

STATE OF SOUTH CAROLINA
COUNTY OF Richland
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2007CP4003365

Margaret Mims et al
PLAINTIFF(S)

Tonya Bradford et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** Affirmed; Reversed; Remanded; Other

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MAY 15 2024
SC Court of Appeals

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

Jury trial commenced on April 8, 2024. At the close of Plaintiff's case, the Court granted Defendants' motion for directed verdict.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/15/2024 .

Susan Dowling
Edward Mims Estate
Sue Slater
Laura M Cole Prs
Craig Stoxen
Tonya Bradford

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Richland Common Pleas

Case Caption: Margaret Mims , plaintiff, et al vs Babcock Center Inc , defendant, et al
Case Number: 2007CP4003365
Type: Order/Electronic Form 4

So Ordered

Jocelyn Newman

Electronically signed on 2024-04-15 09:59:12 page 3 of 3

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STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND

Estate of Edward Mims, Laura M. Cole,)	C/A No. 2007-CP-40-3365
Personal Representative,)	
)	
Plaintiff,)	
)	
v.)	
)	
SCDDSC, Kathi Lacy and Stanley Butkus,)	
)	
Defendants.)	
_____)	

MOTION FOR A DIRECTED VERDICT, A NEW TRIAL AND
TO ALTER OR AMEND JUDGMENT

I. APPLICABLE LAW

Now comes the Plaintiff in this case, who moves for a directed verdict and, alternatively requests that the court grant a motion for new trial pursuant to Rule 50 SCRPC and Rule 59 SCRPC. The trial court erred as a matter of law by refusing to allow the Plaintiff to put on the record the Estate's motion for a directed verdict, thereby unjustly prejudicing the Plaintiff.

Rule 50 SCRPC(a) provides that:

When upon a trial the case presents only questions of law the judge may direct a verdict. A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having reserved the right so to do and to the same extent as if the motion had not been made... A motion for a directed verdict shall state the specific grounds therefor.

That Rule also provides at Rule 50 SCRPC(b):

A party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict; or if a verdict was not returned, such party may move for judgment in accordance with his motion for a directed verdict.

In granting a directed verdict to Defendants, and not allowing the Plaintiff to put on the record the Estate's motion, the court erred by failing to view all reasonable inferences in the light most favorable to the Estate of Edward Mims. *Bultman v. Barber*, 277 S.C. 5, 7 (1981). "A jury issue exists where the evidence is susceptible of more than one reasonable inference." *Jones v. Ridgely Commc'ns, Inc.*, 304 S.C. 452, 454 (1991). "When considering directed verdict and JNOV motions, neither the trial court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence," but the court abused its discretion in accepting as true conflicting evidence and testimony of the Defendants. *Welch v. Epstein*, 342 S.C. 279, 300, 536 S.E.2d 408, 419 (Ct. App. 2000). As the South Carolina Court of Appeals stated in *Weaver v. Lentz*, 348 S.C. 672, 680-81 (Ct. App. 2002):

[I]t is not unusual for a case to have contradictory evidence and inconsistent testimony from a witness. In a law case tried before a jury, it is the jury that must decide what part of the witness's testimony it wants to believe and what part it wants to disbelieve. Under such circumstances, it is not the function of this Court to weigh the evidence and determine the credibility of the witnesses.

Because a jury question was presented on the issue of whether DDSN violated its direct duty of care to Plaintiff and whether the individual defendants were consciously indifferent to their decisions to place and retain Edward Mims in unsafe and unconstitutional conditions, and because Defendants failed to exercise professional judgment, a directed verdict in favor of the Defendants was in error and a directed verdict should be granted to the Plaintiff.

Rule 59 SCRCP provides that:

(a) Grounds. A new trial may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the State.

The grounds for granting a motion for a new trial include a significant error of law, verdict going against the weight of evidence or irregularity in the court proceeding. Rule 59(b) SCRCP provides that:

The motion for a new trial shall be made promptly after the jury is discharged, or in the discretion of the court not later than 10 days thereafter.

On the last day of trial, on Thursday morning, April 11, 2024, the spouse of Plaintiff's counsel, who is also her legal assistant, broke his ankle while loading records to be delivered to the court in this trial. On April 12, 2024, the injury was x-rayed and diagnosed as a lateral malleolus fracture. A significant amount of counsel's time since April 11, 2024 has been spent arranging for care and providing transportation to medical appointments. This motion is made as promptly as possible after the jury was discharged.

II. THE DIRECTED VERDICT DISREGARDED THE UNITED STATES SUPREME COURT'S RULING IN *YOUNGBERG v. ROMEO*

The trial court's ruling contradicts the longstanding rule of law established by the United States Supreme Court in *Youngberg v. Romeo*, 457 U.S. 307, 319 (1982). In that case, the Supreme Court ruled that under substantive component of Fourteenth Amendment's Due Process Clause, a state must provide involuntarily committed mental patients like Edward Mims with services necessary to ensure their reasonable safety from themselves *and others*, as well as freedom from undue restraint. (Emphasis added.) See also *DeShaney v. Winnebago County Dept. of Soc. Servs.*, 489 U.S. 189, 201-02 (1989) (while substantive component of Fourteenth Amendment's Due Process Clause did not protect child beaten to death by his father after state agency failed to remove child from home, "it may well be that, by voluntarily undertaking to protect Joshua against a danger it concededly played no part in creating, the State acquired a duty

under state tort law to provide him with adequate protection against that danger").

In *Youngberg*, as in this case, the mother of an intellectually disabled adult male alleged violations of her son's constitutional rights pursuant to 42 U.S.C. § 1983. In this case, the Plaintiff presented testimony that the individual Defendants knew of the dangers where they placed Edward Mims, they violated his right to liberty to live in a safe setting with his mother and his right to equal protection from beatings and sexual injuries, and they caused him to be committed and forced to live in unconstitutional conditions. In addition, Defendants opposed Plaintiff's right to be removed from those dangerous conditions by his mother (who had obtained a court order for his release) and obstructed her appointment as his guardian in the Probate Court. Then Defendants obstructed his ability to remain in a safe setting by denying his entitlement to receive needed Medicaid-funded services at home.

III. DISREGARD FOR THE SOUTH CAROLINA SUPREME COURT'S CONTROLLING RULING IN *MADISON v. BABCOCK CENTER*

The court's award of a directed verdict also conflicts with the Supreme Court's ruling in *Madison v. Babcock Ctr., Inc.*, 371 S.C. 123 (2006). In *Madison*, the South Carolina Supreme Court ruled that DDSN has a direct duty of care to residents living in facilities operated by the Babcock Center. Pursuant to South Carolina common law, there is no general duty to control the conduct of another or to warn a third person or potential victim of danger. *Id.* at 136. However, the Supreme Court has recognized five exceptions to that rule which all apply in this case: (1) where the defendant has a special relationship to the victim; (2) where the defendant has a special relationship to the injurer; (3) where the defendant voluntarily undertakes a duty; (4) where the defendant negligently or intentionally creates the risk; and (5) where a statute imposes a duty on

the defendant. *Faile v. S.C. Dept. of Juvenile Justice*, 350 S.C. 315, 334 (2002). Here, an affirmative legal duty was created by statutes, DDSN's contractual relationship with Babcock Center and the State Medicaid Agency and other special circumstances. *Jensen v. Anderson County Dept. of Soc. Servs.*, 304 S.C. 195, 199 (1991); *Miller v. City of Camden*, 317 S.C. 28, 33-34 (Ct. App. 1994).

The Supreme Court recognized in *Madison* that "it has long been the law that one who assumes to act, even though under no obligation to do so, thereby becomes obligated to act with due care. *Sherer v. James*, 290 S.C. 404, 406. "One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise *reasonable care to perform his undertaking* (emphasis added), if (a) the defendant's failure to exercise such care increases the risk of such harm, or (b) the harm is suffered because of the other's reliance upon the undertaking." Restatement (Second) of Torts § 323.

In addition, the Supreme Court held in *Madison* that: "[o]ne who, being under no duty to do so, takes charge of another who is helpless adequately to aid or protect himself is subject to liability to the other for any bodily harm caused to him by (a) the failure of the actor to exercise *reasonable care* to secure the safety of the other while within the actor's charge, or (b) the actor's discontinuing his aid or protection, if by so doing he leaves the other in a worse position than when the actor took charge of him." Restatement (Second) of Torts § 324.

The present case falls within the first, second, third, fourth, and fifth exceptions specified in *Faile*, as well as within the circumstances outlined in Restatement (Second) of Torts §§

323-324.

Applying the rule established in *Faile v. S.C. Dept. of Juvenile Justice*, 350 S.C. 315, 334 (2002) and *Madison*, 371 S.C. 136-137, DDSN had a special relationship with Edward Mims because he was a client with special needs and disabilities admitted for care and treatment provided by Babcock Center under contract with DDSN. *Madison*, 371 S.C.

DDSN voluntarily undertook the duty not only of supervising and caring for Edward Mims, as provided through its contractual relationship with Babcock Center, but DDSN went further, and voluntarily took away Edward's right to return to his mother's care and to live outside of an institutional setting. DDSN acted negligently in creating the risk of injury to Edward Mims by not properly monitoring and supervising the care provided to him at the Babcock Center, and by allowing improper sexual contacts and repeated injuries. *Madison*, 371 S.C. at 137. DDSN had a statutory duty to exercise reasonable care in supervising both Madison and Edward Mims. See testimony of Richard Magner and S.C. Code Ann. § 44-20-30(2), (11), and (17) (defining client, mental retardation, and residential programs); S.C. Code Ann. § 44-20-710 to -1000 (2002) (addressing licensing of facilities and programs for mentally disabled persons); S.C. Code Ann. § 44-26-10 to -220 (rights of mental retardation clients). DDSN undertook a duty, for consideration, to render services to Edward Mims which DDSN should have recognized as necessary for his protection. Thus, DDSN had a duty to supervise and monitor to the extent necessary to prevent Edward Mims from harming himself, as well as to prevent others from harming him while in DDSN custody. *Madison, supra* and *Youngberg, supra*.

DDSN is liable for not only injuries suffered during the time when Edward Mims was involuntarily confined to DDSN custody, but also for the time when he was a voluntary admittee.¹ As long as Edward Mims was a client in DDSN's care - whether voluntarily or involuntarily - DDSN owed a duty of care to him. *Madison*, 371 S.C. at 138. See also S.C. Code Ann. § 44-20-460 ("person admitted or committed to the services of the department remains a client and is eligible for services until discharged").

The South Carolina Supreme Court in *Madison* at 138 cited cf. *Kolpak v. Bell*, 619 F. Supp. 359, 377-79 (D. Ill. 1985) (finding much logic in cases that find voluntary and involuntary residents are entitled to the same constitutional rights to a safe environment in actions brought under 42 U.S.C. § 1983, and listing cases). (Referring specifically to both DDSN and Babcock Center.) "These cases recognize that for all practical purposes, many of the residents of state-run mental institutions are effectively admitted involuntarily: they may have been admitted upon the unilateral application of their parents or guardians; they may be incapable of expressing a desire to enter or to leave; they may be involuntarily committed when they apply for discharge; or their financial circumstances may be such that admission, voluntary or involuntary, is a foregone conclusion." *Id.* at 378-79.

