

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Probate Court

RECEIVED

MAR 19 2019

S.C. SUPREME COURT

The Honorable Tamara C. Curry, Associate Probate Judge

Case Number: 2019-GC-10-0005

Vibra Hospital of Charleston and
Lucille Rogers

Respondents

v.

Sandra Rogers Garlington,

Appellant

In the Matter of Lucille Rogers

NOTICE OF APPEAL

I, Sandra Rogers Garlington, hereby appeal the Orders in this matter issued by the Honorable Tamara C. Curry on February 13, 2019 which declared Lucille Rogers as incapacitated and ordered the appointments of both a temporary guardian and temporary conservator. Appellant also appeals the order issued on March 14, 2019 granting a new trial/hearing in part. Appellant received written notice of these orders on February 13, 2019 and on March 14, 2019 by email transmission and is directly appealing to the Supreme Court pursuant to S.C. Code Section 14-3-330(2).



Sandra Rogers Garlington, Appellant
60 Nunan Street
Charleston, SC 29403
843-577-7368

March 15, 2019

Counsels of Record:
Elizabeth F. Fulton, Esq. /Ashley N. Heslop
Hall Booth Smith PC
111 Coleman Boulevard, Suite 301

Mt. Pleasant, SC 29464
843-375-4063 (Attorney for Vibra Hospital)

Kathryn Cockrill, Esq.
Law Office of Kathryn M. Cockrill, LLC
PO Box 12367 Charleston, SC 29422
843-212-7042 (Court Appointed Attorney for Rogers)

Lana M. Jamrosky, Esq.
Jamrosky Law Firm, LLC
21 Gamecock Ave., Suite A
Charleston, SC 29407
843-203-3863 (GAL for Rogers)

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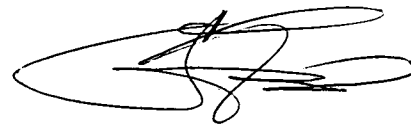
Appellant

In the Matter of Lucille Rogers

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Vibra Hospital of Charleston, by depositing a copy of it in the United States Mail, postage prepaid, on March 15, 2019 and addressed to its attorney of record, Attorney Elizabeth F. Fulton, Hall Booth Smith, PC 111 Coleman Boulevard, Suite 301 Mt. Pleasant, South Carolina 29464.

March 15, 2019



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Respondents,

V.

Sandra Rogers Garlington

Appellant

In the Matter of Lucille Rogers

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Lucille Rogers by depositing a copy of it in the United States Mail, postage prepaid, on March 15, 2019 and addressed to her Guardian ad Litem (GAL) Lana M. Jamrosky, Esq. Jamrosyk Law Firm, LLC 21 Gamecock Ave., Suite A Charleston SC 29407.

March 15, 2019



Sandra Rogers Garlington, Appellant
60 Nunan Street
Charleston, SC 29403
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Sandra Rogers Garlington, Appellant
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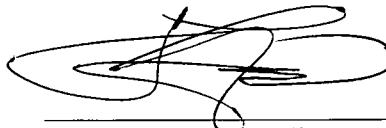
Appellant

In the Matter of Lucille Rogers

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Lucille Rogers by depositing a copy of it in the United States Mail, postage prepaid, on March 15, 2019 and addressed to her attorney of record, Kathryn Cockrill, Esq., Law Office of Kathryn M. Cockrill, LLC P.O. Box 12367 Charleston, SC 29422.

March 15, 2019



Sandra Rogers Garlington, Appellant
60 Nunan Street
Charleston, SC 29403
843-577-7368

certified copies of Petitioner's records discussing certain aspects of A.I.I. Rogers' diagnosis and treatment recommendations. Petitioner submitted an affidavit by A.I.I. Rogers' treating pulmonologist John Mitchell, M.D., certified copies of Petitioner's treatment records of A.I.I. Rogers, and an affidavit of Cheryl Corrigan discussing her attempts to coordinate A.I.I. Rogers discharge in to local hemodialysis clinics. Based on the following, the Court makes the following findings of fact:

Respondent, Lucille Rogers is a patient of Petitioner, a Long Term Acute Care Hospital (LTACH) who was admitted on July 22, 2018, for the purposes of weaning her off her ventilator. Respondent has an open trach that cannot be capped and also requires hemodialysis three times a week due to her diagnosis of end stage renal disease. Due to Rogers' open trach and hemodialysis needs, her discharge planning requires transition to a Long-Term Vent Facility (LTVF), something that has been necessary for several months. By September 2018, Rogers was ready to be discharged from Petitioner's LTACH. Due to Rogers' open trach, ongoing use of a ventilator and need for hemodialysis, discharge to an LTVF is the only option for Rogers and the closest LTVF willing to accept Rogers as a patient is in Miller County, Georgia.

