

SUPREME COURT OF SOUTH CAROLINA

In the Matter of Betsy M. Campbell and Robert S. Campbell, Jr.;
Mary Schuyler Campbell v. Betsy M. Campbell and Robert S.
Campbell, Jr., 379 S.C. 593

666 S.E.2d 908 (2008) · No. No. 26540 · Decided September 8, 2008

SUMMARY

The Supreme Court of South Carolina considered whether S.C. Code Ann. § 62-5-407 requires court-appointed examiners in conservatorship proceedings to be disinterested. The court held that the statute does not impose a per se disinterestedness requirement, but examiners must be neutral and objective; appointing physicians who had served as the mother's expert witnesses constituted an abuse of discretion. The court also upheld recusal of the probate judge and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of South Carolina
WRITING FOR THE COURT	Chief Justice Toal; Justice Moore; Justice Waller; Justice Pleicones; Acting Justice Letitia H. Verdin
JURISDICTION	South Carolina
DECIDED	September 8, 2008
DOCKET	No. 26540
DISPOSITION	affirmed
PROCEDURAL POSTURE	Betsy M. Campbell petitioned the Supreme Court of South Carolina for review of a court of appeals decision affirming the setting aside of probate court orders appointing examiners in a conservatorship proceeding and dismissing the petition for appointment of a conservator.
STANDARD OF REVIEW	Statutory interpretation is a question of law reviewed without deference to the trial court. The appointment of probate court examiners is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Betsy M. Campbell v. Mary Schuyler Campbell

TOPICS

conservatorship

guardianship procedure

statutory interpretation

appellate procedure

standard of review

PRACTICE AREAS

probate

guardianship and conservatorship

statutory interpretation

appellate procedure

QUESTIONS PRESENTED

1. Whether S.C. Code Ann. § 62-5-407 implicitly requires court-appointed examiners in a conservatorship proceeding to be disinterested.
2. Whether the probate court abused its discretion by appointing examiners who had previously served as the protected person's expert witnesses and were not neutral and objective.
3. Whether the probate judge was properly recused and the matter transferred because of ex parte communications, favorable comments concerning one side, and disparaging remarks directed at opposing counsel.

HOLDINGS

1. Section 62-5-407 does not impose a per se requirement that court-appointed examiners be disinterested parties.
2. Although § 62-5-407 does not require examiners to be disinterested, the probate court must appoint examiners capable of rendering a neutral and objective opinion; failure to do so is an abuse of discretion subject to reversal.
3. The probate court abused its discretion by appointing Drs. Cathcart and Edwards as court-appointed examiners because their prior designation as Mother's party experts, preparation by Mother's counsel, compensation, and resulting dual roles were fundamentally incompatible with neutral examination.
4. The circuit court properly ordered recusal of the Cherokee County probate judge and transfer of the case to the Spartanburg County Probate Court.

KEY QUOTATIONS

“Accordingly, although the court of appeals erred in interpreting an overriding requirement of disinterestedness into § 62-5-407, we hold that the probate court is nevertheless obligated to appoint neutral and objective examiners and that failure to do so amounts to an abuse of discretion subject to reversal on appeal.” (at 600)

“In our view, these circumstances illustrate the fundamental incompatibility in assuming a dual role as an expert witness for a party to the litigation and as a neutral examiner for the court.” (at 601)

FACTUAL BACKGROUND

Mary Schuyler Campbell alleged that her mother, Betsy M. Campbell, suffered from dementia and was subject to undue influence affecting her assets. The probate court appointed Drs. John Cathcart and Preston Edwards as examiners, even though Campbell had designated them as her expert witnesses, her counsel had prepared one of them for testimony, and the doctors were compensated for their work. The doctors did not perform medical or

psychological examinations but testified that Campbell was competent, and the probate court dismissed the conservatorship petition.

PROCEDURAL HISTORY

Mary Schuyler Campbell petitioned the Cherokee County Probate Court to appoint herself conservator of her mother's assets. The probate court appointed Drs. John Cathcart and Preston Edwards as examiners and later dismissed the conservatorship petition based on their testimony. The circuit court set aside both orders, finding the examiners were not disinterested and ordering recusal and transfer of the case; the court of appeals affirmed. The Supreme Court granted certiorari, affirmed the court of appeals as modified, and remanded to the Spartanburg County Probate Court.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The matter was remanded to the Spartanburg County Probate Court for further proceedings consistent with the opinion.

