

(S)

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE CIRCUIT COURT FOR THE  
NINTH JUDICIAL CIRCUIT

RECEIVED

2014CP 107868

JUN 23 2015

MICHAEL DAYSE, )  
 )  
Petitioner, )

Appeal from Probate Court for SC Court of Appeals  
Charleston County

IN RE: )

CASE NUMBER 2011-GC-10-08

ETHEL FRAISER, a person alleged to be )  
incapable of caring for or managing her )  
own estate. )

NOTICE OF INTENT TO APPEAL  
TO CIRCUIT COURT

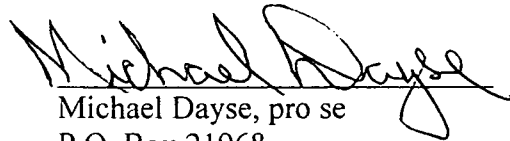
BY  
JULIE S. HARRINGTON  
CLERK OF COURT

2014 DEC 30 AM 11:43

FILED

Pursuant to SCPC §62-1-308, I, Michael Dayse, hereby provide Notice of Intent to Appeal the Final Order of the Probate Court dated December 19, 2014. I received said Final Order on December 26, 2014. A copy of said Final Order is attached hereto.

Respectfully submitted,



Michael Dayse, pro se  
P.O. Box 21968  
Charleston, S.C. 29413

Dated: December 30, 2014.



5

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
 )  
IN THE MATTER OF: )  
ETHEL FRASIER )  
\_\_\_\_\_ )

IN THE PROBATE COURT  
CASE NO.: 2011-GC-10-0081

**RECEIVED**  
JUN 23 2015  
SC Court of Appeals

ORDER


THIS MATTER came before the Court upon a Petition for Appointment of Guardian and Conservator for Ethel Frasier, filed on May 27, 2011, by Petitioner Michael Dayse. However, on October 2, 2014, the Probate Court of Shelby County, Tennessee issued an Order for Appointment of Conservator. The Shelby County Court found that Ms. Frasier has lived in Tennessee since 2011, only visiting South Carolina to bury a relative. Further, she has identification evidencing that she is a Tennessee resident and has no significant connection with South Carolina. The Petitioner received notice of this hearing and finding.

The Petitioner filed a Writ of Mandamus with this Court on October 14, 2014, in which he filed suit against Judge Irvin G. Condon, alleging that the Judge has refused to decide the case. However, with the proceedings in Shelby County, Tennessee, which the Petitioner received notice of, this Court does not have the jurisdiction over the matter. Pursuant to Section 62-5-710(A) of the South Carolina Code, this Court may dismiss a case due to lack of jurisdiction if another state is a more appropriate forum, in this instance Tennessee.

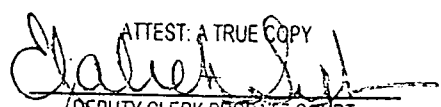
Based on the foregoing, it is now:

**ORDERED, ADJUDGED AND DECREED** that this action is hereby **DISMISSED**.

**IT IS SO ORDERED.**

  
\_\_\_\_\_  
IRVIN G. CONDON  
Judge of Probate  
County of Charleston

This 19<sup>th</sup> day of December, 2014  
Charleston, South Carolina.

ATTEST: A TRUE COPY  
  
\_\_\_\_\_  
DEPUTY CLERK PROBATE COURT  
CHARLESTON COUNTY, SOUTH CAROLINA

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE CIRCUIT COURT FOR THE  
NINTH JUDICIAL CIRCUIT

MICHAEL DAYSE, )  
 )  
Petitioner, )  
 )  
vs. )  
 )  
IRVING G. CONDON, Judge of Probate, )  
Charleston County, )  
 )  
Respondent. )  
\_\_\_\_\_ )

C/A No. 2014-CP-10-6246

MOTION for CLARIFICATION  
OF ORDER OF DISMISSAL  
(EX-PARTE)

