

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2010-CP-08-3732

Jane Roe, as parent and
natural guardian of Judy Roe,
James Roe, and Joyce Roe,
minor children under the age
of eighteen,

Petitioner,

v.

Daniel Bibby, Sr., and
Michelle Bibby,

Of whom, Michelle Bibby is

Respondent.

APPENDIX

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OCT 29 2015

S.C. Supreme Court

INDEX

Record on Appeal	1
Appellant's Final Brief.....	296
Respondent's Final Brief.....	323
Appellant's Reply Brief	357
Court of Appeals' Opinion.....	375
Appellant's Petition for Rehearing.....	387
Respondent's Return to Petition for Rehearing.....	396
Order Denying Rehearing	406

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2010-CP-08-3732

Jane Roe, as parent and natural guardian of
Judy Roe, James Roe, and Joyce Roe, minor
children under the age of eighteen (18).....Appellants,

v.

Daniel Bibby, Sr., and Michelle Bibby

Of,whom, Michelle Bibby is.....Respondent.

RECORD ON APPEAL

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OCT 29 2013

SC Court of Appeals

INDEX

Order Granting Summary Judgment.....	2
Summons and Complaint.....	10
Answer of Defendant Michelle Bibby.....	22
Defendant's Motion for Summary Judgment and Memorandum in Support.....	26
Plaintiffs' Memorandum in Opposition to Summary Judgment.....	34
Plaintiffs' Supplemental Memorandum in Opposition to Summary Judgment.....	44
Transcript of Summary Judgment Hearing, July 10, 2012.....	48
Deposition of Michelle Bibby.....	66
Direct Examination by Akim A. Anastopoulos.....	69
Cross Examination by Eugene P. Corrigan.....	173
Redirect Examination by Akim A. Anastopoulos.....	175
Deposition of Jane Roe.....	179
Direct Examination by Eugene P. Corrigan.....	182
Defendant Michelle Bibby's Response to Requests for Admission.....	283
Statement of Daniel Bibby, Jr.....	287
Filing by Daniel Bibby, Sr., April 25, 2011.....	289
Filing by Daniel Bibby, Sr., May 2, 2011.....	290
Filing by Daniel Bibby, Sr., February 17, 2012.....	291
Certificate of Counsel.....	292

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

[REDACTED] as Parent and)
Natural Guardian of [REDACTED])

[REDACTED], and [REDACTED])
[REDACTED])

Plaintiff,)

v.)

DANIEL BIBBY, SR. and MICHELE)
BIBBY,)

Defendants.)

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO. 2010-CP-08-3732

ORDER GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

FILED
2020 OCT 12 PM 12:33
CLERK OF COURT
BERKELEY COUNTY, SC

This matter comes before the Court pursuant to Defendant Michele Bibby's Motion for Summary Judgment. On July 10, 2012, the parties appeared before this court and arguments were heard from attorneys for all parties. Based on the deposition testimony of Michele Bibby and [REDACTED] the arguments set forth at the motion hearing, and the laws of South Carolina, the Defendant's Motion for Summary Judgment is hereby granted.

STATEMENT OF THE CASE

This case was brought against Michelle Bibby alleging liability for the alleged actions of her husband Daniel Bibby, Sr. by the Plaintiff, [REDACTED] on behalf of her minor children. In an attempt to recover, the Plaintiff filed suit against Daniel Bibby's wife, alleging negligence arising from a special relationship between Michele and the [REDACTED] children, and under a theory of premises liability. Following discovery, which included depositions of both [REDACTED] and Michele Bibby, the Defendant filed a Motion for Summary Judgment, which was heard on July 10, 2012. The Motion was granted as there was no genuine issue of material fact as determined under Rule 56 of the South Carolina

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Rules of Civil Procedure based upon the pleadings, depositions, and current South Carolina law.

A. DEFENDANT MICHELE BIBBY HAD NO DUTY TO WARN PLAINTIFFS ARISING FROM A SPECIAL RELATIONSHIP OR CIRCUMSTANCE.

The Plaintiffs cannot recover against Michele because they cannot establish that she owed a duty to the [REDACTED] children. Generally, there is no duty to control the conduct of another or to warn a third person or potential victim of danger. *Faile v. SC Dep't of Juvenile Justice*, 350 S.C. 315, 334, 566 S.E. 2d 536, 546 (2002). There are exceptions to this rule, including a duty to warn a third party when the defendant has a special relationship to the victim. *Id.* The defendant may have a common law duty to warn potential victims under this "special relationship" when the defendant "has the duty to monitor, supervise and control an individual's conduct" and when "the individual has made a specific threat of harm directed at a specific individual." *Doe v. Marion*, 373 S.C. 390, 400, 645 S.E.2d 245, 250 (2007) (citing *Bishop v. South Carolina Dep't of Mental Health*, 331 S.C. 79, 86, 502 S.E.2d 78, 81 (1998)). However, "it is not simply foreseeability of the victim which gives rise to a person's liability for failure to warn; rather it is the person's awareness of a distinct, specific, overt threat of harm which the individual makes towards a particular victim." *Doe v. Marion*, 373 S.C. 390, 402, 645 S.E.2d 245, 251 (2007) (quoting *Gilmer v. Martin*, 323 S.C. 154, 157, 473 S.E. 2d 812, 814 (Ct. App. 1996)).

There is no testimony in the depositions or any other evidence to support that Michele had a special relationship with the Plaintiffs because she had no duty to monitor, supervise and control Mr. Bibby's conduct. The Plaintiffs argue that Michele had a duty to warn the neighborhood following her husband's sexual misconduct with their daughter that

occurred more than fifteen years ago. That matter was handled by the Department of Social Services, including a direction to reincorporate Mr. Bibby into the family.

The Plaintiffs had not lived in the neighborhood for a year but Michele Bibby lived in the same house for decades. Under the Plaintiff's theory, Michele Bibby would have to hunt out any new residents living anywhere in an undefined area to tell them of an incident that occurred decades earlier. There were no other incidents between then and the time the Plaintiffs moved into the neighborhood. She had no knowledge that her husband was a danger, believing the incident between Mr. Bibby and their daughter was an isolated event and that furthermore, he was rehabilitated according to the Department of Social Services. Based on Michele's testimony, she asked her husband if he had molested any other children, in which he responded, "No." *Michele Bibby Deposition*, p. 27, l. 21-25. *Michele Bibby Deposition*, p.28, l.1-10. Michele was then informed by DSS that after Mr. Bibby had completed his counseling with "flying colors" they felt he was no longer a threat. *Michele Bibby Deposition*, p.65, l. 10-12. Therefore, regarding when a duty arising from a special relationship exists, Michelle lacked the knowledge that Mr. Bibby was a potential threat to other young children, but more importantly she had no knowledge of a specific threat to the [REDACTED]. There is no evidence of such in the record, nor can there be.

Furthermore, the Plaintiffs incorrectly rely on *Doe v. Batson* in support of their argument that Michele had a duty to warn arising from a special relationship. As noted in the Supreme Court's opinion, while they affirmed the Court of Appeals' reversal of summary judgment, the Court "*vacate[s] those portions of the Court of Appeals' opinion discussing liability*, and remand to the trial court for discovery and development of Doe's

theories of recovery.” *Doe ex rel Doe v. Batson*, 345 S.C. 316, 323, 548 S.E. 2d 854, 858 (2001) (emphasis added).

The case law from other jurisdictions also supports a finding that Michelle owed no duty to the Plaintiffs arising out of a special relationship. In *Hackett v. Smith*, the Louisiana Court of Appeals granted summary judgment for the defendant, holding that a relative had no duty to warn parents or a child about her husband’s alleged dangerous propensities when the sexual misconduct occurred more than fifteen years ago and the defendant had no reason to believe the problem had not been resolved. 630 So.2d 1324, 1328 (La.Ct.App. 1993) (finding also that the counselor testified the defendant had made “great progress” in therapy and no further allegation of sexual misconduct with minors surfaced during that period.) The court in *Hackett* also refused to find a special relationship existed between the defendant and the victim because there was no assertion the defendant was ever actually entrusted with the victim’s care. *Id.* at 1328. Similarly, in *Wood v. Astleford*, the Minnesota Court of Appeals found the existence of a special relationship immaterial between a pedophile’s wife and his victims as there was not enough evidence to prove that she could have foreseen the abuse and thus, there was no duty to warn. 412 N.W.2d 753, 757 (Min.Ct.App. 1987) Further, when the wife did become aware of the abuse, she was not alerted that the plaintiffs were the “particular targets of the specific aberrant behavior” and thus had no duty to warn. *Id.* Based on the facts established in the case at issue, Michele was not negligent because no special relationship existed. There are no other exceptions to the general rule that apply or that were argued by the Plaintiffs.

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B. NO DUTY TO WARN EXISTS FOR ONE SPOUSE UNDER A PREMISES LIABILITY THEORY

The Plaintiffs also argued that Michele Bibby was liable for the alleged acts of her husband under a theory of premises liability. Premises liability is an area of law involving a property owner's duties that arise from others (most commonly classified as trespassers, invitees or licensees) coming on to their land. The most common example of a licensee is a social guest. *Singleton v. Sherer*, 377 S.C. 185, 199, 659 S.E.2d 196, 203 (Ct. App. 2008). A landowner is under no obligation to exercise care to make the premises safe for a licensee, but has a duty to use reasonable care to warn him of any *concealed dangerous conditions* or activities which are known to the possessor, or of any change in the condition of the premises which may be dangerous to him, and which he may reasonably be expected to discover. *Id.* (quoting *Neil v. Byrum*, 288 S.C. 472, 473, 343 S.E.2d 615, 616 (1986) (emphasis in original)). Based on the Plaintiff's argument, the Court would have to classify Michele's husband as a "dangerous condition or activity" that she would have to warn licensees about once they entered her property. There are no cases in South Carolina that discuss whether one spouse may be considered a "dangerous condition" or property of the other spouse. Mr. Bibby was charged with crimes against the Bibby children but they were dropped. The only evidence of any such crime was the video interview of the oldest child. She does not give a coherent story and she places several other adults in the room of Mrs. Bibby's granddaughter. Even taking into account the nature of a tale told by a child of her age, it did not make any sense.

In *D. W. v. Richard Bliss and Carol Bliss*, the Kansas Supreme Court directly addressed the topic. Here, the Court stated that to suggest a spouse be equated with and

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considered "property" or a "dangerous condition" in order to give rise to premises liability, while creative, has no support. 279 Kan. 726, 739, 112 P. 3d 232, 241 (2005)

Other states have examined whether or not it is appropriate to find a breach of duty under a premises liability theory against a homeowner for the acts of her spouse and have refused to recognize it. In *Hackett*, the court refused to find the situation of child molestation could be "likened to a premises liability situation, where the owners of the property may be strictly liable for injuries caused by defects in their property... [the husband] is not [the wife's] property." 630 So.2d 1324 at 1329. Further, the Plaintiffs in *Hackett* conceded that the wife could not be held responsible for failing to warn or protect from his activities where she had no special relationship to the victim. *Id.* In *Eric J. v. Betty M.*, the court held that a convicted child molester's "mere presence" on the property could not be considered a dangerous condition, and thus not a basis for premises liability. 76 Cal.App.4th 715, 726 (Cal.Ct.App.1999)

Premises liability and sexual abuse was mentioned in South Carolina in *Burns v. South Carolina Comm'n for the Blind*, but there are several distinguishing features, which preclude its use in the analysis of the law regarding the case at issue. In *Burns*, the Court of Appeals did find that the jury could be charged with instructions on a premises liability theory for a sexual abuse case. However, the Defendant was a state agency, and the Court found "this relationship, analogous to that of a business invitee, imposes liability on the Commission, if at all, similar to that of an owner of a business." 323 S.C. 77, 80, 448 S.E.2d 589, 591 (1994). Therefore, *Burns* falls into a different line of cases than those at issue in this case. The Plaintiff was a patient in a state facility attacked by another patient. The case at issue here deals with a private residence and not real property open to the public. The

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standards enforced under South Carolina premises liability law differ based on the status of the individual and the nature of the property.

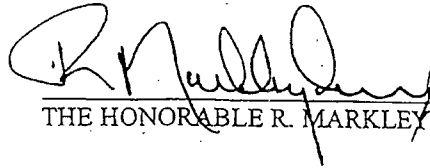
When the Court of Appeals cites *Burns* sixteen years later in *Burnett v. Family Kingdom, Inc.*, there is no mention of premises liability; rather the case is cited for the consideration of liability arising from a statute. 387 S.C. 183, 189, 691 S.E.2d 170, 174 (Ct. App. 2010.) If there is a cause of action in South Carolina under premises liability, there would have to be some question of fact evidence knowledge or acquiescence by a wife in the criminal acts of the husband. Michele Bibby worked at the Charleston County Library during the day and took care of her grandchildren at night. There is nothing that presents even a scintilla of evidence that she had or could have had knowledge of a danger reoccurring at the home where her disabled grown son and children of various ages were living.

