THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Union County
Court of Common Pleas

Honorable Daniel D. Hall

Appellate Case No. 2023-001049

Jane and John Smith, individually and as
Guardians of THE CHILD, and THE CHILD Individually,

Appellants,

v.

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

Respondents.

FINAL BRIEF OF RESPONDENTS TAMMY GAYE CAUSEY DALSING AND EDWARD ANTHONY DALSING

James P. Walsh (SC Bar# 15180)
P. Christopher Smith, Jr. (SC Bar# 74086)
CLARKSON, WALSH & COULTER, P.A.
P.O. Box 6728
Greenville, SC 29606
Phone: (864) 232-4400
jim.walsh@clarksonwalsh.com
chris.smith@clarksonwalsh.com

Attorneys for Respondents Tammy Gaye Causey Dalsing and Edward Anthony Dalsing

And

L. Dale Dove, Esquire (SC Bar# 1735)
THOMPSON DOVE LAW GROUP
P.O. Box 907
Rock Hill, SC 29731
(803) 327-1910
dale@tdlawgroup.com
Attorneys for Respondents Tammy Gaye Causey Dalsing and Edward Anthony Dalsing

TABLE OF CONTENTS

Table of Authorities ……..v

Issues on Appeal……1

Statement of the Case……2

Statement of the Facts……4

Standard of Review……21

Argument……21

The Appellants did not raise and properly preserve arguments at the hearing to address the Dalsings' arguments or in their Brief to address the majority of the trial court's rulings……..21

The Trial Court Properly Granted Summary Judgment On The Issues Of Collateral Estoppel, Judicial Estoppel, Res Judicata, Bankruptcy, The Statute Of Limitations, Duty/Negligence And The Children's Code, Particularly When Appellants Did Not Present Any Legal Arguments Or Case Law To Combat The Dalsings' Legal Arguments And Law…….25

Lack of Evidence of Abuse - The Trial Court Properly Granted The Dalsings' Motion For Summary Judgment Based Upon A Lack Of Evidence To Support The Appellants' Claims…….34

Appellants Cannot Seek Damages Against the Dalsings for Pursuing Adoption of the Child…….38

Appellants Cannot Seek Damages For Court Authorized Foster Placement……..39

Appellants Cannot Pursue Vague And Unsupported Claims for Damages…….39

Appellants Cannot Pursue Claims Which Were Pursued To Conclusion By SCDSS When Child Was In Legal Custody of SCDSS……41

Appellants Were Parties In The Family Court Action And Failed To Challenge Unfounded Investigation Determinations……..43

The South Carolina Children's Code Does Not Create A Private Cause of Action……..……43

Adult Appellants' Claims Are Barred By The Statute Of Limitations……...44

Conclusion……45

TABLE OF AUTHORITIES

CASES

ABB, Inc. v. Integrated Recycling Grp. of SC, LLC,
432 S.C. 545, 854 S.E.2d 171 (Ct. App. 2021)……..22

Beall v. Doe,
281 S.C. 363, 315 S.E.2d 186 (Ct.App.1984)……....32

Bennett v. S.C. Dep't of Corr.,
305 S.C. 310, 408 S.E.2d 230 (1991)……...…….33

Bishop v. South Carolina Dep't of Mental Health,
331 S.C. 79, 502 S.E.2d 78 (1998)……...….24

Cannon v. H.K. Porter Co.,
705 F. Supp. 288 (E.D.Va.1989)……..…....30

Carrigg v. Cannon,
347 S.C. 75, 552 S.E.2d 767 (Ct. App. 2001)……..…….32

Carolina Renewal, Inc. v. S.C. Dep't of Transp.,
385 S.C. 550, 684 S.E.2d 779 (Ct. App. 2009)……..…..32, 33

Chet Adams Co. v. James F. Pedersen Co.,
307 S.C. 33, 413 S.E.2d 827 (1992)……..…23

Colleton Reg. Hosp. v. MRS Med. Rev. Systs.,
866 F. Supp. 896 (D.S.C.1994)……..…30

Crosby v. Prysmian Commc'ns Cables & Sys. USA, LLC,
397 S.C. 101, 723 S.E.2d 813 (Ct. App. 2012)……..…33

Doe ex rel. Doe v. Wal-Mart Stores, Inc.,
393 S.C. 240, 711 S.E.2d 908 (2011)……...44

Doe v. Doe,
346 S.C. 145, 551 S.E.2d 257 (2001)……33

Doe v. Marion,
373 S.C. 390, 645 S.E.2d 245 (2007)……..…….44

Earle v. Aycock,
276 S.C. 471, 279 S.E.2d 614 (1981)……33

Elam v. S.C. Dep't of Transp.,
361 S.C. 9, 602 S.E.2d 772 (2004)……23

Hayne Fed. Credit Union v. Bailey,
327 S.C. 242, 489 S.E.2d 472 (1997)……30

Hilton Head Center of South Carolina, Inc. v.
Public Service Comm'n of South Carolina,
294 S.C. 9, 362 S.E.2d 176 (1987)……31

In re Bearden,
382 B.R. 911 (Bankr. D.S.C. 2008)……29

Judy v. Judy,
383 S.C. 1, 677 S.E.2d 213 (Ct.App.2009)…….32, 33

Kitchen Planners, LLC v. Friedman,
440 S.C. 456, 892 S.E.2d 297 (2023)……21

Knight v. Austin,
396 S.C. 518, 722 S.E.2d 802 (2012)……21

McNeely v. South Carolina Farm Bureau Mut. Ins. Co.,
256 S.C. 39, 190 S.E.2d 499 (1972)……..22

Michael P. v. Greenville County Department of Social Services,
385 S.C. 407, 684 S.E.2d 211 (Ct. App. 2009)……12

Oblachinski v. Reynolds,
391 S.C. 557, 706 S.E.2d 844 (2011)……24

Plum Creek Dev. Co. v. City of Conway,
334 S.C. 30 512 S.E.2d 106 (1999)……31

Riedman Corp. v. Greenville Steel Structures, Inc.,
308 S.C. 467, 419 S.E.2d 217 (1992)……31

Rogers v. S.C. Dep't of Parole & Community Corrections,
320 S.C. 253, 464 S.E.2d 330 (1995)……24

S.C. Dep't of Soc. Servs. v. Boulware,
422 S.C. 1, 809 S.E.2d 223 (2018)……7, 9, 10-13, 30, 35, 39

S.C. Dep't of Soc. Servs. v. Boulware, Op. No. 2016-UP-220,
2016 WL 2944266 (S.C. Ct. App. filed May 19, 2016)…… .9, 10, 12

Sealy v. Dodge,
289 S.C. 543, 347 S.E.2d 504 (1986)……..31

Smith v. Phillips,
318 S.C. 453, 458 S.E.2d 427 (1995)……22

Snavely v. AMISUB of S.C., Inc.,
379 S.C. 386, 665 S.E.2d 222 (Ct. App. 2008)…….32

State v. Bacote, 331 S.C. 328, 503 S.E.2d 161 (1998)…….….32

Sub–Zero Freezer Co. v. R.J. Clarkson Co.,
308 S.C. 188, 417 S.E.2d 569 (1992)……31

Thompkins v. Festival Ctr. Grp. I,
306 S.C. 193, 410 S.E.2d 593 (Ct. App. 1991)…….23

Transp. Ins. Co. v. S.C. Second Injury Fund,
389 S.C. 422, 699 S.E.2d 687 (2010)……23

United States v. Siegel,
472 F. Supp. 440 (N.D.Ill.1979)……31

USAA Prop. & Cas. Ins. Co. v. Clegg,
377 S.C. 643, 661 S.E.2d 791 (2008)……21

Wilder Corp. v. Wilke,
330 S.C. 71, 497 S.E.2d 731 (1998)……..22

Williams v. Jeffcoat,
444 S.C. 224, 906 S.E.2d 588 (2024)……21

Youngblood v. South Carolina Department of Social Services,
402 S.C. 311, 741 S.E.2d 515 (2013)……..12-13

STATUTES

S.C. Code Ann. § 63-1-10……..…2, 43

S.C. Code Ann. § 63-1-20……..…13

S.C. Code Ann. § 63-7-20…….……..19, 20, 34

S.C. Code Ann. § 63-7-310……44

S.C. Code Ann. § 63-7- 930……..…42

S.C. Code Ann. § 63-7-1210……19

S.C. Code Ann. § 63-9-60……..12-13

11 U.S.C. Section 523(a)(3)……...28, 29

11 U.S.C. Section 727(b)……28, 29

OTHER AUTHORITIES

Rule 56(c), SCRCP…….21

31 C.J.S. Estoppel & Waiver § 139 (1996)……..30

ISSUES ON APPEAL

a. Whether Appellants failed to properly raise and preserve arguments at the hearing to address the majority of the Dalsings' arguments as supported by case law and/or in their Brief to address the majority of the trial court's Order granting the Dalsings' Motion for Summary Judgment.

b. Whether the trial court properly granted summary judgment on the issues of collateral estoppel, judicial estoppel, res judicata, bankruptcy, the statute of limitations, duty/negligence and The Children's Code when Appellants did not present any legal arguments or case law to combat the Dalsings' legal arguments and law.

c. Whether the trial court properly ruled that the Appellants' claims against the Dalsings are barred by the applicable Statute of Limitations as raised by the Dalsings both in their Memorandum in support of their Motion for Summary Judgment and further argued at the hearing.

d. Whether the trial court properly granted the Dalsings' Motion for Summary Judgment based upon a lack of evidence to support the Appellants' claims.

STATEMENT OF THE CASE

Appellants John Smith and Jane Smith ("Appellants") filed their initial Complaint in the present action on March 11, 2020, serving the Dalsings on or about March 20, 2020, and then filed an Amended Complaint on March 25, 2020. In their Amended Complaint, the Appellants asserted causes of action for: 1. Negligence, 2. Gross Negligence under the South Carolina Tort Claims Act (not applicable to the Dalsing Defendants), and 3. Negligence Per Se. The Appellants' Negligence cause of action alleged that acts and/or omissions of the Respondents were negligent, grossly negligent, willful, wanton and reckless and were done knowingly and with total disregard for the child's protection. The Appellants alleged that they and the child suffered damages as a result. The Appellants' Negligence Per Se cause of action alleges that the Respondents violated the provisions of the South Carolina Children's Code, South Carolina Code Ann. Section 63-1-10 et seq. The Appellants allege that violations by Respondents and each of them were the proximate cause of the abuse the child endured, along with the child's injuries and resulting damages.

After written discovery and depositions were taken, the Respondents filed Motions for Summary Judgment. Subsequently, the Respondents submitted Memoranda with voluminous exhibits in support of their Motions. (R. pp. 291-330). The Appellants did not submit any Memoranda in opposition to the Motions for Summary Judgment. (R. pp. 419-522).

Those motions were heard on May 25, 2023 by the trial court. Counsel for the Respondents made oral arguments to support their filings. Many of the arguments made orally and in writing by the Respondents went unaddressed by the Appellants. (R. pp. 419-522). No case law or legal arguments were made to refute many of the arguments made and cases cited by the Respondents. (R. pp. 419-522).