Rogers requested that her daughter, Respondent Sandra Rogers Garlington make all decisions regarding discharge planning and to complete all necessary paperwork. Both Respondent Rogers and Respondent Garlington have refused to do what is needed to make arrangements to discharge Rogers from Petitioner's LTACH to a LTVF. Respondent Garlington's preference is to bring Rogers home with the assistance of a Home Health provider and an in-home hemodialysis or outpatient hemodialysis facility, however Respondent Garlington has been unable to facilitate this plan. Moreover, it is the opinion of Rogers' physicians and the policy of several dialysis clinics in the surrounding area that this option is not feasible.

Petitioner contacted several facilities in the Charleston County area to determine if any would accept Rogers as a patient. Due to her medical issues, specifically her open trach cannot be capped per her pulmonologist's recommendation and hemodialysis treatment, the only option remains transfer to the LTVF in Miller County, Georgia. Notwithstanding neither Rogers, nor Respondent Garlington nor any other family members have cooperated with Petitioner to make arrangements to discharge Rogers from Petitioner's LTACH. Given Rogers' current medical needs, she no longer meets the appropriate level of care for treatment at Petitioner's LTACH and steps need to be taken to transfer Rogers to a LTVF. Multiple attempts have been made by Petitioner through a Case Manager to transfer Rogers to the proper facility, but she refuses to cooperate, deferring to Respondent Garlington, who likewise continues to refuse to make healthcare decisions for Rogers.

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In addition, all of Rogers Medicare benefits have run out, and her supplemental insurer's benefits are being utilized in covering Rogers' stay at Petitioner's LTACH. The number of days available from the supplemental insurer are finite and cannot be replenished. Rogers and Respondent Garlington have refused to complete the paperwork to apply for Medicaid, a pre-requisite for admission to a LTVF or other skilled nursing facility. Without completion of the application or furnishing of the necessary financial paperwork for admission to the LTVF, Rogers and Respondent Garlington are impeding the discharge of Rogers from Petitioner's LTACH and transfer to the LTVF.

Based on the foregoing, the Court finds:

- 1) That all parties have been given sufficient notice of these proceedings and this hearing, and that the Respondent, **Lucille Rogers**, is a resident of the County of Charleston.
- 2) The Court further finds, based upon all the testimony, and other documents in the file, that there is clear and convincing evidence that **Lucille Rogers** is incapacitated to the extent that she requires the appointment of a temporary guardian.

- 3) The Court finds that the appointment of a professional third party guardian is appropriate in this matter and that **Elizabeth Friendly** is a fit and proper person to serve as guardian for **Lucille Rogers**.
- 4) Based on the foregoing facts, the Court concludes the evidence is clear and convincing that the A.I.I. lacks the ability to effectively receive, evaluate, and respond to information or make or communicate decisions such that a person, even with appropriate, reasonably available support and assistance cannot meet the essential requirements for her physical health, safety, or self-care, necessitating the need for a guardian, or manage her property or financial affairs or provide support for his/her support or for the support of her legal dependents, necessitating the need for a protective order.
- 5) The Court concludes **Lucille Rogers** is incapacitated and the appointment of a guardian is necessary to provide continuing care and supervision of the A.I.I. Pursuant to S.C. Code Ann. § 62-5-304(A) the Court shall exercise its authority to encourage maximum self-reliance and independence of the A.I.I. and issue orders only to the extent necessitated by the incapacity of the individual. The Court also concludes that **Elizabeth Friendly** is appropriate to serve as temporary guardian for the **Lucille Rogers**.

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IT IS ORDERED that a temporary guardianship is appropriate given the evidence presented.

IT IS ORDERED that **Elizabeth Friendly** is appointed temporary guardian of **Lucille Rogers** and Letters of Guardianship shall be issued.

