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**SC Court of Appeals**

STATE OF SOUTH CAROLINA ) IN THE 16TH CIRCUIT COURT  
COUNTY OF UNION ) DOCKET NO.: 2020-CP-44-00104

\_\_\_\_\_  
Jane and John Smith individually and as Guardians of H.A.  
Plaintiffs,

versus

SCDSS, SCDCA, and Tammy and Edward Dalsing  
\_\_\_\_\_  
Defendants. )

H E A R I N G

BEFORE THE HONORABLE JUDGE DANIEL D. HALL

DATE: MAY 25TH, 2023  
TIME: 10:21 a.m. - 1:17 p.m. EST  
LOCATION: SOUTH CAROLINA CIRCUIT 16  
JUDGE: DANIEL D. HALL  
TRANSCRIBED BY: CATE NEUHAUSER

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24 (THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL

25 IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1           THE COURT: All right. Good morning, again. I'm  
2 pretty sure -- I appreciate your patience. We are on the  
3 record in the matter of H.A. through her guardians and Jane  
4 and John Smith, Plaintiffs, versus South Carolina Department  
5 of Social Services, South Carolina Department of Children's  
6 Advocacy, Tammy Dalsing, and Edward Dalsing. This hearing  
7 has been scheduled on some motions that are pending before  
8 the court. This is case number 2020-CP-44-00104.

9           Y'all sort of help me, tell me about where you -- how  
10 you want to start the motions and we're going to start with  
11 Ms. Burton; is that correct?

12           MS. BURTON: Yes, sir.

13           THE COURT: Yes, ma'am.

14           MS. BURTON: Your Honor, Stephanie Burton. I represent  
15 the Department of Social Services and the Department of  
16 Children's Advocacy. I think there are four motions pending  
17 before the Court; a motion to file some documents under seal  
18 that we filed; a motion for summary judgment on behalf of  
19 both the Department of Social Services and Department of  
20 Children's Advocacy; and then there is a motion for summary  
21 judgment filed on behalf of the Dalsings.

22           THE COURT: All right. I'll start in whatever order  
23 y'all want to start, whatever you deem is appropriate.

24           MS. BURTON: Well, I would suggest that we start with  
25 the easy motion and that's the motion to file under seal.

1 THE COURT: All right.

2 MS. BURTON: Your Honor, that -- obviously this case  
3 involves activities of the Department of Social Services with  
4 respect to a minor child, who was taken into emergency  
5 protective custody. There are medical records, case notes  
6 from DSS, open investigations from DSS, in the light that the  
7 parties have relied upon as evidence in the case.

8 We filed -- there is a motion for protective order in  
9 the case. Most of these documents were produced pursuant to  
10 protective order as you might imagine. In fact, there was an  
11 in-camera review previously some documents I think, by Your  
12 Honor. And so we have filed a motion to file documents in  
13 support of our motions for summary judgment under seal, that  
14 relate to these documents associated with the work of the  
15 agencies, with respect to this child.

16 And I think -- I don't think there's an objection to  
17 it, Your Honor. And of course, you know, the open  
18 investigation documents are protected by statute as  
19 confidential. So, I've got the documents to hand up to the  
20 Court that support the motions -- our motions for summary  
21 judgment. Some of these other lawyers or documents -- I  
22 think, that are also confidential and should be filed under  
23 seal.

24 But I'd like to hand up to the Court documents to fall  
25 under seal proposed by DSS and Department of Children's

1 Advocacy.

2 THE COURT: All right. Hold on just a second.

3 MS. BURTON: Yes, sir.

4 THE COURT: All right. Ms. Butler, Ms. Saunders where  
5 y'all as far as the motion that -- the department's motion?

6 MS. BUTLER: We don't have an objection, Your Honor.

7 THE COURT: Mr. Dove?

8 MR. DOVE: No objection, Your Honor.

9 THE COURT: I'm sorry. Your name -- Mr. Smith, all  
10 right. All right then. I'll sign the appropriate order.  
11 Those under seal now. How do we -- how do you believe that  
12 just logistically the clerk's office is going to handle the  
13 big box of stuff?

14 MS. BURTON: Actually it's these notebooks. I mean ---

15 (CROSSTALK)

16 THE COURT: Well, that's your -- that's yours. They  
17 may have some.

18 MS. BURTON: I think typically, Your Honor, when we've  
19 filed documents under seal before we've had to put them in an  
20 envelope with a big note. It says "file under seal pursuant  
21 to order."

22 THE COURT: Well, I mean, practically we don't have an  
23 envelope that big. I'm just trying to help the clerk figure  
24 out ---

25 MS. BURTON: I understand.

1 THE COURT: --- what are they going to put them in to  
2 seal them. I guess the next best thing is this. We're going  
3 need some type of box, like a banker's box, that can just be  
4 noted on the outside and literally seal. Melanie, will that  
5 work for y'all?

6 MS. BURTON: Yes, sir.

7 THE COURT: I'll definitely -- on all this material?

8 MS. BURTON: Yes.

9 THE COURT: Okay. All right. We'll take care of that.

10 MS. BURTON: Okay. Thank you, Your Honor. And I have  
11 a provision to bring before the Court that's related to this  
12 motion.

13 THE COURT: All right. Thank you. All right. All  
14 right. Then what's the next motion?

15 MS. BURTON: It would be the motion for summary  
16 judgment of the Department of Children's Advocacy.

17 THE COURT: All right. I'll be glad to hear from you.

18 MS. BURTON: Thank you, Your Honor. And I have some  
19 materials, and I've provided them to the other counsel that I  
20 think will help guide us today through the issues in this  
21 case. The first item I put ---

22 THE COURT: And I have the brief that you e-filed and  
23 I have read your motion.

24 MS. BURTON: Yes, Judge.

25 THE COURT: And I believe there's 40-some page brief.

1 I did work through that.

2 MS. BURTON: Yes. There are some briefs, yes, sir.

3 THE COURT: All right.

4 MS. BURTON: The first thing that I handed up to the  
5 Court, which I just think will help because there are a  
6 number of parties, is just a graphic of the relevant folks  
7 involved. Obviously this case relates to a child, Harmony  
8 Stafford, [phonetic] staffer now called Harmony Armstrong.  
9 She is the biological child of Alyssa Woolware [phonetic] and  
10 John Stafford.

11 She was taken into emergency protective custody on  
12 August 27th of 2013, because her parents were running a meth  
13 lab and she had bugbites, and sunburns and, you know, was not  
14 being taken care of. She was placed on August 22nd -- 27th  
15 of 2013 with Tammy and Edward Dalsing. You'll see on the  
16 left hand side of our graphic, the Dalsings were licensed as  
17 foster parents by the Department of Social Services. And the  
18 Dalsings are now, and were in the Family Court litigation  
19 represented by Mr. Dove.

20 The Armstrongs -- Daryl and Ann Armstrong who are  
21 Plaintiffs in this case are -- Mr. Armstrong is the great-  
22 uncle of the child. And they came into the picture in the  
23 latter part of April of 2014. And they were, and continue to  
24 be represented by Ms. Butler, both in this action and  
25 throughout the Family Court action.

1           The next set of materials I provided to the Court, is a  
2 chronology relating to the Family Court actions. And I did  
3 that because this case is -- in my opinion, an attempt to  
4 revisit the plethora of orders issued by our Family Court  
5 once the child was taken into emergency protective custody.  
6 Obviously, the Family Court became involved and throughout  
7 2013 had hearings relating to the plan with respect to the  
8 child and the potential to reunite the child with her  
9 biological parents.

10           Where this matter got "off the rails" so to speak,  
11 happened in 2014. In April 2014, the biological father of the  
12 child identified, for the first time, Daryl Armstrong, as a  
13 relative. We had previously identified some other relatives  
14 and was interested in having the child placed with DSS --  
15 investigated this place. They were not acceptable placements  
16 for a variety of reasons. DSS caseworker went to the jail  
17 where he was -- at that point incarcerated, and he identified  
18 Mr. Armstrong.

19           That same day DSS met with Armstrongs and asked if they  
20 would accept Harmony for placement with them. They indicated  
21 that they would. They decided that they would. DSS  
22 conducted an investigation of them, determined that they were  
23 suitable, and DSS then decided that it would place the child  
24 with the Armstrongs.

25           There was a hearing scheduled for June the 4th, 2014,

1 before the Court at which point the DSS was going to present  
2 his plan to move the child. Prior to the hearing, the  
3 Dalsings, the foster parents, filed a an action to -- for  
4 termination of parental rights and to adopt the child. As a  
5 result of that filing that, the Court could not hold the  
6 hearing it anticipated because there was a notice issue. But  
7 on June 4th, 2014, the Judge McGee in Family Court did  
8 something important in our case. And that is he granted the  
9 Armstrongs unsupervised weekend visitation with the child.

10 And that unsupervised weekend visitation that he  
11 ordered on June 4th, 2014, continued throughout the four  
12 years of Family Court litigation through order, after order,  
13 after order of the Family Court. In his order and also found  
14 that the child's placement with the Dalsings was safe,  
15 appropriate, and in the best interest of the child.

16 So in 2014 we have the action by the Dalsings to adopt  
17 the child to terminate the child's parents parental rights  
18 for a variety of reasons, lots of continuances, Family Court  
19 matter. The nut of that was really not heard until 2015. At  
20 which point, Judge Cory, ruled that the Dalsings didn't have  
21 standing to do that.

22 And so she ruled that there wasn't standing. By that  
23 time because the biological parents weren't doing anything  
24 they're supposed to do, got arrested for meth, the DSS was  
25 seeking determination of their parental rights, but Judge

1 Cory said that the Dalsings didn't have standing. The  
2 Dalsings appealed that order on July 14, 2015. And the  
3 reason I put that out, Your Honor, is if you look at the  
4 Family Court orders, you look at the chronology, what you see  
5 is the Family Court having hearing, after hearing, after  
6 hearing. During which it sides: Number one, the child is  
7 safe her placement with foster parents. Number Two, it  
8 orders status quos, constantly. Status quos: Meaning that,  
9 the child is going to live with the Dalsings and continue to  
10 have weakened unsupervised visitation with the Armstrongs.

11 And the Family Court ordered that status quo during the  
12 pendency of the appeal. And so we've got multiple orders  
13 where the Family Court is saying this -- because there's an  
14 appeal we've never had this issue of standing we're gonna --  
15 we're gonna stop. We're gonna keep doing what we are doing  
16 now. We decided it was safe and that this is what's going to  
17 happen.

18 The Court of Appeals, the South Carolina Court of  
19 Appeals -- and I include their decision in your materials  
20 because I think they make a number of factual findings which  
21 are relevant. The Court of Appeals on May 19th, 2016, held  
22 that the Dalsings did not have standing -- the Court Appeals  
23 affirmed the order of Judge Cory. The Dalsings petitioned for  
24 rehearing, it was denied and then they petitioned for South  
25 Carolina Supreme Court to address the matter, which the

1 Supreme Court granted cert, and did.

2 The South Carolina Supreme Court issued its decision on  
3 January 3rd of 2018, reversing Court of Appeals and decided  
4 that the Dalsings in fact had standing to pursue a private  
5 adoption action. So you have from the hearing on June 4th,  
6 2014, at which point, DSS, the Guardian ad litem, the  
7 biological parents, who were all -- are recommending that the  
8 child transfer custody transfer to the Armstrongs, we have  
9 that stopped in its tracks because of the actions by the  
10 Dalsings, which the Supreme Court said was legitimate and  
11 standing about the action, but it took four years to get that  
12 decision. That is just a fact.

13 And during that four years, the Family Court had many  
14 hearings, and issued so many orders -- they are identified in  
15 the chronology. Acknowledging -- finding that child was safe  
16 in her placement with the Dalsings. And that the split  
17 visitation, weeks with the Dalsings, weekends with  
18 Armstrongs, was going to continue as the status quo.

19 During the course of the protracted Family Court  
20 litigation, there were complaints about -- from the Dalsings  
21 against the Armstrongs. Armstrongs against the Dalsings  
22 against -- about the treatment of the child. And as Your  
23 Honor knows, DSS is -- OHAN [phonetic], conducts  
24 investigations of allegations of abuse and neglect in foster  
25 homes. Both of these are foster homes. The Armstrongs are

1 foster parents and the Dalsings are foster parents.

2 And I've included in your materials a chronology of all  
3 -- of the investigations. There are -- some of them -- one  
4 in 2014, two in 2015, one against the Dalsings, one against  
5 the Armstrongs. 2016, there are some against the Armstrongs.  
6 Two in 2017 against the Dalsings, and then they escalate  
7 after the Supreme Court issued its decision with complaints  
8 against the Dalsings as you can see.

9 OHAN either conducted investigations and found things  
10 to be unfounded or did not accept the allegations. There was  
11 one open investigation that resulted in a founded -- a  
12 decision that it was founded against Ms. Dalsing. After that  
13 occurred, Ms. Dalsing appealed to an administrative tribunal.  
14 There was a trial -- I think it was truncated after some of  
15 the evidence.

16 At which point, the Department of Social Services  
17 issued an order dismissing that founded charge against Ms.  
18 Dalsing, concluding that the agency could not produce a  
19 preponderance of the evidence against Ms. Dalsing. So that  
20 matter about whether the allegations against Ms. Dalsing  
21 constituted abuse and neglect, which was initially founded by  
22 OHAN, was dismissed after a trial because there was a lack of  
23 evidence to support that allegation.

24 So ultimately, there are no founded or OHAN  
25 investigations against any of the parties, despite a lot of

1 finger pointing between the two at one another.

2 After this trial, the Dalsings waved the white flag.  
3 They've been battling for four years. They waved the white  
4 flag, gave up their adoption action, and the Armstrongs  
5 adopted Harmony Stafford by order of January 25 of 2019.

6 So that is the framework of the case. The Plaintiffs  
7 have sued the Department of Children's Advocacy, alleging,  
8 rather generically, three causes of actions: negligence,  
9 gross negligence, and negligence per se. Your Honor, may or  
10 may not know much about the Department Children's Advocacy,  
11 but pertinent to our discussion here it wasn't established  
12 until July 1, 2019.

13 So the Department of Children's Advocacy did not exist  
14 at any point during the pendency of this Family Court  
15 litigation. It didn't exist until after Harmony was adopted  
16 by the Armstrongs. The department has a state child advocate  
17 named Amanda Whittle, and she's appointed by our Governor and  
18 the Department of Children's Advocacy assumed responsibility  
19 for the Guardian ad Litem program once it was created, and  
20 operates that program with volunteer Guardians ad litem and a  
21 few paid guardians ad litem.

22 As your honor probably knows, the Guardian ad Litem  
23 program is created by but General Assembly by statute. Their  
24 responsibilities are set by statute to represent the  
25 interests of the children assigned to them, and to submit

1 reports and recommendations to the Family Court. The Family  
2 Court has absolute discretion whether to adopt, accept, or  
3 reject any recommendation by a guardian ad litem. And in  
4 this case, the Family Court did not adopt recommendations on  
5 guardians because the guardian repeatedly, repeatedly,  
6 repeatedly recommended that Harmony go to the Armstrongs  
7 because they're blood relatives. But given the circumstances  
8 I described to the Court in this matter, the Family Court  
9 never adopted that recommendation.

10 In the amended complaint, Plaintiffs were not very  
11 specific at all about the nature of the allegations against  
12 Children's Advocacy because of Paragraph 7 of the amended  
13 complaint, it's also in those materials I handed up. On Page  
14 2, the Plaintiffs allege that Children's Advocacy is formally  
15 known as the Foster Care Review Board and appears that their  
16 allegations are related to the Foster Care Review Board.

17 Unfortunately, that's just not legally accurate. The  
18 Foster Care Review Board is also created by the General  
19 Assembly by statute. Its members are also appointed by our  
20 Governor. Its responsibilities are set forth by the  
21 legislature, the Foster Care Review Board sends its reports  
22 and recommendations to the Family Court. That -- the family  
23 board likewise has discretion to accept, or reject, or adopt.  
24 It does not and has never been part of the Department of  
25 Children's Advocacy.

