

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Case No. 2011-CP-46-4508

Elizabeth Hope Rainey, as the
Appointed Guardian ad Litem to
Owen C., a minor Appellant

v.

Charlotte-Mecklenburg Hospital
Authority d/b/a Carolinas Medical
Center; South Carolina Department of
Social Services and Bruce Bryant, as
the Constitutional Office of the Sheriff
of York County, the York County
Sheriff's Department, and York County ... Respondents.

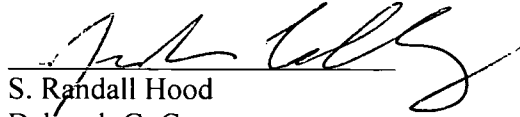
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SC Court of Appeals

[AMENDED] NOTICE OF APPEAL

Appellant Elizabeth Hope Rainey, as the Appointed Guardian ad Litem to Owen C., a minor, appeals from an order of the Honorable S. Jackson Kimball granting Respondent Charlotte-Mecklenburg Hospital Authority d/b/a/ Carolinas Medical Center summary judgment on May 13, 2013. Appellant filed a timely motion to alter or amend judgment on May 22, 2013. Appellant also appeals Judge Kimball's order denying the motion to alter or amend judgment that Appellant received written notice of on August 14, 2013.

[Signature Page to Follow]

Respectfully submitted,



S. Randall Hood
Deborah G. Casey
Lara Pettiss Harrill
Jordan C. Calloway
McGowan, Hood & Felder, LLC
1539 Health Care Drive
Rock Hill, SC 29732
(803) 327-7800

Duane M. Shaw
Nathan J. Sheldon
Shaw Law Firm
1169 Ebenezer Road
Rock Hill, SC 29732
(803) 329-4200

Attorneys for Appellant Elizabeth Hope Rainey, as the Appointed Guardian ad Litem to Owen C.

Other attorneys of record:

Monteith P. Todd
1310 Gadsden Street
Post Office Box 11449
Columbia, SC 29211
(803) 929-1400

Attorney for Respondent Charlotte-Mecklenburg Hospital Authority d/b/a/ Carolinas Medical Center

Patrick J. Frawley
Davis Frawley Law Firm
Post Office Box 489
Lexington, SC 29071
(803) 359-2512

Attorney for South Carolina Department of Social Services

Daniel R. Settana, Jr.
McKay Cauthen Settana & Stubley, PA

Post Office Box 7217
Columbia, SC 29202
(803) 256-4545

*Attorney for Bruce Bryant, as
the Constitutional Office of the Sheriff
of York County, the York County
Sheriff's Department, and York County*

October 28, 2013
Rock Hill, SC

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SC Court of Appeals

Elizabeth Hope Rainey, as GAL for Owen ~~_____~~

The Charlotte-Mecklenburg Hospital Authority

PLAINTIFF(S)

d/b/a Carolinas Medical Center, et al.
 DEFENDANT(S)

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: Ends case as to The Charlotte Mecklenburg Hospital Authority
 d/b/a Carolinas Medical Center Only

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 DAVID HAMILTON
 S.C.C.P. & S.C.S.
 YORK COUNTY, S.C.

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

M. Kimball

 Circuit Court Judge

3063

 Judge Code

5/18/13

 Date

For Clerk of Court Office Use Only

This judgment was entered on the 15th day of May, 2013 and a copy mailed first class or placed in the appropriate attorney's box on this 15th day of May 20 13 to attorneys of record or to parties (when appearing pro se) as follows:

S. Randall Hood
1539 Health Care Dr.
Rock Hill, SC 29732
ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)
Clerk of Court
CLERK OF COURT

Court Reporter:

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

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Motion for Summary Judgment on behalf of The Charlotte-Mecklenburg Hospital Authority d/b/a

Carolinas Medical Center, heard on April 18, 2013 in York County, South Carolina.

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

Elizabeth Hope Rainey, as the)
Appointed Guardian ad Litem to)
Owen Carduff, a minor)

Case No.: 2011-CP-46-4508

Plaintiff,)

v.)

