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STATE OF SOUTH CAROLINA)
COUNTY OF UNION)
SC Court of Appeals IN THE COURT OF COMMON PLEAS

H.A., by and through her guardians, Jane and John Smith, and Jane Smith and John Smith, individually,

Plaintiffs

v.

South Carolina Department of Social Services, South Carolina Department of Children’s Advocacy, Tammy Gaye Causey Dalsing and Edward Anthony Dalsing,

Defendants.

CA. No. 2020-CP-44-00104

MEMORANDUM IN SUPPORT OF MOTIONS FOR SUMMARY JUDGMENT OF DEPARTMENT OF CHILDREN’S ADVOCACY AND THE SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES

War does not determine who is right – only who is left – Bertrand Russell

This case is about a war between Plaintiffs and their counsel and their enemies, Tammy and Edward Dalsing and their counsel. The two factions battled for years in the Family Court for custody of a child, H.A. In this Action, Plaintiffs have tried to add the South Carolina Department of Children’s Advocacy and the South Carolina Department of Social Services as collateral combatants.

FACTUAL BACKGROUND

The South Carolina Department of Children’s Advocacy

The South Carolina Department of Children’s Advocacy (SCDCA) was established by the South Carolina General Assembly on July 1, 2019, as an independent state agency. S.C. Code Ann. § 63-11-2210. SCDCA receives, refers, monitors, and/or investigates complaints regarding services provided to children by other identified “state agencies.” S.C. Code Ann. §§ 63-11-2270(4) & (5). Upon its creation in 2019, SCDCA assumed responsibility for the Guardian ad Litem Program. S.C. Code Ann. § 63-11-2270 (18) (a).

The Foster Care Review Boards

The South Carolina General Assembly created Foster Care Review Boards (FCRB) in each of South Carolina's sixteen judicial circuits to aid the Family Courts regarding children in foster care. S.C. Code Ann. § 63-11-710(A). Each FCRB consists of five members, all of whom are appointed by the Governor. Id. SCDCA provides administrative support to the FCRBs but lacks power or authority to appoint or remove any member of a FCRB or to direct the decisions and recommendations of the FCRBs. FCRBs conduct biannual reviews of children in public foster care for more than four consecutive months to determine what efforts have been made by the supervising agency or facility to acquire a permanent home for the child. S.C. Code Ann. § 63-11-720(A)(1). To that end, FCRBs submit written reports and recommendations to the Family Court. S.C. Code Ann. § 63-11-720(A)(2).

The Division of Foster Care Review is a division of SCDCA. S.C. Code Ann. § 63-11-700(A). The Foster Care Review Division consists of seven members, all of whom are appointed by the Governor. (Id.) The Foster Care Review Division conducts quarterly meetings to review and coordinate the activities of the Foster Care Review Boards and makes recommendations to the Governor and General Assembly regarding foster care policies. S.C. Code Ann. § 63-11-700(D).

Guardian ad Litem Program

The General Assembly created the Cass Elias McCarter Guardian ad Litem Program, which is administered by SCDCA. S.C. Code Ann. § 63-11-500(A). Guardians ad litem represent the interests of the children to whom they are assigned and provide their reports and recommendations to the Family Court, which may adopt or reject the recommendations of the Guardian. S.C. Code Ann. § 63-11-510. Guardians ad litem do not have any authority to place children, to remove them from a placement, or place children into emergency protective custody.

Both Guardians ad Litem and Foster Care Review Boards logically have immunity from suit by statute. Both make recommendations to the Family Court,, which has discretion to accept or reject any such recommendations.

SCDSS

The South Carolina Department of Social Services (SCDSS) is a state agency responsible to promote the safety, permanency, and well-being of children and vulnerable adults. SCDSS may cooperate with other state agencies, such as SCDCA, “for the purpose of carrying out matters of mutual concern.”

Out of Home Abuse and Neglect (OHAN) Unit of SCDSS

SCDSS is authorized to receive and investigate reports of abuse and neglect of children who reside in residential institutions, foster homes, qualified residential treatment programs, and childcare facilities. S.C. Code Ann. § 63-7-1210 (A). These investigations are conducted by a unit that is not responsible for selecting or licensing these homes. S.C. Code Ann. § 63-7-1210 (A). The Out of Home Abuse and Neglect (OHAN) Unit fulfills this obligation by investigating allegations of abuse or neglect related to children in foster care.

H.A.

H.A. was born on December 6, 2012. On August 27, 2013, she was taken into emergency protective custody by law enforcement and placed in SCDSS’s custody because her biological parents were operating a methamphetamine lab. (Ex. A, Order, Aug. 28, 2013, pp. 1-2.) The SCDSS caseworker initially involved also observed that H.A. had severe sunburns, “hardened dry mucous on her nose, and that she had what appeared to be bite marks on her arms, legs, neck, and scalp.” (Ex. B, Order, Oct. 9, 2013, p. 3.) During the probable cause hearing on August 28, 2013, Judge Tony Jones found that there was probable cause for law enforcement to take H.A. into

emergency protective custody and for SCDSS to assume legal custody of H.A. (Ex. A, Order, Aug. 28, 2013, pp. 1-2.)

The Dalsings Become H.A.'s Foster Parents

On August 27, 2013, H.A. was placed with Edward and Tammy Dalsing on the same day that she was taken into custody. (Am. Compl., p. 3, ¶ 10; Dep. of J. Cooper, Jan. 9, 2015, Ex. 10.) At the time, the Dalsings were licensed by SCDSS as foster parents, having become licensed in 2008. (Dep. of T. Dalsing, Nov. 29, 2021, 5:23-24.) There is no evidence of any complaint or concern regarding the Dalsings abusing any child at the time that HA was placed with them.

Initial Appointment of Guardians ad Litem

On September 3, 2013, Jennifer Cooper was appointed as volunteer GAL for H.A. (Id. at ¶ 3.) When Cooper was not available for hearings or had other scheduling conflicts, Stephanie Kitchens also served as a Guardian ad Litem for H.A. (Kitchen S. Dep. 15:13-16:8, Nov. 15, 2021.) Kitchens has served as the Union County Coordinator for the Guardian ad Litem program since 2010. (Id. at 14:6-11.)

Initial Home Visit by SCDSS

On September 5, 2013, Caseworker Stacie Eison conducted a face-to-face visit with H.A. at the home of the Dalsings. (Id. at Ex. B., pp. 11-12.). She did not observe any marks or bruises on H.A. and noted that, “[H.A.] appears to be adjusting to the Dalsing family very well.” (Id.)

September 18, 2013, First GAL Report and Recommendation

Jennifer Cooper and Stephanie Kitchens submitted their first Guardian ad Litem Report and Recommendations to the Family Court on September 16, 2013. (Cooper J. Dep. Ex. 2.) They noted that H.A. was developmentally delayed and had tested positive for cocaine, marijuana, and meth. (Id. at Ex. 2, p. 2.) Cooper and Kitchens did not advocate for reunification with H.A.'s

biological parents and instead recommended that H.A. remain in the custody of SCDSS. (Id.)

Initial Efforts to Locate Family Members of H.A.

After H.A.'s placement with the Dalsings, SCDSS Caseworkers Robin Miller and Stacie Eison searched for family members who could serve as placement options for H.A. (Kaylor Aff. ¶¶ 6-8; Ex. B-D.) In August 2013, H.A.'s father identified two relatives as potential options. (Id. at 7; Ex. B, pp. 8-12.) However, upon investigation, SCDSS concluded that those two relatives were not suitable placements for H.A. (Id.) In addition, SCDSS paid for Seneca Searches in an effort to identify relatives of H.A. who might be an appropriate placement option for her. (Id. at 8; Ex. C.)

Second Home Visit with the Dalsings

On October 4, 2013, Eison conducted another visit with H.A. at the home of the Dalsings. (Aff. of Elizabeth Tisdale, Ex. A 427-28.) She observed H.A. to be free of any marks and bruises and thriving in the home. (Id.)

October 9, 2013, Order for Removal

A merits hearing was held before Judge Henry T. Woods on October 9, 2013. (Exhibit B, Order, Oct. 9, 2013.) The Court found that H.A. was placed in a substantial risk of physical neglect by her biological parents because law enforcement discovered an active methamphetamine lab outside the home where H.A. resided with her parents. (Id. at 2-3.) The Court instructed H.A.'s biological parents to complete a treatment/placement plan. (Id. at 4-6.) The Court ordered that temporary legal and physical custody, including placement rights, of H.A. would remain with SCDSS. (Id. at 7, ¶ 2.) The Court ordered that the permanent plan of reunification with her biological parents was in the best interest of H.A. (Id. at 7, ¶ 3.)

Involvement of Adoption Services Division of SCDSS

On October 11, 2013, Adoption Services Worker Laquacia Weldon conducted a face-to-face visit with H.A. in the home of the Dalsings. (Aff. of Elizabeth Tisdale, Ex. A at 423.) During this visit, Weldon observed H.A. to be happy and healthy. (Id.)

November 5, 2013, Second GAL Report and Recommendation

On November 6, 2013, Jennifer Cooper and Stephanie Kitchens submitted their second GAL Report and Recommendation to the Family Court. (Dep. of J. Cooper, Jan. 9, 2015, Ex. 4.) Their recommendation was that H.A. remain in foster care and that her biological parents have their names placed on the Central Registry. (Id. at Ex. 4, p. 3.) They also recommended that H.A.'s biological parents have supervised visitation with H.A. (Id.)

November 6, 2013, Supplemental Merits Hearing

A supplemental merits hearing was held before Judge Robert E. Guess on November 6, 2013. (Ex. C, Order, Nov. 6, 2013.) The Court concluded that H.A. was physically abused by her biological parents. (Id. at 4, ¶ 1.) The Court ordered that the names of H.A.'s biological parents be placed on the statewide Central Registry of Child Abuse and Neglect. (Id. at 4, ¶ 2.) The Court also ordered that temporary legal and physical custody, including placement rights, of H.A. would remain with SCDSS. (Id. at 4, ¶ 3.)

