

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

DEC 02 2015

SC Court of Appeals
Appellant,

Daniel B. Dorn, in his capacity of the Parent and
Natural Guardian of E.D., R.D., and Y.D.,

v.

Paul S. Cohen and Susan Cohen, Individually and
in their capacity as the Co-Conservators of the
person of Abbie Ilene Dorn, a protected person and
ward, and in their capacity as Co-Trustees of the
Abbie Dorn Special Needs Trust,

Respondents.

Paul S. Cohen, M.D. and Susan Cohen,

Respondents,

v.

E.D., R.D., and Y.D., The Living Issue of Abbie Ilene
Dorn, and the South Carolina Department of Heath and
Human Services, Respondents below,
Of whom E.D., R.D., and Y.D., The Living Issue of
Abbie Ilene Dorn are the
and

Appellants,

the South Carolina Department of Heath and Human
Services is a

Respondent.

In Re: The Abbie Dorn Special Needs Trust

Appellate Case No. 2015-000659

The Honorable Deadra L. Jefferson
Horry County
Trial Court Case No. 2013-CP-26-2968, 2013-CP-26-8139,
2014-CP-26-1691, 2014-CP-26-1744

FINAL BRIEF OF RESPONDENTS

Reese R. Boyd, III
Bret H. Davis
DAVIS & BOYD, LLC
1110 London St., Suite 201
Myrtle Beach, SC 29577
(843) 839-9800
(843) 839-9801 (fax)
ATTORNEYS FOR RESPONDENTS
SUSAN COHEN and PAUL S. COHEN

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Daniel B. Dorn, in his capacity of the Parent and
Natural Guardian of E.D., R.D., and Y.D.,

Appellant,

v.

Paul S. Cohen and Susan Cohen, Individually and
in their capacity as the Co-Conservators of the
person of Abbie Ilene Dorn, a protected person and
ward, and in their capacity as Co-Trustees of the
Abbie Dorn Special Needs Trust,

Respondents.

Paul S. Cohen, M.D. and Susan Cohen,

Respondents,

v.

E.D., R.D., and Y.D., The Living Issue of Abbie Ilene
Dorn, and the South Carolina Department of Heath and
Human Services, Respondents below,
Of whom E.D., R.D., and Y.D., The Living Issue of
Abbie Ilene Dorn are the

Appellants,

and

the South Carolina Department of Heath and Human
Services is a

Respondent.

In Re: The Abbie Dorn Special Needs Trust

Appellate Case No. 2015-000659

The Honorable Deadra L. Jefferson
Horry County
Trial Court Case No. 2013-CP-26-2968, 2013-CP-26-8139,
2014-CP-26-1691, 2014-CP-26-1744

FINAL BRIEF OF RESPONDENTS

Reese R. Boyd, III
Bret H. Davis
DAVIS & BOYD, LLC
1110 London St., Suite 201
Myrtle Beach, SC 29577
(843) 839-9800
(843) 839-9801 (fax)
ATTORNEYS FOR RESPONDENTS
SUSAN COHEN and PAUL S. COHEN

TABLE OF CONTENTS

Table of Authorities	ii
Statement of Issues on Appeal	1
Standard of Review	2
Statement of the Case	3
Argument:	
I. Did the Circuit Court err when it dismissed the appeal from the Probate Court when it found that the Court Order at issue is interlocutory in nature, and not immediately appealable?	11
II. Did the Order of the Probate Court clarifying the standing of Abbie Dorn as a party sufficiently impact a substantial right of the Appellants, such that they should be entitled to an immediate appeal of the ruling?	14
Conclusion	16

TABLE OF AUTHORITIES

Cases:

<u>Matter of Howard</u> , 315 S.C. 356, 360, 434 S.E.2d 254, 256 (1993)	2
<u>Morrow v. Fundamental Long Term Care Holdings, LLC</u> , 773 S.E.2d 144 (2015)	2, 12, 13
<u>Hagood v. Sommerville</u> , 362 S.C. 191, 194, 607 S.E.2d 707, 708 (2005)	12, 13
<u>Berkeley Elec. Coop v. Mt. Pleasant</u> , 302 S.C. 186, 189, 394 S.E.2d 712, 714 (1990)	13
<u>Hunnicutt v. Rickenbacker</u> , 268 S.C. 511, 517, 234 S.E.2d 887, 890 (1977)	13
<u>Ieter v. S.C. DOT</u> , 369 S.C. 433, 633 S.E.2d 143, 146 (2006)	13
<u>Macaulay v. Wachovia Bank of S.C., N.A.</u> , 333 S.C. 201, 508 S.E.2d 46 (Ct. App. 1988)	15
<u>Hanson, et al. v. Denckla, et al.</u> , 357 U.S. 235	15

