

Oct 07 2026

SC Court of Appeals

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Anthony Beasley, individually and on behalf
of the minor child, LB born 2014,

Plaintiffs,

v.

South Carolina Department of Social
Services, South Carolina Department of
Children's Advocacy,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No. 2023-CP-23-05153

**ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT OF
DEFENDANTS SOUTH CAROLINA
DEPARTMENT OF SOCIAL
SERVICES AND SOUTH CAROLINA
DEPARTMENT OF CHILDREN'S
ADVOCACY**

This case arises from an investigation by the South Carolina Department of Social Services ("SCDSS") resulting from a report to the agency that Plaintiff Anthony Beasley sexually abused his minor daughter, LB. This case was called for trial on Tuesday, September 8, 2026. Defendants had filed a motion for summary judgment eleven days earlier on August 28, 2026.¹ Accordingly, the Court heard the motion prior to the commencement of trial.² Melinda Butler appeared for

¹ Plaintiff objected to the Court hearing the motion for summary judgment. The Court finds that Plaintiff received the requisite notice under Rule 56(c), SCRCPP, and was on notice that the pending motion could be resolved prior to trial. See Summer Place of Myrtle Beach Homeowner's Ass'n, Inc. v. Knight, 298 S.C. 241, 243-44, 379 S.E.2d 724, 725-26 (Ct. App. 1989) (recognizing that, where a motion for summary judgment is pending at the time of a pretrial hearing, the opposing party is on notice that the motion may be resolved at that time).

² During the week of August 31, 2026, Plaintiff's counsel sent an unfiled motion to the Chief Administrative Judge for Common Pleas to continue the trial for two reasons (1) that the calendar of Plaintiff's counsel had not been "consulted" about the trial date; and (2) that one of Plaintiff's witnesses, a Solicitor for the Fifth Judicial Circuit, had a case somewhere on the trial roster in Richland County for that week. There was no information provided to the Court regarding the status of that criminal matter. The Chief Administrative Judge denied the request and advised Plaintiff's counsel that she could address it with the Court on September 8, 2026. When asked if any circumstance had changed since the prior week, counsel indicated that nothing had changed since the communication with the Chief Administrative Judge and no further information was provided regarding the criminal roster for Richland County. Accordingly, the Court denied the motion for a continuance.

Plaintiff. Stephanie Burton appeared for Defendants.

Factual Background

It is uncontested that Plaintiff Anthony Beasley is the biological father of LB. The biological mother of the child is Clara Foster. It is uncontested that Clara Foster reported to law enforcement that LB had been sexually abused by Plaintiff. It is also uncontested that a report of child abuse or neglect was thereafter made to the South Carolina Department of Social Services (“SCDSS”) on November 29, 2018. The parties agree LB had been in her mother’s custody since birth when the report was made and remained in her mother’s custody until the resolution of a Family Court action filed by Plaintiff after Defendants’ involvement ceased.

SCDSS is a state agency tasked with investigating reports that a child has been abused or neglected by a caregiver. S.C. Code Ann. § 63-7-920(A) (2023). “Child abuse or neglect” or “harm” occurs when:

- (a) the parent, guardian, or other person responsible for the child's welfare:
 - (ii) commits or allows to be committed against the child a sexual offense as defined by the laws of this State or engages in acts or omissions that present a substantial risk that a sexual offense as defined in the laws of this State would be committed against the child;

S.C. Code Ann. § 63-7-20(6)(a)(ii) (2023).

Within twenty-four hours of the receipt of a report of suspected child abuse or neglect, SCDSS must begin an investigation to determine whether the report should be “indicated” or “unfounded.” 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.” S.C. Code Ann. § 63-7-20(14) (2023). 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.” S.C. Code Ann. § 63-7-20(30) (2023). A preponderance of evidence “means evidence which, when fairly considered, is more convincing as to its truth than the evidence in opposition.” S.C. Code Ann. § 63-7-20(22) (2023).

SCDSS must make a finding “no later than forty-five days from the receipt of the report.” S.C. Code Ann. § 63-7-920(A)(3) (2023). However, a single extension of no more than fifteen days may be granted. Id. When SCDSS determines that a child is abused or neglected and cannot be protected from harm without intervention, SCDSS may petition the Family Court for authority to intervene and provide protective services without removal of the child. S.C. Code Ann. § 63-7-1650(A) (2008).

The parties agree that LB was referred by law enforcement for a forensic interview which was conducted by the Children’s Advocacy Center of Spartanburg, Cherokee, and Union Counties (“CAC”). The parties further agree that the CAC conducted two separate interviews of LB and that during the second of those interviews, she disclosed inappropriate sexual contact by Plaintiff. Plaintiff contends that the forensic interviewer, Heather Flassing, inappropriately interviewed the child and that her disclosure should have been disregarded or viewed skeptically by SCDSS.³ Following the interview, SCDSS indicated the case, finding that there was a preponderance of evidence of abuse or neglect.