Thus, under the common law any entity, such as DDSN, "which accepts the responsibility of providing care, treatment, or services to a mentally retarded or disabled client has a duty to exercise reasonable care in supervising the client and providing appropriate care and treatment to the client." *Madison*, 371 S.C. 138. In *Madison*, the Supreme Court relied upon *Lee v. Dept. of*

¹ The applicable statutes of limitation were established by the South Carolina Court of Appeals in *Estate of Mims v. S.C. Dep't of Disabilities & Special Needs*, 422 S.C. 388, 399-400 (S.C. Ct. App. 2017). See also *Madison*, 371 S.C. at 138.

Health and Rehabilitative Servs., 698 So.2d 1194, 1199 (Fla. 1997) (intellectually disabled woman who became pregnant while in *custody of state agency (emphasis added)* stated cause of action for negligence against agency employees who allegedly failed to follow agency's rules and carry out their assigned duties in supervising patients); *Butler v. Circulus, Inc.*, 557 S.W.2d 469, 475 (Mo. App. 1977) (intellectually disabled minor plaintiff who was resident and student at defendant's licensed institution stated cause of action for negligence against defendant for failing to supervise employees who allegedly physically and mentally abused plaintiff as part of a behavior modification program); Restatement (Second) of Torts §§ 323-324; cf. *Rogers v. S.C. Dept. of Parole & Comm. Corrections*, 320 S.C. 253 (1995) (holding that common law duty to warn arises when a person being released from custody has made a specific threat of harm directed at a specific individual); *Youngberg v. Romeo*, 457 U.S. 307, 319 (1982) (under substantive component of Fourteenth Amendment's Due Process Clause, state must provide involuntarily committed mental patients with services necessary to ensure their reasonable safety from themselves and others, as well as freedom from undue restraint); *DeShaney v. Winnebago County Dept. of Soc. Servs.*, 489 U.S. 189, 201-02, 109 S. Ct. 998, 1006, 103 L. Ed. 2d 249 (1989) (while substantive component of Fourteenth Amendment's Due Process Clause did not protect child beaten to death by his father after state agency failed to remove child from home, "it may well be that, by voluntarily undertaking to protect Joshua against a danger it concededly played no part in creating, *the State* acquired a duty under state tort law to provide him with adequate protection against that danger"). (Emphasis added.)

The Supreme Court ruled in *Madison* that *the factfinder, not the judge*, may consider relevant standards of care from various sources in determining whether a defendant breached a duty owed to an injured person in a negligence case. 371 S.C. at 140. (Emphasis added.) But the trial court in this case erroneously took Edward Mims' right to have that issue decided by a jury. The Supreme Court instructed that: "[t]he standard of care in a given case may be established and defined by the common law, statutes, administrative regulations, industry standards, or a defendant's own policies and guidelines." Id. It cited *Steinke v. S.C. Dept. of Labor, Licensing & Regulation*, 336 S.C. 373, 387-89 (1999) (holding that affirmative legal duty may be created by statute which establishes the standard of care); *Clifford v. Southern Ry. Co.*, 87 S.C. 324 (1910) (statute may create special duty of care and breach of that statute may constitute negligence per se); *Peterson v. Natl. R.R. Passenger Corp.*, 365 S.C. 391, 397 (2005) (although federal regulations provided standard of care, internal policies of company which owned the line of track and railroad which owned the train were not preempted by federal law, and company's and railroad's deviation from own internal policies was admissible as evidence they deviated from standard of care, thus breaching duty owed to plaintiff, in lawsuit brought by plaintiff injured in train derailment); *Elledge v. Richland/Lexington School Dist. Five*, 352 S.C. 179, 186 (2002) (general rule is that evidence of industry safety standards is relevant to establishing the standard of care in a negligence case); *Tidwell v. Columbia Ry., Gas & Elec. Co.*, 109 S.C. 34 (1918) (relevant rules of a defendant are admissible in evidence in a personal injury action regardless of whether rules were intended primarily for employee guidance, public safety, or both, because violation of such rules may constitute evidence of a breach of the duty of care and the proximate cause of injury); *Caldwell v. K-Mart Corp.*, 306 S.C. 27, 31-32 (Ct. App. 1991) (when defendant

adopts internal policies or self-imposed rules and thereafter violates those policies or rules, jury may consider such violations as evidence of negligence if they proximately caused a plaintiff's damages); *Steeves v. U.S.*, 294 F. Supp. 446, 455 (D.S.C. 1968) (violation of a rule or regulation which is designed primarily for the safety of hospital patients will constitute negligence if the violation proximately results in the injury).

While the Supreme Court elected in *Madison* not to express an opinion "on particular standards of care which may be relevant and properly applied in this case," it directed the trial court to identify "sources establishing the standard of care...on remand of this case." *Madison*, 371 S.C. 141. The Court ruled that the "relevant standards of care, and whether the duty was breached *must be determined by a jury* on remand." 371 S.C. 141, 144. (Emphasis added.) The relevant standards of care and testimony that the duty of Defendants was breached was presented by expert witness, Richard Magner. Thereafter, the trial court erred by directing a verdict instead of submitting the questions raised in this case to the jury.

The Supreme Court ruled that both DDSN and Babcock Center owed a duty to exercise reasonable care" with regard to the plaintiff pursuant to the common law in *Madison*.

That Court held that the Richland County Court of Common Pleas erred in granting summary judgment to DDSN, noting that "when duty is based on common law, then its existence is analyzed as it would be with a private defendant which is not a government entity pursuant to Tort Claims Act." *Id.* The Supreme Court held that a "governmental entity is liable for its torts "in the same manner and to the same extent as a private individual under like circumstances," subject to limitations upon and exemptions from liability and damages contained in Tort Claims Act). *Id.*

The Court also found that DDSN's argument that it was not liable for "the torts of its independent contractor, Babcock Center, pursuant to S.C. Code Ann. § 15-78-60(20) (2005)" was "unpersuasive." That is "because Department owes a common law duty of care directly to [the plaintiff]." *Madison*, 371 S.C. at 142-143. It ruled that the "fact an independent contractor provided services to [Madison] or the fact a third party may have committed a criminal act in harming [Madison] does not affect the existence of Department's duty." *Id.* The Supreme Court held that DDSN's "potential liability in this case could be based on a similar principle." *Id.* That is because DDSN "remains under a duty to provide *reasonable care and treatment to its clients.*" (Emphasis added.) The Court clearly and unambiguously ruled that if DDSN "is negligent in its duty, which may include: (1) adequately supervising the provision of services by another entity or (2) its own conduct in relation to prior notice of inappropriate care of its clients by such entity, Department may be held liable for breach of its common law duty provided such negligence creates a foreseeable risk of and causes injury." *Id.* At trial, Plaintiff presented evidence that the injuries Edward suffered were foreseeable.

The Supreme Court also ruled in *Madison* that "Gross negligence is ordinarily a mixed question of law and fact." Citing *Faile*, 350 S.C. at 332. "When the evidence supports but one reasonable inference, it is solely a question of law for court, otherwise it is an issue best resolved by the jury. . . . In most cases, gross negligence is a factually controlled concept whose determination *best rests with the jury.*" (Emphasis added.) *Id.* at 332, 566 S.E.2d at 545.

By granting DDSN's motion for a directed verdict, this court erred as a matter of law in disregarding the Supreme Court's ruling in *Madison* that: "We conclude that the issue of whether Department acted in a grossly negligent manner is a factual issue for a jury" and that "[w]hether

the duty was breached and whether the Department met the applicable standard of care must be determined by a jury on remand.” *Madison*, 371 S.C. 144.

As the Supreme Court ruled in *Madison*, DDSN’s “operations and responsibilities, as well as the care, treatment, and rights of mentally retarded or disabled persons, are governed by a comprehensive scheme of statutes and regulations.” Citing S.C. Code Ann. §§ 44-20-10 to -1170 (S.C. Intellectual Disabilities (Mental Retardation), Related Disabilities, Head Injuries, and Spinal Cord Injuries Act); S.C. Code Ann. §§ 44-21-10 to -80 (Department of Disabilities and Special Needs Family Support Services); S.C. Code Ann. §§ 44-23-10 to -1150 (provisions applicable to both mentally ill and intellectually disabled (mentally retarded) persons); (S.C. Code Ann. §§ 44-26-10 to -220 (rights of intellectually disabled (mental retardation) clients); and 26 S.C. Code Ann. Regs. 88-105 to 88-920 (regulations promulgated by Department of Disabilities and Special Needs). The court erred by disregarding the testimony of expert Richard Magner regarding DDSN’s “operations and responsibilities” that are “affected by internal standards, policies, and guidelines it has promulgated for particular programs as a result of statutes or regulations,” as well as mandatory federal health and safety standards. *Madison*, 371 S.C. at 146.

DDSN’s attempt to blame Babcock Center, the Department of Health and Environmental control or other entities must also fail. The Supreme Court clearly ruled that: “The defendant’s negligence does not have to be the sole proximate cause of the plaintiff’s injury; instead, the plaintiff must prove the defendant’s negligence was at least one of the proximate causes of the injury.” *Madison*, 371 S.C. at 147. By granting the Defendants’ motion for a directed verdict, the trial court here disregarded the Supreme Court’s ruling in *Madison* that “[t]he question of

proximate cause ordinarily is one of fact for the jury, and it may be resolved either by direct or circumstantial evidence.” This Court erred as a matter of law in disregarding that Court’s holding that: “[t]he trial judge's sole function regarding the issue is to inquire whether particular conclusions are the only reasonable inferences that can be drawn from the evidence.” *Id.* at 147.

Whether Edward Mims’ injuries were proximately caused by the alleged negligence of the Defendants “is an issue of fact for the jury.” *Id.* The Supreme Court ruled that: “[t]he jury must determine whether [the plaintiff’s] damages would have occurred ‘but for’ [DDSN’s] alleged negligence, as well as whether such damages were foreseeable, i.e., whether the damages were the natural and probable consequence of a failure to exercise reasonable care in supervising and providing care and treatment to [the plaintiff].” *Id.* The trial court here erred as a matter of law in taking away from the jury the task “after gaining a proper understanding of the facts and circumstances of [the] case, as well as the applicable standards of care.” *Id.* As in *Madison*, the trial court erred as a matter of law by failing to allow the jury to determine proximate cause. *Id.*

The court’s directed verdict makes a nullity out of the Supreme Court’s ruling in *Madison* and it was error not to grant the Plaintiff the opportunity to move for a directed verdict and not to grant a directed verdict in favor of the Plaintiff.

IV. IMPROPER EXCLUSION OF EVIDENCE AND TESTIMONY

The trial court here committed legal errors during the trial by wrongly excluding evidence that would have made a difference to the outcome of the trial, which prejudiced the Estate of Edward Mims.

The trial court erred in its ruling that Randolph Thomas was not qualified by specialized knowledge, skill, experience, training and education to assist the trier of fact to understand the

evidence and to determine facts related to reporting abuse and neglect and training related to abuse and neglect.² See affidavit of Randolph Thomas and attached CV. Mr. Thomas has decades of experience providing training to law enforcement, attorneys and providers regarding the responsibility of mandated reporters (such as Defendants Butkus and Lacy) to report abuse and neglect. Id. He was personally involved in the enactment of the South Carolina Omnibus Adult Protection Act, which established standards for reporting abuse and neglect, and penalties for the failure to report. Id. The trial court also erred by refusing to allow Mr. Thomas to testify regarding the specific injuries suffered by Edward Mims and the Defendants' failure to comply with applicable standards of care, both before and after he was involuntarily committed to DDSN custody.

