THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable J. Derham Cole, Circuit Court Judge

APPELLANT CASE NO.: 2013-000807

Jane Doe, as Guardian for John Doe.....Appellant

v.

Doni Rhinehart.....Respondent

INITIAL BRIEF OF RESPONDENT

Clarkson, Walsh, Terrell & Coulter, P.A.

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Greenville, SC
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3. DID THE TRIAL COURT ABUSE DISCRETION IN FAILING TO CONSIDER THE PROPOSED AMENDED COMPLAINT?

STATEMENT OF THE CASE

Appellant filed suit on April 29, 2010, alleging that the Respondent Doni Rhinehart, now deceased, had negligently supervised James Bryan Rhinehart, negligently supervised the Appellant's grandson while a guest in her home, and failed to warn Appellant's grandson of her ex-husband James Bryan Rhinehart's "known propensity to have a sexual interest in children." Appellant also filed a separate suit against Boy Scout Troop 292, Palmetto Council of The Boy Scouts of America, St. Margaret's Episcopal Church, Brandon Smith, Jackie Lafontaine, Roy Cole, Shelby Culbreth, Bob Faulks and Rob Green on April 30, 2010, alleging that these entities wrongfully discharged John Doe from the Troop, C.A. # 2010-CP-42-02349. Respondent Rhinehart was not a party to this suit. The Respondent was deposed prior to her death and denied any knowledge that her husband at the time the alleged molestations occurred was a child

molester. It is uncontroverted that as soon as the allegations regarding the events alleged in the Complaint came to her attention, she separated from and divorced James Bryan Rhinehart.

The Respondent's motion for Summary Judgment was filed February 17, 2012. The motion was heard May 16, 2012 before the Honorable Derham Cole. On May 14, 2012, Appellant sent to Respondent an affidavit purportedly pursuant to Rule 56(f) related to "problems with being able to respond to the motions submitted by the Respondents." This affidavit bears the caption of both the Appellant's suit against Respondent and the suit against the Boy Scouts. The affidavit indicates that in the Boy Scout suit, one or more of the Boy Scout parties had not produced information regarding a letter which purported to expel the Appellant's grandson from the scout troop. The affidavit does not indicate in what way this would be relevant to the Rhinehart claim. The affidavit does not address any inability by the Appellant to present by affidavit facts essential to justify his opposition to Doni Rhinehart's motion for summary judgment. The transcript of hearing contains no request by the Appellant that the Respondent Rhinehart's motion be continued.

Appellant filed a motion to amend his complaint the day of the summary judgment hearing. The transcript of the summary judgment hearing designated by Plaintiff contains no mention of Appellant's motion to amend filed earlier that day, nor Appellant's proposed Amended Complaint. The proposed Amended Complaint purports to allege a cause of action for negligent supervision, as does the original complaint. The primary difference between the two complaints is that the proposed Amended Complaint contains allegations that Respondent Doni Rhinehart failed to comply with Boy Scout policies while the Appellant's grandson was present in her home. Although Appellant's motion to amend her complaint was not heard prior to the Respondent's motion for summary judgment, Appellant argued in opposition to summary

judgment that Respondent Rhinehart had violated scout law and, thus, was not entitled to summary judgment. The court considered these arguments in granting Respondent's motion and found them to be without legal or evidentiary support.

FACTS

The Respondent Doni Rhinehart, now deceased, was the wife of James Bryan Rhinehart, who Appellants allege sexually molested Appellant's grandson. The Respondent married Mr. Rhinehart in 1999. (D. Rhinehart depo. P.8) At that time, the Respondent was a widow with two children. (D. Rhinehart depo. P.8) She met Mr. Rhinehart at their church where he was active and held a leadership role. (D. Rhinehart depo. P.9) Respondent and Mr. Rhinehart had one daughter. (D. Rhinehart depo. P. 7) Respondent's oldest son[1] and her daughter, both from her prior marriage, lived in the home with her and Mr. Rhinehart. (D. Rhinehart depo. P.10). Respondent's oldest son, now approximately 20, suffers from autism. (D. Rhinehart depo. P.12)

