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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

75835

APPEAL FROM YORK COUNTY  
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

RECEIVED

APR 30 2015

Case No. 2011-CP-46-4508

SC Court of Appeals

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

v.

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

Of whom

Charlotte-Mecklenburg Hospital Authority  
d/b/a Carolinas Medical Center is..... Respondent.

**PETITION FOR REHEARING**

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**Attorneys for Appellant**

Appellant Elizabeth Hope Rainey, as the appointed guardian ad litem to Owen C., petitions the court for rehearing and reconsideration of Unpublished Opinion No. 2015- UP-209 filed April 22, 2015, pursuant to Rule 221(a), SCACR. Appellant asks this court to reconsider the decision to affirm the trial court's finding that no duty existed between the social workers at Charlotte-Mecklenburg Hospital (CMC) and Owen C. Specifically, Appellant seeks review of the mischaracterization of Appellant's arguments because (1) there was a special relationship between CMC and Owen C. and (2) the Record was replete with the necessary evidence of an increased risk of harm and/or actual harm to Owen C. to satisfy the elements of a voluntary undertaking under Restatement (Second) of Torts §323.

**I. Pertinent Facts**

On December 5, 2009, Owen C. was admitted to CMC's Levine Hospital for injuries he sustained at home under the supervision of his father. R. pp. 411, 448. Tests revealed that Owen C. had a subdural hematoma, i.e. bleeding on the brain. R. pp. 448, 478. Upon admission, CMC initiated internal social work policies. First, CMC contacted the York County division of the South Carolina Department of Social Services (DSS). Second, CMC staff sought consults from CMC's social workers to determine whether Owen C. was being abused or neglected. R. pp. 343-363.

During Owen C.'s hospitalization from December 5-8, 2009, Owen C.'s family was contacted by social workers Katie Harrison and Laura Newmark. R. p. 835; R. p. 873. Medical records reveal that CMC officials were concerned about suspected child abuse and posted a sitter in Owen C.'s hospital room. R. pp. 532, 581. These concerns stemmed from the fact that after the subdural hematoma was diagnosed, Owen C.'s parents could not explain how the injury occurred. R. p. 277.

Once CMC officials have a concern about abuse, internal policies dictate that there be both a medical discharge and social discharge in order for a patient to be cleared to go home. R. p. 343. The night before Owen C. was discharged from CMC, Owen C.'s neurosurgeon found the child was medically cleared for discharge, but made no assessment on his social discharge. Despite evidence suggesting abuse and an incomplete assessment by CMC's social workers, Owen C. was discharged from the hospital to his father, the abuser.

In a matter of weeks, Owen C. was left alone with his abuser. He was hurt again and sustained life altering injuries as a result. When he arrived at CMC for a second time, he was diagnosed with a new subdural hematoma, retinal hemorrhaging, and persistent seizures. R. p. 478. It was determined that Owen C. suffered an anoxic brain injury, causing permanent blindness and deafness.

Before the trial court, Appellant's counsel presented medical records, six inadequate reports generated by CMC's social workers, CMC's policies and procedures for social workers, national standards for social workers, and expert testimony as to the duty CMC and its staff owed Owen C during his December 2009 hospitalization. *See* Dr. Saverse, R. pp. 34, 209, 239, 529; Kevin Moore, R. p. 529; National Standards, R. p. 251, 269, 294, 352; Juvenile Abuse Policy, R. pp. 341-363. In sum, these materials support that CMC social workers had both a special relationship with Owen C. and that CMC voluntarily undertook to provide social work care to Owen C. in the hospital setting.

## **II. Special Relationship**

The court of appeals mischaracterizes Appellant's argument regarding a special relationship between CMC and Owen C. First, the court of appeals inadequately distinguishes this case from other supreme courts from around the country where appellate courts have

determined a special relationship exists in these circumstances. Second, the court of appeals incorrectly generalizes Appellant's position in stating, "Appellant is essentially asking this court to impose on all hospitals a common law duty to protect a juvenile patient from third persons who might harm him after he has been discharged from a hospital's care."