Subsequent Home Visits by SCDSS

Eison visited H.A. at the Dalsings' home once a month in November and December 2013, and January 2014. (Aff. of Tisdale, Ex. A at 401-415.) During each visit, Eison observed H.A. to be happy in her placement and free of marks and bruises. (Id. at 408-415.)

Elizabeth (Lea) Funderburk, an adoption services worker assigned to H.A.'s case, visited the Dalsings' home on January 28, 2014. (Aff. of Elizabeth Funderburk, Ex. C, pp. 11-12.)

Funderburk observed H.A. to interact well with the other children and noted that she “seem[ed] to be bonded with them.” (Id.) There were no concerns noted.

January 21, 2014, Foster Care Review Board First Recommendation

On January 21, 2014, the Foster Care Review Board conducted its first review of H.A.’s case. (Ex. D, FCRB Recommendation, Jan. 21, 2014.) The Foster Care Review Board recommended termination of parental rights and adoption within six-months. (Id.)

February 19, 2014, First Permanency Plan Hearing

A permanency planning hearing was held by the Family Court on February 19, 2014. (Ex. E, Order, Feb. 19, 2014.) During the hearing, the Family Court determined that H.A. should not be returned to her biological parents because they had not completed their Court-ordered treatment plans. (Ex. E, Order, Feb. 19, 2014, p. 2, ¶ 1.) The biological parents of H.A. stopped attending ordered drug and alcohol abuse classes and both were arrested on December 16, 2013, for possession of methamphetamines. (Id. at 3, ¶ 5.b.) GAL Jennifer Cooper advised that H.A. was doing well in her current placement and recommended that H.A. remain in foster care and recommended that the parental rights of H.A.’s biological parents be terminated. (Cooper Dep. Ex. 5, pp. 2-3.) By Order filed on March 27, 2014, the Family Court approved a concurrent plan of reunification with H.A.’s biological parents and a plan for termination of parental rights and adoption. (Ex. E, Order, Feb. 19, 2014, p. 4.)

Continued Monthly Home Visits by SCDSS

Eison continued monthly visits in February, March, and April 2014. (Aff. of Elizabeth Tisdale, Ex. A, at 369-381). She noted that, “[H.A.] has developed a close relationship and bond with the Dalsing family.” (Id. at 381). During these visits, H.A. noted to be free of any marks and bruises. (Id. at 369).

April 29, 2014 - Plaintiffs are Belatedly Identified by H.A.'s Father.

Despite SCDSS's efforts to locate and identify relative placement opportunities for H.A., neither biological parent of H.A. provided SCDSS with the names of any additional relatives until April 29, 2014, when H.A.'s biological father identified Plaintiffs for the first time. (Kaylor Aff. ¶ 9.) That very day, Caseworker Stacie Eison contacted Plaintiffs to determine whether Plaintiffs were suitable placements for H.A. (Kaylor Aff. ¶ 10; Ex. E.) SCDSS conducted a home study and determined that Plaintiffs were an appropriate placement option for H.A. (Kaylor Aff. ¶ 11; Ex. F.)

After Plaintiffs expressed their willingness to take custody of H.A., SCDSS visited them prior to a permanency placement hearing scheduled for June 4, 2014, and told Plaintiffs that SCDSS planned to place H.A. with them. (Armstrong D. Dep. 86:17-25, Dec. 1, 2021.) The Foster Parent Dalsings were likewise informed that SCDSS had identified suitable relatives of H.A. and planned to place her with them. (Dalsing T. Dep. 57:6-21.) Edward Dalsing testified that he did not recall a single GAL for H.A. who recommended that H.A. be placed with the Dalsings after Plaintiffs were identified as suitable placement options for H.A. (Dalsing E. Dep. 65:4-8.)

Subsequent Home Visits

On May 16, 2014, Lea Funderburk conducted a home visit at the Dalsing home. (Tisdale Aff., Ex. A, at 357-358). Funderburk observed the home to be safe and clean, and H.A. to be safe in the placement. (Id. at 358). However, Mrs. Dalsing mentioned to Funderburk that she was very upset that H.A. might be placed with a relative. (Id.).

Eison picked up H.A. for a scheduled visit with her father on May 19, 2014. (Id. at 357). When Eison arrived, one of the Dalsings asked if relatives had been found for H.A. Eison informed the Dalsings that a relative had been found but had not been approved yet. The Dalsings responded

that, “Searching for relatives [was] not in [H.A.’s] best interest, especially since the first relatives identified did not check out.” (Id.)

May 30, 2014, Third GAL Report and Recommendation

On May 30, 2014, Jennifer Cooper submitted a GAL Report and Recommendation to the Family Court. (Cooper J. Dep. Ex. 7.) Cooper wrote that she had visited with Plaintiffs, and “they appeared to be a caring and loving family.” (Id. at Ex. 7, p. 2.) However, she recommended to the Family Court that custody of H.A. be given to Plaintiffs and that the case be closed. (Id.)

The Battle Lines were Drawn - The June 4, 2014, Second Permanency Plan Hearing

The planned permanency plan hearing was held on June 4, 2014, before Judge James McGee. (Ex. F, Order, June 4, 2014.) Prior to the hearing, SCDSS reached an agreement with H.A.’s biological parents to place H.A. with Plaintiffs while H.A.’s biological parents tried to complete their treatment plan. (Id. at 2, ¶ 1.) Prior to the hearing, the Dalsings filed their adoption action and a motion to intervene. (Id. at 2, ¶ 2.) During the hearing, Dale Dove, appearing on behalf of the Dalsings, objected to H.A.’s placement with Plaintiffs on the grounds that they had not been given the required ten days’ notice. (Id.)

Given all of this, the Court determined that proper notification had not been given to the Dalsings. (Id. at 2, ¶ 4.) As such, the Court rescheduled the hearing for July 16, 2014. (Id.) **The Court specifically found that H.A.’s current placement with the Dalsings was safe, appropriate, and in the best interests of H.A.** (Id. at 3, ¶ 2.)

The Shuttling of H.A. Begins by Order of the Family Court

At the hearing, the Court ruled that Plaintiffs would be permitted unsupervised weekend visitation. (Id. at 3, ¶ 3.) Two days later, on Friday, June 6, 2014, H.A. was taken to her first weekend visit with Plaintiffs by SCDSS Caseworker Stacie Eison and GAL Stephanie Kitchens.

(Cooper J. Dep. Ex. 11, p. 4.) Throughout the course of the legal battle between Plaintiffs and the Dalsings and consistent with the continuing orders of the Family Court, H.A. was shuttled between them, spending weekends with Plaintiffs and weekdays with the Dalsings.

Home Visits in Both Homes

Eison transported H.A. between the homes of the Dalsings and Plaintiffs on the weekend of July 3, 2014. (Id. at 344-345). She noted that H.A., “appear[ed] to be very happy with her relatives,” who wished to adopt her. (Id. at 344).

Kitchens assisted Eison in transporting H.A. from the Dalsings to Plaintiffs again on Friday, July 11, 2014. On the same afternoon, Kitchens and Eison conducted a walk-through of Plaintiffs’ home, including H.A.’s room, which was determined to be appropriate for H.A. (Id.) During these visits, there were no bruises or marks observed on H.A. (Tisdale Aff., Ex. A, at 343).

July 15, 2014, Fourth GAL Report and Recommendation

On July 15, 2014, Kitchens and Cooper submitted a GAL Report and Recommendation to the Family Court. (Cooper J. Dep. Ex. 11.) The Report notes that “[H.A.] is very much at home in [Plaintiffs’] home and has taken over the hearts [Plaintiffs].” (Id. at 4.) They noted that “[t]he foster parents have provided excellent care to [H.A.], but the time has come that [H.A.] is removed from foster care and be place[d] with relatives who want to adopt her.” (Id. at 5.) They also recommended that if H.A. was not placed with Plaintiffs, that she be removed from her current placement at the Dalsings’ home. (Id.)

July 15, 2014, Second Foster Care Review Board

The Foster Care Review Board conducted a review of H.A.’s case on July 15, 2014. (Ex. G, FCRB Recommendation, July 15, 2014.) The Foster Care Review Board continued to recommend termination of parental rights and adoption for H.A. (Id.)

The Postponed July 16, 2014, Family Court Hearing

A hearing was held on July 16, 2014, concerning the Dalsings' Motion to Intervene and SCDSS's motion to change the permanent plan for H.A. (Ex. H, Order, July 16, 2014.) The Family Court acknowledged that it was reluctant to move forward with the hearing because there was not yet a signed order concerning the hearing held on June 4, 2014. (Id. at 2.) However, attorneys for the parties urged the Family Court to move forward on the issue of moving H.A. from her placement in the home of the Dalsings to the home of Plaintiffs. (Id.)

The Family Court granted the Dalsings' Motion to Intervene. (Id. at 5, ¶ 12.) The Dalsings objected to SCDSS's motion to change the permanent plan and requested an evidentiary hearing. (Id. at 5, ¶ 13.) The Family Court ordered that an evidentiary hearing be held within 45 days and that the permanent plan detailed in the Family Court's February 19, 2014, Order remain. (Id.) The Family Court also ordered that visits between Plaintiffs and H.A. continue as previously ordered. (Id. at 5, ¶ 14.)

Continued Home Visits and Weekend Visitation

Eison picked H.A. up at the Dalsings' home to transport her to Plaintiffs' home on July 18, 2014. (Tisdale Aff., Ex. A, at 339-340). She noticed bruises and red marks on H.A.'s bottom and a bruise on her forehead, which addressed with the Dalsings on Monday, July 21, 2014, when she returned H.A. (Id. at 339-340). Eison was satisfied with the explanation. H.A. had visited the doctor recently as well. (Id. at 339).