The trial court granted the Motions for Summary Judgment. (R. pp. 174-208). The Dalsings' Motion for Summary Judgment was granted based, in part, upon the following grounds:

(1) Appellants' claims are barred by the legal doctrines of judicial estoppel, res judicata, collateral estoppel and the applicable statute of limitations;

(2) Any claim which Appellants may have had against the Dalsings has been discharged by the Dalsings' Bankruptcy, which was filed in the United States Bankruptcy Court for the District of South Carolina on October 31, 2019, Case 19-05767-hb, in which the Dalsings received a Final Order of Discharge issued on February 20, 2020; and

(3) Construing the evidence in this case in the light most favorable to the Appellants, there was no genuine issue of material fact and the Appellants could not establish the requisite elements to support a claim against the Dalsings.

(R. pp.174-208).

Subsequently, the Appellants filed appeals. As will be argued below, the Appellants failed to address many of the Dalsings' arguments at the hearing and have subsequently failed to address arguments in their Brief. As such, those arguments and Court rulings are not preserved for appellate review. In addition, as will be argued below, the Trial Court's Order granting the Dalsings summary judgment should be affirmed in its entirety. On the issue of bankruptcy, the Dalsings filed a Motion to Dismiss this appeal on or about October 3, 2023. However, by Order dated November 22, 2023, Judge Verdin denied the Motion, indicating all issues would be addressed on the merits after briefing.

STATEMENT OF THE FACTS

The history between the parties to this action began many years ago. There has been extensive Family Court litigation involving the parties and voluminous evidence produced through the years. Some of that litigation resulted in appeals which ultimately resulted in the South Carolina Supreme Court decision in favor of the Dalsings' position issued on January 3, 2018. (R. pp. 401-406).

Emergency Protective Custody of The Child

On August 27, 2013, the Child, who was then eight months old, was taken into emergency protective custody by law enforcement because her biological parents were operating a methamphetamine lab, and she was being physically neglected. (R. pp. 1-2). At that time, SCDSS Caseworker Robin Miller asked the Child's biological mother if there was a family member with whom the Child could be placed, but she did not identify any viable relative placement option. (Supp. R. pp. 8-9). Given this, The Child was placed by SCDSS with the Dalsings that day. (R. p. 32, line 3; Supp. R. p. 1079; Second Supp. R. p. 16, lines 16-23; Supp. R. p. 434). At the time, the Dalsings were duly licensed by SCDSS as foster parents. (R. p. 361, line 10; Supp. R. p. 1079; Supp. R. p. 847, lines 15-17). Although they had provided foster care for a number of children, there is no evidence of any complaint to SCDSS about the care rendered by the Dalsings prior to the Child's placement with them. (Supp. R. p. 906, lines 15-17; Supp. R. p. 857, lines 2-5). On August 28, 2013, Family Court Judge Tony Jones found that there was probable cause for law enforcement to take the Child into emergency protective custody and for SCDSS to assume legal custody of the Child. (R. pp. 1-2).

After the Child's placement with the Dalsings, SCDSS caseworkers searched for family members with whom she could be placed. (Supp. R. p. 4, lines 6-8; Supp. R. pp. 11-68). In

August 2013, her father, John Stafford, identified two relatives. (Supp. R. p. 564, lines 8-18; Supp. R. pp. 11-32). However, upon investigation, SCDSS concluded that neither relative was a suitable placement option for the Child. (Supp. R. p. 564, line 19-p. 565, line 2; Supp. R. p. 4, line 9; Supp. R. pp. 45-68). Thereafter, SCDSS paid for a Seneca Search to identify relatives of the Child who might be an appropriate placement option. (Supp. R. p. 4; Supp. R. pp. 33-44).

In the fall of 2013, the Family Court conducted several hearings. (R. pp. 4-12; R. pp. 14-19). The court ordered that temporary legal and physical custody remain with SCDSS. (R. p. 11, line 2; R. p. 18, line 3). The court also ordered that a permanent plan of reunification with her biological parents was in the best interest of the Child. (R. p. 11, line 3).

On February 19, 2014, the Family Court conducted a permanency planning hearing. (R. pp. 20-25). The court reviewed the Child's placement and found that the Child's placement with the Dalsings was "safe, appropriate, and in the best interests of [the Child]." (R. p. 24, line 7). The Family Court ordered legal and physical custody of the Child to remain with SCDSS. (R. p. 24, line 1). The court also ordered that a permanent plan of termination of parental rights and adoption with a concurrent plan of reunification with the Child's biological parents was in the best interest of the Child. (R. p. 24, line 2).

Identification of the Appellants as Temporary Placement for the Child

On April 29, 2014, John Stafford identified his uncle, Daryl Appellant, as a potential placement option for the first time. (Supp. R. p. 4; Supp. R. p. 563, lines 21-23). That same day, SCDSS Caseworker Stacie Eison met with Daryl Appellant and his wife, Ruth Ann Appellant, at which time they agreed that they were willing to have the Child placed with them temporarily to give biological parents additional time to work on their treatment plan. (Supp. R. p. 5; Supp R. pp. 69-70; Supp. R. p. 565, lines 12-16; Supp. R. p. 656, lines 8-20). As a result, SCDSS

completed an investigation and determined that the Appellants were a suitable placement for the Child. (Supp. R. p. 5, line 11; Supp. R. pp. 71-76; Supp. R. p. 565, lines 17-19). The Child's Guardian ad Litem Jennifer Cooper concurred with this placement. (R. p. 28, line 1; Supp. R. p. 1077). Accordingly, on May 30, 2014, GAL Jennifer Cooper submitted a Report and Recommendation to the Family Court recommending that the Child be placed with the Appellants. (Second Supp. R. p. 14, lines 4-18; Supp. R. p. 1077).

The June 4, 2014 Hearing

SCDSS informed the Dalsings that it had identified suitable relatives of the Child, and planned to request that the Family Court order that the Child be placed with the Appellants temporarily to give the biological parents additional time to work on their treatment plan. (R. p. 28, line 2; Supp. R. p. 858, lines 6-21). Prior to the June 4, 2014 hearing, the Dalsings filed an action seeking termination of the parental rights of the Child's biological parents, to adopt the Child, and a motion to intervene. (R. p. 28, line 3; R. p. 335-344). The Dalsings also filed an administrative appeal of SCDSS's decision to remove the Child from their home and an application to adopt the Child with the SCDSS Adoption unit. (R. p. 28, line 3).

On June 4, 2014, the Family Court conducted a permanency planning hearing. (R. pp. 26-29). At the hearing, SCDSS notified the Family Court that it had reached an agreement with the Child's biological parents, with the concurrence of the Guardian ad Litem, to place the Child with the Appellants while the Child's biological parents tried to complete their treatment plan. (R. p. 28, line 1). The Dalsings objected because they had not been given a ten-day prior notice of the Child's removal. (R. p. 28, line 2). The Family Court agreed that proper notification had not been given to the Dalsings and rescheduled the hearing for July 16, 2014. (R. p. 28, line 3). The Family Court found that the Child's current placement with the Dalsings

was safe, appropriate, and in the best interests of the Child. (R. p. 29, line 2). Importantly, the Family Court ordered that the Appellants "are not required but shall be permitted unsupervised weekend visitation with [the Child], to be arranged and coordinated by SCDSS." (R. p. 29, line 3). The Parties thereafter agreed that the Child would spend Monday afternoon through Friday morning with the Dalsings and Friday afternoon through Monday morning with the Appellants. (R. p. 92, line 1; Supp R. p. 708, lines 16-18; Supp. R. p. 867, lines 20-22; South Carolina Dep't of Soc. Servs. V. Boulware, 422 S.C. 1, 5, 809 S.E.2d 223, 225, n.3 (2018)). Throughout the course of the lengthy Family Court proceedings involving Appellants and the Dalsings and consistent with the continuing orders of the Family Court, the Child was shuttled between them pursuant to this schedule. (Second Supp. R. p. 7, lines 16-23; Supp. R. pp. 91-558).

Subsequent Family Court Proceedings

On July 15, 2014, Guardians ad Litem Stephanie Kitchens and Jennifer Cooper submitted a Report and Recommendation to the Family Court. (Supp. R. p. 1081-1086). The GALs found that "[the Child] is very much at home in the Appellant home and has taken over the hearts of [the] Appellant[s]." (Supp. R. p. 1084). They noted that "[t]he foster parents have provided excellent care to [the Child], but the time has come that [the Child] is removed from foster care and be place[d] with [the Appellants] who want to adopt her." (Supp. R. p. 1085). The GALs also recommended that if the Child was not placed with the Appellants, she be removed from her current placement at the Dalsings' home. (Supp. R. p. 1085).

On July 16, 2014, the Family Court conducted a hearing concerning the Dalsings' motion to intervene and SCDSS's motion to change the permanent plan for the Child. (R. pp. 30-37). Appellants appeared at the hearing. (R. p. 32). The Family Court granted the Dalsings' motion to intervene and added the Dalsings as parties in the family court proceeding. (R. p. 35).

The Family Court ordered that the February 2014 permanent plan would remain the permanent plan for the Child, and the living arrangements of the Child would continue as previously ordered. (R. p. 35, line 13[b]).

Importantly, during a subsequent permanency planning hearing on August 27, 2014, the Appellants were added as parties. (R. p. 41, line 2). The Family Court continued the permanency plan and ordered that all provisions of prior Family Court Orders remain in effect. (R. p. 41, line 4).

On January 13, 2015, the Family Court conducted a permanency planning hearing, at which hearing the Appellants and their counsel and the Dalsings and their counsel appeared. (R. pp. 46-53). The Family Court again found that the Child's current placement was safe, appropriate and in the best interests of the Child. (R. p. 50, line 7). The Family Court ordered that legal and physical custody of the Child would remain with SCDSS. (R. p. 51, line 1). The Family Court ordered that a permanent plan of termination of parental rights and adoption was in the best interest of the Child. (R. p. 51, line 2). The Family Court also ordered that SCDSS had made reasonable efforts to make and finalize a permanent plan for the Child. (R. p. 51, line 3).

On March 11 and 12, 2015, the Family Court conducted a termination of parental rights hearing. (R. pp. 54-65). During the hearing, The Child's Guardian ad Litem Stephanie Kitchens recommended that the Child be removed from the Dalsings' home and placed with the Appellants. (R. p. 58, line 19). The Family Court found that SCDSS had made reasonable efforts to make and finalize a permanent plan for the Child. (R. p. 60, line 23). Importantly, the Family Court found that the Dalsings did not have standing to file or maintain an action to adopt the Child and dismissed the Dalsings' adoption action. (R. pp. 61-62, line 30; R. p. 64,

line 3). The Family Court terminated the parental rights of the Child's biological parents, ruled that custody of the Child would remain with SCDSS, and that all provisions of previous orders not in conflict with this ruling would remain in effect. (R. pp. 63-64, line 1; R. p. 64, lines 3, 7).

The Dalsings Appeal the Finding that They did not Have Standing

On July 15, 2015, the Dalsings appealed the March 12, 2015 order of the Family Court. (R. p. 72, line 5). During pendency of the appeal, the Family Court conducted multiple permanency planning hearings. (R. pp. 70-73; R. pp. 74-77; R. p. 78-81; R. p. 90-95). During such hearings, the Family Court repeatedly: (1) found that the Child's placement with the Dalsings was safe, appropriate, and in the best interest of the Child; (2) found that SCDSS had made reasonable efforts to finalize the permanent plan for the Child; (3) ordered that custody of the Child remain with SCDSS; and (4) ordered that the *status quo* be maintained during the appeal. (R. p. 72, line 5; R. p. 73, line 7; R. p. 80, lines 2-4; R. p. 81, lines 1-4; R. p. 93, lines 1-3; Supp. R. p. 736, lines 4-6).

