

THE STATE OF SOUTH CAROLINA

In The Court of Common Pleas

APPEAL FROM CHARLESTON COUNTY
Honorable Kristi Lea Harrington
Trial Court Case No. 2014-000077

RECEIVED
OF
SC Court of Appeals

SCAC Case No.: 2014-00077

Jerome Myers and Gloria Myers

Appellants,

v.

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

Respondents.

FINAL BRIEF OF APPELLANTS

Jerome Myers
Gloria Myers
2321 Taylor Street,
North Charleston, SC 29406-6232
(843) 747-6741
For Appellants

TURNER PADGET LAW FIRM
Mr. David Cobb, Esq.
40 Calhoun Street
Charleston, SC 29401
(843) 576-2800
Attorney for Active Day Care; Craig Mehnert; Bettye
Dorn

John J. Dodds, iii
858 Lowcountry Blvd., Suite 101
Mount Pleasant, SC 29464
(843) 881-6530
Attorney for Kauffmann; Kaufmann & Assoc.; Joseph
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STATEMENT OF ISSUES ON APPEAL

1. Did the trial Judge make an Abuse of Discretion by refusing the Appellants to enter the January 22, 2010 Letter and the Certificate of Appointment (2007) as facts and evidence then discarded unjustly? See *Transcript at Page 16 line 3 to Page 17 line 16*. [ROA pg 131- 133]
2. Did the Probate Court of Charleston County error to begin and order a visitor competency investigation in Pamlico, SC Florence County where Henry Myers was in assisted living after leg surgery in 2007 in violation of SC Code **§14-23-340** resulting in the Court appointment of Walter R. Kaufmann, Esquire as a Guardian? (see also **§62-5-302**. Venue. and **§62-5-308**. Visitor) [[ROA pg 022] & [pg 131 – 133]]
3. Did the Charleston County Probate Court error to appoint attorney Walter Kaufmann, Esquire to serve as a Guardian charging \$140 per hour plus expenses for out of Charleston County guardianship services to Henry Myers living in assisted living after leg surgery in 2007 in Florence County, SC in violation of SC Code **§14-23-340** ? [ROA pg 100 - 101]
4. Did the Probate Court of Charleston County error about a Charleston County citizen to name an attorney and his attorney business and then after 2009 an attorney who created a Guardian and Conservator business in the name Walter R. Kaufmann, Esquire who continued as a Guardian for Henry Myers with the same Certificate of Appointment from September 25, 2007? [ROA pg 094]
5. Did the Probate Court of Charleston County error to not supervise a Guardian's appointment for Henry Myers that was begun as a result of the Appellant's complaints that the original Probate Petitioners' and their attorney Cezar E. McKnight had forged Henry Myers' signature on a General and Durable Power of Attorney while Mr. Myers was recovering leg surgery at the Ralph H. Johnson Veterans Hospital? (see **SC Code §14-23-1070** Probate Judge is ... "accountable and responsible for . . . ") [ROA pg 169 -178]
6. Did the Probate Orders resulting from invoice and petitions for payments to Walter R. Kaufmann, Esquire falsely authenticate and rejuvenate a Guardian Certificate paying himself the enrichment of fees; while the Probate Court had applied the Supremacy Clause of the Department of Veterans Affairs Decision (December 2008) about Henry Myers in a Consent Order (January 2009) that Henry Myers was not incapacitated as had been alleged? [ROA pg 093 - 094]
7. Did Walter R. Kaufmann, Esquire wrongfully continue to perform and invoice Henry Myers for Guardian services after the Department of Veteran Affairs Final Decision until Mr. Myers' death on May 5, 2013?