Pursuant to S.C. Code Ann. § 62-5-309, subject to the rights and powers retained by the ward and except as modified by order of the court, a guardian has the following duties, rights, and powers:

- (1) to the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, maintaining custody of the ward and the ability to establish the ward's place of abode within or without this State;
- (2) if entitled to custody of the ward, providing for the care, comfort, and maintenance of the ward; the guardian is entitled to receive reasonable compensation for his/her services and for room and board furnished to the ward as approved by the court;
- (3) arranging for appropriate habilitation and rehabilitation services and educational, social, and vocational services to assist the ward in the development of maximum self-reliance and independence;
- (4) taking reasonable care of the ward's clothing, furniture, vehicles, and other personal effects, and commencing protective proceedings if other property of the ward is in need of protection;

(5) providing any consents, denials, or approvals necessary to enable the ward to receive or refuse to receive medical or other professional care, counsel, treatment, or service, including institutional care. If there is no conservator and placement or care of the ward requires the execution of an admission agreement or other documents for the ward's placement in a facility, the guardian may execute such documents on behalf of the ward, without incurring personal liability;

(6) if no conservator for the estate of the ward is appointed or if the guardian is also conservator:

(a) instituting proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform his/her duty;

(b) receiving money and tangible property deliverable to the ward and applying the money and property for support, care, and education of the ward; however, he/she may not use funds from the ward's estate for room and board or services that he/she, his/her spouse, parent, or child have furnished the ward unless a charge for the services or room and board is approved by order of the court made upon notice to at least one of the next of kin of the ward, if notice is possible. He/she must exercise care to conserve any excess for the ward's needs; and

(c) exercising the ward's rights as trust beneficiary to the extent provided in Article 7, Title 62;

(7) reporting the condition of the ward and of the estate that has been subject to his/her possession or control to the court, as required by the court or court rule, but at least on an annual basis;

(8) if a conservator has been appointed:

(a) paying over to the conservator all of the ward's estate received by the guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward and accounting to the conservator for funds expended; and

(b) requesting the conservator to expend the ward's estate by payment to the guardian or to third persons or institutions for the ward's care and maintenance;

(9) if co-guardians have been appointed, keeping the other co-guardian informed of all relevant information regarding the care and custody of the ward, including, but not limited to, the identity of the ward's care providers, medical providers, or similar professionals and informing the other co-guardian when scheduling medical appointments for the ward; and

(10) exercising any other power, right, or duty ordered by the court.

(B) A guardian, within thirty (30) days of his appointment, shall file a plan of care. The plan must be based on the actual needs of the ward, taking into consideration the best interest of the ward. The guardian shall revise the plan as the needs and circumstances of the ward require. The guardian shall include in the plan a statement of the extent to which the ward may be able to develop or recover ability for independent decision making and any proposed steps to develop or restore the ward's ability for independent decision

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making. The court shall approve, disapprove, or modify the plan in informal or formal proceedings, as the court deems appropriate. Nothing herein shall require the court to oversee the plan of care.

(C) A guardian, by a properly executed special power of attorney, may delegate to another person, for a period not to exceed sixty (60) days, any of his powers regarding the care and custody of the ward. The original power of attorney must be filed with the court having jurisdiction over the guardianship.

(D) A guardian is not legally obligated to provide for the ward from the guardian's funds solely by reason of his/her appointment as guardian.

(E) A guardian is not liable to a third person for acts of the ward solely by reason of the guardianship relationship and is not liable for injury to the ward resulting from the wrongful conduct of a third person providing medical or other care, treatment or service for the ward except to the extent that the guardian failed to exercise reasonable care in choosing the provider.

(F) Pursuant to S.C. Code Ann. § 62-5-511(c), if the ward previously executed a valid health care power of attorney, decisions concerning the ward's health care made by the guardian must be made in accordance with the directions stated in the health care power of attorney. In addition, if the ward previously executed a Declaration of a Desire for a Natural Death pursuant to Chapter 77, Title 44, the declaration must be given effect in any situation to which it is applicable.

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IT IS ORDERED that within thirty (30) days, the temporary guardian shall notify the Court in writing of:

1. Any change in her address.
2. Any change in the incapacitated individual's custodial dwelling or address.
3. Any change in the incapacitated individual's condition such that the incapacitated individual is capable/incapable of exercising rights previously removed or retained.

IT IS ORDERED:

- The temporary guardian shall notify the following people of any change in the Ward's primary residence:

**Sandra Rogers Garlington
Marvin Gilchrist, Sr.**

- The temporary guardian shall provide copies of the annual report to the following people:

**Sandra Rogers Garlington
Marvin Gilchrist, Sr.**

X The temporary guardian shall notify the following people of the death of the Ward or a significant change in his/her condition:

Sandra Rogers Garlington
Marvin Gilchrist, Sr.