1 Children's Advocacy provides administrative support to  
2 the Foster Care Review Board because it doesn't have separate  
3 administrative staff, but the Foster Care Review Board does  
4 not report to the child advocate. She has no power over  
5 Foster Care Review Board members. She can't appoint them,  
6 get rid of them, that's all the governor's responsibility.

7 First in the amended complaint, the Plaintiffs, there  
8 are three Plaintiffs. There's Harmony through her guardians,  
9 and then there are the Armstrongs in their individual  
10 capacity.

11 First, with respect to the claims of the adult  
12 Armstrongs. I would submit to you that there is no law that  
13 supports a legal duty of care on the Department of Children's  
14 Advocacy to Mr. and Mrs. Armstrong. There's no law that  
15 supports the existence of a legal duty. As Your Honor knows  
16 a legal duty arises under certain circumstances: Contract,  
17 property interest, status, special relationship, and none of  
18 those exists, nor is there any case law in South Carolina to  
19 support the finding that Children's Advocacy has some duty of  
20 care to the Armstrongs.

21 In addition, if they can assert the claim the claims  
22 bar of statute limitations. The Tort Claims Act applies to  
23 the Children's Advocacy as a state agency, as you know, it is  
24 what comes out as a two year statute of limitations into the  
25 58-78-110, to the extent these folks have some complaint

1 about the child being placed somewhere or recommendations  
2 made by Guardians or the like.

3 They've known about her replacement since 2014. They  
4 had a lawyer involved in Family Court matters, since 2014, to  
5 appear at various proceedings. Any claims they have related  
6 to placement with the Dalsings, certainly could have arisen  
7 at some lengthy time.

8 As a practical matter, simple negligence, ordinary  
9 negligence, negligence per se are not actionable under the  
10 South Carolina Tort Claims Act. Those are not valid courses  
11 of action. To the extent that there's some argument that the  
12 enabling legislation creating job efficacy, creates a duty.  
13 I would submit that -- that is more about public duty role  
14 that generally says just because you have enabling  
15 legislation, for the general welfare and safety of the  
16 public, doesn't mean be a duty to individual members of  
17 public under the old *Authors v Aiken* (phonetic) case to the  
18 extent that Plaintiffs assert some claim relating to Foster  
19 Care Review Board, against Child Advocacy, which is not  
20 controlled.

21 In addition to the fact it doesn't control that, there  
22 is immunity -- under the statute for the Foster Care Review  
23 Board, section 63-11-760, grants immunity to members of the  
24 Foster Care Review Board if they act in good faith and their  
25 conduct does not constitute gross negligence, recklessness,

1 willfulness or wanton. Tort Claims Act grants immunity to the  
2 agency under Section 15-78-6030, that specifically talks  
3 about Foster Care Review Boards. It says a governmental  
4 entity is not liable for loss resulting from acts or  
5 omissions of members of the applicable Foster Care Review  
6 Board acting within their official duties, unless they are  
7 grossly negligent, willful, or wanton. Child Advocacy is now  
8 responsible for the Foster Care Review Board, but even if it  
9 was, there's immunity under the act as evidence from first  
10 negligence about the Foster Care Review Board members.

11 Plaintiff does not have any -- Plaintiffs do not have  
12 any expert testimony that anybody on the Foster Care Review  
13 Board didn't do their job properly (indiscernible). They have  
14 nothing on the Foster Care Review Board to the extent that is  
15 the claim. Child Advocacy is entitled to summary judgment.

16 To the extent that it is not listed specifically in  
17 claim, to the extent that there's some allegation against the  
18 guardians ad litem because as of 2019 they did assume  
19 responsibility for the guardian program. As you've know, the  
20 guardian responsibilities are identified in the code:  
21 guardians have immunity. They have old common law, absolute  
22 quasi judicial immunity pursuant to all cases. Specifically  
23 *Folk versus Baallerton* [phonetic], says that guardians ad  
24 litem have true quasi judicial immunity. But beyond that,  
25 they have statutory immunity in the guardian ad litem

1 statute. It says volunteer guardians cannot be liable.

2 And then the agency also has immunity under the Tort  
3 Claims Act for quasi judicial actions and administrative  
4 actions of a quasi judicial nature.

5 So, it's pretty clear that you can't sue a guardian ad  
6 litem nor can you sue the agency for act of the guardian ad  
7 litem, because these acts determined by the Courts to be  
8 quasi judicial by nature. Beyond that, even if you consider  
9 that, there is no evidence they did anything wrong. In fact,  
10 Mr. Armstrong admitted in his deposition and didn't have any  
11 qualms with the Guardians. And the Plaintiffs had an expert  
12 of sorts, who indicated that she didn't have an opinion that  
13 the guardian ad litem was grossly negligent, willful, or  
14 wanton. And the reports from the Guardians recommended what  
15 the Plaintiffs wanted. What they wanted was to have Harmony  
16 transferred to their custody.

17 And the Guardians repeatedly recommended that to the  
18 Family Court, and the Family Court makes the decision and  
19 those decisions are binding. This has been litigate, for  
20 over four years it was litigated where Harmony Stafford was  
21 supposed to be, did the Dalsings have standing to adopt her?  
22 And the Family Court over and over made findings that the  
23 placement was appropriate at the time and that the status quo  
24 was going to continue and that can't be re-litigated in this  
25 court. They were to stop to re-litigate that particular

1 issue in this court.

2 What we're trying to do is go back over four years of  
3 Family Court litigation and have two-or-three week trials in  
4 Circuit Court about the decisions of the Family Court. And  
5 that's exactly why they should be stopped to -- to make that  
6 argument.

7 But to the extent that Plaintiffs argue that this child  
8 was abused at the hands of the Dalsings, which was certainly  
9 investigated a lot. Of course, Tort Claims Acts says: a  
10 government agency is not liable for the actions of third-  
11 parties under Section 15-78-6020. Department of Children's  
12 Advocacy cannot be held liable for the actions of the  
13 Dalsings as a matter of law in the Tort Claims Act.

14 The Armstrongs have offered a couple other theories in  
15 the depositions that I need to address. One of those is that  
16 somehow the Department of Children's Advocacy had some  
17 ability to transfer her placement and transfer her custody.  
18 Of course, they don't have any right in the statute to do  
19 anything about that only the Family Court has the ability to  
20 do that. Of course all of these parties that the Armstrongs  
21 included, were represented by Counsel in Family Court and  
22 could file whatever motions they wanted.

23 If they wanted to make some allegation that she's being  
24 abused or neglected they could apply to the Family Court and  
25 have that addressed, and they did consider placement so many

1 times, but this is not the time to do it.

2 And lastly, with respect to the Department of  
3 Children's Advocacy, they do have a claim for punitive  
4 damages which is specifically excluded under the Tort Claims  
5 Act 15-78-120(B). So, on behalf of have the Department of  
6 Children's Advocacy, I've move for summary judgment on all of  
7 these grounds. Thank you, Your Honor.

8 THE COURT: Thank you. Just to be clear, the motion  
9 for summary judgment is on behalf of the Department of  
10 Children's Advocacy and the Department of Social Services?

11 (CROSSTALK)

12 MS. BURTON: It is. I haven't addressed social services  
13 at this point. I can, if you want me to. I just was --

14 THE COURT: All right. You believe that's one of the  
15 four pending motions that you put before the court. One of  
16 them is for the Department of Children's Advocacy, one is for  
17 the Department of Social Services.

18 MS. BURTON: Yes. Exactly.

19 THE COURT: You referenced both of those entities.

20 MS. BURTON: I do, yes.

21 THE COURT: All right.

22 MS. BURTON: I'll do whatever you want. I'll can do  
23 DSS too, if you like.

24 THE COURT: Well, let's hear from -- let -- let me hear  
25 from either -- of the Dalsings or the Department of

1 Children's Advocacy.

2 MS. BURTON: Thank you, Your Honor.

3 MS. BUTLER: The Department of Children's Advocacy in  
4 Ms. Burton's memorandum ---

5 THE COURT: Well, let me ask you this.

6 MS. BUTLER: Yes, Your Honor.

7 THE COURT: Would you be more comfortable addressing  
8 both? Both the department of DSS and Children's Advocacy at  
9 one time?

10 MS. BUTLER: Yes, Your Honor.

11 THE COURT: All right. Let's go back then, Ms. Burton,  
12 state your position as for the motion of summary judgment in  
13 regards to DSS.

14 MS. BURTON: Thank you, Your Honor. I don't need to  
15 reiterate the history, but I think the history is pertinent  
16 to -- for all of the motions in that, of course the DSS was  
17 party to the Family Court proceedings, because it had custody  
18 of the child once the police took her into emergency  
19 protective custody. And all these parties participated in  
20 this plethora of hearings, motions, appeals and the like in  
21 the Family Court proceeding where the issues related to the  
22 child were decided and decided finally, as a matter of law.

23 Just like with Children's Advocacy, the individual  
24 adults don't have a legal claim against the Department of  
25 Social Services. There is no basis for a legal claim. They

1 were at the time, relatives of the child. They are now the  
2 adoptive parents, but they weren't until 2019. But during  
3 the time about which they complained, 2013 to 2019, they were  
4 just relatives of the child. There's just no duty to them as  
5 a matter of law.

6 They attempt to assert some claims related to the  
7 child, there is a (indiscernible) of consortium plan if they  
8 are parents in South Carolina other than for the loss of  
9 earnings. And this child is under the age of five, so that  
10 is not legal claim. They don't have a claim. If they did  
11 have a claim, they have known about the claim for years, and  
12 years, and years their claims for out of the two years  
13 statute of limitations.

14 With respect to the claims of the child. There is at  
15 least in the testimony, there is an allegation that the child  
16 should not be placed with the Dalsings, which has taken  
17 place. And in the complaint, the basis for that is that DSS  
18 should have known that the Dalsings were going to try and  
19 adopt the child because they subsequent to that placement in  
20 November of 2013 tried to adopt another foster child in  
21 another proceeding. That's not the basis for a legal claim.  
22 Number one, the attempt to adopt the other child was before  
23 she was placed with the Dalsings.

24 And Number two, even if that's the case that doesn't  
25 say that she's gonna be abused and neglected -- in fact, the

1 only evidence in this case is that other than with respect to  
2 this child and allegations made by the Armstrongs, there has  
3 never been an allegation of abuse or neglect related to the  
4 Dalsings who have fostered a number of children. I think 7 or  
5 8 children; never been any allegations except for those made  
6 by the Armstrongs.

7 So there's no evidence whatsoever that the Dalsings  
8 were not properly licensed, and were not an appropriate  
9 placement. Nor was that allegation made in the Family Court  
10 proceeding. To the extent they tried to make some  
11 allegations about licensing the Dalsings, I don't really  
12 think they plan to because I don't have the expert about  
13 licensing, but licensing is the act of licensing is the  
14 subject of immunity under the Tort Claims Act, 15-78-6012,  
15 said that the governmental entity is not liable for losses  
16 resulting from licensing or the revocation of a license.

17 An allegation that Mr. and Mrs. Armstrong made in their  
18 deposition, it is not in their complaint, but I am going to  
19 address it anyway. They have a theory that DSS owed them. A  
20 duty to find them, which is an interesting legal plan.

21 There's no law to support that if I'm a relative DSS  
22 has some obligation to find me specifically, but that is an  
23 allegation. Number one, there's no legal duty to do that.  
24 But number two, they don't have any evidence that that was  
25 done in some way that deviates from any applicable standard

1 of care. DSS got information from the biological mother who  
2 said that none of her relatives would be appropriate.

3 Got information from the father who identified two  
4 family relatives: an aunt and a cousin. We vetted those  
5 people, they did not vet out -- they were not suitable.  
6 Then the DSS paid for what's called the Seneca (phonetic)  
7 search, which is a family tree type search to see if they  
8 could find any options. The Armstrongs did not come up in the  
9 Seneca search they paid for. Then eventually, when  
10 caseworker Ison (phonetic) went to the detention center to  
11 meet with Mr. Stafford in April 2014, he gave the name Mr.  
12 Armstrong. It was the first time he's ever given that. And  
13 that very same day DSS went to meet with them, to see if  
14 they'd be willing to take the child. They were. DSS vetted  
15 them and then recommended that the child be placed with them,  
16 but the Family Court did not adopt with that recommendation.

17 Plaintiff does not have any expert related to how to  
18 find a child, we have to do to find a child, what agencies do  
19 to find the child, but we did. We submitted the affidavit in  
20 full [indiscernible] Peterson, who is a expert we identified  
21 who has actually worked at a state -- similar state agency  
22 and she in her affidavit, she advised the court that the  
23 techniques used by DSS to do that, are acceptable techniques  
24 consistent with what other state Department of Children's  
25 Services do and that the DSS has acted in accordance with

1 policies to try and find appropriate relatives.

2           The family -- the Family Court also made this finding,  
3 the Family Court said that DSS had made reasonable efforts to  
4 make and finalize in the timely manner, a permanent plan for  
5 the minor child from the start. Also DSS has immunity under  
6 the Tort Claims Act. As you know, there is immunity from the  
7 exercise of discretion by the agency provided that the agency  
8 shows that use acceptable -- used -- considered alternatives  
9 and used acceptable standards. And throughout the affidavit,  
10 Nicole Peterson [phonetic] said specifically that they did  
11 that and Plaintiff does not have any evidence to the  
12 contrary.

13           In fact, the Plaintiff's expert said in her deposition  
14 that, "she didn't have any opinions about DSS." She said,  
15 when I asked her what opinions do you have about the South  
16 Carolina Department of Social Services?

17           And she said, "In regard to this case?"

18           And I said, "Of course."

19           She said, "At this point in time, looking at my  
20 observations and opinions are in this case, I don't think I  
21 had something specific to the Department of Social Services."

22           So we have no, we don't have any sort of expert for the  
23 Plaintiff that says trying to find these folks deviated from  
24 the standard of care. We have immunity under the act, we  
25 don't have a legal duty -- which is of course a question for

1 Your Honor, a question of duty is always a question for the  
2 Court. So, I would submit that that claim is not a viable  
3 claim.

4 The main concern I heard on the depositions from the  
5 Armstrongs, the thing they are really unhappy about, is the  
6 fact that Harmony went back and forth, back and forth, back  
7 and forth for four years. They're very, very unhappy about  
8 that fact. The problem is their unhappiness within the Family  
9 Court because none of the parties, DSS, the Dalsings had  
10 control of that. That was what the Family Court ordered of  
11 them. And the South Carolina Supreme Court said, "the  
12 Dalsings had standing to file their action."

13 So it was their legal entitlement to do it, they did  
14 it, and during the pendency of the appeal, they were court  
15 ordered to status quo. That's not something you can complain  
16 about. It's (indiscernible) important use case. It just is  
17 what it is. It is the way the judicial system in this case  
18 operated.

19 The duty -- there is no duty by state agencies to try  
20 and make the court system to move faster when told to do  
21 that, to the extent, that's their claim. It really is based  
22 on the deposition. That's what they are most unhappy about.  
23 That's just not a valid legal claim. And of course, DSS and  
24 Child Advocacy to the extent that it was even party to that,  
25 is immune from suit under the Tort Claims Act for execution,

1 enforcement, or implementation of any court orders.

2           So the Court orders that DSS has to do (indiscernible),  
3 absolutely (indiscernible) from suit for doing that. That is  
4 not a viable claim. In addition, Plaintiffs have just  
5 stopped to (indiscernible). They had their time. It was in  
6 the Family Court. We cannot re-litigate that in this court.  
7 The decision of the Family Court are binding upon us. The  
8 Plaintiffs allege that the Dalsings specifically abused and  
9 neglected Harmony and that somehow DSS breached a duty to her  
10 to protect her.