The Decision on Appeal

On May 19, 2016, this Court issued an unpublished opinion affirming the Family Court's order ruling that the Dalsings did not have standing to file an adoption action of a child in SCDSS custody. South Carolina Dep't of Soc. Servs. v. Boulware, Op. No. 2016-UP-220, 2016 WL 2944266 (Ct. App., May 19, 2016.) The South Carolina Supreme Court granted the Dalsings' petition for a writ of certiorari. South Carolina Dep't of Soc. Servs. v. Boulware, 422 S.C. 1, 6, 809 S.E.2d 223, 225 (2018).

Although the March 2015 Family Court order remained on appeal, on February 10, 2017, the Appellants filed a motion for emergency temporary relief in Family Court requesting

a permanency plan hearing and an order changing the Child's permanent plan to "custody/guardianship with a fit and willing relative." (R. pp. 239-240). In their supporting affidavit, the Appellants stated that the Family Court needed "to grant emergency physical custody [of the Child] to [them]" to "stop the back and forth that happens each week between her temporary foster home and her permanent guardianship placement." (R. p. 241, line 10-p. 242, line 11). During the subsequent emergency hearing, the Family Court ordered that the Child's custody "shall remain status quo." (R. p. 86, line 4).

On December 4, 2017, the Family Court conducted a permanency planning hearing at which the Appellants and counsel and the Dalsings and counsel appeared. (R. pp. 90-95). Notably, in its order, the Family Court noted that "**the parties agree for the matter to remain status quo**." (R. p. 92, line 1) (emphasis added).

January 3, 2018 Decision by the South Carolina Supreme Court

On January 3, 2018, the Supreme Court of South Carolina reversed. South Carolina Dep't of Soc. Servs. v. Boulware, 422 S.C. 1, 14, 809 S.E.2d 223, 229-30 (2018). The Supreme Court held that the Dalsings had standing to pursue a private adoption action of the Child. Id.

The beginning paragraph of the Supreme Court's 2018 decision sets out the issue before the Court and the Court's ruling:

> "In this case, the Court must decide whether Petitioners Edward and Tammy Dalsing have standing to pursue a private action to adopt a child who has been placed in their foster care by the South Carolina Department of Social Services (DSS). The family court found Petitioners do not have standing, and the court of appeals affirmed. S.C. Dep't of Soc. Servs. v. Boulware, Op. No. 2016-UP-220, 2016 WL 2944266 (S.C. Ct. App. filed May 19, 2016). We reverse and remand to the family court, **as we conclude Petitioners have standing to pursue a private adoption under the facts of this case**." S.C. Dep't of Soc. Servs. v. Boulware, 422 S.C. 1, 3–4, 809 S.E.2d 223, 224 (2018). (Emphasis added.)

The Factual and Procedural History section of the Supreme Court's opinion is helpful to understanding the history between the parties. The opinion sets forth:

> "On August 27, 2013, (footnote omitted) law enforcement took the minor child (Child) into emergency protective custody after discovering an active methamphetamine lab outside the home where Child resided with Allyssa and Jonathan Boulware. Child was sunburned, had several insect bites, suffered from severe diaper rash, and tested positive for methamphetamine, cocaine, and marijuana. DSS placed Child in foster care with Petitioners on the same day and then commenced an abuse and neglect removal action. Child's biological parents are Allyssa Boulware and John Stafford (Parents), and Child's legal father by marriage is Jonathan Boulware.
>
> After a hearing on October 9, 2013, the family court issued an order finding a permanent plan of reunification with Parents was in the best interest of Child and adopting a treatment plan requiring Parents to attend parenting classes and substance abuse counseling. In February 2014, the family court held the initial permanency planning hearing and discovered Parents were not attending substance abuse counseling, were not supporting Child, and had been arrested for possession of methamphetamine. The family court approved DSS's recommendation of a permanent plan of termination of parental rights (TPR) and adoption, with a concurrent plan of reunification with Parents. In the meantime, the Foster Care Review Board issued its report recommending TPR and adoption within six months.
>
> The instant controversy began when DSS and Parents reached an agreement for Child to be placed with relatives [Appellants] (Aunt and Uncle)[1] in order to give Parents more time to work on the treatment plan. The proposed placement with Aunt and Uncle was not an adoptive placement. DSS intended to close its case after Parents completed the treatment plan. On May 31, 2014, DSS notified Petitioners of its intent to remove Child from their home and place Child with Aunt and Uncle. Petitioners immediately moved to intervene in DSS's removal action and commenced a private TPR and adoption action. (Footnote omitted.) The family court held a second permanency planning hearing on June 4, 2014, but declined to rule on DSS's new permanent plan of relative placement with Aunt and Uncle until the court ruled on Petitioners' motion to intervene.[2]
>
> In September 2014, the family court granted Petitioners' motion to intervene and granted their request for a full evidentiary hearing on DSS's motion to change

[1] The Appellants are actually the Child's great aunt and great uncle.

[2] Footnote 3 of the opinion sets forth: "**The family court ruled at this hearing that Child should remain with Petitioners until further hearing but permitted Aunt and Uncle unsupervised weekend visitation with Child. The parties subsequently agreed Child would spend Monday through Thursday each week with Petitioners and visit Aunt and Uncle Friday through Sunday each week. These living arrangements are still in effect**." (Emphasis added.)

the permanent plan to a plan of relative placement with Aunt and Uncle. Aunt and Uncle were added as parties to DSS's action. At a January 2015 permanency planning hearing, DSS changed its treatment plan recommendation to TPR and adoption. The family court approved that plan and scheduled a TPR hearing for March 2015. The family court also ordered Petitioners and Aunt and Uncle to be named parties in the DSS TPR action.

After the March 2015 hearing, the family court terminated the parental rights of Parents. The family court also dismissed Petitioners' [Dalsings] adoption action on the basis Petitioners did not have standing to pursue a private action for adoption of a child in DSS custody, citing Michael P. v. Greenville County Department of Social Services, 385 S.C. 407, 684 S.E.2d 211 (Ct. App. 2009), and Youngblood v. South Carolina Department of Social Services, 402 S.C. 311, 741 S.E.2d 515 (2013). Relying upon Youngblood, the family court concluded "the entire legislative scheme should be allowed to work without interference from foster parents who are there to take care of the Child, not to generate an adoption for themselves." The court noted Petitioners and Aunt and Uncle could present their case for adoption to the DSS adoption committee but ruled none had standing to pursue a separate adoption action in the family court. The family court continued:

[T]he terminology in S.C. Code Ann. § 63-9-60 (B), when read in context with the full law regarding child protective services actions, requires that the South Carolina Department of Social Services approve the placement of a child, over whom they have custody, for adoption by that particular family before that family will have standing to proceed to adopt the Child.

The family court granted custody of Child to DSS "with all rights of guardianship, placement, care and supervision, including the sole authority to consent to any adoption "
This appeal followed.

The court of appeals affirmed the family court in an unpublished *per curiam* opinion. S.C. Dep't of Soc. Servs. v. Boulware, Op. No. 2016-UP-220, 2016 WL 2944266 (S.C. Ct. App. filed May 19, 2016). Relying on Youngblood, the court of appeals held 'foster parents do not have standing under section 63-9-60 to file an adoption petition, regardless of whether they are former or current foster parents or whether DSS has made an adoption placement decision.' Id. The court stated its decision was consistent 'with the overall policy of the Children's Code" and concluded the General Assembly did not intend 'to grant standing to foster parents who file adoption actions early in the process while foreclosing standing to foster parents who wait until after DSS has made an adoption placement decision.' Id. We granted Petitioners a writ of certiorari to review the court of appeals' decision." S.C. Dep't of Soc. Servs. v. Boulware, 422 S.C. 1, 4–6, 809 S.E.2d 223, 224–25 (2018).

***

> "Petitioners contend they have standing under section 63-9-60 because they are residents of South Carolina and because they brought their adoption action (1) before DSS placed Child for adoption but while Child was placed in foster care with Petitioners and (2) before DSS was vested with authority to consent to an adoption. We agree. The reasoning employed by the court of appeals would undermine the broad grant of standing we recognized in Youngblood and would rewrite section 63-9-60(B) to (1) read that once DSS acquires custody of a child, that child has been "placed," and (2) require that DSS approve the adoptive placement of a child with a particular family before that family has standing to petition for adoption. Neither of these interpretations is supported by a plain reading of the statute."
>
> S.C. Dep't of Soc. Servs. v. Boulware, 422 S.C. 1, 10, 809 S.E.2d 223, 227 (2018).

The Supreme Court explained that the Family Court's termination of the parental rights of the biological parents had ended efforts for reunification of the Child with them and that the South Carolina Children's Code clearly mandate adoption as the preferred permanent placement for the Child. The Supreme Court then stated that instead of seeking adoption for the Child as called for by the Children's Code, "**DSS seeks nonadoptive relative placement with Aunt and Uncle, which can hardly be considered the path to a permanent setting for Child** and is contrary to the clear mandate of section 63-1-20(D)." Id. (Emphasis added.) The Supreme Court remanded the case to the family court to proceed with the Petitioners' action for adoption. Id. at 14, 809 S.E.2d at 229- 230.

The Supreme Court's decision was issued on January 3, 2018. Two days later, the Appellants filed a Motion to Intervene in the Dalsings' Action, filed their own Family Court Action seeking adoption, and moved to Consolidate these cases. A pretrial conference was held on May 25, 2018 in the Family Court. A Consent Order was filed to consolidate the Dalsings' 2014 adoption action and the Appellants' 2018 adoption action filed after the Supreme Court decision. That Consent Order contemplated a July 26, 2018 hearing regarding the testimony of the Child and

contemplated setting a 5-day trial where the ultimate decision would be made regarding who would get to adopt the Child – the Dalsings or the Appellants.

Appellants' Allegations Of Child Abuse Made Against The Dalsings Escalated After the Supreme Court's Decision

Throughout the four-year Family Court action, Appellants made repeated reports to SCDSS alleging that the Dalsings were abusing and/or neglecting the Child. Every report made by Appellants was investigated by SCDSS/OHAN. All of these voluminous reports prior to the South Carolina Supreme Court's January 3, 2018 decision were deemed "unfounded" by SCDSS/OHAN. (Third Supp. R. pp. 18-678). The Dalsings had 8 children living in the home, and no allegations of abuse were ever made suggesting that any of the other children were abused in the home. (Supp. R. p. 906). Photos of the alleged abuse demonstrate minor bruising and other minor injuries. (Third Supp. R. pp. 679-997).