ORDER FOR SUMMARY JUDGMENT

Charlotte-Mecklenburg Hospital)
Authority d/b/a Carolinas Medical)
Center; South Carolina Department of)
Social Services, and Bruce Bryant, as)
the Constitutional Office of the Sheriff)
of York County, The York County)
Sheriff's Department, and York County,)

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2013 MAY 15 PM 2:26
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

Defendants.)

This matter came before me on April 18, 2013, upon the Motion for Summary Judgment of Defendant Charlotte-Mecklenburg Hospital Authority ("CMHA"). Representing Plaintiff was S. Randall Hood, and representing CMHA was Monteith P. Todd. Based on the record presented, I make the following findings and conclusions.

FACTUAL BACKGROUND

This case arises out of physical abuse of a minor child, Owen Carduff ("Owen"), by his father, Michael Carduff. The essential facts of the case are undisputed, and the critical issue presented is whether there was a duty of care imposed on CMHA to refuse to release the child back to his parents after a thorough medical examination was inconclusive of child abuse, and after reporting its findings to the South Carolina Department of Social Services ("DSS"), as required by statute.

On December 4, 2009, Owen's parents brought him to Piedmont Medical Center ("PMC") in Rock Hill for medical attention. On December 5, 2009, the physicians at PMC transferred Owen to Levine Children's Hospital ("Levine") at CMHA in Charlotte for further care. The following day, a CT scan by CMHA staff revealed a subdural hematoma, which raised a suspicion of a non-accidental injury to Owen. At that time, Levine notified DSS of its

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suspicion that Owen may have been a victim of a non-accidental trauma.

Upon notification of this suspicion, DSS began an investigation into Owen and his injuries. While DSS conducted its investigation, the physicians at Levine performed additional tests and studies on Owen. The results of these tests were essentially normal. Levine advised DSS that it could neither rule in, nor rule out non-accidental trauma as the cause of Owen's injury. They also advised DSS that Owen was medically stable, and otherwise ready for discharge. DSS advised Levine that Owen should be discharged to his parents, that DSS had entered into a safety plan with Owen's parents, and that DSS would conduct a home investigation. Pursuant to those instructions, Levine discharged Owen to his parents on December 8, 2009, having maintained control over Owen's care for four days.

On January 11, 2010, five weeks after discharge, Owen was returned to Levine with severe, permanent brain injury caused by abuse by his father. Michael Carduff subsequently pled guilty to abusing Owen and causing his catastrophic injuries.

PLEADINGS AND DISCOVERY

Plaintiff commenced this action on December 1, 2011, naming CMHA, DSS and the York County Sheriff's Department as Defendants. Plaintiff alleges that CMHA owed Owen a duty not to place him back into an abusive and dangerous environment, and that it breached that duty by discharging Owen back to the custody of his parents. Plaintiff further alleges that Owen suffered catastrophic injuries as a result of CMHA's negligence. CMHA has denied the allegations of Plaintiff's claims, and asserted certain affirmative defenses, including immunity under S.C. Code Ann. § 63-7-390 (1976, as amended).

The parties subsequently engaged in discovery. By motion dated March 19, 2013, CMHA moved for summary judgment. The basis the motion is twofold: (1) that CMHA did not have, and that Plaintiff could not demonstrate, that CMHA owed Owen a duty of care that would prevent the harm complained of; and, (2) that it is granted immunity from liability under S.C. Code Ann. § 63-7-390 (1976, as amended). CMHA and Plaintiff submitted memoranda of law and exhibits in support of their position. After full consideration of the entire record presented, I make the following findings and conclusions.

STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate when it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Baird v. Charleston*



County, 333 S.C. 519, 511 S.E.2d 69 (1999); *Young v. South Carolina Dep't of Corrections*, 333 S.C. 714, 511 S.E.2d 413 (Ct.App.1999); Rule 56(c), SCRPC. In determining whether any triable issue of fact exists, as will preclude summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Strother v. Lexington County Recreation Comm'n*, 332 S.C. 54, 504 S.E.2d 117 (1998); *Pye v. Aycock*, 325 S.C. 426, 480 S.E.2d 455 (Ct.App. 1997).