Mr. Thomas reviewed Babcock Center records and audits, investigations and reports and would have testified as to the multiple injuries Edward Mims suffered, including, but not limited to injuries to his penis at both Clusters and Kensington. He would have testified regarding multiple beatings, all occurring when Edward Mims was assessed by DDSN as needing one-on-one supervision at Clusters. He was not allowed to testify regarding the audits that proved that DDSN and the individual defendants were on notice that one-on-one services being funded by Medicaid were not being provided throughout the Babcock Center. He was erroneously not allowed to testify regarding conditions at Clusters, as discovered by CMS after counsel for Edward Mims reported unconstitutional conditions there to that federal agency. Exhibit 17,

² The trial court limited Mr. Thomas' testimony to that related to investigations, then refused to allow him to testify about even three of the 78 incidents he found to be relative to the case.

October 13, 2004 memo.³

The Court also erred in excluding Mr. Thomas' testimony that six out of the fifty critical incidents reviewed in Mr. Thomas' preparation of the *Unequal Justice* report- records that were provided to Protection & Advocacy by DDSN - involved Edward Mims.⁴ It also erred in excluding testimony of this expert as to the failure of Defendants to report the second penis injury (at Kensington to law enforcement).

The trial court erred by granting the motion to quash testimony of Robert Kerr, who ordered audits and investigations of systemic violations of federal standards of care at Babcock Center. Then, having quashed the subpoena of this witness, it erred in excluding the letters he wrote reporting findings that the facility where DDSN and Defendant Butkus had placed Edward Mims, and other ICF facilities operated by Babcock Center were out of compliance with applicable standards.⁵ The Apex doctrine has not been adopted by South Carolina appellate courts or the Fourth Circuit. This ruling quashing the subpoena of Robbert Kerr conflicts with the trial court's erroneous ruling granting Defendants' late-filed and burdensome motions to compel former members of the governing board to produce documents. (The appellate courts denied

³ While the memo was written after Edward Mims was removed from Clusters, CMS' investigation included incidents occurring while he was placed there.

⁴ The records obtained by P&A are believed to have been destroyed after publication of the report. Names were not included in that report, but this witness' recollection that more than 10% of the incidents involved Edward Mims demonstrated the fact that the individual Defendants and DDSN were on notice of, and were consciously indifferent to the unsafe and unconstitutional conditions throughout the DDSN system.

⁵ The court erred in excluding the Carolina Medical Review report and other investigations, citations, audits and reports documenting violations of applicable standards of care of which Defendants had notice.

review of that interlocutory order, which may be reversed on appeal of this court's final order.)

The trial court also erred by excluding evidence, including multiple Immediate Jeopardy citations and decertifications, newspaper and media reports, audits, studies and investigations on the grounds of hearsay and relevance. "Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." *Thomas v. Dootson*, 377 S.C. 293 (S.C. Ct. App. 2008), citing Rule 801(c), SCRE. However, when statements are offered not for the truth of the matter asserted, but rather as evidence of notice, they do not constitute hearsay. *Id.*, citing *Player v. Thompson*, 259 S.C. 600, 610 (1972). The fact that these Defendants were on notice of these reports and knew that violations of applicable standards were prevalent throughout DDSN's residential programs was relevant and the court erred in excluding evidence and testimony that proved that knowledge.

In *Player*, the trial court held that testimony a filling station attendant told the defendant she had slick tires prior to the accident did not constitute hearsay. *Id.* The testimony was not offered to prove the tires were slick, but only to establish the defendant had notice of her tires' condition prior to the accident. *Id.* Other evidence established the slickness of the tires. *Id.*

Likewise, in this case, as in *Thomas*, Plaintiff attempted to offer evidence and testimony, including audits, investigations and newspaper articles to prove that DDSN and the individual defendants were warned as to the unsafe and unconstitutional conditions where DDSN and Defendant Butkus had placed the Plaintiff. As in *Thomas*: "[T]he trial court improperly ruled the statement was hearsay." The testimony and evidence the Estate of Edward Mims offered, just as in *Player* and *Thomas*, was not offered for the truth of the matter asserted, but rather as evidence of notice." It was error to exclude this testimony and evidence

V. THE DIRECTED VERDICT WENT AGAINST THE WEIGHT OF THE EVIDENCE

The directed verdict also went against the weight of evidence. The trial court erred by disregarding the right of Edward Mims to live in a less restrictive setting, free from the unconstitutional conditions where Defendants placed him - and threw away the key. The court disregarded testimony and evidence that “but for” the illegal actions and inactions of Defendants, Edward Mims would not have suffered all of the injuries he suffered.

Defendant Butkus admitted in his deposition that he made the decision to involuntarily commit Edward Mims and that he had the responsibility to determine placement. He admitted in his deposition that he made the decision to object to Mrs. Mims’ petition for guardianship. He admitted that he was informed of serious injuries (both before and after the involuntary commitment) by Defendant Lacy, whose job it was to track and report abuse and neglect to him.

Testimony was presented by Experts Thomas and Magner that both Butkus and Lacy (an RN) were mandated reporters and they failed to properly investigate injuries to Edward Mims or to report those injuries to the proper authorities, or to take any action to remove Edward Mims from known risks of harm. (Thomas was improperly prohibited from testifying about reporting abuse and neglect or training.) Magner testified that DDSN was ultimately responsible for protecting Edward Mims from abuse and neglect, pursuant to applicable state and federal standards of care. He testified that pursuant to the state statute, Defendant Butkus was responsible for determining placement. Magner also explained that the injuries Edward Mims suffered could not have occurred had the one-on-one supervision that he was assessed by DDSN to need had been provided. The court erred in excluding his testimony about the audits and reports that provided notice to the Defendants in this case that one-on-one services were not

being provided to Edward Mims and were being systemically deprived of those residents who needed them.

The Court also erred in disregarding uncontradicted evidence and testimony that Defendant Butkus imposed a 50% reduction in bed capacity at the Babcock Center, while forcing Edward Mims to remain in a decertified facility where he was repeatedly injured. Butkus and Lacy both clearly knew that conditions at Babcock Center violated the applicable standards of care and they failed to take a single action to protect Edward from the unconstitutional conditions there.

The court disregarded Mr. Magner's testimony that DDSN was obligated by state and federal law to provide services in the least restrictive environment. This evidence supported Plaintiffs' claims that Defendants were grossly negligent in refusing to discharge Edward Mims, opposing his mother's petition to be appointed as his guardian and denying needed services once he returned home.

VI. CREDIBILITY OF TESTIMONY OF DEFENDANT BUTKUS

Defendant Butkus testified that Kensington was not decertified. But, the court disregarded the testimony of court-appointed examiner, Lennie Mullis, who testified that when she arrived at Kensington, there was a notice on the door that the facility had been decertified. This conflicted with the testimony of Defendant Butkus, however, the decertification of Kensington was also confirmed by the letters of Robert Kerr, who was excluded from testifying by the trial court.

Mullis also testified that she was not allowed to examine Edward on three separate trips to Kensington, showing the court order directing her to examine him, but the court erroneously excluded emails showing that Defendant Butkus was involved in the decision to not allow Mullis

to visit Edward Mims. See Exhibit 2. Certified affidavit submitted to the Probate Court.

The court erred in disregarding the conflicting testimony of Richard Magner as to the responsibility of the DDSN and Defendants Butkus and Lacy to provide safe and effective treatment and to report abuse and neglect. His testimony related to Immediate Jeopardy citations at facilities where DDSN placed Edward was also disregarded. The court also erroneously disregarded the serious violations of health and safety standards throughout the Babcock Center ICF facilities.

Defendant Butkus testified, without documentation, that Carl Anthony was immediately terminated and he was arrested. (Transcript not yet provided.) The court disregarded evidence that Defendants failed to investigate and to report to law enforcement the beating by Carl Anthony and beatings by other clients. Mrs. Mims testified that it was she who made the report of the beating by Carl Anthony to the Attorney General's Office. The arrest warrant supports her testimony, because it was more than a year before Anthony was arrested. Randy Thomas was not allowed to testify about Babcock Center reports showing that Anthony was not immediately fired and that none of the mandatory reporters reported the assault to law enforcement.

Butkus also testified that he could not recall another involuntary commitment to DDSN. Expert Richard Magner, however, testified that, although rare, the involuntary commitment of Edward Mims was not the only one during the time in question. Defendant Butkus' failure to remember, or to monitor the care provided to any involuntarily committed individual was evidence of his conscious indifference to Edward Mims' rights and the rights of similarly situated clients under involuntary commitment. *Shaw v. Stroud*, 13 F.3d 791, 799 (4th Cir. 1994). Plaintiff presented evidence that Butkus and Lacy were engaged in conduct that posed "a

pervasive and unreasonable risk" of constitutional injury to citizens like the plaintiff and that their response to that knowledge was so inadequate as to show "deliberate indifference to or tacit authorization of the alleged offensive practices." *Estate of Mims*, 422 S.C. at 401, citing *Shaw* at 799.

The trial court erred in failing to consider the credibility of this witness.

VII.

RES IPSA LOQUITUR

At no point in this trial has Plaintiff argued *res ipsa loquitur*. As the Supreme Court ruled in *McQuillen v. Dobbs*, 262 S.C. 386, 392 (1974):

While our decisions uniformly state that the so called doctrine of *res ipsa loquitur* does not apply in this State, they have with equal uniformity recognized that negligence may be proved by circumstantial evidence as well as direct evidence. And in determining the sufficiency of circumstantial evidence, the facts and circumstances shown are to be reckoned with in the light of ordinary experience and such conclusions deduced therefrom as common sense dictates.

Plaintiffs presented both direct and circumstantial evidence that DDSN violated its duty of care to Plaintiff and that the individual Defendants were supervisors who had actual or constructive knowledge that their subordinate was engaged in conduct that posed "a pervasive and unreasonable risk" of constitutional injury to citizens *like the plaintiff* and that their response to that knowledge was so inadequate as to show "deliberate indifference to or tacit authorization of the alleged offensive practices." *Shaw v. Stroud*, 13 F.3d 791, 799 (4th Cir. 1994), cited in *Estate of Mims v. S.C. Dep't of Disabilities & Special Needs*, 422 S.C. 388, 401 (Ct. App. 2017). The court erred by taking from the jury the right to determine the "causal link" between the Defendants' inaction and the particular constitutional injury (including violation of his right to liberty and equal protection) suffered by the Plaintiff. *Madison*, 371 S.C. at 146-148.

In granting Defendants' motion for a directed verdict, the trial court disregarded the recent Supreme Court ruling in *Ruh v. Metal Recycling Servs., LLC*, 439 S.C. 649 (2023), that the principal in an independent contractor relationship may be subject to liability for injury proximately caused by the principal's own negligence in selecting the independent contractor. Evidence was presented at trial that the Defendants in this case not only negligently selected Babcock Center as an independent contractor to provide ICF/ID services to Edward Mims, but they failed to monitor his care while there, they involuntarily committed him to DDSN custody, then failed to monitor the care provided by its independent contractor.

The potential liability that the Supreme Court recognized in *Ruh* is consistent with longstanding fundamental principles of tort law. The Court's decision in that case was based solely on a principal's own negligence in hiring or selecting an independent contractor. As in this case, the defendants' liability is not a form of vicarious liability, nor is it an exception to the general rule that a principal is not liable for the negligence of an independent contractor.

The testimony presented clearly documented that Defendants knowingly selected an independent contractor with a longstanding history of failing to protect clients from abuse and providing unconstitutional living conditions.

