THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

R. Markley Dennis Jr., Circuit Court Judge

Case No. 2010-CP-08-3732

Jane Roe, as parent and natural guardian of
Judy Roe, James Roe, and Joyce Roe, minor
children under the age of eighteen (18) ..... Appellants,

v.

Daniel Bibby, Sr., and Michelle Bibby

Of whom, Michelle Bibby is.....Respondent.

INITIAL BRIEF OF RESPONDENT

Eugene P. Corrigan III
J.W. Nelson Chandler
CORRIGAN & CHANDLER LLC
PO Box 547
Charleston, SC 29402
Phone: (843) 577-5410
Fax: (843) 577-5650

ATTORNEYS FOR RESPONDENT
MICHELLE BIBBY

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

Rules

STATEMENT OF ISSUES ON APPEAL

I. DID THE CIRCUIT COURT CORRECTLY GRANT SUMMARY JUDGMENT ON THE GROUNDS THAT RESPONDENT OWED NO AFFIRMATIVE DUTY TO WARN APPELLANTS UNDER A EITHER A "SPECIAL RELATIONSHIP" THEORY OR A PREMISES LIABILITY THEORY?

II. DID THE CIRCUIT COURT CORRECTLY GRANT SUMMARY JUDGMENT, IN ANY EVENT, BECAUSE THERE IS NO ADMISSIBLE EVIDENCE TO ESTABLISH THE ALLEGATIONS OF ABUSE?

STATEMENT OF THE CASE

This case centers on whether a wife has an affirmative duty to warn a third-party that her husband might commit a criminal act.

Appellant Jane Roe ("Roe"), on behalf of her three minor children (the "minor Appellants"[1]) (together with Roe, "Appellants") brought this action in the Berkeley County Court of Common Pleas in October 2010. (Summons & Complaint). The Complaint asserted various causes of action against Defendants Daniel Bibby, Sr. ("Mr. Bibby") and, his wife, Michelle Bibby ("Mrs. Bibby" or "Respondent"), arising out of the allegation that Mr. Bibby sexually molested one of Roe's children, "Judy Roe." (Complaint, ¶ 8). Mrs. Bibby answered the Complaint in January 2011, denying the allegations. (Answer). Separately, Mr. Bibby submitted several documents to the Circuit Court, denying the allegations, but Roe ultimately obtained a default judgment against him. (Filings of April 25, 2011; May 2, 2011; and February 17, 2012).

Mr. Bibby is not a party to this appeal. By way of background, the claims asserted against him included assault, battery, false imprisonment, intentional infliction of emotional distress, and wrongful infliction of emotional distress on a bystander. (Complaint). As against Mrs. Bibby, Roe asserted causes of action for negligence and wrongful infliction of emotional distress on a bystander. The former claim was asserted on behalf of Judy Roe and the latter on behalf of Roe's other two children, "James Roe" and "Joyce Roe." (*Id.* at ¶¶ 43-55, 56-62). Following discovery, on April 17, 2012, Mrs. Bibby moved for summary judgment. (Motion for Summary Judgment). The Honorable R. Markley Dennis Jr., held a hearing on July 10, 2012, after which he granted the

[1] For purposes of anonymity, the minor Appellants are referred to herein as James, Joyce and Judy.

motion. (Hearing Transcript). Judge Dennis issued a formal Order on October 21, 2012, dismissing the case against Mrs. Bibby with prejudice. (Order). Roe appealed to this Court in November 2012.

On appeal, Roe argues that the Circuit Court erred in dismissing her negligence claim against Mrs. Bibby. Roe's theory of liability is that Mrs. Bibby owed an affirmative duty to warn Roe that Mr. Bibby might engage in the conduct alleged. The Circuit Court disagreed with Roe, finding that Mrs. Bibby owed no affirmative duty to warn as matter of law. Thus, Roe presently argues that South Carolina law should be expanded to recognize such a duty under either a "special relationship" analysis or a premises liability analysis.

STATEMENT OF FACTS

Mrs. Bibby, 65, is a mother of three and grandmother of five. She is currently retired, following thirteen years of service to the Charleston County Public Library. (Bibby Dep. 43:2-11). During the time at issue, Mrs. Bibby was still working and had legal custody of a minor grandson. This grandson had lived with Mrs. Bibby since he was four months old. (Bibby Dep. 6:10-14). Mr. Bibby had a career in the Navy and married Mrs. Bibby in 1969. (Bibby Dep. 12:5-7, 20-21). They were still together during the time in dispute, but had separated by the time Appellants commenced this lawsuit. (Bibby Dep. 10:5-8).

Sometime in 2002 or 2003, Mrs. Bibby's youngest son, Daniel Bibby Jr. ("Daniel Jr."), moved back into the family home in Goose Creek, along with his minor son and daughter. (Bibby Dep. 44:4-6). Daniel Jr. was the custodial parent of these two children and was the father of the other child of whom Mrs. Bibby already had custody. Thus,

during the time at issue, the Bibby household consisted of three adults (Mr. and Mrs. Bibby and Daniel Jr.) and three children (one girl and two boys). The Bibby residence was owned jointly by Mr. and Mrs. Bibby. (Bibby Dep. 4:17-20, 88:20-25, 89:1-2).

In or around February 2008, Roe, her husband, and three children (again, the "minor Appellants") moved into a home diagonally across from the Bibby family. (Roe Dep. 21:22-24; 22:6-9). The Roe and Bibby children became friends and often played over at the Roe house. (Roe Dep. 20:22-25). One day, Daniel Jr. told Roe that it would be okay for her children to come over and play with his children. (Roe Dep. 21:18-21). Other neighborhood children also played with the Roe and Bibby children, and as in many neighborhoods, the children ran back and forth between houses. (Bibby Dep. 102:9-10; Roe Dep. 50:15-17; 102:21-24).

During this period, Mrs. Bibby worked forty hours a week at the library. (Bibby Dep. 43:4-11). Roe, on the other hand, had stopped working and was home with the kids at all times. (Roe Dep. 56:12-17). Daniel Jr. also was not working. (Bibby Dep. 44:2-3). Roe and Daniel Jr. often sat in lawn chairs and watched the children play outside. (Roe Dep. 56:18-20). According to Roe, there was an understanding with Mrs. Bibby that Roe's children were welcome at the Bibby home, primarily when the children were outside playing. (Roe Dep. 65:24-66:12). Mrs. Bibby was generally aware that the children played together at each other's homes, but was not aware of the children ever being alone with Mr. Bibby. (Bibby Dep. 102:2-13).