Statutes:

South Carolina Code Ann. §62-1-308 (1976 & Supp. 2015)	2
South Carolina Code Ann. §62-1-308(d) (1976 & Supp. 2015)	2
South Carolina Code Ann. §14-3-330 (1976 & Supp. 2015)	2, 12, 13

Rules:

South Carolina Rules of Civil Procedure, Rule 19	13, 14
South Carolina Rules of Civil Procedure, Rule 19(a)	15
South Carolina Rules of Civil Procedure, Rule 24	13

STATEMENT OF ISSUES ON APPEAL

- I. Did the Circuit Court err when it dismissed the appeal from the Probate Court when it found that the court order at issue is interlocutory in nature, and not immediately appealable?**
- II. Did the Order of the Probate Court clarifying the standing of Abbie Dorn as a party sufficiently impact a substantial right of the Appellants, such that they should be entitled to an immediate appeal of the ruling?**

STANDARD OF REVIEW

Appeals from the probate court are governed by the provisions of the probate code. Matter of Howard, 315 S.C. 356, 360, 434 S.E.2d 254, 256 (1993). South Carolina Code § 62-1-308 provides that a final order or decree of the probate court may be appealed to the circuit court, and that the circuit court "must hear and determine the appeal according to the rules of law." S.C. Code Ann. § 62-1-308(d) (1976 & Supp. 2015). "[A]ccording to the rules of law' means according to the rules governing appeals." Matter of Howard, 315 S.C. at 360, 434 S.E.2d at 257. However, in this case, there is no final order of the probate court from which the appeal is taken. As such, this Court must look to the nature of the specific order appealed from in order to determine whether such order is in fact appealable, and if so, the appropriate standard of review to be applied. See S.C. Code Ann. § 14-3-330 (1976 & Supp. 2015), and Morrow v. Fundamental Long Term Care Holdings, LLC, 773 S.E.2d 144 (2015).

STATEMENT OF THE CASE

This appeal arises from two closely related Petitions filed in the Probate Court for Horry County in November 2010, both involving the Abbie Dorn Special Needs Trust. One Petition, brought by Respondents Paul and Susan Cohen, sought confirmation of certain payments made by Paul and Susan Cohen (hereinafter "Mr. Cohen" and "Ms. Cohen" or "the Cohens"), as Co-Conservators of Abbie Dorn, and Co-Trustees of the Abbie Dorn Special Needs Trust, while the other Petition, brought by the Appellant, Mr. Daniel Dorn, (hereinafter "Mr. Dorn") sought to remove the Cohens as Co-Conservators and Co-Trustees of the Abbie Dorn Special Needs Trust (the "Trust"), for acts related to the same payments from the Trust which the Cohens sought to affirm.

A trial was commenced in Probate Court in February of 2013. While the trial was in recess, on or about December 5, 2013, the Court issued an Order naming Abbie Ilene Dorn as a party in both cases (R. pp. 38-39). Appellants, both Mr. Dorn and Attorney Kachmarsky for the children, filed Notices of Appeal to the Horry County Court of Common Pleas in early 2014. The appeals were consolidated in the circuit court, and Respondents filed a Motion to Stay the appeal based on the recusal by the Probate Judge just prior to her losing her reelection bid in June 2014 (R. pp. 358-390). The circuit court held a hearing on the Respondents' Motion to Stay the appeal on February 9, 2015, but did not rule on the Respondents' Motion to Stay, and instead held that the appeal was interlocutory and dismissed the appeal. (R. pp. 554-568). This appeal to the Court of Appeals followed.

FACTS

Daniel Dorn and Abbie Ilene Dorn (hereinafter, "Ms. Dorn" or "Abbie") were married in the State of California in 2002. In or around June 2006, Abbie gave birth to three (3) children, R.D., E.D., and Y.D. (hereinafter "the Dorn children"). Tragically, during childbirth, Ms. Dorn suffered catastrophic injuries. The first two babies were delivered normally at Cedars-Sinai Medical Center, then, while attempting to reposition the third child for delivery, the doctor accidentally cut Mrs. Dorn's uterus causing massive blood loss, shock, and ultimately cardiac arrest. As a result of this accident, Ms. Dorn was left paralyzed, and unable to speak or to function. To date, Ms. Dorn remains tragically disabled.