CASES CITED

- Vaughan v. McLeod Regional Med. Ctr., 372 S.C. 505, 509, 642 S.E.2d 744, 746 (2007)
- Dreher v. Dreher, 370 S.C. 75, 79-80, 634 S.E.2d 646, 648 (2006)
- Hitachi Data Sys. Corp. v. Leatherman, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992)
- Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)
- In the Matter of Campbell, 367 S.C. 209, 212-213, 625 S.E.2d 233, 235-236 (Ct. App. 2006)
- Parkman v. Hanna, 311 S.C. 20, 22, 426 S.E.2d 743, 744 (1992)

OPINION

TOAL, J.

379 S.C. 593 (2008) 666 S.E.2d 908 In the Matter of Betsy M. CAMPBELL and Robert S. Campbell, Jr., Mary Schuyler Campbell, Respondent, v. Betsy M. Campbell and Robert S. Campbell, Jr., of whom Betsy M. Campbell is Petitioner. No. 26540. Supreme Court of South Carolina. Heard June 12, 2008. Decided September 8, 2008. *595 R. David Massey and E. Zachary Horton, both of Brown Massey Evans McLeod & Haynsworth, of Greenville, James R. Thompson, of Saint-Amand Thompson & Brown, of Gaffney, and William E. Winter, Jr., of Winter & Rhoden, of Gaffney, for Petitioner.

Randall Scott Hiller, of Greenville, for Respondent. Chief Justice TOAL. This Court granted Petitioner Betsy M. Campbell's (Mother) petition to review a court of appeals decision setting

aside a probate court order appointing two examiners to evaluate Mother's mental competency in a conservatorship proceeding brought by her daughter, Respondent Mary Schuyler Campbell (Daughter).

We affirm the decision of the court of *596 appeals as modified in accordance with our interpretation of the statute governing the appointment of examiners in conservatorship proceedings. FACTUAL/PROCEDURAL BACKGROUND Daughter petitioned to have herself appointed as conservator of Mother's assets before the probate court for Cherokee County, claiming that (1) Mother was no longer mentally capable of caring for herself or her assets due to dementia, and (2) Mother's assets were being reduced due to undue influence over Mother by her financial advisor William W. Brown (Brown).[1] Mother filed an answer denying the need for the appointment of a conservator and arguing that if the court determined she needed a conservator, Brown had priority to assume the role as her attorney in fact.

In April 2002, Mother listed Dr. John Cathcart and Dr. Preston Edwards to testify at the conservatorship proceeding as expert witnesses on her behalf. Drs. Cathcart and Edwards were both lifelong personal friends of Mother, and Dr. Edwards had occasionally seen Mother for medical reasons over a period of nearly fifty years when Mother primarily resided in Gaffney.

Shortly after being designated as expert witnesses, Mother invited each of the doctors and their wives to dinner while she was in Greenville on other matters. Although the doctors were family friends of Mother, their respective social outings with her at this time were also for purposes of observation and evaluation of Mother as her expert witnesses.

The record reveals that Mother's counsel provided Dr. Edwards with a document entitled "Outline of Testimony" summarizing what he might be asked at trial as an expert witness. The document was also intended to guide Dr. Edwards in his conversation with Mother at their dinner together, indicated by the document's listing of "discussion of business or financial matters," followed by the exclamation "don't ask if none!" *597 In August 2002, the probate court ordered the appointment of Drs.

Cathcart and Edwards to examine Mother, evaluate her mental competency, and render an opinion to the probate court on the need for the appointment of a conservator pursuant to S.C.Code Ann. § 62-5-407 (1987). Mother does not dispute that the probate court conferred with Mother's counsel during the preparation of the order appointing Drs. Cathcart and Edwards.

On the other hand, Daughter was entirely unaware that the probate court was considering an appointment of examiners until Daughter's counsel received a copy of the order from Mother's counsel postmarked two days after the probate court had actually issued the order. Daughter immediately filed a motion to reconsider the appointment on the grounds that Drs. Cathcart and Edwards were not "disinterested parties."