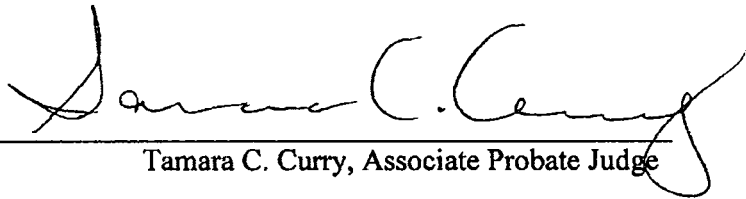
IT IS ORDERED that the temporary guardian shall be required to keep the family of **Lucille Rogers** informed of his/her medical and placement decisions; however, the ultimate decision shall be that of the temporary guardian.

IT IS ORDERED that all interested persons shall be notified of this appointment of temporary guardian and of the upcoming permanency hearing, which shall be held as soon as the court docket allows within six (6) months.

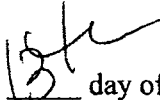
IT IS ORDERED that the Court reserves the right to issue further orders as may be or shall become necessary for the custody, control, care, and administration of the assets of **Lucille Rogers**.

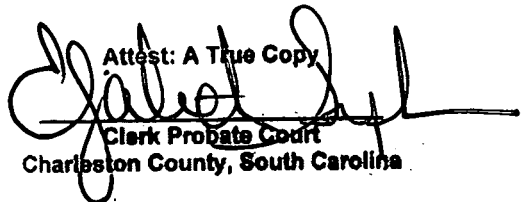
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IT IS SO ORDERED.



Tamara C. Curry, Associate Probate Judge


____ day of February, 2019.
Charleston, South Carolina

Attest: A True Copy

Clerk Probate Court
Charleston County, South Carolina

STATE OF SOUTH CAROLINA)	IN THE PROBATE COURT
)	
COUNTY OF CHARLESTON)	CASE NO. 2018-GC-10-0005
)	
In the Matter of:)	
Lucille Rogers,)	
an alleged incapacitated individual.)	ORDER APPOINTING TEMPORARY
)	CONSERVATOR
Vibra Hospital of Charleston,)	
)	
Petitioner,)	
)	
v.)	
)	
Lucille Rogers and Sandra Rogers)	
Garlington,)	
)	
Respondents.)	

On the basis of the petition and hearing, if appropriate, the Court finds that venue is proper, that the required notices have been given or waived, and the alleged incapacitated individual (A.I.I.) is incapacitated.

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Hearing Date:	January 23, 2019
Presiding Judge:	Tamara C. Curry
Petitioner:	Cherilyn Corrigan of Vibra Hospital of Charleston
Petitioner's Attorney:	Elizabeth F. Fulton, Esquire
Respondents:	Sandra Rogers Garlington Marvin Gilchrest, Sr.
Respondents Attorney:	Pro Se

The Court finds the following facts concerning the nature and degree of incapacity: (*e.g., dementia, cerebral palsy, developmental/cognitive impairment, epilepsy*):

At the hearing, the Court heard the testimony of Ms. Cherilyn Corrigan, a case manager employed by Petitioner, as well as Respondent Sandra Rogers Garlington and Mr. Marvin Gilchrist, Sr. In addition, Ms. Corrigan proffered a nine (9) page timeline detailing the underlying facts of this case that was admitted in to evidence as Petitioner's Exhibit 1. The Court also admitted Petitioner's Exhibit 2, which consisted of a checklist of tasks for admission in to Miller County's

Long Term Vent Facility. Following the hearing, the Court directed the parties to provide additional affidavits from A.I.I. Rogers' pulmonologist and certified copies of Petitioner's records discussing certain aspects of A.I.I. Rogers' diagnosis and treatment recommendations. Petitioner submitted an affidavit by A.I.I. Rogers' treating pulmonologist John Mitchell, M.D., certified copies of Petitioner's treatment records of A.I.I. Rogers, and an affidavit of Cherilyn Corrigan discussing her attempts to coordinate A.I.I. Rogers discharge in to local hemodialysis clinics. Based on the following, the Court makes the following findings of fact:

Respondent, Lucille Rogers is a patient of Petitioner, a Long Term Acute Care Hospital (LTACH) who was admitted on July 22, 2018, for the purposes of weaning her off her ventilator. Respondent has an open trach that cannot be capped and also requires hemodialysis three times a week due to her diagnosis of end stage renal disease. Due to Respondent's open trach and hemodialysis needs, her discharge planning requires transition to a Long-Term Vent Facility (LTVF), something that has been necessary for several months. By September 2018, Rogers was ready to be discharged from Petitioner's LTACH. Due to Rogers' open trach, ongoing use of a ventilator and need for hemodialysis, discharge to an LTVF is the only option for Rogers and the closest LTVF is in Miller County, Georgia.

