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Jul 20 2026

IN THE SUPREME COURT OF SOUTH CAROLINA

S.C. SUPREME COURT

JIRAIR BAGHDASSARIAN,
Petitioner,

RECEIVED

Jul 16 2026

v.

SC Court of Appeals

JUDY TUPOLO, as Attorney-in-Fact for
DONNIE WAYNE ADAIR,
Respondent.

Appellate Case No. 2022-001785

REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI

INTRODUCTION

This Reply is submitted in response to Respondent's Return and demonstrates that the Petition presents the special and important reasons for review required by Rule 242, SCACR. Contrary to Respondent's characterization, the Petition does not seek merely to reargue disputed facts or challenge discretionary factual findings. Rather, it presents significant and recurring questions concerning the proper interpretation and application of South Carolina's Uniform Power of Attorney Act, the limits of judicial authority, statutory standing, procedural due process, preservation of appellate issues, and the proper application of the mootness doctrine.

These questions extend beyond the individual circumstances of this litigation and affect the procedures governing judicial review whenever South Carolina courts are called upon to intervene in disputes involving vulnerable principals, allegations of abuse, disputed capacity, or the exercise of authority under a power of attorney. They concern not only the rights of this Petitioner but also the proper administration of South Carolina's statutory framework governing powers of attorney and the procedural safeguards afforded to those whom the General Assembly has authorized to seek judicial relief under S.C. Code Ann. § 62-8-116. Because these questions concern the administration of South Carolina law and are capable of recurring in future proceedings, they warrant this Court's review under Rule 242.

Petitioner does not ask this Court to resolve disputed factual questions concerning the underlying allegations of abuse or to substitute its judgment for that of the circuit court. Rather, Petitioner submits that the legal and procedural errors identified throughout the Petition prevented the circuit court from reaching a lawful adjudication of the underlying controversy concerning the allegations of abuse, Petitioner's assertion that Mr. Adair expressed a desire to revoke or change his existing Power of Attorney, Petitioner's statutory rights under S.C. Code Ann. § 62-8-116, and the principal's expressed wishes. Accordingly, the procedural questions presented are

inseparable from the disposition of the underlying controversy because they determined whether those issues would ever receive a lawful judicial determination.

Respondent's Return largely addresses the factual merits of Petitioner's allegations while giving comparatively little attention to the legal questions presented. The Petition instead asks this Court to determine whether South Carolina law was properly applied when the circuit court exercised judicial authority after determining that Petitioner lacked standing; relied upon unresolved concerns regarding the principal's capacity without obtaining a judicial determination of competency; substituted indirect investigative evidence for direct testimony from a subpoenaed principal; assessed Guardian ad Litem fees that were subsequently challenged through a timely Rule 59(e) motion; and whether the Court of Appeals correctly concluded that subsequent events rendered the appeal moot.

Petitioner further submits that this controversy remains live because the Guardian ad Litem fee order continues to impose a financial obligation capable of effective judicial relief. Alternatively, even if this Court concludes that certain requests for prospective relief became moot following Mr. Adair's death, the important procedural questions presented remain capable of repetition, are of substantial public importance to the administration of South Carolina's Uniform Power of Attorney Act, and warrant review under the recognized exceptions to the mootness doctrine.

Without guidance from this Court, these questions are likely to recur whenever litigation involving elderly or vulnerable principals extends beyond the principal's lifetime before appellate review can be completed.

For these reasons, and for those set forth below, the Petition satisfies the requirements for discretionary review under Rule 242, SCACR, and the Petition for Writ of Certiorari should be granted.

I. THE COURT OF APPEALS AFFIRMED WITHOUT ADDRESSING PETITIONER'S STATUTORY BASIS FOR STANDING

South Carolina's Uniform Power of Attorney Act expressly authorizes a petition to construe a power of attorney, determine its validity, or review an agent's conduct by, among others, “a person asked to accept the power of attorney.” S.C. Code Ann. § 62-8-116(A)(9). The statute also authorizes a petition by a caregiver or another person who demonstrates sufficient interest in the principal's welfare. Id. § 62-8-116(A)(8). These are legislative categories; the analysis cannot end by labeling Petitioner an “acquaintance.”

The Record contains evidence directly invoking subsection (A)(9). At the July 12, 2022 hearing, Petitioner told the circuit court that he asked Mr. Adair whether he wished to appoint

someone else and that Mr. Adair agreed Petitioner could serve. Petitioner also stated that the recordings documented the conversations and offered to play them during the hearing. (R. pp. 290-92.) Whether that evidence ultimately proves appointment is a merits question. At the certiorari stage, the important point is that the Court of Appeals' standing analysis did not address the statutory category on which Petitioner relied.