The probate court scheduled a hearing for October. Prior to the probate court's appointment of examiners, however, arrangements had already been made for Drs. Cathcart and Edwards to evaluate Mother, and therefore, only seven days after the court's appointment, a privately chartered jet flew Drs. Cathcart and Edwards, accompanied by Brown, to see Mother at her current residence in Florida.

The doctors each testified that they met with Mother's Florida psychiatrist, visited with Mother and Father during the afternoon, and flew back by the same private jet that same evening. Each doctor was compensated \$2,000.00. At the October hearing, the probate court determined that § 62-5-407 did not require the appointed examiners to be disinterested and that the doctors were "well know[n] to this Court as outstanding physicians and as qualified to act as the Court-appointed examiners in the matter."

Therefore, the probate court denied Daughter's motion to reconsider the appointment of Drs. Cathcart and Edwards. At the same hearing, Daughter moved for recusal after the probate judge directed unfavorable personal comments at Daughter's counsel. Daughter additionally based her motion for recusal on the ex parte communications with Mother's counsel prior to the appointment of mental health examiners.

The probate court denied the motion and proceeded to a *598 hearing on the merits of Daughter's petition to appoint a conservator. The only evidence presented as to the merits of Daughter's petition was the testimony of Drs. Cathcart and Edwards.[2] The doctors testified that they did not perform any medical or psychological examinations of Mother, however both were confident in their findings that Mother was competent to handle her financial affairs based on their personal friendship with Mother, their informal dinner with Mother in April 2002, communication with Mother's Florida psychiatrist, and the August 2002 visit with Mother in Florida.

The probate court therefore dismissed Daughter's petition for appointment of a conservator. Daughter appealed the probate court's orders to the circuit court, alleging that the probate court erred in (1) appointing examiners that were the product of ex parte communications; (2) appointing examiners that were not disinterested parties; (3) failing to grant Daughter's motion for recusal; and (4) finding Mother mentally competent.

The circuit court set aside the probate court's order appointing the examiners, finding that § 62-5-407 implicitly required court-appointed examiners to be disinterested, and that the probate court therefore abused its discretion in naming Drs. Cathcart and Edwards as examiners when Mother had previously designated them as expert witnesses on her behalf.

Because of the probate court's error in this regard, the circuit court set aside the probate court's order dismissing Daughter's petition to appoint a conservator. The circuit court also found that the Cherokee County probate judge should have recused himself and therefore transferred the case to

Spartanburg County Probate Court. Mother appealed and the court of appeals affirmed the circuit court's ruling setting aside the probate court's appointment of examiners and order of dismissal.

In the Matter of Campbell, 367 S.C. 209, 625 S.E.2d 233 (Ct.App.2006). The court did not address the issue of recusal, noting that Mother *599 conceded the issue had been rendered moot due to the death of the probate judge during the pendency of the appeal. Id. at 212 n. 1, 625 S.E.2d at 235 n. 1. This Court granted certiorari, and Mother raises the following issue for review: Did the court of appeals err in affirming the circuit court's order setting aside the probate court's orders based upon a determination that S.C.Code Ann. § 62-5-407 implicitly requires that court-appointed physicians be disinterested?

STANDARD OF REVIEW The interpretation of a statute is a question of law for the Court. Vaughan v. McLeod Regional Med. Ctr., 372 S.C. 505, 509, 642 S.E.2d 744, 746 (2007). An appellate court may decide questions of law with no particular deference to the trial court. Dreher v. Dreher, 370 S.C. 75, 79, 634 S.E.2d 646, 648 (2006). **LAW/ANALYSIS** Petitioner argues that the court of appeals erred in interpreting S.C.Code Ann. § 62-5-407 to implicitly require that court-appointed examiners in a conservatorship proceeding be disinterested and independent.

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. Dreher, 370 S.C. at 80, 634 S.E.2d at 648. To this end, the words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statutes operation. Hitachi Data Sys. Corp. v. Leatherman, 309 S.C.

174, 178, 420 S.E.2d 843, 846 (1992). If the language of a statute is unambiguous, then the rules of statutory construction are unnecessary and the court may not impose another meaning. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Section 62-5-407(b) provides that upon receipt of a petition for appointment of a conservator due to alleged mental deficiency, "the court shall direct that the person to be protected be examined by one or more physicians designated *600 by the court, preferably physicians who are not connected with any institution in which the person is a patient or is detained."