Mrs. Bibby and Roe enjoyed a neighborly relationship. Roe regularly talked to Mrs. Bibby and visited the Bibby home herself, whether to borrow a cup of sugar or to pick up hand-me-downs. (Roe Dep. 73:15-22). They discussed religion, their husbands'

military backgrounds, and notably, the fact that Mr. Bibby had physically abused Mrs. Bibby in the past. (Roe Dep. 75:3-9). Roe knew that Daniel Jr. occasionally left all the children with Mr. Bibby while Mrs. Bibby was at work. (Roe Dep. 50:3-4; 51:2-52:12; 54:12-16). Roe did not advise Mrs. Bibby of that when it occurred. (Roe Dep. 65:21-24).

Sometime in April or May 2009, Mr. Bibby checked himself into a behavioral center for depression. (Bibby Dep. 47:11-13). While there, he admitted to a doctor that he had molested his resident granddaughter, Daniel Jr.'s daughter. (Bibby Dep. 30:10-12). Thereafter, Mr. Bibby confessed the same to Mrs. Bibby. (Bibby Dep. 50:2-6). Mrs. Bibby immediately asked Mr. Bibby to move out, and she called the Department of Social Services ("DSS"). (Bibby Dep. 10:14-18; 50:17-22). Mrs. Bibby then informed her son, Daniel Jr., who, in turn, sent a text message to Roe. (Roe Dep. 28:5-8). Roe questioned her children and alleges that the two girls claimed that Mr. Bibby had touched them inappropriately. (Roe Dep. 29:6-9; 30:12-14). Roe testified that she followed the advice of DSS in handling the situation and understood that Mrs. Bibby had done the same. (Roe Dep. 64:21-65:3).

Mr. Bibby has consistently denied touching the Roe children. (Bibby Dep. 80:3-13). In his Court filings in this case, he stated: "Never have I caused any harm to the mentioned children [in this] case, whether it be sexual abuse or physical abuse...Again, I never, ever harmed those children." (Filing by Mr. Bibby, April 25, 2011). And in a subsequent filing, he reiterated: "I deny every and all accusation[s] made by [Jane Roe] against me." (Filing by Mr. Bibby, May 2, 2011; *see also* Filing by Mr. Bibby, February 17, 2012). Ultimately, Mr. Bibby was convicted of molesting his granddaughter, but he

was not prosecuted for any actions involving the Roe children, and those charges were dismissed. (Roe Dep. 38:19-20; 39:3-7).

Roe contends that Mrs. Bibby should have warned her in light of an episode that had come to light some fourteen years prior. (Roe Dep. 58:1-15). In 1995, when Mrs. Bibby's daughter was sixteen years old, she reported that her father had – a few years prior to that – touched her and made her feel uncomfortable. (Bibby Dep. 21:3-8). Upon learning this, Mrs. Bibby immediately called DSS. (Bibby Dep. 20:8-9). Mrs. Bibby also confronted Mr. Bibby, who admitted the allegations, and Mrs. Bibby asked him to leave the house. (Bibby Dep. 20:24-25; 25:16-19). Subsequently, Mr. Bibby spent a month in a behavioral hospital in Florida. (Bibby Dep. 19:4-25).

During that time, the Bibby family worked with DSS, and Mrs. Bibby understood that Mr. Bibby completed his counseling with "flying colors." (Bibby Dep. 65:7-12). DSS advised Mrs. Bibby to take Mr. Bibby back into the family in order to rebuild the family unit. (Bibby Dep. 21:23-22:3). DSS instructed the Bibby family not to discuss the episode with anyone, and Mrs. Bibby understood that Mr. Bibby was "cured." (Bibby Dep. 37:9-14). Mr. Bibby was not prosecuted criminally. As part of the follow-up counseling provided to Mrs. Bibby's daughter, they talked about ways to make her feel more secure. (Bibby Dep. 64:12-23). They decided to purchase a new doorknob for the daughter's room, with a key. (Bibby Dep. 64:17-23). The lock gave her a sense of privacy until she moved out after high school, around 1997. (Bibby Dep. 29:22-23; 64:8-9; 65:2-5).

Until 2009, when Mr. Bibby informed Mrs. Bibby of what had happened with their granddaughter, Mrs. Bibby had no knowledge of any such abuse by Mr. Bibby since

the earlier episode was disclosed and addressed in 1995. (Bibby Dep. 63:3-8; 66:7-24; 83:4-6). Indeed, Roe admitted she has no information to the contrary. (Roe Dep. 66:20-67:1). For well over a decade, Mrs. Bibby believed, as did DSS, that that Mr. Bibby was "cured." (Bibby Dep. 65:6-7).

STANDARD OF REVIEW

When reviewing an order granting summary judgment, the appellate court applies the same standard as the trial court. *Turner v. Milliman,* 392 S.C. 116, 121-22, 708 S.E.2d 766, 769 (2011). Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law. *Id.*; Rule 56(c), SCRCP. In determining whether any triable issues of material fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). "A genuine issue of fact, however, can be created only by evidence which would be admissible at trial." *Hansen v. DHL Laboratories, Inc.*, 316 S.C. 505, 510, 450 S.E.2d 624, 627 (1994).

ARGUMENT

As noted by Appellants, a plaintiff must prove three elements to recover for negligence: (1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach. *See Carolina Chloride, Inc. v. Richland County*, 394 S.C. 154, 163, 714 S.E.2d 869, 873 (2011). "If any of these elements is absent a negligence claim is not stated." *Chakrabarti v. City of Orangeburg*, 403 S.C. 308, 314, 743 S.E.2d 109, 112 (Ct. App. 2013). Further, as a threshold matter, "[t]he court must determine, as a matter of law, whether the law recognizes a particular duty," and if there is no duty, the defendant is entitled to judgment as a matter of law. *Id.; Doe v. Wal-Mart Stores, Inc.*, 393 S.C. 240, 246, 711 S.E.2d 908, 911 (2011). Here, the Circuit Court correctly determined that Mrs. Bibby owed no duty to Appellants and, therefore, she was entitled to judgment as a matter of law. Additionally, the record is devoid of any admissible evidence that the alleged acts occurred, so Appellants cannot establish damage proximately resulting from any alleged breach of duty.