In addition, the case at issue should be removed from the discussion of premises liability because Michele would have to have some reason to expect or know that a danger existed in the first place. Under any analysis, a duty imposed upon Michele requires an element of knowledge of a latent defect on the premises. At the motion hearing, Plaintiff's counsel was unable to articulate evidence in the record that Michele had knowledge of any danger or had placed her grandchildren or anyone else's children in danger. Their only argument was the incident that occurred between Daniel Bibby, Sr., and their daughter more than fifteen years ago.

For the reasons set above, IT IS HEREBY ORDERED THAT Defendant's Motion for Summary Judgment is **GRANTED** and this case is hereby dismissed with prejudice against the Plaintiff.

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AND IT IS SO ORDERED!



THE HONORABLE R. MARKLEY DENNIS, JR.

Moncks Corner, South Carolina

Sept
August 17, 2012

8/17/12

Rec. On Appeal 9

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

[REDACTED], as Parent and)
Natural Guardian of [REDACTED])

And [REDACTED])

Plaintiffs,)

v.)

DANIEL BIBBY SR and)
MICHELE BIBBY,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE 9TH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-08- 3732

SUMMONS
(Jury Trial Demanded)

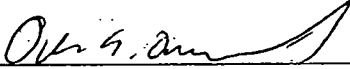
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2010 OCT 15 PM 12:39
HARRY F. FLEMMING
CLERK OF COURT
BERKELEY COUNTY, SC

TO: THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the Plaintiff or his attorney, Akim A. Anastopoulos, at his office, 2850 Ashley Phosphate Rd., Suite B, North Charleston, South Carolina, 29418, within (30) days after the service hereof, exclusive of the day of such service and if you fail to Answer the Complaint within the time aforesaid, Plaintiff will apply to the court for the relief demanded in the Complaint.

Dated at North Charleston, South Carolina on the 8 day of October, 2010.

ANASTOPOULO & CLORE LAW FIRM, LLC


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Attorneys for the Plaintiff

Rec. On Appeal 10

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
FOR THE 9TH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-08- 3732

[REDACTED], as Parent and)
Natural Guardian of [REDACTED])
And [REDACTED])

Plaintiffs,)

v.)

DANIEL BIBBY SR and)
MICHELE BIBBY,)

Defendants.)

COMPLAINT
(Jury Trial Demanded)

FILED
2010 OCT 15 PM 12:39
CLERK OF COURT
BERKELEY COUNTY, SC

The Plaintiffs, complaining of the Defendants, allege and say as follows:

1. That the Plaintiffs, [REDACTED] (herein referred to as "Plaintiffs" or "Plaintiff [REDACTED]", "Plaintiff [REDACTED]" and "Plaintiff [REDACTED]") are citizens and residents of Berkeley County, State of South Carolina.
2. That upon information and belief, Defendants Daniel Bibby Sr. and Michele Bibby, (herein referred to as "Defendants" or "Defendant Daniel" and "Defendant Michele") are citizens and residents of Berkeley County, State of South Carolina, and can be served with process at 225 Pandora Drive, Goose Creek, SC 29455.
3. That the acts and omissions giving rise to the subject of this action occurred in Berkeley County, State of South Carolina.
4. That this Court has jurisdiction over the parties and the subject matter of this action.
5. That Plaintiffs are siblings of each other.
6. That Plaintiffs resided in the same neighborhood as Defendants.
7. That Plaintiffs were friends with Defendants' grandchildren and regularly visited

Defendants' home.

8. That on multiple occasions Defendant Daniel did sexually assault Plaintiff [REDACTED]
9. That Plaintiffs [REDACTED] and [REDACTED] did witness this molestation.
10. That on at least one occasion Defendant Daniel attempted to sexually assault Plaintiff [REDACTED]
11. That on multiple occasions Defendant Daniel forced Plaintiff [REDACTED] to watch said molestation and threatened Plaintiff [REDACTED] to ensure his silence.
12. That Defendant Michele is married to and lives with Defendant Daniel.
13. That Defendant Daniel has a history of sexually assaulting children in the past.
14. That Defendant Michele was aware of this past history.
15. That Defendant Michele had actual knowledge of the molestation which is the subject of this action.
16. That Defendant Michele did nothing to prevent the molestation, nor did she report the same to any authorities.

**AS A FIRST CAUSE OF ACTION AGAINST DEFENDANT DANIEL
ASSAULT**

17. Plaintiffs restate and re-allege every allegation set forth above as if stated herein verbatim.
18. That Defendant Daniel intentionally placed Plaintiffs [REDACTED] and [REDACTED] in reasonable and imminent apprehension of unconsented physical bodily contact.
19. That Defendant Daniel acted overtly with specific intent to place Plaintiffs [REDACTED] and [REDACTED] in reasonable and imminent apprehension of unconsented physical bodily contact.
20. That Defendant Daniel had the general intent to perpetuate unconsented sexual contact

with Plaintiffs [REDACTED] and [REDACTED].

21. That it is substantially certain, to a reasonable person, that the threat of unconsented sexual contact would cause apprehension.
22. That Defendant Daniel's contact did cause Plaintiffs [REDACTED] and [REDACTED] to suffer reasonable and imminent apprehension of unconsented physical contact.
23. That as a direct result of the acts of Defendant Daniel, Plaintiffs [REDACTED] and [REDACTED] have suffered great physical, mental, and emotional harm and injury – all of which has and will in the future cause the Plaintiffs to undergo much physical pain and suffering; has and will in the future cause the Plaintiffs to have to spend large amounts of money for medical treatment and services and has and will in the future cause the Plaintiffs to suffer trauma, anxiety, annoyance, whole body impairment, inconvenience and travel—all to the Plaintiffs' general damage and detriment.
24. That by reason of the acts of Defendant Daniel as set forth above, Plaintiffs [REDACTED] and [REDACTED] are informed and believe that they are entitled to an award of actual damages in a reasonable amount, together with punitive damages in an appropriate amount, and for the costs of this action.

AS A SECOND CAUSE OF ACTION AGAINST DEFENDANT DANIEL
BATTERY

25. Plaintiffs restate and re-allege every allegation set forth above as if stated herein verbatim.
26. That Defendant Daniel's actions brought about harmful, unconsented, and offensive contact to Plaintiff [REDACTED].
27. That Defendant Daniel intended his actions bring about harmful, unconsented, and

offensive contact to Plaintiff [REDACTED]

28. That as a direct result of the acts of Defendant Daniel, Plaintiff [REDACTED] has suffered great physical, mental, and emotional harm and injury – all of which have and will in the future cause the Plaintiff to undergo much physical pain and suffering; has and will in the future cause the Plaintiff to have to spend large amounts of money for medical treatment and services and has and will in the future cause the Plaintiff to suffer trauma, anxiety, annoyance, whole body impairment, inconvenience and travel—all to the Plaintiff's general damage and detriment.
29. That by reason of the acts of Defendant Daniel as set forth above, Plaintiff [REDACTED] is informed and believes that she is entitled to an award of actual damages in a reasonable amount, together with punitive damages in an appropriate amount, and for the costs of this action.

AS A THIRD CAUSE OF ACTION AGAINST DEFENDANT DANIEL
FALSE IMPRISONMENT

30. Plaintiffs restate and re-allege every allegation set forth above as if stated herein verbatim.
31. That Defendant Daniel did intentionally and recklessly confine Plaintiff [REDACTED] within the fixed boundaries of his bedroom.
32. That Plaintiff [REDACTED] was totally restrained, against her will, and had no way of escaping the parameters of the confines controlled by Defendant Daniel.
33. That at all times during said confinement Plaintiff [REDACTED] was aware of the confinement and was injured, mentally and physically, and otherwise harmed by it.

34. That as a direct result of the acts of Defendant Daniel, Plaintiff [REDACTED] has suffered great physical, mental, and emotional harm and injury – all of which have and will in the future cause the Plaintiff to undergo much physical pain and suffering; has and will in the future cause the Plaintiff to have to spend large amounts of money for medical treatment and services and has and will in the future cause the Plaintiff to suffer trauma, anxiety, annoyance, whole body impairment, inconvenience and travel—all to the Plaintiff's general damage and detriment.

35. That by reason of the acts of Defendant Daniel as set forth above, Plaintiff [REDACTED] is informed and believes that she is entitled to an award of actual damages in a reasonable amount, together with punitive damages in an appropriate amount, and for the costs of this action.

AS A FOURTH CAUSE OF ACTION AGAINST DEFENDANT DANIEL
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

36. Plaintiffs restate and re-allege every allegation set forth above as if stated herein verbatim.

37. That by perpetuating unconsented sexual contact with Plaintiff [REDACTED], Defendant Daniel intended to inflict emotional distress upon Plaintiff [REDACTED] or knew, or should have known that his actions were likely to result in the infliction of emotional distress on Plaintiff [REDACTED].

38. That by forcing Plaintiffs [REDACTED] and [REDACTED] to watch the unconsented sexual contact with Plaintiff [REDACTED], Defendant Daniel intended to inflict emotional distress upon Plaintiffs [REDACTED] and [REDACTED] or knew, or should have known that his actions were likely to result in the infliction of emotional distress on Plaintiffs [REDACTED] and [REDACTED].

39. That Defendant Daniel's conduct was extreme and outrageous.
40. That Defendant Daniel's conduct was the actual and proximate cause of severe and persistent emotional distress to Plaintiffs.
41. That as a direct result of the acts of Defendant Daniel, Plaintiffs have suffered great physical, mental, and emotional harm and injury – all of which have and will in the future cause the Plaintiffs to undergo much physical pain and suffering; has and will in the future cause the Plaintiffs to have to spend large amounts of money for medical treatment and services and has and will in the future cause the Plaintiffs to suffer trauma, anxiety, annoyance, whole body impairment, inconvenience and travel—all to the Plaintiffs' general damage and detriment.
42. That by reason of the acts of Defendant Daniel as set forth above, Plaintiffs are informed and believe that they are entitled to an award of actual damages in a reasonable amount, together with punitive damages in an appropriate amount, and for the costs of this action.

**AS A FIFTH CAUSE OF ACTION AGAINST DEFENDANT MICHELE
NEGLIGENCE**

43. Plaintiffs restate and re-allege every allegation set forth above as if stated herein verbatim.
44. That Defendant Michele had a duty to provide a safe environment for all invitees/licensees to her home.
45. That Defendant Michele did welcome Plaintiffs into her home on several occasions to play with her grandkids.
46. That Defendant Michele knew or should have known that her husband was sexually

assaulting Plaintiff [REDACTED] in her own house.

47. That Defendant Michele breached her duty to Plaintiffs by allowing the acts of her husband to occur.

48. That Defendant Michele took no action to prevent or report her husband's sexual conduct with Plaintiff [REDACTED].

49. That the sexual contact and resulting injuries and damages to Plaintiff [REDACTED] were caused directly and proximately by one or more of the following negligent, grossly negligent, careless, reckless, willful, wanton and unlawful acts, and/or omissions of Defendant Michele in any one or more of the following respects:

- a. In failing to ensure the safety of invitees and licensees to her home;
- b. In failing to use due care;
- c. In failing to properly observe the surroundings and conditions present in her home;
- d. In failing to warn Plaintiffs of her husband's dangerous behaviors;
- e. In failing to protect Plaintiffs from her husband's dangerous behaviors;
- f. In failing to report her husband's unlawful actions toward Plaintiffs;
- g. In allowing her husband to continue sexually abusing Plaintiff [REDACTED], even after discovering his behavior.
- h. In failing to properly monitor and supervise minor invitees/licensees to her home;
- i. In failing to exercise the degree of care and caution that a reasonable and prudent person would have exercised under the circumstances then and there prevailing;
- j. In any other acts that represent a breach of the statutory or common laws

of the State of South Carolina; and

- k. In any other such manner that Plaintiff may become aware of through discovery and/or at trial.

50. That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of Defendant Michele, as is set forth more fully above, Plaintiff [REDACTED] was injured, has endured pain and suffering, has suffered mentally and emotionally, and has incurred, and will incur, various medical expenses, and has otherwise been damaged and injured.

51. That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of Defendant Michele, as is set forth more fully above, Plaintiff [REDACTED] was sexually violated on multiple occasions causing her to sustain serious and painful personal injuries including, but not limited to, pain and suffering, and mental anguish.

52. That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of the Defendant, as is set forth more fully above, Plaintiff has been damaged and injured in the following respects:

- a) Plaintiff has been required to expend a significant amount of money for her medical care, treatment, counseling and attendant services;
- b) Upon information and belief, the nature of Plaintiff's injuries will require her to expend a significant amount of money for her medical care, treatment, counseling and attendant services in the future; and
- e) The pain of her injuries and mental anguish has resulted in her loss of enjoyment of life and a change in her personality, all to permanent

detriment to her health and physical well-being.

53. That Defendant Michele's acts and omissions, as is set forth more fully above, show willful misconduct, malice, wantonness and an entire want of care, raising a presumption of the Defendant's conscious indifference to the consequences of such acts and omissions.
54. That because of the Defendant Michele's acts and omissions and the proximate harm resulting to Plaintiffs, Plaintiffs should be awarded punitive damages in an amount to be determined by the trier of fact, in order to punish and penalize the Defendant and to deter the Defendant and others from similar behavior.
55. That upon information and belief, Plaintiffs are entitled to judgment against the Defendant for actual, compensatory and exemplary or punitive damages for their personal injuries and damages set forth herein in an amount that is fair, just and reasonable under the circumstances, plus whatever costs, interest and attorney fees that she may be entitled, to be determined by a jury.