The adult Appellants and the Dalsings were both added as intervening parties in the SCDSS Removal Action which brought the Child into care ("Removal Action"). The Removal Action lasted until the Child was adopted by Appellants through a hearing on January 23, 2019 and subsequent Order signed by Judge Thomas H. White, IV, on January 25, 2019. As intervening parties, Appellants had the opportunity to raise issues with the Family Court to the extent they felt that SCDSS was not sufficiently investigating the allegations of abuse and/or to the extent they felt that SCDSS and/or the Dalsings were not acting in the best interests of the Child. Appellants could have also requested that the Family Court remove the Child from the Dalsings' home and care for abuse and/or neglect. Appellants failed to bring any of these matters to the attention of the Family Court. Further, throughout the Removal Action the Family Court was consistently charged with the responsibility to ensure that the placement of the Child was safe and proper for the Child. Throughout the time that the Child was in the Dalsings' home

and care, the Family Court consistently made findings that the Child's present placement (in foster care with the Dalsings) was safe and appropriate, and in the best interests of the Child. Appellants filed no appeal in the DSS removal action.

After the Supreme Court's decision, Appellants' allegations of child abuse against the Dalsings escalated. Appellants' attorney sent SCDSS a letter on March 16, 2018 making numerous false and slanderous claims of abuse/neglect against the Dalsings and making significant misrepresentations of fact, and asking that SCDSS conduct a forensic interview of the Child, who was then 5 years old. (Third Supp. R. pp. 1008-1010). The letter falsely expressed that the Child suffered three (3) broken arms in the Dalsings' home and that the Child's therapist, Anna Reid, had stated the Child was hit in the face by Mrs. Dalsing. (Third Supp. R. pp. 1008-1010).

The evidence clearly shows that the Child first broke her arm at the home of Appellants on December 25, 2015. (Supp. R. p. 679; Third Supp. R. pp. 1021-1029). The subsequent two breaks which occurred at the Dalsings' home had been investigated by SCDSS with no indications of abuse or neglect. (Third Supp. R. pp. 18-678). In the first break in the Dalsings' home that occurred on May 20, 2016, the Child fell when climbing over a baby gate. (Third Supp. R. pp. 18-678, 1021-1029). In the second, that occurred on February 9, 2018, she was dancing and tripped over the Dalsings' dog. (Third Supp. R. pp. 18-678, 1021-1029). Regarding the letter's representation about Therapist Anna Reid, Ms. Reid had already stated in writing that the Child had never expressed that Mrs. Dalsing had (Third Supp. R. pp. 1011-1018).

First Forensic Evaluation: SCDSS secured the Children's Advocacy Center to conduct a forensic interview of the Child on April 2, 2018. (Third Supp. R. pp. 1019-1020). The first forensic interview was conducted by Investigator Heather Flassing. . (Third Supp. R. pp. 1019-

1020, 1251-1385). A report from the interview was issued on April 18, 2018. (Third Supp. R. pp. 1019-1020).

Dr. Lamb Evaluation: Following the forensic investigation, SCDSS/OHAN referred the Child to Dr. Susan Lamb for an evaluation on or about May 22, 2018 which occurred on June 4, 2018. (Third Supp. R. pp. 1021-1029). Appellants accompanied the Child to Dr. Lamb's evaluation and provided false and defamatory information to Dr. Lamb in support of Appellants' assertions against the Dalsings. (Third Supp. R. pp. 1021-1029; Fourth Supp. R. pp. 1-2). Appellants are the ones who completed the doctor's intake questionnaire claiming that the foster mom slapped the Child in the face and hit her and that older male children took the Child to the bathroom - raising the issue of possible sexual abuse. (Third Supp. R. pp. 1021-1029; Fourth Supp. R. pp. 1-2). These actions demonstrate that this was not a neutral evaluation of the Child. (Third Supp. R. pp. 1021-1029; Fourth Supp. R. pp. 1-2).

Dr. Lamb conducted an invasive vaginal exam of the Child and also reviewed numerous photographs of the Child which had been made by Appellants. (Third Supp. R. pp. 1021-1029). Dr. Lamb identified 8 photos that could potentially be indicative of abuse, unless there was a refuting explanation. (Third Supp. R. pp. 1021-1029). These photos demonstrate the extremely minimal evidence used by the Appellants to repeatedly report the Dalsings to DSS which were ultimately used as part of the decision to remove the Child from the Dalsings' home. (Third Supp. R. pp. 1021-1029). Dr. Lamb also expressed concern about potential abuse in the Appellants' home due to injuries noted in medical records where Mrs. Dalsing took the Child for care. (Third Supp. R. pp. 1021-1029). Those injuries were:

(l) York Pediatrics 6/9/14 – bruising to medial aspect of left upper arm noted on physical exam. Child was with aunt and uncle over the weekend. Was brought in to pediatrician for pulling at ears by foster

mother.

(2) York Pediatrics 12/28/15 – (accompanied by foster mother) Right elbow fracture that reportedly occurred in custody of aunt and uncle on 12/25/15. Reported history was a fall onto an outstretched arm. Pediatrician notes concern for medical neglect as the Child was not taken for care until 12/27/15. (Mrs. Appellant admitted this broken arm occurred in her home during her deposition.))

(3) York Pediatrics 5/20/16 – Foster mother reports that child was climbing on the baby gate and fell, breaking her left distal humerus the evening prior. Went to CMC Steel Creek after fall and was diagnosed with fracture. (This occurred in foster parents' home)

(4) York Pediatrics 10/11/16 – [ ] noted bruises to child's back and buttocks after returning from aunt and uncle's home. [ ] stated that the Child reportedly said that aunt hit her bottom. [ ] reported concern to DSS. On examination child had bruising to her right lower back and her left buttock. In office child stated to pediatrician that she fell.

(5) Carolinas Health Care Steel Creek ED 2-9-18 - Child noted to have an elbow fracture. Full medical record is not available for this visit. (This occurred in foster parents' home). Id.

SCDSS Removed Child from Both Homes: Following Dr. Lamb's evaluation, SCDSS removed the Child from both homes and placed her with a separate foster parent. (Third Supp. R. pp. 18-678). The removal of the Child from the Dalsings' home occurred on June 11, 2018. (Third Supp. R. pp. 18-678). OHAN subsequently determined that there was no evidence of abuse by the Appellants, but OHAN investigation initially made an indicated finding of abuse against Mrs. Dalsing only. (Third Supp. R. pp. 18-678, 1037-1045). SCDSS/OHAN subsequently unfounded the case against Mrs. Dalsing (Second Supp. R. p. 2).

Second Forensic Evaluation: While the Child was out of both Appellants' home and the Dalsings' home, SCDSS had a second forensic evaluation performed on the Child by the same forensic investigator, Heather Flassing, who conducted both the first forensic interview of Child (April 2, 2018) and the second forensic interview on the Child (August 15, 2018). (Third

Supp. R. pp. 1251-1385). The Child's forensic interview was played in its entirety as part of the deposition of Heather Flassing and the interview was transcribed. (Third Supp. R. p. 1251-1385).

Regarding the second forensic interview, when Ms. Flassing was asked "Q: So, from this forensic interview, did you get anything that would indicate that she has been abused or neglected by Tammy and Edward Dalsing?" She responded: "A: She did not make any disclosures about that." (Third Supp. R. p. 1357). The transcription of the second forensic interview sets out the Child's own statements that evidence that the Dalsings did not abuse or neglect her. (Third Supp. R. p. 1484).

SCDSS Placed Child with Appellants: On August 15, 2018, following the second forensic interview, SCDSS placed the Child in the home of Appellants. The Child has remained with Appellants since this placement date.

Dalsings Dismiss Their Action Seeking Adoption - Neither Party Pursued Attorney's Fees Claim: Upon the Dalsings' Motion seeking to end their action for adoption in favor of the Appellants adopting the Child, the Family Court issued an order on October 16, 2018 granting the Dalsings' Motion to Dismiss their adoption action. On the issue of awarding attorney's fees to either party, the Court provided by separate Order (Letter from Judge Tony Jones dated October 19, 2018), *"I have decided that the issue of attorney's fees will be handled by affidavits (including exhibits), as well as other submissions and briefs. Upon receipt of the respective submissions from each party... I will then make my decision regarding attorney's fees.* ***Each party shall have thirty days from the date of this letter, or November 19, 2018, to provide me with their submissions****."* (Emphasis added). Neither party filed any request for attorney's fees. In fact, the Appellants' attorney specifically waived and withdrew any request

for attorney's fees. (Third Supp. R. p. 1386). Appellants' adoption of the Child was granted in or around January 2019.

SCDSS/OHAN Investigations

During the lengthy Family Court proceedings, numerous reports were made to the Out of Home Abuse and Neglect unit (OHAN)[3] of SCDSS against both the Appellants and the Dalsings concerning allegations of abuse or neglect of THE CHILD SCDSS repeatedly investigated such reports. (Second Supp. R. pp. 21-168). Until April 2018, all reports made to OHAN were either not accepted for investigation or upon investigation were determined to be unfounded[4]. (Second Supp. R. pp. 21-168). An April 2018 OHAN investigation of the Dalsings for reported physical abuse of THE CHILD was indicated[5] against Tammy Dalsing. (Supp. R. p. 835; Supp. R. p. 896, lines 9-18). Accordingly, on June 11, 2018, SCDSS removed THE CHILD from the Dalsings' home, and placed her in another foster home. (R. p. 262). Tammy Dalsing appealed the OHAN finding against her. (Supp. R. p. 896, lines 20-23).

In November 2019, the OHAN Administrative Tribunal conducted an administrative hearing concerning the allegations against Tammy Dalsing. (Second Supp. R. p. 2). During the trial, SCDSS determined that there was insufficient evidence to prove that Tammy Dalsing had physically abused THE CHILD and it agreed to dismiss its finding against her. (Second Supp.

[3] SCDSS "is authorized to receive and investigate reports of abuse and neglect of children who reside in or receive care or supervision in residential institutions, foster homes, qualified residential treatment programs, and childcare facilities." S.C. Code Ann. § 63-7-1210 (A) (2021). 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) (2021). The Out of Home Abuse and Neglect (OHAN) unit fulfills this obligation by investigating allegations of abuse or neglect relating to children in foster care.

[4] An unfounded report "means a report made pursuant to this chapter for which there is not a preponderance of evidence to believe that the child is abused or neglected. For the purposes of this chapter, it is presumed that all reports are unfounded unless the department determines otherwise." SC Code Ann. § 63-7-20(30) (2023).

[5] An indicated report "means a report of child abuse or neglect supported by facts which warrant a finding by a preponderance of evidence that abuse or neglect is more likely than not to have occurred." SC Code 63-7-20(14) (2023).

R. p. 2; Supp. R. p. 896, line 21 - Second Supp. R. p. 17, lines 1, 14-17). Despite the OHAN case against Mrs. Dalsing, SCDSS at no time sought to remove any of the other children from the Dalsing home and made no other findings of alleged abuse against Mrs. Dalsing or anyone else. Mrs. Dalsing appealed the OHAN finding against her. The OHAN Administrative Tribunal conducted a trial of the allegations against Mrs. Dalsing in November 2019. (Third Supp. R. p. 1386). The hearing officer dismissed the action because SCDSS determined that the allegations were "unfounded," meaning it could not prove abuse had occurred by a preponderance of the evidence. (Third Supp. R. p. 1386). Director Deanene P. Thornwell issued an Order specifically ruling that set forth, in part, that "…the Department [SCDSS] has concluded that the agency could not produce a preponderance of the evidence and the decision has been overturned. Further, Respondent [SCDSS] agreed that the facts do not support a determination that the minor child, H.S., was abused nor (sic) neglected by Petitioner [Tammy Dalsing] as defined by S.C. Code of Laws §63-7-20." (Third Supp. R. p. 1386).