In ruling on a summary judgment motion, the Court should consider the pleadings, depositions, interrogatory answers, admissions, and affidavits in determining whether there is a genuine issue of fact for trial, and I have done so. *See Thomas v. Waters*, 315 S.C. 524, 526, 445 S.E.2d 659 (Ct.App. 1994).

Within this framework, summary judgment is appropriate when facts exist on which reasonable minds cannot differ, and it is not appropriate where further inquiry into the facts is desirable to clarify the application of law. It is not, however, sufficient that the nonmoving party seeks to create an inference that is not reasonable, or an issue of fact that is not genuine, in order to avoid summary judgment. *Rothrock v. Copeland*, 305 S.C. 402, 409 S.E.2d 366 (1991).

The purpose of summary judgment is to expedite disposition of cases that do not require the services of a fact finder. In that way, "[a] motion for summary judgment is akin to a motion for a directed verdict" because "[i]n each instance, one party must lose as a matter of law." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001); *Main v. Corley*, 281 S.C. 525, 526, 316 S.E.2d 406, 407 (1984); *see, also, Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (standard for summary judgment "mirrors" standard for directed verdict).

"[I]nterpretation of a statute is a question of law for the court." *Catawba Indian Tribe of South Carolina v. State*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007); *Bostic v. American Home Mortgage Servicing, Inc.*, 375 S.C. 143, 147, 650 S.E.2d 479, 481 (Ct.App. 2007). Thus, where there are no issues of fact to be dealt with, summary judgment is the appropriate disposition of the issue.

"The cardinal rule of statutory construction is to ascertain and give effect to the intent of the legislature." *Sloan Constr. Co. v. Southco Grassing, Inc.*, 395 S.C. 164, 170, 717 S.E.2d 603, 606 (2011). "If a statute's language is plain, unambiguous, and conveys a clear meaning, 'the rules of statutory interpretation are not needed and the court has no right to impose another



meaning." *Id.*, quoting *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 582 (2000). When interpreting a statute, the court "must read the language 'in a sense that harmonizes with its subject matter and accords with its general purpose.'" *Ranucci v. Crain*, 397 S.C. 168, 172, 723 S.E.2d 242, 244 (Ct. App. 2012), quoting *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992).

It is a question of law for the court to determine the existence of a duty of care, and the scope of that duty. *Oblachinski v. Reynolds*, 391 S.C. 557, 706 S.E.2d 844 (2011); *Madison ex rel. Bryant v. Babcock Center, Inc.*, 370 S.C. 42, 634 S.E.2d 275 (2006); *Staples v. Duell*, 329 S.C. 503, 494 S.E.2d 639 (Ct.App. 1997).

DISCUSSION

1. Duty of care.

CMHA moved for summary judgment on the basis that it did not owe a duty to Owen to refuse or prevent his discharge back to the custody of his parents. CMHA asserts that once DSS has been notified of the possibility of abuse, and after DSS had ordered the child released to the care of his parents, it had fulfilled its legal responsibility. I agree.

In order to prove negligence, a plaintiff must show: (1) defendant owes a duty of care to the plaintiff; (2) defendant breached the duty by a negligent act or omission; (3) defendant's breach was the actual and proximate cause of the plaintiff's injury; and (4) plaintiff suffered an injury or damages. *Steinke v. S.C. Dep't of Labor, Licensing and Regulation*, 336 S.C. 373, 387, 520 S.E.2d 142, 149 (1999). If there is no duty, then the defendant in a negligence action is entitled to a directed verdict. *Doe v. Marion*, 373 S.C. 390, 400, 645 S.E.2d 245, 250 (2007), citing *Steinke*, 336 S.C. at 387, 520 S.E.2d at 149.

