

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

CASE NUMBER: 2007CP4003365

Margaret Mims

Tonya Bradford

Edward Mims

Craig Stoxen

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <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.
- 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.
- 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 _____

RICHLAND COUNTY
 2014 JUNE - 3 AM 10:40
 JEANETTE W. McBRIDE
 CLERK OF COURT

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 : _____

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

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

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 3 June 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Patricia Logan Harrison

Peter Demos Protopapas

Kenneth P. Woodington

Leslie A. Cotter Jr.

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W. McBride

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Edward Mims, by and through his)
 legal guardian, Margaret Mims,)
)
 Plaintiff,)
)
 vs.)
)
 Bobcock Center, Inc., Judy Johnson,)
 South Carolina Department of)
 Disabilities and Special Needs,)
 Kathi Lacy, and Stanley Butkus,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 IN THE FIFTH JUDICIAL CIRCUIT

Case No. 2007-CP-40-03365

**ORDER DENYING PLAINTIFF'S MOTION
 FOR RECONSIDERATION**


RICHLAND COUNTY
 FILED
 JUN - 3 AM 10:24
 JANETTE W. NORRIDE
 C.C.P. & G.S.

This matter comes before the Court by way of Plaintiff Edward Mims's Motion to Reconsider pursuant to Rule 59(e), SCRPC. Specifically, Plaintiff asks this Court to reconsider its Order Granting Judgment to Defendants Babcock Center, Inc. and Judy Johnson and its Order Granting Summary Judgment to Defendants South Carolina Department of Disabilities and Special Needs, Kathi Lacy, and Stanley Butkus filed January 21, 2014.

After careful consideration of the record in this case and the submissions of the parties, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered. Accordingly, this Court hereby **DENIES** Plaintiff's Motion under Rule 59(e), SCRPC to Reconsider this Court's Orders filed January 21, 2014. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

IT IS SO ORDERED.

Columbia, South Carolina
 May 29, 2014


 G. Thomas Cooper, Jr., Judge
 Fifth Judicial Circuit

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

CASE NUMBER: 2007-CP-40-3365

Edward Mims

Babcock Center, Inc., et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

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

Defendants' Motion to Correct Clerical Error is GRANTED. Signature page corrected.

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Circuit Court Judge *S. L. [Signature]* Judge Code 2276 Date 2.4.14

For Clerk of Court Office Use Only

This judgment was entered on the 10 day of Feb, 2014 and a copy mailed first class or placed in the appropriate attorney's box on this 10 day of Feb, 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Patricia L. Harrison
ATTORNEY(S) FOR THE PLAINTIFF(S)

Kenneth P. Woodington
ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court *Jeanette W. McBride*

the time of her appointment as guardian in June 2005, she could bring suit on such claims within the time remaining on the statute for such claims, or within one year of her appointment, whichever was longer. This does not add any viable claims to this case in addition to the ones from May and June 2005 discussed above. The next most recent claim is an ant bite incident alleged to have occurred in July 2004. The appointment of a guardian did not extend the time for filing suit on this 2004 claim as far out as May 2008, the time when the present action was served. Absent tolling, the state law action on this claim could have been filed as late as July 2006 (two years after July 2004), while the federal law action on this claim could have been filed as late as July 2007 (three years after July 2004). However, both of these dates were more than a year after Mrs. Mims' appointment as guardian in June 2005, so the tolling statute did not add any time to that which already existed.

CONCLUSION

For the foregoing reasons, the Court concludes that the DDSN Defendants' Motion for Summary Judgment should be granted and that this action should be, and hereby is, dismissed with prejudice in all respects with regard to Defendants South Carolina Department of Disabilities and Special Needs, Kathi Lacy, and Stanley Butkus.

AND IT IS SO ORDERED.

G. Thomas Cooper, Jr.
Circuit Court Judge
Fifth Judicial Circuit

_____, South Carolina

_____, 2013

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2007CP4003365

Margaret Mims

Babcock Center Inc

Edward Mims

Judy Johnson

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or 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.
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- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** Affirmed; Reversed; Remanded; Other _____

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

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Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 22 January 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Patricia Logan Harrison

Peter Demos Protopapas

Kenneth P. Woodington
Christian Stegmaier
Leslie A. Cotter Jr.

Joel W. Collins Jr.
William H. Davidson II

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W. McBride

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Edward Mims, by and through his legal)
guardian, Margaret Mims,)

Civil Action No. 2007-CP-40-3365

Plaintiff,)

v.)

ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT
OF DEFENDANTS

Babcock Center, Inc., Judy Johnson,)
South Carolina Department of)
Disabilities and Special Needs,)
Kathi Lacy, and Stanley Butkus,)

SOUTH CAROLINA DEPARTMENT OF
DISABILITIES AND SPECIAL NEEDS,
KATHI LACY, AND STANLEY BUTKUS

Defendants.)
_____)

JUN 21 AM 10:40
CLERK OF COURT

This case was heard on June 4, 2013, by this Court on the Defendants' motions for summary judgment. For the reasons set forth herein, the Court grants the Motion for Summary Judgment filed by Defendants South Carolina Department of Disabilities and Special Needs, Kathi Lacy, and Stanley Butkus (DDSN Defendants). A review of the DDSN Defendants' motion and Plaintiff's response indicates that there is no genuine issue as to any material fact, and that the DDSN Defendants are entitled to judgment as a matter of law. As discussed herein, this conclusion is based on lack of substantive merit for all of Plaintiff's claims, and is alternatively, for most of Plaintiff's claims, based on the statute of limitations as well.

STATEMENT

This action was commenced with the service of the Summons and Amended Complaint on May 12, 2008.¹ Plaintiff Edward Mims (an adult who is now 41 years old) has mental retardation, among other disabilities. Amended Complaint, Par. 1. This action was brought on his

¹ An original Complaint had been filed in May 2007, but it was never served. The defendants named in that Complaint included some, but not all, of the present defendants.

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behalf by his mother, Margaret Mims, who is his legal guardian. The three DDSN Defendants are the Department of Disabilities and Special Needs itself, along with its former Director, Stanley Butkus, and Kathi Lacy, who was also a DDSN official during the relevant timeframe. The other two Defendants are the Babcock Center, Inc., and Judy Johnson, the Director of the Babcock Center.

Defendants South Carolina Department of Disabilities and Special Needs, Kathi Lacy, and Stanley Butkus (DDSN Defendants) have moved for summary judgment in this action both on the basis of the statute of limitations and on other grounds as well.

As noted above, the original Summons and Complaint in this action were filed on May 29, 2007. However, it is undisputed that the 2007 complaint was never served. On May 7, 2008, the Plaintiff filed a second Summons and an Amended Complaint, dropping some parties and adding others. The three DDSN Defendants in the present action were all served a few days later, on May 12, 2008. After the case was dismissed by Judge Strickland on grounds pertaining to untimely service, the Supreme Court reversed that decision and remanded the case for consideration of the merits. *Mims ex rel. Mims v. Babcock Center, Inc.*, 399 S.C. 341, 732 S.E.2d 395 (2012).

In 2009, while the Motions to Dismiss were still pending, Plaintiff took over 15 depositions. The Defendants took the deposition of the guardian, Margaret Mims, and of Leigh Flynn, Plaintiff's guardian ad litem during a 2001 Probate Court proceeding. The case is now before this Court on the DDSN Defendants' Motion for Summary Judgment. The private Defendants have also moved for summary judgment.

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FILED 11/27/11

FACTS

The Amended Complaint contains allegations about a variety of different alleged events. These include (a) several alleged physical injuries between 2000 and 2005, during which time Plaintiff was a resident at Babcock Center facilities, Amended Complaint, pp. 4-8; (b) a delay of several hours in permitting Plaintiff to go home as scheduled for a weekend visit on June 10, 2005, after Plaintiff's counsel had advised DDSN that Plaintiff would not be returning at the end of that weekend; *see* Amended Complaint, p. 9, ¶ 10; (c) an administrative denial of certain Medicaid services in 2005; Amended Complaint, p. 10, ¶ 52; and (d) certain other claims relating to Medicaid financing, which are devoid of any allegation of financial loss to Plaintiff. Amended Complaint, pp. 10-12. Because of the diverse factual claims, each set of facts will be discussed herein separately, with respect to each separate claim.

SUMMARY OF CLAIMS AND DEFENSES

Plaintiff has sued three DDSN Defendants: the agency itself and two individual officers of the agency. There are five different causes of action, three of which are federal and the other two of which arise under state law. The claims of the Plaintiff and defenses of the DDSN Defendants can be outlined as follows:

1. First cause of action (42 U.S.C. § 1983)(failure to monitor Plaintiff's condition and treatment needs)(applies only to individuals).

Defenses:

- a. The three-year statute of limitations bars all claims except the May 2005 unexplained injury and the alleged delay of a visit home for a short time on June 10, 2005.

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- b. Neither the personal involvement of Butkus or Lacy nor the elements of supervisory liability under Section 1983 have been pled or proven as to the any of the alleged physical injuries.
 - c. Plaintiff has not contended that he was damaged in any way by the short delay of a weekend trip home on June 10, 2005, so it is unnecessary to consider any claim he makes as a result of that event.
2. Second cause of action (conspiracy under 42 U.S.C. § 1985) (applies only to individuals).

Defenses:

- a. The Amended Complaint does not allege class-based, discriminatory animus, as is necessary for a conspiracy claim brought pursuant to 42 U.S.C. §1985; in addition, the Amended Complaint is conclusory, and lacks the kind of specificity that is necessary for allegations of conspiracy.
 - b. Even if such allegations had been made, this claim would be barred by the three-year statute of limitations.
3. Third cause of action (state law claim for negligent supervision)

Defenses:

- a. The two-year statute of limitations of the Tort Claims Act bars this claim against the agency, DDSN.
- b. The Tort Claims Act renders the individual Defendants immune from suit as to this claim.

- c. Even if not time-barred, the claim for negligent supervision is without merit, because there is no claim that a specific person supervised by DDSN created an undue risk of harm to Plaintiff.
- d. To the extent that Plaintiff seeks to expand this cause of action to include negligence other than negligent supervision, Plaintiff makes only conclusory allegations, and has not shown that there is a triable issue of fact on such claims.

4. Fourth cause of action (Americans with Disabilities Act and Rehabilitation Act)

Defenses:

- a. This claim became moot in 2006.
- b. To the extent that Plaintiff now seeks to allege incidents that occurred after the Amended Complaint was filed, such allegations are beyond the scope of the pleadings, and are only vaguely asserted in any event.
- c. If there are non-moot aspects of this claim, they are barred by the one-year statute of limitations.

5. Fifth Cause of action (unjust enrichment)

Defense:

- a. Plaintiff has no viable claim for unjust enrichment, because the Defendants did not receive anything of value from the Plaintiff.
6. To the extent, if any, that Plaintiff's disability tolled the statute of limitations, such tolling ended with the appointment of a guardian in 2005, and therefore the statute of limitations would still bar all claims except those occurring in May and June 2005.

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DISCUSSION

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." SCRCP 56(c). "The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001).

"When a motion for summary judgment is made, an adverse party may not rest upon the mere allegations or denials of his pleadings, but must set forth specific facts showing there is a genuine issue of material fact for trial." *Charping v. J.P. Scurry & Co., Inc.*, 296 S.C. 312, 372 S.E.2d 120, 122 (Ct. App. 1988). In resolving a motion for summary judgment, the court must consider all the evidence properly before it. The court's ruling must rest on the entire record and not on isolated fragments of testimony or evidence. *Saluda Motor Lines v. Crouch*, 300 S.C. 43, 45, 386 S.E.2d 290, 292 (Ct. App. 1989). The existence of some factual dispute is not enough to deny summary judgment; the disputed facts must be material. While the evidence must be viewed in the light most favorable to the nonmoving party, a party opposing summary judgment is not entitled to every *conceivable* inference from the facts, but only every *reasonable* inference. *See Main v. Corley*, 281 S.C. 525, 526-27, 316 S.E.2d 406, 407 (1984); *Trotter v. First Federal Savings and Loan Ass'n.*, 298 S.C. 85, 86, 378 S.E.2d 267, 268 (Ct. App. 1989).