VIII. THE COURT DISREGARDED THE TESTIMONY OF MARGARET MIMS

The court also erred in disregarding the testimony of Margaret Mims that for 27 years before he was admitted to DDSN voluntary custody, Edward Mims suffered no unexplained injuries, nor were such injuries suffered during the ten years after he was released from DDSN custody. It erred in disregarding testimony from expert Richard Magner that if Edward Mims had been receiving the one-on-one services he was assessed to need, the unexplained injuries he

suffered while at Clusters should not have occurred.

The court erroneously excluded evidence that DDSN and Defendant Kathi Lacy denied Mrs. Mims' requests to pay for Adult Day Health Care services upon his return home, in their attempt to force him to return to the Babcock Center, in violation of 42 U.S.C. 1396a(a)(23).⁶ Evidence that Mrs. Mims prevailed in an administrative appeal to the South Carolina Department of Health and Human Services was also improperly excluded.

The court also erred in disregarding Mrs. Mims' testimony that ants were found in Edward's room at Clusters when he was discovered with ant bites there, and that he suffered a penis injury and beatings by other clients while assessed to need on-on-one supervision.

IX. IRREGULARITY IN COURT PROCEEDINGS

An irregularity in the court proceedings occurred in this case when the trial judge disclosed during the trial her *ex parte* communications with an unidentified attorney after dismissing the jury for the day and before the trial resumed the next day. The trial court informed the parties that she had spoken the night before to an attorney who was present in the courtroom, who not counsel of record, and that they discussed matters related to the trial. Specifically, the judge reported that this attorney discussed that attorney's opinion with the trial judge that Mims did not have a case. The attorney was not identified, but the attorney who filed the motion to quash (adverse to Plaintiff) on behalf of the South Carolina Attorney General is believed to have been present in the court room that day. The attorney for the South Carolina Department of

⁶ Upon Edward Mims' return home, DDSN did not release him from the involuntary commitment, forcing him into a lengthy battle in the probate court. Randy Thomas was not allowed to describe to the jury the chronology of abuse and neglect, followed by DDSN's obstruction of his receipt of needed services at home.

Health and Human Services, an agency that also filed a motion to quash, was also present in the courtroom during portions of the trial.

This *ex parte* communication appears to have violated: (1) Canon 1, which requires a judge to uphold the integrity and independence of the judiciary, (2) Canon 2, which requires a judge to respect and comply with the law and to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary, (3) Canon 3, which requires a judge to perform the duties of judicial office impartially and diligently and to be patient, dignified and courteous to witnesses and lawyers with whom the judge deals in an official capacity. As the Code of Judicial Conduct explains, a judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Those Canons provide that facial expressions and body language, in addition to oral communication, can give to parties or lawyers in the proceeding and jurors an appearance of judicial bias.

X. CONCLUSION

The court erred in refusing to allow Plaintiff's counsel to move for a directed verdict, in failing to grant a directed verdict to the Plaintiff and in all of the other erroneous actions described above. The court should alter or amend its ruling and either grant a directed verdict to the Plaintiff or order a new trial to fix the injustices associated with the 2024 trial because of these errors that prevented Edward Mims from receiving a fair trial.

Respectfully submitted,

s/Patricia Logan Harrison
Patricia Logan Harrison
Attorney at Law
47 Rosemond Road
Cleveland, South Carolina 29635
(803) 360 5555
pharrison@loganharrisonlaw.com

April 16, 2024
Cleveland, South Carolina

Exhibits

- Exhibit 1 Affidavit of Randolph Thomas
- Exhibit 2 Affidavit of Lennie Mullis
- Exhibit 3 Photograph of Edward Mims and Mrs. Mims

EXHIBIT 1

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND

Estate of Edward Mims, Laura M. Cole,) C/A No. 2007-CP-40-3365
Personal Representative,)
)
Plaintiff,)
)
v.) AFFIDAVIT OF RANDOLPH THOMAS
)
SCDDSC, Kathi Lacy and Stanley Butkus,)
)
Defendants,)
_____)

Affidavit of Randolph Thomas

Now comes Randolph Thomas who swears and affirms:

1. I am a retired police officer, having served in the law enforcement profession for more than 26 years.
2. My experience included law enforcement patrol, investigations, planning and research and I have over 14 years as a law enforcement trainer.
3. I received my undergraduate degree in Political Science from Chaminade University (Honolulu, 1971) and my Master's Degree in Political Science from the University of South Florida (Tampa, 1974).
4. My CV is attached.
5. From 1983 through 1989, I held the position of investigator for the Richland County Sheriff's Office.
6. I have developed and presented training related to investigations of abuse and neglect of vulnerable adults all over the United States and have provided consulting services to the United States Department of Justice in the area of abuse of vulnerable adults.
7. I accepted employment with the South Carolina Criminal Justice Academy (CJA) in 1989 and retired from that position in 2004.
8. At the time of my retirement, I became the President National Committee for the Prevention of Elder Abuse.
9. From 1993 through 2003, I served as an adjunct professor at the University of South

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Carolina, Department of Criminology and Criminal Justice in the area of juvenile delinquency, crime prevention and child abuse.

10. During my tenure at the Criminal Justice Academy (CJA), I represented the Academy in meetings that resulted in the enactment of the Omnibus Adult Protection Act, S.C. Code Ann. §§ 43-35-5 et seq., which was enacted by the South Carolina General Assembly in 1993 with the goal of improving prevention, reporting, and investigation of abuse, neglect, and exploitation of vulnerable adults.
11. During my tenure at CJA, I also served as the designee of the agency on the South Carolina Adult Protection Coordinating Council (SCAPCC).
12. The SCAPCC was established in 1993 pursuant to S.C. Code Section 43-35-310 "under the auspices of the South Carolina Department of Health and Human Services..."
13. S.C. Code Section 43-35-320 authorized the SCAPCC to "coordinate the planning and implementation efforts of the entities involved in the adult protection system" and to "facilitate problem resolution and develop action plans to overcome problems identified within the system." S.C. Code Section 43-35-320.
14. The SCAPCC was charged by the General Assembly with the responsibility for developing "methods of addressing the ongoing needs of vulnerable adults, including increasing public awareness of adult abuse, neglect, and exploitation."
15. Statutory duties of the SCAPCC include the provision and promotion of "communication among groups and associations which may be affected by the council's actions and recommended changes in the system" and the identification and promotion of training on critical issues in adult protection.
16. The SCAPCC is charged by S.C. Code of Laws Section 43-35-30 to "coordinate data collection and conduct analyses including periodic monitoring and evaluation of the incidence and prevalence of adult abuse, neglect, and exploitation" in South Carolina.
17. The South Carolina Department of Disabilities and Special Needs (DDSN) and Protection & Advocacy (P&A) also participated as members of the SCAPCC.
18. The federal Developmental Disabilities Assistance and Bill of Rights (DD) Act of 1975 authorized the governor of each state to designate an agency to be the P&A (now called "South Carolina Disability Rights," hereinafter SCDR) agency to assure that each of these organizations would remain independent of any service provider.
19. SCDR (formerly P&A) is the federally and state mandated protection and advocacy system for South Carolina that was established in 1977 by state law, S.C. Code Ann. 43-33-310 et seq., to protect the rights of people with disabilities.

20. By federal law, DRSC is independent of all agencies providing treatment or other services to people with disabilities in South Carolina.
21. DRSC agencies receive federal funding and they are required by the Act to pursue legal, administrative and other appropriate remedies to protect and advocates for the rights of individuals with developmental disabilities under all applicable federal and state laws.
22. After publication of many media reports by various newspapers and television stations reporting abuse, neglect and exploitation of DDSN clients between 2002 and 2004, SCDR hired me in 2004 to study how investigations and prosecutions involving clients in DDSN programs were handled.
23. The Unequal Justice study of abuse, neglect and exploitation in DDSN programs was published in 2005.
24. To perform the study, SCDR requested and obtained directly from DDSN 50 cases of alleged abuse and neglect representing a variety of programs and environments covering a period of approximately two years.
25. Six of the incident reports provided by DDSN that I investigated in preparing the Unequal Justice report involved Edward Mims.
26. There was no indication in those six incident reports that the injuries to Edward Mims were reported to law enforcement, but one was sent to the State Ombudsman for a noncriminal "standard of care" violation.
27. Four of the six Edward Mims incident reports that I reviewed during the Unequal Justice study in 2004 and 2005 (records that were provided by DDSN) were determined to be "unfounded," only one resulted in employee termination, and only one resulted in an employee being disciplined, despite unequivocal evidence that he was not being provided the one-on-one supervision that DDSN had assessed him to need.
28. It is my understanding that Edward Mims lived at home with his mother for 27 years until she was temporarily hospitalized in October 1999, when she requested temporary voluntary placement from DDSN.
29. DDSN placed Edward at Clusters, an ICF/ID facility operated by the Babcock Center.
30. I am not aware of any unexplained injuries being reported while Edward was living at home and none of the incident reports from the Babcock Center that I have reviewed mention Edward being injured while home on weekend visits during the entire time when he was at Clusters or Kensington.
31. Upon admission to Clusters in September, 1999, DDSN assessed Edward and determined that he required one-one accountability. BC 4502-4511, 424-425.

32. Babcock employees, Edward's physicians and DDSN personnel were all mandatory reporters of neglect and abuse, but none of the records provided to me indicate that any report was made to law enforcement, to the State Ombudsman or to DDSN suggesting that he was not properly taken care by his mother of on these weekend visits.
33. Because Edward was assessed to need one-on-one supervision, staff would certainly have noticed any injury that had occurred at home when he was returned to Clusters.
34. It is significant that Edward Mims was nonverbal, he had the mental capacity of an infant and he was unable to tell anyone verbally when he was mistreated.
35. Despite Edward being unable to verbalize the injuries he suffered in DDSN programs, Babcock Center incident reports document the following injuries between the time of Edward's voluntary admission to DDSN residential services in September 1999 and the date Mrs. Mims wrote to DDSN requesting that he be discharged from Clusters on March 3, 2002:
- * Nov. 6, 1999: bruises and scratch marks on Edward's neck. BC 894
 - * Nov. 20, 1999: a bruise on Edward's right arm. BC 2355
 - * Nov. 21, 1999: scratch marks and bruises on Edward's neck and arm. BC 2350, 2354 and 2356.
 - * Dec. 7-8, 1999: an "openhanded slap by another resident," requiring treatment in emergency room.
 - * March 10, 2000: injury to Edward's right hand when it was run over by a wheelchair. BC 900.
 - * April 14, 2000: bruises on Edward's knees. BC 1804.
 - * May 5, 2000: Injury to Edward's lower lip and left shoulder. BC 2363.
 - * May 26, 2000: "old mark on knee, old mark on back." BC 1803.
 - * June 9, 2000: "old bruise on his back" and "old bruise on his left knee." BC 1806.
 - * June 16, 2000: "old marks on both knees, old bruise on his back and mark on his right hip old." BC 1807.
 - * June 23, 2000: "old bruise on his back and old marks on Edward (sic) knees." BC 1808.
 - * July 4, 2000: "A bruise (sic) on the back of the right shoulder. Abrasion - rt. Shoulder." BC 2372.
 - * July 9, 2000: Edward was served tomato juice despite documented allergy. BC 3199.
 - * July 11, 2000: "discolored area noted lower lip. Lower lip .. deep purple bruise." (Bruise on lip again noted on July 16, 2000). BC 3199.
 - * July 18, 2000: treated in ER for vomiting and abdominal pain. Lexington Urgent Care in morning and Lexington Medical Center ER in evening. Records document "several old bruises noted to left outer aspect of upper arm brownish/yellowish in color, right upper back near shoulder blade right lower back and right side of hip." Exhibit 4, BC 3199 and 3211.
 - * July 22, 2000 Edward was transported to Richland ER for evaluation of vomiting

