

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)