{ Walter Kaufmann's Email May 07, 2013 to E. Sykes Chas Probate Clerk and with derogatory comments } at [ROA pg 171]

8. Did Walter R. Kaufmann, Esquire violate S.C. Code Title **§62-5-104** procedures for any Guardian; Temporary Appointment for one year (365 days) by his pen drafting and enriching to himself, upon his own business letterhead, instructions granting guardian duties of false and phony Guardianship upon Joseph A. Broom about Henry Myers in January 20, 2010 to January 19, 2011 when the State Legislature had outlined this specific procedure in the Probate Code of Laws? (*this codification allows guardian appointment only for periods "no more than thirty (30) days and there must be a properly executed Power of Attorney*) [ROA pg 093-94]
9. Did Walter R. Kaufmann, Esquire having never had a lawful certificate as 2007 Guardian that expired upon the Consent Order of January 2009; any authority to appoint Joseph A. Broom as Conservator to Henry Myers, as so stated in the January 20, 2010 business stationary, violates and victimizes Henry Myers? (*RE:: §62-5-410(a) "only the Court may appoint a conservator"*) [ROA pg 169 -178]
10. Did Walter R. Kaufmann Esquire violate the peace and privacy of Henry Myers' enjoyment, his dignity and 'person by sending' Joseph A. Broom (an alleged employee) with the Kaufmann business letterhead stapled to Kaufmann's Guardian Certificate issued in 2007 therefore implying it to have lawfully transferred his own the full weight and force of an actual court document from his name into the name of Joseph A. Broom? [ROA pg 093-94]
11. Did the conversion of Henry Myers' Veterans Disability Funds ultimately overpay Walter R. Kaufmann Esquire the limitations placed on such funds by the VA and the SC Legislature to 5% maximum? [ROA pg 149 - 158]
12. Did the conversion of Henry Myers' Veterans Disability Funds ultimately overpay Walter R. Kaufmann, Esquire and should he as the attorney who was appointed personally suffer disgorgements and claims against his only probate court bond as issued to Walter R. Kaufmann, Esquire as no such bond exists in the names of his businesses? [ROA pg 142 - 152]
13. Did Joseph A. Broom violate SC Code by acting as the Guardian for Henry Myers without a lawful Certificate of Appointment to be issued by "Raised Seal" with an Order of any Probate Court in SC? [ROA pg 094]
14. Did Bettye Dorn, Director of Active Day, Inc. @ Charleston SC (a Veteran Administration paid for activity) violate SC by assisting Joseph A. Broom with his phony documentation provided by Walter R. Kaufmann Esquire to remove Henry Myers from Active Day, Inc. in June 17, 2010? [ROA pg 093]

15. Did the defendants/respondents “fail to yield to the Supremacy Clause” emancipating Henry Myers from the bounds of Probate Court as early as December 2008 while continuing to interfere with the Myers family and children for their own enrichments? [ROA pg 136]
16. Did Walter R. Kaufmann Esquire, wrongfully attack the Appellants who July-August 2008 the MUSC and VA doctors released and authorized Henry Myers as not incapacitated – while Walter R. Kaufmann Esquire attempted to thwart the Supremacy Clause and Authority of the VA – This medical authority of the US Government allowing the Appellants to obtain their fathers new Power of Attorney which according to the VA “drop file” given after the US Department of Veterans Affairs Decision became final? [ROA pg 136]

STATEMENT OF THE CASE

The case appealed from was filed by Jerome Myers and Gloria Myers against the Respondents as captioned for abuses about a guardianship and conservatorship of their father Henry Myers. The Complaint was filed in Charleston County Common Pleas on December 28, 2012. On March 28, 2013 the AMENDED COMPLAINT was filed and served. The Respondent Active Day, Inc., Bettye Dorn and Craig Mehnert CCO (hereafter referred to as Active Day) filed a ANSWER on February 13, 2010. All Respondents had filed AMENDED ANSWERS timely thereafter, followed by Motion(s) to Dismiss. Rule 12.

The Court ORDER from Hon. Judge Harrington was the result of an **Abuse of Discretions** by her not taking the prime key exhibit listed as the January 20, 2010 letter [see ROA pages 092 - 094] by Respondent Kaufmann, Esquire appointing for one year Respondent Broom to be the Guardian and Conservator for Henry Myers (deceased May 5, 2013). Had the court allowed the presentation of the orders and documents before and after January 2010, the Appellants could have easily shown the violations of SC Codes caused by Respondent Kaufmann, Esquire. In fact, the presentation was made as shown at the Transcript of the November 20, 2013 by Appellants. [ROA 066 – 092 see **Transcript** at Pg 16 Line 3 to Pg 17 Line 16] where Judge Harrington said; THE COURT: “Ms. Myers, we’re not here to litigate this matter, “ [And at Pg 17 Line 22-24]; THE COURT: “We are here because the defendants are requesting that this case be dismissed.” The Court went on to say the Respondents failed to state a claim and there was not a proper service. The later conversation showed the defendants did sign the Return Receipts and appeared and Answered and then Move(d) to Dismiss Rule 12 in a frivolous intention based on the history of their own pattern of behavior.