In subsequent visits by Eison and Funderburk in July and August 2014, there were no concerns or bruising noted. (Id. at 332-336).

August 25, 2014, Fifth GAL Report and Recommendation

Kitchens and Cooper submitted a GAL Report and Recommendation to the Family Court

on August 25, 2014. (Cooper J. Dep. Ex. 12.) Kitchens and Cooper again recommended that H.A. be placed with Plaintiffs or removed from the Dalsings' home. (Id. at 5.)

August 27, 2014, Third Permanency Plan Hearing

The third permanency plan hearing was held on August 27, 2014. (Ex. F, Order, Aug. 27, 2014.) The Family Court ordered that the current permanency plan be continued, and that Plaintiffs be added as parties. (Id. at 2-3.) The next permanency planning was scheduled for November 4, 2014; however, that hearing was rescheduled to January 13 and 14, 2015, upon request of the Dalsings. (Ex. G, Order, Nov. 4, 2014.)

First OHAN Investigation of the Dalsings

On September 19, 2014, Eison did not transport H.A., but was informed that, “[H.A.] had bruises and scratches on her face, jaw, and legs when Mary picked her up from the foster parents’ house.” (Id. at 329). An investigation was conducted by SCDSS, specifically by Melissa Rathel. (Aff. of Louise Cooper, Ex. A, pp. 34-36.) Rathel visited the Dalsings’ home and read the report to inform them of the allegations. (Id. at 34). The allegations contained concerns regarding the level of supervision provided to H.A., specifically regarding when she was left with the Dalsings’ daughter, Hannah. (Id. at 35).

Rathel interviewed the Dalsings and requested that Mrs. Dalsing take H.A. to the doctor which occurred on September 23, 2014. (Id.). Rathel received the relevant medical records on October 21, 2014, which stated that the injuries, “[were] minor and represent[ed] expected injuries that may be present on a toddler who is active and learning how to walk.” (Id. at 27).

Rathel spoke to Plaintiffs on October 21, 2014 regarding the allegations. (Id. at 26). Plaintiffs expressed concern about the bruising on H.A. and stated that H.A. was not adequately supervised. (Id.). On this same date, Rathel also spoke to Stephanie Kitchens, who said she

believed the Dalsings were taking care of the children, but due to the number of small children, they might not have been watching them closely. (Id. at 25).

Rathel conducted a follow-up visit with the Dalsings on October 27, 2014. (Id. at 20-21). During this visit, the Dalsings told Rathel that they found out that H.A. was stripped down every Friday and Monday by the drivers to check for bruises and diaper rash. (Id. at 20). The Dalsings also conveyed their opinion that they were being “harassed for wanting to adopt [H.A.]” (Id.). Rathel noted that H.A. stayed attached to Mrs. Dalsing for most of the visit and had a few bruises on her leg from playing. (Id.)

On October 31, 2014, Rathel spoke with Lea Funderburk, Supervisor Chan Henderson, Adoptions Supervisor Lisa Knight, and Stacie Eison. (Id. at 15-17). None of these workers expressed concerns about H.A. being abused, and Funderburk stated that she had previously worked with the Dalsing family and never had any concerns. (Id.) Subsequently, Rathel recommended that the investigation be marked as “Unfounded Category I.” (Id. at 10).

Home Visits with New SCDSS Case Manager

H.A.’s new case manager, Erika Eison, conducted her first home visits at the Dalsings’ home in November and December 2015. (Tisdale Aff., Ex. A, at 318-321). Eison did not observe any issues during these visits. (Id. at 318-321).

Caseworker Michelle Hames transported H.A. to Plaintiffs’ home on December 26, 2014. (Id. at 317). When she arrived, Hames noticed that H.A. had bruises above her lip, on her lip, and underneath her lip. (Id.) Mrs. Dalsing told Hames that H.A. had fallen while holding a toy, which led to the injuries. (Id.) Hames reported this to Eison, who informed Supervisor Tomeka Posey. (Id.) Eison also received a call from Mr. Dalsing regarding the injuries who stated that H.A. had fallen on Christmas while playing with a toy. (Id. at 316). Hames accepted these explanations.

January 13, 2015, Sixth GAL Report and Recommendation

On January 8, 2015, the Family Court ordered that Jennifer Cooper be relieved of her duties as GAL for H.A. due to medical issues following childbirth. (Ex. K, Order, Jan. 8, 2015.) On January 13, 2015, Kitchens submitted a GAL Report and Recommendation to the Family Court. (Ex. L, GAL Report, Jan. 13, 2015.) In the Report, Kitchens described observations made during a home visit of Plaintiffs on January 9, 2015. (Id. at 5.) Kitchens continued to recommend that H.A. be placed with Plaintiffs. (Id. at 7.)

January 13, 2015, Fourth Permanency Placement Hearing

A permanency planning hearing was held on January 13, 2015. (Ex. M, Order, Jan. 13, 2015.) **Notably, the Family Court again found that H.A.'s current placement was safe, appropriate and in the best interests of H.A.** (Id. at 4.) The Family Court ordered that termination of parental rights and adoption was in H.A.'s best interest. (Id. at 5.) The Family Court scheduled a termination of parental rights hearing for March 11 and 12, 2015. (Id.)

January 20, 2015, Third Foster Care Review Board

The Foster Care Review Board conducted a review of H.A.'s case on January 20, 2015. (Ex N, FCRB Recommendation, Jan. 20, 2015.) The Foster Care Review Board continued to recommend termination of parental rights and adoption. (Id.)

January 29, 2015, Second OHAN Report

An OHAN intake was completed on January 29, 2015. (Cooper Aff., Ex. A, p. 37). It was reported that H.A. had a busted lip and black right eye. (Id.) Tammy Dalsing stated that the busted lip occurred when H.A. fell and H.A. hit herself in the eye with a toy cell phone while playing with another child. (Id.) This allegation was not accepted as the injuries were consistent with the explanation of the Dalsings. (Id.) It was also noted that “agency officials are constantly in and

out of the home and there is not suspicion of abuse or neglect.” (Id.)

Continued Home Visits

When Eison arrived at the Dalsings’ home to pick Harmony up on Friday, January 23, 2015, Mrs. Dalsing informed her that Harmony had a bruise on the upper lid of her right eye from a play phone she and another child had been playing with. (L. Cooper Dep. Ex. 3 at 3). Eison dictated that, “[H.A.’s] bruise was mild and seemed consistent with the incident [Mrs. Dalsing] reported.” (Id.). She reported the bruise to Plaintiffs when dropping H.A. off that evening and was told by Plaintiffs that H.A. did not get bruises while in their care and the Dalsings needed to watch her more closely. (Id.).

Eison conducted additional home visits and transported H.A. between homes multiple times in February and March 2015 with no concerns noted. (Tisdale Aff., Ex. A, at 299-310).

March 6, 2015, Seventh GAL Report and Recommendation

Stephanie Kitchens a Report and Recommendation to the Family Court on March 6, 2015. (Ex. O, Order, March 3, 2015, p. 6, ¶ 19.) In her Report, she recommended that the parental rights of H.A.’s biological parents be terminated and that H.A. be placed with Plaintiffs. (Id.)

March 11 and 12, 2015, Termination of Parental Rights Hearing

On March 11 and 12, 2015, the Family Court held a termination of parental rights hearing. (Ex. O, Order, March 3, 2015.) During the hearing, Kitchens testified that she no longer recommended the termination of parental rights which slightly altered the recommendations made in her March 6, 2015, GAL Report. (Id. at 6, ¶ 19.) However, she confirmed her recommendation that H.A. be removed from the Dalsings’ home and placed with Plaintiffs. (Id.)

The Family Court ordered that the parental rights of H.A.’s biological parents were terminated. (Id. at 10-11, ¶ 1.) The Family Court held that the Dalsings did not have standing to

file or maintain their adoption action of H.A. (Id. at 8-10.) Therefore, the Family Court dismissed the adoption action of the Dalsings. (Id. at 10.) After dismissing the Dalsings' adoption action, the Family Court ordered that Stephanie Kitchens be relieved of performing any further GAL services concerning H.A. (Id. at 11, ¶ 3.) The Family Court ruled that this hearing would also serve as a permanency plan hearing and that the Order would serve as the permanent plan for H.A. (Id. at 11, ¶ 6.) The Family Court noted that all provision of previous orders not in conflict with this ruling would remain in full force and effect. (Id. at 11, ¶ 7.)

Continued Home Visits

Eison continued her monthly home visits, as well as occasional transport, between April and December 2015. (Aff. of Elizabeth Tisdale, Ex. A, at 270-297). During a few of the visits, Eison observed bruising on H.A., however, the bruises were consistent with falling while playing. (Id. at 290).

The War Escalates – The Dalsings Appeal to the South Carolina Court of Appeals

On July 15, 2015, the Dalsings appealed the Family Court's decision to dismiss their private adoption action to the South Carolina Court of Appeals. (Ex. P, Order, Dec. 16, 2015, p. 2, ¶ 5.)

July 21, 2015, Fourth Foster Care Review Board

On July 21, 2015, Foster Care Review Board conducted a review of H.A.'s case. (Ex. Q, FCRB Recommendation, July 21, 2015.) The Foster Care Review Board noted that the parental rights of the biological parents of H.A. had been terminated and recommended a permanent plan of adoption. (Id.)

Order to Substitute GAL

By Order on August 18, 2015, Stephanie Kitchens was removed as GAL for H.A. and

replaced with volunteer GAL Amy Gibson. (Kitchens Dep. Ex. 1, Nov. 15, 2021.) Kitchens testified that she was removed from the case because “[the Dalsings] were calling the State office non-stop complaining that [she] wasn’t recommending for them to keep [H.A.]” (Id. at 61:10-15.)

