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THE STATE OF SOUTH CAROLINA

In The Court of Common Pleas

APPEAL FROM CHARLESTON COUNTY
Honorable Kristi Lea Harrington

RECEIVED

SCAC Case No.: 2014-00077

MAR 16 2016

SC Court of Appeals

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.

RULE 221 PETITION -- REHEARING AND REMITTITUR OF APPELLANTS

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Gloria Myers
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For Appellants

TURNER PADGET LAW FIRM
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Attorney for Active Day Care; Craig Mehnert; Bettye
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Joseph Broom

TABLE OF CONTENTS

Restated from Appellants Briefs pages Ib.

TABLE OF CITED AUTHORITIES & STATUTES

Restated from Appellants Briefs pages Ib.

CITATIONS OF FEDERAL AND STATE AGENCIES

Restated from Appellants in their ROA pages Ib.

- DECISION (2008) BY DEPARTMENT OF VETERANS AFFAIRS; AND
- THE MEDICAL UNIVERSITY HOSPITAL INSTITUTE OF PSHYCHIATRY ABOUT HENRY MYERS MENTAL HEALTH.
- S.C. CONSTITUTION; Art. V, § 4, **Rule** 402(k), the **Oath** of Office for **Attorneys**

STATEMENT OF ISSUES {EMPHASIS ADDED}:

- 1- DID THE HARRINGTON COURT USE A BIASED DESCRESTION ? AND,
- 2- DID THE HARRINGTON COURT FAILURES¹ TO APPLY THE PROPER LAW §62-5-104 AND EVIDENCES INTO THE RECORD MISGUIDE JUSTICE?

The Appellant's restate ENTIRELY their previous BRIEF'S AND PLEADINGS, that Table of Contents; pleadingS, citations and the RECORD ON APPEAL.

FEDERAL CITATIONS - USDC JURISDICTION

- 3- Smith v. Yeager @ 393 U.S. 122 (1968)
- 4- Townsend v. Sain, @ 372 U.S. 317 372 U.S. 293 (1963)

NOTE: Federal Citations (*new considerations*): "... Should the State Court's fail to allow evidences..." about Offenses against Veterans' and their Families without an Equal Protections under the Supremacy Clause, then these exhibits and evidences would be proper before the United States District Courts; see, Smith v. Yeager @ 393 U.S. 122 (1968) and Townsend v. Sain, @ 372 U.S. 317 372 U.S. 293 (1963).

¹ SC Judges and Lawyers MUST take an OATH as shown in Rule 402. This OATH mandates all evidence be admitted.

A CONCISE STATEMENT OF THE BASIS OF JURISDICTION BASIS ABOUT THE
APPEAL COURT ORDER DATED MARCH 2, 2016.

RESTATEMENTS OF ISSUES: The Hearing Transcript at Pg. 081, 082, 083 and 084; Pg. 088, 089 for November 20, 2013 before the Hon. K. Harrington (Line 1-25) shows how Documents were presented to the Court twice AND how they were not allowed to be put into evidence as the supporting material facts. None of the Appellant's Documents made a part of the RECORD ON APPEAL (ROA) were allowed and both times these evidences were physically in the hands of the Court AND was handed back to the Appellants. At the Transcript Pg. 16 Line 3 to Pg 82 the Court clearly stated to these two Appellants that these Respondents wanted the case to be dismissed.

The Court Order by the Harrington Court was the result of her "abuse of discretions" by her not accepting the KEY EXHIBIT listed in the ROA as the January 20, 2010 Letter [see Pg 092 - 094] wherein Respondent Kaufmann, Esq. had illegally appointed for one (1) year Respondent Broom to act as H.Myers' Guardian; who impliedly is directing the work of the Conservatorships, over Henry Myers (deceased now since May 5, 2013). The matter the Harrington Court does not visualize it that Henry Myers at all times of these Respondents civil conspiracy was released from being ruled a Probate Court Ward due to MUSC an Department of Veteran Affairs rulings that Mr. Henry Myers was of sound mind and body. The Respondents keep their scheme in place --even after Mr. Henry Myers moved back into his own home.