**AS A SIXTH CAUSE OF ACTION AGAINST DEFENDANT DANIEL AND
DEFENDANT MICHELE
WRONGFUL INFLICTION OF EMOTIONAL DISTRESS ON A BYSTANDER**

56. Plaintiffs restate and re-allege every allegation set forth above as if stated herein verbatim.
57. That Defendants' acts and omissions as set forth more fully above were the direct and proximate cause of injuries to Plaintiff [REDACTED].
58. That Plaintiff [REDACTED] and Plaintiff [REDACTED] are full blooded siblings of Plaintiff [REDACTED].
59. That Plaintiff [REDACTED] and Plaintiff [REDACTED] were present at the time of Defendant Daniel's

assault of Plaintiff [REDACTED], and witnessed the same.

60. That Plaintiff [REDACTED] and Plaintiff [REDACTED] were then and there aware that the actions of

Defendant Daniel were causing injury to their sister, Plaintiff [REDACTED].

61. That as a result of witness the sexual assault of their sister, Plaintiff [REDACTED] and Plaintiff

[REDACTED] did suffer severe emotional distress, including mental anguish, and were otherwise

damaged.

62. That upon information and belief, Plaintiff [REDACTED] and Plaintiff [REDACTED] are entitled to

judgment against the Defendants for actual, compensatory and exemplary or punitive

damages for their distress and damages set forth herein in an amount that is fair, just and

reasonable under the circumstances, plus whatever costs, interest and attorney fees that

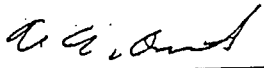
she may be entitled, to be determined by a jury.

WHEREFORE, the Plaintiffs pray for judgment against the Defendants for an amount to be ascertained by the jury at the trial of this action, for all damages, and actual, for the cost and disbursements of this action, and both prejudgment and post judgment interest, and for such other and further relief, in law or in equity, as this court may deem just and proper.

[signatures on following page]

Respectfully submitted,

ANASTOPOULO & CLORE, LLC

BY 
Akim A. Anastopoulos, Esquire
David P. Bolek, Esquire
Anastopoulos & Clore, LLC
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(843) 614-8888

ATTORNEYS FOR THE PLAINTIFF

Charleston, South Carolina
October 9, 2010

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

[REDACTED] as Parent and Natural
Guardian of [REDACTED]
[REDACTED] and [REDACTED]

Plaintiffs,

v.

DANIEL BIBBY, SR. and MICHELE
BIBBY,

Defendant.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

Case No. 2010-CP-08-3732

ANSWER
(JURY TRIAL DEMANDED)

FILED
JAN 12 AM 11:35
CLERK OF COURT
BERKELEY COUNTY, SC

To: AKIM ANASTOPOULO, ESQ. and DAVID P. BOLEK, ESQ., Attorneys for the
Plaintiff:

Defendant Michele Bibby (hereinafter "Bibby"), in Response to the Plaintiff's Complaint states
as follows:

1. On information and belief Bibby admits the allegations of paragraph one.
2. Bibby denies the allegations paragraph two.
3. Bibby denies the allegations of paragraph three.
4. Paragraph four of the Plaintiff's Complaint sets forth a matter of law, which neither
requires an admission or denial and is therefore denied.
5. On information and belief, Bibby admits the allegations of paragraph five.
6. Bibby admits the allegation of paragraph six.
7. Paragraph seven of the Complaint is not clear as to its meaning as to whom it refers so it
is denied.

Rec. On Appeal 22

8. Bibby denies allegations of paragraphs eight, nine, ten, eleven, and twelve of the Plaintiff's Complaint.
9. The allegations of paragraph thirteen are inexact and imply incorrect information.
10. The allegations of paragraph fourteen are inexact and imply incorrect information.
11. The allegation of paragraph fifteen is denied.
12. The allegation of paragraph sixteen are inexact and stated so as to imply false information whether denied or not. The statement is false in every way.
13. Bibby reasserts her answers to paragraphs one to sixteen as if stated fully herein in response to paragraph seventeen.
14. Bibby denies the allegations of paragraph eighteen, nineteen, and twenty.
15. Paragraph twenty-one sets forth a general statement, which does not apply to this case but is generally true.
16. Bibby denies the allegations of paragraphs twenty-two, twenty-three, and twenty-four.
17. Bibby reasserts the allegations of paragraphs one to twenty-five as if set forth herein in response to Plaintiff's Complaint.
18. Bibby denies the allegations of paragraphs twenty-six, twenty-seven, twenty-eight, and twenty-nine.
19. Bibby reasserts the allegations of paragraphs one to twenty-nine as if stated fully herein in response to paragraph thirty.
20. Bibby denies the allegations of paragraphs thirty-one, thirty-two, thirty-three, thirty-four, and thirty-five.
21. Bibby reasserts the allegations of paragraphs one to thirty-six as if set forth herein in response to Plaintiff's Complaint.

22. Bibby denies the allegations of paragraphs thirty-seven, thirty-eight, thirty-nine, forty, forty-one, and forty-two.
23. Bibby reasserts the allegations of paragraphs one to forty-three as if set forth herein in response to Plaintiff's Complaint.
24. Paragraph forty-four sets forth a matter of law which neither requires an admission or denial so it is denied.
25. Bibby admits paragraph forty-five.
26. Bibby denies paragraph forty-six and forty-seven.
27. Paragraph forty-eight is stated so as to misrepresent facts and admitting or denying it does not answer the allegation since Bibby denies the allegations of this Complaint.
28. Bibby denies paragraphs forty-seven, forty-eight, forty-nine, fifty, fifty-one, fifty-two, fifty-three, fifty-four, and fifty-five.
29. Bibby reasserts the allegations of paragraphs one to fifty-six as if set forth herein in response to Plaintiff's Complaint.
30. Bibby denies the allegation of paragraph fifty-seven.
31. On information and belief, paragraph fifty-eight is admitted.
32. Paragraphs sixty, sixty-one and sixty-two are denied.
33. Every allegation not specifically admitted herein is denied.

FOR A SECOND DEFENSE

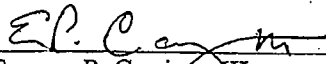
34. The Complaint fails to state a cause of action for which relief can be granted.

FOR A THIRD DEFENSE

35. The basis of this action is barred by the intervening superseding negligence and gross negligence and recklessness of the Plaintiffs' parent and natural guardian, [REDACTED]

Having fully responded to the allegations of the Plaintiff's Complaint, Defendant Michele Bibby Requests that the same be dismissed with prejudice and costs assigned to this Defendant:

CORRIGAN & CHANDLER LLC


Eugene P. Corrigan III
12 Exchange Street
Charleston, South Carolina 29401
(843) 577-5450 (phone)
(843) 577-5650 (fax)
rick@corriganhandler.com

ATTORNEYS FOR THE DEFENDANT
MICHELE BIBBY

Charleston, South Carolina
January 11, 2011

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF BERKELEY)

JUDICIAL CIRCUIT

[REDACTED] as Parent and
Natural Guardian of [REDACTED],)

CASE NO. 2010-CP-08-3732

[REDACTED] and [REDACTED])

[REDACTED])

Plaintiff,)

MOTION FOR SUMMARY JUDGMENT

v.)

DANIEL BIBBY, SR. and MICHELE
BIBBY,)

Defendant.)

FILED
012 APR 17 PM 3:02
CLERK OF COURT
BERKELEY COUNTY, SC

TO: Akim A. Anastopoulos, Esq., ATTORNEY FOR THE PLAINTIFF:

Please take notice that within ten days or soon thereafter as counsel may be heard, Defendant MICHELE BIBBY will move for an Order entering summary judgment in her favor and dismissing the allegations against her pursuant to Rule 56 of the South Carolina Rules of Civil Procedure in so much as the Complaint fails to state any cognizable cause of action against the Defendants under the laws of this state.

This motion is based upon the South Carolina Rules of Civil Procedure, the common law, and the discovery developed in this case.

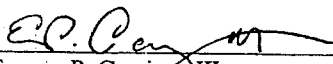
Please be present to attend if so minded.

[SIGNATURE PAGE TO FOLLOW]

v. Bibby / Claim No. 40-D198-326
Case No. 2010-CP-08-3732

Defendants' Motion for Summary
Judgment

CORRIGAN & CHANDLER LLC



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ATTORNEYS FOR DEFENDANTS

Charleston, South Carolina

April 13, 2012

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF BERKELEY)

JUDICIAL CIRCUIT

██████████ as Parent and)
Natural Guardian of ██████████,)

CASE NO. 2010-CP-08-3732

██████████, and ██████████)
██████████,)

Plaintiff,)

MEMORANDUM IN SUPPORT OF
DEFENDANT MICHELE BIBBY'S
MOTION FOR SUMMARY JUDGMENT

v.)

DANIEL BIBBY, SR. and MICHELE)
BIBBY,)

Defendants.)

Defendant Michele Bibby (Michelle) submits this Memorandum in support of her Motion for Summary Judgment along with excerpts of the depositions taken in the case.

FACTS

There is almost universal disagreement between the parties regarding the facts in this case. Michelle does not think that the ██████████ children were abused and is not bound by the default judgment taken against Daniel Bibby. This is not to say she has any reason to protect him or feel sorry for him because he confessed to her that he fondled his granddaughter. He called her at work to tell her. He had also abused his own daughter twenty years earlier and she turned him into authorities at that time. Pursuant to DSS instructions, her husband was integrated back into the home after the first incident. No one else has ever made a complaint about Daniel Bibby. Michelle is raising her son Daniel's children now as her son is disabled and the Family Court found it best to give custody to her. The Plaintiff's claim is that Michelle should be held liable for acts of her husband. This matter is before the Court on a motion for summary judgment so any disputed facts should not be considered. The motion is made based upon the law as applied to the

circumstances taken in a light more favorable to the Plaintiff and under the appropriate standards, the case should be dismissed as a matter of law for the lack of a viable cause of action.

ARGUMENT

The Plaintiff argues that summary judgment is not appropriate because there are "at least three material facts that are still in dispute." (*Plaintiffs' Response in Opposition Defendant's Motion for Summary Judgment*, p. 3) However, based on an accurate reading of South Carolina law, and to the extent it is unsettled in South Carolina and in comparable jurisdictions, there is no material fact in dispute regarding (1) whether the Defendant, Michelle had a duty to warn the plaintiffs arising from a special relationship or circumstance or any other exceptions; or (2) whether Defendant had a duty to warn arising from premises liability, thereby establishing she had no duty to the Plaintiffs or was responsible for any harms alleged; or any other legal duty to Plaintiff.

A. DEFENDANT MICHELE BIBBY HAD NO DUTY TO WARN PLAINTIFFS ARISING FROM A SPECIAL RELATIONSHIP OR CIRCUMSTANCE.

In order for the Plaintiffs to recover against Michelle, they must establish that Michelle owed a duty to the [REDACTED] children arising from the existence of a special relationship. Generally, there is no duty to control the conduct of another or to warn a third person or potential victim of danger. *Faile v. SC Dep't of Juvenile Justice*, 350 S.C. 315, 334, 566 S.E. 2d 536, 546 (2002). There are exceptions to this rule, including a duty to warn where the defendant has a special relationship to the victim. *Id.* The defendant may have a common law duty to warn potential victims under the "special relationship" exception when the defendant "has the duty to monitor, supervise and control an individual's conduct" and when "the individual has made a specific threat of harm directed at a specific

individual.” *Doe v. Marion*, 373 S.C. 390, 400, 645 S.E.2d 245, 250 (2007) (citing *Bishop v. South Carolina Dep’t of Mental Health*, 331 S.C. 79, 86, 502 S.E.2d 78, 81 (1998)).

However, “it is not simply foreseeability of the victim which gives rise to a person’s liability for failure to warn; rather it is the person’s awareness of a distinct, specific, overt threat of harm which the individual makes towards a particular victim.” *Doe v. Marion*, 373 S.C. 390, 402, 645 S.E.2d 245, 251 (2007) (quoting *Gilmer v. Martin*, 323 S.C. 154, 157, 473 S.E. 2d 812, 814 (Ct.App. 1996)).

There is no testimony to support that Michelle had a special relationship with the Plaintiffs because she had no duty to monitor, supervise and control Mr. Bibby’s conduct. Here, the Plaintiffs argue that Michelle had a duty to warn following her husband’s previous sexual misconduct with their daughter that occurred more than fifteen years ago. However, Michelle had no knowledge that her husband had a propensity for molesting children, believing that the incident between Mr. Bibby and their daughter was an isolated event and that furthermore, he was rehabilitated. Based on testimony from Michelle, she asked her husband if he had molested any other children, in which he responded, “No.” *Michele Bibby Deposition*, p. 27, l. 21-25. She stated she also questioned her sons who denied being touched by Mr. Bibby. *Michele Bibby Deposition*, p.28, l.1-10. Michelle was then informed by DSS that after Mr. Bibby had completed his counseling with “flying colors” they felt he was no longer a threat. *Michele Bibby Deposition*, p.65, l. 10-12. Therefore, regarding when a duty arising from a special relationship exists, Michelle lacked the knowledge that Mr. Bibby was a potential threat to other young children, or of the existence of any specific threats toward the Plaintiff minors. There is no evidence of such in the record, nor can there be.