Appellant's grandson, John Doe, and Respondent's son were members of the same Boy Scout troop. (D. Rhinehart depo. P.14) John Doe was also a special needs child, as were all the members of the troop. (D. Rhinehart depo. P.14). At some point James Bryan Rhinehart was the scoutmaster of their scout troop. (D. Rhinehart depo. P.14) John Doe occasionally stayed as an overnight guest in Respondent's home. (D. Rhinehart depo. P. 15)

In his deposition, John Doe testified that he was sexually molested by Mr. Rhinehart four times. (John Doe depo. Vol. I, P.130, Vol.II Pp. 71-76) He testified that two of those times were in the Rhinehart home. (John Doe depo. Vol. I, P.130) At one of those times, the Respondent was not home, but was at the grocery store. (John Doe depo. Vol. I, P. 169) John Doe testified

[1] To preserve confidentiality and protect their privacy, the Symbols ##### are used to substitute for the name of the Respondent's son and ***** for the Appellant's grandson where their names are mentioned in the deposition excerpts used in support of this motion.

that the other incident of abuse that occurred at the Respondent's home was when he was spending the night as a guest of the Respondent's son. (John Doe depo. Vol. I, P.131) John Doe testified that on that night, after bedtime, the boys were having trouble sleeping and Mr. Rhinehart came into his stepson's bedroom to get them to settle down. (John Doe depo. P.137) He then lay in the bed between them and molested them while the door was closed. (John Doe depo. Vol. I, P. 145) John Doe admits he never told the Respondent about the abuse. (John Doe depo. Vol. I, p. 150) In fact, when informed during his deposition that his representative was suing the Respondent, John Doe stated as follows:

25 Q. John Doe, I'm about through with my questions and I
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1 appreciate your being patient with me over the two days
2 answering them. I'm going turn it over to Mr. Phillips
3 who represents the Boy Scouts.
4 And before I do that, though, I just want to ask you
5 one other set of questions. I represent Doni Rhinehart;
6 okay?
7 A. Yes.
8 Q. You've sued Doni Rhinehart in this case.
9 A. Whoa, whoa. Look, listen. Doni Rhinehart has nothing to
10 do with this. She didn't do doing so they shouldn't have
11 sued her estate. That was wrong. It was the Boy Scouts
12 and Brian, not her. She had nothing do with this.
13 Q. That's all I have. Thank you.
14 A. I'm just saying Brian -- Doni had nothing to do with
15 that.
16 Q. I understand and I appreciate you saying that. Thank
17 you.
(Doe depo.Vol. II, P. 101)

It is undisputed that the Respondent was not aware of this alleged abuse until investigators from the Sheriff's Office contacted Mr. Rhinehart about allegations of sexual abuse. Sheriff Investigators questioned both Mr. Rhinehart and the Respondent's son about the allegations. The Respondent knew nothing of this abuse until investigators informed her that Mr.

Rhinehart signed a statement admitting to fondling a boy, not party to this suit.[2] (D. Rhinehart depo. P.11) The Respondent then immediately separated from Mr. Rhinehart, never reconciled with him and divorced him. (D. Rhinehart depo. P.11) Until her death, she appeared before the parole board to testify against Mr. Rhinehart's efforts at parole. (D. Rhinehart depo. P.11-12)

It is undisputed that the Respondent did not know of her former husband's actions. In her deposition, the Respondent stated as follows:

Q. Right. So, then, looking back from knowing what your son said and what your husband pled guilty to, did you -- do you think that you had any signs that your husband was capable of this?
A. No. I mean, there was never any indication. I mean, to me, he just appeared to be a normal step-parent. I mean, he was -- he appeared to be a good husband, and caring, and, you know, did what a normal parent would do; make sure that, you know, both of us check on the kids, make sure they're doing their homework and picking up their rooms and stuff.
I mean, it didn't -- it -- nothing ever came out as he was spending any more time with ##### than he was any of the other two.

Q. Okay. Now, let's assume that it happened. Which we -- I understand you don't know. Do you think that you should have known or could have known something was going on there?
A. No. I mean, there was no indication. I mean, I never caught Brian sneaking around. ##### never acted intimidated by Brian. He never -- they never seemed to have this little secret or whatever going on.

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Q. When ***** would spend the night, were you there at the home?
A. Yeah, I was there at the home.
Q. Okay. And you were spending the night there as well?
A. Right.
Q. Okay. And doing the normal things that you would do as a mom?