Respondents Dalsings' Bankruptcy

The Dalsings filed Voluntary Petition for bankruptcy on October 31, 2019. (Third Supp. R. pp. 1387-1395). The Dalsings' Chapter 7 "No Asset" Bankruptcy Order of Discharge was entered on February 20, 2020. (Third Supp. R. pp. 1396-1397).

The Appellants filed their original Complaint on March 11, 2020, only 20 days after the February 20, 2020 Bankruptcy Court Order Discharging Debtors. (Third Supp. R. pp. 1398-1407). They filed their Amended Complaint on March 25, 2020. (Third Supp. R. pp. 1408-1417). On May 20, 2020, the Dalsings filed their Answer to the Appellants' Amended Complaint, specifically setting forth in Paragraph 75 that "The Dalsings assert that the

Appellants' claims are, or may be, barred and/or discharged by the Dalsings' filing for bankruptcy, as reflected in case no. 7:2019-bk-05767 (scb)." (Third Supp. R. pp. 1418-1483).

In the deposition of Mrs. Appellant, she testified that she knew about the Dalsings' bankruptcy while it was pending. (Third Supp. R. pp. 16-17). However, she did not take any actions to make a claim during the pendency of the bankruptcy action, asked why should she, and conceded that she was making a claim because she wanted to go to court. (Third Supp. R. p. 17).

STANDARD OF REVIEW

Appellate courts apply the same standard of review applied by the trial court to review the grant of summary judgment pursuant to Rule 56(c) of the South Carolina Rules of Civil Procedure. Williams v. Jeffcoat, 444 S.C. 224, 233–34, 906 S.E.2d 588, 593 (2024); citing Knight v. Austin, 396 S.C. 518, 521, 722 S.E.2d 802, 804 (2012). Summary judgment is proper when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law. Id.; citing Rule 56(c), SCRCP; Knight, 396 S.C. at 521-22, 722 S.E.2d at 804; Kitchen Planners, LLC v. Friedman, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023) (eliminating the "mere scintilla" standard and holding the proper standard is the "genuine issue of material fact" standard set forth in the text of Rule 56(c), SCRCP). On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in the light most favorable to the non-moving party. Id.; citing USAA Prop. & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 653, 661 S.E.2d 791, 796 (2008).

ARGUMENT

The Appellants did not raise and properly preserve arguments at the hearing to address the Dalsings' arguments or in their Brief to address the majority of the trial court's rulings.

In their Final Brief, the Appellants did not appeal many of the trial court's rulings. The Final Brief is silent on the trial court's rulings pertaining to:

1. The Appellants' inability to seek damages for the Dalsings pursuing adoption of the Child.
2. The Appellants' inability to seek damages for Court-authorized foster placement.
3. The Appellants' inability to pursue vague and unsupported damages.
4. The Appellants' inability to pursue claims against the Dalsings for time when the Child was in the custody of SCDSS.
5. The Appellants' lack of damages.
6. The Appellants' inability to pursue legal fees.
7. The Dalsings' lack of a duty to the Appellants.
8. The Appellants' claims being barred by the Dalsings' bankruptcy.

(Final Brief of Appellants; R. pp. 122-208). As shown in the Transcript (R. pp. 419-522) of the hearing, the Appellants did not dispute most of the Respondents' arguments at the summary judgment hearing. The first step in preserving an issue for appellate review is to actually raise it to the lower court, which here, was never done. Wilder Corp. v. Wilke, 330 S.C. 71, 497 S.E.2d 731 (1998); Smith v. Phillips, 318 S.C. 453, 458 S.E.2d 427 (1995). Generally, claims not presented in the pleadings will not be considered on appeal. See McNeely v. South Carolina Farm Bureau Mut. Ins. Co., 256 S.C. 39, 190 S.E.2d 499 (1972).

The Appellants are now prohibited from attempting to subsequently raise those issues on appeal. See ABB, Inc. v. Integrated Recycling Grp. of SC, LLC, 432 S.C. 545, 553, 854 S.E.2d

171, 175 (Ct. App. 2021); citing Transp. Ins. Co. v. S.C. Second Injury Fund, 389 S.C. 422, 431, 699 S.E.2d 687, 691 (2010) ("An unappealed ruling is the law of the case and requires affirmance."). In addition, a party cannot raise an issue for the first time in an appellate reply brief. Id.; citing Elam v. S.C. Dep't of Transp., 361 S.C. 9, 23, 602 S.E.2d 772, 779-80 (2004) ("Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the [circuit] court."); Chet Adams Co. v. James F. Pedersen Co., 307 S.C. 33, 37, 413 S.E.2d 827, 829 (1992) (holding an issue was waived when the appellant raised it for the first time in its reply brief); Thompkins v. Festival Ctr. Grp. I, 306 S.C. 193, 196, 410 S.E.2d 593, 594 (Ct. App. 1991) ("[A] party opposing summary judgment may not rest on mere allegations or denials contained in pleadings.").

In addition to citing no case law to combat the law cited by the Dalsings pertaining to the Dalsings' arguments at the hearing on the summary judgment motion on every legal issue raised at the hearing, the Appellants have not cited any case law in their Final Brief to support an argument that the trial court erred in granting the Dalsings' summary judgment motion. See Final Brief of Appellants. The Appellants did not cite to any case law to contradict the law argued by the Dalsings and cited by the Judge in the Order granting summary judgment on the issues of collateral estoppel, judicial estoppel, res judicata, or bankruptcy. Id. Likewise, the Appellants did not put forth any arguments pertaining to duties allegedly owed, claims being barred by the statute of limitations or alleged damages. Those issues are addressed below.

The collective gist of the Appellants' arguments appears to be that they claim abuse occurred and they are entitled to a trial to make that claim to a jury. However, as set forth above, the Appellants failed to address the multiple legal arguments (supported by case law) made by the Dalsings in support of their Motion for Summary Judgment and the rulings on those issues by

the trial court. (R. pp. 291-330; R. pp. 419-522; R. pp. 174-208; Final Brief of Appellants). As set forth above, the Appellants did not provide the trial court at the hearing or this Court through their Final Brief with any argument or case law to refute the Dalsings' arguments and the trial court's rulings that this case is barred by collateral estoppel, judicial estoppel, res judicata, bankruptcy and/or a lack of duty. Further, they did not provide the trial court at the haring or this Court with any argument or case law to refute the Dalsings' arguments pertaining to damages. (See Final Brief of Appellants).

Lack of Duty

In their Final Brief, the Appellants argue that SCDSS owed them a duty, but make no argument that the Dalsings owed them a duty. While the Appellants' first argument appears to be solely focused on SCDSS, we address the arguments out of abundance of caution since some of the arguments could be construed to apply to the Dalsings.

Regarding duty, at the hearing when addressing arguments made on behalf of SCDSS, the Appellants simply argued they trust the jury to be their expert over duty and whether it was breached. (R. pp. 517-518). They made no arguments pertaining to alleged duties owed by the Dalsings. However, even construing the argument to be against the Dalsings as well, no duties whatsoever were even articulated. None were articulated in the Final Brief either. No case law was cited on this issue in their Final Brief. No such duties exist. "Without a duty, there is no actionable negligence." Oblachinski v. Reynolds, 391 S.C. 557, 561, 706 S.E.2d 844, 846 (2011); citing Bishop v. South Carolina Dep't of Mental Health, 331 S.C. 79, 86, 502 S.E.2d 78, 81 (1998); Rogers v. S.C. Dep't of Parole & Community Corrections, 320 S.C. 253, 464 S.E.2d 330 (1995). As such, the Appellants' individual claims must fail on this ground.

Lack of Damages

The Appellants make no arguments regarding their alleged damages or ability to seek damages against the Dalsings. As cited in the Dalsings' Memorandum, the Appellants were impermissibly seeking to recover their attorney's fees from the Family Court action (which were waived) and seeking to recover alleged damages pertaining to the Dalsings' refusal to surrender the Child to them. (Supp. R. pp. 714-715). The Appellants have no viable claim against the Dalsings. As set forth above, the Dalsings did not owe them any duties. The Appellants have no actual recoverable damages. Further, the claims are barred by the applicable statutes of limitations and bankruptcy.

Regarding any claims attempted on behalf of the Child, those claims (and any other claims attempted by the Appellants) are barred by collateral estoppel, judicial estoppel, res judicata and bankruptcy as discussed in further detail below. The claims of alleged abuse were investigated and litigated on the Child's behalf by SCDSS. While the child was in the legal custody of SCDSS, and while SCDSS was charged with protecting the interests of the child, SCDSS timely investigated all claims which Appellants now reallege in their present action. Despite Appellants being parties in the DSS Removal Action, the Family Court continually found in the DSS Removal Action that the Dalsings' home was safe and appropriate for the child. Appellants did not challenge or appeal any of these rulings of the Family Court and allowed the DSS Removal Action to be ended without appeal.

The Trial Court Properly Granted Summary Judgment On The Issues Of Collateral Estoppel, Judicial Estoppel, Res Judicata, Bankruptcy, The Statute Of Limitations, Duty/Negligence And The Children's Code, Particularly When Appellants Did Not Present Any Legal Arguments Or Case Law To Combat The Dalsings' Legal Arguments And Law

The Appellants erroneously cite to page 74 of the Transcript (R. p. 492) for the proposition that that they presented arguments to address the Dalsings' arguments pertaining to collateral estoppel, res judicata, judicial estoppel, bankruptcy, the statute of limitations,

duty/negligence, and/or the Children's Code. See Final Brief of Appellants at pp. 14-15. The correct page number is page 93 after the Transcript (R. p. 511) was revised. However, the portion of the Transcript cited by the Appellants does not present any legal arguments or case law to contradict the Dalsings' arguments pertaining to collateral estoppel, res judicata, judicial estoppel, bankruptcy, the statute of limitations, duty/negligence, and/or the Children's Code. (R. p. 511). The only thing argued by the Appellants is that the family court case where a child is abused and neglected is a different case from gross negligence, without citing to any law at the summary judgment hearing or in the Initial Brief. Id. The Appellants have failed to set forth any legal justification or argument that the trial court erred by granting summary judgment based on the doctrines of collateral estoppel, res judicata, judicial estoppel, bankruptcy, the statute of limitations, duty/negligence, and/or the Children's Code.

Dalsings' Bankruptcy Discharge Precludes Appellants' Claims Against Dalsings

Regarding bankruptcy, counsel for the Appellants incorrectly stated at the summary judgment hearing that she and the Appellants never knew the Dalsings were in bankruptcy. (R. p. 513). However, the bankruptcy was plead in the Dalsings' Answer and Mrs. Appellant admitted to knowing of the bankruptcy in her deposition. (Third Supp. R. p. 1418-1483). Further, the trial judge stated that no notice was required to subsequent creditors and the Appellants did not refute that statement.

The Dalsings filed Voluntary Petition for bankruptcy on October 31, 2019. (Third Supp. R. pp. 1387-1395). The Dalsings' Chapter 7 "No Asset" Bankruptcy Order of Discharge was entered on February 20, 2020. (Third Supp. R. pp. 1396-1397).

