

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

Jane Doe, as guardian for John Doe, Petitioner,

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.

Appellate Case No. 2015-001088

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Spartanburg County
The Honorable J. Derham Cole, Circuit Court Judge

Memorandum Opinion No. 2015-MO-062
Submitted October 8, 2015 – Filed October 14, 2015

REVERSED AND REMANDED

Gregg E. Meyers, of Jeff Anderson & Associates, PA, of St Paul, MN, for Petitioner.

William Harrell Foster, III, of Greenville, Allen Mattison Bogan and Miles Edward Coleman, both of Columbia, and G. Mark Phillips, of Charleston, all of Nelson Mullins Riley & Scarborough, for Respondents.

PER CURIAM: Petitioner seeks a writ of certiorari to review the Court of Appeals' decision in *Doe v. Boy Scout Troop 292*, Op. No. 2015-UP-139 (S.C. Ct. App. filed Mar. 11, 2015). We grant the petition, dispense with further briefing, reverse the Court of Appeals' opinion, and remand to the Court of Appeals for consideration in accordance with this opinion.

Petitioner, as legal guardian for John Doe,¹ filed an intentional infliction of emotional distress (IIED) action against respondents when Doe, a mentally-disabled fourteen-year-old boy, was expelled from his Boy Scout troop within days of reporting he had been sexually abused by his Scoutmaster. The circuit court granted respondents' motion for summary judgment.

Petitioner contends the Court of Appeals erred in finding its argument that an adult's retaliation upon a mentally-disabled child for disclosing sexual abuse *prima facie* constitutes extreme and outrageous conduct was not preserved for review. We agree. *See Spence v. Wingate*, 381 S.C. 487, 674 S.E.2d 169 (2009) (where trial judge's order granted respondents' motion for summary judgment on precisely the grounds argued by respondents at summary judgment hearing, but did not restate the ground on which appellant opposed the motion, the ruling was sufficient to preserve appellant's argument, and appellant was not required to file a Rule 59(e), SCRPC, motion to preserve the issue for appeal).

Additionally, petitioner argues the Court of Appeals erred in *sua sponte* finding summary judgment was appropriate on the ground that petitioner failed to establish Doe's emotional distress was "severe." We agree. *See I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000) (stating although an appellate court may affirm on a ground that was not raised to or ruled upon by the lower court,

¹ Petitioner is Doe's grandmother.

that ground must appear in the record); Rule 220(c), SCACR (stating "an appellate court may affirm any ruling, order, decision or judgment upon any ground *appearing in the record on appeal*") (emphasis added); *Gadson v. Hembree*, 364 S.C. 316, 613 S.E.2d 533 (2005) ("Summary judgment is inappropriate where further inquiry into the facts of the case is necessary to clarify the application of law."); *Helena Chem. Co. v. Allianz Underwriters Ins. Co.*, 357 S.C. 631, 594 S.E.2d 455 (2004) ("[S]ince it is a drastic remedy, summary judgment should be cautiously invoked to ensure a litigant is not improperly deprived of a trial on disputed factual issues.").

Accordingly, we reverse the Court of Appeals' opinion and remand the case for the Court of Appeals to rule on the merits of the issues raised on appeal.

REVERSED AND REMANDED.

TOAL, C.J., PLEICONES, BEATTY and HEARN, concur.

**I would deny the Petition for a Writ of Certiorari.
KITTREDGE, J.**