Family Court Proceedings

On March 20, 2019, SCDSS filed a Complaint for Intervention in the Greenville County Family Court as it is required to do pursuant to S.C. Code Ann. § 63-7-1930(b) (2008). See South Carolina Dep’t of Soc. Servs. v. Clara Foster and Anthony Beasley, C.A. No. 2019-DR-23-1240.

³ The CAC was initially a Defendant in this lawsuit. Plaintiff settled his claims against that Defendant.

The Complaint alleged that LB had been sexually abused by Anthony Beasley and requested, among other things, that custody remain with Clara Foster, that the parties participate in appropriate services, and that the Family Court make a determination concerning the alleged abuse.

Appointment of Guardian ad Litem, Linda Hodges

On April 16, 2019, Linda Hodges, a volunteer Guardian ad Litem with the Cass Elias McCarter Guardian ad Litem Program, was appointed by Family Court Judge Tarita Dunbar to represent LB's interests in the Family Court action. Order Appointing Guardian ad Litem, S.C. Dep't of Soc. Servs. v. Foster, C.A. No. 2019-DR-23-1240 (S.C. Fam. Ct. Apr. 16, 2019).⁴

The South Carolina Department of Children's Advocacy ("SCDCA") came into existence on July 1, 2019. S.C. Code Ann. § 63-11-2210 (2018). SCDCA receives, refers, monitors, and/or investigates complaints regarding services provided to children by other identified state agencies. S.C. Code Ann. §§ 63-11-2270(4) & (5) (2018). Upon its creation in 2019, SCDCA assumed responsibility for the Cass Elias McCarter Guardian ad Litem Program. S.C. Code Ann. § 63-11-2270(18)(a) (2018).

The General Assembly created the Cass Elias McCarter Guardian ad Litem Program in 2008 to "provide training and supervision to volunteers who serve as court-appointed special advocates for children in abuse and neglect proceedings within the family court." S.C. Code Ann. § 63-11-500(A) (2018). Guardians ad Litem represent the interests of the children to whom they are assigned and provide their reports and recommendations to the Family Court, which may adopt

⁴ During the hearing, Defendants provided the Court with copies of the orders entered in the underlying Family Court proceeding, and Plaintiff's counsel likewise indicated that she was relying upon those orders. The Court reviewed the Family Court orders and discussed them with counsel during the hearing. Accordingly, the Court takes judicial notice of the orders entered in the underlying Family Court proceeding, S.C. Dep't of Soc. Servs. v. Foster, C.A. No. 2019-DR-23-1240.

or reject the recommendations of the Guardian. S.C. Code Ann. § 63-11-510 (2018). Guardians ad Litem do not have authority to order visitation, to place children, to remove them from placement, or to place children into emergency protective custody. When SCDCA assumed responsibility for administration of the Cass Elias McCarter Guardian ad Litem Program on July 1, 2019, GAL Hodges continued serving as LB's Guardian ad Litem.

The Merits Proceeding

A merits hearing relating to SCDSS's Complaint for Intervention was initially scheduled for April 23, 2019. The hearing was continued because Plaintiff's counsel was unavailable. Order of Continuance, S.C. Dep't of Soc. Servs. v. Foster, C.A. No. 2019-DR-23-1240 (S.C. Fam. Ct. Apr. 24, 2019). The hearing was rescheduled for June 5, 2019. The June 5, 2019 hearing was continued again because Plaintiff's counsel was again unavailable and it was rescheduled for September 11, 2019. Order of Continuance, S.C. Dep't of Soc. Servs. v. Foster, C.A. No. 2019-DR-23-1240 (S.C. Fam. Ct. June 12, 2019).

Continuance of the September 11, 2019 Hearing

The September 11, 2019 hearing was continued due to a family medical emergency involving Clara Foster's counsel, and the matter was rescheduled for November 6, 2019. Order of Continuance, S.C. Dep't of Soc. Servs. v. Foster, C.A. No. 2019-DR-23-1240 (S.C. Fam. Ct. Sept. 19, 2019). The November 6, 2019 hearing was continued because Ms. Butler was yet again unavailable and a material witness for the defense was unavailable. Order of Continuance, S.C. Dep't of Soc. Servs. v. Foster, C.A. No. 2019-DR-23-1240 (S.C. Fam. Ct. Nov. 21, 2019). Thus, the matter was rescheduled for February 5, 2020. Order of Continuance, S.C. Dep't of Soc. Servs. v. Foster, C.A. No. 2019-DR-23-1240 (S.C. Fam. Ct. Jan. 22, 2020). The February 5, 2020 hearing

was continued at Plaintiff's request because his expert witness was not available. Id. The hearing was rescheduled for March 11, 2020. Id.