December 12, 2015, Eighth GAL Report

On December 12, 2015, Amy Gibson submitted a Report and Recommendation to the Family Court concerning H.A. (Ex. R, GAL Report, Dec. 12, 2015.) Gibson recommended that the case conclude as soon as possible. (Id. at 5.) She did not have a strong preference for placement, but deferred to H.A.’s opinion, writing that, “Both families can provide for [H.A.] and her needs...but per [H.A.]’s own words, she wants to stay with [Plaintiffs.]” (Id.)

December 16, 2015, Fifth Permanency Plan Hearing

Another permanency plan hearing was conducted on December 16, 2015. (Ex. S, Order, Dec. 16, 2015.) During this hearing, Plaintiffs requested an evidentiary hearing. (Id. at 2, ¶ 4.) The Dalsings opposed this request as it would change the *status quo*. (Id. at 2, ¶ 5.) The Family Court agreed with the Dalsings and denied Plaintiffs’ request for an evidentiary hearing. (Id.) The Family Court ordered the continuation of the prior plan and that custody remain with SCDSS. (Id. at 3, ¶ 7.)

Third OHAN Report, this time against Plaintiffs

H.A. suffered a broken arm at the home of Plaintiffs on December 25, 2015. (D. Armstrong Dep., March 22, 2022, at 38-41). Plaintiffs took her to the doctor two days later and it was determined that her arm was broken. (Id.) This was reported to SCDSS, who relayed the information to the Dalsings when dropping H.A. the following day. (Tisdale Aff., Ex. A, at 269).

A report was made to OHAN regarding this incident as York Pediatrics wanted to ensure

that SCDSS was aware of the broken arm and the two-day delay in having it treated. (Aff. of Louise Cooper, Ex. A, p. 39). The report was not accepted by OHAN.

January 19, 2016, Fifth Foster Care Review Board

The Foster Care Review Board conducted a review of H.A.'s case on January 19, 2016. (Ex. T, FCRB Recommendation, Jan. 19, 2016.) The Foster Care Review Board continued to recommend adoption of H.A. within six months. (Id.)

Early 2016 Home Visits and Transports

Caseworkers Eison, Funderburk, and Booker conducted monthly home visits and transports of H.A. between January and April 2016. (Id. at 239-261). During a visit on February 26, 2016, Tammy Dalsing reported that H.A. did not want to return to Plaintiffs' because they hit her and hurt her. (Id. at 254). However, she also stated that she did not believe Plaintiffs were hurting H.A., but she felt that she had to report the comments H.A. made. (Id.). Eison made a report regarding the allegations, but it was not accepted. (Id. at 251).

Amy Gibson is Relieved as GAL

By Order on Feb. 23, 2016, Amy Gibson was relieved of her duties as GAL and volunteer GAL Wayne Cook was appointed to serve as H.A.'s guardian. (Ex. U, Order, Feb. 23, 2016.) Stephanie Kitchens testified that Gibson no longer wished to be assigned to H.A.'s case. (Kitchens Dep. 37:17-19, Nov. 15, 2021.)

May 19, 2016, Decision of the South Carolina Court of Appeals

By decision dated May 19, 2016, the South Carolina Court of Appeals affirmed the Family Court's order that the Dalsings did not have standing to file an adoption action. (Ex. V, Order, May 19, 2016, p. 2.) The Dalsings filed a Petition for Rehearing, which was denied by the South Carolina Court of Appeals by order on July 5, 2016. (Ex. N, Order, July 5, 2016.)

July 19, 2016, Sixth Foster Care Review Board

The Foster Care Review Board conducted a review of H.A.'s case on July 19, 2016. (Ex. X, FCRB Recommendation, July 19, 2016.) As with previous reviews, the Foster Care Review Board recommended adoption of H.A. within six months. (Id.)

Continued Home Visits and Transport

Eison conducted monthly home visits from May through June 2016, and transports were routinely conducted by Booker and Patricia Jones, through September 2016. (Tisdale Aff., Ex. A, 204-236). After a transport on April 29, 2016, Plaintiffs informed Booker and supervisor Tomeka Posey that H.A. had various bruises which H.A. said she received from other children in the Dalsing home. (Id. at 234). Plaintiffs returned to the SCDSS office to show Posey, who took photographs of the bruises. (Id.). Eison spoke with Mrs. Dalsing who denied that the other children had caused the bruises. (Id.).

During this time, H.A. broke her arm again while climbing over a baby gate at the Dalsings' home. (T. Dalsing Dep. at 68-69). This was reported by Mrs. Dalsing to Caseworker Robin Miller, who notified Eison and Plaintiffs. (Tisdale Aff., Ex. A, at 232).

H.A. was assigned a new caseworker, Jocelyn Bell, in early September 2016. (Id. at 207). She conducted her first monthly home visit on September 9, 2016, and noted no concerns or bruises on H.A. (Id.).

September 21, 2016, Ninth GAL Report

On September 21, 2016, volunteer GAL Wayne Cook submitted a Report and Recommendation to the Family Court. (Ex.Y, GAL Report, Sept. 21, 2106.) Cook recommended that the case conclude as soon as possible.

September 21, 2016, Sixth Permanency Plan Hearing

The next permanency plan hearing was held on September 21, 2016. (Ex. AV, Order, Sept. 21, 2016). The Family Court found that it lacked jurisdiction to hear the matter given the Dalsings' appeal. (Id. at 2-3.) Therefore, the Family Court continued the scheduled permanency planning hearing. (Id.)

Continued Visits and Transports

On October 10, 2016, Mrs. Dalsing called Caseworker Robin Miller to report a "raspberry" on H.A.'s bottom as well as bruises on her lower back, which H.A. stated was from being hit by Plaintiff. (D. Armstrong Dep. Ex. 22 at 1-2). H.A. also reported that Plaintiff "smacked her in the face and broke her Barbie doll." (Id. at 2). Miller reported to OHAN and informed the Dalsings. (Id. at 2). When asked about her injuries by Funderburk during a visit in November, H.A. initially stated that Plaintiff had hit her; however, after Mrs. Dalsing left the room, H.A. denied having been hit. (Tisdale Aff., Ex. A, at 185).

The War Reaches its Peak - October 20, 2016 Grant of Certiorari by The South Carolina Supreme Court

On October 20, 2016, the South Carolina Supreme Court granted the Dalsings' petition for a writ of certiorari to review the decision of the South Carolina Court of Appeals. (Ex. Z, Order, Oct. 20, 2016.) The South Carolina Supreme Court determined that the Family Court "may continue with any matter not affected by the appeal" and "the writ of certiorari does not affect the family court's authority to hold the required annual permanency plan hearings." (Id. at 2.)

December 7, 2016, Tenth GAL Report

On December 7, 2016, volunteer GAL Wayne Cook submitted a Report and Recommendation to the Family Court. (Ex. AA, GAL Report, Dec. 7, 2016.) Cook continued to

recommend that the case conclude as soon as possible. (Id.)

December 7, 2016, Seventh Permanency Plan Hearing

A permanency plan hearing was held on December 7, 2016. (Ex. AB, Order, Dec. 7, 2016.)

The Family Court found that H.A.'s placement with the Dalsings was safe, appropriate, and in the best interests of H.A. while the case was under review by the South Carolina Supreme Court. (Id. at 2, ¶ 4.) The Family Court ordered that H.A. remain in the custody of SCDSS and noted that the current *status quo* would be maintained. (Id. at 3.)

Continued Home Visits and Transport

Throughout December 2016 and January 2017, Bell and Funderburk conducted home visits, and H.A. was transported between homes by Jones. (Aff. of Elizabeth Tisdale, Ex. A, at 167-179). On January 30, 2017, Jones noted a small mark on H.A.'s inner thigh that was pointed out to her by Plaintiffs and attributed to an issue with the car seat. (D. Armstrong Dep. Ex. 25 at 1). Other scratches on H.A. were noted on February 10, 2017, but were attributed to the Dalsings' puppy. (Tisdale Aff., Ex. A, at 169). Home visits and transports continued without issue over the following months. (Id. at 108-167).

January 17, 2017, Seventh Foster Care Review Board

The Foster Care Review Board conducted a review of H.A.'s case on January 17, 2017. (Ex. AC, FCRB Recommendation, Jan. 17, 2017.) The Foster Care Review Board continued to recommend adoption of H.A. within six months. (Id.)

Plaintiffs' Motion for Emergency Temporary Relief

On February 10, 2017, Plaintiffs filed a motion for emergency temporary relief in Family Court seeking physical custody of H.A. (Ex. AD, Motion, Feb. 10, 2017.) Plaintiffs requested a permanency plan hearing and an Order changing H.A.'s permanent plan to "custody/guardianship

with a fit and willing relative.” (Id. at 1-2.) Plaintiffs filed an affidavit detailing their concerns news coverage. (Id. at 3-4.) In their supporting affidavit, Plaintiffs also stated that Plaintiffs needed the Family Court “to grant emergency physical custody [of H.A.] to [Plaintiffs]” to “**stop the back and forth that happens each week between her temporary foster home and her permanent guardianship placement.**” (Id.) Judge Thomas White filed an order on February 10, 2017, ordering an emergency hearing be held on February 22, 2017. (Ex. AE, Feb. 13, 2017, Order.)

The February 22, 2017 Emergency Hearing

On February 22, 2017, an evidentiary hearing that was initially planned for April 12 and 13, 2017, was rescheduled because the presiding judge recused himself. (Ex. AF, Feb 23, 2017, Order.) The Family Court ordered that H.A.’s custody **remain status quo**, pending the permanency planning evidentiary hearing. (Id. at 2, ¶ 4.) Due to media coverage related, the Family Court issued a gag order: “no party in the present action, nor their attorneys, nor third parties within their control may in any way attempt to influence this matter through social media or through television, or books or newspapers.” (Id. at 2-3.)