11           The reason I gave the Court the laundry list of OHAN  
12 investigations, is to demonstrate that DSS, in fact conducted  
13 many investigations that are related to Harmony. Now they  
14 weren't founded, in one that was founded was ultimately  
15 overturned, because there was not sufficient evidence to  
16 proceed with that.

17           And as we've discussed earlier, of course, the Tort  
18 Claims Act gives immunity to state agencies for exercise of  
19 discretion. And our South Carolina Supreme Court has ruled  
20 that with respect to OHAN investigations, that the decision  
21 to classify report of abuse is unfounded. They closed the  
22 file because as a discretionary act because it involves the  
23 application of judgment to particular facts.

24           So the Plaintiffs can't argue as a matter of law that  
25 their hand, if they got a complaint about a, b, or c, and

1 decided it was unfounded, that they should have decided --  
2 said something different because that's not a legal claim.  
3 OHAN has to exercise discretion based on what's presented to  
4 it and decided the Plaintiff's claims were unfounded, the  
5 Supreme Court said that. Tort Claims Act says that DSS has  
6 immunity for the exercise of discretion, provided that it  
7 complies with standards.

8           And we've submitted an "uncontroverted" expert  
9 affidavit of Nicole Stoller Peterson, where she says that the  
10 discretionary decisions made by DSS, whether to remove  
11 Harmony Armstrong, was made after weighing and considering  
12 the same types of information considered by other state  
13 departments of social services.

14           Again, DSS is not liable for the acts or omissions of  
15 the Dalsings under the Tort Claims Act of immunity from that  
16 a foster parents have been held by the Supreme Court not to  
17 be employees or agents of DSS so there's no vicarious  
18 liability there. And there's just simply no evidence. And  
19 again they had a chance to have an expert, she says she  
20 doesn't have an opinion about the DSS. She even goes further  
21 to say multiple times in her deposition, she doesn't even  
22 have any opinion on whether the child was abused.

23           That -- that she doesn't -- that she is not qualified  
24 to render that opinion. The only opinion she rendered, that  
25 she was qualified to render, that she did render, was that it

1 wasn't really good for a child to bounce back and forth  
2 between two households. Which is the (indiscernible) with  
3 the Plaintiffs' complaint, which is this bouncing back and  
4 forth. The problem is, that complaint is with the Family  
5 Court. The Family Court obviously can't be sued for that.  
6 The agencies cannot be sued for that either.

7       Of course, they can collect punitive damages against  
8 DSS as a state agency. And to the extent -- I don't really  
9 think this is a legal claim, but to the extent they make some  
10 allegation that DSS should have somehow made the Family Court  
11 do things faster or swifter, the Supreme Court ruled quicker  
12 on the petition for cert that's not a viable legal claim  
13 either.

14       And so for all of those grounds, Your Honor, I move for  
15 summary judgment on behalf of DSS.

16       THE COURT: Thank you.

17       MS. BURTON: Thank you.

18       MS. COURT: Ms. Butler, I'd like to hear from you.

19       MS. BUTLER: Thank you, Your Honor. The Plaintiff's  
20 expert was -- is in the case, for the purpose of the lifelong  
21 impact to the child with the abuse that the child suffered.  
22 The Plaintiff's experts Dr. Monique Mitchell, who's worked  
23 extensively with the Children's Law Center in -- at USC  
24 Columbia, Christopher Church, who leads down there, have  
25 actually authored articles together she's written books on

1 trauma of foster care, Living In an Inspired World: Visions  
2 and Voices of Youth in Foster Care. Her CV is extensive on  
3 her presentations and publications for dealing with children  
4 in foster care.

5 She testified as to the lifelong impact to children who  
6 have suffered child abuse and not knowing when that trauma  
7 will resurface. They -- the expert testified in her  
8 deposition at Page 30, and this is Dr. Monique Mitchell.  
9 When she was asked, she answered the question: "It is beyond  
10 my comprehension why it would take four years to initiate an  
11 investigation within a foster home that has had multiple  
12 reports of physical injuries of a child under the care of  
13 adults for a span of four years. It's further disconcerting  
14 that the child herself in April 2018, reports that her mommy  
15 Tammy spans her with her hand on her bottom, her cheeks, her  
16 forehead, her chin, and her eyeballs. It was still two  
17 months from when the child reported that."

18 Judge the -- the only expert that the DSS sent the  
19 child to was Dr. Susan Lamb in Columbia at the Metropolitan  
20 Center, she opined in her diagnosis and conclusion and I can  
21 pass this up to Your Honor. And her diagnosis and conclusion  
22 she opined that Harmony is a five year old girl with multiple  
23 allegations of physical abuse over several years against her  
24 two sets of caregivers. Harmony has several documented  
25 bruises that are concerning physical abuse in both

1 households, and in medical records Harmony has bruise noted  
2 on her (indiscernible) upper arm, bruises to her back, and  
3 buttocks.

4 Bruising that occurred is that both households.  
5 Photographs that Harmony has bruising to lateral and  
6 posterior thigh, hip, the area around the eyes, and the  
7 cheeks. The bruising reportedly occurred while in the home  
8 of the foster parents. These bruises noted above are highly  
9 suspicious for physical abuse as they are in protected areas  
10 of the body.

11 THE COURT: Let me ask you. (Indiscernible) Is it your  
12 contention that that information was never presented to one  
13 of the seven Family Court judges that heard portions of this  
14 case?

15 MS. BUTLER: That is correct, Your Honor because this  
16 interview was not done until that child was removed from the  
17 foster parents in June of 2018.

18 THE COURT: All right.

19 MS. BUTLER: The interview goes on to say that Harmony  
20 has had three different fractures of her arm ---

21 (CROSSTALK)

22 THE COURT: That interview then -- just so I am clear  
23 in my mind, as I go through the materials that that interview  
24 was after she was adopted, is that right?

25 MS. BUTLER: No your Honor.

1 THE COURT: I'm sorry.

2 MS. BUTLER: It was -- she was removed from both sets  
3 of families at this time, she was removed from the foster  
4 parents, and she was removed from the relatives. She had no  
5 contact and she's placed with a whole different foster parent  
6 Ms. Tina Corn (phonetic) down in Columbia and they took her  
7 (indiscernible) ---

8 (CROSSTALK)

9 THE COURT: So your allegation is that information was  
10 communicated to a DSS worker and nothing was ever done?

11 MS. BUTLER: That is correct, your Honor.

12 THE COURT: Okay. Go on.

13 MS. BUTLER: And it goes on to say, "she had three  
14 different fractures documented in the medical records in  
15 2015, 2016, and 2018." They were all in the medical records  
16 that had been communicated to DSS. Fractures of her arm  
17 exist and the recorded history is only available for the  
18 history in 2016 of a fracture pattern. At this time, it was  
19 concerning for physical abuse. She goes on to say she has  
20 documented bruises, and this is Dr. Lamb still -- I'd like to  
21 pass that up to your Honor, if I can get my hands on that.

22 She goes on to say, and this is bates labeled 9205.  
23 But she goes on, normal bruising in a mobile child is not  
24 even communicated in this below. She goes on, in just this  
25 one interview -- that she did, she documents from 2014, a

1 brown bruise on the left posterior of the left thigh  
2 (indiscernible) and these are bruises that are protected  
3 areas. She's not documenting normal bruising. She says, "a  
4 red purple bruise around the right eye that was January 2014  
5 -- 2015." She says "February 26, 2015," and she is reading  
6 all this from the medical records that DSS is providing her.  
7 She says, "three brown bruises on the right posterior thigh."  
8 She says on August 1, 2015, "there is a brown bruise" --

9 THE COURT: I don't think we need to go through all  
10 this for purpose of this hearing today. I'll review all the  
11 medical records. I'll be glad to hear you all more widely as  
12 the basis for denial for summary judgment.

13 MS. BUTLER: Thank you, Your Honor. There's a material  
14 fact as to whether the child suffered abuse at the hands of  
15 the Dalsings, and whether DSS did anything to protect the  
16 child. So ---

17 (CROSSTALK)

18 THE COURT: So that would be the basis for what legal  
19 claim?

20 MS. BUTLER: That would be the basis for the legal  
21 claim that DSS breached the duty that they had. So they were  
22 exercising their authority when they took this child into  
23 care and placed her where they did. They had a duty to make  
24 sure that the child's placement was safe and protected.

25 And in fact, every time they came to the Family Court

1 they told the Family Court that the child was safe and  
2 protected. When in fact the child -- as the records and  
3 medical evidence would show, the child was not safe and  
4 protected. The -- and so that's where that would come in.

5 There was a duty owed to the child and there was a duty  
6 owed to the child's parents. Now, understanding in this  
7 situation the child didn't have biological parents, but for  
8 DSS and the Department of Children's Advocacy say -- there's  
9 no adult duty due to an adult. You owe a duty to somebody  
10 who is in charge of those children, whether it's parents or  
11 guardians, or adoptive parents even, to make sure that that  
12 child is protected.

13 And so the -- the Armstrongs did not become in a  
14 position to be her guardians, to protect her and file legal  
15 actions on her behalf, until the adoption finally took place,  
16 as Ms. Burton told you, January of 2019. So this had been an  
17 ongoing ---

18 THE COURT: Let me ask you this, and help me through  
19 all this because I have not been practicing in Family Court,  
20 obviously.

21 MS. BUTLER: Yes, sir.

22 THE COURT: But if the Court adopted that every abused  
23 child that goes through placement by DSS and then is later  
24 adopted. Are you saying those -- every adopted parent would  
25 have the legal right to sue DSS for not properly

1 investigating abuse? That would be a lot of children, right?

2 MS. BUTLER: Yes, it would -- Your Honor, that would  
3 not be the case. It would be only in those situations where  
4 DSS was grossly negligent in their duties as they were in  
5 this case.

6 THE COURT: But you -- you're still asking the Court  
7 and the law to allow adoptive parents to go back and access  
8 all medical records and DSS involvement in every adopted  
9 child where there was abuse.

10 MS. BUTLER: No, your Honor. In this case, it's  
11 actually a very special relationship that -- that your  
12 Plaintiffs have. Because they were the relatives of the  
13 child, they were seeking placement of a child, and they were  
14 involved in the child's life on a weekly basis. So every  
15 week -- they had a relationship -- they have her in their  
16 care. Three nights every week. They have -- they have a  
17 relationship that is there with the child.

18 THE COURT: Okay. Thank you.

19 MS. BUTLER: Thank you. Okay. Just give me one  
20 second. And then, there is also an -- I'll hand you up my  
21 stuff as I get through that. I can just hand you Honor up  
22 this one from Dr. Lamb. And we have provided a copy to the  
23 opposing parties.

24 THE COURT: When you are handing it up for purposes of  
25 the record, I mean this is all going to be part of material

1 that you're submitting to be kept under seal; is that right?

2 MS. BUTLER: It is. It is part of what we agreed on. It  
3 has got the opening of record (indiscernible).

4 THE COURT: Okay. All right. Give me it.

5 MR. DOVE: Your Honor, I object to her handing those up  
6 unless she has copies for us.

7 MS. BUTLER: Please pass those out.

8 (CROSSTALK)

9 THE COURT: She says --

10 MR. DOVE: Can you show me -- are those in the  
11 materials you have given us?

12 MS. BUTLER: Yes

13 MR. DOVE: Ok, then can you show it to me?  
14 (Indiscernible) look like?

15 MS. BUTLER: I think we have given a copy to the court  
16 reporter already.

17 THE COURT: Well, she doesn't need a copy.

18 (CROSSTALK)

19 MS. BUTLER: I have the court reporter a copy for her  
20 exhibits. I have your Honor a --

21 THE COURT: She -- she's not -- she is a court  
22 recorder. Now, if you want it to be made part of an exhibit  
23 here on what you stated you're gonna have that whole stack  
24 stuff made part record?

25 MS. BUTLER: [Indiscernible].

1 THE COURT: Well, well, why is that? What you're -- are  
2 you getting ready to do, is introduce certain parts of ---

3 (CROSSTALK)

4 THE COURT: Okay. That needs to be marked Vourt's  
5 exhibit or Plaintiffs' Exhibit 1? Then hand that up to the  
6 Court.

7 (Exhibit No. 1 marked for examination.)

8 MS. BUTLER: I made, your Honor, a separate copy.

9 THE COURT: Ok. That will work. Thank you.

10 MS. BUTLER: At the two tabbed sections of that, your  
11 Honor, that I just passed up, that's what I was reading from.  
12 Dr. Lamb has she noted the records in the past.

13 Judge as to the -- the -- the arguments of the  
14 Department of Children's Advocacy. I think that the -- it  
15 was the words were that the Department of Children's Advocacy  
16 was just formed in 2019. And therefore, it was only after  
17 all of this took place that they were even formed as an  
18 entity. And the argument is, there's no way that they're  
19 liable because they were not even formed at that time.

20 The second part of that argument is that Division of  
21 Foster Care Review is not part of the South Carolina  
22 Department of Children's Advocacy. However, in DSS's  
23 memorandum, in support of this motion for today at Page 2, in  
24 that second paragraph, it specifically says the Division of  
25 Foster Care Review is a division of SCDCA. So the South

1 Carolina Department of Children's Advocacy, Foster Care  
2 Review is a division of that and then guardian ad litem  
3 program is actually administered.

4 Now it's true that that the name itself, the South  
5 Carolina Department of Children's Advocacy, just became a  
6 name, July 1st, 2019. However, there's always been the Cass  
7 Elias the current guardian -- guardian ad litem program,  
8 which is in every DSS case that we have ever had, there is a  
9 guardian ad litem named for the child under the cast alias  
10 guardian ad litem program. They are appointed to represent  
11 the best interest of children.

12 And so the Department Children's Advocacy is the proper  
13 entity to be named. Whether it's for either of those,  
14 regarding the guardian ad litem program, or the South  
15 Carolina Department of Children's Advocacy.

16 The immunity that is spoken of by DSS and DCA, Judge,  
17 that -- they would have, your Honor, to believe that they're  
18 just sovereign -- sovereign -- a sovereign state or just the  
19 sovereign on their own, just with absolute immunity. That we  
20 know that that changed with the Torts Act itself. That's why  
21 the Torts Act came into place was because the General  
22 Assembly carved out a way that the state could be sued.

23 So, if we're going to entrust you to take over  
24 children, then we're gonna have to find a way to counter that  
25 if you don't perform your duties in a way that is proper,

1 which goes to that grossly negligent.

2 So the Torts Claim Act that -- that -- they carved out  
3 specific exceptions where a state can be sued, and we know a  
4 state can be sued, because we've seen that in the case of  
5 *Bass*, that was a second Supreme Court case, that the Supreme  
6 Court decided in 2015. Where the parents, Mr. and Mrs. Bass,  
7 sued DSS, alleging that they were grossly negligent and our  
8 Supreme Court upheld that \$4 million jury verdict, and that  
9 they were grossly negligent. So we know that the South  
10 Carolina Department of Social Services nor SCDCA is  
11 completely immune and sovereign. That can be pierce. Has been  
12 pierced, and certainly can be pierced from this case where  
13 there is ample evidence that this child was abused. And,  
14 furthermore, DSS's own policy at Chapter 5 is so extensive as  
15 to how they are supposed to continue the search for  
16 recklessness.

17 You heard Ms. Burton mention the Seneca search, your  
18 Honor might not be aware of the Seneca search, but she said  
19 they paid, that DSS paid for the Seneca search. The Seneca  
20 search I submit to you, is to search for relatives of the  
21 children in foster care.

22 Now, why would the DSS pay to search for relatives of  
23 children in foster care? More importantly, why would it be so  
24 relevant for your Honor, today in an argument? That is  
25 because DSS's own policy throughout, requires them to

1 continuously, continuously search for relatives and document  
2 their search for relatives throughout. And not just that, we  
3 will acknowledge they found a family relative in June 2014.  
4 They didn't do their due diligence to find a relative until  
5 June 2014. This is Union County. They went to a relative,  
6 they could have asked that relative. In fact, their policy  
7 says they should have asked that relative about any other  
8 relatives.