Furthermore, the Plaintiffs incorrectly rely on *Doe v. Batson* in support of their argument that Michelle had a duty to warn arising from a special relationship. As noted in the Supreme Court's opinion, while the Supreme Court affirmed the Court of Appeals' reversal of summary judgment, the Court "*vacate[s] those portions of the Court of Appeals' opinion discussing liability*, and remand to the trial court for discovery and development of Doe's theories of recovery." *Doe ex rel Doe v. Batson*, 345 S.C. 316, 323, 548 S.E. 2d 854, 858 (2001) (emphasis added). Therefore, any discussion regarding a family member's duty to warn others about the acts of another family member arising from the existence of a special relationship or under a theory of premises liability as stated in *Doe v. Batson* is not binding, and the court should find no special relationship existed between Michelle and the Plaintiffs.

The case law from other jurisdictions cited in the Plaintiffs' response actually supports a finding that Michelle owed no duty arising out of a special relationship. In *Hackett v. Smith*, the Louisiana Court of Appeals granted summary judgment for the defendant, holding that a relative had no duty to warn parents or a child about her husband's alleged dangerous propensities when the sexual misconduct occurred more than fifteen years ago and the defendant had no reason to believe the problem had not been resolved. 630 So.2d 1324, 1328 (La.Ct.App. 1993) (finding also that the counselor's testified the defendant had made "great progress" in therapy and no further allegation of sexual misconduct with minors surfaced during that period.) The court also refused to find a special relationship existed between the defendant and the victim because there was no assertion the defendant was ever actually entrusted with the victim's care. *Id.* at 1328. Similarly, in *Wood v. Astleford*, the Minnesota Court of Appeals found the existence of a

special relationship immaterial between a pedophile's wife and his victims as there was not enough evidence to prove that she could have foreseen the abuse and thus, there was no duty to warn. 412 N.W.2d 753, 757 (Min.Ct.App. 1987) Further, when the wife did become aware of the abuse, she was not alerted that the plaintiffs were the "particular targets of the specific aberrant behavior" and thus had no duty to warn. *Id.*

B. NO DUTY TO WARN EXISTS FOR ONE SPOUSE UNDER A PREMISES LIABILITY THEORY

The theory that premises liability law applies in this set of circumstances. Premises liability is an area of law involving matters which arise from the land. There are no cases in South Carolina that turn a spouse into property for which the other spouse into property. To do so would reverse over a hundred years of civil rights law. A Kansas case, *D. W. Richard v. Richard Bliss and Carol Bliss*, 279 Kan. 726, 112 P. 3d 232 (2005) directly addresses the topic and is consistent with South Carolina law. In that case the Court stated that this area of law equates a spouse to property and that this property is dangerous.

In *Burns v. South Carolina Comm'n for the Blind*, the court of appeals did find that the jury could be charged with instructions on premises liability theory for a sexual abuse case. However, the defendant here was a state agency, and the court found "this relationship, analogous to that of a business invitee, imposes liability on the Commission, if at all, similar to that of an owner of a business." 323 S.C. 77, 80, 448 S.E.2d 589, 591 (1994). Furthermore, the case was reversed and remanded and there is no clear analysis on the basis of whether such a finding would apply where the plaintiffs are merely licensees.

Other states have examined whether or not it is appropriate to find a breach of duty under a premises liability theory against a homeowner for the acts of her spouse and have refused to recognize it. In *Hackett*, the court refused to find the situation of child

molestation could be "likened to a premises liability situation, where the owners of the property may be strictly liable for injuries caused by defects in their property... [the husband] is not [the wife's] property." 630 So.2d 1324 at 1329. Further, the Plaintiffs conceded that the wife could not be held responsible for failing to warn or protect from his activities where she had no special relationship to the victim. *Id.* In *Eric J. v. Betty M.*, the court held that a convicted child molester's "mere presence" on the property could not be considered a dangerous condition, and thus not a basis for premises liability. 76 Cal.App.4th 75 (Cal.Ct.App.1999.)

For the reasons set out above, the Motion should be granted and the case dismissed with prejudice against Michelle Bibby.

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ATTORNEYS FOR DEFENDANT
MICHELE BIBBY

Charleston, South Carolina

July 9, 2012

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

[REDACTED], as Parent)
And Natural Guardian of [REDACTED])

[REDACTED] and [REDACTED],)

Plaintiffs,)

v.)

DANIEL BIBBY, SR. and)
MICHELLE BIBBY,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE 9TH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-08-3732

PLAINTIFFS'
RESPONSE IN OPPOSITION
TO DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

FILED
2012 JUN -4 AM 11:54
CLERK OF COURT
BERKELEY COUNTY, SC

TO: THE HONORABLE COURT AND ALL COUNSEL OF RECORD:

Introduction

Defendant Michelle Bibby (herein after "Defendant") filed a Motion for Summary Judgment on April 16, 2012, in the above captioned matter. Defendant's motion is premature because discovery is still in progress in this matter. However, Plaintiffs respond to this Motion for Summary Judgment by stating its deficiencies, in addition to some of the facts alleged that would create factual disputes according to the Complaint, and discovery commenced thus far. Plaintiffs reply stating that Defendant's Motion is deficient as a matter of law, and that there are multiple issues of material fact to be resolved, and this case is therefore inappropriate for summary judgment.

Factual Background

This is a case arising out of a series of molestation actions, which resulted in injury to the children Plaintiffs. The claims against Defendant Michelle Bibby arise out of a failure to intervene, or to warn Plaintiffs of potential harm.

Rec. On Appeal 34

Legal Standard

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, the trial court may only grant summary judgment when “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 that the moving party is entitled to a judgment as a matter of law.” Rule 56(c) SCRPC. See also Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (1997). The party seeking summary judgment has the burden of demonstrating the absence of a genuine issue of material fact. Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991).

Argument

I. Defendant’s Motion should be denied because it fails to comply with the notice requirements set forth in Rule 7 of the South Carolina Rules of Civil Procedure.

“An application to the court for an order shall be by motion...shall be made in writing, *shall state with particularity* the grounds therefore, and shall set forth the relief or order sought.” Rule 7(b)(1) SCRPC (emphasis added).

Defendant’s Motion for Summary Judgment fails to set forth *any* supporting grounds with any particularity whatsoever and, therefore, fails to provide Plaintiffs with appropriate notice as required under Due Process. Necessarily any motion filed in good faith with the Court must be based upon the pleadings. Defendant’s Motion does not reference a memorandum of law to be filed at a later date as is customary. However, to the extent that a memorandum of law was intended to accompany the Motion, no such memorandum has been provided to Plaintiffs. Plaintiffs have not been presented with an actual summary of Defendant’s argument and are therefore prejudiced in that they are unable to adequately prepare a response.

Accordingly, this Court should dismiss Defendant’s Motion for Summary Judgment as violative of Rule 7 of the South Carolina Rules of Civil Procedure.

II. Defendant’s Motion should be denied because it fails to allege any particular set of facts that would entitle Defendant to summary judgment.

In the Defendant’s Motion for Summary Judgment, Defendant has failed to cite any

specific facts that would extinguish the issues of material fact. The motion is not accompanied by any memorandum in support to sufficiently notify the Plaintiffs or this Court of the basis for the motion.

In the present case there are at least three material facts that are still in dispute between the Plaintiff and the moving party, and therefore summary judgment is inappropriate. Those factual issues are 1.) whether Defendant had a duty to warn Plaintiffs arising from special relationship / circumstance, 2.) whether Defendant had a duty to warn based on premises liability and 3.) whether she breached any of the duties then and there existing upon her that resulted in Plaintiffs' harm.

- a. Plaintiffs allege and there is evidence to support that Defendant had a duty to warn arising from special relationship / circumstance and did breach that duty to Plaintiffs.

The issue is whether Mrs. Bibby knew or should have known of the presence of the children on her property, and of the threat her husband posed to them. With these elements present, her failure to warn them then "constitute[s] a failure to warn of a specific threat to a specific victim" and qualifies as negligence under South Carolina law. Doe v. Batson, 338 S.C. 291, 525 S.E.2d 909, 914 (S.C.App. 1999) (partially vacated on different grounds). It is axiomatic that while there is no general duty to control the dangerous conduct of another "when a defendant has the ability to monitor, supervise, and control an individual's conduct, a special relationship exists between the defendant and the individual, and the defendant may have a common law duty to warn potential victims of the individual's dangerous conduct." Rogers v. South Carolina Dep't of Parole & Comm. Corrections, 320 S.C. 253, 255-56, 464 S.E.2d, 330, 332 (1995)(citing Rayfield v. South Carolina Dep't of Corrections, 297 S.C. 95, 374 S.E.2d 910 (Ct.App. 1988), *cert denied*, 298 S.C. 204, 379 S.E.2d 133 (1989)). For a duty to warn to exist a defendant merely must know, or should know of a specific threat to harm a specific person. Bishop v. South Carolina Dep't of Mental Health, 332 S.C. 79, 502 S.E.2d 78 (1998). There is a plethora of law from other jurisdictions that has been cited by the Court of Appeals of this State

in finding that there is some duty for family members to warn of an "assailant's dangerous propensities." Doe, 338 S.C. 291; 525 S.E.2d at 914 (citing e.g., Hackett v. Schmidt, 630 So.2d 1324 (La.Ct.App. 1993); Wood v. Astleford, 412 N.W.2d 753 (Minn.Ct.App. 1987); J.S. v. R.T.H., 301 N.J.Super. 150, 693 A.2d 1191 (App.Div. 1997) (overruling Rozycki v. Peley, 199 N.J.Super. 571, 489 A.2d 1272 (Law Div. 1984)).

In the present case, the specific persons to be harmed were young children, specifically the [REDACTED] children who were within the confines of Daniel Bibby Sr.'s home. There is no genuine dispute as to the material fact that Mrs. Bibby knew or should have known that the children would be within her husband's home because she admits paragraph forty-five of the complaint, which reads, "That Defendant Michelle did welcome Plaintiffs into her home on several occasions to play with her grandkids," and she states that they would come over "several times a week" in her deposition. Complaint, Exhibit A. Answer, Exhibit B. Michelle Bibby Deposition p. 67, l. 22, Exhibit C.

There is also no genuine dispute as to material fact that Mrs. Bibby knew of her husband's propensity to sexually engage young children, because she admits that she knew of his having similar sexual relations with their daughter when she was young. Defendant's Answers to Plaintiffs' Requests to Admit, Paragraph 2, Exhibit D. Michelle Bibby Deposition, p. 21, l. 7, Exhibit E. These two elements, a specific threat of sexual propensities towards children, which a reasonable person would recognize based on previous actions, combine to create an affirmative duty for Mrs. Bibby to warn the children that there was a specific threat present in her home.

Furthermore, Mrs. Bibby admits in her deposition that she never warned the [REDACTED]s that their children might face a threat in her home, or of her husband's past actions, or even more generally of his sexual propensities toward children thereby breaching that same duty. Michelle Bibby Deposition, p. 70, l. 2-16, Exhibit F.

As a result, Defendant's Motion for Summary Judgment should be denied to the extent it is purported to pertain to the issue of a duty to warn arising out of a special relationship / circumstance and Defendant's breach of that duty.

- b. **Plaintiffs allege that Defendant had a duty to warn based on premises liability and breached that duty, and there are sufficient facts to support that claim making summary judgment inappropriate.**

"In South Carolina, the victim of a sexual abuse on another's premises may bring suit under a premises liability theory." Doe, 338 S.C. 291, 525 S.E.2d at 914. (citing Cf. Burns v. South Carolina Comm'n for the Blind, 323 S.C. 77, 448 S.E.2d 589 (Ct.App. 1994). "A social guest is a licensee." Id. If an individual is a licensee, a landowner has a duty to "use reasonable care to warn him of any *concealed dangerous conditions* or activities which are known to the possessor, or of any changes in the condition of the premises which may be dangerous to him, and which he may reasonably be expected to discover." Neil v. Byrum, 288 S.C. 472, 473, 343 S.E.2d 615, 616 (1986)(quoting Frankel v. Kurtz, 239 F.Supp. 713, 717 (W.D.S.C. 1965))(emphasis in original). Additionally it is not necessary for a defendant to have contemplated the particular event that occurred in order to establish negligence, only that she should have foreseen her negligence could cause injury to someone. Greenville Memorial Auditorium v. Martin, 302 S.C. 242, 245, 391 S.E.2d 546, 547 (1990) (citing Young v. Tide Craft, 270 S.C. 453, 242 S.E.2d 671 (1978) and Childers v. Gas Lines, Inc., 248 S.C. 316, 149 S.E.2d 761 (1966).