The Appellants did not need a long discovery and was barred from a Scheduling Order due to the Rule 12 Motions. However, as the **main Exhibit** [ROA 093- 094] was taken and handled by the Court, but the bias of the Court ORDER [ROA pg 003 -009] is clear when IT asserted that there “*were not any facts sufficient to support a claim*”. [see ROA at pg 016 - 069] IN FACT the AMENDED COMPLAINT was a Verified Complaint with these initial exhibits. The statement is clear when read with the Other Documents and Materials in the Record on Appeal [ROA at pages 94 – 185].the story that began with a forged Power of Attorney of our fathers signature, grew into a challenge of his being declared incapacitated by the Charleston County Probate Court while he was recuperating at an Assisted Living in Pamlico SC in violation of specific Venue and Personal Jurisdictional protections otherwise prohibited by the Probate Code outlined specifically in this BRIEF as STATEMENT OF ISSUES No.'s 2, 3, 5, 8, & 9.

The capture of Henry Myers was a deceitful and self-serving attempt to make Henry Myers a ward and turn his family home and land away from the legacy that he spent his lifetime to protect. Even after the Department of Veterans Affairs [ROA pages 134 – 138] Doctors and MUSC Doctors letters proved Henry Myers was not incapacitated; the Respondents continued to ignore the Probate Court Consent ORDER January 2009 [ROA pages 169 - 178] and were still violating SC Probate Code until May 5, 2013 and now are threatening claims against our fathers estate; AND

Furthermore, the Department of Veteran Affairs via the **Supremacy Clause** directed the Conservator, Family Services, Inc. April 14, 2009 to return funds to Henry Myers as he was never incompetent. [ROA page 134 – 148] . Again and again these Respondents did not respect the Consent ORDER or the Supremacy Clause of the United States. Henry Myers was not then and never should have been a ward of the State. That is a fact easily to be proven at a trial of the facts when granted. [ROA pg 169 -178]

ARGUMENT & ANALYSIS

The Plaintiff-Appellants tried as hard as any *pro se* party can be expected. Although these plaintiffs had filed a Motion to Recuse Judge Dennis and that motion was moot because Judge Harrington took the case over, that event had the potential to cause some friction among the parties – while the plaintiffs were hoping that all was to be fair. The Court (when) asked, the defendants to provide(d) a proposed order. The *pro se* plaintiffs had to ask to file their version of a proposed order. This is part of the Record in both the

transcript. [ROA Transcript Page 24 Line 12 -13] and at [ROA Plaintiff's proposed order Other Documents and Materials Pages 62 - 64]