9 Well, there's no documentation that they asked the  
10 relatives that they talked to, that the father named about  
11 any other relatives. Even so, after June 2014, when they  
12 found the Armstrongs, and DSS themselves decided that the  
13 Armstrongs were proper and suitable, they still never placed  
14 her. Four more years the child was never -- was placed with  
15 the Armstrongs. The whole time DSS never placed that child,  
16 although they continued to have the purview to search for  
17 relatives and place the child with relatives. And we do have  
18 that policy to pass up to your Honor.

19 I would ask that it be marked as Plaintiffs' Exhibit 2.

20 THE COURT: Okay. Go ahead. Go ahead and mark  
21 Plaintiffs' 2.

22 (Exhibit No. 2 marked for examination)

23 MS. BUTLER: And entered in as Plaintiffs' Exhibit 2.

24 (CROSSTALK)

25 MR. DOVE: And just for my records, Plaintiffs' 2 is

1 what?

2 THE COURT: I have what's been -- what -- what has been  
3 marked as Plaintiff's 2. Begins with Chapter 5 -- Foster  
4 Care and Permanency Planning under the title South Carolina  
5 Department of Social Services Human Services Policies and  
6 Procedure Manual.

7 (CROSSTALK)

8 MR. DOVE: Question, that is what you gave us today?

9 MS. BUTLER: Yes, sir.

10 MR. DOVE: Can you show me what the front page looks  
11 like?

12 (CROSSTALK)

13 MS. BUTLER: You have two copies of the doctor's  
14 deposition.

15 MR. DOVE: Thank you.

16 MS. BUTLER: Your Honor, the other assertion was that  
17 this -- these allegations of abuse escalated after the  
18 Supreme Court decision. However, the Supreme Court decision  
19 was not until January 2018. And as the Exhibit Number 1  
20 shows and also the deposition of our expert shows, that this  
21 child, the incidents, and what I've already read to you about  
22 -- from Dr. Lamb, the incidents were all the way back to  
23 broken arms and everything. That were all the way that ---

24 THE COURT: What you gave me -- of Dr. Lamb's Plaintiff  
25 Exhibit 1 -- the last sentence of her diagnostic, diagnosis

1 and conclusion is, and this is dated January -- June 8, 2018,  
2 at this time, the concern for physical abuse regarding  
3 Harmony's fractures is unable to be determined.

4 MS. BUTLER: Yes, Your Honor. Than -- then that ---

5 THE COURT: Dr. Lamb, negligent -- not going further  
6 and trying to determine whether it was abuse or not? Isn't  
7 it what you're saying? Is that what she is saying? That she  
8 can't determine whether there is any abuse?

9 MS. BUTLER: She does. She does say it. She's waiting  
10 on the forensic -- the safe passage -- passage forensic  
11 report.

12 THE COURT: All right.

13 MS. BUTLER: Yes, Your Honor. They also -- the  
14 Dickerson Children's Advocacy Center is another place that  
15 Harmony was taken to, and in Dickerson, Harmony -- you have  
16 disclosures in there. And they are -- and this was also  
17 after she was removed from both sets of foster parents and  
18 the relatives and she was taken to the Dickerson Children's  
19 Advocacy Center. And she was also taken to the Spartanburg  
20 Children's Advocacy Center, after she reported to her  
21 caseworker on July 19th, 2018, that Harmony stated that Ms.  
22 Dalsing, she reported this to Anastasia Booker that -- I  
23 apologize I don't see Ms. Booker's name in this one, but  
24 that's my recollection. She reported that -- it was stated  
25 that Harmony stated -- that Mr. Dalsing and Ms. Dalsing hit

1 her on her arms and head. Reporter states that Harmony had  
2 bruising when she entered the home of the foster parent on  
3 June 11th, 2018.

4 Now this is -- Judge, at the time that child was  
5 removed. So you have two other advocacy centers, Dickerson  
6 and Children's Advocacy Center who are documenting --  
7 particular document -- I'm gonna just go ahead and pass these  
8 up as the next Exhibits.

9 (Exhibit No. 3 marked for examination)

10 MS. BUTLER: The one for Dickerson Advocacy Center, it  
11 does start with what says, "an amended qualified protective  
12 order." So, it won't be clear that is what it is. But,  
13 (indiscernible) we just put that protective order. So, just  
14 for the opposing Counsel, we are actually passing up two  
15 different ones of Dickerson: one is the therapy session  
16 tracking sheets and has all the dictation notes, and the  
17 other says, "amended qualified protective order." Plaintiffs'  
18 Exhibits 3 and 4.

19 (Exhibit No. 4 marked for examination)

20 MS. BUTLER: So I am going to pass these Exhibits to  
21 the clerk, and pass these up to your Honor too.

22 THE COURT: All right. Thank you.

23 MR. DOVE: Your Honor, which one is which? Which one is  
24 3 and which one is 4?

25 MS. BUTLER: The one that says therapy session tracking

1 sheet.

2 MR. DOVE: Thank you.

3 MS. BUTLER: The next Exhibit I am going to pass up is  
4 also what Dickerson Children's Advocacy Center had documented  
5 by Harmony, which is entitled, "Learning About the Scary  
6 Things that Happened to Me." Plaintiff's Number 5.

7 (Exhibit No. 5 marked for examination)

8 I do have the other two children's advocacy center from  
9 Spartanburg. One is dated May 15, 2018. The other is dated  
10 November 9, 2018.

11 We will mark May 2018, as Number 6 and the one from  
12 November 2018 as Number 7.

13 (Exhibit No. 6 and No. 7 marked for examination)

14 Judge, in the case of -- the *Bass* case that I  
15 referenced earlier that was a Supreme Court case out of  
16 Fairfield County. There is a gross negligence standard  
17 discussion in there. I'm going to go ahead and pass that  
18 case out. And I'll mark as Plaintiffs' Exhibit 8 ---

19 (Exhibit No. 8 marked for examination)

20 THE COURT: That's all right. I can look at what you  
21 submitted as part of the record. Nicole, if you will hand me  
22 -- yes. Thank you.

23 MS. BUTLER: Okay. So the case of *Bass*. Those are the  
24 parents, Mr. and Ms. Bass, whose children were -- they were  
25 never removed from foster care in this -- in this case in a -

1 - even -- even though they were never removed from foster  
2 care, they were taken from the parents care under a safety  
3 plan type thing and allegations that the parents abused and  
4 neglected them after a pharmacy mixed the medications wrong.

5 Well -- and in the case as it proceeded forward, there  
6 were allegations by the parents of DSS's competency and  
7 negligence and gross negligence. And it went to the -- the  
8 case was presented to the jury, of course, to determine if  
9 there was -- if there was negligence, gross negligence on the  
10 part of the DSS. The jury made that determination and there  
11 was a verdict rendered.

12 Well, the DSS appealed to the Court of Appeals. So if  
13 we, and mine is numbered a little bit differently from yours,  
14 that is where the section starts at the bottom of page --  
15 it's page number -- where it says, "Ultimately the jury  
16 returned a verdict in favor of the petitioners awarding them  
17 damages. DSS subsequently filed motions for judgment,  
18 notwithstanding the verdict, and a new trial absolute, and to  
19 reduce the verdict."

20 Well, the next page starts up at a Court of Appeals --  
21 reversed the jury's verdict. They found that the trial court  
22 erred in not granting DSS's motions. It was then appealed by  
23 parents to the Supreme Court of South Carolina, and then the  
24 Supreme Court which is relevant for my discussion. The  
25 Supreme Court went on to give us a discussion of the law and

1 analysis on gross negligence when it pertains to DSS. So  
2 they go in. They do an inclusion of punitive damages -- was  
3 part of the parents' award, obviously for \$4 million to be  
4 awarded. The Court of Appeals erred, according to the --  
5 according to the Supreme Court, they get into some history,  
6 they talk about the evidence of gross negligence, that the  
7 jury could have found and then uphold the award of punitive  
8 damages.

9 They do go on to have an expert testimony discussion  
10 within the realm of that gross negligence argument. So for  
11 purposes of our discussion, I will ask you all to note that  
12 the *Harris Teeter* case that they were -- that the Court of  
13 Appeals has used in the reversal; the Supreme Court says,  
14 well, that was a professional malpractice case. This is a  
15 case where it's alleged that DSS breached its duty to  
16 children and parents. And so they distinguish that case in  
17 that way.

18 And they go on to say that the expert was being  
19 questioned, and there was a mixed question of law and fact.  
20 And the Supreme Court says, "Moreover, because there was  
21 other evidence in the record that DSS was grossly negligent.  
22 With respect to the post BP investigation, we found the Court  
23 of Appeals placed undue weight on the expert testimony."

24 A lot has been made as to the expert in our case, Your  
25 Honor. Our expert, as I told you in the beginning, she is

1 absolutely qualified on the lifelong impact of child abuse on  
2 the child. And she testified over and over and over again in  
3 her deposition that I think I'm handing up to you.

4 At Pages 19, 21, 22, 23, 29, just over and over all  
5 through the 50s, 113, 131, all through the 150s she testified  
6 over and over again about the abuse. She also -- she gave us  
7 a report. And in her report, she explained ---

8 (CROSSTALK)

9 THE COURT: Now explain to me. Help me, Ms. Butler --  
10 explain to me -- the *Bass* case was never a Family Court case,  
11 right?

12 MS. BUTLER: The DSS did not take that case to Family  
13 Court. That's correct.

14 THE COURT: This is a case where there's four years of  
15 judicial review in Family Court of everything, DSS, the child  
16 advocacy folks, guardian ad litem; there's four years of  
17 constant review, right?

18 MS. BUTLER: Yes. For those best interests of the  
19 child.

20 THE COURT: Right. For the best interest of the child.  
21 The *Bass* case, never had any Family Court involvement; is  
22 that right? I'm just trying to make sure --

23 MS. BUTLER: Oh, yes, sir.

24 THE COURT: Alright. Thank you.

25 MS. BUTLER: Yes, sir. The concept, your Honor, was

1 that the DSS was grossly negligent for what it did to the  
2 family and the child. And in this situation where the child  
3 was in DSS's custody for those four plus years, four and a  
4 half years.

5 THE COURT: I guess, where is it? I'm sorry. What I'm  
6 hung up on a little bit, is you're -- in essence, you're  
7 asking the Court to find that the Family Court abused their  
8 discretion for four years? But -- because they have the  
9 ultimate issue of the best interest of the child every time a  
10 child -- a case comes before them, isn't that right? A Family  
11 Court judge.

12 MS. BUTLER: Yes.

13 THE COURT: So do you believe there's an action against  
14 the Family Court judges for abusing their discretion, and  
15 that they were negligent, grossly negligent, and negligent  
16 per se because they didn't delve further into issues of the  
17 evidence of abuse or alleged abuse that was presented to  
18 them?

19 MS. BUTLER: No. DSS was the ones who were grossly  
20 negligent in presenting to the Family Court, every single  
21 hearing that this child is fine. This child is doing fine.

22 THE COURT: Isn't it true when they do that, it is not,  
23 that is not their ultimate decision. It's the Family Court's  
24 decision about whether to believe that or not.

25 MS. BUTLER: There was never a trial on the best

1 interests per se ---

2 THE COURT: Every order in Family Court, when there's a  
3 child involved, is -- has the overriding best interest  
4 regardless not just trial, but any motion. Anything else that  
5 is brought before the Family Court. Am I understanding that  
6 correctly?

7 MS. BUTLER: Absolutely, Your Honor.

8 THE COURT: All right.

9 MS. BUTLER: The Family Court is relying on the  
10 guardian, which is why it is important that the guardian be  
11 accurate in their report and as our expert has shown in the  
12 report, I am going to pass up as the next Exhibit. She gave  
13 them inconsistency of the guardians ad litem starting on Page  
14 Number 16 ---

15 MS. BURTON: Your Honor, I object to the guardian's  
16 report. Rule 56 says, "that the only evidence on summary  
17 judgment is that which would otherwise be admissible under  
18 the rules of evidence. An expert report is not ever  
19 admissible under the rules of evidence."

20 They can submit the lady's testimony as far as sworn  
21 testimony, it is admissible under Rule 803, they cannot  
22 submit an expert report at trial and to this Court. So I  
23 object to that.

24 THE COURT: Ms. Butler, do you have a response to the  
25 objection?

1 MS. BUTLER: Yes, Your Honor. The expert report was  
2 prepared in preparation for this trial. I don't think there  
3 is a blanket way that you just deny there was a report ever  
4 admissible.

5 THE COURT: Well, let's look at the rule.

6 MS. BURTON: Well, it's not -- it's hearsay. It's an  
7 out-of-court statement offered in court, prove truth to the  
8 matter (indiscernible). It's not a business record. There's  
9 no affidavit setting it forth it as a business record.

10 THE COURT: I understand the basis for it not coming in  
11 as evidence. Ms. Butler is indicating there is not a blanket  
12 rule against it coming in -- so let's look at the rule.

13 MS. BUTLER: Because it is an Exhibit to the  
14 deposition.

15 THE COURT: I am sorry, tell me again the rule. Ms.  
16 Burton --

17 MS. BURTON: You're talking about the summary judgement  
18 rule or rule of evidence?

19 THE COURT: Summary judgment rule.

20 MS. BURTON: 56.

21 (CROSSTALK)

22 THE COURT: Tell me again, what it is you're trying to  
23 introduce for this hearing, Ms. Butler?

24 MS. BUTLER: That the report of the expert which  
25 documents the guardian ad litem's inconsistencies. That it

1 would help your Honor to understand. So, they attack the  
2 expert and her abilities. Her report clearly outlines what  
3 she had found. It is a summary -- a distinct summary of what  
4 she has found in this case. Very helpful to Your Honor in  
5 the issue before you, Judge.

6 THE COURT: That -- that report has not been a part of  
7 any proceeding up to this point; is that right?

8 MS. BUTLER: It's been provided as Plaintiff's bates  
9 label [Indiscernible].

10 THE COURT: I'm sorry; it's been what?

11 MS. BUTLER: I'm sorry. The label is 4163. It's been  
12 provided for a very long time.

13 THE COURT: All right. I will let it in. Let me see  
14 it.

15 MS. BUTLER: Thank you, Your Honor. This is  
16 Plaintiff's Number 9.

17 (Exhibit No. 9 marked for examination)

18 THE COURT: Let me ask you this. It's a quarter till  
19 12:00. We got as much time as we need. This is a summary  
20 judgment motion, your -- you continue to hand up lots of  
21 material. Probably 1000s of pages, and I don't know that we  
22 need to necessarily go through every thing point by point.

23 Maybe you can kind of summarize where you are as to  
24 your objection to the summary judgment motion.

25 I think we have gotten so far at this, that you believe

1 there's enough in the record of what has happened in the  
2 DSS's records, that there is a scintilla of evidence that  
3 there's negligence on their part. I'm just making the  
4 argument, that that's your argument; is that correct?

5 That summary judgment being improper. I don't know.  
6 And I'll let you do whatever you need to put on the record.  
7 But we need to move on. We've got until about one o'clock  
8 and if we need to finish after lunch, we'll do that. But  
9 let's take a 10 minute break.

10 (A recess was had)

11 THE COURT: Ms. Butler, I will be glad to hear from  
12 you.

13 MS. BUTLER: Thank you, your Honor. Just two more  
14 things. I am going to enter next as Plaintiff's Number 10.  
15 Your Honor. Counsel. It's just the final decree of the  
16 adoption. This just shows that the adoption took place on  
17 January 23, 2019, which is when the Plaintiff would have  
18 gained standing for filing this action.

19 And then I am going to enter Plaintiff's Number 11.  
20 Photographs of Harmony's injuries documented all the way back  
21 to October of 2014. These were photographs that were sent to  
22 -- part of the DSS's file actually submitted in Dalsings'  
23 production during discovery. So, they are all labeled,  
24 Dalsing Production at the bottom, and at the top they have  
25 the date, they have who took the picture, and they have what

1 the injury was to Harmony -- what part of her body. And that  
2 is Exhibit -- I will mark it collectively as Exhibit 11. It's  
3 all the way from Page 98 to Page 200. And I conclude with  
4 that, your Honor. Thank you.