A medical malpractice claim was filed in the State of California on behalf of Ms. Dorn, which ultimately resulted in settlement. Pursuant to the terms of the settlement agreement, a portion of the settlement was used to purchase an annuity on the life of Abbie Ilene Dorn, and a portion of the settlement, just under One Million (\$1,000,000), was paid as a lump sum into the Abbie Dorn Special Needs Trust. The annuity purchased with the settlement provides monthly income to the Trust, currently in excess of \$36,000 monthly, for the life of Abbie Dorn, which income will continue to increase over the life of Abbie Dorn. Ms. Dorn is currently a ward of the Court, and she also is under Guardianship of her parents, the Cohens. (R. pp. 3-27).

At the request of Mr. Dorn, the Cohens instituted a marital dissolution proceeding in California. The Cohens did not object to Daniel Dorn retaining custody

of the Dorn children, who are now nine (9) years of age, but did seek visitation of the Dorn children on behalf of Abbie Dorn. Mr. Dorn, in turn, sought child support payments from the Abbie Dorn Special Needs Trust, payments which the Cohens were advised and believe are inconsistent with the purpose of the Abbie Dorn Special Needs Trust, a special needs trust established pursuant to 42 U.S.C. § 1396p(d)(4)(A). The resulting litigation between Mr. Dorn and the Cohens in the California Superior Court persisted for years, was unfortunate, and was costly. The Cohens paid the legal fees incurred in connection with the California marital dissolution litigation, which amounted to nearly One Million Dollars (\$1,000,000), from the Abbie Dorn Special Needs Trust.

Following the California litigation, Mr. Dorn commenced litigation against the Cohens in South Carolina, filing an action against the Cohens both individually and as Co-Conservators and Co-Trustees of Abbie Dorn and the Trust (the "Dorn Petition"). One day later, and before they were aware the Dorn Petition had been filed, but anticipating further litigation from Dan Dorn, the Cohens filed a separate petition (the "Cohen Petition"), seeking to confirm the same payments from the Trust associated with the California marital dissolution action which Mr. Dorn complained of in the Dorn Petition. The Dorn Petition sought the removal of the Cohens as Co-Trustees of the Trust and as Co-Conservators of their daughter, and requested monetary reimbursement to the Trust for the legal expenses incurred by the Trust in the California litigation. Mr. Dorn alleged various causes of action including breach of several fiduciary duties and willful violations by the Cohens of the terms of the Trust

while acting as Conservators and Trustees. In the Cohen Petition, the Cohens alleged that they had previously been authorized to retain attorneys for the protected person, Abbie Dorn, by the Superior Court of California, Kern County, Metropolitan Division, and by the Order of Transfer of Jurisdiction to Horry County, but that in prudence they were seeking additional specific affirmation of that same authority by the Horry County Probate Court.

The Probate Judge appointed Attorney V. Lee Moore as the Guardian ad Litem (hereinafter "GAL") for Ms. Dorn. (R. p. 28). The Probate Judge also appointed Attorney Lynette R. Hedgepath to serve as the attorney for Ms. Dorn, individually. The Court did not appoint any attorney to represent the GAL. (R. p. 29). These appointments applied to both the Dorn Petition and the Cohen Petition, while the Court's appointment of John Kachmarsky as Attorney and GAL to represent the Dorn children applied only to the Cohen Petition action.

Given the number of common issues arising in both matters, the Court consolidated the two matters for discovery and trial purposes only. In the Order consolidating the matters, the Court indicated that separate final Orders would be issued in each matter. (R. pp. 472-473).

The original Cohen Petition only listed "In re the Abbie Dorn Special Needs Trust" in the caption, with no persons listed as Respondent. (R. p. 96). The Summons to the Cohen Petition, however, was served on "Abbie Ilene Dorn and Her Guardians and Conservators and the Trustee of the Abbie Dorn Special Needs Trust, Paul S. Cohen, MD and Susan Cohen." (R. p. 122). In March 2011, the Cohens amended their Petition

and added E.D., R.D., and Y.D., the Living Issue of Abbie Ilene Dorn and the SC Department of Health and Human Services as Respondents. (R. pp. 123-125)

Prior to the commencement of trial, Mr. Dorn did not serve the Dorn Petition on Ms. Dorn, and neither her Attorney nor the GAL ever served an Answer to the Dorn Petition. The Cohens did serve a copy of the Cohen Petition on Abbie's Attorney, and Ms. Dorn answered the Cohen Petition. (R. pp. 283-287). Over objection by Appellant, the Court allowed both Ms. Dorn's GAL and Ms. Dorn's Attorney to make opening and closing statements and to cross-examine witnesses. (R. pp. 749-750).