I. THE CIRCUIT COURT CORRECTLY GRANTED SUMMARY JUDGMENT BECAUSE MRS. BIBBY DID NOT HAVE A DUTY TO WARN APPELLANTS UNDER EITHER A "SPECIAL RELATIONSHIP" THEORY OR A PREMISES LIABILITY THEORY.

It is well-established that "South Carolina law does not recognize a general duty to warn of the dangerous propensities of others." *See Doe v. Marion*, 361 S.C. 463, 471, 605 S.E.2d 556, 560 (Ct. App. 2004), *aff'd*, 373 S.C. 390, 645 S.E.2d 245 (2007) (emphasis added); *see also Wal-Mart Stores,* 393 S.C. at 247, 711 S.E.2d at 912 ("Under South Carolina law, there is no general duty to control the conduct of another or to warn a third person or potential victim of danger"). Our appellate courts, however, have

recognized certain limited exceptions to the rule. *See Faile v. S.C. Dep't of Juvenile Justice*, 350 S.C. 315, 334, 566 S.E.2d 536, 546 (2002). Appellants ask this Court to apply the exception providing that a duty to warn may arise where the defendant had a "special relationship" with the victim. *Id.* Specifically, Roe argues that Mrs. Bibby had a special relationship with the minor Appellants, which required her to act based upon certain alleged knowledge regarding Mr. Bibby.[2] (App. Brief, p. 6).

In the alternative, Appellants maintain that a duty should be imposed under a theory of premises liability, likening Mr. Bibby to a concealed dangerous condition on the property, such as a "beehive." (App. Brief, p. 17). Describing the scope of the would-be duty, Appellants assert that Mrs. Bibby should have warned any "unsuspecting guests" on her property or anyone else with whom she had a "special relationship." (App. Brief, p. 17). Appellants avoid expounding upon the proposed warning's content, but believe Mrs. Bibby should have advised Roe regarding the danger allegedly posed by Mr. Bibby, which necessarily would have consisted of a disclosure of their daughter's abuse over fifteen years before.

While South Carolina courts have recognized an affirmative duty to warn in certain, unrelated circumstances, the law has not been, and should not be, expanded to recognize the duty advocated by Appellants, particularly on these facts.

---

[2] In *Faile*, the Supreme Court set forth five (5) exceptions to the general rule that one does not have an affirmative duty to act. 350 S.C. at 334, 566 S.E.2d at 546. There are two (2) exceptions for "special relationships," one of which involves the defendant's relationship with the alleged *injurer* and one of which involve the defendant's relationship with the alleged *victim(s)*. *See id.* Though Appellants were less specific below, their appellate argument clearly and exclusively alleges the latter type of potential special relationship (*i.e.* with alleged victim(s)). (App. Brief, pp. 6, 13). On appeal, Appellants do not, and cannot, advance any argument that Mrs. Bibby had the ability to supervise and control Mr. Bibby, the alleged injurer. Further, they purport to disclaim any categorization of their argument as one based on vicarious liability. (App. Brief, p. 13).

A. Appellants Have Not Established the Applicability of the "Special Relationship" Exception, Including The Requisite Knowledge of Any Specific Threat.

Under the special relationship exception, a defendant "may have a common law duty to warn potential victims . . . when [1] the defendant 'has the ability to monitor, supervise, and control an individual's conduct' and when [2] 'the individual has made a specific threat of harm directed at a specific individual.'" *Wal-Mart Stores,* 393 S.C. at 247, 711 S.E.2d at 912 (quoting *Bishop v. South Carolina Dep't of Mental Health*, 331 S.C. 79, 86, 502 S.E.2d 78, 81 (1998)). In this case, Appellants have failed to establish either prong of the special relationship test. They did not present evidence sufficient to demonstrate (1) that Mrs. Bibby had the ability to monitor, supervise and control the minor Appellants; and (2) they did not present evidence of a specific threat to a specific individual.

1. Appellants Failed to Prove a Special Relationship Between Mrs. Bibby and the Minor Appellants.

In order to establish a special relationship, Appellants must prove that Mrs. Bibby was able to "monitor, supervise, and control [the minor Appellants'] conduct." *Wal-Mart Stores, Inc.*, 393 S.C. at 247, 711 S.E.2d at 912 (finding that retailer/film developer had no special relationship with abuse victim depicted in photographs). Importantly, this is not a case where Mrs. Bibby was the minor Appellants' counselor, teacher, or day-care provider. Instead, Mrs. Bibby was the joint owner of a home in or around which neighborhood children occasionally played, as they did at other homes in the neighborhood. (Roe Dep. 21:18-21). Additionally, Mrs. Bibby worked a 40-hour week. (Bibby Dep.43:9-11). Neither Roe nor Daniel Jr. worked, and it was their children who played together. (Roe Dep. 56:12-20). Though Appellants maintain that Mrs. Bibby

said that the children were "welcome" and knew that the children played at the house (App. Brief, p. 9), these facts, even viewed in the light most favorable to Appellants, do not give rise to the type of special relationship necessary to alter the common law and impose an exceptional duty on Mrs. Bibby.

The facts of this case are nothing akin to those of other cases in which the appellate courts have either explicitly or implicitly recognized a special relationship. *See, e.g., Doe v. Marion*, 373 S.C. 390, 645 S.E.2d 245 (2007) (assuming special relationship between psychiatrist and patient/injurer); *Faile*, 350 S.C. 315, 566 S.E.2d 536 (finding special relationship between Dep't of Juvenile Justice and dangerous juvenile/injurer over whom it had custody per court order); *Bishop v. South Carolina Dep't of Mental Health*, 331 S.C. 79, 86, 502 S.E.2d 78, 81 (1998) (finding special relationship between Dep't of Mental Health and involuntarily-committed patient/injurer in its custody); *Rogers v. S.C. Dep't of Parole and Community Corrections, et al.*, 320 S.C. 253, 464 S.E.2d 330 (1995) (assuming special relationship between state agencies charged with prisoner parole and prisoner/injurer who was being released from custody (but finding no specific threat)); *Ballou v. Sigma Nu General Fraternity*, 291 S.C. 140, 352 S.E.2d 488 (1986) (finding that fraternal organization had duty to initiate who had become helplessly drunken from alcohol furnished to him by fraternity) (cited by *Faile* Court as example of special relationship between defendant and victim). In the instant case, by contrast, there was no professional, organization, or treatment provider charged with the care of the minor Appellants in any of the ways exemplified in the case law recognizing special relationships.