July 18, 2017, Eighth Foster Care Review Board

The Foster Care Review Board conducted a review of H.A.’s case on July 18, 2017. (Ex. AH, FCRB Recommendation, July 18, 2017.) As it had in each prior recommendation, the Foster Care Review Board again recommended adoption of H.A. within six months. (Id.)

Continued SCDSS Interactions with H.A.

Beginning in August 2017, Anastasia Booker was assigned as H.A.’s case manager and took over home visits and contact with the families. (Tisdale Aff., Ex. A, at 123). Jones continued transporting H.A. between homes. (Id. at 112). There were no injuries or concerns noted until

October 27, 2017, after H.A. was bitten by a dog at the Dalsing home. (Id. at 106-107). This incident was reported to Supervisor Posey, who took photographs of the injuries. (Id. at 106).

September 22, 2017, OHAN Report

On September 22, 2017, Tammy Dalsing informed Jones that H.A. had reported being spanked by Plaintiff. (Tisdale Aff., Ex. A, at 114). An OHAN report was made regarding these allegations, but it was not accepted as H.A. later denied being spanked and had no marks or bruises. (Aff. of Louise Cooper, Ex. A, p. 42).

November 29, 2017, OHAN Report

A new report was made to OHAN on November 29, 2017, alleging that H.A. was hit on the knee with a hammer by the Dalsings' oldest daughter, Hannah, after H.A. wet on herself. (Id. at 45). When Booker spoke to H.A., she admitted wetting herself, but denied being hit on the knee and Booker observed no bruises on H.A.'s knees. (Id.) As such, the report was not accepted.

December 7, 2017, Eleventh GAL Report and Eighth Permanency Plan Hearing

A permanency plan hearing was held on December 7, 2017. (Ex. AI, Dec. 4, 2017, Order.). Volunteer GAL Wayne Cook submitted a Report and Recommendation recommending that H.A. remain in foster care. (Id. at 2.) The Family Court ordered that H.A. would remain in the custody of SCDSS and that “[b]ased upon the pending appeal, **the status quo shall remain in effect** for [H.A.] and the parties.” (Id. at 3, ¶¶ 1-2.)

The Beginning of the End - January 3, 2018, Decision of the South Carolina Supreme Court

On January 3, 2018, the South Carolina Supreme Court reversed the decision of the South Carolina Court of Appeals. (Ex. AJ, Jan. 3, 2018, Order of the South Carolina Supreme Court.) The Court ruled that the Dalsings had standing to pursue a private adoption action of H.A. (Id. at 10-11.)

January 16, 2018, Ninth Foster Care Review Board

The Foster Care Review Board conducted a review of H.A.'s case on January 16, 2018. (Ex. AK, FCRB Recommendation, Jan. 16, 2018.) The Foster Care Review Board continued to recommend adoption of H.A. within six months. (Id.)

Plaintiffs' Motion to Intervene and Consolidate

After the Supreme Court's decision, on January 5, 2018, Plaintiffs filed an action to adopt H.A. (Ex. AL, Jan. 5, 2018, Complaint.) Plaintiffs contemporaneously filed a motion to intervene and consolidate their recently filed adoption action with the adoption action filed by the Dalsings. (Ex. AM, May 25, 2018, Order.) On May 25, 2018, the Family Court ordered that the adoption actions of the Dalsings and Plaintiffs be consolidated. (Id.)

Home Visits and Transports in Early 2018

Home visits by Booker and Funderburk, as well as transports by Jones, continued in early 2018. (Tisdale Aff., Ex. A, at 70-87). The first concern noted during this time was H.A.'s third broken arm, which occurred on March 9, 2018, after H.A. tripped over the Dalsings' dog. (Id. at 68). Booker and Caseworker Michelle Hames visited H.A. at the Dalsings' home that day to assess the injury. (Id. at 66-67).

March 23, 2018, OHAN Report

On March 23, 2018, an OHAN report was made stating that Dakota, one of the Dalsings' older children, grabbed H.A. by the arm after another child used his lip balm. (Aff. of Louise Cooper, Ex. A, p. 53). This report was not accepted. (Id.)

First Forensic Interview

Due to the prior broken arms, dog bite, and reports made by H.A., she was referred to the Child Advocacy Center for a forensic interview. (Cole Dep. Ex. 10 at 1). The interview was

conducted by Heather Flassing on April 2, 2018. (Cole Dep. Ex. 2 at 1). During the forensic interview, H.A. stated that Mrs. Dalsing “spanks her with her hand on her bottom, on her cheeks, her forehead, her chin, and her eyeballs.” (Id. at 1). Flassing recommended that H.A. participate in therapy and DSS and Law Enforcement conduct thorough investigations of both homes. (Id. at 2).

As a result of the forensic interview, an OHAN report was made against the Dalsings and an investigation was initiated. (L. Cooper Dep. Ex. 2 at 1).

Other Allegations

H.A.’s new caseworker Michelle Hames interviewed H.A. and Plaintiffs on May 4, 2018, after concerns about H.A. being afraid to use the restroom and being taken by an older male were brought to her attention. (Aff. of Elizabeth Tisdale, Ex. A, at 53-54). H.A. reported that she was afraid of Hannah Dalsing because she swung her into the corner by her armpits. (Id. at 53). She also stated that Hannah’s fiancé, Ryan, took her to the bathroom, though he looked at his phone while she was in the bathroom. (Id. at 53).

On May 11, 2018, Hames was informed by Jones that Plaintiffs found scratches on H.A.’s private area. (D. Armstrong Dep. Ex. 1 at 1). Hames went to Plaintiffs’ home to observe the injuries, which H.A. claimed to have done to herself. (Id.). She was also told that H.A. came to their home each Friday in dirty underwear. (Id.). An OHAN report was made regarding these concerns; however, it was not accepted, and the concerns were noted in the following OHAN report on May 16, 2018. (Aff. of Louise Cooper, Ex. A, pp. 63, 71).

OHAN Investigation of Hannah Dalsing

On May 16, 2018, an OHAN intake was accepted related to H.A.’s report that Hannah swung her into the corner for time-out, as well as concerns about an unrelated male taking H.A. to

the restroom and H.A.'s scratches near her private area. (Id. at 71). OHAN Investigator Coretta Bush-Etheredge conducted an investigation which included interviews of H.A., Tammy Dalsing, Edward Dalsing, Hannah Dalsing, Dakota Dalsing, and H.A.'s therapist, Anna Reid. (Id. at 80-86.) Bush-Etheredge concluded that the case was "Unfounded Category II" as H.A. did not disclose physical abuse. (Id. at 79).

June 11, 2018, H.A.is Removed from the Dalsings

The OHAN investigation into the Dalsings' was indicated against Tammy Dalsing for physical abuse. (L. Cooper Dep. Ex. 2 at 1). As a result, on June 11, 2018, SCDSS removed H.A. from the Dalsings. (Ex. AN, Motion of the Dalsings, Oct. 9, 2018, p. 5.) H.A. was placed in another foster home. (Armstrong, R. Dep. 131:17-20, April 12, 2021.)

Despite the initial OHAN findings, Tammy Dalsing successfully appealed the findings, and the allegations of abuse and neglect were later determined to be unfounded. (T. Dalsing Dep. at 107:19-108:17.)

August 2018 OHAN Investigations

On July 20, 2018, H.A.'s foster parent, Tina Corn, reported to OHAN regarding statements made by H.A. that she was hit on her arms and head by the Dalsings. (Aff. of Louise Cooper, Ex. A, p. 115). She also reported being touched in her private area by another child in the home. (Id.) Shortly thereafter, another report was made on August 2, 2018, that stated H.A. disclosed being hit by Hannah Dalsing with a closed fist. (Id. at 133).

Investigator Zoe Mullins investigated both sets of allegations concurrently. (Id. at 115, 133). Mullins interviewed H.A., who denied having been hit by the Dalsings or touched in her private areas. (Id.) She also interviewed members of the Dalsing family, who all denied the reported allegations. (Id. at 128-130).

During her investigation, Mullins reviewed both H.A.'s first forensic interview and second that was conducted in August 2018. (Id. at 120). She spoke with Heather Flassing, the forensic interviewer, who stated that H.A. did not disclose any abuse during her second interview. Flassing stated it was difficult to determine what exactly happened due to H.A.'s inconsistency. (Id.)

The cases were closed by Mullins on August 28, 2018. (Id. at 137). Both cases were categorized as unfounded. (Ex. AN, Oct. 9, 2018, Motion of the Dalsings, at 7).

Continued Visits after Removal from Dalsings

Following H.A.'s removal from the Dalsings' home, she was briefly placed with another foster parent, Tina Corn, in June and July 2018. (Aff. of Elizabeth Tisdale, Ex. A, at 40). Hames conducted two visits with H.A. while in Ms. Corn's care, before H.A. was returned to Plaintiffs. (Id. at 37-40). The case was assigned to Betsy Hudson beginning in September 2018 and she and Funderburk conducted monthly visits at Plaintiffs;' home in September and October 2018 with no concerns noted. (Id. 11-30).

July 19, 2018, Tenth Foster Care Review Board

The Foster Care Review Board conducted a review of H.A.'s case on July 19, 2018. (Ex. AO, FCRB Recommendation, July 19, 2018.) The recommendation submitted by the Foster Care Review Board to the Family Court noted that there were no areas of concern documented at this review. (Id.)

