

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Case No. 2012-CP-10-8423

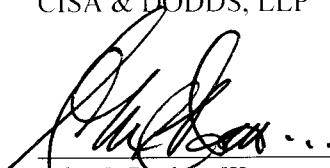
Jerome Myers and Gloria Myers Appellants,

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
WALTER R. KAUFMANN, KAUFMANN AND ASSOCIATES, LLC
AND JOSEPH A. BROOM

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February 13, 2015

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SC Court of Appeals

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629, S.E. 2d 372, 373 (Ct. App. 2006) 3

Statement of Issue on Appeal

1. The trial court correctly dismissed Appellants’ claims, pursuant to Rule 12, SCRPC, against Respondents Walter R. Kaufmann, Kaufmann and Associates, LLC and Joseph A. Broom (collectively “Respondents”) since Respondents acted at all times consistent with the Certificate of Appointment of Guardian from Charleston County Probate Court and in accordance with S.C. Code Ann. § 62-5-312.

Statement of the Case

The Charleston County Probate Court appointed Respondent Walter R. Kaufmann as Guardian for Appellants’ father (Henry Myers) on October 24, 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 and 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

Betty Dorn as Center Director of Active Day, Inc. @ Charleston, SC.”

On October 16, 2013, Respondents Walter R. Kaufmann, Kaufmann and Associates, LLC and Joseph A. Broom moved to dismiss the lawsuit pursuant to Rule 12 of the South Carolina Rules of Civil Procedure. On May 7, 2013, Respondents Active SC One, Inc., Betty Dorn and Craig Mehnert moved to dismiss the lawsuit pursuant to Rule 12 of the South Carolina Rules of Civil Procedure.

Judge Kristi Lea Harrington heard the Respondents’ motions on November 20, 2013 and granted the motions. The Charleston County Clerk of Court filed an Judge Harrington’s dismissing the lawsuit pursuant to Rule 12, SCRCF, 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 a copy of their Brief on Respondents Walter R. Kaufmann, Kaufmann and Associates, LLC and Joseph A. Brown by mail. These Respondents’ attorney received a copy of the Initial Brief on January 20, 2015.

Argument

Appellants’ claims as set forth in the First Amended Complaint center largely on their dispute with Respondent Walter R. Kaufmann as Guardian for their father, Henry Myers, who died on May 5, 2013. Kaufmann and Associates, LLC is a South Carolina Limited Liability Company organized by Respondent Walter R. Kaufmann and Respondent Joseph A. Broom is a nationally certified guardian employed by Kaufmann and Associates, LLC. While the First Amended Complaint is several pages in length, all of the alleged claims against Respondents Walter R. Kaufmann, Kaufmann and Associates, LLC and Joseph A. Broom relate to Kaufmann’s actions in allowing Joseph A. Broom to pick up Appellants’ father on June 17, 2010 from the adult day care facility operated by Active SC One, Inc. in Charleston, South Carolina and take him home, all with the express permission and instruction of Respondent Walter R. Kaufmann. The First Amended Complaint makes no other discernable factual allegations against these Respondents. Moreover, Appellants failed to allege any facts suggesting that

Respondent Walter R. Kaufann acted outside the scope of his 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 Walter R. Kaufmann, Kaufmann and Associates, LLC and Joseph A. Broom. 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 Walter R. Kaufmann, Kaufmann and Associates, LLC and Joseph A. Broom request this Court to affirm Judge Harrington’s decision that dismissed this lawsuit against them pursuant to Rule 12, SCRCP.

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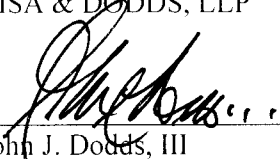
PROOF OF SERVICE

On February 13, 2015, I mailed a copy of Respondents Walter R. Kaufmann, Kaufmann and Associates, LLC and Joseph A. Broom' Initial Brief and the Designation of Matter To Be Included In The Record On Appeal depositing a copy of same in the United States Mail, postage prepaid, addressed to:

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