Mrs. Bibby admits that the victims in this case were invited into her home several times a week, making them, at a minimum, social guests. Michelle Bibby Deposition, p. 67, l. 22., Exhibit C. Therefore, Mrs. Bibby had a duty under the law to warn them, or more appropriately their guardians, of any concealed, dangerous conditions on the premises which she was knew of, or should have known, but which were unknown to them. Because of Mr. Bibby's previous nonconsensual sexual activities with her minor daughter, and Mrs. Bibby's knowledge of that activity, Mrs. Bibby knew or should have known that he potentially posed a threat to other

children. However as she has repeatedly admitted, she never mentioned either the previous activities of her husband, or the threat he posed to the [REDACTED] children. See Exhibit F.

As a result, summary judgment on the issue of Mrs. Bibby's breach of duty under a premises liability theory is inappropriate, because there are material facts imputing her negligence.

Affidavit

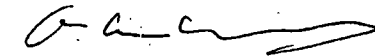
In addition, to all of the facts asserted above, Plaintiffs' action is supported by an Affidavit from Child Care Expert, Marguerite G. Paul, attached as Exhibit G.

Conclusion

The court should deny Defendant's Motion for Summary Judgment. Defendant must show there are no issues of material fact to be resolved for summary judgment to be appropriate. Rule 56(c) SCRPC. While Defendant alleges in the Motion that "the Complaint fails to state any cognizable cause of action against the Defendants under the laws of this state" they have failed to sufficiently show the absence of material facts with issues regarding Plaintiffs' claims against them. Defendant's Motion does not allege any specific resolved facts, cite any legal precedent, nor is there any accompanying memorandum that does so. The moving party has failed to provide an adequate basis to the court, or Plaintiffs for their motion. This is enough to deny the granting of the Motion for Summary Judgment in and of itself. Accordingly, Defendant's Motion for Summary Judgment should be denied.

Respectfully submitted,

ANASTOPOULO LAW FIRM, LLC



Akim A. Anastopoulos, Esquire
Anastopoulos Law Firm, LLC
2850 Ashley Phosphate Rd., Suite B
North Charleston, SC 29418
(843) 814- 6888

Charleston, South Carolina
May 4, 2012

ATTORNEYS FOR THE PLAINTIFFS

Rec. On Appeal 39

EXHIBIT

G

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

[REDACTED], as Parent)

And Natural Guardian of [REDACTED])

and [REDACTED])

)

Plaintiffs,)

v.)

DANIEL BIBBY, SR. and)

MICHELLE BIBBY,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE 9TH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-08-3732

**AFFIDAVIT FOR
MARGUERITE G. PAUL**

COMES NOW, the affiant, Marguerite G. Paul, and first being duly sworn upon her oath under the pains and penalties of perjury now states the following:

1. I am the above named affiant, Marguerite G. Paul.
2. I, Marguerite G. Paul, am the former state director of Child Care Licensing for the South Carolina Department of Social Services.
3. I, Marguerite G. Paul, previously served as a Child Care Specialist for the South Carolina Department of Social Services.
4. I, Marguerite G. Paul, have been involved in child safety issues 32 years.
5. That individuals undertaking the supervision of minors in their home have a responsibility to ensure that their parents and / or legal guardians are aware of dangers that exist in the supervisor's home.
6. That individuals undertaking the supervision of minors in their home have responsibility to protect those children while in their care.
7. That, upon information and belief, Defendant Michelle Bibby did undertake the supervision of the [REDACTED] children and failed to warn their parents of the danger existing in her home.

Rec. On Appeal 41

8. That, upon information and belief, Defendant Michelle Bibby, having such knowledge, failed to intervene on behalf of the [REDACTED] children.
9. That children are vulnerable and depend on responsible adults for their safety and supervision.
10. That upon information and belief Defendant Michelle Bibby had freely allowed the [REDACTED] children in her home and therefore had a special responsibility to protect them from harm.
11. That upon information and belief Defendant Michelle Bibby invited the [REDACTED] children into her home, making them social guest and giving her, the property owner special responsibility to warn their parents of any danger present in her home.
12. That based upon my knowledge, training and experience, Defendant Michelle Bibby having knowledge of Daniel Bibby's propensity to sexually engage young children holds her to a higher standard of reporting and informing the [REDACTED]'s and to protecting their children from harm.
13. That having such knowledge carries responsibility and mandates disclosure to other parties that may be affected.
14. That based upon my knowledge, training and experience, the elements of her knowledge of Daniel Bibby's propensity to sexually engage young children and her knowledge of his having similar sexual relations with their daughter create a duty and responsibility to warn the children and their parents or guardians of the specific threat present in her home.
15. That Michelle Bibby breached her duty as a property owner and as a caregiver of young children by never warning their parents or guardians of the specific threat and danger present in her home.
16. That Michelle Bibby failed to act as a reasonably prudent person would act under the circumstances to warn the [REDACTED].
17. That Michelle Bibby failed to act as a reasonably prudent person would act under the circumstances to ensure the safety and security of the [REDACTED] children.

[signature on following page]

Signature of Affiant

Marguerite G. Paul
Marguerite ("Rita") G. Paul

SWORN BEFORE ME THIS 4TH day of MAY, 2012.

Ronald B. Burt 8-8-2021
NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

[REDACTED], as Parent and)
Natural Guardian of [REDACTED])
And [REDACTED])

Plaintiffs,)

v.)

DANIEL BIBBY SR and)
MICHELE BIBBY,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE 9TH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-08-3732

**PLAINTIFFS' SUPPLEMENTAL
MEMORANDUM IN OPPOSITION
TO SUMMARY JUDGMENT**

FILED
2012 JUL 16 PM 12:54
MARK R. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

TO: THE HONORABLE R. MARKLEY DENNIS, JR.

Introduction

This matter was before the Honorable R. Markley Dennis, Jr. on July 10, 2012, for a hearing on Defendant's Motion for Summary Judgment. Many of the facts and legal issues have been extensively briefed in previous memoranda, argued before his Honor, and already incorporated into the Court's record of the hearing.

During the hearing, the Court inquired as to any evidence or testimony that could allow a reasonable jury to find that Defendant Michelle Bibby might have had knowledge that her husband was likely to re-offend prior to his alleged misconduct with the Plaintiffs, such that she would have been on notice of an alleged dangerous condition on her premises. Although Plaintiffs contend that Daniel Bibby's admitted past sexual misconduct is enough, even though it happened nearly 20 years ago, Plaintiffs secured leave of his Honor to file this supplemental memorandum to squarely address this question.

Argument

In a written statement to police [Exhibit A], Daniel Bibby Jr. stated that he had caught his father looking at child pornography over the internet “from time to time” for nearly two years leading up to and **before** the alleged misconduct with these Plaintiffs.¹ He made similar admissions to the Plaintiff. Plaintiff remembers a specific conversation with Daniel Bibby Jr. that she has recounted under oath. “He [Daniel Bibby, Jr.] said that he had talked to his mother on several occasions about what her – he had caught his father doing. And it seemed like nobody cared. He said that he had talked to his mom numerous times about what he was catching him doing on the computer. And Danny has apologized I don’t know how many times because of everything he did know and that he didn’t stop.” Deposition, p. 79:21 – p. 80:3.

During her deposition, Mrs. Bibby was asked multiple questions about the child pornography. Although she denies knowledge on multiple occasions, her testimony is inconsistent, at least as much as to create a scintilla of evidence for jury consideration. Specifically, Mrs. Bibby is asked, “Were you aware that your son had seen your husband for the past two years prior to him being arrested looking at child pornography on the internet?” M. Bibby Deposition, p. 75: 3-6. Mrs. Bibby responds, “I don’t recollect. He might have told me, but I don’t – I don’t remember.” Id. At 7-8.

Based upon this testimony, a reasonable jury could conclude that Mrs. Bibby had knowledge of the same. Even though she denies having knowledge of the pornography in other portions of her deposition, by her own admission, Mrs. Bibby states that her son might have

¹ Although this statement itself is hearsay, Plaintiffs have no reason to doubt that the declarant would offer similar testimony at the trial of this action. Moreover, in the event declarant were unavailable to so testify, Plaintiffs believe the written statement may be admissible at trial pursuant to the “statement against interest” exception of SCRE 804(a)(3).

informed her. This inconsistency creates a jury question in and of itself. Moreover, it calls into question Mrs. Bibby's credibility as to other denials. Plaintiffs would argue that a conversation with one's child about his father's possession of child pornography is not a common occurrence and cannot reasonably be expected to be easily forgotten. Indeed, a reasonable jury could conclude that most people would never forget a conversation of that nature.

In addition to this admission, there are allegations that, after the molestation of Plaintiffs occurred, Mrs. Bibby aided her husband in disposing of the computer. This could allow a reasonable jury to draw the inference that she knew what might have been on the computer at the time of and prior to the molestation of Plaintiffs.

Specifically, although she denies knowledge of the contents of the computer, Mrs. Bibby admits that she accompanied her husband on a trip to Myrtle Beach. She states that the computer was in the back of the vehicle. She further testifies that she saw her husband dump the computer in a dumpster behind a computer store someplace in Myrtle Beach. See M. Bibby Deposition, p. 75.

A reasonable jury could infer from these admissions that Mrs. Bibby knew, or at least should have known, that illicit material was contained on the computer. Why else would it be dumped secretly in a location several hours from the Bibby household.

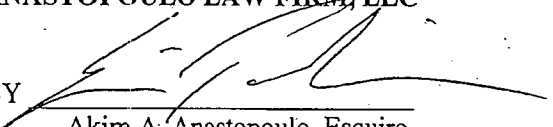
CONCLUSION

For the foregoing reasons, in addition to those already set forth at the hearing and in earlier memoranda, Plaintiffs respectfully would show that Defendant's Motion for Summary Judgment should be denied.

[signatures on following page]

Respectfully submitted,

ANASTOPOULO LAW FIRM, LLC

BY 

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ATTORNEYS FOR THE PLAINTIFFS

Charleston, South Carolina

July 12, 2012

Rec. On Appeal 47

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

COURT OF COMMON PLEAS

[REDACTED] as parent of [REDACTED])
[REDACTED] and [REDACTED])
[REDACTED])

Plaintiffs,)

vs.)

Case No. 10-CP-08-03732

Daniel Bibby, Sr. and Michelle)
Bibby,)

Defendants.)

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned case was heard on July 10, 2012, in Courtroom E of the Berkeley County Courthouse, 300 California Avenue, Moncks Corner, South Carolina; attended by counsel, as follows:

APPEARANCES:

Eric Poulin, Esq.
ANASTOPOULO LAW FIRM, LLC
2850 Ashley Phosphate Road, Suite B
North Charleston, SC 29418
Appearing for Plaintiff

Eugene P. Corrigan, III, Esq.
CORRIGAN & CHANDLER, LLC
P O Box 547
Charleston, SC 29402
Appearing for Defendant Michelle Bibby

DEBORAH GARRISON
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 901
Johns Island, South Carolina 29457
dGarrison@sccourts.org

Rec. On Appeal 48

App'x 49

1 THE COURT: All memoranda filed in
2 conjunction with this Motion is incorporated for
3 purposes of review. Each of you are certainly
4 entitled to rely fully on your memorandum and
5 the position taken therein. Please feel free to
6 reference and cite for the record any portions
7 thereof.

8 MR. CORRIGAN: Your Honor, this is
9 my Motion on behalf of Michelle Bibby, a Motion
10 for summary judgment in this case. This case
11 involves, at this point, Mrs. [REDACTED] suing
12 Michelle Bibby on behalf of three children --
13 three of her children.

14 Mr. Bibby had a default judgment
15 entered against him and his part of the case
16 is final.

17 However, that result is not passed over
18 to Michelle Bibby. Her position is that this
19 matter never occurred, but I don't want to get
20 into any issues of fact because I am here on a
21 Motion for summary judgment.

22 THE COURT: Yes, sir.

23 MR. CORRIGAN: The Motion is based
24 primarily on the fact that there is no duty.
25 The evidence developed through extensive

1 discovery in this case presents no evidence of a
2 duty, no question of a duty.

3 Michelle Bibby was, and is still, I
4 guess, married to Mr. Bibby. She worked and had
5 no information whatsoever that there was a
6 problem in this time period.

7 Their case seems to be based on the
8 fact that Mr. Bibby was convicted of abusing his
9 own daughter about twenty years earlier.
10 Through the DSS program, Mrs. Bibby was told
11 that he was in a position to reenter the
12 household. Nothing occurs until he tells other
13 people that he abused his granddaughter. He
14 denies vehemently abusing anyone else.

15 But the facts relating -- well, the law
16 regarding Michelle Bibby is that there must be a
17 duty or the court should grant the Motion for
18 summary judgment. That at the summary judgment
19 motion stage or on moving for a directed
20 verdict, that that issue must be resolved by the
21 court.

22 There is only one of the exceptions to
23 the common law that states that you do not have
24 a duty to voluntarily try to protect someone.
25 As I said, there are exceptions. The one that

1 might apply in this instance is that there was
2 a specific threat of harm known to a specific
3 individual. That is what the case outlines in
4 very specific detail. There is no evidence that
5 Mrs. Bibby, or anyone, knew of any danger to
6 these children, the minors of plaintiff, and no
7 basis for the argument that there was a duty for
8 the life of this man to act, uh, under our case
9 law.