At trial, Mr. Dorn presented evidence and testimony of several witnesses, including Mr. Dorn and the Cohens. Following the conclusion of witness testimony by both Mr. Dorn and the Cohens, Mr. Dorn rested his case. It was at this time that the GAL and the Attorney for Ms. Dorn sought to call additional witnesses. Counsel for Mr. Dorn objected, stating that while witnesses may be permitted in the Petition filed by the Cohens, wherein Ms. Dorn was a named party, said witness testimony could not and should not be permitted in the Petition filed by Mr. Dorn as all parties had concluded the calling of their witnesses. It was at this point, for the very first time, that the trial Judge stated that Ms. Dorn was, in fact, a Party to both of the actions. (R. pp. 1025-1031).

The ensuing colloquy amongst the Court, and all Counsel present in the courtroom evidences substantial confusion over whether or not Abbie Dorn was a party to either the Dorn Petition, the Cohen Petition, or both petitions. In response to the

discussion in the courtroom, and numerous lengthy objections, the Court indicated that it intended to allow Ms. Dorn's GAL and Attorney to call witnesses:

20 THE COURT: She may not be named as a
21 party, but let's be clear, in my opinion, she is a
22 party in your action to remove the trustees of her
23 trust. I didn't go back to look at the order, and
24 I'm happy to, but my position is I appointed
25 Ms. Hedgepath and Ms. Moore to represent Abbie in
1815:1 the action you brought and in the action that the
2 Cohens brought.

(R. p. 1025). Following ongoing discussion of the issue before the Court, the Court continued to clarify that it had considered Abbie Dorn to be a party to both the Dorn and the Cohen Petitions. (R. pp. 1025-1031). Counsel for the Cohens noted that, while neither the Dorn Petition or the Cohen Petition appeared to directly name Abbie Dorn as a party, certain documents, such as the Orders appointing John Kachmarsky, Lynette Hedgepath, and Lee Moore to their respective court-appointed roles referenced *only* Abbie Dorn as a party:

25 MR. BOYD: Before you rule, let me
1830
1 just add one point. The order appointing the
2 guardian and the attorneys for the protected
3 person, the caption the court used in the order,
4 which, again, you've signed the order the 2nd day
5 of February 2011 -- and I've got a hard copy in
6 the file, I can hand it up -- the caption that the
7 court utilized in the order, it doesn't mention
8 Dan Dorn. It doesn't mention the Cohens. It's a
9 two-line caption, Your Honor. The first line is:
10 The matter of Abbie Dorn, a protected person.
11 Nobody else is mentioned in the caption. The
12 second line is: Matter of Abbie Dorn Special
13 Needs Trust. So to sit here and contend that
14 Abbie Dorn is --
15 THE COURT: And what does the order

16 actually say, Mr. Boyd?

17 MR. BOYD: And it contains -- so the
18 caption of Your Honor's order is: Matter of Abbie
19 Dorn, a protected person, matter of the Abbie Dorn
20 Special Needs Trust, contains both the case
21 numbers, 2008-GC -- actually, I think that's an
22 error, Your Honor. It's 2010. 2010-GC-26-25 and
23 GC-26-50, which are the two cases, and then the
24 order is: Order appointing guardian ad litem upon
25 review of the incoming pleadings filed in the

1831

1 above-referenced matters, plural, referring to
2 both, this court finds that the appointment of a
3 guardian ad litem is appropriate, necessary,
4 and/or desirable for the protected person, Abbie
5 Dorn, referring to her as the protected person.

6 MR. DAN SLOTCHIVER: We agree with
7 that completely. We're not disputing that.

8 THE COURT: And was that the order
9 that appointed both Ms. Hedgepath and Ms. Moore?

10 MR. BOYD: There's an order for
11 Ms. Moore, Your Honor, and there's the equivalent
12 order for Mr. Kachmarsky, referring only to
13 2010-GC-26-50 and an equivalent order for
14 Ms. Hedgepath referring to both actions.

* * *

21 THE COURT: Thank you.

22 Mr. Slotchiver, I'm not aware of any
23 rule that prevents a court-appointed guardian ad
24 litem on behalf of either a minor, an alleged
25 incapacitated person, a protected person, a ward

1832

1 from calling their own witnesses in any action
2 that involves that person.