FILED  
2015 JAN -6 PM 3:14  
JULIE J. ARMSTRONG  
CLERK OF COURT

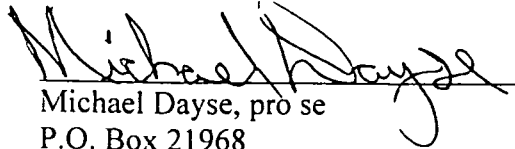
RECEIVED

JUN 23 2015

SC Court of Appeals

On December 29, 2014, the Court of Common Pleas for Charleston County issued an **Order** dismissing the above entitled action (Petition for Writ of Mandamus) from Charleston County Probate Court. Whereas petitioner also has/had an action (Petition for Guardian and Conservatorship, C/A No. 2011-GC-10-0081 and an action for Declaratory Judgment (C/A No. 14-CP-10-6246) to be heard in the same probate court, does this order also dismiss those actions from both probate court and the court of common pleas? Clarification of the above mentioned **Order** is necessary for appeal purposes.

Respectfully submitted,

  
Michael Dayse, pro se  
P.O. Box 21968  
Charleston, S.C. 29413

Dated: January 6, 2015.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

CERTIFICATE OF MAILING

I, Michael Dayse, hereby certify that I have this date served the attached Motion for Clarification of Order of Dismissal on the following interested persons by depositing a copy of same in the U.S. mail, , postage prepaid, and addressed as follows:

Ayesha Washington, Att.  
P.O. Box 30036  
Charleston, S.C. 29407

Irvin G. Condon, Judge  
Charleston County Probate Court  
100 Broad St, Suite 469  
Charleston S.C. 29401

Charles S. Goldberg, Att.  
61 Broad St.  
Charleston, S.C. 29401

Joseph S. Mendelsohn, Att.  
104 Broad St.  
Charleston, S.C. 29402

Ittriss J. Jenkins, Att.  
P.O. Box 953  
Charleston , 29402

RECEIVED

JUN 23 2015

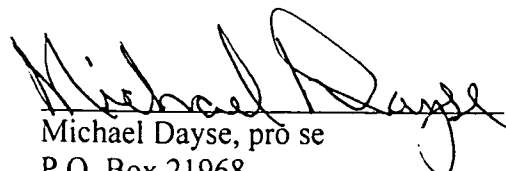
SC Court of Appeals

BY

JULIE J. ARMSTRONG  
CLERK OF COURT

2015 JAN -6 PM 3: 14

FILED

  
Michael Dayse, pro se  
P.O. Box 21968  
Charleston, S.C. 29413

Dated: January 6, 2015.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
FOR THE 9th JUDICIAL CIRCUIT

MICHAEL DAYSE, )  
 )  
Petitioner, )  
 )  
vs. )  
 )  
IRVIN G. CONDON, Judge of Probate, )  
Charleston County, )  
 )  
Respondent. )

C/A No. 14-CP-10-6244  
PETITION FOR WRIT OF  
MANDAMUS

RECEIVED  
JUN 23 2015  
SC Court of Appeals  
JULIE A. STRONG  
CLERK OF COURT  
2014 OCT 10 AM 9:21  
FILED

To: Court of Common Pleas, 9th Judicial Circuit, Charleston County, S.C.

Petitioner, Michael Dayse, alleges:

1. Petitioner is a resident of the city of Mt. Pleasant, county of Charleston, S.C. who has filed an action for Declaratory Judgment. Such action is authorized pursuant to the laws of the state of S.C.
2. Respondent, Irvin G. Condon, has been elected to, and now holds the office of Judge of Probate Court for Charleston County, S.C.
3. On August 31, 2011 petitioner filed an action for Declaratory Judgment, C/A No. 2011-CP-10-6239 (attached hereto) in the court of Common Pleas for Charleston County, asking the court to determine whether he or his sister is the attorney-in-fact for their aunt under South Carolina law.
4. Aforementioned declaratory judgment action was assigned to the defendant by the court of Common Pleas for Charleston County. It was, and still is, the duty of the respondent to decide declaratory judgment actions where appropriate. Respondent refuses, to decide the case.

