

FORM 4

JUDGMENT IN A CIVIL CASE

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

CASE NO. 2013-CP-42-01569

BLH et al.

South Carolina Department of Social Services

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

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

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

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : See Below

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge	Judge Code	Date
----------------------------	-------------------	-------------

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney’s box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Ryan Langley
James Thompson

ATTORNEY(S) FOR THE PLAINTIFF(S)

Andrew Lindemann

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

Thank you for your arguments and briefings in regards to the above referenced matter.

Considering the arguments and briefing DSS’s motion for summary judgment cannot be granted. The Fourth Circuit case is instructive but is not read, as a matter of law, of preventing the plaintiff from going forward with its case a plead. Traditionally, a denial of summary judgment does not require a formal order. However, a portion of the present summary judgment ruling also involves the granting of the plaintiff motion for summary judgment as to the issue of exhaustion of administrative remedies. The plaintiff’s motion on the administrative remedy issue is granted. Therefore, plaintiff’s attorney is asked to prepare a formal order granting its motion. In the formal order a discussion of this Court’s denial of other aspects of DSS’s motion for summary judgment. In the section that includes the granting of plaintiff’s motion include the standard of review for a summary judgement. The evidence before this Court—the agreement—was relied upon by this Court. The plain and ordinary meaning of the words was used. In so doing, it is clear that DSS’s decision concerning the \$20 monthly payment was not an individualize decision based on the specific needs of the adopting family or the special needs of the child. The decision was an overall agency decision. Therefore, an individual recipient (denied recipient) of the \$20 monthly amount clearly would have conclude the futility of appearing the decision---on appeal they would have to challenge the overall agency’s decision instead of an individualize review of the specific needs of the child. At the summary judgment stage, facts and inferences are seen in a light most favorable to the non-

moving party. Thus, the defendant's motion could not be granted on this issue. Moreover, once a party has established their right to summary judgment, the opposing party must come forth with facts to counter the moving party's right to summary judgment. Here, DSS's position is that, as matter of law, the plaintiff had to exhaust their administrative remedies in order to recover the \$20 monthly amount. While DSS's argument presents a logical explanation of the administrative review process in South Carolina, under the facts presented as part of this summary judgment, this Court finds that the plaintiff have established the issue of futility. The plaintiff's argument concerning the word "may" is not determinative to the granting of this motion but rather instructive. To the degree the decision concerning the administrative remedies being exhausted before filing a civil action is discretionary with this Court, my decision is that the facts presented do not require the exhaustion of those remedies. As an observation, the overall nature of the claim being an institutional/agency decision over a \$20 monthly non-payment for the care of special needs children appears to meet the objectives behind class action litigation.

Considering the arguments and briefings, plaintiff's counsel is asked to prepare a formal order denying the motion to Decertify the Class. Note in the order that this was a motion to decertify the Class. While a motion to decertify a class can be made at any time, no new evidence was offered by the moving party that was not available or offered to the previous circuit judge who certified the class. While the rule that one circuit judge cannot overrule another circuit judge may not apply to decertification motions, without additional new evidence unavailable to the prior judge or some articulatable change that justifies revisiting the certification issues, this Court, to some degree, will not begin its review of the prior judge's decision as meritless. Otherwise, a party opposing class certification could simply file and refile and file again, decertification motions, thereby frustrating the class members right to reasonable due process.

Based on the record presently before this Court, the prior Judge's ruling to certify the class was correct and the motion to decertify is properly denied. The prior judge certified that class and then address the class certification again on the defendants motion to reconsider. This case is about a contractual \$20 monthly payment that was not paid by DSS to families who were adopting--- through DSS--- a special needs child. The \$20 monthly payments were to be paid through DSS for the child's benefit based needs. As this Court understands a "special needs" child is one who has a medical condition, physical condition, mental condition, or combination of thereof, that causes the child to have needs beyond those typical needs that may be considered customary for a child. The American With Disabilities Act may have a better definition for these children. The parties are welcomed to challenge this Court on the following conclusion, but this Court take judicial notice that the needs of special needs child are finacally more significant that non-special needs children AND that adoption of special needs children presents more challenges to the DSS to find a pool of prospective adopting parents.

Considering the challenges to certification articulated by DSS as part of its motion to decertify, please discuss in the proposed order that "individualize" characteristic of the class members do not warrant decertification. This Court disagrees, as asserted by DSS, that to recover damages a child or family would need to prove with particularity how the denial of \$20 a month would have individually affected them affected them in a negative manner. This case does not involve the Tort Claims Act or Qualified Immunity under Section 1983. The damages calculation is contractual. DSS asserts that the



Spartanburg Common Pleas

Case Caption: Blh , plaintiff, et al VS South Carolina Department Of Social Services

Case Number: 2013CP4201569

Type: Order/Form 4

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132