3 MR. DAN SLOTCHIVER: Well, Your Honor,
4 I'll be happy to --

5 THE COURT: Regardless of whether they
6 were actually named as a party in a proceeding,
7 I'm not aware of any rule that prevents them -- I
8 understand you've cited the South Carolina Rules
9 of Civil Procedure, but I'm not aware of any rule
10 that limits a guardian ad litem's right to call

11 witnesses in an action where that person they were
12 appointed to represent -- maybe they're an
13 incarcerated person, out of state, in state, maybe
14 they're a minor, maybe they're already a protected
15 person, maybe they're already a ward, maybe
16 they're alleged to be incapacitated -- that would
17 prevent someone who's representing the best
18 interest of that person from calling witnesses in
19 an action to which they have an interest.

(R. p. 1029).

At the conclusion of the last scheduled day for trial, March 7, 2013, the Court recessed the trial, and agreed to entertain a formal written Motion by Ms. Dorn's Attorney to have Abbie Dorn added as a Party to the case. Other parties were allowed to brief the Court on the issue in response to Ms. Dorn's Motion. (R. p. 1142) On December 5, 2013, the Court issued an Order explicitly joining Ms. Dorn as a party in both cases. (Order Naming Abbie Ilene Dorn as Party to Actions).

Appellants, both Mr. Dorn and Attorney Kachmarsky for the children, filed Notices of Appeal to the Horry County Court of Common Pleas in early 2014. The appeals were consolidated in the Circuit Court. Respondents filed a Motion to Stay the appeal based on the recusal by the Probate Judge just prior to her losing her reelection bid in June 2014, and pending Motion for Mistrial filed by the Respondents in the Probate Court based on the judge not being reelected. (R. pp. 358-364). The Circuit Court held a hearing on the Respondents' Motion to Stay the appeal on February 9, 2015. The Circuit Court judge, however, did not rule on the Motion to Stay, but instead concluded that the appeal was interlocutory and dismissed the appeal. (R. pp. 554-568).

ARGUMENT

I. THE ORDER AT ISSUE IS NOT IMMEDIATELY APPEALABLE, AND THE CIRCUIT COURT DID NOT ERR WHEN IT DISMISSED APPELLANT'S APPEAL.

Appellants correctly note in their Brief that, despite the fact that appellate briefing had not been completed, the Circuit Court dismissed the appeal below as interlocutory at a hearing on the Respondents' Motion to Stay the appellate proceedings, on February 9, 2015. (Appellants' Brief pp. 9-10). Appellants claim that because the Probate Order appealed from added a party defendant, mid-trial, it was immediately appealable. However, while on its face the Probate Order being appealed from added Abbie Dorn as a party defendant to the cases below in the Probate Court, these Respondents would argue that the Probate Order at issue merely clarified with certainty the role of Abbie Dorn in these proceedings. As Respondents have already observed, neither the Dorn Petition *nor* the Cohen Petition named Abbie Dorn as a specific party to their respective actions, while other documents in both proceedings, such as the Orders concerning court appointed counsel and GALs, referenced Abbie Dorn *exclusively*. (Supra, at p. 8).

To suggest that Abbie Dorn was truly "added as a new party-Defendant, mid-trial," as the Appellants do, is also to suggest that these actions could ever have been undertaken and litigated fairly, absent her full and unfettered participation in the proceedings. Such a rule would undermine the very purpose of appointed counsel for protected persons and guardians ad litem in the probate courts. Similarly, suggesting

that the Probate Order appealed from affected the substantial right of Daniel Dorn because it interfered with his right to “choose his Defendant,” is true only insofar as Daniel Dorn would have been free to litigate the Dorn Petition absent the full and active participation of Abbie Ilene Dorn, something which these Respondents would argue cannot be the rule, and which this Court cannot sanction.

The South Carolina Supreme Court recently addressed the question of what types of trial court orders are, and are not, immediately appealable in the case of Morrow v. Fundamental Long-Term Care Holdings, LLC, 412 S.C. 534, 773 S.E.2d 144 (2015). In Morrow, the Court held that:

the determination of whether a trial court’s order is immediately appealable is governed by statute. Hagood v. Sommerville, 362 S.C. 191, 194, 607 S.E.2d 707, 708 (2005); *see* S.C. Code Ann. § 14-3-330 (1976 & Supp. 2014). Pursuant to Section 14-3-330, appellate courts have jurisdiction to immediately review:

- (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;
- (2) An order affecting a substantial right made in an action when such order (a) in effect **determines the action and prevents a judgment from which an appeal might be taken or discontinues the action**, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;
- (3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and

(4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

S.C. Code. Ann. § 14-3-330. The provisions of section 14-3-330 have been construed by this Court to serve the underlying policy favoring judicial economy by avoiding "piecemeal appeals." Hagood, 362 S.C. at 196, 607 S.E.2d at 709. By its nature, the question of whether an order is immediately appealable is determined on a case-by-case basis.