5 (Exhibits No. 10 and No. 11 marked for identification)

6 THE COURT: When you say, Conclude, you have nothing  
7 further as far as your motion for summary judgement as to DSS  
8 and South Carolina Children's Advocacy Center?

9 MS. BUTLER: Yes, your Honor. Thank you.

10 THE COURT: All right. Mr. Dove, do you wish to weigh  
11 in on this particular motion? Or Mr. Smith?

12 (CROSSTALK)

13 MR. SMITH: We don't your Honor. We have our own motion  
14 for summary judgement, which we will just piggy back off of  
15 all these from the same parties.

16 THE COURT: Okay.

17 MR. DOVE: We, I actually -- I think -- We didn't  
18 discuss that when we discussed the other ones. I think -- I  
19 would bring a couple of matters to the Court's attention.  
20 Probably going in reverse order. I think the Court's question  
21 on the *Bass* case was an excellent question. About the issue  
22 not being brought before the Family Court, but also I would  
23 say that Ms. Butler had argued that (indiscernible) damages.  
24 And that issue could be allowed to -- come before this court  
25 -- that issue was already in front of the Family Court every

1 single time. For the -- and I calculated for four and half  
2 years over 1600 days. For over 1600 days, the issue of what  
3 was in the best interest of the child and whether DSS was  
4 doing its job or not, was consistently before the Court.  
5 Every time based upon, I guess practice, but also federal  
6 statute that governs Title 40 funding. There are certain  
7 findings that Family Court has to make. And one of those  
8 findings is basically whether the care giver and DSS in South  
9 Carolina -- are they doing right by the child? Is the best  
10 interest of the child being protected while the child is in  
11 DSS's care? So, that issue is literally before the Family  
12 Court for every single day from August of 2013, until after  
13 the adoption was over.

14 In these cases, your Honor, when a child comes into  
15 care based upon a court order in the Family Court we would  
16 call that a "removal action." That "removal action" is what  
17 gave Family Court jurisdiction to put the child in DSS's  
18 custody. That removal action, even though the TPRs that were  
19 filed and other actions by parties or whatever, that removal  
20 action continued on continuously until after the adoption was  
21 over. That removal action. And so I would say one of the  
22 things that is there is the administrative -- well, let me  
23 finish on the *Bass* case. So, in the *Bass* case you didn't have  
24 that (indiscernible). On top of that, there is no evidence  
25 these people were parties to any underlying case. And that is

1 the difference between -- the question you ask as to whether  
2 are you going to re-litigate every single case where adoptive  
3 parents adopt a child. Well, no you wouldn't re-litigate it.

4 There may be a case where these people or parties  
5 didn't have any information about what happened in Family  
6 Court. Once they adopted, they found out this information. I  
7 can see that. That's not this case.

8 The people that are important, they tried to advance  
9 the cause when in court. We're in that court action for over  
10 1600 days. They could have brought this to the attention of  
11 the Family Court anytime they wanted to and they didn't. That  
12 was one of the big differences in the Family Court case.

13 One of the other things, I think -- because I have  
14 lived this case. You asked Ms. Butler a question, when she  
15 had Dr. Lamb's report that was the doctor who came in and was  
16 being represented. It was after the case was over. It wasn't  
17 presented to the Family Court. It wasn't presented to DSS. It  
18 wasn't anything in the purview of the case that -- her  
19 clients were in. That is not true.

20 Look at the (indiscernible). The date she did that  
21 exam would have been somewhere in April of 2018. Maybe May of  
22 2018. The Supreme Court made its decision January 3rd, 2018.  
23 That's when the Supreme Court said, "the Dalsings had  
24 standing." At that point, then Ms. Butler filed her own  
25 action for termination of parental rights. Excuse me, for

1 adoption. She filed her own action on behalf of the  
2 Armstrongs for adoption of the child.

3           So at that time, it was an action for adoption of the  
4 child by the Armstrongs. There was action for TPR adoption  
5 that the Dalsings had filed in the first part June of 2014.  
6 Those two cases were now active. And the Family Court said,  
7 "We're going to try these two cases because that is what the  
8 Supreme Court said." The Supreme Court ruled that the  
9 Dalsings had standing. They should have been allowed to try  
10 their case and adopt this child back in 2015, when Judge Cory  
11 granted TPR. We participated in that as soon as we got TPR of  
12 the birth parents. Then she kicked us out and said, "We  
13 didn't have standing."

14           The Supreme Court corrected that. Said they were going  
15 to have a hearing on whether or not. So, the Court then said,  
16 "there is going to be a head to head conflict between these  
17 parties." We all agreed to that. And so that is where we were  
18 going. And then Ms. Butler sends a letter that she references  
19 -- she sends a letter in March of 2018, with a whole bunch of  
20 allegations asking for a forensic interview. The forensic  
21 interview was held, and Dr. Lamb reviews the forensic  
22 interview and (indiscernible) the pictures. The child was  
23 removed from both parties at the beginning of June of 2018.  
24 The child stayed out of the homes of both parties from then  
25 until the first part of August, when there was a second

1 forensic interview done. During that period of time the child  
2 is out of both homes, but the removal action is still going  
3 on.

4 DSS investigates whatever the complaints are. So, the  
5 only allegations that are founded -- that DSS did -- are  
6 founded -- founded -- were against Ms. Dalsing. That  
7 continued on to Administrative Court -- which -- at the same  
8 time the removal action is going on. Then the Administrative  
9 Court has a several day trial. Dr. Lamb's report and Dr. Lamb  
10 testified. She testified. We got the transcript right here.  
11 We would be happy to present that. All the parties have it.

12 So, she testified at that hearing, and it was at that  
13 hearing that DSS's counsel read the report. We don't have  
14 probable cause to pursue this. And they stopped. So, DSS  
15 considered the very report that she handed up with  
16 representations that were made, that it wasn't considered. It  
17 was considered. They had access to it and the parties took  
18 removal action. The discovery rights for removal action. They  
19 participated in the DSS removal cases until after the  
20 adoption was done in 2019. So, that has been before the Court  
21 already as well.

22 (Indiscernible) I believe Ms. Burton's -- summary of  
23 the facts and the status of law is accurate. One of the  
24 things that has been complained about, and she pointed that  
25 out, by the Plaintiffs in this case, is that when DSS learned

1 about the Armstrongs -- the child came in here in August of  
2 2013. When DSS learned about the Armstrongs in April of 2014.  
3 Then in the hearing, we all learned about it on June 4th of  
4 2014, and shortly after that both of those became intervening  
5 parties in the removal action. We got a removal action and  
6 the Armstrongs got a removal action.

7 So, starting then, on the June 4th hearing of 2014,  
8 everybody knew who the parties -- everybody knew shortly  
9 after that about the intervening parties and the ability to  
10 do it.

11 The part of the complaint the Plaintiffs have made is  
12 that the Dalsings were wrong in not just turning the child  
13 over. It wasn't up to them to turn the child over. They as  
14 foster parents have a contractual relationship with the  
15 Department of Social Services. That was the Family Court and  
16 DSS that was doing that. They have their right to bring their  
17 action for TPR and adoption. The Supreme Court  
18 (indiscernible). And also, your Honor, at the time there is a  
19 statute. We talked about the Foster Care Review Board, but  
20 there is a statute and I want to bring this to everyone's  
21 attention: 63-11-720, 63-11-720(a)5 and here is the perfect  
22 portion of (a)5: "It is the duty of the Foster Care Review  
23 Board -- it is the duty of the Foster Care Review Board to  
24 advise foster parents of their right to petition Family Court  
25 for the termination of parental rights and adoption." And not

1 only to advise, but it goes on," and encourage those foster  
2 parents to initiate proceedings in the appropriate case when  
3 it has been determined by the local Foster Care Review Board,  
4 that return to the natural parent is not in the best interest  
5 of the child." And the parties knew the Foster Care Review  
6 Board had already made a recommendation for TPR and adoption.

7 And so when the Dalsings filed their action in June of  
8 2014, the Foster Care Review Board had already made its  
9 determination. And they had a statutory duty to inform the  
10 Dalsings that they have the right to bring a TPR and adoption  
11 action. And to encourage them to do it. And the Dalsings did.

12 And one further thing that will be referenced in the  
13 timeline that Ms. Burton presented, was that at the beginning  
14 of February of 2014, before the Dalsings brought their  
15 action, the Family Court had determined that the permanent  
16 plan for the child was TPR and adoption. The Family Court  
17 had issued an order. So, at the time the Dalsings filed their  
18 action for adoption, the Family Court had ordered TPR and  
19 adoption, the Foster Care Review Board had found and  
20 recommended TPR and adoption, and the Dalsings had been  
21 encouraged to bring an actionable TPR and adoption, in which  
22 they did.

23 Then the Supreme Court ultimately said, "Well, oh yeh,  
24 they did have the right to do that." And, so, the timing of  
25 this case -- the point -- the point has been made -- I just

1 wanted to put an exclamation point that it is absolutely  
2 correct. There is not one fact of injury that came after the  
3 child was removed from the Dalsings' home in January of 2018.  
4 There is nothing before this Court that is going to be  
5 presented before this court of any issue of fact or any  
6 injury the Dalsings -- either one of them -- had with this  
7 child, that would have occurred before the child was removed  
8 from them; never returned to their home.

9 So every one of those things were referred to DSS or  
10 investigated by DSS -- were subject to be -- were looked at  
11 in the Administrative trial. All of them were subject to  
12 bring to the attention of the Family Court judge in the  
13 ongoing removal action, which continued until the adoption  
14 action was over.

15 And one note on the complaint that was handed up --  
16 excuse me the order. Let me what there is on the order. Ok.

17 THE COURT: Well, let me do this. It sounds like  
18 you're also sort of moving off into your motion of summary  
19 judgments. Let me wrap up, make sure we wrapped up on the  
20 summary judgment as to DSS and Children's Advocacy.

21 MR. DOVE: Yes.

22 THE COURT: I keep getting them -- calling them the  
23 wrong thing. Department of Children's Advocacy. I think we've  
24 concluded everything that the Court needs to hear to make a  
25 decision on that. And that has been provided. So let's move

1 on. What is remaining? Mr. Dove? Y'all have -- y'all  
2 motions for summary judgment and then what else?

3 MR. SMITH: I think that it is, your Honor. Just our  
4 motion.

5 THE COURT: Okay. All right. That's the last thing we  
6 have? Y'all would agree to that?

7 MS. BURTON: Yes, your Honor.

8 THE COURT: At this point -- Mr. Smith, I'll be glad to  
9 hear you on defendant's motion for summary judgment.

10 MR. SMITH: And just for the record, your Honor, is it  
11 permissible if -- to the extent Mr. Dove, with this since  
12 2014, needs to interject and add a few things to the end  
13 about some history. Can we both speak if we need to? I don't  
14 want to (indiscernible).

15 MS. BUTLER: If I may? They tried that during  
16 depositions, your Honor. You might remember --

17 THE COURT: Obviously, the general rule would confine  
18 one lawyer for arguing. You can certainly -- I will give you  
19 an opportunity to pause, and you can consult with Mr. Dove.  
20 If you need to speak after consulting with him, we will do  
21 that. Just one lawyer.

22 MR. SMITH: That's fine.

23 THE COURT: Mr. Dove.

24 MR. DOVE: I would just like to address -- I hear your  
25 ruling. I understand it. I believe at the end of the

1 argument, when the issue comes up about bankruptcy, there is  
2 going to be a divergence then between counsel representing  
3 the Dalsings individually versus Counsel representing the  
4 insurance carrier. I mean there is going to be an actual  
5 divergence. I just want to tip you off about that, because I  
6 think --

7 THE COURT: Okay. We will deal with that --

8 MR. DOVE: We should be able to revisit that issue --

9 THE COURT: Again, Mr. Smith, you're here on behalf of  
10 the Dalsings, but you're also here in a role as insurance ---

11 MR. SMITH: (Indiscernible) insurance, but yes, your  
12 Honor, I represent the Dalsings.

13 THE COURT: All right. Mr. Smith, if you're ready to  
14 be heard.

15 MR. SMITH: Yes, Your Honor. May it please the Court.  
16 Chris Smith here for Tammy and Haywood Dalsing. I think the  
17 facts have been hashed as the need to be for the most part  
18 for this hearing. So, I would incorporate what Ms. Burton has  
19 already argued. I would incorporate what is in my lengthy  
20 memorandum in support of summary judgment and the 20-plus  
21 exhibits that were submitted to Court. I don't know if you  
22 have had a chance to review those, your Honor. I may hand up  
23 a couple of small documents today that were previously marked  
24 as part of that memo.

25 But our arguments are very similar to what DSS's are on

1 many issues. Then we have a few extras. Similarities are the  
2 collateral estoppel, judicial estoppel, and (indiscernible).  
3 Essentially, (indiscernible) of this entire case, all this  
4 has been heavily litigated. We have identical issues and in  
5 many instances we have identical parties, and all these were  
6 fully and fairly litigated. Standard was the same as to the  
7 preponderance of the evidence. I am aware of cases where  
8 there is an ongoing criminal case and civil case, but I'm not  
9 aware of one where there was not a finding in the criminal  
10 case that helps support the civil case or they were going off  
11 it contemporaneously. So, yes, if someone shot someone  
12 they'd be criminally convicted for that shooting, but also be  
13 civilly liable for that person. But what we have here are  
14 rulings in an administrative tribunal, full DSS  
15 investigations, full opportunities to raise these issues with  
16 the Family Court where you have no findings of abuse rulings  
17 by administrative tribunal, and no findings of abuse, and that  
18 is in Exhibit 14, your Honor. And I will hand those up. I  
19 have two orders: One from Ms. Dalsing and one to Ms. Dalsing,  
20 where there's a ruling, and Ms. Dalsing was actually there at  
21 the hearing that Mr. Dove spoke of earlier where Dr. Lamb was  
22 questioned at length for hours, and also the director of  
23 OHAN, Louise Cooper, [phonetic] was questioned at length for  
24 hours and then the decision was made to drop the case.

25 At that point, quite honestly, I think the next

1 witnesses to testify in that hearing would have been Mr. and  
2 Ms. Armstrong. The Dalsings were also set to testify, but  
3 there was no preponderance of the evidence, Your Honor. And  
4 there is still not any evidence. Even if they somehow got  
5 past all of these "gestapo" arguments, and issue preclusion  
6 and claim preclusion and were able to get this to a court.  
7 They still don't have any evidence.

8           The have Dr. Lamb saying, "their eight photos I've  
9 found suspicious" and I also find some concerns with the  
10 record from pediatricians where the Dalsings took Harmony to  
11 the doctor and those concerns were by the Armstrongs. DSS  
12 fully investigated all of those issues and there has never  
13 been any evidence that actually points to someone  
14 specifically actually harming -- harming Harmony or any  
15 evidence pointing to one of the Dalsings being in the room  
16 and failing to stop some harm if they did it themselves.

17           There are some videos, and I have submitted the full  
18 videos to your Honor, and tried to enter some time stamps to  
19 condense your time down. I actually have condensed versions  
20 of the videos. There is one in that very first hearing -- or  
21 excuse me -- interview that was done in April of '18. After  
22 Ms. Butler wrote a letter that suggested three broken arms.

23           I don't know I'd say it, but gives you inference that  
24 all three happened in our home. The first one actually  
25 happened in the Armstrongs' home. And they didn't report it

1 for two days, but then they're trying to blur lines, and  
2 there's this inference of sexual abuse from scratches to the  
3 inner thigh that are a known yeast infection that was  
4 diagnosed -- that Dr. Lamb dismissed all that as well. Didn't  
5 have any concern of any of those issues.

6 But there was this agenda. We don't want an arm's  
7 length trial because we can't risk losing this child. We  
8 never anticipated that the Supreme Court would rule that they  
9 have the standing to proceed with adoption.

