The State of South Carolina
In The Court of Appeals

Appeal from Spartanburg County
Hon. J. Derham Cole, Circuit Court Judge

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MAR 26 2015
SC Court of Appeals

Appeal 2012-213521
Case No. 10-CP-42-2349

Jane Doe, as guardian for John Doe .... Appellant

v.

Boy Scout Troop 292, Spartanburg SC; Palmetto Council of the Boy Scouts of America; St. Margaret's Episcopal Church; Shelby Culbreth; Jackie LaFontaine; Brandon Smith; Rob Green; Roy Cole; Bob Faulks; and Scott O'Neill .... Respondents

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Petition for Rehearing

Plaintiff Jane Doe, as guardian for John Doe, hereby petitions for rehearing of the March 11, 2015 *per curiam* order affirming the trial court on the apparent conclusion that the trial court failed to rule upon the various arguments below in granting a motion for summary judgment.

The Court of Appeals panel has erred in concluding the trial court failed to rule on the four grounds of error claimed in the *per curiam* opinion. The trial court granted the Defendant's motion to dismiss on the grounds submitted by the Defendant. We agree the trial court's "order did not restate the ground on which petitioner opposed the motion," *Spence v. Wingate*, 674 S.E.2d 169, 170 (S.C. 2009). That the trial court's order did not do so is irrelevant. *Spence v. Wingate*, 674 S.E.2d 169, 170 (S.C. 2009).

The trial court order granting the motion, R. App. 12 – 20, necessarily rejected the appellant's opposing arguments. R. App. 145 – 151. It is undisputable that the grounds were articulated for the trial court. The trial court order implicitly rejects those opposing arguments. *Spence v. Wingate*, 674 S.E.2d 169, 170 (S.C. 2009); *Walsh v. Woods*, 638 S.E.2d 85, 88 (S.C. 2006) (implicitly denied arguments do not require Rule 59(e) motion).

The Court of Appeals panel's interpretation that a Rule 59(e) motion was required by *Johnson v. Lloyd*, 757 S.E.2d 705, 706 (S.C. 2014), was itself rejected in *Spence v. Wingate*, 674 S.E.2d at 170 (S.C. 2009). The panel should address the merits of the trial court's opinion because each of the contested grounds was implicitly rejected by the trial court.

The Court of Appeals panel has also erred in repeating the trial court's error of applying an adult standard to a developmentally disabled fourteen year old when it concluded, Order at 2, that "Appellants has not made a prima facie showing of severe emotional distress." As the record sets forth, the child on whose behalf the complaint was brought "has very significant health problems, mental." R. App. 224 (testimony of stepmother); R. App. 145, 163 (IQ of 60). It is undisputed that all the boys in the scout troop were special needs children. R. App. 212. The Court of Appeals has erred in contending that the Plaintiff offered "no evidence that Doe's distress was severe." Doe's stepmother testified not only that he was "really upset," as the panel opinion notes, but that "he just sit around looking at the letter." Doe himself testified that he "looked like to my parents that I was really shocked," R. App. 194, and that he stayed awake at night worrying that his scoutmaster would come after him to retaliate against him for reporting

the sexual abuse, R. App. 210, and that Doe "had a fear of him" because "he used to be in law enforcement" and "owned several firearms." R. App. 202. Doe also had been sexually abused by his scoutmaster, which was among his pre-existing conditions when the troop retaliated against him. R. App. 197.

The Court of Appeals is obligated to construe the factual record in the light most favorable to the Appellant, and is also obligated, since the Appellant is a developmentally disadvantaged child, to not view the record from the same, erroneous adult standard used by the trial court. The distress required is that of the developmentally disadvantaged fourteen year old with an IQ of 60 who was (a) sexually abused by his scoutmaster, and (b) retaliated against by the other adults for having reported the scoutmaster. This is "reprehensible conduct" by the Defendants, *Hansson v. Scalise Builders of S.C.*, 650 S.E.2d 68 (S.C. 2007), and "hostile and abusive encounters" by the Defendants. *Gattison v. S.C. State College*, 456 S.E.2d 414 (S.C App. 1995).

CONCLUSION

The Court of Appeals panel should grant this petition to rehear and address on the merits the trial court's failure to apply the proper standard for the Appellant's handicapping conditions.

Respectfully submitted,

Jeff Anderson & Associates, P.A.
Gregg Meyers
366 Jackson Street
St. Paul, MN 55101
651-227-9990, 297-6543 facsimile

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Proof of Service

I hereby affirm that I have served upon counsel for the Defendant/Respondent a copy of:

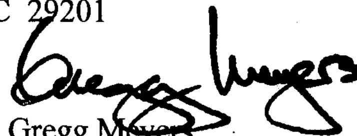
Petition for Rehearing

by causing a copy of the document to be placed in the United States mails, first-class postage pre-paid wrapper, properly addressed to:

Nelson Mullins Riley & Scarborough, LLP

Mark G. Phillips	A. Mattison Bogan
William H. Foster	Miles E. Coleman
P.O. Box 10084	P.O. Box 11070
Greenville, SC 29601	Columbia, SC 29201

Done March 26, 2015



Gregg Meyers
Jeff Anderson & Associates, P.A.
366 Jackson Street
St. Paul, MN 29601
651-227-9990

JEFF ANDERSON & ASSOCIATES PA

REACHING ACROSS TIME FOR JUSTICE

ATTORNEYS

JEFFREY ANDERSON
REGISTERED FOREIGN LAWYER
(UNITED KINGDOM)
Minnesota
Wisconsin
Illinois
Colorado
New York
Pennsylvania

MICHAEL FINNEGAN
Minnesota
Wisconsin
California

GREGG MEYERS
Minnesota
South Carolina

J. MICHAEL RECK
California
New York
Texas
Pennsylvania

SARAH ODEGAARD
Minnesota
Wisconsin
California

ELIN LINDSTROM
Minnesota
Wisconsin

ANNIE KOPPLIN
Minnesota
Hawaii

TRUSHA PATEL
Minnesota
Washington DC

JOSH PECK
Minnesota

MOLLY BURKE
Minnesota

OF COUNSEL

ANTHONY DEMARCO
California

JOANNA ROBLES
California

OFFICE LOCATIONS
St. Paul, Minnesota
Pasadena, California
Chicago, Illinois
Milwaukee, Wisconsin
Kailua, Hawaii
Charleston, South Carolina
Malvern, Pennsylvania
New York, New York
London, England

March 26, 2015

Hon. Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

Re: Appeal 2012-213521
Jane Doe v. Boy Scout Troop 292, Case No. 10-CP-42-2349
(Spartanburg County, Hon. J. Derham Cole)

Dear Ms. Kitchings:

Enclosed please find an original and 6 copies of a Petition for Rehearing and a Proof of Service. Also enclosed is a check for the $25.00 filing fee.

Please do not hesitate to contact me with any questions regarding this filing.

Sincerely,

Gregg Meyers
gregg@andersonadvocates.com

GM/tld
Enclosure

cc: Nelson Mullins Riley & Scarborough, LLP
Attorneys for Respondents, with enclosure

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