Morrow v. Fundamental Long Term Care Holdings, LLC, 412 S.C. 534, 537-38, 773 S.E.2d 144, 145-46 (2015) (emphasis added).

Appellants correctly observe that the Supreme Court in Morrow affirmed and recognized that a Plaintiff's right to name or choose his own defendant is a substantial right. However, in this case, significantly, the Probate Court order appealed from neither "determined the action," nor did it prevent "a judgment from which an appeal might be taken," nor did it "discontinue the action." As Appellants acknowledge in their brief, "the decision to grant or deny a motion to join an action pursuant to Rule 19, SCRCF, or intervene in an action pursuant to Rule 24, SCRCF, lies **within the sound discretion of the trial court.**" (Appellant's Br. p. 12, *citing* Berkeley Elec. Coop. v. Mt. Pleasant, 302 S.C. 186, 189, 394 S.E.2d 712, 714 (1990); and Hunnicutt v. Rickenbacker, 268 S.C. 511, 517, 234 S.E.2d 887, 890 (1977)(emphasis added)), and this Court should not disturb a lower court's decision, unless "a manifest abuse of discretion is found resulting in an error of law." (Appellant's Br. p. 12, *citing* Jeter v. S.C. DOT, 369 S.C. 433, 633 S.E.2d 143, 146 (2006)). No such manifest abuse of discretion is found here. The Probate Order appealed from did not "determine the action." Indeed, the status and

outcome of these cases remains very much “uncertain,” as Appellants themselves acknowledge. (Id.) Nor did the Probate Court Order appealed from prevent a judgment from which an appeal might be taken, or discontinue the action. As such, the Probate Order appealed from does not fall within the ambit of S.C. Code § 14-3-330, and is therefore not immediately appealable.

II. THE PROBATE COURT DID NOT ERR IN CLARIFYING THE STATUS OF ABBIE DORN AS A DIRECT PARTY TO THE PROCEEDINGS BELOW, AND THE PROBATE COURT’S RULING DID NOT SUFFICIENTLY IMPACT A RIGHT OF THE APPELLANTS SUCH THAT THEY SHOULD BE ENTITLED TO AN IMMEDIATE APPEAL OF THAT RULING.

As Respondents note above, the trial transcript makes clear that while there were differing opinions in the courtroom when the issue of Abbie Dorn’s status arose on March 7, 2013, the transcript generally supports the conclusion that both the attorney and the GAL for Abbie Dorn, and the attorneys for the Cohen Respondents, as well as, significantly, the Probate Court judge herself, had commenced the underlying trial proceedings in the Probate Court, on both the Dorn and Cohen Petitions, with the expectation that Abbie Dorn would be able to fully and completely participate in all proceedings, on both the Dorn Petition and the Cohen Petition. (R. pp. 1024-1031).

Moreover, there can be little doubt that Abbie is unquestionably a necessary and indispensable party to these proceedings. South Carolina Rules of Civil Procedure, Rule 19, provides in pertinent part, that:

A person ... shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties,

or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. **If he has not been so joined, the court shall order that he be made a party.**

Rule 19(a), SCRPC (emphasis added). Here, where the Probate Court was asked to construe a special needs trust that exists, as it must pursuant to Medicaid requirements, *for the sole benefit* of Abbie Dorn, it is difficult to argue that Abbie Dorn is not a necessary party to those proceedings. *See, e.g., Macaulay v. Wachovia Bank of S.C., N.A.*, 333 S.C. 201, 508 S.E.2d 46 (S.C. App. 1988) (citing *Hanson, et al. v. Denckla, et al.*, 357 U.S. 235, for the general rule that a trustee is a necessary party to an action involving the validity of a trust).

While acknowledging that the Court has the authority to add Abbie Dorn as a party, if necessary, pursuant to Rule 19(a), SCRPC, Appellants assert that Abbie is not a necessary party to the proceedings in the Probate Court because she “was already represented by the presence of the Cohens as defendants in the action.” (Appellant’s Br. p. 13.) Yet, the Cohens are the same co-trustees whom Appellants seek to have removed as co-trustees for allegedly breaching their fiduciary responsibilities with respect to Abbie’s Special Needs Trust.