"A legal duty can be created by statute, a contractual relationship, status, property interest, or some other special circumstance." *Madison ex rel Bryant v. Babcock Center, Inc.*, 371 S.C. 123, 136, 638 S.E.2d 650, 656-57 (2006) (citations omitted.). The determination of the existence of a duty is one of law for the court. See *Doe ex rel Doe v. Wal-mart Stores, Inc.*, 393 S.C. 240, 246, 711 S.E.2d 908, 911 (2011) (a "court must determine, as a matter of law, whether the law recognizes a particular duty"). In this state, "... there is no general duty to control the conduct of another or to warn a third person or potential victim of danger . . ." *Faile v. S.C. Dep't of Juvenile Justice*, 350 S.C. 315, 334, 566 S.E.2d 536, 546 (2002).

The crux of the plaintiff's claim against Charlotte-Mecklenburg Hospital Authority is that

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Levine had a legal duty not to discharge Owen to his parents on December 8, 2009, or a duty to prevent Owen from being discharged into the custody of his parents, despite being medically cleared for discharge. Plaintiff asserts that, despite DSS's instruction to discharge Owen to his parents, CMHA had a duty to refuse to do so, while CMHA conducted a separate investigation of its own into the possibility of abuse. Plaintiff asserts that if CMHA had done such an investigation, it could have concluded that Owen was abused, resulting in Owen not being discharged into the custody of his parents. Plaintiff asserts that this would have prevented the catastrophic injury that occurred five weeks later on January 11, 2010.

South Carolina has enacted a comprehensive statutory scheme designed to deal with children suspected child abuse or neglect. Under South Carolina law, DSS, with the assistance of law enforcement and the family court system, is charged with investigating, prosecuting, and adjudicating issues related to the safety of children in their homes, removal from the custody of parents, placement in foster homes, and the ultimate issue of retention of custody for a child's welfare. See S.C. Code Ann. § 63-7-10 *et seq.* (1976, as amended). Other than in connection with obvious criminal acts, no other agency of the State has the duty, obligation, or authority to investigate child abuse or neglect cases. Moreover, DSS is the agency given the authority deny or deprive a parent of custody of a child.

Thus, CMHA had no legal right, and no legal duty, to withhold custody of Owen from his parents. It fulfilled its statutory duty by properly reporting its findings to DSS.

By statute, certain persons are required to report suspected child abuse or neglect. Physicians, nurses, healthcare professionals, and other designated people are required to report suspected child abuse or neglect to the county DSS, or to a law enforcement agency in the county where the child resides. See S.C. Code Ann. § 63-7-310. This section states, in relevant part:

A physician, nurse, . . . or any other . . . health professional . . . **must report** in accordance with this section when in the person's professional capacity the person has received information which gives the person reason to believe that a child has been or may be abused or neglected as defined in Section 63-7-20.

(D) Reports of child abuse or neglect may be made orally by telephone or otherwise to the county department of social services or to a law enforcement agency in the county where the child resides or is found. (Emphasis added.)

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It is uncontested that Levine complied with this statutory requirement by reporting to DSS that Owen may have been a victim of non-accidental trauma. Once this report was made, the DSS became responsible for implementing the child welfare process for Owen's protection, including any decision to withhold custody from the parents. See S.C. Code Ann. § 63-7-660 (DSS may remove a child from his or her home and has legal custody of the child thereafter if there is probable cause to believe abuse or neglect has occurred); see also *South Carolina Dept. of Social Services v. Randy S.*, 390 S.C. 100, 700 S.E.2d 250 (Ct. App. 2010) (noting that Section 63-7-1660(A) grants to DSS alone the authority to petition the family court to remove a child from custody of a parent if DSS "determines by a preponderance of evidence that the child is an abused or neglected child"); *South Carolina Department of Social Services v. Pritchard*, 329 S.C. 242, 246, 495 S.E.2d 242, 244 (Ct. App. 1997) (same); *Doe v. Marion*, 373 S.C. 390, 645 S.E.2d 245 (same).