The Return repeatedly describes Petitioner as only an acquaintance, but it does not analyze § 62-8-116(A)(9) or explain why the evidence that Mr. Adair asked Petitioner to accept the role did not bring Petitioner within the statute. The construction of this express standing provision is a question of South Carolina law warranting review.

II. A. THE PROCEEDINGS PRESENT AN IMPORTANT QUESTION ABOUT INVESTIGATION, STANDING, AND THE ASSESSMENT OF GAL COSTS

The circuit court did not dismiss the action immediately when standing was challenged. In its August 1, 2022 order, the court determined that “serious allegations” had been made regarding Mr. Adair's competency, status, and care and appointed a Guardian ad Litem to investigate. The court authorized access to medical, financial, and other records, received the GAL's report, conducted a later hearing, and considered the report before entering judgment. (R. pp. 198-206, 243-45.) The final order then dismissed the action for lack of standing and required Petitioner to pay one-half of the GAL fee. (R. pp. 243-45.)

Petitioner does not contend that a court is powerless to take protective action merely because standing is disputed. The narrower question is whether, after the court chose to investigate the allegations and later held that Petitioner lacked statutory standing, it could assess the resulting investigative costs against the party it concluded was not entitled to invoke review—especially when the fee obligation was not announced until the final order. The Return maintains that the investigation was appropriate under adult-protection principles, but it does not

reconcile that position with dismissal under the narrower standing analysis or with the allocation of the investigation's costs to Petitioner.

This sequence presents a recurring issue of judicial administration: how a court should resolve standing, protective investigation, and cost allocation when allegations involving a vulnerable principal prompt court-ordered investigation. The review would provide guidance without requiring this Court to decide the underlying factual accusations.

**B. EVEN IF THIS COURT CONCLUDES THAT PORTIONS OF THE CASE
HAVE BECOME MOOT, REVIEW REMAINS WARRANTED**

Even if this Court concludes that certain requests for prospective relief became moot following Mr. Adair's death, the legal questions presented remain appropriate for review because they are capable of repetition, are of substantial public importance, and concern the administration of South Carolina's Uniform Power of Attorney Act.

This case extends beyond the individual circumstances of Mr. Adair.

Rather, it presents recurring procedural questions concerning:

- the scope of judicial authority after standing has been challenged;
- statutory standing under S.C. Code Ann. §62-8-116;
- the procedures governing judicial review of alleged abuse by an attorney-in-fact;
- the procedures by which courts may rely upon unresolved concerns regarding competency;
- the role of Guardian ad Litem investigations in proceedings involving revocation of powers of attorney;
- preservation of objections arising from relief first appearing in a final judgment; and
- the proper application of mootness where collateral financial obligations remain enforceable.

These questions affect not merely this Petitioner but every principal, attorney-in-fact, proposed successor attorney-in-fact, caregiver, family member, and other individual whom the General Assembly has expressly authorized to seek judicial review under S.C. Code Ann. §62-8-116.

Proceedings involving elderly or vulnerable principals frequently extend beyond the principal's lifetime.

Absent appellate review, the procedural questions presented here are likely to recur while repeatedly evading review because the principal's death may occur before appellate proceedings conclude.

Accordingly, even if portions of the controversy are determined to be moot, the questions presented remain appropriate for this Court's review under Rule 242 because they concern recurring issues affecting the administration of South Carolina law.

III. THE COURT OF APPEALS AFFIRMED PROCEEDINGS THAT RELIED ON UNRESOLVED CAPACITY CONCERNS WHILE DIRECT EVIDENCE WAS TIMELY SOUGHT

The Return argues that the action was not a competency proceeding. Petitioner agrees that he did not seek an adjudication of incapacity. The problem is that the circuit court itself relied on unresolved concerns regarding capacity when declining to recognize the principal's revocation. The final order states: "There is evidence to suggest that Mr. Adair may be incapacitated; however, the proper medical evaluations have not been performed." (R. pp. 243-45.)

That finding did not establish incapacity. It acknowledged the absence of the evaluation necessary to resolve the concern. Yet the proceedings treated the concern as sufficient to reject the principal's stated revocation. The Petition therefore raises a procedural question, not a

request for this Court to decide capacity: may unresolved concerns regarding capacity be used to defeat a principal's action while the issue remains adjudicated and the court acknowledges the absence of proper evaluation?