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limitations accordingly bars any Section claims against the individual Defendants in their individual capacities arising before May 12, 2005, given that this action was commenced no earlier than May 12, 2008.²

- d. **Plaintiff's claims under Section 1983 lack substantive merit, because Plaintiff has neither pled nor proven facts that would establish liability of supervisory personnel under Section 1983.**

In response to the Defendants' motions for summary judgment on the Section 1983 claims, Plaintiff's memorandum in response dated June 28, 2013 (hereinafter "Pl. Mem.") refers only to a few incidents. Only those incidents will be considered by the Court, because Plaintiff's Memorandum contains no argument with respect to any other incidents referenced in the Amended Complaint.³ The specific incidents discussed in Plaintiff's June 28, 2013 response to Defendants' motion for summary judgment are as follows:

1. An occasion on August 13, 2000, when Plaintiff was residing at the Clusters facility and was beaten by Carl Anthony, an employee of Babcock Center. Pl. Mem. 5-6.⁴
2. An occasion on July 27, 2004, when Plaintiff was residing at the Kensington facility and was found to have a number of ant bites. Pl. Mem. 6.

² Issues pertaining to tolling are addressed under the last point in this Order.

³ Plaintiff seeks in passing to refer to the statement of facts set forth in a May 29, 2013, memorandum filed by Plaintiff in support of his own motion for summary judgment. Pl. Mem. at 1. That motion, which was filed well after Defendants' motions, was not set for hearing when Defendants' motions were heard on June 4, 2013. The Court declines to consider Plaintiff's May 29, 2013, memorandum, because it does not pertain to any of the legal contentions and standards by Defendants in support of their motions for summary judgment.

⁴ Plaintiff's Memorandum also briefly mentions, but does not discuss, an alleged "second beating." Pl. Mem. at 5, 18.

3. An occasion on May 27, 2005, when Plaintiff was residing at the Kensington facility and was found with an unexplained penis injury which was not regarded by the treating physician as indicative of abuse or neglect. Pl. Mem. 7.

Plaintiff does not suggest that Defendants Lacy or Butkus themselves actually inflicted any of the three physical injuries referenced above. Likewise, Plaintiff has not alleged, and cannot show, any other personal involvement of Defendants Lacy and Butkus in any of the alleged physical injury incidents. It is undisputed that Lacy and Butkus hold administrative and supervisory positions. They were not personally involved with the care of Plaintiff.

It is well settled that there is no *respondeat superior* liability in connection with claims made pursuant to Section 1983 claim. *Monell v. Department of Social Services*, 436 U.S. 658 (1978). In other words, it is clear that a necessary element of a § 1983 claim against a government official in his individual capacity is some showing of personal participation by the official. *See, e.g., Wright v. Collins*, 766 F.2d 841, 849-850 (4th Cir. 1985)(defendant in a Section 1983 action must be affirmatively shown to have acted personally in the deprivation of the plaintiff's rights).

The only exception to this requirement of personal participation occurs when the claim is brought as a supervisory claim. To the extent that the Plaintiff is attempting to assert Section 1983 liability against Defendants Lacy and Butkus under a theory of failure to supervise, that claim also fails. Such claims require more than simple "failure adequately to supervise or control any conduct that directly caused the specific deprivation charged." *Fisher v. Washington Metro. Area Transit Auth.*, 690 F.2d 1133, 1143 (4th Cir. 1982).

In *Shaw v. Stroud*, 13 F.3d 791 (4th Cir. 1994), the Fourth Circuit set forth three elements that must be shown to establish the theory of supervisory liability under Section 1983.

All three must be pled and proven:

1. Actual or constructive knowledge on behalf of the supervisor that the subordinate's conduct was a "pervasive and unreasonable risk" to injury to citizens like the plaintiff;
2. Deliberate indifference or implied authorization of the conduct by the supervisor; and
3. An "affirmative causal link" between the supervisor's inaction and the constitutional injury suffered by the plaintiff.

13 F.3d at 799 (citations omitted).

The standard for asserting a valid claim for Section 1983 supervisory liability has become so strict that there is some doubt as to whether such claims are still viable at all:

As the *Ashcroft v. Iqbal*, 129 S.Ct. 1937 (2009) Court observed, because masters do not answer for the torts of their servants in § 1983 cases, "the term 'supervisory liability' is a misnomer." *Id.* at 1949. Indeed, the dissent in *Iqbal* opined that "[I]f there be any mistake, in these words the majority is not narrowing the scope of supervisory liability; it is eliminating [] supervisory liability entirely." *Id.* at 1957 (Souter, J., dissenting).

Davis v. Richland County, 2012 WL 6186470, 3 (D.S.C. 2012).

The Amended Complaint fails to allege any of these elements of supervisory liability under 42 U.S.C. § 1983.⁵ For that reason alone, any Section 1983 claims against the DDSN Defendants must be dismissed. *See, e.g., Payne v. CCOH*, 2012 WL 6801387, 5 (D.S.C.

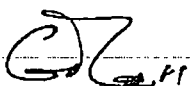
⁵ The Court assumes for the sake of argument that Butkus and Lacy actually had supervisory responsibilities over Babcock Center employees. However, it cannot reasonably be claimed by Plaintiff that such persons were in fact employees of DDSN. *Young v. South Carolina Dept. of Disabilities and Special Needs*, 374 S.C. 360, 367, 649 S.E.2d 488, 491 (2007).

2012)(dismissing supervisory liability in part because “none of the three elements for such liability have been pled”); *Mitchell v. Lewis*, 2012 WL 137471, 5 (D.S.C. 2012)(dismissal where “Plaintiff does not allege any facts to show the existence of an affirmative causal link between any alleged injury to Plaintiff and any action or inaction on the part of the defendants”).

Even if the three elements had been alleged, it is readily apparent that Plaintiff cannot satisfy the third element (an “affirmative causal link”) for any of the incidents of physical injury discussed by Plaintiff in opposition to summary judgment. Such failure to show an “affirmative causal link” is sufficient in and of itself to defeat Plaintiff’s Section 1983 supervisory liability claims, whether they occurred within three years of the filing of this case or not.

The first incident cited by Plaintiff in opposition to Defendants’ motions involved a beating of Plaintiff in 2000 by a Babcock employee at the Clusters facility. Plaintiff cites several instances of deficiencies having been found at Clusters, but Plaintiff fails to mention that those findings occurred in 2003, several years after the August 13, 2000 incident involving Plaintiff at Clusters, and more than a year after Plaintiff had been moved from Clusters in 2002. Mims 2141-2142 (November 2003 CMS letter pertaining to Clusters); as to Plaintiff having been moved from Clusters in 2002, see Amended Complaint, Par. 28. Plaintiff has shown nothing prior to 2000 that would amount to a factual or logical connection between the August 2000 incident and any acts or omissions of Defendants Butkus or Lacy. As a result, no Section 1983 claim can be based on the 2000 incident.⁶

⁶ In fact, when this event occurred in 2000, an investigation began promptly and the employee was fired and prosecuted by the Attorney General. See Exhibit 3 (Deposition of Bradford, pp. 16–18); Exhibit 4 (Arrest Warrant for Carl Anthony). (Unless otherwise indicated, all references in this Order to exhibits are intended to refer to the exhibits attached to the DDSN Defendants’ Motion for Summary Judgment.)



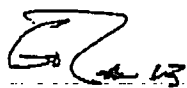
The second incident involved a number of ant bites on occasion in July 2004 at Kensington, the Babcock facility to which Plaintiff had been moved two years earlier. Plaintiff points to no other incident involving insect bites at Kensington. Defendant Butkus testified at his deposition that that incident was the only one of its kind of which he was aware in his 40 years of working in the field of disabilities. Butkus deposition 46-47, Mims 1381-1382. Plaintiff offers no evidence or argument at all that disputes the random nature of this event or that points to any action that Defendants Butkus or Lacy wrongfully took or wrongfully failed to take. As a result, this event cannot form the basis for a Section 1983 claim alleging failure to supervise.

With regard to the third incident, the penis injury on May 27, 2005, Plaintiff has provided no evidence whatsoever as to how that injury might have been caused, much less evidence of how Defendants Butkus or Lacy might have done anything to prevent this incident. This injury consisted of a tear of unknown origin on the bottom of the Plaintiff's penis that occurred on May 27, 2005. Exhibit 1 (Incident Report for May 27, 2005 incident). The incident occurred while Plaintiff was by himself at a Babcock Center facility for a moment while his caregiver went to get clothing for him prior to his going home for the weekend. *Id.* The tear lengthened somewhat as it was examined by a nurse, and lengthened still further upon examination by a doctor. *Id.* Eventually, it was four centimeters long and required seven stitches. *Id.* The clinicians at Lexington did not believe that the injury was the result of abuse or neglect. As a result, they permitted Plaintiff to return to Babcock that same evening. *Id.* A medical consultant from DDSN, Dr. Graeme Johnson, examined Plaintiff several days later. He concluded that the cause for the laceration was unknown, but that it did not appear to have resulted from abuse or neglect. Exhibit 2. The injury apparently healed quickly and without incident. *Id.*

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This injury was a factually unique incident. There is no dispute that its cause was found to be simply unknown. Exhibit 2. It was not foreseeable, and therefore no action by a supervisor can logically be said to have been necessary to prevent it, much less that there was in fact any causal connection between the injury and action or inaction by the DDSN Defendants. As the Court of Appeals has held in *Shealy v. Doe*, 370 S.C. 194, 204, 634 S.E.2d 45, 50 (Ct. App. 2006), “[f]or circumstantial evidence to be sufficient to warrant the finding of a fact, the circumstances must lead to the conclusion with reasonable certainty and must have sufficient probative value to constitute the basis for a legal inference, not for mere speculation.” Applying this standard to the nonexistent evidence to support this claim, there can be no doubt that there is nothing to show an “affirmative causal link” between some act or omission of the defendants and the penis injury. As a result, this incident, like the others discussed above, cannot serve as the basis for a Section 1983 claim by Plaintiff.

While it is probably not even necessary to discuss the other two elements of the supervisory liability tests, it is obvious from the discussion above that Plaintiff has not shown anything that would satisfy either of them. No pertinent showing has been made of a history of widespread abuse by subordinates, or deliberate indifference to conduct by the subordinates. *Shaw, supra*. There has simply been no showing of anything at all that would have provided prior notice to Butkus or Lacy that the 2000 beating was likely to occur, or that the 2004 ant bite incident was likely to occur, or that the 2005 penis incident was likely to occur. In other words, Plaintiff has not provided any evidence that these Defendants were on notice of a problem which affirmatively caused an injury to Plaintiff and responded inadequately to it. All Plaintiff has cited, without trying to argue a logical connection to any injury, is that other events of other



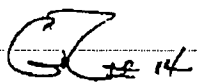
kinds occurred at Babcock facilities, often at times after the events involving Plaintiff, and in any event not connected to the kinds of injuries that occurred with respect to Plaintiff.

Plaintiff also claims that Defendant Butkus is in some way liable for the 2001 Probate Court Order admitting Plaintiff to DDSN facilities. Plaintiff asserts, Pl. Mem. 17, that that Order was “based on this false information which had been provided to me by employees of the Babcock Center and the Department of Disabilities and Special Needs.” Mims 2040. [This is a reference to the Affidavit of Leigh Flynn, ¶ 12](emphases added). Plaintiff has also alluded to Mrs. Mims’ Affidavit (M. 2076) as providing support for similar allegations. Pl. Mem. 16-17. Counsel for the DDSN Defendants has provided the Court with excerpts from the depositions of both the GAL and Mrs. Mims indicating that both of those individuals stated that they were unaware of any false information having been provided to the Probate Court by DDSN or its employees (Flynn deposition), or by anyone (Mims deposition) notwithstanding statements to that effect in their respective affidavits. Flynn Deposition, 9/2/09, pp. 50-65 and p. 52, lines 16-18; Mims Deposition, , 6/23/09, p. 84, lines 15-21.⁷ Under these circumstances, the Court need not consider the contentions of Plaintiff’s counsel pertaining to alleged false information provided by DDSN to the Probate Court in 2001, because those contentions are based solely on portions of affidavits that the affiants later contradicted in their depositions.