10 So, let's take action to make sure this -- that we  
11 never have to go to trial on that issue. And so you escalate  
12 the abuse allegations, you get an investigation, and one  
13 thing that went forward on Ms. Dalsing was the statement by  
14 Harmony that she was hit in the face. Even Harmony, as a  
15 child who had been delivered to that interview by the  
16 Armstrongs, that she said, "Someone talked to her about what  
17 was going to go on" and didn't really go into detail from  
18 there.

19 Says, "She's hit all over her face, all over her body."  
20 She is being kind of silly about it, but here's no marks on  
21 her body from that. But there are two separate recorded  
22 interviews of Harmony after that April 2018 interview. And  
23 one of those done in May, and one is a forensic interview  
24 done in August.

25 That one in May, she goes as far as saying and this is

1 -- the timing of that is critical and who's doing it matters  
2 as well. She puts -- goes through this exercise where she  
3 puts people on a good side or bad side. Harmony puts Tammy  
4 Dalsing on the good side and says she never does anything  
5 wrong. She says, "She may tell her to shush it." She even  
6 denies that she puts her in time-out, which was a statement  
7 previously made. If the only actual evidence in this case,  
8 outside photos of bruises where there is a home with eight  
9 kids and dogs. There is a tripping over a dog that causes a  
10 broken bone. She talks about that.

11           You can tell that there's some conflict and dislike  
12 between the siblings, but that's not something worthy of  
13 bringing the case about. She says Tammy Dalsing is on the  
14 good side, all good no bad, that's it. 23:15 through 24:20  
15 on the time stamps on the video from the May interview. Part  
16 one of that interview. There is even case law out there, that  
17 says you can't create a general issue of material fact, with  
18 a conflicting version of your own statements. This isn't  
19 intentional by a child to do that, but this is what the  
20 adults are trying to do.

21           But all this evidence was there, available. Ms. Butler  
22 had initiated this investigating. Her clients took the child  
23 to the interview with Dr. Lamb for that -- which included a  
24 vaginal exam, your Honor. And they filled out the  
25 questionnaire and put forth the narrative that these folks,

1 being the Dalsings, are abusing her.

2 All of that was investigated. They had -- they -- they  
3 had the records. It's my understanding, they had the Dr.  
4 Lamb report within days of it being completed. There's some  
5 narrative about that in the records. They could of taken that  
6 to the Family Court, at any time. They could of taken DSS to  
7 task through the Family Court if they felt like DSS was not  
8 acting in the best interest of the child. But all those  
9 actions actually got the child removed from both homes and  
10 investigations were conducted.

11 Ultimately, there was a hearing. And, your Honor, if I  
12 may approach just to hand up these two orders to dismiss that  
13 -- actually make a ruling at the Administrative hearing that  
14 there is no preponderance of the evidence of abuse. And the  
15 case law cited in my memo, your Honor, specifically says that  
16 collateral estoppel applies in Administrative hearings, as  
17 well if there has been a full-and-fair litigation of the  
18 issues.

19 If the Armstrongs, who were present and prepared to  
20 testify their own testimony in this case was they expected to  
21 testify at that hearing with Ms. Dalsing, that they could  
22 have appealed that outcome if they did not like it. They did  
23 not appeal that. They did not challenge that in any way.

24 Their agenda at that time was to prevail and end up  
25 with the child. And they succeeded with that and now this is

1 a "twisting of a knife" to try and sue for civil damages,  
2 impermissibly, and their -- shockingly, their deposition  
3 testimony was, we want our attorney's fees from the Family  
4 Court action -- and we're angry that a foster family didn't  
5 hand this kid over as soon as we were identified. And we want  
6 damages for that.

7 Well, that's not recoverable. The statute of  
8 limitations, just as Ms. Burton has argued, bars the  
9 Plaintiff. I have a three year statute, not two year because  
10 I'm not under Tort Claims Act. But still, the parents these  
11 are the same actions that started in 2014, 2015. All that's  
12 barred. These suits filed many years later.

13 They have no probable (indiscernible) cause of action  
14 that they can get to a jury. I got a letter here, Your  
15 Honor, and it was -- it's Exhibit 17 in my memo, but there is  
16 no avenue for attorney's fees in this case. Even if there  
17 were and it was the attorney's fees from the Family Court  
18 action, the judge in that case, gave the parties a deadline  
19 to submit their attorney's fee and seek those. And Ms.  
20 Butler, I will concede that my copy is unsigned, but in  
21 discovery on November 16 of 2018, there's a letter from Ms.  
22 Butler to Judge Tony Jones that says she specifically waives  
23 her attorney's fee contingent upon Mr. Dove doing the same.  
24 They had a chance to sue for attorneys' fees if they wanted  
25 to in the Family Court and they waive those.

1           The big issues -- and I know Mr. Dove says there is a  
2     divergence, there could be, but the bankruptcy is another  
3     issue we put it front and center in our answering and counter  
4     claim. One of our first defenses was all the stop  
5     (indiscernible) arguments. We put that front and center.  
6     Counter claims, collusion, issue for collusion  
7     (indiscernible) all that is right there. But we actually  
8     inserted the bankruptcy case number -- and plead as a  
9     affirmative defense that the bankruptcy bars this action.

10           Ms. Dalsing testified that she knew of this bankruptcy,  
11     the existence of it. Before they filed their civil suit. She  
12     knew what was going on. There is a suspicious timing of  
13     their initial complaint being filed about 20 days after this  
14     bankruptcy action ended.

15           All this suggests that, okay, we want the bankruptcy to  
16     end, we won't be barred by it. It seems to be the mindset.  
17     The case I have cited. The *Enroy Bearden* (phonetic) case in  
18     our memo specifically says, if there is a pleading that says  
19     this is barred by bankruptcy, you immediately have to take  
20     this to the district courts and bankruptcy court, and get a  
21     ruling on this issue. Failure to do so you, you incur  
22     attorneys' fees, from the time of that pleading through the  
23     answer, for that.

24           I'm not here to ask for attorney's fees. Mr. Dove may  
25     be -- I just want this case to end. It is just vindictive. My

1 folks made a decision. They have 8 to 7 kids in their home  
2 now. This is never going to end. It is going to continue to  
3 escalate. Let's walk away, as hard as this will be, because  
4 at the time the Armstrongs even surfaced, Harmony had been in  
5 their home, I think about 15 months or so. Maybe I am off a  
6 couple months. (Indiscernible) But they had grown very  
7 attached to her, even though they have lots of other kids,  
8 some adopted, some biological.

9 They were planning on adopting her as well. And they  
10 moved forward with the rest of their family. Some of the kids  
11 are adults. Some are still -- actually a couple are right at  
12 Harmony's age in that 10 to 11 age frame. No issues  
13 whatsoever. No allegations of abuse by anyone. No harm to any  
14 kids. No harm by any adult kids to any kids. This is a  
15 manufactured narrative to try to win a child. And now they  
16 are trying to get their attorneys' fees back, which they  
17 can't do.

18 In my memo, I go into great detail about the factual  
19 issues that they have no evidence. Even if all that's off  
20 the table, to actually show abuse of Harmony. Their expert is  
21 not qualified. She regurgitates a few things from Dr. Lamb's  
22 report and from other records.

23 But her entire expertise and her personal life  
24 experience that she brings it to her expertise is about the  
25 separation of kids, and in particular, splitting families

1 into separate foster homes. And I happen to see a video on  
2 YouTube that she presented out there, that these are things  
3 that happened to her as a child. This is like her life's  
4 work. The harm caused by separating kids.

5 That's not what's happening here. But we often see  
6 that having Harmony go between the Armstrongs and the  
7 Dalsings weekdays versus weekends probably wasn't the most  
8 ideal situation, but that's what the court ordered.

9 And in Footnote 3 of the *South Carolina Department*  
10 *Social Services v Bolware* (phonetic) case, 422-SC-1, that is  
11 the Supreme Court Ruling in this case. The Supreme Court  
12 dropped the footnote, "The Family Court ruling at the hearing  
13 that the child should remain with the petitioners until  
14 further hearings, but permit aunt and uncle supervised  
15 weekend visitation with the child. The parties subsequently  
16 agreed the child would spend Monday through Thursday each  
17 week with the petitioner, and then visit aunt and uncle  
18 Friday through Sunday each week. These living arrangements  
19 are still in effect."

20 The Supreme Court decision acknowledges the agreement  
21 between the parties about the custody of the child. The  
22 Supreme Court decision acknowledges that the Dalsings have  
23 standing to pursue adoption of Harmony, and so that wipes out  
24 any of these allegations that they should have acted  
25 differently.

1           Between the ongoing Family Court action, the subsequent  
2 OHAN investigations, and the founded investigation that went  
3 all the way through the administrative hearing that that, Mr.  
4 Dove was correct -- that had multiple days of testimony  
5 before the case was called off -- the recordings of those  
6 hearings have been produced from -- from early discovery in  
7 this case, and we've subsequently asked for those recordings  
8 to be transcribed so we can have a transcription of that. And  
9 from what I recall, that has come in the last day or two. I  
10 think I saw it yesterday for the first time, your Honor.

11           And we have that, if, your Honor, would like to see the  
12 amount of questioning that not only the department attorney  
13 put Dr. Lamb through, but the extensive cross examination,  
14 attacking not Dr. Lamb's credibility because she's a very  
15 creditable doctor and she stays within her lane, but all she  
16 could ultimately say were "8 photos caused me some concern,  
17 and now I need more information."

18           There was no evidence linking any of those 8 photos to  
19 any specific person. And there's no evidence suggesting that  
20 Ms. Dalsing was involved in causing harm or not -- or failing  
21 to do something about that harm. And in fact, in one of  
22 these recordings with Harmony being interviewed, she concedes  
23 that one of the other children would do something to upset  
24 her, hit her on the arm, or fight over a toy, Mr. Dalsing,  
25 when he was present, stepped in and said, "Don't do that."

1 And he reprimanded them, stopped them from doing it. The  
2 older sister would do that, Hannah, in the home and so would  
3 Ms. Dalsing too. If anyone was present, they're not letting  
4 their kids run amok and harm one another.

5 And if you look at the photos, that's why I submitted  
6 them. I wanted you to see their best case, as part of my  
7 motion. These photos shows minimal bruises, that if that's  
8 the standard of abuse, I submit to you, someone should take  
9 my kids right now for letting them play sports. They got more  
10 bruises than that at the moment. And I understand that  
11 that's a younger child, but we are in a home with eight  
12 children and dogs, one of the broken arms happens by crawling  
13 over a play gate -- one of those playpen-type of gates or  
14 barriers between rooms.

15 And there's just simply no evidence that Mr. or Ms.  
16 Dalsing actually abused this child. And once again, the  
17 adult Armstrongs have no causes of action that are viable  
18 against the Dalsings. There is no duty there, and as a  
19 result, there can be no breach, and they have no damages.

20 In fact, when we asked about damages in this case,  
21 there have been no medical bills submitted. There has been no  
22 suggestion of actual harm other than their attorney's fees  
23 and their anger of failing to turn the kid over. And in  
24 fact, Ms. Armstrong testified in her deposition about the  
25 foster parent that housed Harmony when she was removed from

1 the Armstrongs and the Dalsings. She was a proper foster  
2 parent, I'm paraphrasing, because she didn't try to keep my  
3 child.

4 And so there's this mindset that even though they are a  
5 great uncle and spouse of Harmony, who only encountered the  
6 child once at Walmart to learn she existed and that she was  
7 in the world. That because they were some distant blood  
8 relative, they were entitled to this child 18 months down the  
9 road, after the child had been removed from -- from -- the  
10 home where the meth was cooked and the diaper wasn't changed.

11 The one part that hadn't been discussed at all is that  
12 there is severe developmental deficiencies when a child is  
13 placed in the corner and ignored while the parents cooked  
14 meth.

15 So the child was extremely behind on speech, she was  
16 extremely behind on motor skills. It was Ms. Dalsing who  
17 took her and realized these things number one, but she's got  
18 seven other kids in the home. I'm not measuring that, but  
19 she's not supposed to be a prodigy, but she's not hitting  
20 benchmarks that that I have seen with my other kids. She  
21 sought out a doctor, got her all these therapies she was  
22 taking her, Armstrongs didn't even know that was existing.  
23 And they have no concept of the idea that a child was  
24 basically fifth-percentile, I think that's the number, it's  
25 either the third or fifth-percentile. That there are 95% or

1 more of other kids out there, that walk better, talk better,  
2 and there is -- has been this concept -- and Mr. Dove took  
3 Dr. Lamb to task on this in that Administrative hearing.

4 How can you ignore these deficiencies and the  
5 explanation that someone in these records talks about her  
6 gait issues, her repeated falling. There's a depth  
7 perception issue. How can you not indicate that this may  
8 have something to do with bruising the child has? And she  
9 talks through that and tries to say that it was mild, even  
10 though it was in the fifth-percentile categorization. Maybe  
11 her definition of mild and mine are different. But I didn't  
12 see that -- I didn't understand that at all, your Honor. So  
13 we are here today -- all my arguments are set forth in my  
14 memorandum.

15 And this entire case -- forget -- even if abuse did  
16 occur, it is all barred. It was all litigated and found not  
17 to have occurred, and they did not appeal that. That's the  
18 ruling in the admin hearing. They never raised it to the  
19 Family Court -- were -- and that's the other testimony.  
20 Pictures were taken essentially almost every weekend, by the  
21 Armstrongs. They were documenting alleged abuse every time  
22 they had this child. If there had been actual abuse going  
23 on, and I've been in cases where I've seen actual abuse, the  
24 birth parents, that actual abuse, entirely neglecting the  
25 child while cooking meth in her presence and have meth in her

1 system. That's abuse.

2 But trying to gain favor with the child by documenting  
3 every bruise -- and I know attorney Dove has taken issue with  
4 the fact that they would have to go through this narrative  
5 and explain to a child who is 5, 6, 7 why they are unclothing  
6 the child to take pictures. What harm could that have done?  
7 Take all that -- assume every bruise is actual abuse, they  
8 can't tell you who caused it, when it happened, and they  
9 can't tie it to my clients, and all those are barred by the  
10 underlying action.

11 Then again we have this bankruptcy action. The law is  
12 extremely clear on this. This was discharged. I know -- I  
13 can't introduce evidence of what happened at mediation at  
14 trial, but I can tell, your Honor, about it. There's a  
15 coverage attorney at this mediation. They're saying there is  
16 no coverage. These folks are asking for millions of dollars,  
17 above and beyond all coverage available to every defendant in  
18 the case. Millions of dollars based on the pictures of  
19 bruises you see.

20 This is a personal case against the Dalsings. This is  
21 not about insurance coverage. There's no way to argue that  
22 that insurance applies, and that's all their after, and it's  
23 not discharged by bankruptcy. That's the only argument that  
24 I can anticipate they can try and argue on bankruptcy. This  
25 was an absolute discharge, and I cited the code section that

1 says, "If you have actual knowledge of it and fail to do  
2 anything about it -- even though you are not a listed  
3 creditor your claim is barred." The testimony, actual  
4 knowledge, and they filed their action, this case, right  
5 after the bankruptcy case ended.

6 So I'll rest there, Your Honor. It's all in the memos  
7 and in the 17 exhibits. And actually I think my co-counsel  
8 wants me to take a brief moment. I have -- I have put  
9 everything they could rely upon, that I thought could suggest  
10 abuse out there. I also -- I've also got videos I can even  
11 play, in short one and two minute sections, if you like to  
12 hear, your Honor, what she says that Ms. Dalsing is good and  
13 has not ever done anything to her.