- and dehydration. Exhibit 4 and BC 3197.
- * July 23, 2000: Edward was transported to Lexington Medical Center ER for evaluation of vomiting. Exhibit 4.
 - * August 4, 2000: red area left shoulder collar bone. BC 3192.
 - * August 6, 2000: scrapes on back and abrasion on Edward's right knee. BC 3192. See also 2363.
 - * August 8, 2000. treated at the Palmetto Richland emergency room for nausea and vomiting. Exhibit 4.
 - * August 11, 2000: injury to Edward's right knee, coccyx and lower back. BC 3191, 956.
 - * August 13, 2000: Edward was assaulted by Babcock Center employee, Carl Anthony. Although witnessed, this injury was not reported to his mother or to law enforcement. Report indicates abrasions to his knees and back.
 - * Babcock Center records dated August 13, 2000, report that Edward was beaten by Babcock Center employee, Carl Anthony. Although witnessed, this injury was not initially reported to Mims' mother or to law enforcement. Records document "bruises and scratches noted over body," also noting that Mims had not been scratching himself. These injuries included multiple purple elongated lesions on his bilateral chest wall, neck, posterior ear, right eye lids and wrist and scratches on his chest wall."
 - * August 14, 2000: The State Ombudsman issued a report on July 28, 2003, nearly three years after the assault, stating that the beating was reported to the State Ombudsman on August 14, 2000.
 - * August 15, 2000: scratched areas of Edward's torso, gagging and nearly vomiting. Scratches to his right eye, neck, sides and back. BC 3201.
 - * August 20, 2010: "bruise around right eye and scratches on neck, right and left sides of torso and on back." BC 3201.
 - * August 27, 2000: scrape on Edward's right knee and bruise on back right side. BC 2367.
 - * August 29, 2000: Edward was admitted to Palmetto Richland emergency room for nausea and vomiting. Exhibit 4.
 - * September 4, 2000: Babcock notes document that Edward's mother attempted to prevent him from returning to Clusters after a home visit. Babcock staff reported that Mrs. Mims did not want to allow Edward to get on the van when they came to pick him up from a weekend visit. BC 2368.
 - * October 13, 2000: bruises on Edward's back, right upper thigh and knees. BC 965.
 - * Babcock records at 3220 document that Edward continued to be assessed to need one-on-one accountability in October, 2020.
 - * October 24, 2000: Babcock records state that "Overall, Edward's health has been essentially stable throughout the year." BC 3220.
 - * December 2, 2000: Edward was treated at Lexington ER for a swollen right hand.
 - * January 14, 2001: Edward was "[s]cratched by another client." BC 1654.
 - * January 15, 2001: treatment in the Lexington Medical Center ER for injury to Edward's right eye. BC 2613.
 - * January 16, 2001. bruising on the inside of Edward's right thigh. BC 885 and 1654.

- * January 27, 2001: scratches to Edward's" scalp, right ear and right eye. BC 1654.
 - * March 1, 2001: a blood clot...on the right side of Edward's nose and eye. BC 3189.
36. On March 3, 2001, Mrs. Mims wrote to DDSN asking that Edward be discharged and returned home to her care.
37. After Mrs. Mims sought to discharge her son from Babcock Center and to return him to live with her at home, the following injuries were reported:
- * March 4, 2001: the blood clot below Edward' eye remained visible. BC 3189.
 - * March 8, 2001: a three inch long scratch to Edward's upper thigh. BC 3189.
 - * March 10, 2001: scratch to Edward's right leg. BC 3189.
 - * March 19, 2001: Babcock Center records document a scratch and "open slit" and bleeding on Mims' penis, which "remained bruised." This injury was not reported to law enforcement, the Ombudsman, or to his mother.
 - * March 20, 2001: nurse note states that the wound on the left side of Edward's penis remained bruised. BC 3190.
 - * March 21, 2001: nurse note states that the wound on Edward's penis remains bruised. B.C. 3190.
 - * March 22, 2001: "wound left side penis bruising, open areas healed." B.C. 3190.
 - * March 23, 2001: bruising remains on penis and that bruise was "reddish brown in color." B.C. 3190.
 - * March 25, 2001: "two small red, flat bumps on scalp above r ear and ... old red mark on r flank. White blistered area on l forearm. Dark area from old scratch on l side of penis. 3" light scratch on r thigh. Black line in nail bed of gt toe. Questionable whitish area just tor of center of nape of neck." BC 923.
 - * March 27, 2001: scratch under Edward's right eye and nose, reportedly by another client and that the "open slit" on Edward's penis "remained bruised." BC 3190, 3333, 3274, 3190. The injury to Edward's penis was not reported to law enforcement or the State Ombudsman.
 - * April 1, 2001: Records document Edward was "Scatched under r eye by another client." BC 3190.
38. On April 16, 2001, with the approval of Director Butkus, SCDDSN filed a Petition asking the Probate Court to involuntary commit Edward to the custody of DDSN.
39. DDSN provided the following grounds on its Petition:
- Edward is fragile and carries diagnosis of cerebral palsy, seizures, hypertension, esophagitis/erosion disease. His mother is in poor health and is unable to care for him since she has limited means and resources.
40. According to the affidavit and the deposition of the court-appointed Guardian ad Litem (GAL), Marsha Leigh Flynn, she reviewed the records provided at Clusters and asked if

those were all that were in Edward's file at Clusters.

41. None of the incident reports, including the assault by Carl Anthony were provided to Flynn, but Flynn testified that Clusters informed her that all of Edward's file had been provided to her.
42. Clusters employees informed GAL Flynn that when returning from weekend visits: "he had problems on Sundays, that he would have crying, hysterical tantrum-type behavior when they came to get him to take him back to Babcock."
43. In the affidavit the GAL filed in the Probate Court guardianship proceedings in 2005, she informed the Court that during the involuntary commitment proceedings, she was informed "that his behavior was associated with his mother and that the reason he was upset was because the way he was being treated at home, at his mother's home."
44. In his deposition, Dr. Butkus testified that it was he who was responsible, as the director of DDSN, for making decision as to where clients are placed within the DDSN system and that he made the decision to file the involuntary judicial commitment petition which resulted in Edward being committed to the custody of DDSN.
45. In the judicial commitment proceedings, DDSN informed the Court that Edward "is on one-on-one care at Clusters."
46. Dr. Butkus testified that involuntary admissions to the custody of DDSN were rare.
47. Dr. Butkus testified that it was Kathi Lacy's job to track trends in abuse and neglect data and to inform him of serious injuries.
48. While the involuntary commitment action was pending in the Probate Court, Edward suffered the following injuries:
 - * April 18, 2001: "laceration to top of head .. dried blood noted to also l side several dark red areas noted." BC 1656.
 - * April 19, 2001: wound to top of head and bruising. BC 1656.
49. By statute, the Director of DDSN has the responsibility for determining placement of DDSN clients in its residential programs.
50. On September 3, 2001, an accident report states that "Edward slipped while being given a shower." BC 3799 and 1661.
51. On September 4, 2001, an accident report states that Edward fell on the floor of the shower and "hit his behind." BC 3796 and 1662.
52. On September 17, 2001, an "investigation of Injury" documents a mark on Edward's left

leg..."

53. On October 3, 2001, the South Carolina Attorney General obtained an arrest warrant for the arrest of Babcock Center employee Carl Anthony, who on August 13, 2000 "did knowingly and willfully strike or hit Edward Mims about the head."
54. On November 13, 2001: Mrs. Mims wrote to the South Carolina Attorney General begging for Edward to be released from DDSN custody to her care.
55. Edward was taken to the "Lex. Med. Ctr for evaluation due to severity of bruises." Records note 27 marks over Mims' body, which were red in color, but "one area on r upper shoulder is purple in color." No report was made to law enforcement, the Ombudsman or Edward's mother.
56. On December 3, 2001, Edward's discolored and swollen right hand was X ray'd at Lexington Medical Center. Records note "An "old bruise light yellow in color." A nursing note indicates scratch on right side of Mim's neck. The large abrasion on Edward's face in the photograph was not mentioned in the nurse's notes. Staff notes from December 2, 3 and 4 state that none of the staff saw any marks on Edward. Exhibit 4, BC 3184, 3188, 3277, 1637, 1638 and 1643.
57. On December 6, 2001, the letter that Mrs. Mims' letter wrote to the Attorney General asking that Edward be returned to her care was referred to DDSN, informing Mrs. Mims that the AG does not have authority over Babcock Center or DDSN. R. 235.
58. On December 16, 2001, Edward "was assaulted by another client today at the Babcock Center although this was not witnessed by staff but by one of the clients ... possible corneal abrasion" treated at Lexington Medical Center. Body audit states "No new mark & bruise on Edward. Red bumps on his top back & right eye is bruise (sic)." BC 3308 and 3778.
59. On December 19, 2001, Babcock records document red marks on Edward's back and above his right eye lid. BC 3234.
60. Records from December 21, 2001: document a scrape on Edward's left hand. "Old blood on his sheet and shirt. Sm dk red scrape noted on l hand." BC 3280, 1664 and 4584.
61. On December 27, 2001, DDSN wrote to Mrs. Mims, in response to her letter to AG Condon informing her that Edward would not be released because "he requires several persons around him at all times. DDSN informed Mrs. Mims that because Edward requires a "number of medications. and requires close monitoring and assistance ..." and that his "significant special needs and complex medical conditions required more staffing and supervision than any one person could possibly provide. No one person can do it all to care for Edward."2708 and Exhibit 8.

62. Records from January 6, 2002, report that Edward had "a red mark on left side of neck and small red bumps on back. Also a red mark on left arm." BC 3784.
63. On January 24, 2002, Babcock records report: a '3" long old red scratch noted r side of neck" and he was treated at Lexington Medical Center ER for abrasions and contusions after being beaten with a belt at the Babcock Center.
64. Records from January 30, 2002, report that Edward "slipped on some water that was left on floor from where another resident was mopping." BC 1665 and 4562.
65. Records from February 4, 2002: state that Edward "fell" and that the injury was "healing well." BC 3185.
66. On February 8, 2002, the back of Edward's head was injured, reportedly when he sat in a chair." Babcock records state that when the chair collapsed, Edward hit the floor on his back. BC 4564.
67. On February 27, 2002, Edward was treated at Lexington Urgent Care for a contusion on his right hand, with "discoloration and bruising on his first and second fingers of his right hand ..." Nurse's notes report that "t "results are from Edward swinging his hands and hit his hand on the door resulting in the bruise." Exhibit 4, BC 3275 and 3185.
68. On March 2, 2002, nursing note stated that Edward suffered a bruise "possibly from swinging his hand and hitting the door." BC 3186.
69. On March 3, 2002, two long scratches were discovered on middle of right side of Edward's neck. BC 3792.
70. Those scratches were still present on March 10, 2002. BC 3186.
71. On March 20, 2002, DDSN transferred Edward to Kensington ICF/MR, also operated by the Babcock Center.
69. August 29, 2002, records state that Edward scratched himself. BC 1106.
72. November 24, 2002 records state that Edward suffered an injury to the back of his leg. BC 1107.
73. January 8, 2003, records state that a client pushed Edward's head into the coffee table. BC 1104.
74. On January 14, 2003, Edward was transported to Palmetto Richland ER where it was reported that he was unable to sleep and was "holding his hands to his eyes."
75. On February 28, 2003, Babcock Center complained that the body audits requested by

Mrs. Mims when he was delivered home and returned to Babcock Center constituted a violation of his client rights.