The Court would note that summary judgment is frequently granted in favor of defendants in Section 1983 supervisory liability cases when a plaintiff’s showing in opposition to summary judgment fails to satisfy one or more of the *Shaw v. Stroud* tests. *See, e.g., Tigrett v. Rector and Visitors of University of Virginia*, 290 F.3d 620, 630 (4th Cir. 2002)(affirming grant

⁷ The Flynn deposition was conducted under seal in order to protect against possible disclosure of medical records of third parties. The portions of it referenced above, pp. 50-65, do not involve such records, and may be filed with the Clerk.

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of summary judgment to defendants in §1983 supervisory liability case); *Carter v. Morris*, 164 F.3d 215, 218 (4th Cir. 1999)(same; also noting that “rigorous standards of culpability and causation” apply in such cases, as opposed to “scattershot accusations of unrelated constitutional violations”); *Estate of Cuffee ex rel. Cuffee v. Newhart*, 498 Fed.Appx. 233, 237, 2012 WL 5954679, 3 (4th Cir. 2012)(summary judgment granted for defendants where record did not contain any evidence of causation); *Peter B. v. Sanford*, 2012 WL 2149784, 9 (D.S.C. 2012)(summary judgment granted for defendant where the Amended Complaint “fail[ed] to make any allegations which reveal the presence of the required elements for supervisory liability”). Many other cases to the same effect could be added to this list.

Based upon the record in this case, there is no evidence of widespread abusive conduct by employees of the Defendants and there is no evidence that these Defendants knew of and ignored widespread systemic problems. Therefore, all of the Plaintiff’s Section 1983 personal injury claims against these Defendants, whether arguably time-barred or not, should be, and hereby are, dismissed with prejudice.⁸

2. **Second Cause Of Action (conspiracy under 42 U.S.C. § 1985).**

- a. **The elements of a claim under 42 U.S.C. § 1985 have not been alleged, nor did they exist in fact.**

In the Second Cause of Action, the Plaintiff has attempted to allege that the Defendants in this matter have acted in concert to deprive the Plaintiff of certain rights protected by the United

⁸ The Amended Complaint, p. 9, Paragraphs 46 and 47, references an alleged refusal of the Defendants to permit Plaintiff to go home for a weekend visit on a Friday night (June 10, 2005). In opposition to Defendants’ motions for summary judgment, Plaintiff offers no suggestion as to how he was damaged by that incident. Moreover, Plaintiff has not disputed that a short time later that same day, Plaintiff was indeed permitted to leave that facility. *See generally*, Exhibit 7 (incident report); *see also*, Affidavit of Margaret Mims (previously filed by Plaintiff), p. 5, Par. 44 (noting that Plaintiff returned home on June 10, 2005). As a result, this claims by Plaintiff cannot survive Defendants’ summary judgment motion.

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States Constitution. See Complaint, ¶ 71–77. Plaintiff claims that the alleged conspiracy resulted in damages to him in violation of 42 U.S.C. § 1985. *Id.* This claim is without merit, however, because Plaintiff’s allegations fall far short of what is necessary to state a cause of action for conspiracy under 42 U.S.C. § 1985.

In *Simmons v. Poe*, 47 F.3d 1370 (4th Cir. 1995), the Fourth Circuit described the elements of a claim under 42 U.S.C. § 1985 as follows:

The law is well settled that to establish a sufficient cause of action for “conspiracy to deny equal protection of the laws” under section 1985(3), a plaintiff must prove: (1) a conspiracy of two or more persons, (2) who are motivated by a specific class-based, invidiously discriminatory animus to (3) deprive the plaintiff of the equal enjoyment of rights secured by the law to all, (4) and which results in injury to the plaintiff as (5) a consequence of an overt act committed by the defendants in connection with the conspiracy. Moreover, the law is well settled that to prove a section 1985 “conspiracy,” a claimant must show an agreement or a “meeting of the minds” by defendants to violate the claimant’s constitutional rights.

47 F.3d at 1376–77 (internal citations omitted).

The Amended Complaint fails to allege or even suggest that any of the alleged conspirators were motivated by a specific class-based, invidiously discriminatory animus. Nor does it allege that any action against the Plaintiff was based on his inclusion in a specific protected class. As a result, the Second Cause of Action does not allege facts sufficient to constitute a cause of action.⁹

Another reason for dismissal of the Second Cause of Action is that it is entirely conclusory as to the nature of the alleged conspiracy. As the Fourth Circuit has held,

⁹ Plaintiff notes, Pl. Mem 22 that some cases have held that mentally retarded persons can be regarded as a class under certain circumstances. However, Plaintiff has failed to show any specific animus against him based on his mental retardation or anything else.

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[W]e have specifically rejected section 1985 claims whenever the purported conspiracy is alleged in a merely conclusory manner, in the absence of concrete supporting facts.

Simmons v. Poe, *supra*, 47 F.3d at 1377. As the Fourth Circuit has further held, a plaintiff “must demonstrate with specific facts that the defendants were ‘motivated by a specific class-based, invidiously discriminatory animus to [] deprive the plaintiff[s] of the equal enjoyment of rights secured by the law to all.’” *Francis v. Giacomelli*, 588 F.3d 186 (4th Cir. 2009) (quoting *Simmons*, 47 F.3d at 1376)(emphases added). *Simmons* also has noted that the Fourth Circuit “has rarely, if ever found that a plaintiff has set forth sufficient facts to establish a section 1985 conspiracy,” *Id.* at 1377. ¹⁰ Plaintiff asserts (Pl. Mem. 23) that in *Anthony v. Ward*, 336 Fed.Appx. 311, 2009 WL 1931192, (4th Cir. 2009), the Fourth Circuit affirmed a verdict for a violation of 42 U.S.C. § 1985, but this is clearly not so. The very first sentence of the opinion in that case notes that the basis of liability was a state law conspiracy claim. Plaintiff also cites *Pridgen v. Ward*, 391 S.C. 238, 705 S.E.2d 58 (Ct. App. 2010), but that was also a state law case that did not involve Section 1985 in any way.

A review of the allegations of the Second Cause of Action, Paragraphs 72 through 74 of the Amended Complaint, shows that those allegations could hardly be any more conclusory than they are. The only matters alleged are that the Defendants “entered into a conspiracy” (Par. 72), whose purpose was “to deprive . . . Plaintiff of services (Par. 73) and that the “Defendants’ acts

¹⁰ While these are federal cases, the state pleading rules are, if anything, more stringent when it comes to alleging specific facts, as opposed to mere notice pleading. As the Court of Appeals has held:

Rule 12(b)(6), SCRPC, “retains the Code Pleading standard . . . rather than the more lenient notice pleading standard found in the federal rules.” Harry M. Lightsey, Jr. & James F. Flanagan, *South Carolina Civil Procedure* 93 (2nd ed.1996).

Gaskins v. Southern Farm Bureau Cas. Ins. Co. 343 S.C. 666, 671, 541 S.E.2d 269, 271 (Ct. App. 2000).

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in furtherance of this conspiracy injured Plaintiff in his person and deprived him of rights. . . .” (Par. 74). These allegations are clearly devoid of “specific facts.” Likewise, Plaintiff’s June 28, 2013 Memorandum contains no discussion at all with respect to any specific conspiratorial acts of the Defendants.

Given the complete absence of substantive merit of the claims under 42 U.S.C. § 1985, it is not necessary to consider the application of the statute of limitations to that claim. However, any such claims arising prior to May 12, 2005, would be time-barred in addition to being unmeritorious. *Harris v. Sumter County Sheriff’s Dept.*, 2001 WL 34685102, *3 (D.S.C. 2001).

3. Third Cause of Action (Negligent Supervision).

a. The Tort Claims Act statute of limitations bars the negligent supervision claim against the agency, DDSN.

The statute of limitations that applies to the state law claims against DDSN is found in the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-110. That section provides for a two year statute of limitations after the “date the loss was or should have been discovered.” S.C. Code Ann. § 15-78-110. There is no question that the last act that even arguably damaged Plaintiff occurred or on about June 10, 2005. Amended Complaint, Par. 47.¹¹

As discussed above, the Summons and Amended Complaint were filed on May 7, 2008, and served on these Defendants on or about May 12, 2008. The original 2007 Summons and Complaint were never served at all. Accordingly, this suit could not be deemed to have commenced any earlier than the date the Plaintiff first filed the Amended Complaint, which was May 7, 2008. *See S.C. Code Ann. § 15-3-20(B)*(civil action is commenced when the summons and complaint are filed with the clerk of court if actual service is accomplished within one

¹¹ Paragraph 46 of the Amended Complaint contains a typographical error to the effect that a Probate Court Order was issued on “June 9, 2007,” but the date clearly should read “June 9, 2005.”

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hundred twenty days after filing). The commencement date of approximately May 12, 2008 was eleven months after the two-year statute had run in June 2007. Plaintiff's state law claims against DDSN are therefore clearly barred by § 15-78-110.

b. The Tort Claims Act renders the individual Defendants immune from suit on the negligent supervision claim.

The South Carolina Tort Claims Act "constitutes the exclusive remedy for any tort committed by an employee of a governmental entity." S.C. Code Ann. § 15-78-70(a). The same subsection provides further that an employee of a governmental entity is immune from liability for tortious acts committed within the scope of his official duties. This statutory principle has been explained by the Court of Appeals as follows:

The statutory dialectic [of the Tort Claims Act] reveals that a governmental employee acting within the scope of official duty is exempt from personal liability When a plaintiff claims an employee of a state agency acted negligently in the performance of his job, the [Act] requires a plaintiff to sue the agency for which the employee works, rather than suing the employee directly.

Flateau v. Harrelson, 355 S.C. 197, 584 S.E.2d 413, 417-18 (Ct.App.2003).

The only exception to this rule of immunity for the employees occurs when the employee commits actual fraud, actual malice, intent to harm, or a crime involving moral turpitude. S.C. Code Ann §15-78-70(a) and (b). However, Plaintiff has neither alleged in the Amended Complaint, nor provided evidence that Defendants Lacy or Butkus acted outside the scope of their official duties by engaging in actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.¹² Because all actions by Defendants Lacy and Butkus were done

¹² Plaintiff makes only conclusory references to the need to show actual fraud, actual malice, intent to harm, or a crime involving moral turpitude. Pl. Mem. at 23, 28. Neither of these vague references provides any reason for the Court to deny summary judgment to the individual DDSN Defendants under the Tort Claims Act.

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within the scope of their official duties, they are entitled to immunity under the Tort Claims Act and any state law claims against them must be dismissed.¹³

- c. **Even if not time-barred, the claim for negligent supervision is without merit, because Plaintiff has cited no specific evidence to support it.**

Even if Plaintiff's negligent supervision claim against the agency is not time-barred, it fails as a matter of law, because Plaintiff does not claim, as he must, that "a specific person created an undue risk of harm . . ." *Bank of New York v. Sumter County*, 387 S.C. 147, 156, 691 S.E.2d 473, 478 (2010). Plaintiff's claims, as already discussed, are based only on isolated incidents involving persons other than those who allegedly injured Plaintiff. Even if the negligent supervision claim had centered on a specific person, which it clearly did not, it still fails for the same reasons stated above in the Section 1983 context— a lack of evidence of foreseeability and causation. *See Degenhart v. Knights of Columbus*, 309 S.C. 114, 420 S.E.2d 495 (1992). In the absence of evidence that the DDSN Defendants knew or should have known of the necessity to exercise control over one or more specific individuals prior to the injuries of which Plaintiff complains, there can be no liability for negligent supervision. *See Brockington v. Pee Dee Mental Health Center*, 315 S.C. 214, 433 S.E.2d 16 (Ct. App. 1993). Moreover, as already discussed above, there is no question that Babcock Center employees are not employees of DDSN. *Young v. South Carolina Dept. of Disabilities and Special Needs*, 374 S.C. 360, 367, 649 S.E.2d 488, 491 (2007).