There is no statutory or common law authority in South Carolina that would grant CMHA the authority to remove a child from the custody of his parents, or to refuse discharge of a child to his parents when the child is medically ready for discharge. The reporting statute does not enhance the duty of a reporting entity to require it to prevent a child from being returned to its parents after DSS has instructed that the child should be returned. In *Doe v. Marion, supra*, the Supreme Court held that even the failure to report under the statute does not create a private right of action. On the other hand, had CMA attempted to retain this child in its custody absent a court order or directive from DSS, it would have been potentially liable for false imprisonment or kidnapping.

Plaintiff also argues that Levine had a statutory duty and right to refuse to discharge Owen to his parents under S.C. Code Ann. § 63-7-750, which reads as follows:

§ 63-7-750. Doctor or hospital may detain child; civil immunity.

(A) A physician or hospital to which a child has been brought for treatment may detain the child for up to twenty-four hours without the consent of the person responsible for the child's welfare if the physician or hospital:

(1) has reason to believe that the child has been abused or neglected;

(2) has made a report to a law enforcement agency and the department pursuant to Section 63-7-310, stating the time the physician notified the agency or department that the child was being detained until a law enforcement officer could arrive to determine whether the officer should take emergency physical

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custody of the child pursuant to Subarticle 3; and

(3) has reason to believe that release of the child to the child's parent, guardian, custodian, or caretaker presents an imminent danger to the child's life, health, or physical safety. A hospital must designate a qualified person or persons within the hospital who shall have sole authority to detain a child on behalf of the hospital.

(B) A physician or hospital that detains a child in good faith as provided in this section is immune from civil or criminal liability for detaining the child. (Emphasis added.)

I disagree with Plaintiff's construction. I find and conclude that the ability to retain a child under this section is limited to a twenty-four hour period to afford the hospital opportunity to contact law enforcement or DSS in order that such agency may investigate the hospital's concern. This was accomplished, and DSS had already directed that Owen be discharged to his parents. In any event, CMHA retained Owen well beyond the authorized twenty-four hours in the course of its own further investigation of its concern of child abuse. Further, and in any event, the right to retain the child is permissive and not mandatory. See § 63-7-750(A).

In summary, I find and conclude that the entity obligated to retain custody over a child in derogation of a parent's rights is DSS, or temporarily, a law enforcement agency, and then only if these entities meet the statutory requirements to do so. In this case, Owen remained in Levine from December 5 until December 8, 2009. Levine notified DSS of the possibility of abuse on December 6, 2009, and DSS began investigating the matter that same day. Under the statute, any authority the hospital had to retain the child for up to twenty-four expired, and the decision as to whom Owen would be discharged belonged to DSS, not CMHA.

Notwithstanding these findings and conclusions, Plaintiff attempts to create a duty by expanding the scope of CMHA's duty through the submission of an expert's affidavit which asserts that Levine "abrogated a duty or responsibility to Owen." The expert's opinions are based on this expert's interpretation of hospital accreditation standards and internal hospital policies. I find and conclude that these expert opinions do not create a duty at law, or expand the statutory scheme promulgated by the legislature.

The existence of a duty is a legal question for determination by the court. Because the determination of the existence of a duty is a legal question, the plaintiff cannot create a duty through expert testimony or internal policies and procedures, where the duty does not otherwise exist at law. *Trotter v. State Farm Mut. Auto. Ins. Co.*, 297 S.C. 465, 480, 377 S.E.2d 343, 351

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(1988) (opinion testimony cannot create a duty that does not exist at law); *see also, Citizens and Southern National Bank of South Carolina v. Lanford*, 313 S.C. 540, 443 S.E.2d 549 (1994)

Further, Plaintiff's effort to create a common law duty, or a duty that reaches beyond the plain language of the statutes at issue, ignores basic rules of statutory construction. The court ". . . must presume that the legislature did not intend a futile act, but rather intended its statutes to accomplish something." *Denene, Inc. v. City of Charleston*, 352 S.C. 208, 212, 574 S.E.2d 196, 198 (2003) (citing *TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 503 S.E.2d 471 (1998)). If a common law duty to report and prevent child abuse existed without the need for §§ 63-7-310 and 63-7-750, the action of the General Assembly in promulgating these statutes would have been unnecessary. These statutes create a duty where there was none at common law, and the duty created is more narrow than that asserted by Plaintiff.