In light of the absence of supporting precedent, Appellants turn to the vacated opinion of the Court of Appeals in *Doe v. Batson*, 338 S.C. 291, 525 S.E.2d 909 (Ct. App. 1999). In *Batson*, the Court of Appeals stated that the mother of an adult son, living at home, *may* have had a duty to warn identifiable victims of her son's criminal sexual conduct, if certain prerequisites were satisfied. *Id.* at 301, 525 S.E.2d at 914. First, as conceded by Appellants, *Batson* is not precedential because the Supreme Court vacated the Court of Appeals' discussion of liability. *See Doe v. Batson*, 345 S.C. 316, 548 S.E.2d 854, 858 (2000). Second, there was essentially no factual record in *Batson,* so it is impossible to analogize it to this case. The mother in *Batson* is alleged to have been at home and to have known that her adult son had taken young boys into his bedroom. 338 S.C. at 295, 525 S.E.2d at 911.

In the instant case, however, there is no evidence that Mrs. Bibby "monitor[ed], supervise[d], and control[led]" the conduct of the minor Appellants in the manner contemplated by the case law on special relationships. *See Wal-Mart Stores, Inc.*, 393 S.C. at 247, 711 S.E.2d at 912; *Rayfield v. S.C. Dep't of Corrections*, 297 S.C. 95, 109-10, 374 S.E.2d 910, 918 (Ct. App. 1998) (focusing on custody and whether defendant "had charge" of individual with whom special relationship was alleged). Unlike the other adults involved in this dispute, Mrs. Bibby was working full-time and out of the house. She did not know, and does not admit, that the children were ever alone with Mr. Bibby. (Bibby Dep. 68:11-16; 102:2-5; 103:14-15). According to Roe's own allegations, the minor Appellants went into the Bibby home while Mrs. Bibby was at work. (Roe Dep. 49:24-10:7; 56:4-10). It was not Mrs. Bibby, but her adult son, who – with Roe's knowledge – allegedly and briefly left the house while Mr. Bibby was home. (Roe Dep.

51:2-52:12; 65:16-23). Roe concedes she did not advise Mrs. Bibby about this. (Roe Dep. 65:21-24). In sum, by no stretch of the facts could Mrs. Bibby be said to have custody, charge, or control over the minor Appellants in the manner contemplated by the case law.

The special relationship requirement is important because it sets a formal threshold over which a case must pass before the Court will consider imposing an exceptional duty. Further, because one is generally aware of entering into the types of relationships recognized as "special" under the law, a person in such a relationship effectively has notice of potential liability for failing to act after obtaining knowledge of certain specific threats. Mrs. Bibby simply had no such relationship with the minor Appellants in this case. Accordingly, the Circuit Court properly granted summary judgment in her favor. *See Wal-Mart Stores, Inc.*, 393 S.C. at 247, 711 S.E.2d at 912 (affirming summary judgment where defendant had no special relationship with the victim of sexual abuse); *Hackett v. Schmidt*, 630 So.2d 1324, 1328 (La. Ct. App. 1993) (finding no special relationship between defendant/wife and abuse victim merely because victim was present in defendant's home on occasion).

2. Appellants Failed to Prove That Mrs. Bibby Had Knowledge of a Specific Threat of Harm To a Specific Individual.

While necessary, the existence of a special relationship is not itself sufficient to create a duty to warn. Rather, such a duty will only arise where "the [alleged injurer] has made a specific threat of harm directed at a specific individual." *Marion*, 373 S.C. at 400, 645 S.E.2d at 250 (emphasis added). Indeed, as reiterated by the Supreme Court, "it is not simply foreseeability of the victim which gives rise to a person's liability for failure to warn; rather, it is the person's awareness of a distinct, specific, overt threat of harm

which the individual makes towards a particular victim." *Id.* at 401, 645 S.E.2d at 251 (quoting *Gilmer v. Martin*, 323 S.C. 154, 157, 473 S.E.2d 812, 814 (Ct. App. 1996)) (emphasis added); *see also Oblanchinski v. Reynolds*, 391 S.C. 557, 562, 706 S.E.2d 844, 846 (2011) (emphasizing that "foreseeability of injury, in and of itself, does not give rise to a duty") (emphasis in original). The "specific threat" requirement provides reasonable parameters for an affirmative duty that would otherwise become amorphous and overly-burdensome.

Appellants have failed to meet their burden on this element. To begin with, Appellants do not and cannot argue that Mrs. Bibby had knowledge of their purported abuse.[3] Indeed, Mrs. Bibby denies the allegations of abuse asserted by Appellants and believes that Judy Roe was coached and potentially influenced by problems in Roe's own home. (Bibby Dep. 79:19-20; 80:3-81:9; 105:11-19). Secondly, there is no evidence that Mrs. Bibby had knowledge of any "distinct, specific, overt threat of harm" to the minor Appellants. In fact, there is no evidence that Mr. Bibby made any such distinct, specific and overt threat to harm them. This itself should conclude the argument and validate the entry of summary judgment. *See, e.g., Marion*, 373 S.C. at 400-01, 645 S.E.2d at 250-51 (affirming dismissal due to lack of specific and overt threat where psychiatrist failed to warn pediatrician's patients of known "predilection for child molestation"); *Gilmer*, 323 S.C. at 157, 473 S.E.2d at 814 (affirming summary judgment due to lack of overt threat where mentally-ill employee of nursing home killed nursing home patient).

[3] Though Appellants' brief refers to allegations of abuse on behalf of both Joyce and Judy Roe (App. Brief, p. 4), the negligence claim in the Complaint is based upon the alleged abuse of Judy Roe only. (Complaint, ¶¶ 46-51).

In the absence of the requisite threat, Appellants argue that this Court should apply a lesser standard for imposing liability, based on what Mrs. Bibby knew or should have known regarding her husband's propensities toward pedophilia and the threat he posed. (App. Brief, pp. 9-10). Even if constructive knowledge were the legal standard – and it is not – the only evidence is that Mrs. Bibby reasonably believed that her husband was "cured" following his 1995 confession and release from treatment. (Bibby Dep. 37:9-14; 64:10-13; 65:6-12). During that time, DSS counseled Mrs. Bibby and her family to rebuild the family unit and to refrain from discussing the situation with anyone else. (Bibby Dep. 21:23-22:3; 37:11-14; 69:22-23). Moreover, Mrs. Bibby had no indication of any recidivism by Mr. Bibby until the subsequent confession regarding their granddaughter, after the fact. Additionally, and assuming *arguendo* it is relevant, Appellants cannot show that Mrs. Bibby knew or should have known that Mr. Bibby – whatever his propensities – was a threat to the minor Appellants. Again, over fifteen years had passed since the pre-1995 incident, without notice of any further incident. Mrs. Bibby was neither responsible for, nor aware of, the minor Appellants ever being alone with Mr. Bibby. (Bibby Dep. 68:11-16; 102:2-5; 104:15-20; Roe Dep. 51:2-52:12; 65:16-23). At all times relevant hereto, there was another, stay-at-home adult in the Bibby home (Daniel Jr.), who was also the parent of the three resident minors. (Bibby Dep. 68:11-16). In sum, Appellants cannot establish that Mrs. Bibby knew or should have known of any active threat – much less a distinct, specific, and overt one.