South Carolina courts have long recognized that a duty can be based on special circumstances. *Madison v. Babcock Ctr., Inc.*, 371 S.C. 123, 140, 638 S.E.2d 650, 659 (2006); *Jensen v. Anderson County Dep't of Soc. Servs.*, 304 S.C. 195, 199, 403 S.E.2d 615, 617 (1991). Specifically, our courts have explained that a key element in establishing a duty is based on the relationship between the parties. In this case, Owen C. was a three month old child suspected to be a victim of child abuse at the hands of his parents. Owen C. was a patient at CMC. CMC held itself out to be a specialized facility serving both children's medical and social needs. Owen C. was the most vulnerable of patients. He arrived at CMC with two hematomas. His age alone rendered him unable to advocate for himself. CMC and its staff became the only advocate and protector of Owen C.'s medical and social well-being based on its relationship with Owen C.

Other state supreme courts have found that this type of relationship establishes a duty based on these special circumstances. See *Niece v. Elmview Group Home*, 929 P.2d 420, 424 n. 2 (Wash. 1997) ("the relationship between a hospital and its vulnerable patients is a recognized special relationship"); *Henderson v. Gunther*, 931 P.2d 1150, 1155 (Colo. 1997) (en banc) ("special relationships such as . . . a hospital and a patient have been found to impose a duty of care"). The court of appeals suggests that this case is distinguishable from other state appellate courts because Appellant has not challenged the quality of care provided to Owen C. See Unpublished Opinion No. 2015-UP-209 ("However, all of these cases are distinguishable from the present case because Appellant does not challenge the quality of care Respondent provided to

Child during his four-day hospitalization in December 2009.”). That is incorrect. The crux of this case is that the quality of care provided by CMC was unacceptable. CMC provided both medical and social care. The care that was provided for Owen C.’s social needs fell well below the standard of care. As written, the court of appeals opinion suggests that the type of services rendered dictate whether or not a special relationship can be formed. This reasoning fails to recognize the interdisciplinary nature of care provided in a hospital setting. CMC offered and inadequately rendered social services as part of the hospital services and treatment. The quality of the social services provided by CMC was deficient and the failure to properly provide those services was negligent.

Further, Appellant is asking this court to rely on *Madison* and *Jensen* to find a special relationship. South Carolina courts have acknowledged that a special relationship can exist and have provided precedent to make such a finding. While the South Carolina Supreme Court has not directly addressed this scenario, it has found that circumstances can create a special relationship and a finding of a duty is appropriate in those instances. Therefore, Appellant respectfully asks this court to reconsider the decision to affirm the trial court.

### **III. Voluntary Undertaking**

The Record provides sufficient evidence to meet the necessary elements of a voluntary undertaking, as outlined by Restatement § 323. Specifically, the evidence demonstrates that (1) CMC’s staff failed to exercise reasonable care which increased the risk of harm to Owen C.; and (2) Owen C. suffered harm because he relied on this undertaking. The Restatement only requires that one of these elements be met. Evidence in the Record supports a finding of a voluntary undertaking on either element.

First, if CMC's social workers had properly completed their assessment, as outlined by CMC's policies and procedures and national standards, Owen C. would not have been sent back to his abuser. See Dr. Saverse, R. pp. 34, 209, 239, 529; Kevin Moore, R. p. 529; National Standards, R. p. 251, 269, 294, 352; Juvenile Abuse Policy, R. pp. 341-363. For example, CMC's social workers took a minimal psychological assessment. R. pp. 380-386. CMC's social workers failed to explore and probe, and their questioning of Owen C.'s family members lacked the breadth and rigor necessitated in this type of social work case. R. p. 217. If the standard questions had been asked, then a finding of abuse would have been made. For example, if CMC social workers asked the right questions, then they would have discovered: (1) Father acknowledge his relationship with Mother had been strained since Owen C.'s birth; (2) Mother acknowledged that Father had poor parenting skills; (3) the maternal grandmother reported stress between the grandparents and Mother over Father's poor conduct. A proper assessment in December 2009 would have revealed pertinent facts that would have alerted CMC staff that Owen C. was not safe returning to his home. CMC's policies and procedures outline when CMC should retain a child that the staff believes is not safe to return home. R. p. 343. The policy specifically states:

When a physician determines at a juvenile should remain in the hospital for medical reasons, *or that it is unsafe for the juvenile to return to his or her parent, guardian, or caretaker, the physician or administrator* should first contact the director of [DSS] to determine if [DSS] will take emergency custody and authorize the hospital to retain the physical custody of the juvenile.