FORM 4

STATE OF SOUTH CAROLINA  
 COUNTY OF CHARLESTON  
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-10-6239

MICHAEL DAYSE

DEBORAH WINSTON

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or
	<input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

FILED  
 2012 JUN 28 PM 1:15  
 JUDIE ARNSTROM  
 CLERK OF COURT

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court: **The Court ordered that the case should be Transferred to Probate Court to be heard concurrently with the case filed in Probate Court.**

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
NA		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2134

Judge Code

6/28/12  
 Date

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**ATTORNEY(S) FOR THE PLAINTIFF(S)**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**ATTORNEY(S) FOR THE DEFENDANT(S)**  
\_\_\_\_\_  
**CLERK OF COURT**

**Court Reporter:** Anne Meyer

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

MICHAEL DAYSE, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
DEBORAH WINSTON, )  
 )  
Defendant. )  
\_\_\_\_\_ )

C/A No. 2011-CP-10-6239

MOTION AND NOTICE-FOR  
JUDGMENT ON THE PLEADINGS

**RECEIVED**  
JUN 23 2015  
SC Court of Appeals

BY  
JULIE J. ARMSTRONG  
CLERK OF COURT  
2012 MAR -8 PM 2:41

FILED

**MOTION**

Plaintiff, Michael Dayse, acting pro se, moves the court pursuant to Rule 56(a) of the SCRCF, for an order directing entry of judgment in favor of plaintiff and against defendant on the cause of action herein and for the relief sought in the complaint.

This motion is made on the ground that no genuine triable issue of material fact exists, and that the plaintiff is entitled to judgment as a matter of law.

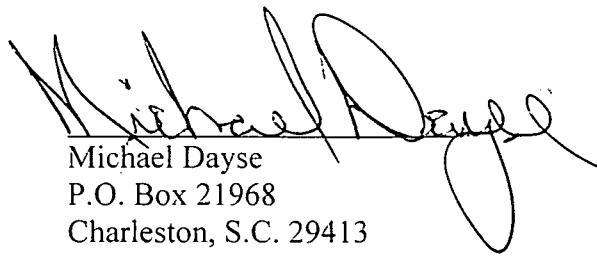
This motion is based on the attached Memorandum of Authorities, files and pleadings in this matter.

**NOTICE OF MOTION**

To: Deborah Winston, defendant, and her attorney:

Please take notice that the plaintiff will bring on the foregoing motion for hearing before this court at a time, date and place to be set by the court.

Dated: Mar. 8, 2012.



Michael Dayse  
P.O. Box 21968  
Charleston, S.C. 29413

## MEMORANDUM OF AUTHORITIES

### STATEMENT OF THE CASE

On August 31, 2011 Michael Dayse brought this action seeking declaratory judgment and injunctive relief against Deborah Winston. Winston did not answer the complaint in a timely manner. On November 2, 2011 Dayse filed application and notice for entry of default judgment. On the same date the clerk of court signed a certificate entering default and judgment against defendant. On November 7, 2011 defendant filed a motion to set aside default.

On February 9, 2012, defendant's motion was heard by Judge Thomas Hughston. Judge Hughston granted the motion. On February 25, 2012, Dayse served the Notice of Appeal on Winston. On March 5, 2012 defendant answered the complaint.

### FACTS

On September 3, 2010 my aunt Ethel Frasier made me attorney-in-fact for her (See Exhibit "A", attached hereto). On April 8, 2011 Aunt Ethel was diagnosed as suffering from Alzheimer's Dementia (See medical report attached hereto as Exhibit "B"). On April 26, 2011 Ms. Winston physically removed Ms. Frasier from the residence where Ms. Frasier and I resided at 64 Columbus St., Charleston, S.C., which Ms. Frasier owned.

On May 4, 2011 my sister Deborah Winston was appointed attorney-in-fact for Ms. Frasier. The same document appointed my sister Eva Dayse Lyons as attorney-in-fact, if Ms. Winston is unable or unwilling to serve. (See Exhibit "C", attached hereto). Thereafter, on August 24, 2011 Ms. Frasier allegedly revoked the power of attorney given to Michael Dayse, defendant herein, (See Exhibit "D", attached hereto).

## ARGUMENTS

“A suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue.” *Gaddy v. Douglass*, 359 S.C. 329; 597 S.E.2d 12; (S.C. App. 2004). The instant case seeks to set aside an instrument revoking a power of attorney and executing a new power of attorney on the ground of a lack of mental capacity and thus, sounds in equity.” *Gaddy*, supra.

“In order to execute or revoke a valid power of attorney the principle must possess contractual capacity. Contractual capacity is generally defined as a person’s ability to understand in a meaningful way, at the time the contract is executed, the nature, scope, and effect of the contract.” *Gaddy*, supra.