In response, Appellants suggest that Mrs. Bibby might be disbelieved. (App. Brief, p. 10). This position is plainly inadequate. *See Hoard v. Roper Hospital, Inc.*, 387 S.C. 539, 549, 694 S.E.2d 1, 6 (2010) ("A plaintiff cannot create a genuine issue of

material fact with the argument that the jury does not have to believe a witness"). No doubt recognizing this, Appellants contend that the following should be considered: (1) that Mrs. Bibby once installed a lock on her daughter's door; (2) that Daniel Jr. allegedly saw his father looking at child pornography on the internet; (3) that Roe testified that Daniel Jr. stated that he told Mrs. Bibby about the pornography (Roe Dep. 79:21-80:3); and (4) that Mrs. Bibby was with Mr. Bibby when he disposed of his computer. (App. Brief, p. 11). These allegations do nothing to meet Appellants' burden of proving notice of a specific threat of harm to the minor Appellants.

First, the fact Mrs. Bibby installed a lock for her daughter some fourteen years before the time at issue has no bearing on whether Mr. Bibby presented an active threat to the minor Appellants. In any event, the idea for the lock emerged from counseling as a means to give Mrs. Bibby's daughter an added sense of security and privacy at that time. (Bibby Dep. 64:6-65:5). There is no evidence of a lock having been installed or used during the time of the interactions with minor Appellants. To the contrary, the granddaughter's door was unlocked because, again, Mrs. Bibby did not believe there was any kind of threat. (Bibby Dep. 83:16-25). Second, whether and to what extent *Daniel Jr.* saw Mr. Bibby looking at inappropriate images on the internet is completely irrelevant to what *Mrs. Bibby* knew. In any event, Daniel Jr.'s statement, cited and relied upon by Appellants, is inadmissible hearsay. (App. Brief, p. 11; Daniel Jr. statement). Mrs. Bibby acknowledges that she had seen Mr. Bibby looking at explicit adult images on the computer, of which she disapproved. (Bibby Dep. 55:15-56:11; 93:2-9). Third, *Roe's* contention regarding what Daniel Jr. told *her* that *he* told *Mrs. Bibby* is similarly hearsay, and therefore inadequate to create any type of factual question. *See Hall v. Fedor*, 349

S.C. 169, 175, 561 S.E.2d 654, 657 (Ct. App. 2002) (refusing to consider hearsay evidence to refute summary judgment); *Hansen v. DHL Laboratories, Inc.*, 316 S.C. 505, 510, 450 S.E.2d 624, 627 (1994) ("A genuine issue of fact, however, can be created only by evidence which would be admissible at trial"). Fourth, the fact that Mrs. Bibby was with Mr. Bibby when he disposed of his computer is irrelevant. The computer crashed sometime prior to Mr. Bibby's confession regarding their granddaughter. (Bibby 58:1-14). He was planning to give the computer to Goodwill, but forgot to stop there and ended up leaving it behind a computer store by the dumpster. (Bibby Dep. 54:2-55:10; 57:19-25).

In short, the allegations relied upon by Appellants are either irrelevant to the issue at hand, inadmissible as evidence, or both. Regardless, they do not substitute for evidence of a "distinct, specific, overt threat of harm" made toward a particular victim. *See Marion*, 373 S.C. at 400, 645 S.E.2d at 250. In the absence of such evidence, the Circuit Court properly granted summary judgment in favor of Mrs. Bibby. *See Marion*, 373 S.C. at 400-01, 645 S.E.2d at 250-51; *see also Wood v. Astleford*, 412 N.W.2d 753, 757 (Minn. Ct. App. 1987) (affirming summary judgment for defendant/wife based on lack of specific threat to specific victims, though wife knew that husband had "boys" staying overnight when she was gone, had some concurrent knowledge of his involvement with "child pornographic photography," and the facts were such to have aroused suspicion of some "aberrant behavior").

B. Appellants Failed to Establish a Duty to Warn under a Premises Liability Theory of Recovery.

In an attempt to sidestep the analysis set forth above, Appellants argue, in the alternative, that the Court should impose a duty on Mrs. Bibby pursuant to the law of

premises liability. Under this line of reasoning, liability should be assigned to Mrs. Bibby because she was the joint owner of the home where the alleged molestation occurred. As noted by Appellants, a premises liability action requires proof of all the standard elements of negligence (duty, breach of duty, and proximately caused damages). (App. Brief, p. 13). The scope and nature of a duty in a premises liability action, however, "is determined based upon the status or classification of the person injured at the time of his or her injury." *Singleton v. Sherer*, 377 S.C. 185, 200, 659 S.E.2d 196, 204 (Ct. App. 2008).

In the instant case, Appellants maintain that they were licensees on the subject property (App. Brief, p. 14), and that they were harmed by the alleged criminal acts of a third-party, Mr. Bibby. Appellants have not cited, and cannot cite, a single South Carolina case recognizing a duty to warn a licensee with regard to an alleged criminal act committed by a third-party. Further, Appellants have failed to offer any compelling reason for the Court to break new ground in this case. Indeed, the alleged facts of this case take it outside of the conventional premises liability paradigm. In any event, Appellants cannot meet the legal standard necessary to proceed as a matter of law.