Initially, we find that the circuit court and the court of appeals erred in interpreting § 62-5-407 to implicitly require that the court-appointed examiner be disinterested. In drafting the provisions governing conservatorship proceedings, the legislature undoubtedly sought to establish a framework within which the probate court could exercise its discretion with the best interests of the allegedly incapacitated person in mind.

It would be inconsistent with the subjective theory of "best interests" for the Court to find an overriding requirement that all examiners appointed under § 62-5-407 be completely disinterested parties. In fact, in certain instances of alleged mental incapacity, it may actually be preferable to seek the opinion of a treating physician who is familiar with the patient.

This is not to say, however, that the court of appeals' analysis entirely misses the point. Rather, the primary flaw in the opinion below is that it fails to distinguish between a "disinterested" party and an "unbiased" party.

Although the statute does not impose a per se requirement of disinterestedness, basic tenets of justice in our jurisprudence dictate that the appointed examiners must be able to render an objective opinion. As the court of appeals rightly acknowledged, the obvious purpose of the statute permitting the appointment of examiners "is to provide the probate court with a medical opinion regarding the person's mental capacity, and it is inherent that such an opinion come from a neutral physician."

Campbell, 367 S.C. at 213, 625 S.E.2d at 236. The statute's "preference" for the examiner to be unaffiliated with any institution in which the examinee is a patient lends support to the notion that the legislature intended for the appointed examiner to be unbiased, for presumably, only an unbiased examiner can render an opinion to the probate court that considers the best interests of the allegedly incompetent party.

Accordingly, although the court of appeals erred in interpreting an overriding requirement of disinterestedness into § 62-5-407, we hold that the probate court is nevertheless obligated to appoint neutral and objective examiners and that *601 failure to do so amounts to an abuse of discretion subject to reversal on appeal.[3] To this end, we hold that the court of appeals was correct in affirming the setting aside of the probate court's appointment of Drs.

Cathcart and Edwards. Mother had previously designated the doctors as expert witnesses and it is evident in the record that Mother's counsel had coached them as such prior to their evaluative meetings with Mother. Mother also compensated the doctors for the work they performed as her expert witnesses.

In our view, these circumstances illustrate the fundamental incompatibility in assuming a dual role as an expert witness for a party to the litigation and as a neutral examiner for the court. Accordingly, we hold that the probate court committed an abuse of discretion in appointing Drs. Cathcart and Edwards as examiners in the conservatorship proceeding. Additionally, although Mother does not raise to this Court the issue of whether the circuit court erred in recusing the probate judge, we briefly address the circuit court's ruling on the matter because we disagree with the court of appeals' apparent finding that the death of the probate judge during the pendency of the appeal rendered the issue moot.

In our view, the circuit court properly ordered the recusal of the probate judge. In addition to the preparation of an order of appointment that we find was strongly influenced by ex parte contact, the probate judge expressed his own favorable opinions on Mother's counsel and the appointed examiners in open court, while directing disparaging personal remarks at Daughter's counsel.

These incidents, in our view, are manifestations of a clear bias on the part of the probate judge, and therefore, we hold that the circuit judge properly ordered the recusal of the probate judge and the transfer of the case from Cherokee County Probate Court to Spartanburg County Probate Court. *602 CONCLUSION For the foregoing reasons, we affirm as modified the court of appeals' decision setting aside the probate court's order appointing Drs.

Cathcart and Edwards as examiners in a conservatorship proceeding. Accordingly, we remand the case to the Spartanburg County Probate Court for further proceedings consistent with this opinion. MOORE, WALLER, PLEICONES, JJ., and Acting Justice LETITIA H. VERDIN, concur. NOTES [1] Daughter brought the conservatorship proceeding with respect to both her parents, however, the probate court's appointment of examiners at issue in this case only pertains to Mother.

Incidentally, Father passed away during the pendency of this appeal. [2] Counsel for Daughter explained to the probate court that he was not prepared to proceed with a hearing on the merits because the notice of hearing had given him the impression that the court would only be hearing Daughter's motion to reconsider the appointment of Mother's examiners.

[3] See *Parkman v. Hanna*, 311 S.C. 20, 22, 426 S.E.2d 743, 744 (1992) ("The authority of the Probate Court, derived from the statute and precedent case law, will not be disturbed absent a clear abuse of discretion.").