10 The plaintiffs also argue that this is
11 a premises liability case. A premises liability
12 case, from its analysis, springs from the land
13 and has to do with property.

14 THE COURT: Um-humm.

15 MR. CORRIGAN: Spouses are not
16 property of the other. Therefore, the premises
17 liability analysis just doesn't apply, could not
18 apply to this case or it would be flying in the
19 face of a hundred years of women's rights and
20 civil rights litigation and Constitutional
21 issues.

22 So, Your Honor, that is fairly briefly
23 our position. I'll be happy to answer any
24 questions that the court may have.

25 THE COURT: Okay. I will certainly

1 afford you an opportunity to respond to
2 counsel's arguments as to why I should deny it.
3 I will be happy to hear from you. You can stay
4 there if you want -- whichever is easiest for
5 you.

6 MR. POOLE: Thank you very much, Your
7 Honor. Good afternoon. My name is Eric Poulin
8 and I represent Ms. [REDACTED]. I practice with
9 Mr. Anastopoulo.

10 Mr. Corrigan sort of summarized the
11 issues. Approximately twenty years ago, Mrs.
12 Bibby's husband admitted to molesting one of
13 their own children, their daughter. He sought
14 some help.

15 We fast forward to today. Mrs. Bibby
16 had invited Ms. [REDACTED]'s children over to her
17 house on multiple occasions to play with her
18 grandchildren. It comes out that Mr. Bibby,
19 Mrs. Bibby's husband, again molested their
20 grandchild and we also allege that they (sic)
21 molested Mrs. [REDACTED]'s children.

22 Your Honor, we -- we brought this case
23 correctly against Mrs. Bibby. We're not
24 alleging any type of vicarious liability. We're
25 not trying to say that she is the property of

1 Mr. Bibby or anything like this. This is based
2 on a premises liability theory, and that's the
3 duty to warn ---

4 THE COURT: About what?

5 MR. POULIN: --- of concealed dangers,
6 Your Honor. The ---

7 THE COURT: About what?

8 MR. POULIN: The danger we're
9 alleging, Your Honor, that would give rise to
10 a duty would be the fact that her husband was
11 a sexual predator.

12 THE COURT: How is that property?
13 How is he an item of property or condition of
14 the property?

15 MR. POULIN: Your Honor, he ---

16 THE COURT: Let me ask you a
17 question, Mr. Poulin. Do you have any case in
18 South Carolina that supports your position and
19 your theory?

20 MR. POULIN: We do, Your Honor.

21 THE COURT: Okay, I would love to --
22 tell me that one.

23 MR. POULIN: There's a case that is
24 very similar, very, very similar in nature.
25 It's *Doe v. Batson*. In *Doe v. Batson*, a family

1 -- a next-door neighbor brings a premises
2 liability against the parents of their grown
3 child who lives in the house and molested the
4 neighbor's.

5 Now, the trial court in *Doe v. Batson*
6 threw the case out on summary judgment. It was
7 appealed to the Court of Appeals and the Court
8 of Appeals reversed the trial court. They said
9 that there was in fact a duty and the Court of
10 Appeals put forth two distinct reasons. They
11 put forth the reason that there was evidence
12 to support -- that because of the relationship
13 between the mother and child that she had a
14 special duty to warn. We've alleged that in
15 this case, as well.

16 THE COURT: Wait a minute. Hold on.
17 That doesn't have a thing to do with premises
18 liability. That has a special duty -- a special
19 duty that the person had. So that's not a
20 premises liability decision. So tell me about
21 that case that said that it was -- that you had
22 a cause of action on premises liability.

23 MR. POULIN: That's correct, Your
24 Honor. The appellate court goes on to say that
25 even if they cannot prove that a special duty

1 that existed, that they would have an action in
2 premises liability.

3 Of course, the law of premises
4 liability in the state is that even if -- and we
5 agree that they are -- that they are licensees
6 to the property, not invitees. They are
7 certainly not there for her financial benefit.
8 So there is a lesser duty.

9 But the duty is, nonetheless, to use
10 reasonable care to warn of any concealed dangers
11 of activities which are known to the possessor
12 of the property which would be dangerous to the
13 licensees and in which licensees would be
14 expected to recover.

15 The court also talks about *Burns v.*
16 *South Carolina* where our courts have
17 specifically held that in South Carolina that
18 the victim of sexual abuse on another's premises
19 may bring suit under the premises liability
20 theory.

21 Now, I submit to you, Your Honor, that
22 after the appeal court made all these findings
23 on the record that the Supreme Court granted
24 certiorari. They vacated and looked at certain
25 portions of the appeal court's decision and

1 basically kinda, uh, slapped the appeal court on
2 the wrist a little bit for sort of putting these
3 theories out when they weren't really advanced
4 by counsel. They vacated certain portions of
5 the decision but they agreed with the ultimate
6 holding of the Court that it was improper for
7 the lower court to grant summary judgment. So
8 they ---

9 THE COURT: Well, what -- when you
10 say that they threw out, I will be happy to read
11 the case because I can read it as well as you
12 can, but did it throw out the premises liability
13 issue?

14 MR. POULIN: It vacated that portion
15 of the decision.

16 THE COURT: So it is no longer a
17 decision, then; right?

18 MR. POULIN: It is not binding on
19 this court, Your Honor, but ---

20 THE COURT: Not binding? It's no
21 longer the law. That doesn't stand for
22 anything, because they vacated it.

23 MR. POULIN: That's absolutely ---

24 THE COURT: So it doesn't exist?

25 MR. POULIN: That's right, Your Honor.

1 THE COURT: Okay.

2 MR. POULIN: We believe that it's
3 instructive because the Supreme Court ---

4 THE COURT: How is it instructive if
5 it doesn't exist?

6 MR. POULIN: It's -- well, it is
7 certainly not binding, Your Honor, it does not
8 exist. We agree with that. The appellate court
9 looked at the issues and, uh, -- we believe that
10 if the appellate court were to look at the
11 issues again, they may rule the same way. But
12 even without that case, there are cases in other
13 jurisdictions which also certainly are -- which
14 are certainly not binding on this court.

15 THE COURT: Right.

16 MR. POULIN: But we believe that if we
17 start afresh and scratch the surface in South
18 Carolina, a question of first impression, we
19 look at the premises liability theory -- and we
20 still have the Burns case out there that is good
21 law, that says in South Carolina that sexual
22 abuse on another's property may bring suit under
23 premises liability. And we contend -- as far as
24 I know, that's still good law.

25 THE COURT: Okay.

1 MR. POULIN: So if we look at the duty
2 that would be owed to a licensee to use
3 reasonable care and warn of concealed dangers,
4 so -- the first question that you asked me, Your
5 Honor, was how is this a concealed danger. You
6 know, we liken it potentially to a wasp nest.
7 If there is a wasp nest in the garage and you
8 invite somebody over for a barbecue and you know
9 the wasp nest is there -- you don't control the
10 wasps, you're not vicariously liable if the
11 wasps were to come down and sting ---

12 THE COURT: But you -- but you
13 uttered something real quickly. You know the
14 wasp nest is there.

15 MR. POULIN: That's exactly right,
16 Your Honor.

17 THE COURT: All right.

18 MR. POULIN: That is exactly right,
19 Your Honor, and that brings us to the factual
20 issues. Of course the standard for summary
21 judgment is for factual issues to be determined
22 by jury -- you know all this, so I won't repeat
23 it all.

24 But the very first line, in fact, of
25 the defendant's memorandum in support of their

1 Motion, I think is very instructive. The very
2 first line in the fact section Mr. Corrigan's
3 submitted is that there is almost universal
4 disagreement between the parties regarding the
5 facts in this case.

6 Now, the facts that we allege that a
7 reasonable jury would use to determine that she
8 had knowledge of the future molestation of my
9 client are these, Your Honor, -- and there are
10 several:

11 It is undisputed that she knew of his
12 prior sexual tendencies. He had molested their
13 own child several years ago.

14 THE COURT: How long ago was "several
15 years"?

16 MR. POULIN: I believe that it was
17 about twenty.

18 THE COURT: So that's more than
19 several. Correct?

20 MR. POULIN: Yes, Your Honor.

21 THE COURT: Thank you.

22 MR. POULIN: (Affirmative nod), more
23 than several. Twenty year ago, in that range.
24 We know that after the molestation occurred that
25 their daughter that was molested, we also took

1 her deposition along with Mrs. Bibby's, and even
2 after he returned to the house -- Mrs. Bibby's
3 allegation is that she thought that he was
4 cured. But even after he returned to the house,
5 she took steps to protect her daughter from him.
6 Again, this was back more than several years ago
7 -- twenty, nineteen, eighteen years ago. But
8 this is after she claims to have alleged that
9 she thought that he was cured, she was still
10 taking steps. She puts a lock on her daughter's
11 bedroom door. She does not allow him to be
12 alone with the daughter. Various things of that
13 nature.

14 Now, when we fast forward twenty years,
15 for some reason -- and I do not know why, Mr.
16 Bibby was not required to register as a sex
17 offender. That's the first thing.

18 So he moves into Mrs. [REDACTED]'s
19 neighbor and as far as I know, as far as Mrs.
20 [REDACTED] knows, and -- so she really has no way
21 to know, which is one of the factors that we
22 have to look at under the premises liability,
23 whether she could have discovered this defect
24 herself or whether it was this latent defect or
25 this latent defect that no one could have found.

1 children that he was also molesting the Bibby's
2 granddaughter. The parties agree -- all the
3 parties agree. He has admitted to that. I
4 believe that he was arrested for that.

5 Subsequent to that, and I -- I think
6 that there was some detail about this in Mrs.
7 Bibby's deposition. Subsequent to that, she
8 kicks him out of the house. She says, you know,
9 'Twice is enough, this keeps happening.'

10 There is certainly a jury question
11 there. Certainly the second time she knows
12 about these proclivities.

13 THE COURT: The children came and
14 visited after she kicked him out of the house?

15 MR. POULIN: No, Your Honor. Around
16 the same time.

17 THE COURT: No, no. Don't use words
18 like that. I mean, if you're going to be an
19 advocate, for goodness sakes be straightforward.
20 "Around the same time" -- was it before she knew
21 about it?

22 MR. POULIN: No, Your Honor.

23 THE COURT: So after -- this is --
24 there is nothing, no contact -- no contact that
25 she knew about and allowed after she began aware

1 that he had resumed the conduct?

2 MR. POULIN: Not specifically.

3 THE COURT: Well, don't use things
4 like that. Tell me what -- what do you mean
5 when you say "not specifically." What contact
6 did he -- that she allowed the children to have
7 with him after she had knowledge of it.

8 MR. POULIN: I'm sorry, Your Honor.

9 In essence, I ---

10 THE COURT: You've got to be
11 straightforward with the court when you're
12arguing something. Don't say "not specifically"
13because that implies that there is some
14inference. What inference that there was any
15contact?

16 MR. POULIN: I understand, Your Honor,
17and I apologize -- our theory throughout the
18case, that we believe that a jury could find, is
19that ---

20 THE COURT: I understand ---

21 MR. POULIN: --- she had the prior
22knowledge from twenty years ago, ---

23 THE COURT: Yeah. Well, -- okay.

24 MR. POULIN: And then allowing the
25children to be alone with him in the house. You

1 know, him in the house and ---

2 THE COURT: And she allowed her own
3 children to be -- or the grandchild to be alone
4 with him, too, didn't she?

5 MR. POULIN: She did, Your Honor,
6 (affirmative nod).

7 THE COURT: So that implies knowledge
8 that she had about and would allow her
9 grandchild to be with him?

10 MR. POULIN: We believe that it does.

11 THE COURT: Okay. What else?

12 MR. POULIN: (No response).

13 THE COURT: That's it? Of course,
14 you have set forth in your memoranda your
15 position, fully, and the basis for it, I'm sure.

16 MR. POULIN: Yes, sir, Your Honor. We
17 also submitted affidavits with the memorandum,
18 which Your Honor has, which are on file and --
19 from a childcare worker who also talks about
20 what she believes is the duty ---

21 THE COURT: I appreciate that. The
22 childcare worker doesn't set the law, though, I
23 don't believe. Thank you.

24 MR. POULIN: Thank you.

25 THE COURT: All right. Do you wish

1 to respond, Mr. Corrigan? How about the *Burns*
2 case for premises liability?

3 MR. CORRIGAN: I don't believe that
4 it applies based on later case law and what the
5 current state of the law is in this state. If I
6 recall correctly, the *Burns* case came before the
7 Marion case and I don't think that it is as
8 straightforwardly clear as counsel indicated.
9 I must admit that I haven't read it today.

10 THE COURT: Okay. That's fine.

11 MR. CORRIGAN: The only other
12 comment is that the affidavit is from someone
13 that works to license daycare centers in
14 people's homes, so that doesn't really apply at
15 all in this set of circumstances.

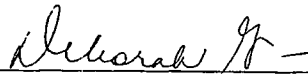
16 THE COURT: Right. No. Gentlemen,
17 thank you very much. I am going to review those
18 cases and read your memorandums in full and I
19 will let you know. Thank you so much.