As a preliminary matter, Appellants cite *Burns v. S.C. Comm'n for the Blind*, 323 S.C. 77, 448 S.E.2d 589 (Ct. App. 1994) for the proposition that our courts "have already held that a victim of a sexual assault may bring suit under a premises liability theory." (App. Brief, p. 14). While technically correct, Appellants' short but sweeping description of *Burns* omits the details that both distinguish it from this case and bear upon the application of South Carolina law to it. First, *Burns* involved an alleged duty to protect a resident of a treatment facility instead of an alleged duty to warn a third-party of an

alleged threat in a residence. *Id.* at 79, 448 S.E.2d at 591. Second, and more importantly, the Court classified the plaintiff in *Burns* as an *invitee* and not a licensee – thus implicating a higher duty of care. *Id.* at 80, 448 S.E.2d at 591. Third, and most informatively, the *Burns* Court determined – as a threshold matter – that a *special relationship* exited between the plaintiff-victim and the defendant-residential treatment facility. *Id.*

The application of *Burns* to this case actually undermines Appellants' position on their premises liability theory of recovery. Under *Burns,* a court must determine whether a special relationship exists prior to evaluating the existence of any affirmative duty to warn of a third-party threat – even in a premises liability case.[4] *See id.* As a matter of law, by virtue of Appellants' admitted status as licensees, no special relationship exists. Under South Carolina law, a licensee is owed "something less than a duty of due care." F.P. Hubbard & R.L. Felix, *The South Carolina Law of Torts*, 126 (4th Ed. 2011). "The duty owed to a licensee differs from the duty owed to an invitee in that the landowner has no duty to search out and discover dangers or defects in the land or to otherwise make the premises safe for a licensee." *See Singleton v. Sherer*, 377 S.C. 185, 201, 659 S.E.2d 196, 204 (Ct. App. 2008) (internal quotations omitted). Rather, a licensee can be said "to accept the premises as they are and demand no greater safety than his host provides himself." *Id.* at 201, 59 S.E.2d at 205 (emphasis added). Because licensees do not stand in a special relationship with a property owner, *per se*, Appellants cannot proceed on a

[4] Indeed, *Burns* provides yet another illustrative contrast to the relationship at issue in this case. The plaintiff-victim in *Burns* was a resident of a rehabilitation facility operated by the defendant commission. She was allegedly assaulted while residing in the defendant's dormitory, under the defendant's care. Though the Court did not evaluate the defendant's relationship with the alleged assailant, it appears he was a "fellow student" in the facility and presumably also under the defendant's custody and control. *Id.* at 78-80, 448 S.E.2d at 590-91. Thus, *Burns* appears to have involved established special relationships with both the victim and the injurer.

premises liability theory of recovery.[5] *See Burns*, 323 S.C. 77, 448 S.E.2d 589; *see also T.A. v. Allen,* 669 A.2d 360, 364 (Penn. Super. Ct. 1995) ("There is no special relationship between the possessor of land and a licensee which creates a duty upon the possessor of land to protect or warn licensees, whether adult or minor, against criminal acts committed on the land by a third person").

The inclusion of the special relationship prerequisite in *Burns* demonstrates that the Court of Appeals did not consider the unadorned premises liability framework sufficient to evaluate liability based on the alleged criminal conduct of third-parties. Though Appellants claim there is "little difference between a pedophile [on the property] and, say, a beehive" (App. Brief, p. 17), the differences are significant. An active – and, therefore, potentially dangerous – beehive is readily identifiable by a homeowner. The burden and risks of warning third-parties about the threat presented by an active beehive are slight. The likelihood that an independent adult will actually commit a morally-reprehensible criminal act, on the other hand, is not readily determinable. *See generally Feld v. Merriam*, 485 A.2d 742, 746 (Pa. 1984).[6] Moreover, the burden and risks of warning third-parties of the potential for such behavior are great, and in some instances, the warning itself could subject the homeowner to liability. The repercussions for giving

[5] Even if it were conceptually possible for a "special relationship" to exist between a property owner and a licensee, the facts of this case do not support a special relationship between Mrs. Bibby and the minor Appellants for all the reasons delineated in Section I.A.1., above.

[6] Though the facts of *Feld* are not directly analogous, the *Feld* Court had occasion to opine on the very distinction disputed by Appellants. In chastising the lower court for failing to recognize the "crucial distinction" between the risk of injury from a physical defect in the property, and the risk from the criminal act of a third person, the Pennsylvania Supreme Court stated: "In the former situation the landlord [or here, the property owner] has effectively perpetuated the risk of injury by refusing to correct a known and verifiable defect. On the other hand, the risk of injury from the criminal acts of third persons arises not from the conduct of the landlord [or here, the property owner] but from the conduct of an unpredictable independent agent." *Feld*, 485 A.2d at 746 (declining to impose duty in the latter case because it would make landlords the insurers of their tenants' safety).

such a warning are numerous, particularly where the warning impacts the spousal relationship and children of that relationship.[7] These factors, as well as those previously discussed, no doubt informed the development the "special relationship" and "specific threat" tests outlined in Section I.A., above. These tests were not as refined when the *Burns* opinion was issued almost twenty years ago. In light of the progression in the law, the former analysis should apply to the exclusion of any separate assessment under the law of premises liability.

Though unnecessary, a further evaluation of this case under the law of premises liability does nothing to change the result. As noted by Appellants, a property owner owes a licensee a duty "to use reasonable care to warn him of any concealed dangerous conditions or activities which are known to the possessor, or of any change in the condition of the premises which may be dangerous to him, and which he may reasonably be expected to discover." *See Neil v. Byrum*, 288 S.C. 472, 473, 343 S.E.2d 615, 616 (1986) (emphasis added). Appellants' premises liability claim additionally fails because (1) Mr. Bibby was not a "dangerous condition" on the property; and (2) Appellants have failed to establish the requisite knowledge on the part of Mrs. Bibby.

First, unlike a dangerous staircase or a "beehive," Mr. Bibby was an independent human actor over whom Mrs. Bibby possessed no ownership. *Cf. Neil*, 288 S.C. at 474, 343 S.E.2d at 616 (determining existence of duty to warn licensee of dangerous

[7] This case is not only about the duty to warn of "third-party" criminal conduct in the abstract, but of criminal conduct by *one's own spouse*. As such, Appellants' proposed expansion of liability should be approached with additional sensitivity and caution. *See generally Theisen v. Theisen*, 394 S.C. 434, 446, 716 S.E.2d 271, 277 (2011) ("It is beyond question that the public policy of this State favors the institution of marriage . . ."). One reason for the rejection of such liability in *Eric J. v. Betty M.*, 76 Cal. App. 4th 715 (Cal. Ct. App. 1999) was that any other result "would create intolerable conflicts of interest within families." *Id.* at 730. The recognition of liability in this case would similarly create immediate conflicts, not only within families but within marital relationships.

staircase). Therefore, as a matter of law, Mr. Bibby cannot properly be categorized as a dangerous "condition" on the property giving rise to a duty to warn. On this point, the opinions of other jurisdictions are instructive. In *Hackett v. Schmidt*, 630 So.2d 1342 (La. 1993), for example, the Louisiana Court of Appeals rejected a similar attempt to use premises liability law as a separate basis for asserting liability against the wife of a child molester for failure to warn. Dismissing the plaintiff's attempt to draw an analogy between the offender and a "hole in the floor" or "the presence of a dog," the *Hackett* Court declared: "[T]his situation cannot be likened to a premises liability situation. . . . [The husband] is not [the wife's] property." *Id.* at 1329; *see also Allen,* 669 A.2d at 364 (noting that the requirement for notifying licensees of certain "conditions on the land" has no application "to the risk of injury from criminal acts of third persons").