14 THE COURT: All right. I have looked at the record and  
15 what's been provided.

16 MR. DOVE: (Indiscernible)

17 THE COURT: I will give you a second to confer.

18 MR. SMITH: Thank you, your Honor, for that. And Your  
19 Honor, just a couple of extras -- I know Mr. Dove just wants  
20 to talk about a couple of bankruptcy issues briefly. Number  
21 one, all the rules in bankruptcy court require that you act  
22 within a reasonable time, and arguably several  
23 [indiscernible] a reasonable time should be within a year of  
24 the actual order of dismissal of the action. And that was, I  
25 believe, in February of 2020.

1           Your Honor, definitely within a year of notice in our  
2 actual pleading. Our answer and counterclaim came which was a  
3 few months later, your Honor. It was -- May 20 of 2020. And  
4 we are now three years beyond that date, your Honor. And no  
5 action had been taken on the notice of bankruptcy action. And  
6 I would submit rested on the rights (indiscernible) and the  
7 case should be dismissed based on that grounds.

8           Separately, one additional argument was that the  
9 Dalsings actually moved to dismiss their case, when they were  
10 waving the white flag, as Attorney Stephanie Burton said, and  
11 walked away.

12           Attorney Melinda Butler objected during that hearing  
13 and raised essentially every issue that is before the Court  
14 today, put everything in front of Judge Tony Jones that that  
15 is the basis of this suit.

16           So, your Honor, that -- that alone shows that they were  
17 aware of the information, they put it all out there, and it  
18 was in front of the Family Court and they could have taken  
19 appropriate action if they did not like Judge Jones ruling.

20           And the last part of my memorandum, asked for in the  
21 event that you do not dismiss the case in its entirety. That  
22 you address the specific issues individually, at least, and  
23 I'm not conceding anything. I believe this entire case should  
24 go away. Whether there is a ruling that there be no claim to  
25 attorneys' fees. There's no viable cause for action for

1 failing to hand the child over. I would just like to narrow  
2 the scope of this case as much as we can, your Honor. If  
3 you're not inclined to grant the entire motion. That's all I  
4 have, your Honor.

5 THE COURT: All right. Thank you. All right, Ms.  
6 Butler.

7 MS. BUTLER: Thank you, your Honor.

8 THE COURT: Just factually, help me understand. The  
9 Armstrongs have been referred to as the child's aunt and  
10 uncle. But what's the biological relationship between? In  
11 other words is it through the mother or her father?

12 MS. BUTLER: The paternal father. The biological  
13 father.

14 THE COURT: The biological father is whose nephew?

15 MS. BUTLER: Mr. Armstrong's sister is the grandma of  
16 the child. She had passed with lupus a couple years before  
17 this happened with the child. And he ---

18 THE COURT: She is his sister's child.

19 MS. BUTLER: Yes.

20 THE COURT: I'm sorry. His sister's grandchild?

21 MS. BUTLER: That's correct.

22 THE COURT: All right. And that's through John  
23 Stafford. Has John Stafford always lived in Union County?

24 MS. BUTLER: Yes, Your Honor.

25 THE COURT: And has Darrell Armstrong always lived in

1 Union County?

2 MS. BUTLER: Yes, Your Honor.

3 THE COURT: And I'm just curious, Union County we refer  
4 to the geography of Union county, it's a small county,  
5 population wise. I'm curious how far apart -- how many miles  
6 was there between where John Stafford generally lived and  
7 where Darrell Armstrong generally lived?

8 MS. BUTLER: He lived with Mr. Darrell for a period of  
9 time. I think Mr. Darrell's sister lived next door.

10 THE COURT: Well, am I curious about that too. That's  
11 probably part of the Family Court. When the child was born,  
12 where was Mr. John Stafford living and Mr. Darrell Armstrong?

13 MS. BUTLER: Mr. -- in depositions Mr. Armstrong  
14 testified that Mr. Stafford, his nephew, had gotten "off the  
15 beaten path" and was into drugs. They had not seen them in  
16 some time. They didn't know of the pregnancy. They didn't  
17 know about the child until they saw the child one day at  
18 Walmart with the parents.

19 THE COURT: Okay. All right. Thank you. When you say,  
20 "saw the child at Walmart one day." He was at Walmart here in  
21 Union with Alecia Bolware and John Stafford?

22 MS. BURTON: That's correct.

23 THE COURT: Okay, you answered my questions. That was  
24 an inquiry -- factual.

25 MS. BUTLER: Thank you. And then again ---

1 THE COURT: Hold on a second. Mr. Dove. I don't need  
2 anymore information. That was just part of my curiosity where  
3 we are factually.

4 MR. DOVE: I understand. I just wanted to just say  
5 that, if you are going to at least hear me about whether or  
6 not I should be able to present a little bit more information  
7 to the Court about the argument for bankruptcy. I would like  
8 the opportunity to address the Court on that issue. I didn't  
9 know if I need to wait on that after Ms. Butler --

10 THE COURT: Well, at this point wait. And I will  
11 decide after I hear.

12 MR. DOVE: Just wanted to bring it up.

13 THE COURT: Thank you, Ms. Butler?

14 MS. BUTLER: Thank you, Your Honor. I wanted to start  
15 with Mr. Dove, who stood up earlier and said, "It's just not  
16 true," the time line that I had presented. Judge, I looked  
17 back at the counterclaims that he filed, and he included my  
18 name in it 90 times. As to the untruths and  
19 misrepresentations that I have made through the whole four  
20 and a half years of the Family Court, and all the way up to  
21 the Supreme Court. So, I'm kind of used to that and I can  
22 tell you that the OHAN case and Dr. Lamb, that was not my  
23 person. That was the DSS person.

24 We didn't know Dr. Lamb. We didn't choose or know Dr.  
25 Lamb.

1 (CROSSTALK)

2 THE COURT: All right. Let's -- let's talk -- talk  
3 about the motion for summary judgment.

4 MS. BUTLER: Thank you.

5 THE COURT: Why I should rule in your favor?

6 MS. BUTLER: Yes, Your Honor. So, I believe -- because  
7 I'll get to the collateral estoppel and rescue  
8 (indiscernible) that Mr. Smith has argued with Dr. Lamb.  
9 There was a OHAN trial after this child was removed from the  
10 foster parents in 2018, June of 2018. Fast-forward, there  
11 was a OHAN trial. We don't know -- I don't know the exact  
12 dates. My clients don't know the exact dates. We were not  
13 parties to the OHAN trial.

14 (Indiscernible) -- That's the case that Mr. Smith is telling  
15 you ---

16 THE COURT: You're telling the Court today that you  
17 don't know the date of, what's been referred to as the OHAN  
18 trial, after all these years in litigation?

19 MS. BUTLER: I do not have that in my record -- in --  
20 in my writing solidified. It was in September of 2018 ---

21 THE COURT: Somewhere in your information and paperwork  
22 you certainly have that? You know, when some of -- you could  
23 tell me when it was?

24 MS. BUTLER: I can find that for you, Your Honor. Yes.

25 THE COURT: I'm not asking. I am curious. Go ahead.

1 MS. BUTLER: Okay. So when Dr. Lamb came into the  
2 picture and Dr. Lamb testified at the OHAN trial that Mr.  
3 Smith is telling you about, that we were not parties to, my  
4 clients. So, there is no way there is a ratio accata and if I  
5 may see that order of dismissal that Mr. Smith passed up. He  
6 doesn't have a copy. I know he electronically submitted. But  
7 if that is the OHAN order for dismissal, it should say on  
8 there that our -- that the Armstrongs were not parties to  
9 that case.

10 THE COURT: All right, that's a fact -- that's for the  
11 Court to review. Hold on a minute, we're not going to start  
12 going through all the records and finding stuff that should  
13 be available -- I have it right here.

14 On the other hand, that's the facts that I look at.  
15 And so I'll make a determination based on that ---

16 MS. BUTLER: Yes, Your Honor. So, they were not  
17 parties to that case. So, they did not have the right to  
18 present any evidence that was subpoenaed or Harmony was  
19 subpoenaed. So, the evidence of abuse has not been  
20 adjudicated in the Family Court. There has never been  
21 allegations of gross negligence, negligence per se, which is  
22 what ---

23 THE COURT: Well, they didn't present as being  
24 adjudication in Family Court. It was presented as an  
25 adjudication of administrative court or administrative

1 hearing.

2 MS. BUTLER: That's correct.

3 THE COURT: That's what they presented.

4 MS. BUTLER: And they are presenting it as stops, or  
5 somehow a judicial or collateral estoppel, or ratio accata  
6 applies when the Armstrongs were not even parties to that  
7 case. It is not possible they could litigate their issues in  
8 that case ---

9 (CROSSTALK)

10 THE COURT: Let me be sure -- I am just asking so I am  
11 sure legally -- ratio accata and collateral estoppel does not  
12 necessarily imply parties, it implies facts in upon which  
13 decisions are made; is that correct?

14 Mr. DOVE: Yes.

15 THE COURT: Sorry, go ahead.

16 MS. BUTLER: Yes, Your Honor. So, the judicial  
17 estoppel is applied to the position that will be taken by the  
18 party or parties in the -- in the similar involving the same  
19 party or parties. So they do not involve party or parties  
20 after ---

21 THE COURT: Well, the Dalsings are a party?

22 MS. BUTLER: Yes. Yes, the Dalsings were the Defendant  
23 who were claimed to have abused and neglected the child ---

24 THE COURT: And DSS is a party?

25 MS. BUTLER: Yes.

1           THE COURT:    And in this case as well. All right, go  
2 ahead.

3           MS. BUTLER:   And then after four days of testimony  
4 against Dalsings -- the Dalsings -- including Dr. Lamb, which  
5 as you heard Mr. Smith say extensive cross examination by Mr.  
6 Dove. It was after Dr. Lamb's testimony that the Dalsings  
7 actually reached an agreement with DSS. So this whole time,  
8 the Dalsings have been fighting DSS that they haven't done  
9 anything wrong.

10           They've been telling, and disputing, and defending that  
11 all the way to trial. So, after Dr. Lamb's testimony they --  
12 they go in and after four days of testimony of the OHAN trial  
13 they go in and work out an agreement to where the Dalsings  
14 say, "Okay just get rid of the fining, we will permanently  
15 surrender our license to foster care children." Now, you've  
16 heard the evidence that up until this time, they had five  
17 foster children in their home. That they have eight children  
18 in their home, three of them are biological, five fosters,  
19 one of which was Harmony.

20           And so they decided they would come to terms after Dr.  
21 Lamb testified. Dr. Lamb -- they can discredit Dr. Lamb all  
22 they want to -- her report -- whatever they want to do to  
23 discredit her, that she is not our expert. She did come to  
24 trial and testify, and she would be expected to testify in  
25 this case and let the jury decide whether there was evidence

1 of abuse or neglect that Dr. Lamb saw.

2 They -- they -- that Exhibit 11 that we've passed up,  
3 Judge -- I think it was alluded that these were just injuries  
4 that occur. And Mr. Smith's own children of sports injuries  
5 and -- we passed up the exhibits of over 100 pages of  
6 injuries to Harmony.

7 Ms. Ruth Armstrong, in her deposition, we did not  
8 submit the entire deposition which -- we took out excerpts,  
9 so that your Honor could see how many times she has testified  
10 that she reported the abuse. She even -- she was asked, "Did  
11 you even complain about this to the guardian ad litem?"

12 She said, "Yes, ma'am. I complained to every one that  
13 would listen."

14 The testimony would show that she complained to her  
15 state representatives; she complained to the DSS director;  
16 Ms. Tisdale; she complained to the caseworkers; she  
17 complained to SLED. The note showed she complained to  
18 everybody that who could potentially listen to her.

19 She took pictures, she documented everything all along  
20 trusting every time it would come back to her they would say,  
21 "Nope Harmony is fine. Nothing is going on with her. It is  
22 just normal." That's what DSS would find in their  
23 investigation as they are entrusted by statute to investigate  
24 allegations of abuse and neglect. They came back every  
25 single time and said, "The child is not being abused. She is

1 not being abused, she is fine."

2 We now know different because we have forensic reports  
3 that shows different. (Indiscernible) the Plaintiffs' next  
4 exhibit. These are the excerpts of Ferdinand Armstrong's  
5 deposition.

6 These -- Mr. Smith, on behalf of the foster parents,  
7 has said that they had become -- just bonded to Harmony.  
8 That's why they wanted to keep Harmony, they were bonded to  
9 her. Well in Ms. Burton's memorandum to the Court, which I  
10 believe Mr. Dove says he appreciates her time line, supports  
11 her time line. I think we all agree that she laid it out  
12 very accurately in her time lines and her -- her memorandum,  
13 in support of summary judgment that she submitted to this  
14 Court, at Page 5 she told us there was hearing on October the  
15 9th.

16 Now, this child had just gotten placed with the  
17 Dalsings in August 2013 September, -- October. They come in  
18 October 9th, in front of Judge Woods, and the plan for the  
19 child is for reunification with the parents. That was the  
20 plan -- that was the child's permanent plan three months into  
21 the case which is normal. They usually do try to plan a  
22 reunification.

23 This is what not -- is not normal, though. Two days  
24 later, October 9th -- on October 11th, according to Ms.  
25 Burton's memorandum -- on October 11th -- an adoptions worker

1 went into the home of the Dalsings, and conducted a face to  
2 face visit with Harmony in the home of the Dalsings. That is  
3 not normal under a plan of reunification, and three months  
4 into it.

5 So they want to say that the Dalsings had become bonded  
6 to the child -- no, the Dalsings were going to do with this  
7 child what they've done with other children in the home. The  
8 other children just didn't have relatives that would fight.

9 Furthermore, they brought an adoption worker and again,  
10 as Ms. Burton's memorandum would show on Page 6, that  
11 Elizabeth Funderburk, [phonetic] an adoption worker came and  
12 visited the Dalsings' home January 28, 2014, -- I will remind  
13 you that they still had a plan of reunification. There was  
14 no reason for an adoptions worker to come into that house,  
15 when there was a plan for reunification.

16 Furthermore, up above that it was ordered that they had  
17 placement rights -- that DSS had placement rights of this  
18 child. They continue to operate under a plan of  
19 reunification until they came back to Court, March 27th,  
20 2014. That's just around the corner. They came -- the  
21 current plan that time. The current plan was still  
22 reunification. We call it "dual tracks", with a plan that  
23 could go either way. They could go with a reunification  
24 track, if the parents do what they're supposed to do. And if  
25 they didn't, it was a plan of TPR and adoption. The Dalsings

1 had already been planning the adoption. They already brought  
2 the adoptions workers in. DSS had already brought the  
3 adoptions workers in. These people work for DSS.

4 But that was the first time that the plan changed for  
5 something different, besides that straight reunification was  
6 March 2014. And when they say that they came in and they  
7 couldn't ---

8 (CROSSTALK)

9 THE COURT: Hang on. Is that -- is that not a Family  
10 Court issue.

11 MS. BUTLER: This ---

12 THE COURT: I mean, isn't this -- that something that  
13 was reviewed by the Family Court judge?

14 MS. BUTLER: This goes to the argument ---

15 THE COURT: Can you just answer my question, please?

16 MS. BUTLER: Yes.

17 THE COURT: Was that reviewed by -- that whole adoption  
18 workers being sent it and planning for adoption and  
19 reunification. Certainly those were Family Court issues.  
20 Were those issues heard or reviewed under judicial review?  
21 Their role in the best interest of child by a Family Court  
22 judge?

23 MS. BUTLER: Not the adoptions workers, Your Honor.  
24 Family Court judge wouldn't have authority to have adoptions  
25 workers go in when reunification --

1 THE COURT: That was not my question.

2 MS. BUTLER: Yes, Your Honor.

3 THE COURT: My question was simply. -- And I don't know  
4 the answer to that. -- But I mean, my question was simply  
5 that -- maybe you can't answer -- was that ever information  
6 that a Family Court judge was made aware of? Or should have  
7 -- your argument I guess, if he wasn't, he should have been.  
8 I don't know what your argument is.