October 9, 2018 – The Dalsings Surrender

On October 9, 2018, the Dalsings filed a motion to dismiss and to withdraw their adoption action. (Ex. AN, Oct. 9, 2018, Motion of the Dalsings.) On October 16, 2018, the Family Court granted the Dalsings' motion. (Ex. AP, Order, October 16, 2018.) In their Return, Plaintiffs admitted that within days of Plaintiffs agreeing to serve as a placement for H.A. in 2014, SCDSS

asked the Family Court to place H.A. with Plaintiffs. (Ex. AQ, Oct. 17, 2018, Return at 1.) Likewise, Plaintiffs admitted that “[t]hrough it all, each Guardian ad Litem advocated for [H.A.] to be placed with [Plaintiffs].” (Id.) Plaintiffs identified the Dalsings as the genesis for the damages which are alleged in this Action. Specifically, Plaintiffs stated that “The [Dalsings] have caused much delay in allowing [H.A.] to have the permanency she should have had in 2014[,]” and “have caused [H.A.] unrelenting pain and suffering.” (Id. at 3.)

November 14, 2018, Ninth Permanency Plan Hearing

The final permanency plan hearing was held on November 14, 2018. (Ex. AR, November 14, 2018, Order.) Volunteer Gal Wayne Cook recommended that that H.A. be adopted. (Id. at 2, ¶ 3.) The Family Court found that H.A.’s placement was safe, appropriate, and in the best interests of H.A. (Id. at 3, ¶ 7.) The Family Court approved the plan of adoption and ordered custody of H.A. to remain with SCDSS until further order of the Family Court. (Id. at 4.)

November 29, 2018, Eleventh Foster Care Review Board

An eleventh review was conducted by the Foster Care Review Board on November 9, 2018. (Ex. AS, FCRB Recommendation, Nov. 29, 2018). The review was continued at this time and the recommendation for adoption was unchanged. (Id.)

January 15, 2019, Twelfth Foster Care Review Board

The Foster Care Review Board held its final review of H.A.’s case on January 15, 2019. (Ex. AT, FCRB Recommendation, Jan. 15, 2019.) The Foster Care Review Board continued to recommend to the Family Court that the permanent plan of H.A. be adoption. (Id.)

To the Victors Go the Spoils - January 23, 2019, Adoption of H.A.

On January 23, 2019, a hearing was held before Judge Thomas White, regarding H.A.’s adoption by Plaintiffs. (Ex. AU, Jan. 23, 2019, Order.) The Family Court granted the adoption

and Plaintiffs became the legal parents of H.A. (Id. at 4.)

It is well that war is so terrible, otherwise we grow too fond of it – Robert E. Lee

Plaintiffs Have Grown Fond of Battle and Bring this Lawsuit

On March 11, 2020, Plaintiffs initiated this Action adding SCDCA and SCDSS into their battle against the Dalsings.

ARGUMENT

Plaintiffs attempt to assert three legal theories against SCDSS and SCDCA: Simple negligence; gross negligence, and negligence per se. Although many of their current theories are not pled in their Amended Complaint, based upon discovery in this case, Plaintiffs may assert the following theories against SCDSS and/or SCDCA:

1. That H.A. should not have been placed by SCDSS with the Dalsings on August 27, 2013, when she was taken into emergency protective custody.
2. That Plaintiffs should have been identified by SCDSS as a placement option for H.A. before April 29, 2014, when her father finally told SCDSS about their existence.
3. That H.A. should have been permanently placed with Plaintiffs after they were identified by H.A.'s biological father on April 29, 2014, despite the many orders to the contrary by the Family Court.
4. That H.A. should not have been allowed visitation with Plaintiffs while she was in the care of the Dalsings.
5. That SCDSS and/or SCDCA should have made the judicial system operate more efficiently so that permanent custody could have been established.
6. That H.A. was abused and neglected by the Dalsings starting upon her placement with the Dalsings and her Guardians ad litem should have taken some action.
7. That H.A. was abused and neglected by the Dalsings starting upon her placement with the Dalsings and SCDCA is somehow responsible for a failure of the Foster Care Review Board to take some unknown action.
8. That H.A. was abused and neglected by the Dalsings starting upon her placement with the Dalsings and SCDSS should have removed her from the home of the Dalsings and placed her with Plaintiffs.

SCDCA and the Guardians ad Litem Are Immune from Being Drafted into Battle.

To the extent that Plaintiffs argue that SCDCA is vicariously liable for the acts of the Guardians ad Litem, who merely make recommendations to the Family Court, Plaintiff's negligence claims are barred by the South Carolina Tort Claims Act and common law immunity principles. Among the many exceptions to the waiver of sovereign immunity, the Act provides that SCDCA is not liable for a loss resulting from: (1) "legislative, judicial, or quasi-judicial action or inaction"; or (2) "administrative action or inaction of a legislative, judicial, or quasi-judicial nature." S.C. Code Ann. § 15-78-60(1)-(2) (2021). In addition, the Tort Claims Act did not supplant common law principles of judicial immunity. Williams v. Condon, 347 S.C. 227, 247, 553 S.E.2d 496, 507 (Ct. App. 2001) (citing Fleming v. Asbill, 326 S.C. 49, 483 S.E.2d 751 (1997)). Here, it is clear that the acts complained of by Plaintiff against SCDCA are quasi-judicial acts and that Defendant SCDCA is immune from any tort claim as a result.

For example, in Fleming, the plaintiff sued volunteer guardian ad litem for breach of fiduciary duty and negligence arising out of custody proceedings. 326 S.C. at 51. The Supreme Court of South Carolina detailed the importance of guardians ad litem remaining free from the threat of litigation by people like these Plaintiffs:

To safeguard the best interests of the children, however, the guardian's judgment must remain impartial, unaltered by the intimidating wrath and litigious penchant of disgruntled parents. Fear of liability to one of the parents can warp judgment that is crucial to vigilant loyalty for what is best for the child; the guardian's focus must not be diverted to appeasement of antagonistic parents.

Id. at 56 (quoting Short v. Short, 730 F. Supp. 1037, 1039 (D. Colo. 1990)). The court ultimately found that a guardian ad litem acting in the scope of his duties performs quasi-judicial acts and is therefore entitled to an "absolute quasi-judicial immunity." Id. at 57. See also Falk v. Sadler. 341 S.C. 281, 533 S.E.2d 350 (Ct. App. 2000). (The court noted that "no matter how disagreeable" a

guardian's ad litem decision in the scope of her duties may be, “[a] recommendation by the guardian ad litem . . . will not sustain an action against the guardian of this sort.”)

Here, Plaintiffs do not allege, nor is there any evidence that, any guardian ad litem appointed for H.A. acted outside of his or her duties. To the contrary, Plaintiffs allege that the guardians should have exercised their duties differently by removing H.A. from the Dalsings. (Am. Compl., p. 3-6, ¶¶ 10-18.) Guardians ad litem in South Carolina are entitled to protection for exactly these types of claims. Plaintiffs simply disagree with the recommendations and work done by the guardians ad litem. This is the kind of discretionary decision-making that is “precisely the type of judicial acts to which immunity applies.” Plyer v. Burns, 373 S.C. 637, 647-48, 647 S.E.2d 188, 194 (2007) (finding that a probate court’s monitoring of a conservatorship was a judicial act). Accordingly, to the extent that Plaintiffs assert claims against SCDCa relating to the actions of the guardians ad litem, SCDCa is protected by absolute quasi-judicial immunity.

Furthermore, all of the volunteer guardians ad litem appointed by the Family Court have statutory immunity. All volunteer guardians ad litem are immune from liability pursuant to S.C. Code Ann. § 63-11-560, which provides that:

After participating in the training program of the South Carolina Guardian ad Litem Program, or a county guardian ad litem program operating pursuant to Section 63-11-500(B), a person who is appointed to serve as guardian ad litem and serves without compensation is not liable for any civil damages for any personal injury as a result of any act or omission by the person in the discharge of the responsibilities of a guardian ad litem if the person acts in good faith and is not guilty of gross negligence.

S.C. Code Ann. § 63-11-560. Here, uncontroverted evidence demonstrates that Jennifer Cooper, Amy Gibson, and Wayne Cooke all served as volunteer Guardians ad Litem for H.A. (Whittle Aff. ¶¶ 3-5.) Furthermore, Jennifer Cooper, Amy Gibson, and Wayne Cooke successfully completed the training course provided by the South Carolina Guardian ad Litem Program prior

to serving as a GAL for H.A. (Id.) There is no evidence that Jennifer Cooper, Amy Gibson, or Wayne Cooke acted in bad faith or in a grossly negligent manner. SCDCA is entitled to an order granting summary judgment in its favor as a matter of law.

SCDCA is Not Liable for the Acts of the Foster Care Review Boards and They Have Immunity

As discussed above, SCDCA is not liable for the acts or inactions of the Foster Care Review Boards. Members of those Boards are appointed by the South Carolina Governor and can only be removed by the Governor. SCDCA does not control the decisions of the Foster Care Review Boards, but instead provides administrative support to them. SCDCA is not vicariously liable for the Foster Care Review Boards, separate legal entities.

Beyond this, the Foster Care Review Boards have immunity under the Tort Claims Act. Section 15-78-60(30) of the Tort Claims expressly grants immunity for acts or omissions of local foster care review boards, except in limited circumstances. There is not a scintilla of evidence that any member of a foster care review board acted in bad faith, was grossly negligent, reckless, willful or wanton. To the contrary, the evidence shows that the foster care review boards considered H.A.'s case as required and consistently made recommendations to the Family Court, which had the sole discretion to accept or reject such recommendations. SCDCA is entitled to summary judgment as a matter of law for any claim associated with the Foster Care Review Board.