It is reasonable to conclude that the Probate Court proceedings in this matter, and the cases generally, have life-or-death implications for Abbie Ilene Dorn. To overlook the individual primarily impacted by these proceedings, Abbie Ilene Dorn, or to suggest that the proceedings below may proceed absent Abbie’s full and unfettered

participation, is to overlook both the true nature of the litigation, and the very purpose of the Abbie Dorn Special Needs Trust. The trial judge in the Probate Court, as is made clear in the Orders appointing Abbie's counsel and GAL, understood from the outset that Abbie's rights and interests in these proceedings were paramount and must be protected. (R. pp. 28, 29). The Probate Court Judge appointed Abbie's attorney and GAL for that purpose, and she was well within her discretion to do so.

Because Abbie Dorn is, and has been from the outset, a necessary party to both the Dorn Petition and the Cohen Petition, the Order of December 5, 2013, naming her as such and clarifying her status as a necessary party does not sufficiently impact the rights of the Appellants, such that they should be entitled to an immediate appeal of that Order.

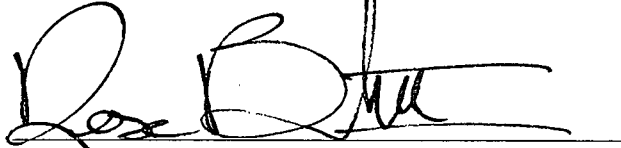
CONCLUSION

Appellants would appear to suggest to this Court a rule by which vulnerable and protected persons such as Abbie Dorn may participate in litigation in the Probate Courts which directly affects them in fundamental ways, but without being afforded the same rights, privileges, or status of other litigants. Appellants have not been unduly prejudiced by the rulings of the trial court below. Respondents respectfully request that the ruling of the Circuit Court below be AFFIRMED, and that the Appellants' current appeal be DENIED.

For the reasons set forth herein, Respondents Paul and Susan Cohen respectfully request that this Court affirm the judgment of the Circuit Court below.

November 30, 2015

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Reese R. Boyd, III", written over a horizontal line.

Reese R. Boyd, III

Bret H. Davis

DAVIS & BOYD, LLC

Post Office Box 70517

Myrtle Beach, SC 29572

(843) 839-9800

reese@davisboydlaw.com

bdavis@davisboydlaw.com

ATTORNEYS FOR RESPONDENTS
PAUL S. COHEN, M.D., AND SUSAN
COHEN, Individually and in their
Capacity as the Co-Conservators of the
Person of Abbie Ilene Dorn, a Protected Person
and Ward, and in their Capacity as Co-
Trustees of the Abbie Dorn Special Needs
Trust

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Daniel B. Dorn, in his Capacity as the Parent and Natural
Guardian of E.D., R.D., and Y.D., Appellant.

RECEIVED

DEC 02 2015

SC Court of Appeals

v.

Paul S. Cohen and Susan Cohen, individually and in their
capacity as the Co-Conservators of the person of Abbie
Ilene Dorn, a protected person and ward, and in their
capacity as Co-Trustees of the Abbie Dorn Special Needs
Trust, Respondents.

Paul S. Cohen, M.D. and Susan Cohen, Respondents,

v.

E.D., R.D. and Y.D., the Living Issue of
Abbie Ilene Dorn and the South Carolina Department
of Health and Human Services, Respondents below,

Of whom E.D., R.D. and Y.D., the Living
Issue of Abbie Ilene Dorn are the Appellants,

and

The South Carolina Department of Health and Human
Services is a Respondent.

In Re: The Abbie Dorn Special Needs trust.

Appellate Case No. 2015-000659

The Honorable Deadra L. Jefferson
Horry County
Trial Court Case No. 2013CP2608152, 2013CP2608139,
2014CP2601691, 2014CP2601744

CERTIFICATE OF COUNSEL

The undersigned certifies that the Respondents' Final Brief complies with Rule 211(b) pursuant to SCACR.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Reese R. Boyd, III', written over a horizontal line.