Plaintiff apparently tries to argue that the Third Cause of Action, labeled "Negligent Supervision," should be extended to include negligent acts in general. *See* Pl. Mem. at 24. While

¹³ While it is unnecessary to reach the issue of whether the two-year statute of limitations would apply to this claim against the individual Defendants, *Flateau* also held that "the two-year statute of limitations applies even if the [individual defendants] acted outside the scope of their official duties or if their actions constituted fraud, actual malice, intent to cause harm, or a crime involving moral turpitude." 355 S.C. at 208-209, 584 S.E.2d at 419.

the Court is not necessarily persuaded that this cause of action may validly be read so broadly, Plaintiff has in any event failed to make the showing necessary to defeat the DDSN Defendants' motion for summary judgment. As with other claims, Plaintiff sets forth a lengthy version of the facts on the one hand, coupled with a general discussion of legal principles on the other hand, but Plaintiff completely fails to connect the two. Plaintiff's response simply does not set forth how the alleged acts or failure to act of the DDSN Defendants amounted to actionable torts that proximately caused injury to Plaintiff. Essentially, the only argument made by Plaintiff is this:

. . . the defendants acted negligently, carelessly, recklessly and that these actions were willful and wanton, causing injuries over a long period of time to Mims.

Pl. Mem. at 28.¹⁴

Such a conclusory showing falls well short of the requirement that a party opposing summary judgment must "present evidence of specific facts from which the finder of fact could reasonably find for him." *Miller v. Blumenthal Mills, Inc.*, 365 S.C. 204, 225, 616 S.E.2d 722, 732 (Ct. App. 2005)(emphasis added). Rule 56(e), S.C.R.C.P., contains the same requirement that the party opposing summary judgment must set forth "must set forth specific facts showing that there is a genuine issue for trial." The concept of "specific facts" does not refer to mere conclusory statements. Thus, in such cases as *Shupe v. Settle*, 315 S.C. 510, 516-517, 445 S.E.2d 651, 655 (Ct. App. 1994) it has been held that "[a] conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment." Plaintiff has made no showing other than the conclusory statements of counsel that

¹⁴ Similarly, Plaintiff lists the elements of a negligence claim and then concludes that "Plaintiff has pled these elements and has provided this court with extensive credible evidence to support his claims for negligence in this case." Pl. Mem. 24. While it is not clear that Plaintiff has even pled these elements, there is in any event no question that conclusory statements such as the ones quoted herein fail to cite "specific facts" in opposition to the motion for summary judgment.

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the facts set forth in the brief support Plaintiff's claims in some unspecified way. However, in considering a plaintiff's showing in opposition to a motion for summary judgment, "the court should not be expected to pore through the record of the case to find what might be the factual basis of a particular allegation in the complaint." *North Creek Farm, Inc. v. Town of Phippsburg*, 2009 WL 73796, *12 (D. Me. 2009). The courts of this state have frequently granted summary judgment to defendants in cases where negligence is claimed, but not supported. *See, e.g., Savannah Bank, N.A. v. Stalliard*, 400 S.C. 246, 252, 734 S.E.2d 161, 164 (2012); *Hoard ex rel. Hoard v. Roper Hosp., Inc.*, 387 S.C. 539, 547, 694 S.E.2d 1, 5 (S.C. 2010).

Based on all of the reasons set forth above, the Court therefore concludes that the all of the DDSN Defendants, that is, the individuals and the agency, are entitled to summary judgment on Plaintiff's Third Cause of Action.

4. Fourth Cause of Action (ADA and Rehabilitation Act).

Plaintiff's claims under the ADA and the Rehabilitation Act are moot, and/or barred by the one-year statute of limitations.

The Amended Complaint vaguely asserts claimed violations of the ADA and the Rehabilitation Act. Amended Complaint, Paragraphs 83-89. Apparently this claim is that the Defendants had failed, as of May 2008, when the Amended Complaint was served, to provide Plaintiff with some type of unspecified "needed services." Amended Complaint, Par. 83. The only specific allegation of the Amended Complaint in this regard is the assertion in Paragraph 52 of the Amended Complaint that "Defendant Lacy denied Plaintiff's request for adult health care services, requiring Plaintiff to appeal eligibility for those services." That event occurred in 2005. Exhibit 5.

The DDSN Defendants do not dispute that DDSN in June 2005 found that Plaintiff was not eligible for Adult Day Health Services. However, that decision was appealed by Plaintiff to

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the DHHS Hearing Officer, who reversed DDSN's decision by order dated March 7, 2006. Exhibit 5. The short answer to this claim of a denial of services is accordingly that it was rendered moot in 2006 by the above-cited Hearing Officer decision in favor of Plaintiff.

Plaintiff's only response with reference to this cause of action does not even address the mootness of that claim regarding the 2005 denial of services. *See* Pl. Mem. at 29-30. The rest of Plaintiff's response relating to this cause of action is devoid of reference to any specific denial of services. *Id.* Plaintiff provides the Court and the Defendants with no information about what is presently being sought via this cause of action, with only one exception. That exception, it would appear, is a claim of a wrongful denial of services by DDSN on May 13, 2013, five years after the filing of the Amended Complaint. This late claim, which obviously was not covered by the 2008 Amended Complaint, need not be considered, because it is beyond the scope of the Amended Complaint.

Plaintiff has not articulated a damage claim based on the June 2005 denial of services, but in any event, such a claim would be barred by the one-year statute of limitations applicable to ADA and Rehabilitation Act claims. While the ADA and the Rehabilitation Act do not contain a specific limitation period, Congress has directed courts to borrow the most appropriate state statute of limitations to apply to the federal claim. *McCullough v. Branch Banking & Trust Co.*, 35 F.3d 127, 129 (4th Cir.1994) (*citing Wilson v. Garcia*, 471 U.S. 261, 266-67 (1986)). The United States District Court for the District of South Carolina addressed the applicable statutes of limitations in ADA and Rehabilitation Act cases and applied the one-year statute of limitations found in the South Carolina Human Affairs Law (SCHAL), S.C. Code Ann. §§ 1-13-10, et. seq. *Cockrell v. Lexington County School District One*, 2011 WL 5554811 (D.S.C. 2011). *Accord, Mestrich v. Clemson University*, 2013 WL 842328 (D.S.C. 2013). Plaintiff's claim of

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alleged denial of services is based on a June 2005 DDSN decision. The present action was served in May 2008, nearly three years later. Accordingly, to the extent the Plaintiff might assert damages or some other non-moot claim pertaining to the 2005 denial of services, the ADA and Rehabilitation Act claims are nevertheless barred by the one-year statute of limitations.

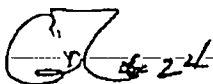
5. Fifth Cause of Action (Unjust Enrichment).

The Amended Complaint Fails To State Facts Sufficient To Constitute A Cause Of Action For Unjust Enrichment.

In the Fifth Cause of Action, Plaintiff claims that the Defendants have been unjustly enriched by receiving "payment for staffing which was not provided to Plaintiff" and by receiving "payment for treatment which was not provided in a safe and effective manner." Amended Complaint, Paragraphs 91-92. However, the Plaintiff has failed to establish the elements of an unjust enrichment action.

"The equitable doctrine of quantum meruit allows an aggrieved party to recover for unjust enrichment." See *QHG of Lake City, Inc. v. McCutcheon*, 360 S.C. 196, 202, 600 S.E.2d 105, 108 (Ct. App. 2004). "To prevail on this theory, a plaintiff must establish the following three elements: (1) a benefit conferred by plaintiff upon the defendant; (2) realization of that benefit by the defendant; and (3) retention of the benefit by the defendant under circumstances that make it inequitable for her to retain it without paying its value." *Id.* at 202-03, 600 S.E.2d at 108 (emphasis added).

Plaintiff's unjust enrichment claim must fail as a matter of law as Plaintiff cannot establish that any of the Defendants inequitably obtained payments or anything else of value from Plaintiff. Although Plaintiff alleges that the Defendant DDSN received payments for the staffing and treatment that Plaintiff contends was not provided to him, Plaintiff does not allege that any of those payments were made by Plaintiff himself to the Defendants. Indeed, Plaintiff's

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mother, Margaret Mims, admitted at her deposition that neither she nor Edward Mims had ever been charged for services rendered to Edward. Exhibit 6 (Deposition of Margaret Mims p. 84). Plaintiff cites neither facts nor law in opposition to the DDSN Defendants' motion on this cause of actions. *See* Pl. Mem. 33-34. Plaintiff's cause of action for unjust enrichment must therefore be dismissed.¹⁵

6. Any argument by Plaintiff regarding tolling of the statutes of limitations does not affect the application of statutes of limitations, as set forth above.

Plaintiff argues that he is a person for whom the applicable statutes of limitations should be tolled to some extent. There are several reasons why such an argument is unavailing in the present case.

a. Plaintiff was not adjudicated incompetent until 2005.

While South Carolina law provides a provision to toll the statute of limitations period for individuals who are insane, such provision has no application in this case. The South Carolina Code provides in relevant part that “[i]f a person entitled to bring an action mentioned in Article 5 of this chapter or an action under Chapter 78 of this title ... is at the time the cause of action accrued ... (2) insane ... the time of the disability is not a part of the time limited for the commencement of the action....” S.C. Code Ann. § 15-3-40(2). In this case, while the Plaintiff may have been profoundly mentally retarded, it is clear that he was not actually adjudicated to be incapacitated until the Probate Court order of June 14, 2005. Code Section 44-26-90 provides that a mentally retarded person has all the rights of citizenship unless and until the person is adjudicated to be incompetent.¹⁶ However, all of the allegations contained in the Plaintiff's

¹⁵ Given that no grounds exist for an unjust enrichment claim, there is no event from which to compute the running of any otherwise-applicable statute of limitations.

¹⁶ Plaintiff claims otherwise, Pl. Mem. 30-31, but the 2001 Probate Court order clearly contains no mention of an adjudication of incapacity.

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complaint relate to incidents that occurred between 2000 and May 2005. Therefore, it is clear that all of the causes of actions alleged by the Plaintiff accrued prior to the adjudication of his incompetence. See *Stephens v. Draffin*, 327 S.C. 1, 5, 488 S.E.2d 307, 309 (1997) (“A cause of action accrues at the moment when the plaintiff has a legal right to sue on it.”). Because the Plaintiff had not been adjudicated incompetent at the time that the allegations contained within his Complaint arose, he is not entitled to the tolling provision of S.C. Code Ann. § 15-3-40(2), and the applicable statutes of limitations bar all of the Plaintiff’s claims other than the claims brought pursuant to 42 U.S.C. § 1983 involving the unexplained injury discovered on May 27, 2005 and the alleged detention on June 10, 2005.

b. The appointment of a guardian in June 2005 ended any tolling period that may have been in effect.

Even if tolling is permitted, § 15-3-40(2) expressly provides that the tolling period “cannot be extended (a) more than five years by any such disability, except infancy; nor (b) in any case longer than one year after the disability ceases.” This action was filed by and through Margaret Mims, “who is the natural parent and the duly appointed guardian for Edward Mims.” Amended Complaint, Par. 2.¹⁷ The power to sue is conferred on guardians such as Mrs. Mims by Rule 17(c), S.C.R.C.P.

No South Carolina case has decided the issue of whether the appointment of a guardian terminates the disability period under § 15-3-40(2). While cases from other jurisdictions have reached conflicting results on this issue, see Annot., 111 A.L.R.5th 159 (2003), the Court concludes that the better rule, and the one that should be adopted under the facts of this case, is that the statute of limitations is tolled only until the appointment of a guardian. As held in *Stewart v. Robinson*, 115 F.Supp.2d 188, 195 (D.N.H. 2000), such a rule “gives effect to

¹⁷ The Order appointing Mrs. Mims as guardian is part of Exhibit 7.