Thus, plaintiff argues that Ms. Frasier, the principal in this case, lacked contractual capacity to make defendant her new attorney-in-fact or revoke plaintiff’s power of attorney because she was suffering from Alzheimer’s dementia, a chronic and permanent organic disease, at the time she allegedly executed these instruments.

The medical report herein (Exhibit “B”), which diagnosed Ms. Frasier as suffering from Alzheimer’s dementia is dated April 8, 2011 and the instrument making defendant new power of attorney (Exhibit “C”) is dated May 4, 2011, thirty-four (34) days later.

“For purposes of evaluating a principal’s contractual capacity, where the mental condition of the principle is of a chronic nature, evidence (medical report herein) of the principle’s prior or subsequent condition is admissible as bearing upon his or her condition at the time the contract is executed.” *Gaddy*, supra.





# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1015 SUMTER STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

April 22, 2013

The Honorable Julie J. Armstrong  
100 Broad St Ste 106  
Charleston SC 29401-2210

## REMITTITUR

Re: Dayse, Michael v. Winston, Deborah  
Lower Court Case No. 2011CP1006239  
Appellate Case No. 2012-208726

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

Enclosure

cc: Michael Dayse  
Joseph S. Mendelsohn



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

MICHAEL DAYSE, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
DEBORAH WINSTON, )  
 )  
Defendant. )  
\_\_\_\_\_ )

C/A No.

DECLARATORY JUDGMENT  
& INJUNCTIVE RELIEF

2011 AUG 31 AM 9:38  
JULIE J. ARMSTRONG  
CLERK OF COURT

FILED

NOW COMES the plaintiff, MICHAEL DAYSE, and alleges as follows:

1. Jurisdiction of this Court is invoked pursuant to the laws of the state of South Carolina.
2. Plaintiff resides at 64 Columbus St., city of Charleston, county of Charleston, S.C.
3. At all times mentioned herein plaintiff resided at 192 Rutledge Ave., city of Charleston, county of Charleston, S.C.
4. Defendant, Deborah Winston, is and at all times mentioned herein was, residing at 2390 Baker Hospital Blvd., Apt. H 202, city of North Charleston, county of Charleston, S.C.
5. On or about September 3, 2010 plaintiff was appointed attorney-in-fact for Ethel Frasier, his aunt (a copy of which is attached hereto as Exhibit "A").
6. On or about August 17, 2011, defendant recorded documents with the RMC office of Charleston County, S.C. claiming to be attorney-in-fact for the same Ethel Frasier (a copy of which is attached hereto as Exhibit "B").
7. Plaintiff's appointment has never been revoked.
8. On or about August 5, 2011 defendant wrongfully and unlawfully withdrew all the monies out of Ethel Frasier's bank account.

9. Plaintiff has demanded that defendant refrain from committing any and all acts as attorney-in-fact for Ethel Frasier, but defendant has refused and has threatened to continue such acts, and will do so, unless this court immediately enjoins the defendant from doing so.

10. An actual controversy has arisen and now exists between plaintiff and defendant concerning their respective rights and duties as attorney-in-fact for Ethel Frasier.

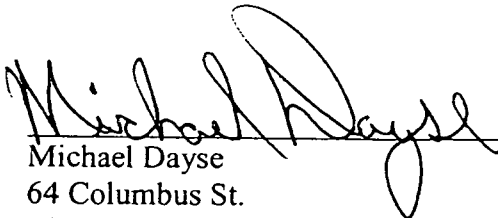
11. Plaintiff desires a judicial determination of plaintiff's rights and duties and a declaration as to who is legally the attorney-in-fact for Ethel Frasier.

12. A judicial declaration is necessary and appropriate at this time under the circumstances in order to prevent further misappropriation of assets owned by Ethel Frasier.

WHEREFORE, plaintiff requests judgment for:

1. A declaration that plaintiff is attorney-in-fact for Ethel Frasier;
2. A declaration that defendant's general Power of Attorney document is void and of no force or effect;
3. Enjoin defendant from acting as attorney-in-fact for Ethel Frasier;
4. Such other and further relief as the court deems just and proper.

Dated: August 30, 2011.

  
Michael Dayse  
64 Columbus St.  
Charleston, S.C. 29403