November 30, 2015

Reese R. Boyd, III
Bret H. Davis
DAVIS & BOYD, LLC
Post Office Box 70517
Myrtle Beach, SC 29572
(843) 839-9800
reese@davisboydlaw.com
bdavis@davisboydlaw.com

ATTORNEYS FOR RESPONDENTS
PAUL S. COHEN, M.D., AND SUSAN
COHEN, Individually and in their
Capacity as the Co-Conservators of the
Person of Abbie Ilene Dorn, a Protected
Person and Ward, and in their Capacity
as Co-Trustees of the Abbie Dorn
Special Needs Trust

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

DEC 02 2015
SC Court of Appeals

Daniel B. Dorn, in his Capacity as the Parent and Natural Guardian of E.D., R.D., and Y.D., Appellant.

v.

Paul S. Cohen and Susan Cohen, individually and in their capacity as the Co-Conservators of the person of Abbie Ilene Dorn, a protected person and ward, and in their capacity as Co-Trustees of the Abbie Dorn Special Needs Trust, Respondents.

Paul S. Cohen, M.D. and Susan Cohen, Respondents,

v.

E.D., R.D. and Y.D., the Living Issue of Abbie Ilene Dorn and the South Carolina Department of Health and Human Services, Respondents below,

Of whom E.D., R.D. and Y.D., the Living Issue of Abbie Ilene Dorn are the Appellants,

and

The South Carolina Department of Health and Human Services is a Respondent.

In Re: The Abbie Dorn Special Needs trust.

Appellate Case No. 2015-000659

The Honorable Deadra L. Jefferson
Horry County
Trial Court Case No. 2013CP2608152, 2013CP2608139,
2014CP2601691, 2014CP2601744

PROOF OF SERVICE

I certify that I have served Respondents' Final Brief and Certification of Counsel by depositing a copy of it in the United States Mail, postage prepaid, on December 1, 2015, addressed to:

John A. Massalon, Esquire
Christy Ford Allen, Esquire
WILLS MASSALON & ALLEN LLC
Post Office Box 859
Charleston, South Carolina 29402
(843) 727-1144
jmassalon@wmalawfirm.net
callen@wmalawfirm.net
ATTORNEYS FOR APPELLANTS

John Kachmarsky, Esquire
Law Office of John Kachmarsky
171 Church Street, Suite 330
Charleston, South Carolina 29401
johnk@jktaxlaw.com
COURT APPOINTED ATTORNEY
AND GUARDIAN AD LITEM FOR
E.D., R.D. AND Y.D., THE LIVING
ISSUE OF ABBIE ILENE DORN

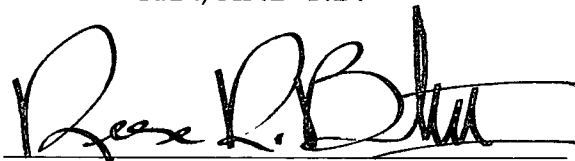
Virginia Lee Moore, Esquire
Moore, Johnson & Saranti
P. O. Box 14737
Surfside Beach, SC 29587
(843) 650-9757
moore@grandstrandlawyers.com
ATTORNEYS FOR AND GUARDIAN
AD LITEM FOR ABBIE ILENE DORN

Shealy B. Reibold, Esquire
The South Carolina Department
of Health and Human Services
P. O. Box 8206
Columbia, South Carolina 29202
ATTORNEY FOR THE SOUTH
CAROLINA DEPARTMENT OF
HEALTH AND HUMAN SERVICES

Lynette Rogers Hedgepath, Esquire
The Hedgepath Law Firm, PA
207 Beatty Street
Conway, South Carolina 29526
(843) 488-3161
lynette@sccoast.net
COURT APPOINTED ATTORNEY
FOR ABBIE ILENE DORN

Daniel S. Slotchiver, Esquire
Slotchiver & Slotchiver, LLP
44 State Street
Charleston, SC 29401
(843) 577-6531
dan@slotchiverlaw.com
steve@slotchiverlaw.com
Andrew@slotchiverlaw.com
ATTORNEYS FOR APPELLANT
DANIEL B. DORN, IN HIS
CAPACITY AS THE PARENT AND
NATURAL GUARDIAN OF E.D.,
R.D., AND Y.D.

December 1, 2015



Reese R. Boyd, III
Bret H. Davis
DAVIS & BOYD, LLC
Post Office Box 70517

Myrtle Beach, SC 29572
(843) 839-9800
reese@davisboydlaw.com
bdavis@davisboydlaw.com

ATTORNEYS FOR RESPONDENTS
PAUL S. COHEN, M.D., AND SUSAN
COHEN, Individually and in their
Capacity as the Co-Conservators of the
Person of Abbie Ilene Dorn, a Protected Person
and Ward, and in their Capacity as Co-Trustees
of the Abbie Dorn Special Needs Trust