Rogers requested that her daughter, Respondent Sandra Rogers Garlington make all decisions regarding discharge planning and to complete all necessary paperwork. Both Respondent Rogers and Respondent Garlington have refused to do what is needed to make arrangements for discharging Rogers from Petitioner's LTACH for the LTVF. Most recently Respondent Garlington has stated that she wanted to bring Rogers home with Home Health and Hemodialysis (HD) but despite consultation of Rogers' physicians and requests to several dialysis clinics in the surrounding area, this option is not feasible.

Petitioner contacted several facilities in the Charleston County area to determine if any would accept Rogers as a patient. Due to her medical issues, specifically her open trach that cannot be capped per her pulmonologist's recommendation and hemiodialysis treatment, the only option remains transfer to the LTVF in Miller County, Georgia. Notwithstanding neither Rogers, nor Respondent Garlington nor any other family members have cooperated with Petitioner to make arrangements to discharge Rogers from Petitioner's LTACH. Given Rogers' current medical needs, she no longer meets the appropriate level of care for treatment at Petitioner's LTACH and steps need to be taken to transfer Rogers to a LTVF. Testimony revealed that multiple attempts have been made by Petitioner through a Case Manager to transfer Rogers to an appropriate facility but she refuses to cooperate, deferring to Respondent Garlington, who likewise continues to refuse to make healthcare decisions for Rogers.

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In addition, all of Rogers Medicare benefits have run out, and her supplemental insurer's benefits are being utilized to cover Rogers' stay at Petitioner's LTACH. These numbers are finite and cannot be replenished. Rogers and Respondent Garlington have refused to complete the paperwork to apply for Medicaid, a pre-requisite for admission to a LTVF or other skilled nursing facility. Without completion of the application or furnishing of the necessary financial paperwork for admission to the LTVF, Rogers and Respondent Garlington are impeding the discharge of Rogers from Petitioner's LTACH and transfer to the LTVF.

Based on the foregoing, the Court finds:

- 1) That all parties have been given sufficient notice of these proceedings and this hearing, and that the Respondent, **Lucille Rogers**, is a resident of the County of Charleston.
- 2) The Court further finds, based upon all the testimony presented during this hearing, and other documents in the file, that there is clear and convincing evidence that **Lucille**

Rogers is incapacitated to the extent that she requires the appointment of a temporary conservator.

- 3) The Court finds that the appointment of a professional third party conservator is appropriate in this matter and that **Family Services, Inc., d/b/a Origin SC** is a fit and proper person to serve as temporary conservator for **Lucille Rogers**.
- 4) Based on the foregoing facts, the Court concludes the evidence is clear and convincing that the A.I.I. lacks the ability to effectively receive, evaluate, and respond to information or make or communicate decisions such that a person, even with appropriate, reasonably available support and assistance cannot manage her property or financial affairs or provide for her support or for the support of her legal dependents, necessitating the need for a protective order.
- 5) The Court further concludes that **Lucille Rogers** is a person for whom appointment of a conservator is proper and that the appointment of a conservator will be in her best interest. Pursuant to S.C. Code Ann. § 62-5-407(A), the Court shall exercise its authority to encourage maximum self-reliance and independence of the protected person and issue orders only to the extent necessitated by the protected person's mental and adaptive limitations. The Court also concludes that **Family Services, Inc., d/b/a Origin SC** is appropriate to serve as temporary conservator for **Lucille Rogers**.

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IT IS ORDERED that a Conservatorship is appropriate given the evidence presented.

IT IS ORDERED that the Court appoints **Family Services, Inc., d/b/a Origin SC** as temporary conservator of the financial affairs and assets of the protected person and directs the issuance of Letters of Conservatorship to the temporary conservator:

IT IS ORDERED, pursuant to S.C. Code Ann. § 62-5-409:

- Before the issuance of Letters of Conservatorship, the Conservator must file a bond in the amount of: \$
- The Court finds that **Family Services, Inc. d/b/a Origin SC** is covered by a corporate bond so no further bond is necessary at this time.