At the scheduled hearing on March 11, 2020, the parties advised Family Court Judge Thomas T. Hodges that the merits hearing would require more than one day. Because sufficient docket time was not available to complete the hearing, the matter was continued by the Court to be placed on the Court's complex docket. Order of Continuance, S.C. Dep't of Soc. Servs. v. Foster, C.A. No. 2019-DR-23-1240 (S.C. Fam. Ct. Apr. 23, 2020).

The parties agree that on August 19, 2020, Plaintiff filed a motion seeking supervised visitation with LB. Following the hearing, Family Court Judge Rochelle Y. Conits entered an order on January 5, 2021, providing Plaintiff with supervised visitation with LB a minimum of two weekends per month, supervised by Plaintiff's mother. Order for Supervised Visitation, S.C. Dep't of Soc. Servs. v. Foster, C.A. No. 2019-DR-23-1240 (S.C. Fam. Ct. Jan. 5, 2021).

The merits hearing was rescheduled for January 19, 2021. By that time, in-person Family Court proceedings had been suspended due to the COVID-19 pandemic. Family Court Judge Rochelle Y. Conits determined that conducting the merits hearing virtually was not reasonable given the nature and complexity of the case and continued the matter for placement on the complex docket when in-person proceedings resumed. Order of Continuance, S.C. Dep't of Soc. Servs. v. Foster, C.A. No. 2019-DR-23-1240 (S.C. Fam. Ct. Jan. 19, 2021).

The September 20, 2021 Merits Hearing and Final Order

The merits hearing was finally held on September 20, 2021. By that time, the parties had reached an agreement resolving the action, which Family Court Judge Rochelle Y. Conits found to be fair, reasonable, and in LB's best interests. Merits Order, S.C. Dep't of Soc. Servs. v. Foster, C.A. No. 2019-DR-23-1240 (S.C. Fam. Ct. Oct. 4, 2021). Of importance in this case, Judge Conits

specifically ruled that SCDSS had reasonable cause to intervene in the matter and provide services to the family and that SCDSS had made reasonable efforts to preserve and reunite the family. Id. While the Family Court explicitly made no findings concerning the merits of the sexual abuse allegations, Judge Conits continued Plaintiff's supervised visitation and noted that either Anthony Beasley and Clara Foster could file a subsequent private custody action. Id. Following this order, SCDSS closed its case, concluding its involvement with the family, and GAL Hodges' involvement as LB's Guardian ad Litem ended.

Plaintiff filed a subsequent custody action against Clara Foster. Neither Defendant was involved in that case. A new paid Guardian ad Litem was appointed for LB. According to Plaintiff, that GAL was critical of the conditions of Clara Foster's home when she visited same. Plaintiff was awarded custody in that Family Court proceeding. This Action was filed on October 4, 2023.

CONCLUSIONS OF LAW

The remaining claims in Plaintiff's Complaint are causes of action for gross negligence and defamation against Defendants SCDSS and SCDCA.⁵ In his pre-trial brief, Plaintiff agreed to dismiss his defamation claim, which was affirmed by Plaintiff's counsel at the hearing on the motion for summary judgment. Accordingly, the only remaining claim for consideration by the Court is a single cause of action for gross negligence.

Plaintiff's gross negligence claim against Defendant SCDSS is based upon allegations that SCDSS:

- (1) Failed to exercise slight care in investigating the allegations of sexual abuse against Plaintiff and making an indicated finding against him, which he alleges resulted in

⁵ Plaintiff unsuccessfully appealed a prior order granting a motion to dismiss his cause of action for outrage and his claim for punitive damages. After that decision, the only remaining claims are for gross negligence and defamation.

Plaintiff's inability to see LB for an extended period of time;

- (2) Failed to exercise slight care in connection with the Family Court proceedings, including by allegedly failing to timely move the case toward resolution, which Plaintiff alleges prolonged his inability to see LB; and
- (3) Failed to exercise slight care by allowing LB to remain in the custody of her mother, Clara Foster, during SCDSS's involvement with the family.

The Complaint does not identify any specific act or omission by SCDCA or by the volunteer Guardian ad Litem as a basis for Plaintiff's gross negligence claim against SCDCA. Plaintiff generally alleges that SCDCA failed to properly investigate the allegations, timely move the Family Court proceedings toward resolution, and protect LB while she remained in Clara Foster's custody.

The Court finds that there is no genuine issue of material fact in this case. Of note, Plaintiff admittedly did not serve written discovery upon either Defendant or take any depositions and thus had no discovery to submit in opposition to Defendants' motion. Plaintiff did not file any opposing affidavits prior to the hearing.