I find and conclude that there is no duty or obligation for a hospital to refuse to discharge a child, who is medically stable, when DSS has directed that the child be discharged to the parents. The applicable statutes in this case provide only a limited right to retain the child in derogation of a parents' custodial rights. This limited right permits such retention for only twenty-four hours, and only in order that law enforcement or DSS can be contacted and conduct an investigation.

Thus, I find and conclude that CMHA had neither the right, nor the duty to refuse discharge of Owen to his parents under the circumstances. CMHA met its duties in this case by reporting its suspicion of a non-accidental trauma to DSS. Further, it fulfilled its legal duty in returning Owen to the custody of his parents upon being advised by DSS to do so. The decision as to whether Owen should be discharged to his parents was a decision for DSS, not for CMHA.

2. Immunity regarding reporting of abuse.

CMHA also argued statutory immunity from liability pursuant to S.C. Code Ann. § 63-7-390, which provides:

A person required or permitted to report pursuant to Section 63-7-310 or who participates in an investigation or judicial proceedings resulting from the report, acting in good faith, is immune from civil and criminal liability which might otherwise result by reason of these actions. In all such civil or criminal proceedings, good faith is rebuttably presumed. Immunity under this action extends to full disclosure by the person of facts which gave the person reason to believe that the child's physical or mental health or


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welfare had been or might be adversely affected by abuse or neglect.

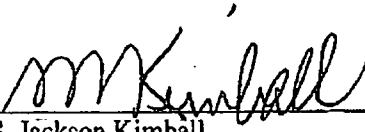
Plaintiff's claim in this case is not premised on the fact that CMHA reported its suspicion of abuse. No issue is raised concerning the fact that Levine reported Owen's condition to DSS, as required by 63-7-310. Rather, Plaintiff's claim is premised on the assertion of a further duty to retain custody of Owen, and to refuse to return him to his parents' custody. Thus, § 63-7-390 has no application to the facts of this case, and I so find and conclude.

CONCLUSION

Therefore, based on the discussion herein, the motion for summary judgment of the Defendant Charlotte-Mecklenburg Hospital Authority is granted.

AND IT IS SO ORDERED.

May 13, 2013



S. Jackson Kimball
Special Circuit Court Judge
York County

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FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2011CP4604508

Elizabeth Hope Rainey	Owen C... ..	Charlotte Mecklenburg Hospital Authority Department of Social Services South Carolina York County Sheriffs Department	Carolinas Medical Center Bruce Bryant York County
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PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
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- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

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

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

This matter came before me on August 14, 2013, upon Plaintiff's motion pursuant to Rule 59(e), SCRPC, asking the Court to alter or amend the Court's Order filed May 15, 2013. Representing the parties were: Deborah Casey for Plaintiff, Monteith Todd for Defendant Charlotte-Mecklenberg Hospital Authority, and Patrick Frawley for Defendant S.C. Dept. of Social Services.

Upon reviewing the record presented, and considering the memoranda and arguments of counsel, I find no matter presented that was not addressed expressly or by clear implication in the prior order. I further find no basis for reconsideration or amendment of the court's ruling in the prior order. Plaintiff's case is tragic, but Plaintiff's position asks the court to make inferences, suppositions, and conclusions that are not supported by the extensive discovery in this case, and, in my judgment, go beyond the scope of existing precedent on the issues presented.

Therefore, it is ordered that Plaintiff's Motion pursuant to Rule 59(e), SCRPC, be denied.

AND IT IS SO ORDERED.