76. On May 20, 2003, Edward was found at 6:00 a.m. to have a "long red scratch mark extending from the left side of mouth and the side of his cheek." BC 1110.
77. On July 26, 2003, Edward was treated at Palmetto Baptist ER. Palmetto Baptist records provided to counsel for DDSN.
78. On August 3, 2003, Edward was struck on the left side of his head, reportedly by a client, BC 1109.
79. August 8, 2003, Edward was pushed into the wall at the Babcock Center workshop resulting in a "scrap on his left hand." BC 1099.
80. On July 27, 2003, Edward was discovered at Kensington to have "ant bites all over." According to Babcock Center records the ants "had a storm around the center and somehow ants managed to get into the building. Some ants were found in Edward's bed ... " (There is no mention in Mims' Babcock Center records of this injury.)
81. On July 30, 2003, a cut was discovered on Edward's lower back and his hair was matted when he arrived home for his weekend visit. Mrs. Mims had not been informed of the injury, but Babcock Center subsequently reported that Mims "slipped out of his chair and scraped his back against the air conditioner." BC 4888.
82. On October 28, 2004, Edward received medical treatment for "complaint of redness around left eye since yesterday morning."
83. On November 2, 2004, Edward's doctor noted "Mild bruising (sic) noted around left eyelid." Medical records and service notes provided.
84. On November 8, 2004, Babcock Center records describe a need for monitoring of eating and hydration. BC 4733.
85. On May 27, 2005, Edward was discovered to have an unexplained 4 cm "gaping laceration" on his penis. He was treated at Lexington Medical Center ER where seven stitches were required to repair the wound.
86. The Babcock Center's internal investigation report states that the date of the incident is "unknown," however, a statement signed by a Babcock Center employee state:

When getting Edward ready to go home, I took him in his room to .. get his shoes. After putting his shoes on, I looked him over and found that he had on no underwear. I then removed his shoes and asked him to take off his pants as I walked to get a pair of underwear, When I returned to the room Edward had his pants down and he was sitting

VITAE

RANDOLPH W. THOMAS

EDUCATION

Master of Arts: Political Science, University of South Florida, 1974

Bachelor of General Studies: Political Science/History, Chaminade University, 1971

PROFESSIONAL EDUCATION

Child Abuse Investigations, SC Criminal Justice Academy, 1986

Law Enforcement Photography, SC Criminal Justice Academy, 1987

Police Driving Instructor, SC Criminal Justice Academy, 1989

Basic Instructor, SC Criminal Justice Academy, 1989

Managing Juvenile Operations, Federal Law Enforcement Training Center, 1990

Managing Criminal Investigations, International Association of Chiefs of Police, 1990

Intervention in Child Sexual Abuse, Forensic Mental Health Associates, 1990

Health Assessment for Non-Medical Professionals, Lander College, 1991

Homicide Investigations, SC Criminal Justice Academy, 1992

Homicide Investigations, Institute of Police Technology and Management, 1993

Advanced Investigators School (Homicide and Rape Profiling), National Law Enforcement Institute, 1994

Basic Training for Child Abuse Prosecutors and Investigators, American Prosecutor's Research Institute, 1997

Problem Based Learning (Police Training Officer), RCPI, Wichita State University, 2005

Police Instructor, Problem Base Learning (Certification), Center for Advanced Public Safety Research, University of New Haven, 2005

VITAE

2

WORK EXPERIENCE

Consultant/Trainer, 2004 to present

Unit Manager, Behavioral Science/Domestic Investigations Unit, SC Department of Public Safety, Criminal Justice Academy, 1989 to 2004

Investigator, Richland County (SC) Sheriff's Department, 1983-1989

Military Intelligence Officer, US Army (Active and Reserve), 1976-2005

Planning Coordinator, Tampa Police Department, 1977-1980

Graduate student, University of South Florida, 1972-1975

General Manager, Pascoe Concessions, 1975-1977

Training Technician, US Air Force, 1966-1972

TEACHING EXPERIENCE

Instructor, Tampa Police Academy, Uniform Crime Reporting and Planning, 1978-1980

Adjunct Instructor, University of South Florida, College of Criminal Justice, Crime Analysis, 1979

Adjunct Instructor, Hillsborough Community College, Police Planning, 1978-1980

Adjunct Instructor, Sumter Technical College, American Government, 1990

Adjunct Instructor, University of South Carolina, College of Criminal Justice, Sociology of Juvenile Delinquency, Child Abuse, Delinquency Prevention, Juvenile Justice Administration, Crime Prevention, and Youth At Risk, 1993 to 2003

Adjunct Instructor, The Citadel, Education Department, School Violence and Safety, 1993-1995

Instructor, Carolina Institute for Community Policing, 2005-2007

Instructor, South Carolina Department of Education, Juvenile Delinquency: Theory and Practice, Child Abuse, 2006-2007

VITAE

3

COMMITTEES AND ORGANIZATIONS

Member, Hillsborough County (FL) Criminal Justice Planning Council, 1977-1980

Member, Ad Hoc Task Force on Criminal Justice Research and Development Standards, 1978

Vice-President, Association of Police Planning and Research Officers (Florida Chapter), 1978-1980

Member, Board of Directors, Rape Crisis Center of Hillsborough County, 1979-1980

Member, Executive Board, SC Juvenile Officers Association, 1991-1999

Member, SC Long Term Care Council Advisory Committee, Laws Workgroup, 1991-1993

Advisory Board, Police Executive Research Forum, Elder Abuse Training for Law Enforcement, 1992-1993

Advisory Committee, National Center on Elder Abuse, 1994-1998

Member, SC Adult Protection Coordinating Council, 1993-2003

Member, Elder Abuse Project Advisory Committee, American Bar Association, 1996

Technical Advisor, National Teleconference on Domestic Violence, US Department of Justice, SC Attorney General and SC Educational Television, 1996

Member, SC Attorney General's Violence Against Women Coordinating Review Committee, 1996 to 1997.

Member, Advisory Committee, "Action Partnerships with Professional Organizations-Training Lawyers to Respond to Domestic Violence and Elder Abuse", American Bar Association, 1998

President, National Committee for the Prevention of Elder Abuse, 2005-2007

Member and Chair, Board of Directors, Dickerson Children's Center, 2005-2014

Immediate Past-President, National Committee for the Prevention of Elder Abuse, 2008-2010

VITAE

4

Advisory Panel, National Center on State Courts, 2006

South Carolina Adult Protection Coordination Council, Training Committee, 2010 to 2016

Board of Directors, Seniors Against Crime, Florida Attorney General, 2019 to present

MILITARY EDUCATION

Military Intelligence Officer Basic Course

Tactical Intelligence Officer Course

Military Intelligence Officer Advanced Course

Military Intelligence Pre-Command Course (Battalion and Brigade)

US Army Command and General Staff College

PUBLICATIONS

Berger, C. Manning, T. Thomas, R. & Traster, D. (1978), *Police services study: Tampa police department*. Tampa: City of Tampa

Brandl, B., Dyer, C., Heisler, C., Otto, J., Stiegel, L., and Thomas, R. (2006). *Elder abuse detection and intervention: a collaborative approach*. New York: Springer.

Brandl, B., Dyer, C., Heisler, C., Otto, J., Stiegel, L., and Thomas, R. (2006). Enhancing victim safety through collaboration, *Care Management Journals: Journal of Case Management and The Journal of Long Term Health Care*, Summer, 2006, Vol 7, Number 2, pp.64-72

Eagan, J. Thomas, C. & Thomas, R. (1990). *Abuse of the elderly: Law enforcement response*. Columbia, SC: SC Criminal Justice Academy

Thomas, R. (1992). *Abuse of the elderly and other high risk adults*. Columbia, SC: SC Criminal Justice Academy

Thomas, R. & Fair, N. (2005). *Unequal Justice for South Carolinians with Disabilities: Abuse and Neglect Investigations*. Columbia, SC: Protection and Advocacy for People with Disabilities, Inc.

Thomas, R. & Heisler, C. (1999). Law Enforcement and Adult Protective Services-Critical Collaboration in Elder Maltreatment. *Victim Advocate*. Fall 1999. 13-15.

VITAE

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Thomas, R. (2002). Law Enforcement and the Elder Justice Act. *Journal of Elder Abuse and Neglect*, Vol 14, Numbers 2/3. 205-207.

Thomas, R. (2015), Law Enforcement and Public Safety of LGBT Elders. *Handbook of LGBT Elders: An Interdisciplinary Approach to Principles, Practices, and Policies*. New York: Springer.

Morgan, R., Tester, P. Thomas, R. (2018), A View from the Bridge: A Brief Look at the Progression of Cases of Elder Financial Exploitation Prosecutions. *The Elder Law Journal*, Vol 25, Number 2. 272-327. Champaign, IL

Morgan, R & Thomas, R (2020), Financial Exploitation By Agents Under Powers of Attorney: It Is A Crime. *Elder Law and Criminal Justice*, Vol 34, No 4. 31-37, Chicago, IL.

Hansen, K., Morgan, R., Teaster, P., Thomas, R. (2022), Empowering the Wicked: How Some Agents Use a Power of Attorney to Commit the Crime of Financial Exploitation, *The Elder Law Journal*, Vol 30, Number 1. 3-32, Champaign, IL.

CONSULTING

West Tennessee Law Enforcement Training Project

Advisory Committee, National Center for State Courts

Self-Neglect Project, Baylor Medical University

Forensic Nurses Training Project, Johns Hopkins Medical School

Investigative Process, South Carolina Protection and Advocacy for People with Disabilities

Child Abuse and Neglect/Disability Outreach Project, Arc Riverside

Police Executive Research Forum, *Improving Police Response to Domestic Elder Abuse*, review of course material

Stetson University College of Law and Florida Department of Law Enforcement, elder abuse training material development

Stetson University College of Law, revision of Florida Department of Elder Affairs elder abuse material

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National District Attorney's Association, prosecutor's training material, elder abuse

United States Department of Justice, OVW, elder abuse training program. Specific focus on effective training techniques utilizing problem-based learning. Conduct site evaluations for the Elder Abuse First Responder's Course

Stetson University, College of Law, Elder Consumer Protection project.

South Carolina Criminal Justice Academy, Elder Abuse telecourse.