The South Carolina Tort Claims Act Applies to Plaintiff's Claims

The South Carolina Tort Claims Act ("SCTCA") applies to Plaintiff's claims in this case. The SCTCA is "the exclusive remedy for any tort committed by an employee of a governmental entity." S.C. Code Ann. § 15-78-70(a) (2005). The provisions of the SCTCA "establish limitations on and exemptions to the liability of the governmental entity and must be liberally construed in favor of limiting the liability of the governmental entity." S.C. Code Ann. § 15-78-20(f) (1988); S.C. Code Ann. § 15-78-200 (1997).

Plaintiff Is Estopped from Relitigating Issues Previously Determined by the Family Court

Under South Carolina law, "[c]ollateral 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. South Carolina Dep’t of Transp., 385 S.C. 550, 684 S.E.2d 779, 782 (Ct. App. 2009). The party asserting collateral estoppel must demonstrate that the issue was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment. Plum Creek Dev. Co., Inc. v. City of Conway, 334 S.C. 30, 34, 512 S.E.2d 106 (1999).

The South Carolina Supreme Court’s decision in Doe v. State, 294 S.C. 125, 363 S.E.2d 106 (1987) is on point. In Doe, a child was taken into emergency protective custody. Id. at 127, 363 S.E.2d at 107. Subsequently, SCDSS filed a removal petition, and the family court determined that there was probable cause to do so. Id. No party appealed the order. Id. Approximately forty days after the removal, a merits hearing was conducted. Id. The parties had reached a compromise agreement, and the order of the family court said that the discipline that the mother administered was excessive. Id. The family court ordered custody of the child to be returned to the mother subject to counseling and supervision. Id. That order was not appealed. Id. Nearly two years later, the mother sued SCDSS alleging that SCDSS had improperly removed her son from her custody. Id. at 127, 363 S.E.2d at 107-08.

The South Carolina Supreme Court held that the claims were barred by collateral estoppel: “[u]nder the doctrine of collateral estoppel parties are prevented from relitigating specific issues in a second suit, based on a separate claim, where the issues were previously decided in litigation.” Id. at 127, 363 S.E.2d at 108 (citing Richburg v. Baughman, 290 S.C. 431, 351 S.E.2d 164 (1986)). The South Carolina Supreme Court found that the issue of whether the child was wrongfully removed had already been decided by the family court. Id. at 128, 363 S.E.2d at 108. Accordingly, the Court found that SCDSS was entitled to summary judgment. Id.

Here, the Family Court expressly determined that SCDSS had reasonable cause to intervene and provide services to the family **and that SCDSS made reasonable efforts to preserve and reunify the family**. Those determinations were necessary to the Family Court's disposition of the underlying action and were not appealed. As in Doe, Plaintiff may not use a subsequent tort action to relitigate issues already determined by the Family Court. See also H.A. v. South Carolina Department of Social Services et al., C.A. No. 2020-CP-44-00104 (S.C. Com. Pl. Jun. 30, 2023) (granting summary judgment to SCDSS and SCDCA and holding that plaintiffs were estopped from relitigating issues that had been addressed in prior Family Court proceedings), aff'd, No. 2023-001049 (Ct. App. Aug. 19, 2026) (unpublished).

Plaintiff claims that SCDSS was grossly negligent in determining that there was a preponderance of evidence of abuse or neglect, which resulted in SCDSS filing an action to intervene with the family and provide services. Plaintiff also alleges that SCDSS did not properly push the Family Court action forward, which kept him from contact with his daughter. Plaintiff's contentions would require findings inconsistent with the Family Court's prior determinations that SCDSS not only had reasonable cause to intervene but also made reasonable efforts to preserve and reunify the family. Accordingly, Plaintiff is collaterally estopped from relitigating those issues in this Action.

There Is No Evidence that Either SCDSS or SCDCA Were Grossly Negligent

Plaintiff asserts gross negligence claims against SCDSS and SCDCA. To prove gross negligence, Plaintiff must prove that SCDSS and SCDCA failed to exercise even the slightest care. Hollins v. Richland Cnty. Sch. Dist. One, 310 S.C. 486, 490 (1992). Gross negligence is the “**intentional, conscious** failure to do something which is incumbent upon one to do or the doing

of a thing intentionally that one ought not to do.” Faile v. S.C. Dep’t of Juvenile Justice, 350 S.C. 315, 331-32 (2002).

