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Reply to the North Charleston Office
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July 1, 2013

The Honorable V. Claire Allen
Deputy Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: *Jane Roe v. Michelle Bibby*
*Case No.: 2010-CP-08-3732*
***Tracking No.: 2012-213350***

Dear Ms. Allen:

I am in receipt of your letter requesting proof that the Trial Court considered the video interview of one of the minor Appellants that was conducted by the Dorchester Children's Center.

I have enclosed for your review a copy of the Order that is on appeal. On page 5, the Trial Court explicitly references this interview and re-counts Appellant's statement. The Court relies upon this statement as one of the grounds for granting Summary Judgment.

Please do not hesitate to contact me should you have any questions.

Sincerely,

Eric M. Poulin
2557 Ashley Phosphate Road
North Charleston, SC 29418
(843) 614-8888



Cc: Eugene P. Corrigan, III (w/ enclosures)
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STATE OF SOUTH CAROLINA )
) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY )
) NINTH JUDICIAL CIRCUIT
[redacted] as Parent and )
Natural Guardian of [redacted], )
[redacted], and [redacted] )
[redacted], )
)
Plaintiff, )
) CASE NO. 2010-CP-08-3732
v. )
)
DANIEL BIBBY, SR. and MICHELE )
BIBBY, )
)
Defendants. )

FILED
2012 OCT 12 PM 12:53
CLERK OF COURT
BERKELEY COUNTY, SC

**ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

This matter comes before the Court pursuant to Defendant Michele Bibby's Motion for Summary Judgment. On July 10, 2012, the parties appeared before this court and arguments were heard from attorneys for all parties. Based on the deposition testimony of Michele Bibby and [redacted] the arguments set forth at the motion hearing, and the laws of South Carolina, the Defendant's Motion for Summary Judgment is hereby granted.

## STATEMENT OF THE CASE

This case was brought against Michelle Bibby alleging liability for the alleged actions of her husband Daniel Bibby, Sr. by the Plaintiff, [redacted] on behalf of her minor children. In an attempt to recover, the Plaintiff filed suit against Daniel Bibby's wife, alleging negligence arising from a special relationship between Michele and the [redacted] children, and under a theory of premises liability. Following discovery, which included depositions of both [redacted] and Michele Bibby, the Defendant filed a Motion for Summary Judgment, which was heard on July 10, 2012. The Motion was granted as there was no genuine issue of material fact as determined under Rule 56 of the South Carolina



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Rules of Civil Procedure based upon the pleadings, depositions, and current South Carolina law.

## A. DEFENDANT MICHELE BIBBY HAD NO DUTY TO WARN PLAINTIFFS ARISING FROM A SPECIAL RELATIONSHIP OR CIRCUMSTANCE.

The Plaintiffs cannot recover against Michele because they cannot establish that she owed a duty to the [redacted] children. Generally, there is no duty to control the conduct of another or to warn a third person or potential victim of danger. *Faile v. SC Dep't of Juvenile Justice*, 350 S.C. 315, 334, 566 S.E. 2d 536, 546 (2002). There are exceptions to this rule, including a duty to warn a third party when the defendant has a special relationship to the victim. *Id.* The defendant may have a common law duty to warn potential victims under this "special relationship" when the defendant "has the duty to monitor, supervise and control an individual's conduct" and when "the individual has made a specific threat of harm directed at a specific individual." *Doe v. Marion*, 373 S.C, 390, 400, 645 S.E.2d 245, 250 (2007) (citing *Bishop v. South Carolina Dep't of Mental Health*, 331 S.C. 79, 86, 502 S.E.2d 78, 81 (1998). However, "it is not simply foreseeability of the victim which gives rise to a person's liability for failure to warn; rather it is the person's awareness of a distinct, specific, overt threat of harm which the individual makes towards a particular victim." *Doe v. Marion*, 373 S.C. 390, 402, 645 S.E.2d 245, 251 (2007) (quoting *Gilmer v. Martin*, 323 S.C. 154, 157, 473 S.E. 2d 812, 814 (Ct. App. 1996).