Pursuant to S.C. Code Ann. § 62-5-422(A), except as otherwise qualified or limited by court order, a conservator, acting reasonably in the best interest of the protected person and in efforts to accomplish the purpose for which he/she was appointed, may act without court approval to:

- (1) invest and reinvest funds of the estate as would a trustee;
- (2) collect, hold, and retain assets of the estate including land in another state, until, in his/her judgment, disposition of the assets should be made, and retain assets even though they include an asset in which the conservator personally is interested;
- (3) receive additions to the estate;
- (4) deposit estate funds in a financial institution including a financial institution operated by the conservator;
- (5) make ordinary or extraordinary repairs or alterations to buildings or other structures, demolish, improve, raze, or erect existing or new party walls or buildings;
- (6) vote a security in person or by general or limited proxy;
- (7) pay calls, assessments, and other sums chargeable or accruing against or on account of securities;
- (8) sell or exercise stock subscription or conversion rights; consent directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise whose stock or shares are publicly held;
- (9) hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery, but the conservator is liable for an act of the nominee in connection with the stock so held;
- (10) insure the assets of the estate against damage or loss, and the conservator against liability with respect to third persons;
- (11) borrow money to be repaid from estate assets or otherwise; advance money for the protection of the estate or the protected person and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of estate assets; and the conservator shall have a lien on the estate as against the protected person for advances so made;
- (12) pay or contest a claim except as limited by S.C. Code Ann. § 62-5-433; settle a claim by or against the estate of the protected person by compromise, arbitration, or otherwise except as limited by S.C. Code Ann. § 62-5-433; and release, in whole or in part, a claim belonging to the estate to the extent that the claim is uncollectible;
- (13) pay taxes, assessments, and other expenses incurred in the collection, care, administration, and protection of the estate;

(14) allocate items of income or expense to either estate income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties;

(15) pay a sum distributable to a protected person or his dependent without liability to the conservator, by paying the sum to the protected person or the distributee or by paying the sum for the use of the protected person or the distributee either to his guardian or, if none, to a relative or other person with custody of his person;

(16) employ persons including attorneys, auditors, investment advisors, or agents even though they are associated with the conservator to advise or assist the conservator in the performance of his administrative duties; to act upon their recommendation without independent investigation; and instead of acting personally, to employ one or more agents to perform an act of administration, whether or not discretionary;

(17) prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of his duties;

(18) execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the conservator;

(19) review the originals and obtain photocopies of the protected person's fully executed estate planning documents, including those documents referenced in S.C. Code Ann. § 62-5-425;

(20) enter into a lease of a residence for the protected person for a term not exceeding one (1) year;

(21) access, monitor, suspend, or terminate the protected person's digital assets and accounts in electronic format, including the power to obtain information as to the protected person's account number, user name and agreement, online tools, addresses, or other unique subscriber or account identifiers, including passwords, and any catalogue of electronic communications considered necessary by the conservator for administration of the conservatorship, consistent with the provisions of S.C. Code Ann. Part 10, Article 2, Title 62; and

(22) exercise the protected person's rights as trust beneficiary to the extent provided in S.C. Code Ann. Article 7, Title 62.

IT IS ORDERED pursuant to S.C. Code Ann. § 62-5-422(B) a conservator acting reasonably and in the best interest of the protected person to accomplish the purpose for which he/she was appointed, may file an application with the court pursuant to S.C. Code Ann. § 62-5-428(A) requesting authority to:

(1) continue or participate in the operation of any unincorporated business or other enterprise;

(2) acquire an undivided interest in an estate asset in which the conservator, in a fiduciary capacity, holds an undivided interest;

(3) buy and sell an estate asset, including land in this State or in another jurisdiction for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(4) subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate easements to public use without consideration;

(5) enter into a lease as lessor or lessee, other than a residential lease described in S.C. Code Ann. § 62-5-422(A);

(6) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(7) grant an option involving disposition of an estate asset or to take an option for the acquisition of any asset;

(8) undertake another act considered necessary or reasonable by the conservator and the court for the preservation and management of the estate;

(9) make charitable gifts pursuant to the protected person's gifting and estate plan if the estate is sufficient to provide for the health, education, support, and maintenance of the protected person and his dependents;

(10) encumber, mortgage, or pledge an asset for a term extending within or beyond the term of the conservatorship;

(11) pay a reasonable fee to the conservator, special conservator, guardian ad litem, attorney, examiner, or physician for services rendered;

(12) adopt an appropriate budget for routine expenditures of the protected person;

(13) reimburse the conservator for monies paid to or on behalf of the protected person;

(14) exercise or release the protected person's powers as personal representative, custodian for minors, conservator, or donee of a power of appointment; and

(15) exercise options to purchase securities or other property.