To prove gross negligence against either SCDSS or SCDCA, Plaintiff must show: (1) the agency owed a duty of care to each Plaintiff Anthony Beasley, individually, and to LB; (2) the agency was grossly negligent by failing to exercise even the slightest care; (3) the agency’s breach was the actual and proximate cause of the injury sustained by that Plaintiff; and (4) that Plaintiff Anthony Beasley or LB suffered cognizable injuries or damages. Steinke v. S.C. Dep’t of Labor, Licensing and Regulation, 336 S.C. 373, 387 (1999).

SCDSS Does Not Owe Plaintiff Anthony Beasley a Duty of Care

To prevail on his claim for gross negligence against SCDSS, Plaintiff must establish that SCDSS owed him the legal duties he claims. Whether a defendant owes a duty of care to a plaintiff is a question of law for the Court. Oblachinski v. Reynolds, 391 S.C. 557, 560, 706 S.E.2d 844, 845 (2011); Steinke v. S.C. Dep’t of Labor, Licensing and Regulation, 336 S.C. 373, 387 (1999) (“The court must determine, as a matter of law, whether the law recognizes a particular duty. If there is no duty, then the defendant in a negligence action is entitled to a directed verdict.”).

A legal duty may arise from statute, contract, relationship, status, property interest, or some other special circumstance. McCullough v. Goodrich & Pennington Mortg. Fund, Inc., 373 S.C. 43, 47-48, 644 S.E.2d 43, 46 (2007); Hendricks v. Clemson Univ., 353 S.C. 449, 456, 578 S.E.2d 711, 714 (2003). When a plaintiff relies upon a statute as the source of the alleged duty, the plaintiff must establish that the essential purpose of the statute is to protect against the kind of harm suffered and that the plaintiff is a member of the class of persons the statute was intended to protect. Summers v. Harrison Constr., 298 S.C. 451, 455, 381 S.E.2d 493, 496 (Ct. App. 1989).

Plaintiff has not established that SCDSS owed Anthony Beasley in his individual capacity a legal duty that supports any of his theories of gross negligence. First, SCDSS did not owe Plaintiff a duty to refrain from making an indicated finding against him. SCDSS's statutory responsibility to investigate allegations of child abuse and neglect and determine whether a report is indicated or unfounded exists for the protection and welfare of the child. It does not create a corresponding duty to the alleged perpetrator to reach a particular investigative determination or to protect him from the consequences of an indicated finding.

Second, SCDSS did not owe Plaintiff a duty to docket the Family Court action, obtain an earlier hearing date, or otherwise ensure that the Family Court proceedings were resolved within a particular period of time. The scheduling and docketing of the Family Court action were matters within the authority and control of the Family Court. Plaintiff has not, and cannot, identify a statute or other source of law imposing upon SCDSS a duty owed to him individually to control the Family Court's docket.

Third, Plaintiff's gross negligence claim appears to be premised, in part, upon SCDSS allowing LB to remain in Clara Foster's custody, which Plaintiff admits she had been in since birth. SCDSS owed no legal duty to Anthony Beasley to remove LB from her mother's custody or to obtain a different custody arrangement for LB.

Accordingly, Plaintiff has not identified a legal duty owed to him individually that required SCDSS to refrain from making an indicated finding, control the scheduling or disposition of the Family Court proceedings, or remove LB from her mother's custody.

SCDCA Does Not Owe Plaintiff Anthony Beasley a Duty of Care

Similarly, SCDCA does not owe Plaintiff Anthony Beasley any duty of care. Plaintiff's claims against SCDCA arise, if at all, from the involvement of LB's volunteer Guardian ad Litem

in the underlying Family Court proceedings. A Guardian ad Litem is appointed by the Family Court to “represent the best interests of the **child**,” and to “protect and promote the best interests of the **child**.” S.C. Code Ann. § 63-11-510 (2008). The Guardian ad Litem serves as an independent representative of the child and provides reports and recommendations to the Family Court concerning the child’s best interests. The Guardian ad Litem does not owe a parent a duty to make any particular recommendation to the Family Court, nor does the Guardian ad Litem have authority to determine custody, arrange or order visitation, place or remove a child from a home, or control the scheduling or disposition of the Family Court proceedings. Those matters ultimately rest with the Family Court.

Accordingly, neither the Family Court’s appointment of LB’s volunteer Guardian ad Litem nor SCDCA’s administration of the Guardian ad Litem Program created a legal duty owed to Anthony Beasley individually. Plaintiff cannot premise a gross negligence claim against SCDCA based upon alleged failures to protect his interests, secure visitation for him, obtain a particular custody arrangement, or cause the Family Court proceedings to reach a particular result because SCDCA and the Guardian ad Litem had no such authority and owed him no such duty.