The attorney for the Active Day defendants Mr. Cobb told the Court at the **Transcript** Page 20 Lines 16-22 in a way to distract the Court about whom it was who took Henry Myers away from Active Day on James Island. Mr. Cobb says; "at Page 20 Line 20 – 22, . . ."The only claim is that we let Mr. Myers go home with his legally appointed , court appointed guardian." Mr. Dodds attorney for Walter R. Kaufmann, Kaufmann and Associates and Joseph A. Broom spoke right after, [ROA pg 066 – 092] **Transcript** Page 20 Line 23 – 25 and Page 21 Line 1 – 13. At Page 21 Line 4-8 Mr. Dobbs says; . . . " And on June the 17th when Mr. Kaufman had Mr. Broom present a certificate and his letter {Kaufmann, Esquire stationary January 20, 2010} [ROA pg 093] of authority to simply pick Mr. Broome (SIC) up an bring him home, that was certainly in accordance with section 62-5-312." Mr. Dobbs misspoke and mislead testimony to the Court as the evidence and facts would have shown that Mr. Myers was picked up and the evidence and Law shows that Mr. Broom did not have any guardian authority based on a letter of January 20, 2010 to January 19, 2011 as this can only be done for a period of less than thirty (30) days by a properly executed Power of Attorney. There is and was no such Power of Attorney as the Law requires at **§62-5-104. Delegation of Guardian's Powers**, which is main Claim in the AMENDED COMPLAINT that the defendants have together misrepresent(ed) to the Court by asserting a protection of Law where their own statements (or testimony to the Court) actually support the Plaintiffs Causes of Action.. It is not **§62-5-312 General Powers and Duties of a Guardian** was simply the wrong law for the Court to consider. To compound the defendant's burden to file their Motions to Dismiss Rule 12; the AMENDED COMPLAINT clearly lists causes in line with, Walter R. Kaufmann, Esquire **§62-5-104. Delegation of Guardian's Powers**. Too, Charleston County Probate Judge Condon's "*accountability and responsibility*" that without oversight and supervision otherwise prohibited these actions of a guardian. This is a clear Law violation of Probate guardian appointee. See **§14-23-1070**. Mr. Kaufmann, Esquire knew and had reason to know that Mr. Henry Myers was actually not mentally incapacitated. Mr. Kaufman was involved in the civil case to defend Cezar E. McKnight (now also under Appeal, Case No. 2013-000371) wherein the forgery of Henry Myers' signature on a Power of Attorney escalated into a misuse, a challenge and an expert finding that the signature was indeed a fraud but certified by Attorney Cezar E. McKnight. This event caused the Probate Petition that fueled the tainted appointment of Walter R. Kaufmann, Esquire over Henry Myers on September 25, 2007. Other testimony at a trial of the facts, when held, will reveal that as is shown in this pleading – there was a **Supremacy Clause** finding by the United States Department of Veterans Affairs in December 2008 and letters from

federally paid doctors in July – August 2008 -- that Henry Myers was, in fact, not incapacitated at all. Too, that there is in place the Consent Order on January 2009 releasing Henry Myers as being incapacitated – allowing him to continue to vote, to obtain his driver’s license again and enjoy his life with his 6 children and 10 grandchildren. All this should have been accomplished and Henry Myers and his immediate family should not have been deprived further enjoyments and freedoms afforded to every American. All these causes of action are part of the AMENDED COMPLAINT.

CITATIONS:

The **Supremacy Clause** was upheld by the Charleston County Probate Court in January 2009 via the Consent Order. [**ROA pg 169 - 178**] & [**pg 179 - 187 respectively**] These defendants did not respect this *latch* placed on their behavior. IN FACT, there was one day the Transcript gave that the Police asked the Defendants Kaufmann and Broom to leave the Myers property. Ms. Gloria Myers was home that day and an eyewitness.

The trial court, Honorable Judge Harrington, has clearly applied the **wrong Law** and being inexperienced was lead into this misapplication by the testimony of the defendant’s attorneys. Mr. Kaufmann, Esquire simply cannot ignore the limitations placed on any guardian by the Law written in **§62-5-104. Delegation of Guardian’s Powers**. Mr. Broom did not have a Power of Attorney as would have been required when he and the Active Day Inc. forced and manhandled Henry Myers into Mr. Broom’s vehicle on that dreadful day June 17, 2010. At that time, the Consent Order [**ROA pg 169 -178**] negated any Guardianship as Henry Myers was released at Probate. IN FACT, and a trial of these facts will show, that Walter R. Kaufmann, Esquire did not interfere with Henry Myers or his family life for a one year until Mr. Broom appeared with the unlawful stationary and a copy (no raised seal) of the 2007 Certificate of Appointment from Probate. The defendant attorney’s mislead the Court and the **wrong Law** was interpreted finding for the defendants a dismissal as { such created } an **error of Law**.

The trial court gave improper weight to January 20, 2010 key evidence as the Letter by Walter R. Kaufmann, Esquire [**ROA pg 093**] that violated how powers of such are to be delegated AND that Walter R. Kaufmann, Esquire continued his invoicing [**ROA pg 149 - 188**] until the death of Henry Myers and now likely has { is making } claims against the { Henry Myers } Estate for more fees and expenses. Simply, the guardianship in question ceases to have any purpose based on the Consent Order 2009. [**ROA pg 169 -**

178] An event for which the Defendant Walter R. Kaufmann, Esquire, Kaufmann and Associates LLC, Joseph A. Broom, Active Day { Inc. and Bettye Dorn, Director } cannot present rationally as a {successful} Rule 12 Motion(s) to Dismiss.