The error is that the Harrington Court applied the wrong laws. And ignored the correct law(s). And did not enter evidence writing that there was not evidences. This *reversible mistake* by the Court below is directly an appealable substantive law right of these Appellants to the SC Court of Appeals; without any SCRCF 59(e) Motion finding below was actually during the hearing and on the Transcript - EXHIBITS taken in the personal hands of or by the Harrington Court -- twice -- and refused and returned to these pro se Appellants meets any SCRCF 59(e) purposes; in fact, the matter of these refused

evidences and exhibits were clearly in the Judge's own hands and thereby, not simply overlooked in the pleadings considerations or orders granting the Respondents dismissal for SCRCF 12(b)... as the Judge returned them twice into the hands of these Appellants. These judicial acts opened the door to the complicity of this which is really more an **Interlocutory Appeal**. Any pro se or even a learned attorney would be befouled unjustly contrary to the Appeal Court ORDER of March 2, 2016.

This SCRCF 221: Motion for Remitter and Reconsideration is timely fair and just and proper. Had the Harrington Court allowed the Previous Probate Court Orders, the Appellant's Documents and time-lined these relevant dates both before and after the January 20, 2010 EXHIBIT; any Appellant pro se or fully represented -- even the common knowledge easily shows the Respondents violations and offenses to a person known as §62-5-313; §62-5-410a; §62-5-312 and §62-5-302. The ROA and Court saw or should have seen the letters and Certificate that was presented into the Appellants pleadings as evidence of the Complaint(s); IT should have and could have seen the Good Cause and Preponderance of evidences that has been overlooked --- the Harrington Court and Appeal Court finding {see the March 2, 2016 ORDER attached} must review and reconsider GRANTING these Appellants Jurisdiction in the Court. The obvious is shown by the *one-sidedness* of the ISSUES raised on APPEAL.

Furthermore: The Respondents' each tried to convince the Harrington Court that they had not been served -- however a presentation of the USPS Green Card signed shown to the Court rebuked that implications for a SCRCF 12(b) dismissal. In fact, this gives more credence's to these Appellants, pro se. The Hearing Transcript of November 20, 2013 shows a proper service of Summons & Complaint. On Pg 082 Attorney Dodd's admitted on the record that Mr. Broom was a stranger and was using, Mr. Walter Kaufmann's Esquire (as attorney) Probate Certificate of Authority. One was never issued by the Probate Court nor Petitioned to be obtained for Broom. The date of that Certificate of Authority was September 25, 2007 and the Kaufman's Stationary Letter giving Guardian Authority is clearly a violation and offense and is illegally written and used against these Appellants and their father, Mr. Henry Myers. The Respondents, when the Appeals Court reconsiders the March 2, 2016 ORDER, {IT} will be shown to have violated SC Code §62-5-302; §62-5-104 and even §16-17-735 could not have been in the record but should have been in the record.

Again, restating the Appellant's Brief and prior pleadings: The Harrington Court on Pg 088 asked Mr. Dodd and Mr. Cobb to submit a Proposed Order by Friday. Pg 089 Line 9 - 23). WE the Appellants did not have a chance even with the Proposed Order that we sent into the Court Pg 089 Line 17 - 22. On Pg 090 Line 18 - 25. the Harrington Court saw and touched the Exhibits and evidences of Documents . . . the Court's refusal to file these documents into the record is a Deprivation and Civil Conspiracy. Too, §42 U.S. Code §1983 compounds along with the Respondents a Harrington Court's failure to respect the Department of Veterans Affairs findings (December 15, 2008) and the Probate Court's release of personal jurisdiction of Mr. Henry Myers -- then for and continuation of times in disfavor of these Respondents -- violates the Supremacy Clause and the Fifth and Fourteenth Amendment Equal Protections these Appellants expect and deserve applied in their favor.

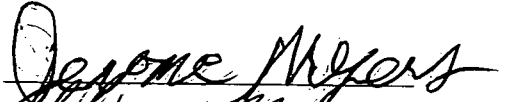
HISTORY: the Respondents Violation of §62-5-302 on 08/07/2007 ... when the Appellant's father was in Commander Nursing Center in Florence, SC . . . after that date Henry Myers returned home in December 2008. The Respondents violated SC Code §14-23-340; §62-5-104; and the Supremacy Clause. The Respondents knew and were intimately involved when the Federal Ruling became effective in 2008. The Federal Register and Code of Regulations 38 CFR for Veterans is supreme across the land and above any State Courts.