The Appellants filed their original Complaint on March 11, 2020, only 20 days after the February 20, 2020 Bankruptcy Court Order Discharging Debtors. (Third Supp. R. pp. 1398-

1407). They filed their Amended Complaint on March 25, 2020. (Third Supp. R. pp. 1408-1417).On May 20, 2020, the Dalsings filed their Answer to the Appellants' Amended Complaint, specifically setting forth in Paragraph 75 that "The Dalsings assert that the Appellants' claims are, or may be, barred and/or discharged by the Dalsings' filing for bankruptcy, as reflected in case no. 7:2019-bk-05767 (scb)." (Third Supp. R. pp. 1418-1483).

In the deposition of Mrs. Appellant, she testified that she knew about the Dalsings' bankruptcy while it was pending. (Third Supp. R. pp. 16-17). However, she did not take any actions to make a claim during the pendency of the bankruptcy action, asked why should she, and conceded that she was making a claim because she wanted to go to court. (Third Supp. R. p. 17). Her testimony on this issue is:

Appellant, Ruth Ann - Vol. 2, (Pages 318:17 to 319:10)

318

Q. Very quickly, did you know anything about the Dalsings filing bankruptcy?
A. Vaguely, I do, yes.
Q. Were you notified as a potential creditor in any way?
A. No, sir.
Q. Okay, did you actually submit a claim and claim to be a potential creditor?
A. No, sir.
Q. Okay, but you knew that action was going on while it was

319

pending?
A. Yes.
Q. But you didn't take any actions to try and make a claim at that time?
A. No, sir.
Q. And why not?
A. Why? I just didn't. Why should I make a claim?
Q. You're making a claim now, I'm just ---
A. Yeah, we're going to court, that's what I'm assuming, that we're gonna go to court.

(Third Supp. R. pp. 16-17).

Applicable law makes it clear that once the Appellants were placed on notice of the bankruptcy, they were precluded from pursuing or continuing any action against the Dalsings without first seeking relief from the Bankruptcy Court on whether their claim was viable following the Bankruptcy Court's Order of Discharge.

11 U.S.C. Section 727(b) states that:

> "Except as provided in section 523 of this title, a discharge under subsection (a) of this section **discharges the debtor from all debts that arose before the date of the order for relief under this chapter, and any liability on a claim that is determined under section 502 of this title as if such claim had arisen before the commencement of the case, whether or not a proof of claim based on any such debt or liability is filed under section 501 of this title, and whether or not a claim based on any such debt or liability is allowed under section 502 of this title**." (Emphasis added).

11 U.S.C. Section 523(a)(3) provides:

> "A debt is excepted from discharge if it was... neither listed nor scheduled under section 521(1) of this title, with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit—(A) if such debt is not of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim, **unless such creditor had notice or actual knowledge of the case in time for such timely filing**; or (B) if such debt is of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim and timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice or actual knowledge of the case in time for such timely filing and request." (Emphasis added).

The Dalsings never anticipated the Appellants would file a lawsuit against them and, as such, did not know to list them as creditors in their bankruptcy action. Regardless, as admitted by Mrs. Appellant in her deposition, she had actual knowledge of the bankruptcy action while it was pending, which satisfies the Dalsings' burden of demonstrating the Appellants' notice or actual knowledge. (11 U.S.C. Section 523(a)(3); Third Supp. R. pp. 16-17). In the deposition, she testified that she knew about the Dalsings' bankruptcy while it was pending. (Third Supp. R. pp.

16-17). However, she did not take any actions to make a claim during the pendency of the bankruptcy action. (Third Supp. R. pp. 16-17). She asked why should she. (Third Supp. R. pp. 16-17). She conceded she subsequently filed her lawsuit because she wants to go to court. (Third Supp. R. pp. 16-17).

To date, the Appellants have not taken any action to address whether the underlying lawsuit was barred by the Dalsings' bankruptcy, despite having notice while the bankruptcy action was pending and despite the bankruptcy being pled as an affirmative defense in this case. Based on that actual knowledge and the failure to take action, the Appellants' claims were discharged in the bankruptcy and there are no applicable exceptions to that discharge. See 11 U.S.C. § 727(b) and 11 U.S.C. § 523(a)(3), supra.

In the case of In re Bearden, the Creditor learned of the Debtor's bankruptcy after it was closed and after filing a lawsuit against the Debtor. See In re Bearden, 382 B.R. 911, 923 (Bankr. D.S.C. 2008). The Bankruptcy Court held that the **Creditor violated the discharge injunction by failing to dismiss the Debtor from the state court litigation after the Creditor were served with the answer** which indicated that Debtor had received a discharge. Id. The Bankruptcy Court stated that the **correct procedure** would have been to dismiss Debtor from the state court litigation without prejudice and then file an adversary proceeding seeking a determination of nondischargeability pursuant to §523(a)(3)(B) and §523(a)(2), (4), or (6). Id.

The Bankruptcy Order of Discharge bars the Appellants' claims in this case. The Appellants did not set forth an argument to the contrary at the summary judgment hearing and have not set forth an argument to the contrary in their Initial Brief. As a result, this is an additional reason the trial court's granting of summary judgment to the Dalsings should be affirmed.

Collateral Estoppel / Judicial Estoppel / Res Judicata

The Child came into SCDSS foster care in August 2013 based upon an Order of the Family Court. S.C. Dep't of Soc. Servs. v. Boulware, 422 S.C. 1, 4, 809 S.E.2d 223, 224 (2018). When Appellants entered the case in June 2014, they consented to the custodial arrangement where the Court allowed the minor child to be allowed unsupervised weekend visits with Appellants while the Child remained in foster care in the Dalsings' home. Id. at footnote 3. This consent by Appellants was acknowledged in the Supreme Court's Boulware decision referenced above. Id. In addition, the South Carolina Supreme Court's January 3, 2018 ruling held that the Dalsings' pursuit of their action was proper and that they had standing to seek adoption of the minor child. Id. at 12, 809 S.E.2d at 229.

These rulings conclusively decide all issues pertaining to the Dalsings' continued pursuit of adoption and maintaining their foster care placement of the Child during the pendency of the appeal. As a result, the Appellants' claims on these issues are barred by the legal doctrines of judicial estoppel, res judicata and collateral estoppel.

Judicial Estoppel

Judicial estoppel precludes a party from adopting a position in conflict with one earlier taken in the same, or related litigation. Hayne Fed. Credit Union v. Bailey, 327 S.C. 242, 251,489 S.E.2d 472, 477 (1997); citing Colleton Reg. Hosp. v. MRS Med. Rev. Systs., 866 F.Supp. 896 (D.S.C.1994). The purpose or function of the doctrine is to protect the integrity of the judicial process or the integrity of courts rather than to protect litigants from allegedly improper or deceitful conduct by their adversaries. Id.; citing 31 C.J.S. Estoppel & Waiver § 139, at 593 (1996). Judicial estoppel generally applies only to inconsistent statements of fact. Id.; citing Cannon v. H.K. Porter Co., 705 F.Supp. 288 (E.D.Va.1989). Although some courts

have held to the contrary, the doctrine does not apply to conclusions of law or assertions of legal theories. Id.; citing United States v. Siegel, 472 F.Supp. 440 (N.D.Ill.1979).

Judicial estoppel applies because the Appellants took a position in the trial court which was different than the position they took in the Family Court. They consented to the custodial arrangement at issue a reflected in the South Carolina Supreme Court's decision cited above. However, now they are impermissibly seeking damages for that same custody arrangement.

Res Judicata

Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties. Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999); citing Sub–Zero Freezer Co. v. R.J. Clarkson Co., 308 S.C. 188, 417 S.E.2d 569 (1992). Under the doctrine of res judicata, "[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." Id.; quoting Hilton Head Center of South Carolina, Inc. v. Public Service Comm'n of South Carolina, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987). To establish res judicata, the defendant must prove the following three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit. Id.; citing Riedman Corp. v. Greenville Steel Structures, Inc., 308 S.C. 467, 419 S.E.2d 217 (1992); Sealy v. Dodge, 289 S.C. 543, 347 S.E.2d 504 (1986).

Res judicata applies because the Appellants are now seeking monetary damages for the following: For a custodial arrangement that was not only agreed upon by them in the Family Court, but was ruled upon and ordered by the Family Court; for attorney's fees they generated during the Family Court proceeding, which have been foreclosed by prior Family Court order;

and for the Dalsings bringing and maintaining their Family Court action seeking adoption of the Child, when the Supreme Court affirmed their right to do so.

Collateral Estoppel

Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same. Carolina Renewal, Inc. v. S.C. Dep't of Transp., 385 S.C. 550, 554–55, 684 S.E.2d 779, 782 (Ct. App. 2009); citing Judy v. Judy, 383 S.C. 1, 7, 677 S.E.2d 213, 217 (Ct.App.2009). The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment. Id.; citing Beall v. Doe, 281 S.C. 363, 369 n. 1, 315 S.E.2d 186, 189–90 n. 1 (Ct.App.1984). "While the traditional use of collateral estoppel required mutuality of parties to bar relitigation, modern courts recognize the mutuality requirement is not necessary for the application of collateral estoppel where the party against whom estoppel is asserted had a full and fair opportunity to previously litigate the issues." Id.; quoting Snavely v. AMISUB of S.C., Inc., 379 S.C. 386, 398, 665 S.E.2d 222, 228 (Ct.App.2008). The doctrine of collateral estoppel should not be rigidly or mechanically applied. Carrigg v. Cannon, 347 S.C. 75, 81, 552 S.E.2d 767, 770 (Ct.App.2001). Thus, even if all the elements for collateral estoppel are met, when unfairness or injustice results or public policy requires it, courts may refuse to apply it. State v. Bacote, 331 S.C. 328, 331, 503 S.E.2d 161, 163 (1998).

The Carolina Renewal case makes it clear that a party's absence from prior litigation does not insulate it from issue preclusion. Carolina Renewal, Inc. v. S.C. Dep't of Transp., 385 S.C. 550, 555–56, 684 S.E.2d 779, 782–83 (Ct. App. 2009). The doctrine of collateral estoppel

prevents the relitigation of issues, not claims, necessarily determined in a former proceeding regardless of whether the identity of the causes of action in successive lawsuits are the same. Id.; citing Judy, 383 S.C. at 7, 677 S.E.2d at 217 ("Collateral estoppel applies to specific issues, regardless of whether the claims in the first and subsequent suits are the same."); see also Doe v. Doe, 346 S.C. 145, 551 S.E.2d 257 (2001) (defendant was collaterally estopped from relitigating the issue of whether defendant had physically and sexually abused his children in children's civil action for assault and battery damages after guilty plea in related criminal action).

Our courts have applied the doctrine of issue preclusion to the factual determinations of administrative tribunals. Crosby v. Prysmian Commc'ns Cables & Sys. USA, LLC, 397 S.C. 101, 108–09, 723 S.E.2d 813, 817 (Ct. App. 2012); citing Bennett v. S.C. Dep't of Corr., 305 S.C. 310, 312, 408 S.E.2d 230, 231 (1991) ("This Court has repeatedly held that, under the doctrines of res judicata and collateral estoppel, the decision of an administrative tribunal precludes the relitigation of the issues addressed by that tribunal in a collateral action." (citing Earle v. Aycock, 276 S.C. 471, 475, 279 S.E.2d 614, 616 (1981))). In order to determine whether an agency's factual finding is preclusive, the Court must first determine whether the particular finding meets the traditional elements of collateral estoppel. Id. The Court must then examine whether there is some countervailing consideration which necessitates relitigation. Id. A party claiming preclusive effect under collateral estoppel must demonstrate that the particular issue was "(1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment." Id.; quoting Carolina Renewal, 385 S.C. at 554, 684 S.E.2d at 782.