A court's testimony constitutes an "abuse of discretion" where the ruling is manifestly arbitrary, unreasonable, or unfair. **Means v. Gates**, 348 S.C. 161, 558 S.E. 2d 921 (S.C. App. 2001)

The trial court's rulings about the January 20, 2010 letter-evidence shows that this Court did not consider the key to the sequential issues (discussed separately showing the pattern of behavior) and also were inconsistent with Laws and certainly prejudicial to Plaintiffs. Plaintiffs were not allowed to determine with reasonable certainty what in the 'eyes of the court' were involved with co-Defendant's alleged wrongdoings - acts inconsistent with Laws and are the very prohibitions set forth in the State guardian laws. The term "abuse of discretion" means only that [a] ruling of the trial court was without reasonable factual support, resulted in prejudice to the rights of appellant, and therefore amounted to error of law. **Bridges v. Wyandotte Worsted Co.**, 239 S.C. 37, 121 S.E. 2d 300 (1963).

CONCLUSION

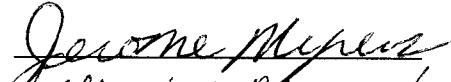
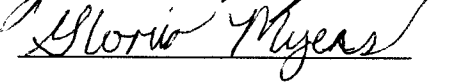
The Appellants have shown that the testimony and their key evidence; as supporting documents and other materials, that the Honorable Judge Harrington applied the wrong law and the finding was an error of law.

The Respondent's both filed a Motion(s) to Dismiss; Rule 12 and offered testimony asserting the AMENDED COMPLAINT had failed to state a claim for which relief could be granted. Clearly, the Appellants have shown that **§62-5-104. Delegation of Guardian's Powers** was the only correct Law to ask the Court to apply properly fitting the facts and testimony presented at the hearing; **not** §62-5-312 General Powers and Duties of a Guardian. The path to the Guardian appointment in this matter was tainted from the forged power of attorney in 2007 until the death of Henry Myers May 5, 2013 and continuing until resolved.

The Appeal should **REMAND** this matter for a true trial of the facts. A trial will show that the rights of the Appellants have been hindered and damaged by the defendant's wrongful actions. The plaintiffs have been deprived life, liberty and the expectation of happiness by these defendants in public and in their home. The

plaintiffs' family has been invaded unjustly. This appeal is now the only path to making whole these Appellant's lives. The Appellants have been denied a due process of law and equal protections so afforded.

Respectfully submitted this 5 day of March 2015

Jerome Myers 
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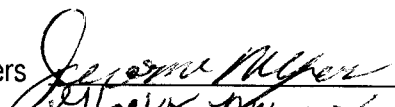
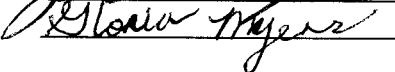
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Jerome Myers & Gloria Myers affirm that on this day I have placed a copy of the in the **FINAL BRIEF OF APPELLANTS** USPS mail with first class postage affixed to the South Carolina Appeals Court Clerk and the following Defendants/Respondents:

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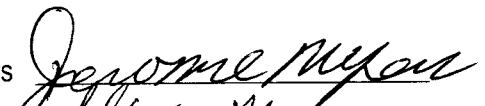
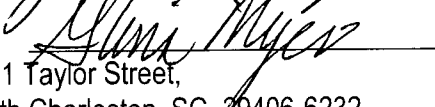
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CERTIFICATE OF COUNSEL

RULE 211(b). Content . . . "Certificate of Counsel that their FINAL BRIEF complies with their INTIAL BRIEF."

Respectfully submitted this 5th day of JUNE 2015

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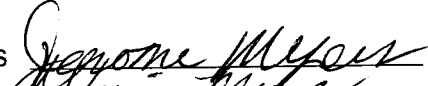
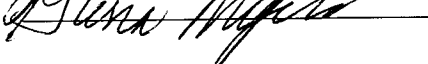
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Jerome Myers & Gloria Myers affirm that on this day I have placed a copy of **RULE 211(b). Content . . . "Certificate of Counsel that their FINAL BRIEF complies with their INTIAL BRIEF"** as ORDERED by the Clerk's Letter June 2, 2015; in the USPS mail with first class postage affixed to the South Carolina Appeals Court Clerk and the following Defendants/Respondents:

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