There is no testimony in the depositions or any other evidence to support that Michele had a special relationship with the Plaintiffs because she had no duty to monitor, supervise and control Mr. Bibby's conduct. The Plaintiffs argue that Michele had a duty to warn the neighborhood following her husband's sexual misconduct with their daughter that



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occurred more than fifteen years ago. That matter was handled by the Department of Social Services, including a direction to reincorporate Mr. Bibby into the family.

The Plaintiffs had not lived in the neighborhood for a year but Michele Bibby lived in the same house for decades. Under the Plaintiff's theory, Michele Bibby would have to hunt out any new residents living anywhere in an undefined area to tell them of an incident that occurred decades earlier. There were no other incidents between then and the time the Plaintiffs moved into the neighborhood. She had no knowledge that her husband was a danger, believing the incident between Mr. Bibby and their daughter was an isolated event and that furthermore, he was rehabilitated according to the Department of Social Services. Based on Michele's testimony, she asked her husband if he had molested any other children, in which he responded, "No." *Michele Bibby Deposition*, p. 27, l. 21-25. *Michele Bibby Deposition*, p.28, l.1-10. Michele was then informed by DSS that after Mr. Bibby had completed his counseling with "flying colors" they felt he was no longer a threat. *Michele Bibby Deposition*, p.65, l. 10-12. Therefore, regarding when a duty arising from a special relationship exists, Michelle lacked the knowledge that Mr. Bibby was a potential threat to other young children, but more importantly she had no knowledge of a specific threat to the [redacted] There is no evidence of such in the record, nor can there be.

Furthermore, the Plaintiffs incorrectly rely on *Doe v. Batson* in support of their argument that Michele had a duty to warn arising from a special relationship. As noted in the Supreme Court's opinion, while they affirmed the Court of Appeals' reversal of summary judgment, the Court "*vacate[s] those portions of the Court of Appeals' opinion discussing liability*, and remand to the trial court for discovery and development of Doe's



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theories of recovery." *Doe ex rel Doe v. Batson*, 345 S.C. 316, 323, 548 S.E. 2d 854, 858 (2001) (emphasis added).

The case law from other jurisdictions also supports a finding that Michelle owed no duty to the Plaintiffs arising out of a special relationship. In *Hackett v. Smith*, the Louisiana Court of Appeals granted summary judgment for the defendant, holding that a relative had no duty to warn parents or a child about her husband's alleged dangerous propensities when the sexual misconduct occurred more than fifteen years ago and the defendant had no reason to believe the problem had not been resolved. 630 So.2d 1324, 1328 (La.Ct.App. 1993) (finding also that the counselor testified the defendant had made "great progress" in therapy and no further allegation of sexual misconduct with minors surfaced during that period.) The court in *Hackett* also refused to find a special relationship existed between the defendant and the victim because there was no assertion the defendant was ever actually entrusted with the victim's care. *Id.* at 1328. Similarly, in *Wood v. Astleford*, the Minnesota Court of Appeals found the existence of a special relationship immaterial between a pedophile's wife and his victims as there was not enough evidence to prove that she could have foreseen the abuse and thus, there was no duty to warn. 412 N.W.2d 753, 757 (Min.Ct.App. 1987) Further, when the wife did become aware of the abuse, she was not alerted that the plaintiffs were the "particular targets of the specific aberrant behavior" and thus had no duty to warn. *Id.* Based on the facts established in the case at issue, Michele was not negligent because no special relationship existed. There are no other exceptions to the general rule that apply or that were argued by the Plaintiffs.



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## B. NO DUTY TO WARN EXISTS FOR ONE SPOUSE UNDER A PREMISES LIABILITY THEORY

The Plaintiffs also argued that Michele Bibby was liable for the alleged acts of her husband under a theory of premises liability. Premises liability is an area of law involving a property owner's duties that arise from others (most commonly classified as trespassers, invitees or licensees) coming on to their land. The most common example of a licensee is a social guest. *Singleton v. Sherer*, 377 S.C. 185, 199, 659 S.E.2d. 196, 203 (Ct. App. 2008) A landowner is under no obligation to exercise care to make the premises safe for a licensee, but has a duty to use reasonable care to warn him of any *concealed dangerous conditions* or activities which are known to the possessor, or of any change in the condition of the premises which may be dangerous to him, and which he may reasonably be expected to discover.. *Id.* (quoting Neil v. Byrum, 288 S.C. 472, 473, 343 S.E.2d 615, 616 (1986) (emphasis in original)). Based on the Plaintiff's argument, the Court would have to classify Michele's husband as a "dangerous condition or activity" that she would have to warn licensees about once they entered her property. There are no cases in South Carolina that discuss whether one spouse may be considered a "dangerous condition" or property of the other spouse. Mr. Bibby was charged with crimes against the Bibby children but they were dropped. The only evidence of any such crime was the video interview of the oldest child. She does not give a coherent story and she places several other adults in the room of Mrs. Bibby's granddaughter. Even taking into account the nature of a tale told by a child of her age, it did not make any sense.