The Dalsings satisfy all of the elements for collateral estoppel. Further, there is no countervailing consideration which necessitates relitigation and the Appellants have not argued such. Collateral estoppel applies because the Appellants are attempting to relitigate the custodial arrangement that was litigated and decided by the Family Court. (R. pp. 1-121). They are also attempting to relitigate the decisions made by SCDSS (including OHAN) in the various investigations made and concluded unfounded. In addition, they are attempting to relitigate the Administrative Tribunal's prior Order dismissing the abuse case against Mrs. Dalsing. As such, dismissal of these claims was proper by the trial court and should be affirmed on appeal.

Lack of Evidence of Abuse - The Trial Court Properly Granted The Dalsings' Motion For Summary Judgment Based Upon A Lack Of Evidence To Support The Appellants' Claims

The Appellants misstate that there is no proof of the indicated case being reversed against Mrs. Dalsing, despite an Order specifically ruling on that issue. See Final Brief of Appellants at pp. 8-9 (Third Supp. R. pp. 1248-1250). The ruling from the Administrative Tribunal was that there was insufficient evidence of abuse. (Third Supp. R. pp. 1248-1250). That Order states, in part:

> Respondent [SCDSS] has informed this Office that after a review of the evidence presented at the Fair Hearing on November 18 and 19 2019, the Department has concluded that the agency could not produce a preponderance of the evidence and the decision has been overturned. Further, Respondent agreed that the facts do not support a determination that the minor child, H.S., was abused or neglected by Petitioner [Tammy Dalsing] as defined by S.C. Code of Laws §63-7-20.
>
> Petitioner is the moving party and has the right to withdraw this request. Such a case is properly dismissed.

(Third Supp. R. pp. 1248-1250). As stated above, that ruling bars the Appellants' claims in this case. Further, the same evidence presented at the Administrative Hearing and/or available at that time is the same evidence being relied upon by the Appellants. There is no available

evidence in this case which creates a genuine issue of material fact regarding whether the Dalsings abused the Child in any way.

Outside of the issues surrounding collateral estoppel, res judicata and judicial estoppel, a review of the evidence presented by all parties demonstrates that there is not a genuine issue of material fact and the evidence supports only one conclusion – that no abuse occurred. The opinions and testimony of Appellants' expert pertain to alleged harm caused by the Child splitting time between the Appellants' home and the Dalsings' home. (Second Supp. R. p. 19). This was a court-ordered arrangement consented to by the parties at the time. See Boulware at footnote 3, supra.

Without addressing any of the arguments and rulings pertaining to collateral estoppel, judicial estoppel or res judicata, the Appellants simply argue that there is a factual issue pertaining to whether the Child was injured. (See Final Brief of Appellants at p. 10). The trial court considered the Appellants' arguments on this issue and the evidence available on the issue when making its ruling. (R. pp. 122-208). The available evidence, even when construed in the light most favorable to the Appellants, does not create a genuine issue of material fact regarding whether abuse occurred. Further, the Appellants' narrative ignores the fact that a broken arm occurred in their home and ignores the ruling of the Administrative Tribunal dismissing the case against Mrs. Dalsing due to a lack of evidence of abuse. (Third Supp. R. pp. 1248-1250). Again, the Appellants failed to even attempt an argument that collateral estoppel, judicial estoppel and res judicata bar all of their claims. The Administrative Hearing was a full trial on the issue of alleged abuse, with no appeal of the ruling that the allegations of abuse would be dismissed for a lack of evidence. (Third Supp. R. pp. 1248-1250). The same photos and opinions of Dr. Lamb which were relied upon to present alleged abuse at that hearing are the same opinions the

Appellants now attempt to rely upon to create a genuine issue of material fact that abuse occurred, even though the un-appealed ruling was that this evidence presented at a multi-day Administrative Hearing was not evidence of abuse. (Third Supp. R. pp. 1021-1029, 1248-1250).

The collective testimony, when compared to the physical evidence in this case, demonstrates the absurdity of the Appellants' claims. The gist of their claims against the Dalsings can be summed up by the following testimony:

Mrs. Appellant, - Vol. 1, (Pages 51:10 to 53:10)

51

Q. All right, so, I want to have a very clear understanding about that allegation today. Do you allege that both Mr. and Mrs. Dalsing physically abused [the Child]?
A. Yes, they were in her care, they were in their care.
Q. Okay, well, let me be more specific then; I want to focus on Mr. Dalsing first. Other than [the Child] being in his care at his house, do you allege that, or do you believe that Mr. Dalsing ever physically abused [the Child]?
A. I believe she was abused, yes.
Q. By Mr. Dalsing?
A. By all of them.
Q. Okay, well, I want to focus on him very specifically at the moment. My question is narrow, it's not other people, it's Mr. Dalsing very specifically. Do you believe that he physically abused [the Child]?
A. Well, in my understanding, she was in their care, anything

52

that happened to her in their care they're directly responsible for, so yes, I do believe she was abused.
Q. Do you believe that Mr. Dalsing is the person that abused her?
A. Well, I just know she came with bruises from her head to her toes every week, so I went to DSS almost every single Friday, so she was, someone was hitting her in that home and they're the ones that are responsible for her, so yes, I believe that she was abused in that home under their care.

Q. Do you have any evidence for me that Mr. Dalsing ever struck [the Child], pinched [the Child], injured [the Child]?
A. All I can say is she was in their care and I believe she was abused in their care.
Q. Okay, other than saying that she was at their house or with them, do you have any specific evidence that you can share with us today that Mr. Dalsing is the one who injured her?
A. All I can tell you is she had bruises from her head to her toes and she was in their care and she was abused; I believe she was abused in their home.
Q. All right, well, how about Mrs. Dalsing, ---
A. The same ---
Q. --- do you have any evidence that Mrs. Dalsing struck [the Child], pinched [the Child] or otherwise injured [the Child]?

53

A. She was always bruised up in places she shouldn't have bruises, and yes, she was abused in that home.
Q. But you don't know, I gather from your testimony that you don't know who might have struck the Child?
A. Well, she was abused in that home under their care so whatever happened to her in that home was directly by their hand. They were responsible to take care of her, not to let her be harmed in any way.
Q. Tell me who you believe injured the Child.
A. I believe they all had a hand in it.

(Supp. R. p. 663, line 10-p.665, line 10).

The testimony continues from there, detailing alleged incidents where children in the Dalsings' home allegedly hurt the Child. The claims include the Child being put in timeout, another child hitting her with a toy, and alleged emotional abuse due to being placed in a pull up at bedtime. (Supp. R. pp. 673-675). Mrs. Appellant stated she could not provide specific instances, but she reported every incident. (Supp. R. pp. 673-675).

As a result, it was proper for the trial court to also grant summary judgment on this ground. The Dalsings respectfully request that this Court affirm the grant of summary judgment.

Appellants Cannot Seek Damages Against the Dalsings for Pursuing Adoption of the Child:

When the Dalsings brought their action seeking termination of the parental rights ("TPR") of the biological parents and adoption of the Child, the Family Court had already adopted a permanent plan for the Child of TPR and adoption and the Child had been in the Dalsings' home for over ten months. Mrs. Appellant testified that she understood that the Dalsings were seeking adoption of the Child in 2014. (Supp. R. p. 714). She testified that once her family was identified and qualified as suitable blood relatives, the Dalsings should have surrendered the Child to them. (Supp. R. pp. 714-715).

In her deposition, Mrs. Appellant acknowledged that after the Child was removed from the Dalsings' home for alleged abuse and neglect, the Dalsings gave up and the Appellants proceeded with adopting the Child. (Third Supp. R. p. 5). Mrs. Appellant testified that the foster parent where the Child was placed when she was removed from both the Dalsings and the Appellants was a "true foster parent". (Third Supp. R. p. 6). When asked what she meant by that, Mrs. Appellant testified that "**Well, she didn't file a private action to keep my baby from me**." (Third Supp. R. p. 6). (Emphasis added.)

That is what this entire case is about in the eyes of the Appellants. They do not believe that the Dalsings, as foster parents, should have pursued adoption of the Child. They maintain this position despite the fact that the South Carolina Supreme Court ruled that the Dalsings' actions were proper and had standing to pursue adoption of the Child.

As stated above, the Appellants did not make any arguments regarding damages at the hearing or in their Initial Brief. As a result, those issues are not preserved for appeal and summary judgment should be affirmed on appeal. Regardless, even if the issues were preserved, the testimony referenced above demonstrates the Appellants' true motives and their lack of

recoverable damages. The trial court's granting of summary judgment should also be affirmed on this ground.

Appellants Cannot Seek Damages For Court Authorized Foster Placement

The Appellants previously acknowledged that the Family Court maintained the status quo at a hearing, meaning that the Child's time would continue to be split between the Appellants and the Dalsings, as reflected in the Boulware holding summarized above. However, the Appellants claim that SCDSS should have removed the Child from the Dalsings and placed her with the Appellants permanently, despite the Court's decision. (Supp. R. p. 735, line 18-p.736, line 12).

The Dalsings' alleged failure to surrender the Child does not support the basis of a cause of action, particularly when their actions were supported by the Family Court's decision. Further, as discussed above and below, such a claim is barred by the applicable Statute of Limitations. As a result, the Appellants cannot seek damages for a Court-authorized foster placement and summary judgment should be affirmed on this ground.

Appellants Cannot Pursue Vague And Unsupported Claims for Damages

Mrs. Appellant testified that she wants someone to be held accountable for what was allegedly done to the Child for 5 years, without specifying what that accountability would be. (Third Supp. R. pp. 7-8). She claims that she never got to testify in the Family Court and she wants to tell her story, and wants somebody to hear the case. (Third Supp. R. p. 12). She was frustrated she did not get to testify in Mrs. Dalsing's OHAN hearing and was disappointed OHAN did not stand their ground, and was never told that there were concerns about the sufficiency of the evidence or the veracity of Dr. Lamb's report. (Third Supp. R. pp. 13-14). She did not understand that the Child had made statements that she was harmed in her house as

well. (Third Supp. R. p. 15). She wanted to testify and wanted the hearing to play out to a conclusion. (Third Supp. R. pp. 15-16). None of these desires form the basis of a viable lawsuit.

Mrs. Appellant went so far as to suggest that the Child should have been removed from the Dalsings' home because she cut her own hair in their house. (Third Supp. R. pp. 9-10). She claimed the Child could have been injured with the scissors by stabbing herself in the eye or neck, but conceded that did not happen. (Third Supp. R. pp. 9-10).