IT IS ORDERED that the temporary conservator shall not pay compensation to him/herself from assets of the estate without Court approval. Further, the conservator may not change the character of the estate without court approval and shall expend the assets of the protected person only pursuant to this court order.

CAC
7/8/19
2/13/19

IT IS ORDERED the temporary conservator shall:

- X** Prepare and file a complete inventory of the estate of the Protected Person and file it with the Court within thirty (30) days of appointment.
- X** File a financial plan for the managing, expending, and distributing the assets of the Protected Person's estate within thirty (30) days of appointment.
- X** Report to the court regarding his/her administration of the estate annually and upon the Conservator's resignation or removal, the termination of the Protected Person's minority or disability, the death of the Protected Person, and at other times the court directs.

IT IS ORDERED that **Family Services, Inc., d/b/a Origin SC** shall establish a conservatorship bank account for the benefit of **Lucille Rogers**.

IT IS ORDERED that **Family Services, Inc., d/b/a Origin SC**, as temporary conservator, cannot sell or dispose of any real or personal property of **Lucille Rogers** without further order of this Court.

IT IS ORDERED that that **Family Services, Inc., d/b/a Origin SC**, as temporary conservator, shall not make any extra ordinary purchases above five hundred dollars (\$500) out of the funds of **Lucille Rogers** without approval from this Court. The Conservator shall be authorized to pay normal day to day expenditures for **Lucille Roger's** care, to include payment to the facility in which she resides.

IT IS ORDERED that within thirty (30) days, the temporary conservator shall notify the Court in writing of:

1. Any change in his/her address.
2. Any change in the Protected Person's custodial dwelling or address.
3. Any change in the Protected Person's condition such that the Protected Person is capable/incapable of exercising rights previously removed or retained.

IT IS ORDERED:

- X** The Conservator shall attempt to notify the following people of any change in the Protected Person's primary residence:

Sandra Rogers Garlington
Marvin Gilchrist, Sr.

X The Conservator shall provide copies of the annual report to the following people:

**Sandra Rogers Garlington
Marvin Gilchrist, Sr.**

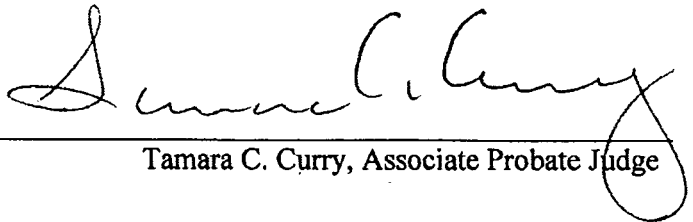
X The Conservator shall provide copies of the Inventory and Appraisement (Form#550GC) to the following people:

**Sandra Rogers Garlington
Marvin Gilchrist, Sr.**

X The Conservator shall notify the following people of the death of the Protected Person or a significant change in his condition:

**Sandra Rogers Garlington
Marvin Gilchrist, Sr.**

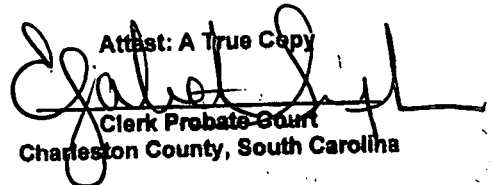
IT IS SO ORDERED.



Tamara C. Curry, Associate Probate Judge

CCC
909
2/13/19 *13th*

____ day of February, 2019
Charleston, South Carolina


Attest: A True Copy
Clerk Probate Court
Charleston County, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 IN THE MATTER OF: LUCILLE)
 ROGERS)
)
 VIBRA HOSPITAL OF CHARLESTON,)
)
 Petitioner,)
)
 v.)
)
 LUCILLE ROGERS AND SANDRA)
 ROGERS GARLINGTON,)
)
 Respondents.)

IN THE PROBATE COURT

CASE NO.: 2019-GC-10-005

**ORDER ON RESPONDENT'S
 MOTION FOR NEW
 TRIAL/HEARING**

ACC
10/3
3/14/19

THIS MATTER comes before the Court upon a Motion for New Trial/Hearing filed by Respondent Sandra Rogers Garlington on February 25, 2019. The Motion was filed in regard to an Emergency Hearing held before this Court on January 23, 2019 and on Order Appointing Temporary Guardian and Order Appointing Temporary Conservator, issued by this Court on February 13, 2019. For the reasons set forth below, Respondent's Motion for New Trial/Hearing pursuant to Rule 59 of the South Carolina Rules of Civil Procedure is hereby **GRANTED**, in part.