In *D. W. v. Richard Bliss and Carol Bliss,* the Kansas Supreme Court directly addressed the topic. Here, the Court stated that to suggest a spouse be equated with and

considered "property" or a "dangerous condition" in order to give rise to premises liability, while creative, has no support. 279 Kan. 726, 739, 112 P. 3d 232, 241 (2005)

Other states have examined whether or not it is appropriate to find a breach of duty under a premises liability theory against a homeowner for the acts of her spouse and have refused to recognize it. In *Hackett,* the court refused to find the situation of child molestation could be "likened to a premises liability situation, where the owners of the property may be strictly liable for injuries caused by defects in their property... [the husband] is not [the wife's] property." 630 So.2d 1324 at 1329. Further, the Plaintiffs in *Hackett* conceded that the wife could not be held responsible for failing to warn or protect from his activities where she had no special relationship to the victim. *Id.* In *Eric J. v. Betty M.*, the court held that a convicted child molester's "mere presence" on the property could not be considered a dangerous condition, and thus not a basis for premises liability. 76 Cal.App.4th 715, 726 (Cal.Ct.App.1999)

Premises liability and sexual abuse was mentioned in South Carolina in *Burns v. South Carolina Comm'n for the Blind,* but there are several distinguishing features, which preclude its use in the analysis of the law regarding the case at issue. In *Burns,* the Court of Appeals did find that the jury could be charged with instructions on a premises liability theory for a sexual abuse case. However, the Defendant was a state agency, and the Court found "this relationship, analogous to that of a business invitee, imposes liability on the Commission, if at all, similar to that of an owner of a business." 323 S.C. 77, 80, 448 S.E.2d 589, 591 (1994). Therefore, *Burns* falls into a different line of cases than those at issue in this case. The Plaintiff was a patient in a state facility attacked by another patient. The case at issue here deals with a private residence and not real property open to the public. The



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standards enforced under South Carolina premises liability law differ based on the status of the individual and the nature of the property.

When the Court of Appeals cites *Burns* sixteen years later in *Burnett v. Family Kingdom, Inc.*, there is no mention of premises liability; rather the case is cited for the consideration of liability arising from a statute. 387 S.C. 183, 189, 691 S.E.2d 170, 174 (Ct. App. 2010.) If there is a cause of action in South Carolina under premises liability, there would have to be some question of fact evidence knowledge or acquiescence by a wife in the criminal acts of the husband. Michele Bibby worked at the Charleston County Library during the day and took care of her grandchildren at night. There is nothing that presents even a scintilla of evidence that she had or could have had knowledge of a danger reoccurring at the home where her disabled grown son and children of various ages were living.

In addition, the case at issue should be removed from the discussion of premises liability because Michele would have to have some reason to expect or know that a danger existed in the first place. Under any analysis, a duty imposed upon Michele requires an element of knowledge of a latent defect on the premises. At the motion hearing, Plaintiff's counsel was unable to articulate evidence in the record that Michele had knowledge of any danger or had placed her grandchildren or anyone else's children in danger. Their only argument was the incident that occurred between Daniel Bibby, Sr., and their daughter more than fifteen years ago.

For the reasons set above, IT IS HEREBY ORDERED THAT Defendant's Motion for Summary Judgment is **GRANTED** and this case is hereby dismissed with prejudice against the Plaintiff.



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**AND IT IS SO ORDERED!**

THE HONORABLE R. MARKLEY DENNIS, JR.

Moncks Corner, South Carolina

Sept
~~August~~ 17, 2012



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