In the event [DSS] is unwilling to take custody or cannot be contacted, the local District Court has authorized *the physician or administrator to retain physical custody of the juvenile whenever the physician determines that (1) the juvenile should remain for medical treatment or (2) according to his or her medical evaluations, it is unsafe for the juvenile to return to his parent,*

*guardian, custodian, or caretaker.* (See Administrative Order, Attachment C).

R. p. 343 (emphasis added).

The risk of harm increased to Owen C. when CMC failed to follow internal policies and procedures, as well as national standards. Owen C. was sent home because pertinent and easily ascertainable information was not uncovered. Had this information been learned, as expected and required by guidelines, the physicians and administrator would have been able to make an educated assessment regarding Owen C's safety. An increased risk of harm occurred when CMC's social worker's decided to breach the standard of care.

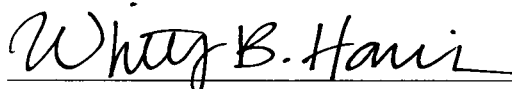
Second, there is no question that Owen C. suffered harm because of this undertaking. While the hematoma he presented with on his second visit to CMC has healed, the lifelong harm Owen C. sustained because he was returned to his abuser will never heal. Owen C will never walk or see again. He will never exceed the mental capacity of a one year old. Owen C. suffered harm when CMC's social workers were negligent. A social worker exercising the normal standard of care would have seen factor after factor that demonstrated an abusive home and would not have allowed for Owen C.'s return. Owen C. was harmed because CMC didn't fulfill their duty. Evidence in the record establishes that a voluntary undertaking occurred, and therefore, Appellants asks this court to reconsider the finding on the evidence in the record.

**CONCLUSION**

For the foregoing reasons, Appellant requests this Court to grant this Petition for Rehearing.

Respectfully submitted,

April 30, 2015



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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM YORK COUNTY  
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S. Jackson Kimball, Special Circuit Court Judge

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Case No. 2011-CP-46-4508  
Appellate Case No. 2013-002058

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Elizabeth Hope Rainey, as the  
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Owen Carduff, a minor ..... Appellant

v.

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

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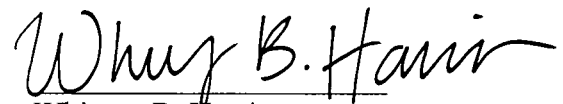
**PROOF OF SERVICE**

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The undersigned hereby certifies that on April 30, 2015, she served counsel for Respondent with the *Petition for Rehearing* in this matter by mailing a copy of the same by United States Mail with first class postage prepaid to the following addresses:

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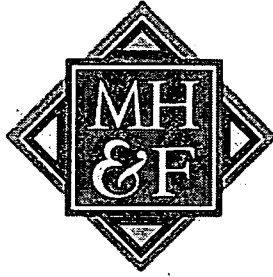
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A handwritten signature in black ink that reads "Whitney B. Harrison". The signature is written in a cursive style with a horizontal line underneath the name.

Whitney B. Harrison  
McGowan, Hood & Felder, LLC

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April 30, 2015

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APR 30 2015

**SC Court of Appeals**

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

**RE: *Elizabeth Hope Rainey v. Charlotte-Mecklenburg Hospital***  
**Appellate Case No.: 2013-002058**

Dear Ms. Kitchings,

Enclosed please find Appellant's Petition for Rehearing in the above referenced matter along with a proof of service. Please let me know if you have any questions or concerns. Thank you for your assistance with this matter.

Sincerely,

Whitney B. Harrison

Enclosure

cc: Monteith P. Todd, Esq.  
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