[2] Mr. Rhinehart was charged with molesting another boy and pled guilty to the charges. Mr. Rhinehart was never charged with molesting Appellant's grandson.

A. Yeah; cooking, cleaning.
Q. Right. And so you -- so you never got a complaint from ***** or from your son that something was going on?
A. No, I never had anything like that. And Dena's room was just right across the hall from my son, #####'s.
(Deposition Doni Rhinehart pp. 21 – 22)

Furthermore, it is undisputed that Respondent would have never tolerated Mr. Rhinehart's actions had she known of his alleged actions.

Q. And some allegations I want to ask you specifically about, paragraph 9 of the Complaint, it said that Mr. Rhinehart had a known propensity to have a sexual interest in children, and that you failed to warn either the Appellant or the Appellant's parents about that. Did you know at any time before his admission that he had a known propensity to have a sexual interest in children?
A. No, I most definitely did not. I'm very protective of my children, and if I'd have had a clue, he wouldn't have been near -- I mean, even now, to this day, when I'm dealing with like my 10-year-old, I mean, normal things that you wouldn't think about, like when -- her just walking up and giving somebody a hug, I mean, it just -- it just makes me cringe. I'm like, "Don't ever hug somebody like that." Things that normally wouldn't -- you're just like, "She's being friendly." Now, thanks to the sick thing that he has done, I mean, you can't help but second-guess everything that somebody does around your child.

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Q. If you had any inclination or thought that Mr. Rhinehart had some sort of predatory qualities, that he had an interest in kids and wanted to do harm to them, what would you have done?
A. I wouldn't have been near him. I -- if I'd have had that kind of information, I probably wouldn't even -- have even attended the same church as the man.
Q. Okay. Now, paragraph 10 says that you allowed Mr. Rhinehart to be in the presence of these kids knowing basically that he -- there was this risk of sexual abuse. Did you allow that with any knowledge?
A. No. I mean, that's just ridiculous. I mean, I -- I think it's very sick and just makes my skin crawl to

think of somebody who could do that.
Q. It says here in paragraph 13 that you had "the capacity to prevent the Appellant's sexual abuse by her warning and disclosure about James Rhinehart." If you had known, would you have allowed your kids or any other kids in the presence of this man?
A. No. I mean, I'm very protective of my kids and other kids, like I said before. I mean, if I'd have had a clue, I wouldn't have even attended the church as him.
Q. Right.
A. Because, I mean, that proximity right there gives him access, and I would not do that.

Q. Prior to receiving that phone call from the detectives, had you had any reason to suspect or -- that *** *** had made any complaint of sexual abuse against your then-husband?
A. No. I mean, ***** -- everything appeared to be fine. I mean, ##### and ***** were good friends, and talking and getting along. I mean, I had no clue that anything was bothering *****.
Q. Before that phone call, you had no information to suggest to you that your husband was even capable of such a thing?
A. No, not as far as I know. I mean, we had been married

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almost six years, and as far as I was concerned, he was, you know, a normal husband and father.
Q. When your husband told you on October 20th, 2005 that he was going to confess to -- I'll just say sexual misconduct with your son, did you immediately begin the process of separating yourself from him?

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A. As soon as I got out of there, I was on the phone to a good friend of mine who's an attorney in Spartanburg, and he had just recently gone through a divorce. And I'm like, "Richard, who did you use for your attorney? You know, I need a good lawyer who -- you know, I need to immediately separate from this man." There was never any doubt in my mind what was going to happen.
Q. If you had believed prior to your husband's confession to you that he had abused your son, would you have contacted the authorities?
A. I would have turned him in in a minute. I mean, he's lucky that he confessed, you know, in front of witnesses. As far as I'm concerned, Lake Bowen is

plenty deep enough to have gotten rid of him.
Q. If you believed he had sexually abused any child, would you have reported that to the authorities?
A. Yes. I mean, I just -- that's just the sickest thing on earth, to prey on somebody who's innocent and doesn't understand or that you can intimidate enough to where they don't speak up.
(Doni Rhinehart Deposition pp. 23 -24, 30 -31)

The Appellant, her husband, John Doe's father, and Mr. Rhinehart have all been deposed. John Doe's father testified that he did not believe the Respondent knew of or condoned the abuse. (Father of John Doe 1 Deposition p. 132.) The husband of Jane Doe testified that he did not know why the Respondent had been sued and doesn't know if the Respondent knew her ex-husband was abusing John Doe. (Husband of Jane Doe Deposition pp. 130-131) He testified that he did not have any evidence that the Respondent knew or should have known the abuse took place in her home. (Id. at p. 132). Mr. Rhinehart specifically denies the abuse, and therefore testified that Respondent would not have knowledge of his alleged actions since the events did not occur. (James Rhinehart Deposition p. 102).