IT is CLEAR that the Appeal Court ORDER takes the position, as listed in the first page of the ORDER, that because the Appellant's EXHIBITS and EVIDENCES were not made a part of the Transcript - the Appeal Court has no jurisdiction to REMAND the Harrington Court's Dismissal under Rule 12(b). The opposite is what's true -- the Appeal Court is the ONLY proper place (i) to review these rejected evidences of the Harrington Court; (ii) to correct the Harrington Court failure to recognize the Appellants just causes of action; and (iii) to apply **SC Code §62-5-104** as the correct law to be applied and to find that ...312 was the incorrect law to have relied upon. (see Brief of Appellants)

The Appeal Courts ORDER ends with a statement to the effect that 'one who elects to be *pro se* is at his own risks' for compliance(s) with the rules and procedures. So is it too, that the Judges and Lawyers who've taken the OATH under Art V, § 4 Rule 402, MUST not commit prosecutorial misconduct and cause exculpatory evidence and exhibits to be ignored by a Courts decisions '...against any Party'; Partie' just like these very Appellants.

Respectfully submitted this 13th day of March 2016

Jerome Myers

Handwritten signature of Jerome Myers in cursive script.

Gloria Myers

Handwritten signature of Gloria Myers in cursive script.

2321 Taylor Street,
North Charleston, SC 29406-6232
(843) 747-6741

ORDER - MARCH 2, 2016

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

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.

Appellate Case No. 2014-000077

Appeal From Charleston County
Kristi Lea Harrington, Circuit Court Judge

Unpublished Opinion No. 2016-UP-125
Submitted February 1, 2016 – Filed March 2, 2016

AFFIRMED

Jerome Myers and Gloria Myers, of North Charleston,
pro se.

John Joseph Dodds, III, of The Law Firm of Cisa &
Dodds, LLP, of Mt. Pleasant for Respondents Walter R.
Kaufmann, Kaufmann and Associates, LLC, and Joseph
A. Broom.

David Starr Cobb, of Turner Padgett Graham & Laney,
PA, of Charleston, for Respondents Active Day, Inc.,
Craig Mehnert, and Bettye Dorn.

PER CURIAM: Jerome and Gloria Myers (Appellants) appeal the circuit court's order dismissing their action against Walter R. Kaufmann, Kaufmann and Associates, LLC, Joseph A. Broom, Active Day, Inc., Craig Mehnert CCO, and Bettye Dorn as Center Director of Active Day, Inc. @ Charleston, SC (Respondents) pursuant to Rule 12(b)(6), SCRCF, for failure to state a cognizable claim. Appellants argue (1) the circuit court erred in refusing to admit documents as evidence prior to its decision; (2) the probate court erred in offering a "visitor competency investigation[;]" (3) the probate court erred in appointing Walter Kaufmann to serve as guardian; (4) the probate court erred by allowing Kaufmann to continue to serve as guardian under the original guardianship order after he began Kaufmann and Associates, LLC; (5) the probate court erred by failing to supervise the guardian; (6) the probate court erred in approving payments to Kaufmann after the Department of Veterans Affairs determined his ward to be competent; (7) Kaufmann violated section 62-5-104 of the South Carolina Code (2009) by granting guardianship duties to Broom; (8) Kaufmann did not have authority to appoint Broom as conservator; (9) Kaufmann "violat[e]d the peace and privacy of [his ward's] enjoyment" by appointing Broom a "temporary guardian[;]" (10) Kaufmann committed conversion of his ward's disability benefits; (11) Kaufmann should suffer disgorgements for his actions; (12) Broom violated South Carolina law by acting as a guardian without a lawful certificate of appointment; (13) Dorn violated South Carolina law by assisting Broom in transporting the ward; (14) Respondents "failed to yield to the Supremacy Clause[;]" and (15) Kaufman "wrongfully attack[ed]" Appellants when they obtained a power of attorney from the ward following the Department of Veteran's Affairs determination. We affirm¹ pursuant to Rule 220(b), SCACR, and the following authorities:

As to issue 1: *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007) ("In reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCF, the appellate court applies the same standard of review as the [circuit] court."); *id.* ("In considering a motion to dismiss a complaint based on a failure to state facts

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

sufficient to constitute a cause of action, *the [circuit] court must base its rulings solely on allegations set forth in the complaint.*" (emphasis added)); *id.* ("If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper.").