There Is No Evidence that SCDSS Failed to Exercise Slight Care in Making the Indicated Finding

Plaintiff cannot establish that SCDSS failed to exercise slight care in investigating the allegations of sexual abuse and making an indicated finding against him. In fact, Plaintiff does not have any evidence at all. Plaintiff did not conduct discovery in this case. There were no depositions of SCDSS employees involved in the investigation nor did Defendant SCDSS have to respond to written discovery of any type whatsoever. Plaintiff was not personally involved in the investigation and thus could offer no information about the process actually used or the

information gathered.⁶ Accordingly, the Court finds that there is no genuine issue of material fact and that summary judgment is appropriate.

There Is No Evidence that SCDSS Failed to Exercise Slight Care in Connection with the Family Court Proceedings

Plaintiff cannot establish that SCDSS failed to exercise slight care in connection with the Family Court proceedings or caused the delay in the resolution of that action. SCDSS does not control the Family Court's docket, and the continuances that prolonged the proceedings were primarily attributable to Plaintiff and his counsel, not SCDSS. The parties agreed that SCDSS did not request a single continuance. According to the Court orders issued by the Family Court, Plaintiff was responsible for continuances of the April 23, 2019, June 5, 2019, November 6, 2019, and February 5, 2020 hearings. The remaining continuances resulted from circumstances equally outside SCDSS's control, including the unavailability of other participants, insufficient Family Court docket time to complete the merits hearing, and the suspension of in-person proceedings during the COVID-19 pandemic.

SCDSS initiated the Family Court action and continued to participate in the proceedings as the case moved through the Family Court. SCDSS had neither the authority nor the ability to control the Family Court's docket, prevent continuances requested by Plaintiff, or require the Family Court to resolve the action within a particular amount of time.

There Is No Evidence that SCDSS Failed to Exercise Slight Care in Allowing LB to Remain in Clara Foster's Custody

⁶ During the hearing regarding the pending motions, Plaintiff's counsel also advised the Court that at a trial Plaintiff planned to call only Plaintiff Anthony Beasley as a witness.

Plaintiff's third theory appears to be that SCDSS failed to exercise slight care by allowing LB to remain in Clara Foster's custody throughout SCDSS's involvement with the family although no report of abuse or neglect was made to the Agency regarding Clara Foster. There is no evidence in the record before this Court about the condition of Clara Foster's home during the period that either SCDSS or the GAL was involved with the child. To the extent that Plaintiff relies upon allegations concerning the condition of Clara Foster's home made during the subsequently filed private custody action, those allegations arose after the involvement of either Agency and do not establish the conditions that existed, or the information available, during the relevant period.

There Is No Evidence that SCDCA or GAL Hodges Failed to Exercise Slight Care

Plaintiff cannot establish that SCDCA or Guardian ad Litem, Linda Hodges, failed to exercise even slight care. To the extent Plaintiff's gross negligence claim is based upon SCDSS's investigation or indicated finding, GAL Hodges was not appointed as LB's Guardian ad Litem until April 16, 2019, after SCDSS's investigation had concluded and its indicated finding had been made. Likewise, neither GAL Hodges nor SCDCA controlled or was responsible for scheduling the Family Court's docket.

Additionally, there is no evidence to support Plaintiff's apparent contention that GAL Hodges failed to exercise slight care in protecting LB while she remained in Clara Foster's custody. The only information in the record is reflected in the Family Court's orders showing that the GAL (and her counsel) appeared at each of the hearings scheduled by the Family Court.

To the extent Plaintiff contends that GAL Hodges failed to protect his relationship with LB or secure visitation for him, there is no evidence to support such a claim nor obligation by a GAL to advocate on his behalf. Notably, Plaintiff did not file a motion seeking supervised visitation until August 2020. There was nothing precluding him from doing so earlier.

There Is No Evidence that Any Action of SCDSS or SCDCA Proximately Caused Plaintiff's Alleged Injuries

Negligence is not actionable unless it is the proximate cause of the injury. Madison ex rel. Bryant v. Babcock Center, Inc., 371 S.C. 123, 147, 638 S.E.2d 650 (2006). Proximate cause requires proof of both causation in fact and legal cause. Id. Causation in fact is proved by establishing that the Plaintiff's alleged injury would not have occurred "but for" SCDSS or SCDCA's negligence. Id. "Legal cause is proved by establishing foreseeability." Hurd v. Williamsburg Cty., 363 S.C. 421, 427, 611 S.E.2d 488, 492 (2005). "An injury is foreseeable if it is the natural and probable consequence of a breach of duty." Id. (internal citations omitted). Proximate cause may be proven by direct or circumstantial evidence. J.T. Baggerly v. CSX Transp., Inc., 370 S.C. 362, 369, 635 S.E.2d 97, 101 (2006).