The Record demonstrates that Petitioner did not wait until appeal to raise the problem. At the July 12 hearing, he advised the court that Mr. Adair and the facility had been subpoenaed and served, questioned why Mr. Adair was absent, and objected to proceeding without him. The court responded that the hearing was non-testimonial. Petitioner then stated that Mr. Adair had revoked the powers of attorney orally, that the conversation was recorded, and that he could play the recording during the hearing. (R. pp. 289-92.) Thus, Petitioner timely sought direct testimony and direct recorded evidence from the principal.

Petitioner's objection to Mr. Adair's absence was not merely an objection that one witness failed to appear. It preserved the objection to resolving the controversy through substituted, second-hand evidence after Petitioner had sought to present the principal's own testimony and recorded statements. The later proceedings relied substantially on the GAL investigation. The GAL expressly acknowledged that he was not a medical doctor and that his opinions were based on personal experience. (R. p. 318.) He nevertheless offered capacity-related comparisons and opinions, while also acknowledging that the alleged emotional restriction included Mr. Adair being unable to speak with members of his congregation or to do what he wished. (R. pp. 318-21.)

After the GAL's presentation, Petitioner again challenged the legal and evidentiary foundation for restricting Mr. Adair's choices. He argued that if Respondent claimed authority to impose such restrictions, a medical evaluation should have been obtained and presented to the court. (R. p. 335.) The circuit court later acknowledged that proper medical evaluations had not been performed. (R. pp. 243-45.) The Court of Appeals' disposition did not address whether the combination of these circumstances—unresolved capacity concerns, the absence of direct

testimony despite subpoena and objection, the offered recordings, and reliance on a nonmedical GAL investigation—presented a reviewable procedural error.

The referral to guardianship or conservatorship proceedings does not eliminate the question. Petitioner maintained that Mr. Adair retained sufficient capacity to revoke the authority. Directing Petitioner toward a separate proceeding designed to determine incapacity did not resolve whether the revocation could be rejected in this action on the basis of unproven incapacity concerns. The Petition asks for guidance on the procedure required when capacity becomes outcome-determinative even though the action was not initially filed as a guardianship case.

IV. RULE 59(e) WAS THE PROPER MEANS TO CHALLENGE THE GAL FEE FIRST IMPOSED IN THE FINAL ORDER

The Return relies on the general rule that a party may not raise an entirely new issue for the first time in a Rule 59(e) motion. That principle does not resolve this case because the GAL fee allocation itself first appeared in the final order. Before entry of that order, no ruling required the Petitioner to pay one-half of the GAL's fee. Petitioner, therefore, could not object to the allocation before it existed.

South Carolina authority distinguishes a new post-judgment theory from an objection to new relief contained in the judgment. When a trial court grants “relief not previously contemplated or presented,” the aggrieved party must use Rule 59(e) to preserve the objection. In *re Estate of Timmerman*, 331 S.C. 455, 460, 502 S.E.2d 920, 923 (Ct. App. 1998). See also *Pelican Bldg. Ctrs. v. Dutton*, 311 S.C. 56, 60, 427 S.E.2d 673, 675 (1993) (requiring a Rule 59(e) motion where a party first learned in the post-trial order that additional relief would be granted); *Coward Hund Constr. Co. v. Ball Corp.*, 336 S.C. 1, 6-7, 518 S.E.2d 56, 59 (Ct. App. 1999) (recognizing the distinction where a motion challenges a new ruling).

Petitioner's motion served precisely that function. It gave the circuit court its first opportunity to reconsider the newly imposed fee obligation. The circuit court considered the objection and expressly ruled: "The Court previously ordered that the named parties split the GAL bill evenly and this remains the order of the Court." (R. pp. 246-47.) The issue was therefore raised at the first available opportunity and ruled upon. The Court of Appeals' preservation conclusion warrants review because it did not account for the rule governing relief first appearing in a final judgment.

V. THE CONTINUING GAL FEE OBLIGATION PREVENTS THE ENTIRE CONTROVERSY FROM BEING MOOT

A case becomes moot only when a judgment would have no practical legal effect on the existing controversy and the reviewing court cannot grant effectual relief. *Curtis v. State*, 345 S.C. 557, 567-68, 549 S.E.2d 591, 596 (2001); *Mathis v. S.C. State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973).