Appellant testified that the Respondent "should have known" that abuse was taking place in the Respondent's household (Jane Doe Deposition p. 79); however, she offered no evidence that the Respondent knew of the abuse or any evidence of any facts that would have put the Respondent on notice of the abuse. Ultimately, Appellant opined that the Respondent should have been supervising her grandson "every single second" he was in her home. (Jane Doe Deposition p. 102) However, Appellant ultimately conceded that she had no evidence that the Respondent knew of the abuse. (Jane Doe Deposition p. 168).

ARGUMENT

I. THE TRIAL COURT CORRECTLY HELD THAT APPELLANT PRESENTED NO EVIDENCE FROM WHICH A JURY COULD INFER THAT RESPONDENT KNEW OR SHOULD HAVE KNOWN OF ANY DANGER TO JOHN DOE.

Appellant's sole cause of action is for negligent supervision. Our courts have not recognized this cause of action in the context of this case. The question before the lower court was a question of law, not fact.

An essential element in a cause of action for negligence is the existence of a legal duty of care owed by the Respondent to the Appellant. Bishop v. South Carolina Dept. of Mental Health, 331 S.C. 79, 86, 502 S.E.2d 78, 81 (1998). Without a duty, there is no actionable negligence. Id. "Proof of negligence in the air, so to speak, will not do." Palsgraf v. Long Island Railroad Co., 248 N.Y. 339, 162 N.E. 99, 99 (1928) (quoting Sir Frederick Pollock). The existence of a duty owed is a question of law for the courts. Washington v. Lexington County Jail, 337 S.C. 400, 405, 523 S.E.2d 204, 206 (Ct.App.1999). Appellant has produced no evidence that Respondent Rhinehart knew or should have known James Bryan Rhinehart was a threat to John Doe. Appellant has cited no cases that create a duty in the absence of such knowledge. Appellant argues that the lower court should be reversed because it construed the record in the light most favorable to the Respondent. This assertion, even if correct, would not provide a basis for relief where the Appellant has failed to establish a duty, since duty is a question of law, not fact.

Our courts have held that a parent has no legal duty to continuously supervise the children who were playing at the home. See, Saenz v. Andrus, 195 Ga. App 431, 393 S.E. 2d 724 (1990) (the Court stated that the parent was not negligent in failing to keep a constant and unremitting watch and restraint over a child). Although where an act is voluntarily undertaken the actor assumes a duty to use due care, our courts are clear that parents are not negligent in

failing to keep a constant and unremitting watch and restraint over their children, or over other children with whom their children were playing. Dennis by Evans v. Timmons, 313 S.C. 338, 342-343, 437 S.E.2d 138, 141 (Ct. App. 1993).

This case is factually similar to Doe ex rel. Doe v. Batson, 345 S.C. 316, 322-323, 548 S.E.2d 854, 857 - 858 (2001).[3] In Doe, the Supreme Court vacated a Court of Appeals decision establishing duties under similar circumstances as premature. However, even if the Supreme Court had recognized the duties established by the Court of Appeals, Appellant's claim would fail. In Doe, the Court of Appeals held that while it is not necessary for the injuring party (in the instant case James Rhinehart) to have made a threat while under the Respondent's control or custody, it is required that that the Respondent knew or should have known of a specific threat made to harm a specific person. Citing, Bishop v. South Carolina Dep't of Mental Health, 331 S.C. 79, 502 S.E.2d 78 (1998). Both John Doe and the Respondent have testified that the Respondent had no knowledge that Mr. Rhinehart was a child molester.

Any potential theory of liability as to Doni Rhinehart relies upon knowledge of by her of the potential harm. There is no evidence of such knowledge presented before the court. Thus, even if the now vacated theories of liability in Batson were good law, they would not afford the Appellant relief under these facts.