Defendants Did Not Proximately Cause the Duration of Plaintiff's Separation from LB

Plaintiff cannot establish that any act or omission by SCDSS or SCDCA proximately caused the prolonged separation between Plaintiff and LB or the injuries Plaintiff attributes to that separation. Although Plaintiff's Complaint alleges that SCDSS "kept" Plaintiff from having contact with LB for more than twenty months and that Defendants' conduct resulted in Plaintiff "losing over two years of his daughter's life," the evidence does not support that characterization. Admittedly, prior to SCDSS's involvement with the family, Plaintiff had no court-ordered custody or visitation arrangement. Plaintiff's contact with LB occurred at Clara Foster's sole discretion. Plaintiff therefore cannot establish how frequently he would have seen LB during the relevant period in the absence of SCDSS's involvement.

Plaintiff cannot establish that SCDSS's investigation or indicated finding proximately caused his loss of contact with LB. The indicated finding did not determine Plaintiff's custody or visitation rights. Rather, following its investigation and indicated finding, SCDSS initiated the

Family Court action, and any determination concerning Plaintiff's custody or visitation rights was within the Family Court's discretion. Further, the Family Court controlled the scheduling and disposition of the underlying action, not SCDSS or SCDCA, and multiple continuances during the proceedings were attributable to Plaintiff and his counsel. Other delays resulted from circumstances outside Defendants' control, including the Family Court's inability to complete the merits hearing within the time allotted and the suspension of in-person proceedings during the COVID-19 pandemic.

Plaintiff's own actions further defeat his attempt to attribute the duration of the separation to Defendants. Plaintiff was represented by counsel throughout the Family Court proceedings and had the ability to seek interim relief from the Family Court. Yet, despite now claiming that the absence of contact caused substantial harm to both him and LB, Plaintiff did not move for supervised visitation until August 2020, approximately seventeen months after SCDSS initiated the Family Court action.

There Is No Evidence that Defendants Caused the Injuries Alleged on Behalf of LB

Plaintiff did not present evidence that the absence of contact with Plaintiff caused LB any injury. Plaintiff alleges that she suffered "mental harm and injury, physical pain, emotional and mental distress, and loss of enjoyment of life" as a result of not having her father's protection or presence in her life. Plaintiff has no evidence of these alleged injuries.

There is no evidence that she was diagnosed with or treated for trauma or other mental health injury caused by the absence of contact with Plaintiff. The evidence therefore does not establish that LB suffered any alleged injuries as a result of any act or omission by SCDSS or SCDCA.

There Is No Evidence that Defendants Caused Plaintiff's Alleged Emotional or Mental Injuries

Similarly, there is no evidence supporting Plaintiff's claim that he personally suffered compensable emotional or mental injury as a result of Defendants' conduct. Although Plaintiff seeks damages arising from the loss of contact with his daughter and elsewhere alleges severe emotional distress and mental anguish, there is no evidence that he sought counseling or other mental health treatment.

Defendants Are Immune from Plaintiff's Claims Under the South Carolina Tort Claims Act

Even if Plaintiff could otherwise establish the elements of his claims, SCDSS and SCDCA are immune under the SCTCA's exceptions to the waiver of sovereign immunity. The SCTCA includes various exceptions to the waiver of sovereign immunity. See S.C. Code Ann. § 15-78-60 (2005). "The exceptions under the Act must be construed liberally in favor of limiting the liability of the State and its political subdivisions." Staubes v. City of Folly Beach, 331 S.C. 192, 205, 500 S.E.2d 160, 167 (Ct. App. 1998).

SCDCA and GAL Hodges Are Entitled to Quasi-Judicial Immunity for GAL Hodges's Performance of Her Guardian ad Litem Duties

Section 15-78-60(1) provides immunity to SCDCA for a loss resulting from: "legislative, judicial, or quasi-judicial action." S.C. Code Ann. § 15-78-60(1) (2005). The South Carolina Supreme Court has held that a guardian ad litem acting within the scope of the guardian's duties performs quasi-judicial acts and is entitled to absolute quasi-judicial immunity. Fleming v. Asbill, 326 S.C. 49, 57, 483 S.E.2d 751, 756 (1997). The Court explained that a guardian ad litem must remain free to exercise independent judgment in protecting the best interests of the child without the threat of liability from a dissatisfied parent. Id. at 56-57, 483 S.E.2d at 755-56; see also Falk v. Sadler, 341 S.C. 281, 533 S.E.2d 350 (Ct. App. 2000) (noting that "no matter how disagreeable"

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

Plaintiff's claims against SCDCA seemingly arise from GAL Hodges's performance of her duties as LB's court-appointed Guardian ad Litem. In performing her duties, GAL Hodges was required to exercise independent judgment concerning LB's best interests, including whether LB could safely remain in Clara Foster's custody and what contact with Plaintiff was appropriate.