Mr. Adair's death may have rendered some prospective relief unavailable, but it did not eliminate the fee order entered against Petitioner. The order requiring Petitioner to pay one-half of the GAL fee remains a legal and financial consequence of the judgment. Reversal or modification of that order would provide concrete, effectual relief. The Return responds that Petitioner has not paid the fee, but nonpayment does not extinguish an enforceable obligation; it confirms that the obligation remains disputed.

The Petition therefore presents a narrow and recurring legal question: whether an appeal is moot in its entirety when collateral financial relief remains available. The Court of Appeals did not separately analyze that surviving controversy. Review is warranted to clarify that the death of a principal does not automatically moot an appeal from every collateral order entered in litigation concerning the principal.

CONCLUSION

This Petition does not ask this Court to reweigh disputed evidence or resolve factual conflicts. Rather, it presents important and recurring questions concerning the proper interpretation and application of South Carolina's Uniform Power of Attorney Act and the procedures governing judicial review of allegations involving vulnerable principals.

Specifically, this case presents recurring questions concerning statutory standing under S.C. Code Ann. § 62-8-116; the scope of judicial authority after standing has been challenged; the procedures governing judicial reliance upon unresolved concerns regarding a principal's capacity; the substitution of indirect investigative evidence for direct testimony from a subpoenaed principal; preservation of objections arising from relief first appearing in a final judgment; and the proper application of the mootness doctrine where continuing collateral obligations remain enforceable.

These legal questions were preserved in the record, remain unresolved by the decision below, and warrant this Court's review pursuant to Rule 242, SCACR. Their significance extends beyond the circumstances of this individual case because they concern the administration of South Carolina law whenever courts are called upon to resolve disputes involving powers of attorney, allegations of abuse, vulnerable principals, and judicial intervention under the Uniform Power of Attorney Act.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Grant the Petition for Writ of Certiorari;
2. Review the Court of Appeals' decision concerning Petitioner's statutory standing under S.C.

Code Ann. § 62-8-116; the circuit court's exercise of judicial authority after determining that Petitioner lacked standing; the procedures employed after the circuit court acknowledged unresolved concerns regarding the principal's capacity while declining to resolve those concerns through available procedural mechanisms; the preservation of Petitioner's objections concerning the assessment of Guardian ad Litem fees; and the Court of Appeals' application of the mootness doctrine.

3. Reverse, vacate, or otherwise modify the decision of the Court of Appeals to the extent this Court concludes that the proceedings below were inconsistent with South Carolina law.

4. Remand this matter for further proceedings consistent with this Court's opinion, including consideration of Petitioner's preserved statutory standing arguments, the procedural issues concerning unresolved questions of capacity, the preservation of the Guardian ad Litem fee issue, and any remaining matters not rendered moot by subsequent events.

5. Grant such other and further relief as this Court deems just and proper.

Petitioner respectfully submits that this appeal is not moot because the Guardian ad Litem fee order remains a continuing financial obligation for which effective judicial relief remains available.

Alternatively, if this Court concludes that certain requests for prospective relief became moot following Mr. Adair's death, review nevertheless remains warranted because the Petition presents recurring legal questions concerning the administration of South Carolina's Uniform Power of Attorney Act. These questions affect not only this Petitioner but every principal, attorney-in-fact,

proposed successor attorney-in-fact, caregiver, family member, and other individual whom the

General Assembly has authorized to seek judicial relief under S.C. Code Ann. § 62-8-116.

Because appellate proceedings involving elderly or vulnerable principals may extend beyond the principal's lifetime, these procedural questions may otherwise evade appellate review unless this

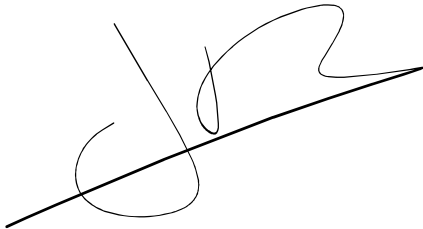
Court provides guidance.

The significance of this case therefore lies not merely in the disposition of one dispute but in clarifying the procedures governing judicial review whenever South Carolina courts are called upon to resolve controversies involving vulnerable principals, substitute decision-makers, and the statutory protections established by the General Assembly. For these reasons, the Petition presents the special and important reasons for review required by Rule 242, SCACR.

WHEREFORE, Petitioner respectfully requests that this Court grant the Petition for Writ of Certiorari and grant such other and further relief as this Court deems just and proper.

Respectfully submitted,

Jirair Baghdassarian
Petitioner, Pro Se

A handwritten signature in black ink, appearing to be 'Jirair Baghdassarian', written over a horizontal line.