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society's compelling interest in effectively protecting the rights of those who are disabled . . . , while also serving the important interests underlying statutes of limitations." The same case further holds that this rule serves several interests:

(1) it protects a ward's legal rights for an additional two years (one year in South Carolina] after a guardian acquires the legal ability to vindicate those rights; (2) it encourages guardians to act in a timely manner to preserve and prosecute claims of the ward, gather relevant evidence, and identify potential defendants; . . . and (3) it protects defendants from potentially timeless liability.

115 F.Supp.2d at 197.

This rule is clearly the better rule, because it prevents undue lengthening of the limitations period, while also protecting the incapacitated plaintiff. This rule therefore not only protects potential defendants, it also protects potential plaintiffs against the loss of relevant evidence as a result of the passage of time. *Accord, e.g., Hernandez v. New York City Health and Hospitals Corp.*, 78 N.Y.2d 687, 694, 585 N.E.2d 822, 826 (1991)(statute of limitations "tolled only until appointment of a guardian"); *Fox v. Health Force, Inc.*, 143 N.C. App. 501, 507, 547 S.E.2d 83, 87 (N.C. App. 2001)(limitation period began to run from the time of appointment of a guardian). It is also noteworthy that in this case, Mrs. Mims was aware of all of the alleged claims of injury at the times they occurred. In addition, Mrs. Mims was represented by counsel (who is still her counsel at present) at least as long ago as June 2005, the time when Mrs. Mims was appointed guardian.

As applied to the facts of the present case, the appointment of the guardian in June 2005, extended the statute of limitations by one year for all of the older claims. §15-3-40(b). In other words, for any claim for which the statute would otherwise already have run as of June 2005, Mrs. Mims had until June 2006 to bring suit upon such claims. She did not, however, file a lawsuit between June 2005 and June 2006. For any claim for which the statute had not run as of

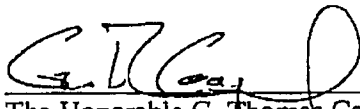
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the time remaining on the statute for such claims, or within one year of her appointment, whichever was longer. This does not add any viable claims to this case in addition to the ones from May and June 2005 discussed above. The next most recent claim is an ant bite incident alleged to have occurred in July 2004. The appointment of a guardian did not extend the time for filing suit on this 2004 claim as far out as May 2008, the time when the present action was served. Absent tolling, the state law action on this claim could have been filed as late as July 2006 (two years after July 2004), while the federal law action on this claim could have been filed as late as July 2007 (three years after July 2004). However, both of these dates were more than a year after Mrs. Mims' appointment as guardian in June 2005, so the tolling statute did not add any time to that which already existed.

CONCLUSION

For foregoing reasons, the Court concludes that the Babcock Defendants are entitled to a grant of summary judgment in the case at bar, which thereby dismisses Plaintiff's claims against them.

AND IT IS SO ORDERED.



The Honorable G. Thomas Cooper, Jr.
Judge of the Fifth Judicial Circuit

COLUMBIA, South Carolina

JANUARY 21, 2014

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2007CP4003365

Margaret Mims

Babcock Center Inc

Edward Mims

Judy Johnson

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <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.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried and heard and a decision rendered.
- 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 _____

RICHLAND COUNTY
 FILED
 2014 JAN 22 AM 9:36
 JEANETTE W. McBRIDE
 CLERK OF COURT

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 : _____

INFORMATION FOR THE PUBLIC 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
		\$
		\$
		\$

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

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

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the ____ day of _____, 20 ____ and a copy mailed first class or placed in the appropriate attorney's box on this 22 January 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Patricia Logan Harrison

Peter Demos Protopapas

Joel W. Collins Jr.
Leslie A. Cotter Jr.

Christlan Stegmaler

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W. McBride

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Edward Mims, by and through his legal)
guardian, Margaret Mims,)
)
Plaintiff,)

Civil Action No. 2007-CP-40-3365

v.)

**ORDER GRANTING
SUMMARY JUDGMENT TO
DEFENDANTS
BABCOCK CENTER, INC.
AND JUDY JOHNSON**

Babcock Center, Inc., Judy Johnson,)
South Carolina Department of)
Disabilities and Special Needs,)
Kathi Lacy, and Stanley Butkus,)
)
Defendants.)

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JEANNE E. HORTON
C.C.P. CLERK

The instant action was commenced with the service of the Summons and Amended Complaint on May 12, 2008.¹

The Amended Complaint alleges Plaintiff Edward Mims (an adult who is now 41 years old) has mental retardation, among other disabilities. Amended Complaint, Par. 1. This action was brought on his behalf by his mother, Margaret Mims, who is his legal guardian. The defendants are Babcock Center, Inc.,² Judy Johnson (Babcock Center's executive director) (identified in this order collectively as the "Babcock Defendants), as well as the South Carolina Department of Disabilities and Special Needs, Stanley Butkus (former DDSN director), and Kathi Lacy (a DDSN official during the relevant timeframe) (identified in this order collectively as the "DDSN Defendants").

The Babcock Defendants and the DDSN Defendants separately moved for summary judgment in this action. Their respective motions were premised upon arguments relating to

¹ An original Complaint had been filed in May 2007, but it was never served.

² Babcock Center is a private, non-profit organization based in the Midlands, which contracts with DDSN to house and care for individuals with mental retardation and other disabilities.

statute of limitations (for most claims) and on other grounds for the remaining claims. For the reasons stated herein, this Court grants summary judgment to the Babcock Defendants.

FACTS/PROCEDURAL BACKGROUND

The events alleged in the Amended Complaint occurred between 1999 and 2005, when Mims resided in facilities owned and managed by Babcock Center. Plaintiff claims damage from several incidents of alleged physical injury between 1999 and 2005. All but one of these incidents occurred more than three years before the Amended Complaint was filed on May 7, 2008.

Plaintiff's claims are as follows:

1. Alleged violations of 42 U.S.C. § 1983 (First Cause of Action)
2. Federal civil rights conspiracy claims under 42 U.S.C. § 1985 (Second Cause of Action)
3. Negligent supervision under state law (Third Cause of Action)
4. Alleged violation of the Americans with Disabilities Act and the Rehabilitation Act (Fourth Cause of Action)
5. Unjust enrichment (Fifth Cause of Action)

As noted above, the original Summons and Complaint in this action were filed on May 29, 2007. However, it is undisputed that the 2007 complaint was never served. On May 7, 2008, Plaintiff filed a second Summons and an Amended Complaint, dropping some parties and adding others. Service of process of the Amended Complaint was accomplished by Plaintiff.

After the case was dismissed by the Circuit Court on the grounds pertaining to untimely service, the Supreme Court reversed that decision and remanded the case for consideration of the merits. Mims ex rel. Mims v. Babcock Center, Inc., 399 S.C. 341, 732 S.E.2d 395 (2012).

The Amended Complaint also sought certain injunctive relief; however, as articulated within this pleading, such claims have long been moot, and are barred for other reasons as well.

In 2009, while the Motions to Dismiss were still pending, Plaintiff took over 15 depositions. The defendants took the deposition of the guardian, Margaret Mims, and of Leigh Flynn, Plaintiff's guardian ad litem during a 2001 Probate Court proceeding.

Plaintiff alleges that several different personal injuries occurred between 1999 and 2005, during which time he was a resident at Babcock Center facilities. Amended Complaint, pp. 4-8. All but one of the alleged injuries occurred more than three years prior to the service of the Amended Complaint in May 2008.

The last-referenced injury was a tear of unknown origin on the bottom of the Plaintiff's penis that occurred on May 27, 2005, just short of three years prior to the service of the Amended Complaint. This incident, as far as can be told, occurred while Plaintiff was by himself at a Babcock Center facility for a moment while his caregiver went to get clothing for him prior to his going home for the weekend. The record reveals the tear lengthened somewhat as it was examined by a nurse, and lengthened still further upon examination by a doctor. Eventually, it was four centimeters long and required seven stitches. The clinicians at the hospital did not believe that the injury was the result of abuse or neglect. As a result, they permitted Plaintiff to return to Babcock Center that same evening. A medical consultant from DDSN, Dr. Graeme Johnson, examined Plaintiff several days later. He concluded that the cause for the laceration was unknown, but that it did not appear to have resulted from abuse or neglect. The injury apparently healed quickly and without incident.

The Amended Complaint also asserts that "On June 10, 2005, officials at DDSN and the Babcock Center refused to allow Plaintiff's mother to remove him from the [Babcock] facility."

Amended Complaint at 9, Par. 47. This allegation omits the undisputed fact that later that same day, Plaintiff was indeed permitted to leave that facility. Affidavit of Margaret Mims, p. 5, Par. 44.

The Babcock Defendants moved this Court for summary judgment, as did Defendants South Carolina Department of Disabilities and Special Needs, Kathi Lacy, and Stanley Butkus ("DDSN Defendants") in a separate filing. The parties' respective dispositive motions were heard on June 4, 2013, by this Court.

STANDARD OF REVIEW

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." SCRCP 56(c). "The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001).

"When a motion for summary judgment is made, an adverse party may not rest upon the mere allegations or denials of his pleadings, but must set forth specific facts showing there is a genuine issue of material fact for trial." Charging v. J.P. Scurry & Co., Inc., 296 S.C. 312, 372 S.E.2d 120, 122 (Ct. App. 1988). In resolving a motion for summary judgment, the court must consider all the evidence properly before it. The court's ruling must rest on the entire record and not on isolated fragments of testimony or evidence. Saluda Motor Lines v. Crouch, 300 S.C. 43, 45, 386 S.E.2d 290, 292 (Ct. App. 1989). The existence of some factual dispute is not enough to deny summary judgment; the disputed facts must be material. While the evidence must be viewed in the light most favorable to the nonmoving party, a party opposing summary judgment

is not entitled to every conceivable inference from the facts, but only every reasonable inference. See Main v. Corley, 281 S.C. 525, 526-27, 316 S.E.2d 406, 407 (1984); Trotter v. First Federal Savings and Loan Ass'n., 298 S.C. 85, 86, 378 S.E.2d 267, 268 (Ct. App. 1989).

Finally, the Babcock Defendants note that argument of counsel is not a substitute for evidence. Brown v. Johnson, 276 S.C. 68, 72, 275 S.E.2d 876, 878 (1981); see also Rule 56(c), SCRPC, quoted in Trivelas v. S.C. Dep't of Transp., 348 S.C. 125, 141, 558 S.E.2d 271, 279 (Ct. App. 2001) ("The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.").

LAW/ANALYSIS

Plaintiff has sued the Babcock Defendants, along with the DDSN Defendants. There are five different causes of action, three of which are federal and the other two of which arise under state law. In order to assist the Court in reviewing the claims and defenses, the following outline is offered:

1. First cause of action (42 U.S.C. § 1983)(failure to monitor Plaintiff's condition and treatment needs)(applies only to individual defendants, including Defendant Judy Johnson)
 - a. The three-year statute of limitations bars all claims except the May 2005 unexplained injury.
 - b. No personal involvement of Defendant Johnson has been shown as to the May 2005 injury.



- c. If Plaintiff actually claims that any defendant wrongfully delayed a trip home by Plaintiff (for a short time at most), such delay was entirely attributable to failures by Plaintiff's counsel to inform Babcock Center and DDSN of an operable Probate Court order
2. Second cause of action (conspiracy under 42 U.S.C. § 1985) (applies only to individuals)
 - a. The Amended Complaint does not make the necessary allegations of class-based, discriminatory animus.
 - b. Even if such allegations had been made, this claim would be barred by the three-year statute of limitation.
3. Third cause of action (state law claim for negligent supervision)
 - a. The two-year statute of limitations of the Tort Claims Act bars this claim against Babcock Center.
 - b. The Tort Claims Act renders the individual Defendants immune from suit as to this claim.
4. Fourth cause of action (Americans with Disabilities Act and Rehabilitation Act)
 - a. This claim was rendered moot in 2006.
 - b. If there are non-moot aspects of this claim, they are barred by the one-year statute of limitations.
5. Fifth Cause of action (unjust enrichment)
 - a. Plaintiff has no viable claim for unjust enrichment, because the Defendants did not receive anything of value from Plaintiff.

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6. The statute of limitations has not been tolled in any way, but even if tolled to some extent, such tolling would still not permit any claim other than those occurring in May and June 2005, referenced above.