To the extent Plaintiff contends that GAL Hodges should have reached different conclusions, made different recommendations, or taken different action on LB's behalf, his claim is based upon precisely the type of quasi-judicial judgment protected by Section 15-78-60(1). Plaintiff's disagreement with the manner in which GAL Hodges exercised her independent judgment in representing LB's best interests cannot serve as a basis for imposing liability upon SCDCA. SCDCA is accordingly immune under Section 15-78-60(1) from liability for any loss allegedly resulting from GAL Hodges's performance of her court-appointed duties.

SCDCA Is Likewise Immune Under Section 63-11-560 of the South Carolina Children's Code

Section 63-11-560 of the South Carolina Code provides:

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

S.C. Code Ann. § 63-11-560 (2008).

GAL Hodges served without compensation as LB's volunteer Guardian ad Litem and performed the responsibilities assigned to her throughout the Family Court proceedings. There is

no evidence that GAL Hodges acted in bad faith or failed to exercise even slight care. Plaintiff therefore cannot overcome the immunity afforded by Section 63-11-560.

Defendants Are Immune From Suit Resulting from the Execution or Implementation of the Family Court's Orders

Section 15-78-60(3) provides immunity to SCDSS and SCDCA for a loss resulting from the “execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process.” S.C. Code Ann. § 15-78-60(3) (2005).

Plaintiff's Claims Against SCDCA Are Barred by Section 15-78-60(3)

Section 15-78-60(3) directly applies to Plaintiff's claims against SCDCA. The Family Court appointed GAL Hodges to serve as LB's Guardian ad Litem and entered an order expressly directing the responsibilities she was required to perform in that role. Among other things, the Family Court directed GAL Hodges to “serve as a full participant in the court proceeding with the duty to protect and advocate for the child's best interests,” “provide the family court with a written report which includes evaluation and assessment of the issues, recommendations, and wishes of the child,” and to “perform such other duties as directed by the court.” Order Appointing Guardian ad Litem, S.C. Dep't of Soc. Servs. v. Foster, C.A. No. 2019-DR-23-1240 (S.C. Fam. Ct. Apr. 16, 2019). The conduct upon which Plaintiff seeks to impose liability against SCDCA arose from GAL Hodges's performance of those court-ordered responsibilities. In carrying out those responsibilities, GAL Hodges was executing and implementing the Family Court's appointment order. Accordingly, SCDCA is immune from suit for any loss allegedly resulting from GAL Hodges's performance of her court-appointed responsibilities under Section 15-78-60(3) and Plaintiff's claims against it are barred.

SCDSS Is Entitled to Immunity Under Section 15-78-60(3) for Its Execution of Family Court Orders

Section 15-78-60(3) also provides immunity to SCDSS to the extent Plaintiff seeks to impose liability for actions SCDSS took in execution or implementation of orders entered by the Family Court. Once the Family Court entered orders governing matters such as custody, visitation, and the provision of services during the underlying action, SCDSS was required to act in accordance with those orders and had no authority to disregard or independently alter them. To the extent Plaintiff attributes his alleged injuries to SCDSS's compliance with or implementation of those Family Court orders, Section 15-78-60(3) provides immunity for any resulting loss.

SCDSS and SCDCA Are Immune Under Section 15-78-60(25) Because There Is No Evidence That They Failed to Exercise at Least Slight Care

Section 15-78-60(25) provides immunity for a loss resulting from "responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any student, patient, prisoner, inmate, or client of any governmental entity, except when the responsibility or duty is exercised in a grossly negligent manner." S.C. Code Ann. § 15-78-60(25) (2005). Accordingly, when a plaintiff's alleged loss results from the exercise of a responsibility or duty encompassed by Section 15-78-60(25), a governmental entity is immune from liability unless the plaintiff establishes that the responsibility or duty was exercised in a grossly negligent manner.

Plaintiff's claims concerning SCDSS's protection and supervision of LB and SCDCA's involvement through LB's Guardian ad Litem implicate the responsibilities encompassed by Section 15-78-60(25). As discussed above, there is no evidence that either SCDSS or SCDCA failed to exercise at least slight care. Plaintiff therefore cannot establish the gross negligence necessary to overcome the immunity afforded by Section 15-78-60(25).

CONCLUSION

Accordingly, the Court finds that there is no genuine issue of material fact and that Defendants' motion for summary judgment should be granted as a matter of law.

AND IT IS SO ORDERED.

G.D. Morgan, Jr., Judge
Court of Common Pleas



Greenville Common Pleas

Case Caption: Anthony Beasley , plaintiff, et al vs. Social Services South Carolina
Department Of , defendant, et al
Case Number: 2023CP2305153
Type: Order/Other

So Ordered

G.D. Morgan Jr.