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[3] In Doe, the trial court granted summary judgment on the Appellant's suit against the mother of a youth pastor who allegedly molested the Appellant in the mother's home. The Court of Appeals reversed the trial court on the basis that summary judgment should not have been granted when discovery was incomplete. The Supreme Court reversed the portion of the Court of Appeals decisions discussing applicable duties under the facts since the record was not sufficiently developed for the court to rule thereupon. Although the Court of Appeals in the later reversed Batson, concluded that the victim of sexual abuse on another's premises may bring suit under a premises liability theory, the court opined that the landowner's duty was only to warn of dangers **known** to the possessor. Unlike Batson, the record in this case is fully developed with this regard and there is no evidence the Respondent knew of her husband's actions.

II. THE STATEMENTS CONTAINED IN APPELLANT COUNSEL'S RULE 56(f) AFFIDAVIT ARE IMMATERIAL TO THE ISSUES ON APPEAL.

Appellant's counsel submitted to the lower court an affidavit purportedly pursuant to SCRCP 56(f). This rule states as follows:

> **(f) When Affidavits Are Unavailable.** Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such order as is just.

Rule 56, SCRCP

In her brief before this court, Appellant argues "The Plaintiff sought, and been (sic) promised production of, minutes of meetings and accounting records, 56(f) affidavit at Paragraph 6, none of which had been produced at the time of the motion. Among other things the documents would reflect plainly the Defendant's affiliation with the Troop and the procedures which had not been followed by the Defendant." (Appellant Initial brief p. 4.) In fact, Paragraph 6 of Appellant's Rule 56(f) affidavit addresses an entirely different issue:

> 6. Among the information sought in discovery is the information which bears on the contention by defendants, now sought to be exploited in the motions for summary judgment and the accompanying affidavits, that the letter which excluded John Doe from the Boy Scout Troop was motivated both prior in time and by a reason independent of his report of sexual abuse. (sic) For example, in discovery we requested minutes of meetings, which are said to have exist (sic) but have not been produced, and accounting records which relate to the supposed "real" reason the child was expelled from the troop. Also, accounting information has been sought which will bear on the rationale claimed to be behind the expulsion of John Doe, a dispute about funds for popcorn used as a scout promotion."

Affidavit of Gregg E. Meyers

Appellant's affidavit does not address any missing evidence which would establish any "facts essential to justify his opposition" to Rhinehart's motion for summary judgment as

required by Rule 56(f).[4] Appellant's affidavit does not set forth any reason that affidavits necessary to oppose Respondent's motion are unavailable. Appellant did not file this motion until three months after Respondent filed her motion for summary judgment. Nothing in paragraph 6 of the affidavit could possibly be construed to alert the lower court that the Appellant is seeking information to demonstrate that the Respondent serves in any type of capacity as a representative of the troop. The entire paragraph expresses a need for this information to establish the basis for John Doe's removal from the troop, which has nothing to do with any issue relevant to Respondent's motion for summary judgment.

Most significantly, Appellant never made this argument before the lower court. The record demonstrates that during the hearing Appellant never requested a continuance or that Respondent's motion should be denied in accordance with Rule 56(f). The affidavit is never referenced in the transcript of hearing as a basis to continue or deny the Respondent's motion. Appellant did, as he references in her brief, request in Paragraph 21 of this affidavit that the motions for summary judgment be deferred, however never articulated this request at any point evident in the transcript of hearing; nor did she make a motion with this regard. An issue must be raised to and ruled upon by the circuit court to be preserved for appellate review. Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). Appellant's failure to raise this issue before the court constitutes a waiver of this issue on appeal.