I. Plaintiff's Five Causes of Action

A. First Cause of Action (Section 1983)

1. Judy Johnson, If Sued In Her Official Capacity, Is Not Subject to Suit Under 42 U.S.C. § 1983

A review of the pleadings reveals it is unclear whether Plaintiff has intended to state a claim, including a damage claim, against Judy Johnson in her official capacity in the First Cause of Action. If so, such claims are barred by Will v. Michigan State Police, 491 U.S. at 71 ("suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office. [Citation omitted] As such, it is no different from a suit against the State itself"). In her response to the Babcock Defendant's motion for summary judgment, Plaintiff maintains it was her intention to pursue Defendant Johnson in her individual capacity on this ground. Accordingly, the analysis continues.

2. Most of the Section 1983 Claims Against Judy Johnson In Her Individual Capacity Are Barred By the Three-Year Statute of Limitations

For causes of action based on 42 U.S.C. § 1983 and/or 42 U.S.C. § 1985, a three year statute of limitations applies. See, e.g., Hoffman v. Tuten, 446 F.Supp.2d 455 (D.S.C. 2006) (three-year statute of limitations applies to claims brought in South Carolina under 42 U.S.C. § 1983); Harris v. Sumter County Sheriff's Dept., 2001 WL 34685102, *3 (D.S.C. 2001) (same for claims brought in South Carolina under 42 U.S.C. § 1985).

This three-year statute of limitations for Section 1983 claims bars any such claims against the individual defendants in the instant case arising before May 12, 2005, given that this action

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was commenced no earlier than May 12, 2008. The three-year statute accordingly bars such claims as the 2001 injury alleged in Paragraph 25 of the Amended Complaint, various 2002 incidents alleged in Paragraphs 27 and 28 of the Amended Complaint, and the July 2004 ant bite incident alleged in Paragraph 29 of the Amended Complaint. It also bars other allegations in Paragraphs 30 through 38 that concern other events in 2004 and through March 2005.³

3. Any Claims Under Section 1983 That Were Less Than Three Years at the Time the Amended Complaint Was Served Are Unmeritorious Because of Lack of Personal Involvement by Judy Johnson or For Other Reasons

The only events alleged in the Amended Complaint that are not barred by the three-year statute are the small laceration of unknown origin that occurred on May 27, 2005 and perhaps the alleged "refus[al] to allow Plaintiff's mother to remove him from the facility" on June 10, 2005. Amended Complaint, Paragraphs 39 and 47. Neither has merit.

Plaintiff does not suggest that Defendant Judy Johnson actually inflicted the injury. Likewise, Plaintiff cannot show any other personal involvement of Defendants Johnson in that alleged incident. Defendant Judy Johnson holds an administrative position at Babcock Center. She is not personally involved with the care of any consumers in Babcock Center facilities.

In Monell v. Department of Social Services, 436 U.S. 658 (1978), the United States Supreme Court held that a claim based on the doctrine of respondeat superior does not give rise to a claim under 42 U.S.C. § 1983. In other words, it is clear that the personal participation of a defendant is a necessary element of a § 1983 claim against a government official in his individual capacity. Davis v. D.S.S. of Baltimore Cty., 941 F.2d 1206 (4th Cir. 1991) (unpublished opinion) (citations omitted); see also Trulock v. Freeh, 275 F.3d 391 (4th Cir. 2001). Plaintiff has taken a number of depositions, but nowhere in them is there any suggestion of

³ Plaintiffs' likely arguments about tolling are addressed under the last point in this Memorandum.

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direct participation on the part of the individual defendants in any alleged events occurring while the Plaintiff resided at a Babcock Center facility. Accordingly, there can be no claim against these defendants pursuant to 42 U.S.C. § 1983.

The only exception to the requirement of personal participation occurs when the claim is brought as a supervisory claim. To the extent that the Plaintiff is attempting to assert liability against Defendant Judy Johnson under a theory of negligent supervision, that claim should also fail. Although supervisors may be held liable in certain circumstances for the constitutional injuries inflicted by their subordinates, Shaw v. Stroud, 13 F.3d 791 (4th Cir. 1994), for a supervisor to be held personally liable under 42 U.S.C. § 1983 requires allegations of more than simply "failure adequately to supervise or control any conduct that directly caused the specific deprivation charged." Fisher v. Washington Metro. Area Transit Auth., 690 F.2d 1133, 1143 (4th Cir. 1982). In Shaw, the Fourth Circuit set forth three elements that must be shown to establish the theory of supervisory liability:

1. actual or constructive knowledge on behalf of the supervisor that the subordinate's conduct was a "pervasive and unreasonable risk" to injury to citizens like the plaintiff;
2. deliberate indifference or implied authorization of the conduct by the supervisor; and
3. an "affirmative causal link" between the supervisor's inaction and the constitutional injury suffered by the plaintiff. Id. at 799 (citations omitted).

Put another way, supervisory liability can be imposed in situations such as where a supervisor has actual knowledge of a subordinate's constitutional violation and acquiesces, where

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supervisors “know about the conduct and facilitate it, approve it, condone it, or turn a blind eye for fear of what they might see,” or where the supervisor has no actual knowledge of the violation but was reckless in his supervision of the subordinate. Ashcroft v. Iqbal, 129 S.Ct. 1937 (2009) (citations omitted). The standard for asserting a valid claim for Section 1983 supervisory liability has become so strict that there is some doubt as to whether such claims are still viable at all:

As the Ashcroft v. Iqbal, 129 S.Ct. 1937 (2009) Court observed, because masters do not answer for the torts of their servants in § 1983 cases, “the term ‘supervisory liability’ is a misnomer.” Id. at 1949. Indeed, the dissent in Iqbal opined that “[l]est there be any mistake, in these words the majority is not narrowing the scope of supervisory liability; it is eliminating [] supervisory liability entirely.” Id. at 1957 (Souter, J., dissenting).

Davis v. Richland County, 2012 WL 6186470, 3 (D.S.C. 2012).

It is readily apparent that Plaintiff cannot satisfy the third part of this test (an “affirmative causal link”), and such failure in and of itself is sufficient to defeat Plaintiff’s claim based on the small laceration of the penis. This was a factually unique incident. Its cause was found to be simply unknown. Plaintiff offers no evidence or argument at all that disputes the random nature of this event or that points to any action that Defendant Johnson wrongfully took or wrongfully failed to take. It was not foreseeable, and therefore no action by a supervisor can logically be said to have been necessary to prevent it. As the Court of Appeals held in Shealy v. Doe, 370 S.C. 194, 204, 634 S.E.2d 45, 50 (Ct. App. 2006), “[f]or circumstantial evidence to be sufficient to warrant the finding of a fact, the circumstances must lead to the conclusion with reasonable certainty and must have sufficient probative value to constitute the basis for a legal inference, not for mere speculation.” Applying this standard to the nonexistent evidence to support this claim, there can be no doubt that there is nothing to show an “affirmative causal link” between some act

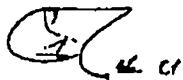
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or omission of the defendants and the penis injury. As a result, this incident, like the others discussed above, cannot serve as the basis for a Section 1983 claim by Plaintiff.

Finally, with respect to the slight delay in Plaintiff's being permitted to go home on the afternoon of Friday, June 10, 2005, the undisputed fact is that Plaintiff's counsel had an *ex parte* Probate Court Order, but did not send a copy of it to DDSN's General Counsel. While the delay in Plaintiff's return home was minor, such delay as did occur was attributable to this failure of communication by Plaintiff's counsel, and not to any wrongful act of the Babcock Defendants.

The Court notes that summary judgment is frequently granted in favor of defendants in § 1983 supervisory liability cases when a plaintiff's showing in opposition to summary judgment fails to satisfy one or more of the *Shaw v. Stroud* tests. See, e.g., Tigrett v. Rector and Visitors of University of Virginia, 290 F.3d 620, 630 (4th Cir. 2002) (affirming grant of summary judgment to defendants in §1983 supervisory liability case); Carter v. Morris, 164 F.3d 215, 218 (4th Cir. 1999) (same; also noting that "rigorous standards of culpability and causation" apply in such cases, as opposed to "scattershot accusations of unrelated constitutional violations"); Estate of Cuffee ex rel. Cuffee v. Newhart, 498 Fed.Appx. 233, 237, 2012 WL 5954679, 3 (4th Cir. 2012) (summary judgment granted for defendants where record did not contain any evidence of causation); Peter B. v. Sanford, 2012 WL 2149784, 9 (D.S.C. 2012) (summary judgment granted for defendant where the Amended Complaint "fail[ed] to make any allegations which reveal the presence of the required elements for supervisory liability").

Therefore, all of the Plaintiff's § 1983 personal injury claims against these defendants - whether arguably time-barred or not - should be dismissed with prejudice.



B. Second Cause Of Action (Conspiracy Under 42 U.S.C. § 1985)

**The Elements of a Claim Under 42 U.S.C. § 1985 Have Not Been Alleged,
Nor Did They Exist In Fact**

In the Second Cause of Action, Plaintiff has attempted to allege that the defendants in this matter have acted in concert to deprive the Plaintiff of certain rights protected by the United States Constitution. See Complaint, ¶ 71-77. Plaintiff claims the alleged conspiracy resulted in damages to him in violation of 42 U.S.C. § 1985. Id. This claim is without merit because Plaintiff's allegations fall far short of what is necessary to state a cause of action for conspiracy under 42 U.S.C. § 1985.

In Simmons v. Poe, 47 F.3d 1370 (4th Cir. 1995), the Fourth Circuit articulated the elements of a claim under 42 U.S.C. § 1985:

The law is well settled that to establish a sufficient cause of action for "conspiracy to deny equal protection of the laws" under section 1985(3), a plaintiff must prove: (1) a conspiracy of two or more persons, (2) who are motivated by a specific class-based, invidiously discriminatory animus to (3) deprive the plaintiff of the equal enjoyment of rights secured by the law to all, (4) and which results in injury to the plaintiff as (5) a consequence of an overt act committed by the defendants in connection with the conspiracy. Moreover, the law is well settled that to prove a section 1985 "conspiracy," a claimant must show an agreement or a "meeting of the minds" by defendants to violate the claimant's constitutional rights.

47 F.3d at 1376-77 (internal citations omitted).

The Amended Complaint fails to allege or even suggest that any of the alleged conspirators were motivated by a specific class-based, invidiously discriminatory animus. Further, the Amended Complaint does not allege that any action against Plaintiff was based on his inclusion in a specific protected class. As a result, the Second Cause of Action does not allege facts sufficient to constitute a cause of action.

Moreover, dismissal of the Second Cause of Action is warranted because Plaintiff's claims are entirely conclusory as to the nature of the alleged conspiracy. As the Fourth Circuit

has held: “[W]e have specifically rejected section 1985 claims whenever the purported conspiracy is alleged in a merely conclusory manner, in the absence of concrete supporting facts.” Simmons v. Poe, 47 F.3d at 1377. As the Fourth Circuit has further held, a plaintiff “must demonstrate with specific facts that the defendants were ‘motivated by a specific class-based, invidiously discriminatory animus to [] deprive the plaintiff[s] of the equal enjoyment of rights secured by the law to all.’” Francis v. Giacomelli, 588 F.3d 186 (4th Cir. 2009) (quoting Simmons, 47 F.3d at 1376) (emphases added). Simmons also has noted that the Fourth Circuit “has rarely, if ever found that a plaintiff has set forth sufficient facts to establish a section 1985 conspiracy,” Id. at 1377.

A review of the allegations of the Second Cause of Action, Paragraphs 72 through 74 of the Amended Complaint, shows that those allegations could hardly be any more conclusory than they are. The only matters alleged are that the defendants “entered into a conspiracy” (Par. 72), whose purpose was “to deprive . . . Plaintiff of services (Par. 73) and that the “Defendants’ acts in furtherance of this conspiracy injured Plaintiff in his person and deprived him of rights. . . .” (Par. 74). These allegations are clearly devoid of “specific facts.”