9 MS. BUTLER: Should have been made aware of. And  
10 that's why the DSS was grossly in their entire action ---

11 THE COURT: Because they let adoption workers go in?

12 MS. BUTLER: That ---

13 THE COURT: To examine for a potential adoption?

14 MS. BUTLER: That -- but that's just one part of the  
15 total culmination. They should never have sent an adoptions  
16 worker in during a plan for reunification. That's just --  
17 that's just a pair of what we're dealing with. Overall, when  
18 the Dalsings decided come June 14 -- June 2014, they came in  
19 knowing DSS ---

20 THE COURT: All right. Go ahead. You answered my  
21 question.

22 MS. BUTLER: Knowing DSS, the child's caseworker for  
23 DSS, the child's guardian ad litem for the Court, the child's  
24 relatives, all were in agreement. They came in on June 4,  
25 2014, with an agreement. Everybody did. That's for everybody

1 -- for the child to be placed with her biological family, her  
2 relatives who have been vetted by DSS and approved. The  
3 Dalsings knew they were approved.

4 But the Dalsings said, "uh-uh. Nope. We're too bonded  
5 and we're going to file our own action." They halted the who  
6 -- whole agreement. They ---

7 THE COURT: But they -- but ultimately the Supreme  
8 Court said they had the right to do.

9 MS. BUTLER: That was not at the TPR stage at that time  
10 ---

11 THE COURT: I mean -- the Supreme Court ruled,  
12 ultimately, that they had a right, a legal right to do that.

13 MS. BUTLER: The Supreme Court ultimately ruled that  
14 they had standing to file an adoption action. That is  
15 correct, Your Honor. At this time, they were just filing to  
16 intervene into the where they do -- did file the adoption  
17 action. Yes. Yes, they did. The Supreme Court ruled they  
18 have standing to file the adoption action.

19 The Supreme Court, nor the Family Court, and any of  
20 these judges that ever touch this case, have any authority  
21 whatsoever to determine if DSS or the Dalsings acted  
22 negligently per se, or grossly negligent in their dealings  
23 with the Armstrongs and the child.

24 So this is the first opportunity that they're able to  
25 argue that issue, the bankruptcy statute ---

1           THE COURT: Help me to understand that. See, I'm not  
2 trying -- not trying to pick on you. I'm just, I'm a circuit  
3 court judge. In a Family Court -- clearly, these are Family  
4 Court issues. A party in a Family Court case, involving  
5 adoption or termination of parental rights, or reunification,  
6 never has a basis by which to raise -- they may not in a  
7 legal sense file an action for negligence per se, in Family  
8 Court, but isn't that the standard that is basically applied  
9 in every -- in every case that a Family Court judge has to  
10 decide?

11           I mean, we've had that argument before today just in  
12 the best interest of the child.

13           MS. BUTLER: I think what you're saying is because the  
14 Family Court has decided that the best interest, the jury  
15 shouldn't be able to determine if DSS was grossly negligent,  
16 or the Dalsings were grossly negligent in their dealings with  
17 the family.

18           THE COURT: Then that seems to me like -- and again,  
19 I'm not trying to pick on you, I'm just trying to absorb all  
20 of this. Then if that's the case, would not your argument be  
21 that every adoption could be subject to a civil action for  
22 negligence, negligent per se, or -- because you could argue  
23 that, well the Family Court didn't deal with that, somebody  
24 has a right as a cause of action against DSS and other foster  
25 parents. Seems like it opens the door to just as wide open

1 to sue after an adoption, if things didn't go right in Family  
2 Court.

3 MS. BUTLER: And I think that's certainly the same  
4 question, your Honor had after Ms. Burton's arguments. And  
5 the response reminds us there is the Family Court case where  
6 Harmony was abused and neglected. That is a whole different  
7 case from what you're dealing with -- with gross negligence.  
8 So no, you cannot, it does not open the door to any suit, but  
9 if you get past that there is a ---

10 THE COURT: I mean, it would open the door to people  
11 filing suit, arguing that there's always going to be a  
12 scintilla of evidence. That there's negligence and the jury  
13 ought to be the proper place for this to be heard.

14 MS. BUTLER: This is gross negligence. You can't get to  
15 that jury without the scintilla of evidence that there was  
16 gross negligence -- and there's certainly presentation of  
17 that. So, that's only when you could do it. It would not be  
18 an available remedy for every adoptive family. Only when you  
19 can present -- meet that standard of gross negligence, which  
20 we've certainly done.

21 THE COURT: All right. Thank you.

22 MS. BUTLER: Thank you.

23 THE COURT: That was my question. Did you have anything  
24 else? I cut you off with my question.

25 MS. BUTLER: Did I address the bankruptcy? I will

1 address that briefly, your Honor.

2 THE COURT: No. You have not addressed the bankruptcy.  
3 I will be glad to hear you on the bankruptcy.

4 MS. BUTLER: Okay. Thank you. As to the bankruptcy,  
5 so well, we never knew that they were in bankruptcy. We  
6 didn't have any way to know that. I think that I've heard  
7 Mr. Smith say that there was a discharge from bankruptcy  
8 February 2020 and that the Dalsings have been immune, until  
9 that time frame -- well, our case was filed March 2020, and I  
10 appreciate the fact that they think that my clients or myself  
11 knew of a bankruptcy filing but we simply did not.

12 THE COURT: Wait a minute. I don't do much bankruptcy  
13 either, but isn't it true that once a bankruptcy is filed,  
14 there's no notice that is required for subsequent creditors.  
15 I mean, the filing itself is public. I mean public notices  
16 that -- am I thinking right? Or you all educate me ---

17 MR. DOVE: That's correct, your Honor, all debts are  
18 being discharged from the day of that order, and any claim  
19 made afterward for debts that were allegedly approved  
20 beforehand are discharged. And this was a Chapter 11. Where  
21 -- where it's ---

22 THE COURT: Right it's not -- I remember that from  
23 debtor's credit thirty years ago.

24 MS. BUTLER: Thank you, Your Honor.

25 THE COURT: Anything else?

1 MS. BUTLER: No, your Honor.

2 THE COURT: Any other motions -- anybody wishes to put  
3 on the record?

4 MS. BURTON: Your Honor, may I speak briefly ---

5 THE COURT: Yes.

6 MS. BURTON: -- on a couple of the topics raised by Ms.  
7 Butler? Because I was listening to your argument and not --  
8 read my notes what is this case about? Because there's two --  
9 really two claimants. One of those is Harmony. The  
10 Armstrongs are bring it on her behalf, but it's Harmony's  
11 case.

12 And in that case, that case was adjudicated.

13 THE COURT: Yeh, let me be sure that -- at least --  
14 while you folks are here. The standard in this court and in  
15 civil court, circuit court for common pleas -- is not the  
16 best interest of the child. That's clearly statutorily given  
17 to the Family Court. That doesn't mean that the Court's not  
18 concerned about the best interest of the child, but that is  
19 not the issue before the Court. It's whether it's -- in the  
20 legal sense the best interest of the child. I hear minor  
21 settlements. I hear cases involving minors. We deal with  
22 that -- we deal with those issues, but yes, the child is part  
23 of the suit. But that is not the legal standard for the  
24 Court to make decisions in the best interest of the child. I  
25 just wanted to put that on the record. All right.

1 MS. BURTON: Yes, sir. Yes, sir. Noted. And I  
2 understand that, but the child and in their best interests  
3 were represented in the Family Court action. And the child  
4 and her best interest, were represented in the OHAN action --  
5 the administrative action. Because DSS had been granted  
6 custody, legal, physical custody of the child. And took in  
7 the OHAN action -- that was -- was discussed, where the  
8 allegations were that Tammy Dalsing had abused the child.

9 Her -- and she was represented in that action by DSS.  
10 DSS was prosecuting that action on behalf of the child. So,  
11 it was some discussion by Ms. Butler that the Armstrongs, as  
12 adult individuals, were not parties in that action and that  
13 may be the case, but the child's interests and the issue of  
14 abuse and neglect were in that case, and as Your Honor  
15 pointed out for -- for estoppel arguments, its issue  
16 preclusion for collateral estoppel. Was the issue of abuse  
17 and neglect addressing the administrative proceeding and it  
18 was.

19 And so to the legal claim here, by Harmony, through her  
20 legal representatives is precluded by the administrative  
21 action because that legal claim was in fact addressed and  
22 Harmony's interests representative. And the order that Mr.  
23 Smith handed to you said that -- that DSS dismissed it  
24 because there was not a preponderance of the evidence of  
25 abuse and neglect.

1           So, I wanted to draw the distinction just because the  
2   Armstrongs are Plaintiffs in name. In this case, they're  
3   sitting in two positions. They're sitting in their position  
4   as individuals. And I would submit to the Court that they  
5   aren't -- that nobody -- the Dalsings, not DSS, Child  
6   Advocacy, they don't owe a legal duty to them as individual  
7   adults. There are no cases. You didn't hear about any cases  
8   and you never will. That there is a legal duty owed to those  
9   folks in their individual capacity, which is a legal question  
10   for the Court. It isn't a scintilla of evidence standard,  
11   that's a legal question. They don't have a claim in their  
12   individual capacity. They're representative of Harmony.

13           And so she's a separate Plaintiff, but her claims have  
14   been fully adjudicated in the underlined Family Court and  
15   administrative actions.

16           And so I -- so I wanted to draw that distinction,  
17   because I think your Honor, has to address legal duty, and  
18   you know Ms. Butler waived around the *Bass* case and talked  
19   about first negligence. The *Bass* case is isolated to a  
20   single exception to the waiver of sovereign immunity under  
21   the Tort Claims Act. And they're a bunch of them that would  
22   apply in this case you didn't hear about. And the *Bass* case,  
23   because that exception talks about gross negligence.

24           The Court -- the Court addressed that exception and so  
25   does expert testimony in that case about liability. And you

1 heard there was a concession that their expert is not an  
2 expert on liability, but it's only an expert on damages.  
3 There is no expert testimony in this case.

4 But I wanted to address the issue preclusion because I  
5 think we've got to -- we've got to draw distinctions between  
6 the parties. What the alleged legal duties are, a legal duty  
7 to find relevance. There are no cases that say that any  
8 state agency has a legal duty to find relatives. That is  
9 just not a legal duty to take her and move her from one house  
10 to another one, when Family Court has ordered otherwise. The  
11 Supreme Court said that didn't happen, that dog's hunted. And  
12 so, I would ask the Court, if it's in your plan to ball it  
13 all up and talk about scintilla evidence, but the issues here  
14 are -- are there legal duties as they have described,  
15 specific legal duties that they have described? Are there  
16 specific legal duties to the separate groups of Plaintiffs?  
17 And do the agencies, at least from my client's perspective,  
18 do they have immunity? There's a lot of -- there's a lot of  
19 immunities that apply under the Tort Claims Act. Not just  
20 Section 25, which talks about custody and control of the  
21 prisoner or client, to exercise gross negligence. Thank you,  
22 Your Honor.

23 THE COURT: Ms. Butler, I'll give you the opportunity  
24 for a brief response, if you wish.

25 MS. BUTLER: Just briefly. As to the duty and the duty

1 of the expert Judge, we trust the jury to be our expert over  
2 duty, and whether it was breached.

3 THE COURT: All right. Thank you. Mr. Smith?

4 MR. SMITH: Yes, Your Honor. Very, very briefly.

5 (Indiscernible) it's on Page 36 of my memo -- it is misstated  
6 here -- Mr. Armstrong actually admitted to knowing about the  
7 bankruptcy pending before it was over with. That is extremely  
8 relevant under both the *Dearing* case and USC Section 523 and  
9 Section 727B. I wanted to cite both of those as well.

10 And that knowledge is essential to this case, Your  
11 Honor. And the failure to act on that knowledge. Outside of  
12 that, we've not heard anything from the Plaintiff today that  
13 gets around our legal arguments, and -- and there's simply no  
14 duties owed to the adult claims.

15 And as Ms. Burton stated, legal duties pertaining to  
16 Harmony were litigated that -- when DSS was in control and  
17 had custody of Harmony at that time. The Children's Code  
18 creates no proper calls to action and no negligence per se  
19 because of cause of action. That should be dismissed as well.  
20 Even these photos that are trying to be relied upon by Ms.  
21 Butler, to suggest abuse. There's nothing whatsoever in  
22 record that I recall, tying Tammy Dalsing to -- I don't think  
23 any of those, except for maybe there's one record to a slap,  
24 and one record to a dog bite. So, that's 2 out of 160. Those  
25 were investigated, and it was no findings of abuse based on

1 those, and there's the order of dismissal, which we've  
2 referenced multiple times now.

3 The plot to stop the argument doesn't matter, it  
4 matters about the issue more than who the two parties are.  
5 But Harmony was a party -- she was the party -- in that abuse  
6 trial that that happened. And this would have been her claim  
7 -- and that really bars that claim. And that is extremely  
8 important to understand. It's my understanding that not only  
9 were the Armstrongs subpoenaed to testify, just like they've  
10 attended absolutely everything we've had in this case whether  
11 it's discovery hearing or a deposition, they were at that  
12 hearing. They are present, ready to go, and they knew exactly  
13 what happened that day, your Honor. They didn't like that  
14 outcome, they could have gone through Ms. Butler, who  
15 remained their attorney and taken action. They didn't,

16 Essentially, the collateral estoppel and judicial  
17 estoppel, in addition to the ratio accata and separate  
18 nuances bar all of these claims, and the ones that aren't  
19 barred by that, are barred by the statutes of limitation, or  
20 there's just simply not a duty between the Dalsings and adult  
21 Armstrongs.

22 THE COURT: All right. Thank you. All right. I think  
23 that the ---

24 MR. SMITH: That's fine. And I got one additional  
25 thing to hand up, of law bankruptcy issues.

1 MS. BURTON: Can you give me one? Thank you.

2 MR. SMITH: Your Honor, there has been essentially no  
3 argument against our raw citing of the bankruptcy issues.

4 (Indiscernible)

5 THE COURT: All right. Thank you. That concludes this  
6 three hour hearing. I appreciate the way all you lawyers  
7 have conducted yourselves professionally today and what  
8 certainly, historically has been a very charged atmosphere. I  
9 appreciate again the way you, as professionals, have made  
10 your arguments and answering my questions today. Thank you  
11 all for that.

12 I will issue my ruling on these motions by the end of  
13 next week.

14 I'm sorry, Mr. Dove? No further argument as to -- what  
15 do you want to say?

16 MR. DOVE: I would say, what's been handed up to you  
17 concerning the Dalsing bankruptcy ---

18 THE COURT: Right.

19 MR. DOVE: Additional information needed, I would  
20 specifically refer you to what's been decided already in the  
21 *Deardon* case, which starts on -- starts on Page 4, of this  
22 memo.

23 THE COURT: I see that.

24 MR. DOVE: The *Deardon* case. Then on Page 6 -- this is  
25 where, we're on Page 6. The Court, there actually used the

1 phrase "the correct procedure." I would refer you to that.  
2 The correct procedure. It's not what we wanted. It's just  
3 what to look out for here. This part of the law here sets out  
4 this insurance versus the individuals. And some of the  
5 things the Court looks at procedurally (indiscernible).

6 THE COURT: I will look over that. Thank you. I will  
7 digest that, and I will issue my ruling on these motions by  
8 the end of next week.

9 MS. BUTLER: Thank you, Your Honor. see.

10 THE COURT: Let's see. We need to be sure that Melody  
11 knows what needs to be under seal, or whatever needs to be  
12 under seal. Place right here on this desk before her.

13

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17 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED AT

18 1:17 p.m. EST)

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## CERTIFICATE OF TRANSCRIBER

I, Cate Neuhauser, a court-approved transcriber, do hereby certify that I transcribed the electronic recording of the foregoing proceedings in Docket No. 2020-CP-44-00104 held on May 25th, 2023, before the Honorable Daniel D. Hall and that said transcript is true and correct, all to the best of my knowledge and ability.

I further certify that I am not related to nor the employee of any of the parties hereto, nor related to or employed by any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

June 1st, 2024

Cate Neuhauser

*Cate C. Neuhauser*

Transcriber