The California Court of Appeals engaged in a scholarly analysis of the same issue in *Eric J. v. Betty M.*, 76 Cal. App. 4th 715 (Cal. Ct. App. 1999). *Eric J.* involved a claim on behalf of a child who was molested by his mother's boyfriend at the home of the boyfriend's relatives. The plaintiff argued that the relatives should have warned her in light of their knowledge that the boyfriend had been convicted of felony child molestation four years earlier and released on parole. *Id.* at 717. Like the Appellants' "beehive," the plaintiff in *Eric J.* likened the offender to a "vicious pit bull" on the premises. After providing a thorough discourse on the law, the California Court of Appeals disagreed. While acknowledging, "in retrospect," that the boyfriend-offender was the "moral equivalent of a vicious pit bull," the Court rejected any contention that he could be equated – for purposes of premises liability – to either an "inanimate, dangerous condition, or that of a dangerous animal." *Id.* at 725-36. The Court could not square

treating the offender as a "brute beast without the capacity to repent" with the fact that he was an individual released on parole with at least the *possibility* of having been rehabilitated. *Id.* at 726.

By the same token, in this case, Mrs. Bibby believed that a dark chapter had been closed after Mr. Bibby underwent treatment "with flying colors," and they lived together for well over a decade without any report of recidivism. To treat him as a "brute beast," or condition of the property, would be inconsistent with his status as a free and independent human actor, at least theoretically capable of rehabilitation. Because Mr. Bibby was not the property of Mrs. Bibby, she had no duty to warn under the premises liability standard applicable to licensees. *See id.*; *see also D.W. v. Bliss*, 112 P.3d 232, 243 (Kan. 2005) (affirming summary judgment for wife of offender on duty to warn claim and rejecting premises liability theory of recovery).[8] Summary judgment is sustainable on this ground alone.

Regardless of Mr. Bibby's status as a "condition" of the property, Appellants have not established, and cannot establish, the requisite knowledge on the part of Mrs. Bibby. As noted by Appellants, the analysis for liability with regard to licensees turns on whether Mr. Bibby constituted a dangerous condition "known to Respondent." (App. Brief, p. 14) (emphasis added); *see also Singleton*, 377 S.C. at 201, 659 S.E.2d at 204 (also stating that "the [defendant] has no duty to search out and discover dangers or defects in the land"). As previously argued, Appellants have not established, and cannot

[8] One final distinction between a beehive and a third-party criminal is that a beehive, by virtue of its nature as property, cannot be held directly accountable in a civil or criminal action. A third-party criminal, on the other hand, may be held accountable by both society and the victim. In *Bliss*, the Supreme Court of Kansas rejected the duty-to-warn action against the wife as an unwarranted attempt to convert her ownership interest "into responsibility for [her husband's] criminal actions." 112 P.3d at 243. Appellants in this case effectively seek to do the same.

establish, that Mrs. Bibby had actual knowledge of their alleged abuse (which abuse is denied). Further, Appellants have not established, and cannot establish, that Mrs. Bibby knew that Mr. Bibby was an active threat or active danger to the minor Appellants. (*See* Section I.A.2., above). Summary judgment is sustainable on this ground as well.[9]

For all of the foregoing reasons, this Court should affirm summary judgment in a favor of Mrs. Bibby on Appellants' premises liability cause of action.

II THE CIRCUIT COURT CORRECTLY GRANTED SUMMARY JUDGMENT, IN ANY EVENT, BECAUSE THERE IS NO ADMISSIBLE EVIDENCE TO SUBSTANTIATE THE ALLEGATIONS OF ABUSE.

Appellants contend, without citing any support, that "[t]here is evidence in the record to support a conclusion that Mr. Bibby did, in fact, molest Appellants, rendering him dangerous." (App. Brief, p. 18). Because Appellants have not pointed to any admissible evidence to substantiate the allegations of molestation, they cannot establish that any failure to warn on the part of Mrs. Bibby proximately resulted in damages to them.

---

[9] Near the conclusion of their brief, Appellants cite *J.S. and M.S. v. R.T.H.*, 714 A.2d 924 (N.J. 1998) as purportedly instructive regarding their position in this case. *R.T.H.*, however, is inapposite for several reasons. First, though cited in the context of Appellants' premises liability argument, the plaintiffs in *R.T.H.* do not appear to have based their case on a premises liability theory, and the Court did not evaluate it as such. Accordingly, the *R.H.T.* opinion has no apparent relevance to Appellants' premises liability argument. Second, the *R.H.T.* Court followed New Jersey law in recognizing a potential duty to warn on the part of a wife without any analysis of whether a "special relationship" was present. Indeed, the term "special relationship" is conspicuously absent from the opinion and, in fact, it does not appear that one existed on the facts alleged. In this respect, the *R.H.T.* opinion is an outlier and in direct conflict with long-established law in South Carolina. Third, the defendant-wife in *R.H.T.* admitted that "at all relevant times . . . she knew or should have known of her husband's proclivities/propensities." *Id.* at 928. She also knew that her husband spent substantial time alone with the minor plaintiffs and, on at least one occasion, referred to them as his "whores." *Id.* at 927. In sum, *R.T.H.* fails to support Appellants' arguments under any theory of recovery.

As noted above, "[a] genuine issue of fact . . . can be created only by evidence which would be admissible at trial." *Hansen*, 316 S.C. at 510, 450 S.E.2d at 627. Hearsay evidence, for example, is insufficient to overcome a motion for summary judgment. *See Hall*, 349 S.C. at 175, 561 S.E.2d at 657. Though the Circuit Court did not reach this issue due to its focus on the absence of any duty, the result below may be affirmed on the additional sustaining ground that there is no admissible evidence of the alleged, underlying abuse. *See I'On, L.L.C. v. Town of Mount Pleasant*, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000).