As to issues 2-6: Rule 203(b)(1), SCACR ("A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment."); Rule 203(b)(5), SCACR (stating appeals from the probate court "shall be served in the same manner as provided by Rule 203(b)(1)"); *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008) ("The requirement of service of the notice of appeal is jurisdictional, *i.e.*, if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal...." (quoting *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004))).

As to issues 7-15: *Pye v. Estate of Fox*, 369 S.C. 555, 566, 633 S.E.2d 505, 510 (2006) ("It is well settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the [circuit] court to be preserved."); *Lapp v. S.C. Dep't of Motor Vehicles*, 387 S.C. 500, 507, 692 S.E.2d 565, 569 (Ct. App. 2010) ("To be preserved for appellate review, an issue must have been: (1) raised to *and ruled upon* by the [circuit] court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the [circuit] court with sufficient specificity." (emphasis added)); *Rodriguez v. Gutierrez*, 391 S.C. 323, 330, 705 S.E.2d 94, 98 (Ct. App. 2011) ("When an issue or argument has been raised to but not ruled upon by the circuit court, a party must file a Rule 59(e) [, SCRCPP] motion in order to preserve it for appellate review."); *Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011) ("Issue preservation rules are designed to give the [circuit] court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review." (quoting *Queens Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006))); *State v. Burton*, 356 S.C. 259, 265 n.5, 589 S.E.2d 6, 9 n.5 (2003) (noting "[a] pro se litigant who knowingly elects to represent himself assumes full responsibility for complying with the substantive and procedural requirements of the law").

AFFIRMED.

FEW, C.J., and SHORT and THOMAS, JJ., concur.

THE STATE OF SOUTH CAROLINA

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

Respondents.

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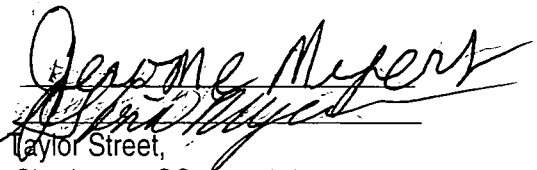
Jerome Myers & Gloria Myers affirm that on this day I have placed a copy of the in the **RULE 221 PETITION -- REHEARING AND REMITTITUR OF APPELLANTS** USPS mail with first class postage affixed to the South Carolina Appeals Court Clerk and the following Defendants/Respondents:

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Respectfully submitted this 13th day of March 2016

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MAR 16 2016

SC Court of Appeals

The Court of Appeals,

March 14, 2016
Appellate Case NO:

2014-000077
Pro Se litigant

We are Submitted Comply with the Substantive
and procedural requirements of the law, by
Answers to: Unpublished Opinion NO:

2016-UP-125 Submitted February 6, 2016

- Filed March 2, 2016 / Forward To: With Money Order
of \$25.00

① Few, C.J.

② Short

③ Thomas, J.J.

④ Ms. Jenny Abbott Kitchings, Clerk

C.C. Mr. David Starr Cobb, Esquire

Mr. John Joseph Dodds, III Esquire

The Honorable Kristi Lea Harrington

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MAR 16 2016

SC Court of Appeals

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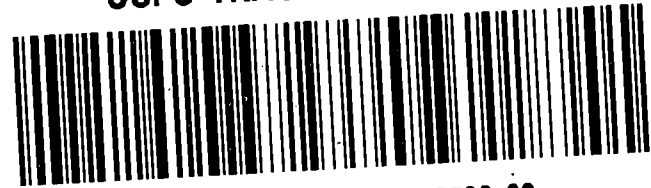
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