20 (HEARING CONCLUDED)
21
22
23
24
25

CERTIFICATE OF REPORTER

I, the undersigned, Deborah Garrison,
official court reporter for the 9th Judicial
Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true,
accurate and complete transcript of the hearing
held before The Honorable R. Markley Dennis,
Jr., on July 10, 2012;

I further certify that I am neither kin nor
counsel to any of the parties and have no
interest in the outcome of this action.



Deborah Garrison

Circuit Court Reporter

9th Judicial Circuit

Charleston, South Carolina

January 21, 2013

COPY

1 IN THE COURT OF COMMON PLEAS
2 FOR THE STATE OF SOUTH CAROLINA
3 BERKELEY COUNTY
4 CASE NO: 2010-CP-08-3732

5 DEPOSITION OF MICHELLE BIBBY

6 [REDACTED], as Parent and Natural Guardian of

7 [REDACTED], [REDACTED], [REDACTED], and [REDACTED],

8 PLAINTIFFS,

9 vs.

10 DANIEL BIBBY, SR., and MICHELLE BIBBY,

11 DEFENDANTS.

12 -----
13 WITNESS: MICHELLE BIBBY

14 DATE: JULY 7, 2011

15 TIME: 11:15 A.M.

16 LOCATION: ANASTOPOULO LAW FIRM
17 2850 Ashley Phosphate Rd., Ste. B
18 North Charleston, SC 29418
19 -----

20
21 REPORTED BY:
22 WANDA S. BUCKNER
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Deposition of Michelle Bibby

A P P E A R A N C E S

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FOR STATE FARM INSURANCE COMPANIES:

BY: SUSAN GRAVES HOPSON
LAW OFFICES OF SUSAN GRAVES HOPSON
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(843) 974-6495

ALSO PRESENT: MR. AND MRS. [REDACTED]

Deposition of Michelle Bibby

1 EXAMINATION

2 MICHELLE BIBBY

3 BY MR. ANASTOPOULO 4, 110

4 BY MR. CORRIGAN 108

5 Certificate of Reporter 112

6 Deponent's Correction Sheet 113

7 Certified Questions 114

8

9

10

11

12

13

14

15

16

17 EXHIBITS

18 Exhibit No. 1 72

Exhibit No. 2 76

19 Exhibit No. 2A 110

20

21

22

23

24

25

Deposition of Michelle Bibby

1 MICHELLE BIBBY,
2 being first duly sworn or affirmed, testified as
3 follows:

4 EXAMINATION

5 BY MR. ANASTOPOULO:

6 Q Please state your name for the record.

7 A Michelle Bibby.

8 Q Mrs. Bibby, have you ever had a deposition
9 taken before?

10 A No.

11 Q Okay. You have been sworn under oath and
12 I will be asking you a series of questions. At any
13 time if you do not understand the question, then
14 please ask me to explain it; because if not, then we
15 will just assume that you understood the question
16 and your answers are in response to the question.

17 Where are you living now?

18 A [REDACTED]

19 Q How long have you been living there?

20 A 26, 27 years.

21 Q Who is currently living with you in that
22 house?

23 A My grandson.

24 Q What is his name?

25 A [REDACTED]

Deposition of Michelle Bibby

1 Q Anybody else?

2 A No.

3 Q And we have -- could you give me your date
4 of birth and Social Security number?

5 A [REDACTED]

6 Q Okay. How many children do you have?

7 A Three.

8 Q What are their names and ages?

9 A [REDACTED]. He is 39.

10 Q Where does he live?

11 A In Conway.

12 Q Do you know his address?

13 A [REDACTED]

14 Q Okay. Who else?

15 A [REDACTED]

16 Q How old is he?

17 A He is 32.

18 Q What is his address?

19 A [REDACTED]

20 Q How do you spell that?

21 A [REDACTED]

22 Q Okay. Third one?

23 A And [REDACTED]

24 Q Okay.

25 A She lives at [REDACTED]

Deposition of Michelle Bibby

1 Q How many children does [REDACTED] have?

2 A He doesn't have any.

3 Q And how about [REDACTED]?

4 A Three.

5 Q What are their names and ages?

6 A First one is [REDACTED] he is 13. The
7 second is [REDACTED], he is -- he was born
8 in -- he was born in 2002, so I guess nine now. And
9 [REDACTED] she will be eight on Friday.

10 Q Why is [REDACTED] living with you?

11 A I have custody.

12 Q When did you get custody?

13 A When he was four months old. His mother
14 gave him up.

15 Q Why did you get custody instead of [REDACTED]?

16 A Because at that time the lawyer that we
17 had said that I would have a better chance since he
18 wasn't working at that point.

19 Q Who was your lawyer?

20 A I want -- [REDACTED] but his first name
21 really isn't [REDACTED], but --

22 Q I have always called him [REDACTED], too?

23 A You know who I am talking about, yeah.

24 Q How long has [REDACTED] lived with you?

25 A His whole life.

Deposition of Michelle Bibby

1 Q Okay.

2 A Minus a month or two.

3 Q What was the mother's name?

4 A [REDACTED]

5 Q Do you know where she lives?

6 A All I know is that she lives someplace in
7 the Chesapeake area of Virginia.

8 Q Okay. Who is the mother of [REDACTED]

9 [REDACTED]

10 A [REDACTED]

11 Q What is her name, last name?

12 A Her last name now is [REDACTED]

13 Q How do you spell that?

14 A [REDACTED]

15 Q Okay. Where does she live?

16 A [REDACTED]

17 Q Does she have custody of [REDACTED]?

18 A She has temporary custody. I am in the
19 process of trying to get custody.

20 Q Why is that? On what basis?

21 A On what basis?

22 Q Yeah. Why are you trying to get custody?

23 A Because she posted their pictures naked on
24 the Internet. She refuses to give them medication.

25 The list goes on. Her husband sits on [REDACTED]

Deposition of Michelle Bibby

1 [REDACTED], on his chest when he wants to get the
2 child's attention. So, abuse, yes. I am trying to
3 get -- yes.

4 Q Is [REDACTED] representing you on that, too?

5 A No. [REDACTED].

6 Q Have you actually filed papers?

7 A She was filing court papers, yes. We are
8 waiting for a date.

9 Q And [REDACTED], where is [REDACTED]
10 living?

11 A She is with her mother as well, [REDACTED].

12 Q Are you trying to get custody of [REDACTED]
13 too?

14 A Oh, yes, yes. She alleged that her
15 stepfather abused her.

16 Q Sexually or physically?

17 A Sexually.

18 Q Who did she allege that to?

19 A To Dorchester Children's Center.

20 Q How long ago was that?

21 A I don't remember. Several months.

22 Q Ago?

23 A Yes.

24 Q Has there been any arrest or any --

25 A There was an arrest, and then they let him

Deposition of Michelle Bibby

1 go.

2 Q What is his name?

3 A [REDACTED]

4 Q Do you know how to spell the last name?

5 A [REDACTED]

6 Q Okay. And [REDACTED], does she
7 have any children?

8 A She has two.

9 Q What are their names?

10 A [REDACTED]

11 Q [REDACTED]

12 A Um-hum.

13 Q How old is [REDACTED]?

14 A He -- 12. I had to stop and think.

15 Q Okay. And who else?

16 A [REDACTED], and he -- he is 7.

17 Q Where do they live?

18 A They live with my daughter.

19 Q Who is the father of [REDACTED]?

20 A [REDACTED] is the father of [REDACTED].

21 Q Where does he live?

22 A He is in prison in Pennsylvania somewhere.

23 Q What is he in prison for?

24 A I have no idea.

25 Q Okay. [REDACTED]

Deposition of Michelle Bibby

1 A [REDACTED] is the son of my
2 daughter and her husband, [REDACTED]

3 Q They are still together?

4 A Oh, yes.

5 Q How would you describe your status? Are
6 you married, separated?

7 A I have been separated for two-and-a-half
8 years.

9 Q When did you -- when you say you have been
10 separated for two-and-a-half years, is that when you
11 quit living together or --

12 A That is when we quit living together, yes.

13 Q Who moved out and why?

14 A My husband moved out because I requested
15 that he not be in the house anymore.

16 Q Why was that?

17 A Allegations were made of abuse against my
18 granddaughter.

19 Q And do you know the exact date of that or
20 month?

21 A It was April.

22 Q Of?

23 A 2009, I think it was.

24 Q He physically left the house at that time?

25 A Yes.

Deposition of Michelle Bibby

1 Q Did he ever come back to the house?
2 A To get his things, that was all.
3 Q Do you know where he went to go live?
4 A [REDACTED]
5 Q Who did he live with?
6 A He rents an apartment.
7 Q Did he live with anybody?
8 A No.
9 Q Did he continue to live there for how
10 long?
11 A Until the present. I closed his apartment
12 in April because he was in jail.
13 Q When he got released from jail where
14 did --
15 A He is still there.
16 Q But at one point, he got released?
17 A For a week and he went back to his
18 apartment.
19 Q That was the apartment on [REDACTED]?
20 A Um-hum.
21 Q Has he lived anywhere else?
22 A He lived with a friend very briefly but I
23 don't know the address.
24 Q Do you know the friend's name?
25 A I am trying to think, off the top of my

Deposition of Michelle Bibby

1 head -- I can see a face, I can see -- I don't
2 remember his name. [REDACTED] was the last name. But I
3 don't remember -- that is really strange, but I
4 can't remember his first name.

5 Q Okay. When did you marry Daniel Bibby,
6 Senior?

7 A September 13, 1969.

8 Q Up until two-and-a-half years ago had you
9 ever been separated from him at any other time?

10 A Yes.

11 Q When was that?

12 A In the -- towards the end of our first
13 year of marriage, he used me for a punching bag and
14 I left. We got counseling and --

15 Q Who did you go to?

16 A Our parish priest.

17 Q Okay.

18 A And we reconciled and then it got better.

19 Q Did you separate any other time between --

20 A The only separations we have had were
21 military. He was career Navy.

22 Q But no other legal separations besides
23 two-and-a-half years ago?

24 A No.

25 Q You said he hit you the first year of your

Deposition of Michelle Bibby

1 marriage. Did he hit you any other times during the
2 marriage?

3 A One time, and I don't remember. I know
4 that my children were all young and we were still
5 stationed at Lakehurst and he hit me and I reported
6 it to the Navy chaplain and to the doctor in the
7 Navy facility and they hospitalized him.

8 Q When was that?

9 A I don't remember the year.

10 Q Approximately, do you know how many years
11 you had been married or --

12 A Probably -- I would say probably around
13 '78, '79. I don't remember.

14 Q Where were you living?

15 A We were living in Lakehurst, New Jersey.

16 Q Do you know what hospital he was
17 hospitalized at?

18 A Philadelphia Naval Hospital.

19 Q How long was he treated there for?

20 A About a month.

21 Q Okay. Has he been seen or been treated
22 anywhere else during your marriage?

23 A Yes. He was treated in Horizon Hospital
24 in St. Petersburg.

25 Q When was that?

Deposition of Michelle Bibby

1 A That was about 15 years ago, I think.

2 Q You were living in Charleston at that
3 time?

4 A Yes, we were in Goose Creek.

5 Q How did you find Horizon Hospital in
6 St. Petersburg?

7 A His counselor told him about it.

8 Q What was his counselor's name?

9 A [REDACTED]

10 Q Okay. Where does -- does Ron still live
11 in this area?

12 A No, I don't think so. I heard something a
13 few years ago that he either moved or he died or
14 something. I don't remember.

15 Q Okay. And how did you and your husband
16 know [REDACTED]

17 A A friend from the Navy recommended him.

18 Q Okay. What was [REDACTED]'s title?

19 A He was a counselor, that's all I knew. I
20 didn't know whether he was a psychologist,
21 psychiatrist, I don't know.

22 Q Was he with the military?

23 A No.

24 Q Okay. And do you know where his office
25 was?

Deposition of Michelle Bibby

1 A Someplace off Ashley Phosphate. Down
2 further towards the railroad tracks.

3 Q Do you know the name of the office or
4 anything?

5 A No, I don't remember, it has been so long.

6 Q When was the last time you had seen [REDACTED]
7 [REDACTED]?

8 A I saw him about four or five years ago at
9 my job. He had come in to use the library
10 facilities and we chatted for about two minutes and
11 then I had to get back to work, so --

12 Q What did he say he was doing at the time?

13 A He was a pastor for a church downtown
14 somewhere.

15 Q Do you know the name of the church?

16 A No.

17 Q Do you know who the friend was that
18 referred you to [REDACTED] or who the person
19 was?

20 MR. CORRIGAN: I object to the form.

21 Q Do you know the name of the person that
22 referred you to [REDACTED]?

23 MR. CORRIGAN: I object to the form.

24 MR. ANASTOPOULO: That is fine.

25 A I don't know.

Deposition of Michelle Bibby

1 Q You don't know the name of the person?

2 A I don't remember.

3 Q Where did you -- do you know what he did,
4 the person that referred you to [REDACTED]?

5 MR. CORRIGAN: I object to the form.

6 A I have no idea.

7 Q Okay. You don't know who it was that
8 referred you?

9 MR. CORRIGAN: I object to the form.

10 A No, I don't.

11 Q There will be a series of objections. You
12 can go ahead and answer.

13 MR. CORRIGAN: Objection. If you are
14 referring to her, I don't think that was the
15 testimony.

16 MR. ANASTOPOULO: What now?

17 MR. CORRIGAN: In each line of questions I
18 referred to, you kept referring to her being
19 referred to.

20 MR. ANASTOPOULO: I'm sorry. Thanks.

21 Q Okay. Do you know who it was that
22 referred Daniel Bibby, Senior, to [REDACTED]?

23 A No, I do not.

24 Q What other -- what other treatment places
25 has Daniel Bibby, Senior, been to while you have

Deposition of Michelle Bibby

1 been married to him?