The Statute of Limitations Bars the Individual Claims of the Adult Plaintiffs Against SCDSS and SCDCA

The adult Plaintiffs' claims against SCDSS and SCDCA are barred by the two-year statute of limitations set forth in Section 15-78-110 of the South Carolina Tort Claims Act. Section § 15-78-110 of the Tort Claims Act provides: "[A]ny action brought pursuant to [the SCTCA] is forever barred unless an action is commenced within two years after the date the loss was or should have

been discovered...” South Carolina’s courts routinely apply the discovery rule to determine when a claim accrues under the Act. Joubert v. S.C. Dep't of Soc. Servs., 341 S.C. 176, 190, 534 S.E.2d 1 (Ct. App. 2000) (“Under the [SCTCA]...the statute of limitations begins to run when the plaintiff should know that he might have a potential claim against another, not when he develops a full-blown theory of recovery.”); Young v. S.C. Dep't of Corr., 333 S.C. 714, 719, 511 S.E.2d 413 (Ct. App. 1999) (“[C]ourts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist.”); Gillman v. City of Beaufort, 368 S.C. 24, 27, 627 S.E.2d 746 (Ct. App. 2006) (“Under the discovery rule, the statutory limitations period begins to run from the date when the injury resulting from the wrongful conduct either is discovered or may be discovered by the exercise of reasonable diligence.”); Kreutner v. David, 320 S.C. 283, 285 (1995) (“The date on which discovery of the cause of action should have been made is an objective, rather than subjective, question.”)

Plaintiffs filed their Complaint on March 11, 2020. Thus, if their negligence claims accrued prior to **March 11, 2018**, they are time-barred. Any claim by these adult Plaintiffs concerning the placement of H.A. with the Dalsings on August 27, 2013, accrued long ago. Plaintiffs have known about her placement since the Spring of 2014. Plaintiffs have employed legal counsel for years.

The specious claim that Plaintiffs should have been identified as a placement option for H.A. prior to April 29, 2014 is likewise barred. Plaintiffs have long contested H.A.’s placement. (Armstrong R. Dep. 216:15-18, July 29, 2021.) (“I’m asking all the way back in 2015, do you recall objections being made on your behalf over the Family Court making a determination on the placement of Harmony? Of course, I guess we objected because we were there to take her as family

reunification; is that what you're talking about?) (Feb. 10, 2017, Motion, p. 3, ¶ 10.) (“...we [Plaintiffs] need this court to grant emergency physical custody [of H.A.] to us...”)

With respect to Plaintiffs’ claims that H.A. should not have been spending weekends with them and weekdays with the Dalsings, that first occurred in June 2014, when the Court ordered that Plaintiffs have visitation. Likewise, while Plaintiffs bemoan that the Family Court did not issue an order for the permanent placement of H.A. until after the Dalsings’ appeals were concluded, they have been involved in every decision of the Family Court and long aware of the status and the Court’s continuing status quo orders.

Finally, with respect to Plaintiffs’ claims that H.A. was being abused and neglected by the Dalsings, Plaintiffs have made this contention virtually since their first visit with her. (Armstrong R. Dep. 91:2-3, July 29, 2021.) (“I’m saying that it started the first weekend about her being neglected.”) To the extent that they even have a legal claim to assert, it is clear that all claims which the adult Plaintiffs make against SCDSS and SCDC are time barred and their claims should be dismissed.

Neither SCDSS Nor SCDC Is Liable for the Acts of the Dalsings

Under Section 15-78-60(20) of the Tort Claims Act, governmental entities are not liable for the acts or omissions of third parties. Smith v. Reg’l Med. Ctr., 394 S.C. 110 (Ct. App. 2011). By their own admission, the alleged damages sustained by Plaintiffs for the lengthy Family Court litigation and the alleged abuse and neglect of H.A. were caused by the Dalsings. (Depo. of R. Armstrong, July 29, 2021, 104:7-11.) (“They [the Dalsings] [sic] the ones that did the private action, they're the ones that kept this going all the way to the Supreme Court instead of letting us go to court and let a judge decide, they're the ones that kept [H.A.] in this.”); (Depo of D. Armstrong, Dec. 20, 2021, 45:9-10.) (...the private adoption action [filed by the Dalsings] is what

led to all of this.”)

The South Carolina Supreme Court has held that SCDSS is not liable for torts committed by foster parents because foster parents are not employees of SCDSS. Simmons v. Robinson, 305 S.C. 428, 431 (1991) (Holding that despite being licensed by SCDSS as a foster parent, a foster mother “was not an employee or independent contractor” of DSS and, therefore, “the foster mother’s actions cannot be imputed to D.S.S....”) Given that the actions of a licensed foster parent cannot be imputed to SCDSS, it is axiomatic that such actions also cannot be imputed to SCDCA. As such, both SCDSS and SCDCA are entitled to immunity from liability arising in connection with any actions of the Dalsings pursuant to S.C. Code Ann. § 15-78-60(20).

Plaintiffs’ Claims for Negligence Are Flawed and Not Actionable

Simple Negligence is not Actionable Against SCDSS or SCDCA

Governmental entities, like SCDSS and SCDCA, are immune from liability for the claims asserted by these Plaintiffs pursuant to Section 15-78-60(25) of the Tort Claims Act, unless Plaintiffs can prove that they were grossly negligent. Simple negligence is not actionable. Doe v. Greenville Cnty. Sch. Dist., 373 S.C. 63, 71 (2007).

To prove gross negligence, Plaintiffs must prove that SCDSS and SCDCA failed to exercise even the slightest care. Hollins v. Richland Cnty. Sch. Dist. One, 310 S.C. 486, 490 (1992). Gross negligence is the “**intentional, conscious** failure to do something which is incumbent upon one to do or the doing of a thing intentionally that one ought not to do.” Faile v. S.C. Dep’t of Juvenile Justice, 650 S.C. 315, 331-32 (2002). Accordingly, Plaintiffs purported claims for simple negligence against these state agencies is barred by the provisions of the Act and they are entitled to summary judgment as a matter of law.

There is no Evidence that Either SCDSS or SCDCA Were Grossly Negligent

To prove gross negligence against either SCDSS or SCDCA, **each Plaintiff** must show: (1) the agency owed that duty of care to **that Plaintiff**; (2) the agency was grossly negligent by failing to exercise even the slightest care; (3) the agency's breach was the actual and proximate cause of the injury sustained by that Plaintiff; and (4) **that Plaintiff** suffered a cognizable injury or damages. Steinke v. S.C. Dep't of Labor, Licensing and Regulation, 336 S.C. 373, 387 (1999) ("The court must determine, as a matter of law, whether the law recognizes a particular duty. If there is no duty, then the defendant in a negligence action is entitled to a directed verdict.").

There is no evidence to support a Gross Negligence Claim against SCDSS for the Initial Placement of HA with the Dalsings

Plaintiffs appear to assert that SCDSS owed each of them a duty to not place H.A. with the Dalsings when she was removed from her meth-cooking parents on an emergency basis. First, there is no law to support any claim by Plaintiffs that SCDSS owed them such a legal duty. Until they adopted H.A., the adult Plaintiffs were merely relatives of H.A.'s father. H.A. was not even born when the Dalsings were licensed.

Second, there is no evidence that SCDSS breached any applicable standard of care relating to the licensing or relicensing of the Dalsings as foster parents. The Dalsings attended training prior to being licensed as foster parents. (Dalsing T. Dep. 37:13-15.) The evidence proves that prior to H.A.'s placement with the Dalsings, they had never been accused of abusing or neglecting any of the children who had been placed with the Dalsings through the foster care system. (Dalsing E. Dep. 40:15-17; Dalsing T. Dep. 53:2-5.) Plaintiffs have no evidence that SCDSS did not exercise at least slight care in its licensure of the Dalsings as foster parents and, therefore SCDSS is immune from any liability arising in connection with its issuance and renewal of the foster care license of the Dalsings pursuant to S.C. Code Ann. § 15-78-60(12).

Furthermore, Plaintiffs have failed to present any evidence from a qualified expert witness that SCDSS deviated from any applicable standard of care when it decided to place H.A. with the Dalsings on August 27, 2013. The uncontroverted expert testimony of Nicole Stolar-Peterson establishes that SCDSS “considered the provided and available options and utilized accepted professional standards when it made the discretionary decision to place H.A. with the licensed foster care providers, Edward and Tammy Dalsing on August 27, 2013.” (Stolar Aff. ¶ 5.) Moreover, SCDSS “demonstrated accepted professional standards when it made the initial placement [of H.A.] into the Dalsing Home.” (Stolar Aff. ¶ 7.) As such, there is no genuine question of material fact concerning whether SCDSS exercised appropriate care when it made the decision to place H.A. with the Dalsings.

Plaintiffs’ Flawed Claim that SCDSS Perform Genealogical Searches

Plaintiffs appear to contend that SCDSS should have conducted different genealogical searches which they say would have identified them as potential relatives at some unknown point when the child’s own parents did not identify them as a placement option, but instead wanted the child to be placed with other relatives. There is simply no case law in South Carolina or otherwise to support any claim that SCDSS had a legal duty to any of these Plaintiffs to identify the adult Plaintiffs as a placement option. The evidence proves that SCDSS requested relative information from H.A.’s biological mother when H.A. was taken into emergency protective custody. (Kaylor Aff. Ex. A.) The evidence proves that SCDSS continued to request such information from H.A.’s parents. (Id. at ¶¶ 5-6; Ex. B.) SCDSS conducted investigations into the suitability of the two relatives identified by H.A.’s father. (Id. at ¶ 7.) SCDSS also paid for a Seneca Search for possible family of H.A. who might serve as a placement option for H.A. (Id. at ¶ 8; Ex. C.)

As the Affidavit of Nicol Stolar-Peterson establishes, the techniques utilized by SCDSS to

locate relative placement options of children in the care and custody of SCDSS are the same types of techniques employed by other state department of social services and comply with 42 U.S.C. § 671(a)(29).¹ (Stolar Aff. ¶¶ 8-9.) Moreover, the uncontested expert witness testimony of Stolar-Perterson establishes that SCDSS acted in accordance with its policies in searching for relative placement options for H.A. (Id. at ¶ 10.) Therefore, there is no genuine question of material fact whether SCDSS exercised appropriate care in searching for relative placement option for H.A.

