



THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM THE CHARLESTON COUNTY COURT OF COMMON PLEAS  
Kristi Lea Harrington, Circuit Court Judge

Case No.: 2012-CP-10-8423

Jerome Myers and Gloria Myers.....Appellants,

v.

Walter R. Kaufmann, Kaufmann and Associates, LLC, Joseph A.  
Broom, Active Day, Inc., Craig Mehnert COO, Bettye Dorn as Center  
Director of Active Day, Inc. @ Charleston, SC.....Respondents.

**INITIAL BRIEF OF RESPONDENTS ACTIVE DAY, INC.,  
CRAIG MEHNERT, COO, BETTYE DORN AS CENTER  
DIRECTOR OF ACTIVE DAY, INC. @ CHARLESTON, SC**

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Craig Mehnert, COO, Bettye Dorn as Center  
Director of Active Day, Inc. @ Charleston, SC

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**SC Court of Appeals**

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## Statement of Issue on Appeal

1. The trial court correctly dismissed Appellants' claims, pursuant to Rule 12, SCRPC, against Respondents Active SC One, Inc. (incorrectly named), Bettye Dorn, and Craig Mehnert, who operated an adult day care facility, because the only allegation against these Respondents is that they allowed an agent of the Probate Court-appointed Guardian for Appellants' father to take him home from the adult day care facility on June 17, 2010?

## Statement of the Case

The Charleston County Probate Court appointed Respondent Walter R. Kaufmann as Guardian for Appellants' father (Henry Myers) on October 25, 2007. Appellants filed this lawsuit on December 28, 2012 against "Atty. Walter R. Kaufmann, Mr. Joseph A. Broom, and Bettye Dorn-Ctr. Dir. Active Day, Inc." alleging various Constitutional violations. Appellants filed a "First Amended Complaint & for a Temporary and Permanent Injunction" on March 28, 2013 against "Walter R. Kaufmann; Kaufmann and Associates, LLC; Joseph A. Broom; and Active Day, Inc., Craig Mehnert COO; and Bettye Dorn as Center Director of Active Day, Inc. @ Charleston, SC."

On May 7, 2013, Respondents Active SC One, Inc. (incorrectly named in the Amended Complaint), Craig Mehnert, and Bettye Dorn moved to dismiss the lawsuit pursuant to Rule 12 of the South Carolina Rules of Civil Procedure. On October 16, 2013, Respondents Walter Kaufmann, Kaufmann and Associates, LLC, and Joseph Broom moved to dismiss the lawsuit pursuant to Rule 12 of the South Carolina Rules of Civil Procedure.

Judge Kristi Lea Harrington heard the motions on November 20, 2013 and granted the motions. The Charleston County Clerk of Court filed an Order dismissing the lawsuit pursuant to Rule 12, SCRCP, on December 23, 2013. Appellants filed the Notice of Appeal on January 2, 2014. Appellants filed their Initial Brief on January 15, 2015 and served these Respondents by mail. These Respondents' attorney received a copy of the initial brief on January 20, 2015.

### Argument

Appellants claims center largely on their dispute with attorney Kaufmann as Guardian for their father, who passed on May 5, 2013. As for claims against Active SC One, Inc. and its agents (Mehnert and Dorn), the First Amended Complaint alleged that Active SC One, Inc. and its agents damaged Appellants by allowing Kaufmann's agent (Joseph Broom) to pick up Appellants' father on June 17, 2010 from the adult day care facility operated by Active SC One in Charleston, South Carolina and take him home. The First Amended Complaint made no other factual allegation against these Respondents. In addition, Appellants produced no credible evidence that Kauffman acted outside the appointment as Guardian by the Charleston County Probate Court or the mandates of S.C. Code Ann. § 62-5-312.

Judge Harrington correctly ruled that Appellants did not present a sufficient claim under South Carolina law against Respondents Active SC One, Inc. (incorrectly named), Bettye Dorn, and Craig Mehnert. As stated in Sloan Constr. Co., Inc. v. Southco Grassing, Inc., 368 S.C. 523, 525, 629 S.E.2d 372, 373 (Ct. App.

2006), “[t]he circuit court, in a civil action, may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court.” Clearly, allowing the court-appointed Guardian and/or an agent of the Guardian to pick up Appellants’ father and take him home did not constitute any actionable conduct or misdeed.

### **Conclusion**

Respondents Active SC One, Inc. (incorrectly named), Bettye Dorn, and Craig Mehnert ask this Court to affirm Judge Harrington’s decision that dismissed this lawsuit against them pursuant to Rule 12, SCRCP.

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Director of Active Day, Inc. @ Charleston, SC.....Respondents.

**PROOF OF SERVICE**

On February 10, 2015, I mailed a copy of Respondents Active SC One, Inc.  
(incorrectly named in the Amended Complaint), Craig Mehnert, and Bettye Dorn's  
Initial Brief and Designation of Matter to Be Included in the Record on Appeal to:

Gloria Myers and Jerome Myers  
2321 Taylor Street  
North Charleston, South Carolina 29406-6232  
APPELLANTS

John J. Dodds, III  
858 Lowcountry Boulevard, Suite 101  
Mount Pleasant, South Carolina 20464  
ATTORNEY FOR RESPONDENTS KAUFFMAN, KAUFMANN AND  
ASSOCIATES, LLC, AND JOSEPH A. BROOM

  
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David S. Cobb

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February 10, 2015

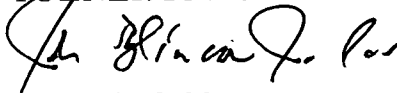
Jenny Abbott Kitchings  
Court of Appeals Clerk of Court  
Post Office Box 11629  
Columbia, South Carolina 29211

Re: Myers v. Kaufmann et al.  
Docket No.: 2012-CP-10-8423  
TP File No.: 12418.101

Dear Ms. Kitchings:

We enclose the original and one copy of Initial Brief of Respondents Active Day, Inc., Craig Mehnert, COO, Bettye Dorn as Center Director of Active Day Inc. @ Charleston, SC in this case. Please file the original and return a filed copy to me in the enclosed envelope. If you have any questions or need additional information, please call me at your convenience. With kind regards,

TURNER PADGET



David S. Cobb

DSC/hah  
enclosures

cc: Jerome and Gloria Myers (with enclosure)  
John Dodds (with enclosure)

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SC Court of Appeals

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12418.101

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