Lexington County (SC) Solicitor, neglect death case

PROFESSIONAL PRESENTATIONS

County Directors and Supervisors Association of the SC Department of Social Services, "Crisis in Adult and Elderly Issues", 1991 and 1992

SC Association of Social Workers, "Elder Abuse", 1992

Summer School of Gerontology, SC Commission on Aging, "Elder Abuse", 1992

Mississippi Area Agencies on Aging, "Elder Abuse", 1992

Tennessee State University, "Elder Abuse: Law Enforcement Perspective", 1993

South Carolina School Administrators Association, "Youth Violence and Law Enforcement", 1993

South Carolina Department of Mental Health, "Youth Violence", 1993

Montana Department of Family Services and Billings Police Department, "Elder Abuse", 1993

Medical University of South Carolina, Institute of Psychiatry, "Elder Abuse: Questions and Answers", 1994

Florida Department of Health and Rehabilitative Services, "Elder Abuse", 1994

Florida Policy Exchange Center on Aging, University of South Florida, "Dynamics of Law Enforcement in Abuse and Neglect", 1994

Stetson University, College of Law, "Elder Abuse-Economic, Physical and Mental", 1995

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- South Carolina Health Care Association, "Elder Abuse: Law Enforcement Perspective", 1995
- South Carolina Victim Assistance Network (Annual Victim Rights Conference), "Crimes Against the Elderly", 1996
- South Carolina Council on Child Abuse and Neglect, "Child Sexual Exploitation", 1996
- South Carolina Health Care Association, "The Four W's of Abuse Investigations", 1997
- National Association of Attorneys General, Presidential Summit on Elder Issues, "Elder Protection and the Courts", 1997
- 14th Annual Adult Protective Services Conference, "Convincing the District Attorney That You Have a Case", 1997
- 1998 Twelfth Annual Elder Rights Conference, Illinois Department on Aging, "Elder Abuse Investigations", 1998
- Fifth Annual Adult Abuse Conference, Nebraska Adult Protective Services, "Prosecuting Elder Abuse: A Multidisciplinary Approach", 1998
- United States Attorney's Office (Montana), "Convincing the Prosecutor That You Have A Case", 1998
- 1998 South Carolina Solicitor's Association Conference, "Protection of the Adult Community" and "Financial Exploitation of Adults", 1998
- South Carolina Health Care Association, "Elder Abuse Update", 1998
- South Carolina Child Protection Advisory Committee 1988 Conference, "School Crisis Incidents (School Crime)", 1998
- 15th Annual Adult Protective Services Conference, "Elder Abuse Investigations, A Common Foundation", 1998
- Cobb County District Attorney (Georgia), "Domestic Violence in Later Life", 1999
- Sixth Annual Adult Abuse Conference, Nebraska Adult Protective Services, "Critical Collaboration in Financial Exploitation Cases" and "Investigating Financial Exploitation", 1999

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West Tennessee Legal Services, "Prosecution and Investigation of Elder Abuse", 1999

University of South Florida and Hillsborough County Sheriff's Office, "Law Enforcement and Adult Protective Services", 1999

Minnesota Department of Human Services, "Financial Exploitation of Vulnerable Adults (Investigation and Prosecution)", 1999

16th Annual Adult Protective Services Conference, Texas Department of Regulatory Services, "Adult Protective Services and Law Enforcement", "Physical Evidence", and "Financial Exploitation", 1999

2nd Annual Conference, Tucson Police Department and Pima County Elder Abuse Task Force, "Conducting Elder Abuse Investigations-Year 2000", 2000

University of South Florida, College of Public Health, "A Collaborative Response to Elder Abuse", 2000

Kansas Adult Protective Services, "A Collaborative Approach to Elder Abuse", 2000

US Department of Justice, "Elder Justice Roundtable", 2000

US Department of Justice, "Our Aging Population: Promoting Empowerment, Preventing Victimization and Implementing Coordinated Interventions", 2000

17th Annual Adult Protective Services Conference, Texas Department of Regulatory Services, "Investigating Physical Abuse and Neglect: A Detailed Look at the Process" and "Preparing a Case: The Good, The Bad and The Ugly", 2000

Georgia Department of Human Services and Georgia Southern University, "Elder Abuse and Neglect: A Collaborative Approach", "Physical Abuse and Neglect", and "Financial Exploitation of the Elderly", 2001

Temple University and Pennsylvania Department of Aging, "Effective Collaboration in Elder Abuse and Neglect", 2001

Florida Department of Law Enforcement and Stetson College of Law, "Financial Exploitation of the Elderly", 2001

University of South Florida, "Interdisciplinary Approach to Elder Abuse", 2001

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Georgia Southern University and Georgia Department of Human Services, "A Collaborative Approach to Elder Abuse and Neglect" and "Financial Exploitation", 2001

University of South Carolina, "Elder Abuse and Neglect", 2002

Ohio Area Agency on Aging, "Interdisciplinary Approach to Elder Abuse", 2002

United States Senate Finance Committee, "Elder Justice Act", 2002

Miami-Dade Police Department, "Interviewing Elderly and Disabled Victims", 2002

State of Wyoming Family Services, "Vulnerable Adult Abuse, Neglect and Exploitation", 2002

National Association of District Attorney's, "Elder Abuse Panel", 2002

Federal Bureau of Investigation, Behavioral Science Unit, "Elder Abuse", 2003

Nebraska Department of Health and Human Services, "Investigation and Prosecution of Vulnerable Adult Sexual Assault Cases", 2003

San Antonio Police Department, "Sexual Assault of the Elderly and Vulnerable Adults", 2003

United States Attorney's Office, Philadelphia, "Elder Abuse and Neglect", 2003

20th Annual Adult Protective Services Conference, Texas Department of Protective and Regulatory Services, "Civil or Criminal: Conducting and Investigation that Meets the Test" and "Investigating Physical Abuse and Neglect: Is There Anything New", 2003

Colorado Department of Human Services, "Multidisciplinary Approach to Elder Maltreatment Investigations" and "Documenting Investigative Findings and Preparing for Court", 2003

Iberia Parish Sheriff's Office, "Domestic Violence in Late Life", (3 sessions), 2004

Office on Violence Against Women (US Dept of Justice), "Domestic Violence in Late Life: Train-the-Trainer", 2004

Tennessee State University, "Elder Abuse and Neglect: Is There Anything New?", 2004

South Dakota Office of Adult Services and Aging, "Elder Abuse and Neglect", 2004

Albermarle (NC) Hopeline, "Abuse in Late Life", 2004

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- Carolina Institute for Community Policing, "Emerging Issues in Family Violence", 2004
- Albermarle (NC) Hopeline, "Elder Abuse and Neglect". 2004
- Omaha Police Department and Nebraska Department of Social Services, "Elder Abuse in Late Life", 2004
- Louisiana Coalition Against Domestic Violence, "Elder Abuse in late Life", 2004
- 21st Annual Adult Protective Services Conference, San Antonio Texas, "Civil and Criminal Case Building", "Elder Abuse and Death" and "The Good, Bad and Ugly", 2004
- Louisiana District Attorney's Associate, "Elder Abuse" and "Interviewing the Elderly", 2004
- US Department of Justice, VAWA, "Training Law Enforcement", 2005
- Illinois Department of Aging, "Elder Abuse, Neglect and Death", "Animal Hoarding" and "The Good, Bad and Ugly: Working with the Criminal Justice System", 2005
- Lee County Sheriff's Office (SC), "Emerging Issues in Family Violence", 2005
- Palmetto State Law Enforcement Officers Association, "Emerging Issues in Family Violence", 2005
- South Dakota Department of Social Services, "Recognizing and Responding to Elder Abuse", "Interdisciplinary Approach to Vulnerable Adult Abuse", and "Self-Neglect", 2005
- South Carolina Office on Aging, Summer School of Gerontology, "Investigating Abuse and Neglect", 2005
- 22nd Annual Adult Protective Services Conference, San Antonio, Texas, "Protective Services and Law Enforcement Working Together" and "Magnifying the Evidence: An Advanced Look at Investigating Abuse and Neglect", 2005
- Office of the Arizona Attorney General, "Elder Abuse and Neglect", 2005
- Stetson University College of Law and Florida Department of Law Enforcement, "Elder Abuse Train-the-Trainer", 2005
- Fayetteville Police Department, "Problem Based Learning for Law Enforcement", 2005

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- Carolina Institute for Community Policing, "Terrorism for Law Enforcement", 2005
- Police Executive Research Forum, "Elder Abuse Training Curriculum", 2006
- Alaska State Troopers and Forensic Nurses Association of Alaska, "Recognizing and Responding to Elder Abuse", 2006
- Lowcountry AHEC (SC), "Recognizing and Responding to Elder Abuse", 2006
- Coastal Georgia Legal Services, "Recognizing and Responding to Elder Abuse", 2006
- Florida Department of Children and Family Services, "Recognizing and Responding to Elder Abuse", 2006
- Iberia Parish Sheriff's Office, "Elder Services Officer Training: Elder Abuse", 2006
- Illinois Elder Rights Conference, "Building Effective Elder Abuse Cases", 2006
- South Carolina Victim Assistance Academy, "Elder Abuse", 2006
- Low Country AHEC, "Recognizing and Responding to Child Abuse", 2006
- Lifespan, Rochester, NY, "Recognizing and Responding to Elder Abuse", 2006
- Alliant University, Institute for Violence and Trauma, "Elder Abuse", 2006
- 23rd Annual Adult Protective Services Conference, San Antonio, Texas, "Worker Safety" and "Elder Abuse Investigations", 2006
- Minnesota Department of Health and Human Services, "Elder Abuse Investigations", 2007
- AARP, "Elder Abuse Training", (5 sessions), 2007
- Iberia Parish Sheriff's Office, "Elder Services Officer Training:", 2007
- South Carolina Victim Advocate Training Program, "Elder Abuse", 2007
- National Adult Protective Services Association Conference, "Training Law Enforcement" and "Improving Elder Abuse Investigations", 2007

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- SC Department of Public Safety, Drugs of Abuse Conference, "Elderly Substance Abuse", 2007
- Allied Health Education (South Carolina), Elder Abuse", (2 sessions), 2007
- Virginia Geriatric Care Managers, "Recognizing and Responding to Elder Abuse", 2007
- South Carolina Law Enforcement Victim Advocates, "Recognizing and Responding to Elder Abuse", 2007
- North Carolina, 30th Judicial Circuit, "Elder Abuse", 2007
- Pee Dee AHEC, "Elder Abuse", 2008
- AARP, "Elder Abuse" (4 presentations), 2008
- West Tennessee Legal Services, "Elder Abuse: Crime or Social Problem", 2008
- Low Country AHEC, "Elder Abuse", 2008
- University of Wyoming (US Department of Justice, VAWA grant), "Investigating Elder Abuse", 2008
- Missouri Department of Health and Senior Services, "Elder Abuse", 2008
- St Paul (MN) Police Department, "Elder Abuse Investigations", 2008
- Senior Services of Northern Kentucky/Boone County Sheriff's Office, "Elder Abuse Investigations", 2008
- St Elizabeth Medical Center (KY), "Elder Abuse", 2008
- New York State Unified Court System, "Financial Exploitation of the Elderly", 2008
- SC Department of Public Safety, "Elder Substance Abuse and Violence", 2008
- Gulf States US Attorneys Conference, "Elder Abuse", 2008
- Low Country AHEC (SC), "Worker Safety", 2009
- SC Department of Social Services APS Conference, "Elder Abuse", 2009