The Claim Against SCDSS and SCDCA that the War Took Too Long

Based upon their deposition testimony, the primary claim of Plaintiffs is that that the Family Court fight lasted too long and the status quo of H.A. spending weekdays with the Dalsings and weekends with Plaintiffs was unreasonable. Neither SCDSS or SCDCA owed any Plaintiff any duty to make the judicial system operate more efficiently or deny the Dalsings their legal right to fight for H.A. There is no evidence that either SCDSS or SCDCA had the ability to make the Court system operate differently. Notably, SCDCA did not even exist until several months **after** Plaintiffs were awarded permanent custody of H.A. on January 25, 2019, so it is difficult to understand how Plaintiffs assert any such claim against SCDCA.

Instead, the evidence demonstrates that both SCDSS, the Foster Care Review Board, and the Guardians ad Litem consistently appeared before the Family Court and made good faith recommendations to the Court regarding H.A. The order in the Family Court plainly show that once the Dalsings filed their adoption action in June 2014, the Family Court would not grant custody of H.A. to Plaintiffs. There is no evidence that either SCDSS nor SCDCA had either a duty or ability to make the courts do anything. To the contrary, Plaintiffs were represented by

¹ 42 U.S.C. § 671(a)(29) imposes upon a state department of social services to enact a plan relating to the identification of and notification to certain relatives of a child who is placed in foster care.

counsel and had more than adequate opportunity to seek redress from the Family Court.

Plaintiffs' Claims that Either SCDSS or SCDC A Were Grossly Negligent in Preventing H.A. From Abuse or Neglect is not Supported by the Evidence.

Plaintiffs allege that the Dalsings were abusing H.A. and that SCDSS and SCDC A were grossly negligent by not intervening. Many of Plaintiffs' complaints of alleged abuse - a bad haircut, blisters on H.A.'s feet on one occasion, the use of pull-ups at night, mosquito bites, ear piercing - are simply spurious. Plaintiffs' other claims are not supported by the facts in evidence.

First, SCDC A has no right or ability to alter the placement of a child in foster care or to move a child from a particular placement. Guardians ad Litem and the Foster Care Review Boards (for which SCDC A has no liability) merely make recommendations to the Family Court, which has complete discretion to adopt or ignore those recommendations, as it did in this case. Here, the record is devoid of any evidence establishing that any acts of SCDC A proximately caused any of the damages allegedly sustained in this Action. Contrary to Plaintiffs' allegations, it is irrefutable that the Family Court repeatedly found that H.A.'s placement, which was not in the home of Plaintiffs, was in her best interest and that she was safe. (Ex. C, Feb. 19, 2014, Order, p. 4, ¶ 7; Ex. D, June 4, 2014, Order, p. 3, ¶ 2; Ex. I, Jan. 13, 2015, Order, p. 4, ¶ 7; Ex. Q, Dec. 7, 2016, Order, p. 2, ¶ 4; Ex. T, Feb. 22, 2017, Order, p. 2, ¶ 4; Ex. V, Dec. 4, 2017, Order, p. 3, ¶ 1.; & Ex. AA, Nov. 14, 2018, Order, p. 3, ¶ 7.) The Family Court also repeatedly ordered that the placement of H.A. remain status quo. (Ex. Q, Dec. 7, 2016, Order, p. 3; Ex. T, Feb. 22, 2017, Order, p. 2, ¶ 4; Ex. V, Dec. 4, 2017, Order, p. 3, ¶ 1.)

Second, as the long factual history of investigations detailed above shows, the undisputed evidence establishes that SCDSS investigated a plethora of claims, anonymous and otherwise, relating to abuse of H.A. lodged against both the Dalsings and Plaintiffs. There is no evidence that SCDSS breached any duty to investigate allegations of alleged abuse of H.A. The uncontroverted

expert witness testimony of Nicole Stolar-Peterson establishes that SCDSS “conducted investigations of abuse and neglect asserted against [the Dalsings] and also against [Plaintiffs] in accordance with the standard of care utilized by other similar state agencies.” (Stolar Aff. ¶ 6.) Moreover, the discretionary decisions made by SCDSS concerning whether allegations of abuse or neglect of H.A. warranted the removal of H.A. were made after weighing and considering the same types of information that other state departments of social services consider for those situations. (Id.) Plaintiffs have not presented any evidence from any qualified expert witness that SCDSS deviated from any applicable standard of care in conducting any investigation of alleged abuse or neglect of H.A.

The evidence and uncontroverted expert witness testimony of Nicol Stolar-Peterson proves that SCDSS weighted competing considerations and utilized accepted professional standards in investigating all allegations of abuse or neglect of H.A. As such, Plaintiffs’ claims are barred by Section 15-78-60(5) of the South Carolina Tort Claims Act. The evidence also proves that SCDSS exercised at least slight care in conducting investigations relating to the alleged abuse or neglect of H.A and Plaintiffs claims are barred by Section 15-78-60(25) of the South Carolina Tort Claims Act.

The Adult Plaintiffs Cannot Assert any Valid Damages Claim for Their Injuries on the Battlefield

Although not particularly specified in their Amended Complaint, it appears that the adult Plaintiffs seek emotional damages, damages for the loss of H.A.’s companionship, and perhaps damages from some physical injuries that have never been identified. (Am. Compl. ¶ 35.) These damages are not recoverable against SCDSS or SCDC.A. In the first place, these Adult Plaintiffs

were not the parents of H.A. until 2019, long after all of the events they complain of took place. In the second place, these damages are not recoverable under South Carolina law.

South Carolina “common law only allow[s] a parent to maintain an action for the loss of a child’s services and earning capacity.” Doe v. Greenville County Sch. Dist., 375 S.C. 63, 69 651 S.E.2d 305, 308 (2007) (ruling that South Carolina court do not recognize a claim for filial consortium). “This right was based upon the concept that a father was entitled to compensation for the loss of services and earning capacity of his minor child.” Id. at 68 (citing Hughey v. Auburn, 249 S.C. 470, 476, 154 S.E.2d 839, 841-42 (1967)). The damages that a parent can recover for an injury to this child do “not include the intangible losses of aid, companionship, and society.” Doe, 375 S.C. at 69-70.

Here, the adult Plaintiffs are trying to use a trojan horse by seeking emotional damages and damages for the loss of H.A.’s companionship which are really loss of filial consortium claims barred under South Carolina law. Such damages are not recoverable under clearly established South Carolina precedent. The adult Plaintiffs notably do not seek damages for the loss of H.A.’s services or earning capacity, nor can they since she was not in their custody until 2019 and she did not earn anything as a very young child. Accordingly, this Court should grant summary judgment for SCDSS and SCDSS because the adult Plaintiffs did not suffer and do not claim recoverable damages.

The Adult Plaintiffs Cannot Claim Damages for Emotional Distress.

Although their claim is not artfully pled, it appears that the adult Plaintiffs attempt to assert a claim for emotional distress claim against SCDSS and SCDCA. (Am. Cmplt. ¶¶ 19-22.) There is no evidence to support such a claim. In Kinard v. Augusta, the Supreme Court of South Carolina detailed the elements to recover for negligent infliction of emotional. These Plaintiffs must prove:

- (a) the negligence of SCDSS and SCDC A caused death or serious physical injury to H.A.;
- (b) Plaintiffs were in close proximity at the time;
- (c) Plaintiffs and H.A. are closely related;
- (d) Plaintiffs contemporaneously perceived the incident; and
- (e) the emotional distress must both manifest itself by physical symptoms capable of objective diagnosis and be established by expert testimony.

Id. at 582. The court in Kinard found that a mother watching her daughter get hit by a load of roof trusses that fell off a truck “[f]e]ll within the limits of the cause of action.” Conversely, the court in Doe v. Greenville County Sch. Dist. found that parents could not bring a negligent infliction of emotional distress claim where their daughter was involved in a sexual relationship with a substitute teacher at her school. 375 S.C. 63, 66-67, 651 S.E.2d 305, 306-07 (2007).

Here, the adult Plaintiffs’ negligent infliction of emotional distress claim lacks the necessary elements detailed in Kinard. Plaintiffs allege that H.A. broke her arm twice in the care of the Dalsings and suffered bruises and scratches (Am. Cmpl. ¶ 18.), but this does not amount to the “death or serious injury”. Similarly, Plaintiffs allege that the abuse happened “while in the Defendant’s foster home.” Id. Thus, like the parents in Doe who may have seen the impact of the substitute teacher’s sexual relationship on their daughter, the adult Plaintiffs did not witness the abuse that occurred at the foster home. The adult Plaintiffs were necessarily not in close proximity to the alleged abuse of H.A. and could not contemporaneously perceive it. Accordingly, any claim by the adult Plaintiffs is legally deficient and SCDSS and SCDC A are entitled to summary judgment.

Plaintiffs’ Claim for Punitive Damages Is Barred by § 15-78-120(b) of the South Carolina Tort Claims Act

South Carolina Tort Claims Act prohibits Plaintiff from recovering punitive damages against either SCDSS or SCDC A. S.C. Code Ann. § 15-78-120(b) (“No award for damages under this chapter shall include punitive or exemplary damages or interest prior to judgment.”)

Charleston Cnty. Sch. Dist. v. State Budget and Control Board, 313 S.C. 1, 9 (1993) (holding that “[n]o punitive damages are recoverable under the State Tort Claims Act.”) As such, Plaintiffs’ claim for punitive damages against SCDSS and SCDCa is barred by the Act.

CONCLUSION

The bruising war between the Dalsings and Plaintiffs has been long and has utilized many of the resources of the South Carolina court system, the South Carolina Department of Social Services and the South Carolina Department of Children’s Advocacy. This Court should declare the battle over. The forgoing authorities and arguments demonstrate that both the South Carolina Department of Social Services and the South Carolina Department of Children’s Advocacy are entitled to an order granting summary judgment in their favor as a matter of law.

Respectfully submitted,

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