The present motion is captioned as "Motion for New Trial/Hearing" and is properly considered as a Rule 59 motion for a new trial. The filing of motions and other pleadings in the Probate Court is governed by the South Carolina Probate Code and, where not inconsistent, the South Carolina Rules of Civil Procedure, including Rule 59. In re: Estate of Timmerman, 331 S.C. 455, 460, 502 S.E.2d 920, 922 (Ct. App. 1998) (see also S.C. Code Ann. §§ 14-23-280, 62-1-304).

Under Rule 59(a) of the South Carolina Rules of Civil Procedure, "[a] new trial may be granted to all or any of the parties and on all or part of the issues... in an action tried without a

jury, for any of the reasons for which rehearings have heretofore been granted in the courts of the State.” SCRCF Rule 59(a). “The grant or denial of new trial motions rests within the discretion of the [court].” Brinkley v. S.C. Dep’t of Corr., 386 S.C. 182, 185, 687 S.E.2d 54, 56 (Ct. App. 2009). “On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.” SCRCF Rule 59(a).

Respondent Sandra Rogers Garlington’s Motion ask this Court to grant a new hearing to determine whether a temporary guardian and temporary conservator should be appointed for Lucille Rogers, an alleged incapacitated individual. This Court finds that all parties were properly noticed of the January 23, 2019 hearing under S.C. Code Ann. § 62-5-108. Furthermore, this Court finds that there was sufficient evidence presented at the January 23, 2019 hearing to support the finding of the appointment of temporary guardian and temporary conservator for Lucille Rogers. However, under the new revisions to Article 5 of the South Carolina Probate Code, which took effect January 1, 2019, Lucille Rogers, as an alleged incapacitated individual, was entitled to the appointment of a guardian ad litem and counsel prior to the hearing.

Therefore, a hearing shall be held in which the Guardian Ad Litem for Lucille Rogers, Lana Jamrosyk, Esquire, and attorney for Lucille Rogers, Kathryn Cockrill, Esquire, shall be permitted to present arguments and testimony on behalf of Lucille Rogers. All interested parties shall be permitted to respond to any testimony given by the Guardian Ad Litem or presented by counsel for Lucille Rogers, however, the parties to this case will not be permitted to re-litigate the issues addressed at the January 23, 2019 hearing.

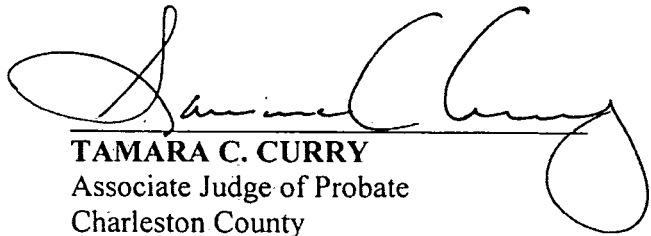
Based on the foregoing, it is hereby

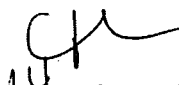
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ORDERED, ADJUDGED, AND DECREED that Respondent Sandra Rogers Garlington's Motion for a New Trial/Hearing is hereby **GRANTED**, in part; it is further

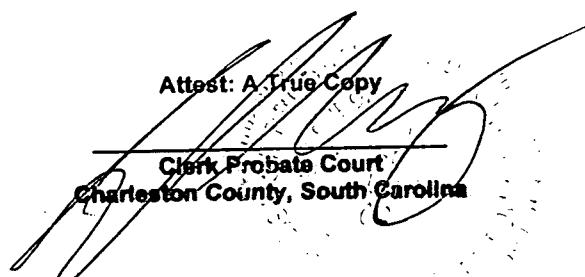
ORDERED, ADJUDGED, AND DECREED that the scope of the hearing shall be limited to the arguments and testimony of Kathryn Cockrill, Esquire, as attorney for Lucille Rogers, and Lana Jamrosyk, Esquire, as guardian ad litem for Lucille Rogers.

IT IS SO ORDERED.


TAMARA C. CURRY
Associate Judge of Probate
Charleston County


This 19 of March, 2019
Charleston, South Carolina

2CC
3843
3/14/19

Attest: A True Copy

Clerk Probate Court
Charleston County, South Carolina