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- Pee Dee AHEC, "Worker Safety" and "Elder Abuse", 2009
- CSRA Agency on Aging (GA), "Elder Abuse (Keynote)", 2009
- US Attorney's Conference (NC), "Elder Abuse", 2009
- Spartanburg Department of Public Safety, "Domestic Violence in Later Life", 2009
- Compass Coordination (TN), "Investigating Elder Neglect and Financial Exploitation", 2009
- World Study Group on Elder Law, Stetson University College of Law, "Police Investigations of Elder Abuse in the US" 2009
- Sister Care (SC), "Domestic Violence in Later Life", 2009
- US Department of Justice, OVW, "Arresting and Working with Older Perpetrators", 2009
- Florida Department of Children and Families Conference, "Keynote" and "Sexual Assault and the Elderly", 2009
- Virginia Department of Forensic Science, "Elder Death Cases", 2009
- Richland County Sheriff's Department (LEVA), "Domestic Violence in Later Life" and "Sexual Assault of the Elderly", 2009
- SC Association of Children's Homes and Family Services, "Child Abuse", 2009
- Stetson University, College of Law, Elder Law Conference, "Elder Abuse Investigations", 2009
- SOURCE of Georgia, "Elder Abuse: America's Growing Challenge", 2010
- Georgia Dept of Human Services, Division of Aging, "Worker Safety", 2010
- 30th Judicial Circuit (NC, Haywood County law enforcement), "Investigating Elder Neglect and Exploitation", 2010
- Spokane Police Department, "Investigating Elder Abuse", 2010
- Pee Dee AHEC, "Elder Abuse", 2010

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Atlanta AAA, "Elder Abuse", 2010

Ohio Attorney General's Conference on Elder Abuse, "Elder Abuse and Law Enforcement", 2010

Pee Dee AHEC, "Elder Abuse", 2011

South Carolina Coalition Against Domestic Violence and Sexual Assault, "Elder Abuse", 2011

Wayne County Sheriff's Department, "Elder Abuse Train-the-Trainer", 2011

National Victim Assistance Academy, "Elder Abuse", 2011

Ohio Attorney General, "Advanced Elder Abuse Investigations", 2011

Susanna Wesley Family Learning Center, "Advanced Elder Abuse Investigations", 2011

Texas Department of Family and Protective Services, 25th APS Conference, "Facility Investigations" and "Interviewing", 2011

Nebraska Attorney General's Office, "Advanced Elder Investigations", 2011

SC Criminal Justice Academy, "Advanced Elder Abuse Investigations", 2011

Pee Dee AHEC, "Elder Abuse", 2012

Pee Dee AHEC, "Elder Financial Exploitation", 2012

Lakeshore Legal Aid (Port Huron, MI), "Advanced Elder Abuse Investigations", "Elder Abuse Awareness (Community)" and "Elder Abuse Awareness for Clergy", 2012

Georgia Elder Rights Conference, "Elder Abuse", 2012

South Carolina Council on Aging, "Elder Abuse", 2012

29th Texas APS Conference, "Interviewing in Facilities", "Facilities Investigations" and "Coordination with Law Enforcement", 2012

Pee Dee AHEC, "Financial Exploitation", 2013

Albermarle AAA, "Elder Abuse", 2013

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Minnesota District Attorney's Association, "Key Note: Elder Abuse" and "Elder Neglect", 2013

Arkansas OVW Program, "Advanced Elder Abuse Investigations", 2013

Chattanooga OVW program, "Advanced Elder Abuse Investigations", 2013

Pee Dee AHEC, "Elder Abuse" 2013

Nez Perce Tribal Police, San Antonio Police Department and Umatilla Tribal Police, "Advanced Elder Abuse Investigations", 2013

Pee Dee AHEC, "Elder Financial Exploitation", 2014

Pee Dee AHEC, distance learning grant, "Elder Financial Exploitation", 2014

University of South Carolina/SC Department of Social Services, "Financial Exploitation", 2014

Lexington County SC OVW Program, "Advanced Elder Abuse Investigations", 2014

Bristol, TN OVW Program, "Advanced Elder Abuse Investigations", 2014

OVW Abuse in Later Life Program, "First Responder", 2015

Syracuse, NY, OVW Program, "Advanced Elder Abuse Investigations", 2015

Sister Care, "Domestic Violence in Later Life", 2015

Richland Country Sheriff's Department (SC), "Elder Abuse", 2015

Hillsdale (MI) County State's Attorney, "Basic Investigations", 2015

Upstate AHEC, "Financial Exploitation of Vulnerable Adults", and "Neglect of Vulnerable Adults", distance learning, 2015

SC Adult Protection Coordinating Council, "Abuse of Vulnerable Adults", 4 presentations, 2015.

Rochester, NY, OVW Program, "Advanced Elder Abuse Investigations", 2015

Provo, Utah, Advanced Investigations (Elder Abuse), 2016

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National Adult Protective Services Association Annual Conference, Financial Exploitation: A 20 Year Perspective, 2016

National Adult Protective Services Association, "Elder Abuse", 2016

Ohio SALT, "Financial Exploitation", 2016

LiveSafe, "Advanced Elder Abuse Investigations", 2017

Elder Justice Initiative, "Elder Abuse Webinar", 2017

Argentum, "Facilities Investigations", 2017

Savannah-Chatham MPD "Advanced Elder Abuse Investigations", 2017

American Society on Aging, "Financial Exploitation", 2017

Chippewa-Cree Tribal Police, "Advanced Elder Abuse Investigations" 2017

South Bend PD, "Advanced Elder Abuse Investigations", 2017

35th Texas APS Conference, "Elder Abuse (3 sessions)", 2018

Cobb County Law Enforcement Grant, "Advanced Elder Abuse Investigations", 2019

36th Texas APS Conference, "Elder Abuse, (4 sessions), 2019

Memphis Police Department, "Elder Abuse Investigations", 2019

37th Texas APS Conference, "Elder Abuse", 5 sessions, 2020

VITAE

A TRUE COPY
ATTEST:

AMY W. McCULLOCH

FILED

STATE OF SOUTH CAROLINA PROBATE JUDGE PROBATE COURT

RICHLAND COUNTY, SC

IN THE MATTER OF GUARDIANSHIP
OF EDWARD MIMS

by: *[Signature]* 05 JUN -9 PM 1:42

CASE NUMBER 03 GC 4000172

AMY W. McCULLOCH
PROBATE JUDGE
RICHLAND COUNTY, S.C.

Personally appears before me Lennie Mullis who swears and affirms:

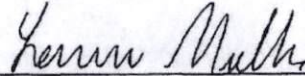
1. I was appointed by the Richland County Probate Court to examine Edward Mims.
2. I have a masters of science degree in psychology.
3. I am certified by the South Carolina Department of Disabilities and Special Needs as a behavioral consultant and a psychological consultant.
4. When I approached the residence, I noticed a sign stating that the facility has been decertified.
5. I first attempted to visit Edward Mims on June 6, 2005 at his residence at 100 Kensington Road.
6. When I approached the residence, I noticed a sign stating that the facility has been decertified.
7. I provided the Court Order appointing me as examiner to the Babcock Center employee who answered the door at approximately 6:15 p.m. The manager on duty called her supervisor and I was not allowed to examine Edward Mims on June 6, 2005.
8. On the evening of June 6, 2005, a Babcock supervisor informed me that I needed to provide Dr. Johnson or Dorothy Goodwin with a copy of the examination form.
9. I faxed the examination form to Dr. Johnson on June 7, 2005.
10. At approximately 6:30 p.m. on June 7, 2005, I returned to 100 Kensington Road, but was again not allowed to examine Edward Mims.
11. On the morning of June 8, 2005, Dr. Johnson left a message to call her or Dorothy Goodwin about examining Edward Mims. I spoke with Dorothy Goodwin who agreed to allow me to examine Edward Mims. She informed me that I would be allowed to examine Edward Mims at 6:00 p.m. on June 8.



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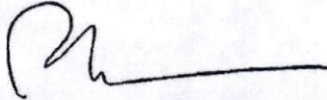
12. When I returned to Kensington at approximately 6:15 p.m. on June 8, 2005, I was not allowed to examine Edward Mims.

Further affiant sayeth not.



Lennie Mullis

SWORN TO BEFORE
ME THIS 8th DAY OF MAY,
2005.



Notary Public for South Carolina



ELECTRONICALLY FILED - 2024 Apr 17 11:58 AM - RICHLAND - COMMON PLEAS - CASE#2007CP4003366

EXHIBIT 2 Motion filed April 17, 2024

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

Estate of Edward James Mims,)
Laura M. Cole, Personal Representative,)
)
Plaintiff,)
)
v.)
)
The South Carolina Department of)
Disabilities and Special Needs,)
Kathi Lacy and Stanley Butkus,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS

Civil Action No. 07-CP-40-3365

ORDER

This matter comes before the Court upon a motion for reconsideration filed by Plaintiff. Specifically, Plaintiff’s counsel filed a motion for reconsideration on August 30, 2019, asking the undersigned to reconsider the rulings in his August 22, 2019 Order. For the reasons set forth herein, Plaintiff’s motion is **DENIED**.

The August 22, 2019 Order addressed two motions. Specifically, that Order denied Plaintiff’s “Motion for Protective Order and Other Relief,” which was filed by Plaintiff on June 17, 2019, as well as Plaintiff’s “supplement” to that motion, which was filed by Plaintiff July 8, 2019. The August 22, 2019 Order also granted Defendants’ “Motion to Compel Discovery and for Extension of Scheduling Order Deadlines,” which was filed by Defendants on May 30, 2019.

As was stated in the August 22, 2019 Order, the Court held a hearing, on July 30, 2019, on Plaintiff’s “Motion for Protective Order and Other Relief” and Defendants’ “Motion to Compel Discovery and for Extension of Scheduling Order Deadlines.” At that hearing the Court heard and considered the arguments from all parties with regards to both motions, and subsequently the Court decided to deny Plaintiff’s motion in its entirety, and to grant Defendants’ motion. Plaintiff’s counsel

subsequently filed a “Motion to Reconsider, Alter or Amend,” and Plaintiff states said motion is based on Rules 52 and 59(e), SCRCP. Plaintiff proceeds to alleged that the August 22, 2019 Order “did not address all of the issues and arguments raised by the Estate.” *See*, Motion at pg. 2.

The undersigned has carefully and fully reviewed the Motion to Reconsider, Alter or Amend and hereby **DENIES** that motion. First, the Court is not required to set forth, on interlocutory Orders, specific findings of fact and/or conclusions of law. The August 22, 2019 Order is not a final Order or Judgment, and therefore Rules 52 and 59(e), SCRCP are not applicable to that Order. Therefore, for that reason alone, Plaintiff’s motion can be, and hereby is, **DENIED**.

Furthermore, to the extent Plaintiff is asking the Court to reconsider its ruling contained in the August 22, 2019 Order, the Court finds Plaintiff has failed to make the requisite showing for why the Court should reconsider, alter or amend its ruling. The Court’s August 22, 2019 Order makes it clear the Court considered all arguments made by Plaintiff’s counsel in Plaintiff’s written submissions, as well as at the oral argument on the motions in question. Having heard and considered those arguments, the Court decided to deny, in its entirety, Plaintiff’s “Motion for Protective Order and Other Relief.” Additionally, the Court decided to grant, in its entirety, Defendants’ “Motion to Compel Discovery and for Extension of Scheduling Order Deadlines.” The Court reiterates said rulings, with the following *caveat*.

Due to the delay in moving discovery forward in this case caused by Plaintiff’s filing of the herein denied motion for reconsideration, the Court hereby Orders that the Scheduling Order in this matter shall be further modified as follows:

1. Discovery in this case shall conclude 90 days after the date this Order is signed and filed.
2. The witnesses must respond to Defendants’ subpoenas within 15 days of this Order.

AND IT IS SO ORDERED.

The Honorable Robert E. Hood
Judge, Fifth Judicial Circuit

Columbia, South Carolina

September _____, 2019



Richland Common Pleas

Case Caption: Margaret Mims , plaintiff, et al vs Babcock Center Inc , defendant,
et al
Case Number: 2007CP4003365
Type: Order/Other

So Ordered

s/ R.E. Hood #2164

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