The minor Appellants were not deposed, nor were any affidavits submitted that substantiate the underlying allegations against Mr. Bibby. Mr. Bibby admitted to molesting his granddaughter and was convicted of that offense. The charges against him related to the minor Appellants, however, were dismissed. (Roe Dep. 38:19-20; 39:3-7). Further, Mr. Bibby has consistently denied touching the Roe children in his statements to Mrs. Bibby and filings with the Court. (Bibby Dep. 80:7-13; 81:10-25; Filings by Mr. Bibby, April 25, 2011; May 2, 2011; and February 17, 2012).

In the factual section of their brief, Appellants cite Roe's testimony about what Joyce and Judy Roe allegedly told her. (App. Brief, p. 4). Roe's statements as to what she was allegedly told are clearly hearsay and, therefore, inadmissible. *See* Rules 801-801, SCRE. Other than Roe's testimony, Appellants refer to portions of a forensic interview of Judy Roe read by Roe's attorney during Mrs. Bibby's deposition. (App. Brief, p. 4; Bibby Dep. 78:1-19). Appellants' counsel's statement regarding the content of Judy Roe's statement is also hearsay. The quoted forensic interview of Judy Roe is not a part of the record, but even if it were, it is an unsworn, out-of-court statement and,

therefore, hearsay to the extent Appellants seek to rely on it to prove the truth of the allegations against Mr. Bibby. *See SC Dep't of Social Services v. Doe*, 292 S.C. 211, 355 S.E.2d 543 (1987) (holding that there is no "child sexual abuse" exception to the rule against hearsay).

Accordingly, there is no record of any admissible evidence substantiating the allegations against Mr. Bibby as related to the minor Appellants. Without admissible evidence to substantiate the alleged abuse, Appellants cannot establish the requisite elements of proximate cause and damages. See generally *Carolina Chloride, Inc. v. Richland County*, 394 S.C. 154, 163, 714 S.E.2d 869, 873 (2011) (setting forth necessary elements of negligence). Summary judgment should be affirmed on this additional sustaining ground.

CONCLUSION

Whatever the circumstances, the molestation of a child is an abhorrent and reprehensible crime. Mrs. Bibby's defense of this case should in no way be seen as a defense of any such conduct. Mr. Bibby confessed and has been punished for the crime he committed with respect to his granddaughter. The allegations of the minor Appellants, however, have been denied, and the charges against Mr. Bibby arising from those allegations have been dismissed. This appeal is not about whether Mr. Bibby should be held accountable in any respect. The question before this Court is whether Mrs. Bibby should be held potentially liable for an alleged tort of omission. This appeal requires the Court to determine whether the circumstances justify a departure from the common law that there is no general duty to warn of the dangerous propensities of others. On these facts, a departure from the general rule would require a wife to disclose painful and personal facts about her husband and past, intra-familial events to a third-party. Any

recognition of the proposed duty, however, would no doubt have ramifications beyond the specific facts of this case, potentially creating exposure in a variety of scenarios. The facts of this case do not present the occasion for this Court to so expand the scope of tort liability in this State. The application of well-established South Carolina law requires the affirmation of the Circuit Court's order granting summary judgment in favor of Mrs. Bibby.

For all the foregoing reasons, and any others this Court may deem proper, Respondent, by and through her undersigned counsel, respectfully requests that this Court AFFIRM the Circuit Court's order granting summary judgment in her favor.

Respectfully submitted,

Eugene P. Corrigan III
J.W. Nelson Chandler
CORRIGAN & CHANDLER LLC
PO Box 547
Charleston, SC 29402
Phone: (843) 577-5410
Fax: (843) 577-5650

ATTORNEYS FOR RESPONDENT
MICHELLE BIBBY

August 30, 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis Jr., Circuit Court Judge

Case No. 2010-CP-08-3732

Judy Roe, as parent and natural guardian of
Judy Roe, James Roe, and Joyce Roe, minor
children under the age of eighteen (18) ..... Appellants,

v.

Daniel Bibby, Sr., and Michelle Bibby

Of whom Michelle Bibby is.....Respondent.

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

Respondent proposes the following to be included in the Record on Appeal:

1. Order Granting Defendant's Motion for Summary Judgment, October 21, 2012;
2. Summons and Complaint;
3. Answer of Defendant Michelle Bibby;
4. Defendant's Motion for Summary Judgment;
5. Transcript of Summary Judgment Hearing, July 10, 2012;
6. Deposition of Jane Roe;
7. Deposition of Michelle Bibby;
8. Filing by Daniel Bibby, Sr., April 25, 2011;
9. Filing by Daniel Bibby, Sr., May 2, 2011;
10. Filing by Daniel Bibby, Sr., February 17, 2012;
11. Statement of Daniel Bibby Jr.

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

August 30, 2012

Eugene P. Corrigan III
J.W. Nelson Chandler
CORRIGAN & CHANDLER LLC
PO Box 547
Charleston, SC 29402
Phone: (843) 577-5410
Fax: (843) 577-5650

ATTORNEYS FOR RESPONDENT
MICHELLE BIBBY

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

R. Markley Dennis Jr., Circuit Court Judge

Case No. 2010-CP-08-3732

Jane Roe, as parent and natural guardian of
Judy Roe, James Roe, and Joyce Roe, minor
children under the age of eighteen (18) ..... Appellants,

v.

Daniel Bibby, Sr., and Michelle Bibby

Of whom, Michelle Bibby is.....Respondent.

PROOF OF SERVICE

I certify that I have served the foregoing **INITIAL BRIEF OF RESPONDENT** and **RESPONDENT'S DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL** on all parties of record by depositing a copy of them in the United States Mail, postage prepaid, on August 30, 2013, addressed to their attorneys of record as follows:

Eric M. Poulin, Esq.
Anastapoulo Law Firm, LLC
2557 Ashley Phosphate Road
North Charleston, SC 29418

Attorney for the Appellants

[SIGNATURE PAGE TO FOLLOW]

J.W. Nelson Chandler
CORRIGAN & CHANDLER LLC
PO Box 547
Charleston, SC 29402
Phone: (843) 577-5410
Fax: (843) 577-5650

ATTORNEYS FOR RESPONDENT
MICHELLE BIBBY