Given the complete absence of substantive merit of the claims under 42 U.S.C. § 1985, it is not necessary to consider the application of the statute of limitations to that claim. Nevertheless, these defendants would show that any such claims arising prior to May 12, 2005, would be time-barred in addition to being unmeritorious, as noted earlier. Harris v. Sumter County Sheriff's Dept., 2001 WL 34685102, *3 (D.S.C. 2001).⁴

⁴ While these are federal cases, the state pleading rules are, if anything, more stringent when it comes to alleging specific facts, as opposed to mere notice pleading. As the Court of Appeals has held:

Rule 12(b)(6), SCRPC, “retains the Code Pleading standard . . . rather than the more lenient notice pleading standard found in the

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C. Third Cause of Action (Negligent Supervision)

1. The Tort Claims Act Statute of Limitations Bars the Negligent Supervision Claim Against Babcock Center

With some exceptions, residential and treatment services to persons with disabilities and special needs in South Carolina are largely delivered by DDSN rather than contractors. That is not the case in Richland and Lexington Counties. DDSN has detailed the substantial portion of this responsibility to Babcock Center.⁵ By virtue of its provision of residential and vocational supports to DDSN in Richland and Lexington Counties, Defendant Babcock Center is a “means,” “agency,” “agent,” “medium,” or “intermediary” employed by DDSN to deliver these services in those areas. Based on this proposition, Defendant Babcock Center is an “instrumentality” of the state, which brings it into the aegis of § 15-78-30 concerning entities covered by the Tort Claims Act. See also Frady v. Student Loan Processing Center, 313 S.C. 561, 443 S.E.2d 580 (Ct. App. 1994) (upholding the Circuit Court’s finding the “Student Loan Processing Center” was a “governmental agency” for purposes of the Tort Claims Act). To that

federal rules.” Harry M. Lightsey, Jr. & James F. Planagan, South Carolina Civil Procedure 93 (2nd ed.1996).

Gaskins v. Southern Farm Bureau Cas. Ins. Co., 343 S.C. 666, 671, 541 S.E.2d 269, 271 (Ct. App. 2000).

⁵ In Madison v. Babcock Center, 371 S.C. 123, 638 S.E.2d 650 (2006), the Supreme Court described Babcock Center and its relationship with DDSN in the following manner:

Babcock Center is a private, non-profit corporation based in Columbia that provides housing and other services for people with autism, mental retardation, head or spinal injuries, or related disabilities. [DDSN] has approved Babcock Center as a contractual provider of such services This residential program offers mentally retarded persons the opportunity to live in the community and receive individualized supervision and support services. [DDSN] coordinates, directs, funds, and oversees the provision of services by contractual providers such as Babcock Center.

Id. at 131, 638 S.E.2d at 654.

end, Defendant Babcock Center is entitled to the protections of the South Carolina Tort Claims Act, where applicable, including provisions relating to the statute of limitations. Accordingly, the statute of limitations that applies to the state law claims is found in S.C. Code Ann. § 15-78-110. That section provides for a two year statute of limitations after the “date the loss was or should have been discovered.” There is no question that the last act that even arguably damaged Plaintiff occurred or on about June 10, 2005. Amended Complaint, Par. 47.⁶

As discussed above, the Summons and Amended Complaint were filed on May 7, 2008, and served on these Defendants on or about May 12, 2008. The original 2007 Summons and Complaint were never served at all. Accordingly, this suit could not be deemed to have commenced any earlier than the date the Plaintiff first filed the Amended Complaint, which was May 7, 2008. See S.C. Code Ann. § 15-3-20(B) (civil action is commenced when the summons and complaint are filed with the clerk of court if actual service is accomplished within one hundred twenty days after filing). The commencement date of approximately May 12, 2008 was eleven months after the two-year statute had run in June 2007. Plaintiff’s state law claims against Defendant Babcock Center are therefore clearly barred by § 15-78-110.

2. The Tort Claims Act Renders the Individual Defendants Immune From Suit on the Negligent Supervision Claim

The South Carolina Tort Claims Act “constitutes the exclusive remedy for any tort committed by an employee of a governmental entity.” S.C. Code Ann. § 15-78-70(a). The same subsection provides further that an employee of a governmental entity is immune from liability for tortious acts committed within the scope of his official duties. This statutory principle has been explained by the Court of Appeals as follows:

⁶ Paragraph 46 of the Amended Complaint contains a typographical error to the effect that a Probate Court Order was issued on “June 9, 2007,” but the date clearly should read “June 9, 2005.”

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The statutory dialectic [of the Tort Claims Act] reveals that a governmental employee acting within the scope of official duty is exempt from personal liability When a plaintiff claims an employee of a state agency acted negligently in the performance of his job, the [Act] requires a plaintiff to sue the agency for which the employee works, rather than suing the employee directly.

Flateau v. Harrelson, 355 S.C. 197, 584 S.E.2d 413, 417-18 (Ct.App.2003).

The only exception to this rule of immunity for the employees occurs when the employee commits actual fraud, actual malice, intent to harm, or a crime involving moral turpitude. S.C. Code Ann §15-78-70(a) and (b). However, the discovery process in this case has not revealed any evidence that Defendant Judy Johnson acted outside the scope of her official duties by engaging in actual fraud, actual malice, intent to harm, or a crime involving moral turpitude. Because all actions by Defendant Judy Johnson were done within the scope of her official duties, she is entitled to immunity under the Tort Claims Act and any state law claims against them should be dismissed.⁷

3. Plaintiff Has Articulated Only a Res Ipsa Loquitur Argument Concerning the Alleged May 27, 2005, Personal Injury

In the case at bar, Plaintiff has – at most – articulated only a res ipsa loquitur argument concerning the alleged May 27, 2005, personal injury to Plaintiff's penis while at Babcock Center. As this Court well knows, the doctrine of res ipsa loquitur, which is not applicable in this jurisdiction. Merch. v. Columbia Coca-Cola Bottling Co., 214 S.C. 206, 208, 51 S.E.2d 749, 750 (1949). Instead, in this professional liability action sounding in negligence, it is incumbent upon Plaintiff to: (1) demonstrate the applicable duty of care via qualified expert testimony; and (2) propound admissible evidence demonstrating the applicable duty of care was breached and

⁷ While it is unnecessary to reach the issue of whether the two-year statute of limitations would apply to this claim against the individual Defendant, Flateau also held that “the two-year statute of limitations applies even if the [individual defendants] acted outside the scope of their official duties or if their actions constituted fraud, actual malice, intent to cause harm, or a crime involving moral turpitude.” 355 S.C. at 208-209, 584 S.E.2d at 419.

that such breach was a proximate cause of Plaintiff's alleged injuries. See City of York v. Turner-Murphy Co., Inc., 317 S.C. 194, 196, 452 S.E.2d 615, 616-17 (Ct. App. 1994) (citing Doe v. American Red Cross Blood Servs., 297 S.C. 430, 377 S.E.2d 323 (1989) and Hoeffner v. The Citadel, 311 S.C. 361, 429 S.E.2d 190 (1993)) ("In a professional negligence cause of action, the plaintiff must prove the professional failed to conform to generally recognized and accepted practices in the profession. If the plaintiff cannot meet this burden, then the professional cannot be found liable as a matter of law. Where professional negligence is alleged, expert testimony is usually necessary to establish both the standard of care and the professional's deviation from that standard, unless the subject matter is within the area of common knowledge and experience of the layman so that no special learning is needed to evaluate the professional's conduct."). Plaintiff has made no such demonstration in the instant case. Accordingly, Plaintiff's negligence claim relating to the alleged May 27, 2005, personal injury to Plaintiff's penis while at Babcock Center fails as a matter of law.

D. Fourth Cause of Action (ADA and Rehabilitation Act)

Plaintiff's Claims Under the ADA and the Rehabilitation Act are Moot, and/or Barred by the One-Year Statute of Limitations

The Amended Complaint vaguely asserts claimed violations of the ADA and the Rehabilitation Act. Amended Complaint, Paragraphs 83-89. Apparently this claim is that the Defendants had failed, as of May 2008 (when the Amended Complaint was served) to provide Plaintiff with some type of unspecified "needed services." Amended Complaint, Par. 83. The only specific allegation of the Amended Complaint in this regard is the assertion in Paragraph 52 of the Amended Complaint that "Defendant Lacy denied Plaintiff's request for adult health care services, requiring Plaintiff to appeal eligibility for those services." That record occurred in 2005.

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The Babcock Defendants do not dispute that DDSN in June 2005 found that Plaintiff was not eligible for Adult Day Health Services. That decision was appealed by Plaintiff to the DHHS Hearing Officer, who reversed DDSN's decision by order dated March 7, 2006. The short answer to this claim of a denial of services is accordingly that it was rendered moot by the Hearing Officer's decision of March 7, 2006.

Plaintiff's only response with reference to this cause of action does not even address the mootness of that claim regarding the 2005 denial of services. See Plaintiff's Memorandum in Opposition to Summary Judgment, pp. 29-30. The rest of Plaintiff's response relating to this cause of action is devoid of reference to any specific denial of services. Id. Plaintiff provides the Court and the defendants in this matter with no information about what is presently being sought via this cause of action, with only one exception. That exception, it would appear, is a claim of a wrongful denial of services by DDSN on May 13, 2013 - five years after the filing of the Amended Complaint. This late claim, which obviously was not covered by the 2008 Amended Complaint, need not be considered, because it is beyond the scope of the Amended Complaint.

Plaintiff has not articulated a damage claim based on the June 2005 denial of services; nevertheless, to the extent, if any, that Plaintiff might be asserting a damage claim as a result of this June 2005 denial of services, such a claim would be barred by the one-year statute of limitations applicable to ADA and Rehabilitation Act claims. While the ADA and the Rehabilitation Act do not contain a specific limitation period, Congress has directed courts to borrow the most appropriate state statute of limitations to apply to the federal claim. McCullough v. Branch Banking & Trust Co., 35 F.3d 127, 129 (4th Cir.1994) (citing Wilson v. Garcia, 471 U.S. 261, 266-67 (1986)). The United States District Court for the District of South

Carolina addressed the applicable statutes of limitations in ADA and Rehabilitation Act cases and applied the one-year statute of limitations found in the South Carolina Human Affairs Law (SCHAL), S.C. Code Ann. §§ 1-13-10, *et. seq.* See Cockrell v. Lexington County School District One, 2011 WL 5554811 (D.S.C. 2011). Accord Mestrich v. Clemson University, 2013 WL 842328 (D.S.C. 2013). Plaintiff's claim of alleged denial of services is based on a June 2005 DDSN decision. The present action was served in May 2008, nearly three years later. Accordingly, to the extent Plaintiff might assert damages or some other non-moot claim pertaining to the 2005 denial of services, the ADA and Rehabilitation Act claims are nevertheless barred by the one-year statute of limitations.

E. Fifth Cause of Action (Unjust Enrichment)

The Amended Complaint Fails To State Facts Sufficient To Constitute A Cause Of Action For Unjust Enrichment

In the Fifth Cause of Action, Plaintiff claims the defendants in the case at bar have been unjustly enriched by receiving "payment for staffing which was not provided to Plaintiff" and by receiving "payment for treatment which was not provided in a safe and effective manner." Amended Complaint, Paragraphs 91-92. However, the Plaintiff has failed to establish the elements of an unjust enrichment action.

"The equitable doctrine of quantum meruit allows an aggrieved party to recover for unjust enrichment." See OHG of Lake City, Inc. v. McCutcheon, 360 S.C. 196, 202, 600 S.E.2d 105, 108 (Ct. App. 2004). "To prevail on this theory, a plaintiff must establish the following three elements: (1) a benefit conferred by plaintiff upon the defendant; (2) realization of that benefit by the defendant; and (3) retention of the benefit by the defendant under circumstances that make it inequitable for her to retain it without paying its value." *Id.* at 202-03, 600 S.E.2d at 108 (emphasis added).