Mrs. Appellant testified that this case was about 5 years of sleepless nights wondering if the Child was okay. (Supp. R. pp. 750-751). She testified that it was about SCDSS not locating them as suitable relatives. (Supp. R. pp.750-751). Mrs. Appellant's only testimony about monetary out-of-pocket damages were her attorney's fees. (Supp. R. pp. 750-751). She claims she just wants the Child "…to have some justice." (Third Supp. R. p. 3). She claims she wants:

Mrs. Appellant - Vol. 2, (Page 63:13 to 63:19)

A. Well, for somebody to hear what happened to her and make a decision to not - - I mean, there's some things that need to be changed. There's things that need to be changed in our court system, there are things that need to be changed in our foster system, there's things that needs to be changed in our DSS system where children aren't just put in a foster home without looking for family.

(Third Supp. R. p. 12, lines 13-19).

Mrs. Appellant denied that her own conduct in insisting to adopt the Child (after the Child had developed a bond with the Dalsings for 8 months) and insisting that the Child split time at her home did not have a negative effect on the Child simply because she is biological family. (Supp. R. p. 750; Supp. R. p. 737). This is despite the fact that the Appellants had no relationship with the Child whatsoever for approximately the first 18 months of her life, except

for a chance run-in with the family in Wal-Mart when the Child was about 6 months old. (Supp. R. p. 652). She subsequently testified:

Mrs. Appellant - Vol. 2, (Page 50:14 to 50:22)

14 Q. But to be fair, you didn't even know this child existed
15 until you stumbled into her in a Walmart; correct?
16 A. It doesn't matter when we know she would exist or not.
17 The point is, she's our family, and me and my husband both
18 believe in family and that we will stand by [the Child]
19 through thick and thin. She's our family, and we were
20 suitable, we were deemed suitable by DSS to take her. We
21 even went through all the fostering classes just to be
22 able to see her.

(Third Supp. R. p. 11, lines 14-22).

Mrs. Appellant denied knowledge of the Child's spatial awareness issues which caused unsteadiness on her feet and for which Mrs. Dalsing was taking the Child to therapy. (Fourth Supp. R. pp. 3-4 - Third Supp. R. p. 13). She also denied a difference in parenting styles between people with 1 child in the home and people with 8 children in the home. (Fourth Supp. R. pp. 3-4 - Third Supp. R. p. 13).

As set forth above, arguments pertaining to damages are not preserved for appeal. Regardless, the Dalsings' alleged failure to surrender the Child does not support the basis of a cause of action, particularly when their actions were supported by the Family Court's decision. Further, Mrs. Appellant's testimony above does not provide any evidence of any recoverable damages. In addition, as discussed above and below, such a claim is barred by the applicable Statute of Limitations. As a result, summary judgment should be affirmed on this ground.

Appellants Cannot Pursue Claims Which Were Pursued To Conclusion By SCDSS When Child Was In Legal Custody of SCDSS

South Carolina's process regarding finding abuse is set forth in S.C. Code Ann. § 63-7-930. Reports of child abuse and neglect must be classified in the department's data system and recorded in one of three categories: Suspected, Unfounded, or Indicated. Id. Indicated findings must be based upon a finding of the facts available to the department that there is a preponderance of evidence supporting the finding.

As set forth above, SCDSS/OHAN investigated **all of** the claims of abuse and neglect made against anyone in the Dalsings' household from June 6, 2014, when the Child first went to Appellants' home, until June 11, 2018, when the Child was removed from the Dalsings' home. (Third Supp. R. pp. 18-678). A "Finding" or "Indication" of abuse was made by SCDSS only against Mrs. Dalsing for one alleged event. Each of the claims of abuse and neglect were thoroughly investigated and were ultimately "unfounded," including the claim against Mrs. Dalsing as referenced above. (Third Supp. R. pp. 1248-1250).

The same law cited above pertaining to res judicata and collateral estoppel applies here to bar Appellants' claims pertaining to alleged abuse. The issue of alleged abuse by Mrs. Dalsing was heavily litigated by SCDSS. The OHAN Administrative Tribunal Order dismissing the indicated abuse finding which had initially been made against Mrs. Dalsing bars any claim of abuse in this case. (Third Supp. R. pp. 1248-1250).

At that time, SCDSS was the legal custodian of the Child, *had in loco parentis* responsibility for the Child and possessed the legal ability to protect the rights of the Child for issues arising from her foster care placement. SCDSS (including OHAN) pursued to legal conclusion all statutorily required investigations, all administrative cases and action, and all family court cases and actions for all allegations being raised by Appellants against the

Dalsings in the present litigation. Therefore, the Dalsings respectfully request that the trial court's Order granting their Motion for Summary Judgement be affirmed on appeal.

Appellants Were Parties In The Family Court Action And Failed To Challenge Unfounded Investigation Determinations

Appellants were intervening parties in the underlying SCDSS Family Court action which brought the Child into SCDSS foster care. All allegations which Appellants made against the Dalsings in the underlying case were made by Appellants to SCDSS in the Family Court action, and were investigated by SCDSS and ultimately determined by SCDSS (including OHAN) to be unfounded. (Third Supp. R. pp. 1248-1250). Appellants had the legal ability to present these allegations to the attention of the Family Court, along with any allegations of deficiencies which Appellants had in the investigations conducted by SCDSS, and seek a finding by the Family Court that the Dalsings had committed abuse and/or neglect of the subject Child. For each and every allegation of abuse and/or neglect which Appellants made against the Dalsings during the four-year Family Court action, Appellants failed to request that the Family Court hold an evidentiary hearing and make a finding of abuse or neglect against the Dalsings. As a result, the trial court ruled the Appellants were barred from pursuing any of the claims they made against the Dalsings in the underlying action. The trial court's ruling should be affirmed on appeal.

The South Carolina Children's Code Does Not Create A Private Cause Of Action

Appellants' Third Cause of Action in their Amended Complaint alleging Negligence Per Se pursuant to alleged violations of the South Carolina Children's Code, 63-1-10 *et seq,* was summarily dismissed against the Dalsings by the trial court. South Carolina case law is clear that provisions of the South Carolina Children's Code do not create a private cause of action since the

Code is concerned with the protection of the public and not with the protection of an individual's private right. See generally Doe ex rel. Doe v. Wal-Mart Stores, Inc., 393 S.C. 240, 711 S.E.2d 908 (2011); citing Doe v. Marion, 373 S.C. 390, 645 S.E.2d 245 (2007) (the Court found there could be no private right of action for failing to report suspected or known child abuse in accordance with § 63–7–310 and holding that the statute does not create a private (civil) cause of action). Further, to the extent any potential cause of action could exist under the South Carolina Children's Code, it appears such actions may apply to actors on behalf of governmental entities acting on behalf of the public rather than the Dalsings. Id. As stated above, the trial court granting the Dalsings' Motion for Summary Judgment on this ground. The Appellants did not make any arguments on this issue at the hearing and have not made any arguments in their Final Brief. (R. pp. 419-522; See Final Brief of Appellants). As such, the granting of summary judgment on this issue should be affirmed on appeal.

Adult Appellants' Claims Are Barred By The Statute Of Limitations

The Appellants misstate that the issue of the statute of limitations was not raised by the Respondents. Respondents clearly raised in the Memorandum in support of the Motion for Summary Judgment and being raised at the hearing on the Motion. (See Final Brief of Appellants at p. 10; R. pp. 291, 315; R. pp. 434, 441, 487, 519). The Appellants are the ones who did not raise any arguments at the hearing pertaining to their claims against the Dalsings. (R. pp. 419-522). The portion of the Transcript cited on page 14 of the Appellants' brief has nothing to do with that issue. See Final Brief of Appellants at p. 14. Further, other than citing to an irrelevant argument made at the hearing, the Brief does not make any arguments pertaining to the statute of limitations. As such, for the reasons set forth above, the Appellants' arguments on this issue are not preserved for appellate review. See pages 31-32, supra.

As set forth above, the thrust of the adult Appellants' claims surround the placement of the Child with the Dalsings, which the Appellants have known about since the June 4, 2014, the date of the first Family Court hearing they attended in the underlying case. As a result, the statute of limitations bars these claims.

CONCLUSION

A review of the record in this case reveals that the Appellants were unable to establish genuine issues of material fact on their causes of action. The record also reveals that many of the rulings of the trial court in the Order granting the Dalsings' Motion for Summary Judgment are not preserved for appeal by the Appellants and/or review by this Court.

Based on the foregoing, this Court should affirm the trial court's rulings and the granting of summary judgment in their entirety.

Respectfully submitted,

CLARKSON, WALSH & COULTER, P.A.

s/P. Christopher Smith, Jr.
James P. Walsh (SC Bar #15180)
P. Christopher Smith, Jr. (SC Bar #74086)
P.O. Box 6728
Greenville, SC 29606
Phone: (864) 232-4400
jim.walsh@clarksonwalsh.com
chris.smith@clarksonwalsh.com
Attorneys for Respondents Tammy Gaye Causey Dalsing and Edward Anthony Dalsing
And

THOMPSON DOVE LAW GROUP
L. Dale Dove, Esquire (SC Bar #1735)
P.O. Box 907
Rock Hill, SC 29731
(803) 327-1910
dale@tdlawgroup.com
Attorneys for Respondents Tammy Gaye Causey Dalsing and Edward Anthony Dalsing

August 7, 2025

RECEIVED
Aug 07 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Union County
Court of Common Pleas

Honorable Daniel D. Hall

Appellate Case No. 2023-001049

Jane and John Smith, individually and as
Guardians of H.A., and H.A. Individually,

Appellants,

v.

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

Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

August 7, 2025

SIGNATURE ON FOLLOWING PAGE

CLARKSON, WALSH, & COULTER, P.A.

s/P. Christopher Smith, Jr.

James P. Walsh, Esquire (SC Bar No.: 15180)
P. Christopher Smith, Jr. (SC Bar No.: 74086)
P.O. Box 6728
Greenville, South Carolina 29606
(864) (864) 232-4400
jim.walsh@clarksonwalsh.com
chris.smith@clarksonwalsh.com
Attorneys for Respondents Tammy Gaye Causey Dalsing and Edward Anthony Dalsing

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Union County
Court of Common Pleas

Honorable Daniel D. Hall

Appellate Case No. 2023-001049

Jane and John Smith, individually and as
Guardians of H.A., and H.A. Individually,

Appellants,

v.

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

Respondents.

PROOF OF SERVICE

I, P. Christopher Smith, Jr., hereby certify that my office has served a copy of **RESPONDENTS TAMMY GAYE CAUSEY DALSING AND EDWARD ANTHONY DALSING'S FINAL BRIEF** on the below stated parties at the stated e-mail address as indicated below, by attaching a copy of same, on August 7, 2025, addressed as follows:

Melinda Butler: melinda@butlerservingjustice.com

Stephanie Burton: sburton@gibbesburton.com

Dale Dove: Dale@tdlawgroup.com

South Carolina Court of Appeals Filings: ctappfilings@sccourts.org

Respectfully Submitted,

CLARKSON, WALSH, & COULTER, P.A.

s/P. Christopher Smith, Jr.
James P. Walsh, Esquire (SC Bar No.: 15180)
P. Christopher Smith, Jr. (SC Bar No.: 74086)
P.O. Box 6728
Greenville, South Carolina 29606
(864) (864) 232-4400
jim.walsh@clarksonwalsh.com
chris.smith@clarksonwalsh.com
Attorneys for Respondents Tammy Gaye Causey Dalsing and Edward Anthony Dalsing