III. THE LOWER COURT CORRECTLY GRANTED SUMMARY JUDGMENT ON THE ISSUES PROPERLY BEFORE THE COURT.

Appellant filed a motion to amend his complaint the day of the hearing on Respondent's motion for summary judgment, some three months after Respondent filed her motion for

[4] Appellant does not argue that any of the information he referenced in counsel's affidavit was to be produced by the Respondent Rhinehart.

summary judgment. The motion to amend included a proposed amended complaint alleging that the Respondent Rhinehart violated the rules and regulations of the Boy Scouts of America by allowing her then-husband to be alone with John Doe. Appellant alleges that Respondent Rhinehart was "an adult volunteer associated with Troop 292." Appellant does not allege that Respondent was an agent of the Boy Scouts of America, nor does he allege fact which would establish agency.[5]

The record does not contain any transcript of a hearing on the motion to amend. The order appealed from does not rule upon the motion to amend. However, the Appellant argued before the court in response to Respondent's motion for summary judgment that Respondent Rhinehart had disobeyed scout law. Appellant produced no authority indicating that Respondent had any duty to the Appellant to obey the Boy Scout Rules or that any failure to do so is actionable. Appellant produced no evidence of the "two deep" rule he argued applied to Respondent Rhinehart, nor any evidence of establishing its applicability to this case other than his own Rule 56(f) affidavit. While counsel's affidavit addresses his inability to obtain documentation regarding John Doe's expulsion from the Boy Scout troop, it does not address any inability to get information to support the application of the "two deep" rule to Respondent Rhinehart. For the most part the affidavit is no more than a brief, making arguments unsupported by admissible evidence.

Despite the lack of any authority or evidence supporting the application of the "two deep rule" to this case, the court addressed this issue in its order concluding:

> Plaintiff has introduced nothing in opposition to Defendant's motion except for an affidavit of her attorney which sets forth legal arguments in opposition to

[5] Upon information and belief, none of Appellants claims in his separate suit against the Boy Scouts of America are based upon the Boy Scouts vicarious liability for the actions of Doni Rhinehart.

Summary Judgment and attaches a supervision policy allegedly enacted by the Boy Scouts of America. Plaintiff has not introduced any evidence that this policy is applicable to the Defendant. However, even if it were, a violation of the policy could, at best, be evidence of breach of duty, but cannot serve to establish a duty where none exists. Madison ex rel. Bryant v. Babcock Center, Inc., 371 S.C. 123, 141, 638 S.E.2d 650, 659 (2006)

Court's order filed March 14, 2013 p. 12-13.

Although leave to amend should generally be "freely given," our courts have held that it may be denied where the proposed amendment would be futile. See Higgins v. Med. Univ. of S.C., 326 S.C. 592, 604-05, 486 S.E.2d 269, 275 (Ct.App.1997). Appellant did not submit to the lower court, nor has he submitted to this court, any authority establishing that a violation of a scout rule would be actionable against Respondent Rhinehart. In fact, Appellant does not even argue in his brief before this court that violations of scout rules is actionable. The court did not err in failing to allow the Appellant to amend his complaint the day of the summary judgment hearing to add a cause of action with no basis in law or fact.

CONCLUSION

For the reasons stated herein, the judgment of the lower court should be affirmed.

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Greenville, SC
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The Honorable J. Derham Cole, Circuit Court Judge

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v.

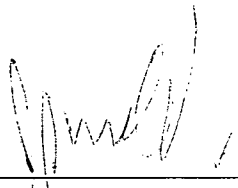
Doni Rhinehart.....Respondent

RESPONDENT'S DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

Respondent Rhinehart proposes the following be included in the Record on Appeal in addition to those matters proposed by the Appellant:

1. Deposition of Doni Rhinehart;
2. Deposition of Jane Doe;
3. Deposition of John Doe;
4. Deposition of Husband of Jane Doe;
5. Deposition of Father of Jane Doe;
6. Rule 56(f) Affidavit of Plaintiff's Counsel; and
7. Summons and Complaint of C/A No.: 2010-CP-42-02349; *Jane Doe, as Guardian for John Doe v. Boy Scout Troop 292, Spartanburg, SC, Palmetto Council of the Boy Scouts of America, St. Margaret's Episcopal Church, Shelby Culbreth, Jackie LaFontaine, Brandon Smith, Rob Green, Roy Cole, Bob Faulks, and Scott O'Neill*

I certify that this designation contains no matter which is irrelevant to this appeal.



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PROOF OF SERVICE

I certify that I have served a copy of the **Initial Brief and Designation of Matter to Be Included in the Record of Respondent Rhinehart** upon all counsel of record by depositing a copy of the same in the United States mail, First Class, in an envelope with due and proper postage affixed thereto, addressed as shown below this **23rd** day of **August, 2013.**

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