Plaintiff's unjust enrichment claim must fail as a matter of law as Plaintiff cannot establish that any of the defendants inequitably obtained payments or anything else of value from the Plaintiff. Although Plaintiff alleges the Babcock Defendants received payments for the staffing and treatment that Plaintiff contends was not provided to him, Plaintiff does not allege that any of those payments were made by the Plaintiff himself to the Babcock Defendants. Indeed, Plaintiff's mother, Margaret Mims, admitted at her deposition that neither she nor Edward Mims had ever been charged for services rendered to Edward. Deposition of Margaret Mims, p. 84. Accordingly, Plaintiff's cause of action for unjust enrichment must be dismissed.⁸

II. Any Argument by Plaintiff Regarding Tolling of the Statutes of Limitations Does Not Affect the Application of Statutes of Limitations, As Set Forth Above

Plaintiff asserts he is person for whom the applicable statutes of limitations should be tolled to some extent. There are several reasons why such an argument is unavailing in the present case.

A. Plaintiff Was Not Adjudicated Incompetent until 2005

While South Carolina law provides a provision to toll the statute of limitations period for individuals who are "insane," such provision has no application in this case. The South Carolina Code provides in relevant part that "[i]f a person entitled to bring an action mentioned in Article 5 of this chapter or an action under Chapter 78 of this title ... is at the time the cause of action accrued ... (2) insane ... the time of the disability is not a part of the time limited for the commencement of the action...." S.C. Code Ann. § 15-3-40(2). In this case, Plaintiff is not "insane." Further, while Plaintiff may have been profoundly mentally retarded, it is clear that he was not adjudicated to be incapacitated until the order of June 14, 2005. However, all of the

⁸ Given that no grounds exist for an unjust enrichment claim, there is no event from which to compute the running of any otherwise-applicable statute of limitations.

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allegations contained in Plaintiff's Amended Complaint relate to incidents that occurred between 1999 until May 2005. Therefore, it is clear that all of the causes of actions alleged by the Plaintiff accrued prior to the adjudication of his incompetence. See Stephens v. Draffin, 327 S.C. 1, 5, 488 S.E.2d 307, 309 (1997) ("A cause of action accrues at the moment when the plaintiff has a legal right to sue on it."). Because the Plaintiff had not been adjudicated incompetent at the time that the allegations contained within his Amended Complaint arose, he is not entitled to the tolling provision of S.C. Code Ann. § 15-3-40(2), and the applicable statutes of limitations bar all of the Plaintiff's claims other than the single claim brought pursuant to 42 U.S.C. § 1983 claim involving the unexplained injury discovered on May 27, 2005.

B. The Appointment of a Guardian in June 2005 Ended Any Tolling Period That May Have Been in Effect

Even if tolling is permitted, § 15-3-40(2) expressly provides that the tolling period "cannot be extended . . . (b) in any case longer than one year after the disability ceases." This action was filed by and through Margaret Mims, "who is the natural parent and the duly appointed guardian for Edward Mims." Amended Complaint, Par. 2. The power to sue is conferred on guardians such as Mrs. Mims by Rule 17(c), SCRPC.

No South Carolina case has decided the issue of whether the appointment of a guardian terminates the disability period under provisions of statute similar to § 15-3-40(2). Cases from other jurisdictions have reached conflicting results on this issue. See Annot., 111 A.L.R.5th 159 (2003). However, the Babcock Defendants submit that the better rule - and the one that should be adopted under the facts of this case - is that the statute of limitations is tolled only until the appointment of a capable guardian. As was held in Stewart v. Robinson, 115 F.Supp.2d 188, 195 (D.N.H. 2000), such a rule "gives effect to society's compelling interest in effectively protecting

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the rights of those who are disabled . . . , while also serving the important interests underlying statutes of limitations.” The same case further holds that this rule serves several interests:

(1) it protects a ward's legal rights for an additional two years [one year in South Carolina] after a guardian acquires the legal ability to vindicate those rights; (2) it encourages guardians to act in a timely manner to preserve and prosecute claims of the ward, gather relevant evidence, and identify potential defendants; . . . and (3) it protects defendants from potentially timeless liability.

115 F.Supp.2d at 197.

This rule is clearly the better rule, because it prevents undue lengthening of the limitations period, while protecting the incapacitated plaintiff. This rule therefore not only protects potential defendants, it also protects potential plaintiffs against the loss of relevant evidence as a result of the passage of time. Accord, e.g., Hernandez v. New York City Health and Hospitals Corp., 78 N.Y.2d 687, 694, 585 N.E.2d 822, 826 (1991)(statute of limitations “tolled only until appointment of a guardian”); Fox v. Health Force, Inc., 143 N.C. App. 501, 507, 547 S.E.2d 83, 87 (N.C. App. 2001)(limitation period began to run from the time of appointment of a guardian). It is also noteworthy that in this case, Mrs. Mims was aware of all of the alleged claims of injury at the times they occurred. In addition, Mrs. Mims was represented by counsel (who is still her counsel at present) at least as long ago as June 2005, the time when Mrs. Mims was appointed guardian.


As applied to the facts of the present case, the appointment of the guardian in June 2005 extended the statute of limitations by one year for all of the older claims. §15-3-40(b). In other words, for any claim for which the statute would otherwise already have run as of June 2005, Mrs. Mims had until June 2006 to bring suit upon such claims. She did not, however, file a lawsuit between June 2005 and June 2006. For any claim for which the statute had not run as of the time of her appointment as guardian in June 2005, she could bring suit on such claims within

the time remaining on the statute for such claims, or within one year of her appointment, whichever was longer. This does not add any viable claims to this case in addition to the ones from May and June 2005 discussed above. The next most recent claim is an ant bite incident alleged to have occurred in July 2004. The appointment of a guardian did not extend the time for filing suit on this 2004 claim as far out as May 2008, the time when the present action was served. Absent tolling, the state law action on this claim could have been filed as late as July 2006 (two years after July 2004), while the federal law action on this claim could have been filed as late as July 2007 (three years after July 2004). However, both of these dates were more than a year after Mrs. Mims' appointment as guardian in June 2005, so the tolling statute did not add any time to that which already existed.

CONCLUSION

For foregoing reasons, the Court concludes that the Babcock Defendants are entitled to a grant of summary judgment in the case at bar, which thereby dismisses Plaintiff's claims against them.

AND IT IS SO ORDERED.



The Honorable G. Thomas Cooper, Jr.
Judge of the Fifth Judicial Circuit

COLUMBIA, South Carolina

JANUARY 21, 2014

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM THE COURT OF COMMON PLEAS

Honorable G. Thomas Cooper, Jr.
Circuit Court Case No.: 2007-CP-40-03365
Appellant Case No. 2014-001373

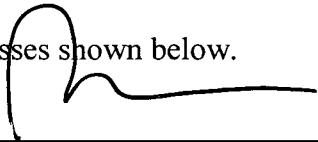
Edward Mims, by and through his legal
guardian, Margaret Mims,
Appellant

vs.

Babcock Center, Inc., Judy Johnson, the
South Carolina Department of Disabilities
and Special Needs, Kathi Lacy and Stan
Butkus,
Respondent.

CERTIFICATE OF SERVICE

I, Patricia L. Harrison, certify that I have caused the enclosed orders that are being appealed
in our *Notice of Appeal* dated June 24, 2014, as well as the letter ordering transcript, to be served
by hand delivery on July 17, 2014, to the attorneys at the addresses shown below.



Patricia Logan Harrison
Law Office of Patricia L. Harrison
611 Holly Street
Columbia, Sc 29205

Christian Stegmaier, Esq.
Collins & Lacy, P.C.
1330 Lady Street
Columbia, SC 29201

Kenneth P. Woodington, Esq.
Davidson & Lindemann, P.A.
1611 Devonshire
Columbia, SC 29206

RECEIVED

JUL 17 2014

SC Court of Appeals

PATRICIA L. HARRISON
ATTORNEY AT LAW
611 HOLLY STREET
COLUMBIA, SOUTH CAROLINA 29205

TELEPHONE (803) 256-2017

FAX (803) 256-2213

July 17, 2014

Ms. V. Claire Allen, Deputy Clerk
The South Carolina Court of Appeals
1015 Sumter Street
PO Box 11629
Columbia, South Carolina 29211 734-1890

Re: **Edward Mims v. Babcock Center**
Circuit Court Case No. 2007-CP-40-03365
The Honorable G. Thomas Cooper, Jr.
Appellate Case No. 2014-001373

Dear Ms. Allen:

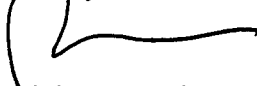
Enclosed are the following orders that are being appealed in our *Notice of Appeal* originally filed on June 24, 2014, in the above case:

- *Order Denying Plaintiff's Motion for Reconsideration* dated May 29, 2014
- *Correction of Clerical Error* granted February 4, 2014
- *Order Granting Motion for Summary Judgment of Defendants South Carolina Department of Disabilities and Special Needs, Kathi Lacy, and Stanley Butkus* dated January 21, 2014
- *Order Granting Summary Judgment to Defendants Babcock Center, Inc. and Judy Johnson* dated January 21, 2014

Also enclosed: copy of the letter ordering transcript, a *Certificate of Service* and a copy of the letter we sent to the court reporter requesting the transcript on June 19, 2014.

Please clock and return the copies in the enclosed, stamped envelope. Thank you for your assistance in this matter.

Cordially,



Patricia L. Harrison

Enclosures

c: Christian Stegmaier, Esq.
Collins & Lacy, P.C.
1330 Lady Street
Columbia, SC 29201

Kenneth P. Woodington, Esq.
Davidson & Lindemann, P.A.
1611 Devonshire
Columbia, SC 29206

RECEIVED

JUL 17 2014

CERTIFIED SPECIALIST IN ESTATE PLANNING AND PROBATE LAW **SC Court of Appeals**

PATRICIA L. HARRISON
ATTORNEY AT LAW
811 HOLLY STREET
COLUMBIA, SOUTH CAROLINA 29205

TELEPHONE (803) 256-2017

FAX (803) 256-2213

June 19, 2014

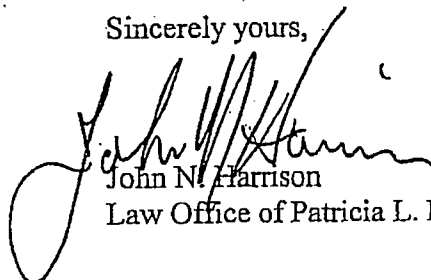
Ms. Latoya Perry
PO Box 991
Winnsboro, SC 29108

Re: **Mims, et al v. Babcock Center, et al**
Case No.: 2007-CP-40-03365
Hearing June 4, 2013, before the Honorable G. Thomas Cooper, Jr.

Dear Ms. Perry:

This letter is a request for the transcript of the above-referenced hearing. Please contact this office if you have any questions.

Sincerely yours,



John N. Harrison
Law Office of Patricia L. Harrison

PATRICIA L. HARRISON
ATTORNEY AT LAW
611 HOLLY STREET
COLUMBIA, SOUTH CAROLINA 29205

TELEPHONE (803) 256-2017

FAX (803) 256-2213

July 17, 2014

Ms. Latoya Perry
PO Box 991
Winnsboro, SC 29108

Re: **Mims, et al, Appellant, v. Babcock Center, et al, Respondent**
Circuit Court Case No. 2007-CP-40-03365
[Appellant Case No. 2014-001373]

Dear Ms. Perry:

On June 4, 2013, there was a hearing in the above case before the Honorable G. Thomas Cooper, Jr., Circuit Court Judge, in Richland County. My records indicate that you were the court reporter for this hearing.

I request that you provide me with a transcript of the hearing.

I agree to pay the per page charge for this transcript as provided by Rule 607, SCACR.

Sincerely,



Patricia L. Harrison
Attorney for Appellant

c: Christian Stegmaier, Esq.
Collins & Lacy, P.C.
1330 Lady Street
Columbia, SC 29201

Kenneth P. Woodington, Esq.
Davidson & Lindemann, P.A.
1611 Devonshire
Columbia, SC 29206

SC Court Administration
1015 Sumter Street, Suite 200
Columbia, SC 29201

Clerk, SC Court of Appeals
1015 Sumter Street
Columbia, SC 29201

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JUL 17 2014

SC Court of Appeals