2 A He went to Palmetto Behavior
3 two-and-a-half years ago.

4 Q Who referred him there?

5 A [REDACTED]

6 Q How do you spell that?

7 A [REDACTED]

8 Q What is his title?

9 A He is a nurse practitioner, PA, whatever
10 they call them.

11 Q Where?

12 A He worked with [REDACTED]'s office.

13 Q Spell that.

14 A [REDACTED].

15 Q Where is he located?

16 A He is located off College Park Road in
17 Goose Creek.

18 Q Who -- how did your husband find
19 [REDACTED]?

20 A He is our family doctor.

21 Q He is your doctor, too?

22 A Yes.

23 Q [REDACTED]

24 A [REDACTED].

25 Q [REDACTED], okay. Is he still at

Deposition of Michelle Bibby

1 [REDACTED]'s office?

2 A Yes, he is.

3 Q Any other places that your husband has had
4 treatment?

5 A No, not to my knowledge.

6 Q Has he been, to your knowledge, has
7 your -- can you tell me if he has seen -- any
8 counselors or psychiatrists that your husband has
9 seen during the marriage?

10 A Yes, I just told you.

11 Q Those are the only two that you know
12 about?

13 A Yes.

14 Q Horizon and Palmetto Behavior?

15 A Yes.

16 Q What about does he go to the VA?

17 A Yes.

18 Q Okay. Has he had any counseling there, to
19 your knowledge?

20 A He went to a -- what do you call it, one
21 of those clinics that they were doing in
22 experimental counseling type thing for people who
23 suffer from chronic depression.

24 Q Okay. Do you know when he went there
25 approximately?

Deposition of Michelle Bibby

1 A Maybe five years ago. I don't know.

2 Q Do you know the name of the doctor he saw?

3 A No.

4 Q Why did he go to Horizon Hospital in
5 St. Petersburg?

6 A Depression.

7 Q Okay. Depression about what? What was he
8 depressed about?

9 MR. CORRIGAN: Objection.

10 Q Do you know what he was depressed about?

11 A Just life in general.

12 Q Did your statement -- it is your statement
13 that to your knowledge is that the only reason he
14 went to Horizon Hospital was for depression?

15 MR. CORRIGAN: Objection.

16 Q To your knowledge, is that the only reason
17 he went to Horizon Hospital was for depression?

18 MR. CORRIGAN: Objection. Asked and
19 answered. You may answer.

20 THE WITNESS: I may?

21 MR. CORRIGAN: Um-hum.

22 A He had a deep depression. He was trading
23 his addiction -- basically it was gambling
24 addiction, but he had also inappropriately touched
25 my daughter and he was suffering from guilt from

Deposition of Michelle Bibby

1 that.

2 Q Okay. And when did you become aware that
3 he was inappropriately touching your daughter?

4 MR. CORRIGAN: I object to the form.
5 Mischaracterization of testimony.

6 Q Did you ever become aware that he had
7 inappropriately touched your daughter?

8 A I was informed by a friend who she spoke
9 with and I called DSS.

10 Q Okay. Who was the friend?

11 A Her name is [REDACTED],
12 [REDACTED].

13 Q Where does she live?

14 A She lives in Goose Creek.

15 Q Do you know the address?

16 A No. I just know where her house is. I
17 don't know the street name.

18 Q Where is it, in what subdivision?

19 A It is in [REDACTED].

20 Q Okay. And how did she inform you?

21 A She called me and asked me to come to the
22 house. She said that she would like to talk to me.
23 So when I got there I sat down with her and my
24 daughter and my daughter told me. And I went home,
25 confronted my husband.

Deposition of Michelle Bibby

1 Q What did your -- that is [REDACTED]?

2 A Yes.

3 Q How old was [REDACTED] at the time?

4 A She was 16 at the time.

5 Q What did she tell you had happened?

6 A She said that years earlier while I was up
7 at USC that her father had touched her and made her
8 feel uncomfortable.

9 Q Did you ask any follow-up questions on
10 where he touched or at?

11 A No, I did not. I called DSS.

12 Q Did you ask any questions after she said
13 that?

14 A I asked her was she okay and she said she
15 was okay now that she had told me. I told her it
16 wasn't her problem, it was his. I called DSS. I
17 took her to Charleston Children's Center to be
18 evaluated. I work with DSS.

19 And after he had counseling, I guess, I
20 don't remember for how long, he stayed with a friend
21 of his. [REDACTED] I forgot about that.

22 Q How do you spell that?

23 A [REDACTED] is no longer with us. He
24 passed a few years ago. After the counseling and
25 all of that, DSS came to me and asked me -- they

Deposition of Michelle Bibby

1 said that their purpose was to reunite families and
2 they asked me to bring him back into the house and
3 try to rebuild the family unit, which I tried to do.

4 Q Okay. Who was the DSS caseworker?

5 A I am not positive but I think his name was

6 [REDACTED].

7 Q Was it Dorchester or Berkeley County?

8 A Berkeley.

9 Q What year was that?

10 A I don't remember.

11 Q Your daughter was 16, when is her date of
12 birth?

13 A She was born in '79, so probably --

14 Q '95?

15 A Yeah. I don't remember.

16 Q Did your husband have an attorney?

17 A No, I don't believe so.

18 Q Did you have an attorney?

19 A No.

20 Q Did they take your children away from you?

21 A No, sir.

22 Q They did not remove [REDACTED] from the
23 house?

24 A No.

25 Q How many times did she say that it

Deposition of Michelle Bibby

1 happened to her, that he had touched her
2 inappropriately?

3 A At first, I thought it was only twice, but
4 I don't know exactly.

5 Q How many times did she tell you it
6 happened?

7 A About three or four.

8 Q What did she say happened?

9 A That he touched her.

10 Q Did she say anything else?

11 A No. She said the last time he touched her
12 she said, Daddy, I don't think this is right. He
13 said -- she said that they both started crying and
14 he never touched her after that.

15 Q How old was she when it first started?

16 A I don't know.

17 Q Did she tell you how old she was when it
18 first started?

19 A No.

20 Q Did she tell you what ages, any ages that
21 it happened?

22 A When she was about 12.

23 Q Did she tell you where it happened?

24 A In her room.

25 Q At your house?

Deposition of Michelle Bibby

1 A Yes.

2 Q When she was 12 were you living in that
3 house?

4 A Yes.

5 Q Okay.

6 A She told me it was while I was gone to
7 school. I would take summer courses at USC and
8 lived on campus and came home on weekends.

9 Q When did you take summer courses, what
10 year?

11 A I don't remember.

12 Q How many years did you take summer
13 courses?

14 A Two; two, I think it was..

15 Q How many months were you gone?

16 A I was only gone for like two or three
17 weeks at a time.

18 Q So you were gone --

19 A They were accelerated courses where you
20 took one course from 9 in the morning until 6 at
21 night, five days a week.

22 Q So you were gone two to three weeks for
23 two years in the summertime?

24 A Yeah.

25 Q So approximately -- you were gone maybe

Deposition of Michelle Bibby

1 four to six weeks total?

2 A Total, yeah.

3 Q Did [REDACTED] get counseling?

4 A Yes.

5 Q Who did she go to?

6 A I don't remember. It was somebody on
7 Ashley Phosphate who was -- no, it was not on Ashley
8 Phosphate. There was an office. I am trying to --
9 by the T-Bonz in West Ashley, that side street, but
10 I don't remember the name of anybody in that office
11 now. I am blanking out.

12 Q Who paid for her treatment?

13 A We did.

14 Q Was it Court ordered or --

15 A No. It was voluntary.

16 Q Okay. Was your husband removed from the
17 house?

18 A I removed him. He went to stay with [REDACTED]

19 [REDACTED] I told him he couldn't live with us.

20 Q Okay. Did he go live with [REDACTED]
21 before he went to Horizon or after?

22 A I think it was after. I don't remember
23 exactly.

24 Q Okay. And how long was he in Horizon
25 Hospital?

Deposition of Michelle Bibby

1 A A month.

2 Q Okay. Who paid for that?

3 A He did.

4 Q Then he came home and you don't --

5 A After he stayed with [REDACTED], and -- I mean
6 after he stayed with [REDACTED] and we went to counseling.

7 Q Who did you go to counseling with?

8 A That same group where my daughter was
9 going. I remember walking in the little gray
10 building, but I can't tell you any -- I think it
11 was -- let me think. He is no longer practicing
12 because we tried to get -- I am drawing a blank.
13 I'm sorry.

14 Q Who went to the group therapy?

15 A My husband and I -- well, he went to group
16 therapy two nights a week. I went with him in the
17 mornings once every couple of weeks. We had like
18 marriage counseling. And my daughter was seen by a
19 different therapist in that office.

20 Q Okay. And did your husband admit to the
21 therapist that he had done it, that he had touched
22 your daughter inappropriately?

23 A I have no knowledge.

24 Q In the therapy you were in with him did he
25 admit it to the therapist?

Deposition of Michelle Bibby

1 A No. We didn't talk about that.

2 Q Did he ever admit to you that he had
3 touched your daughter -- did Daniel Bibby, Senior,
4 ever admit to you he had touched his daughter
5 inappropriately?

6 A Yes.

7 Q When did he admit it to you?

8 A The day after I confronted him.

9 Q What did he tell you had happened?

10 A He told me, I'm sorry I touched her. That
11 was all he ever said about it. He would not talk
12 about it.

13 Q Did you ask him how many times he had
14 touched her inappropriately?

15 A No.

16 Q Did you ask him specifically what sexual
17 acts he did on her?

18 A No.

19 Q Did you ever ask him why he did it?

20 A I did one time. He said he didn't know.

21 Q Did you ask him if he had done it to any
22 other children?

23 A Yes.

24 Q When did you ask him that?

25 A 15 years ago.

Deposition of Michelle Bibby

1 Q What did he say?

2 A He said no.

3 Q Did you talk to any other children to see
4 if he had touched them inappropriately?

5 A I asked my children. And I remembered the
6 therapist's name was [REDACTED].

7 Q Which children did you ask?

8 A My sons.

9 Q What did they say?

10 A They said no.

11 Q Did they know anything about Mr. Bibby
12 touching Michelle inappropriately?

13 A Not until -- my friend was a police
14 officer and I asked her to come to the house to meet
15 and we sat the children down and my husband was
16 there. We told them that he had inappropriately
17 touched [REDACTED] and then that my husband was
18 leaving the house.

19 Q Did you ever ask [REDACTED] if he had done
20 digital penetration?

21 A I don't know.

22 Q That there had been penetration inside
23 her, did you ever ask her?

24 A No.

25 Q Did you ever ask your husband if he had

Deposition of Michelle Bibby

1 penetrated her?

2 A Yes. He said no.

3 Q Okay. What did he say he had done?

4 A Just said he had touched her private
5 parts.

6 Q How many times did he say he had done it?

7 A He didn't.

8 Q Did you ask him?

9 A No, I don't think so. Once was bad
10 enough.

11 Q Has [REDACTED] -- how has she suffered
12 emotionally due to the fact she was sexually abused
13 by Mr. Bibby?

14 A She went to counseling, and after about
15 six months the counselor told me that he thought she
16 would be okay because she had talked about whatever
17 happened. When she hit her late teens, she tried
18 marijuana twice and I took her back to the therapist
19 and the therapist talked to her and she said she
20 never did it after that. It was an experiment
21 apparently.

22 And then she started, after high school,
23 went to live with [REDACTED]. I think that was,
24 you know, she had [REDACTED] during that period and [REDACTED]
25 tried to kill her, so she called me at 3 o'clock in

Deposition of Michelle Bibby

1 the morning and I went and got them away from him.

2 Q Had she ever told you how it has
3 emotionally affected her, the fact that she had been
4 sexually abused at a young age?

5 A No. I tried to talk to her and ask her in
6 light of what happened within our family a couple of
7 years ago if she wanted to go back to counseling and
8 she said no.

9 Q What happened a couple of years ago?

10 A My husband admitted when he was in
11 Palmetto Behavior that he touched my granddaughter
12 inappropriately.

13 Q What was her name?

14 A [REDACTED]

15 Q Was she living with you at the time?

16 A Yes.

17 Q How long had she been living with you at
18 that time?

19 A Since she was eight months old.

20 Q And her father is [REDACTED]?

21 A No. Her father is [REDACTED].

22 Q I'm sorry. [REDACTED]. And
23 the mother is [REDACTED]?

24 A [REDACTED].

25 Q Okay. She had come to live with you from

Deposition of Michelle Bibby

1 the age of eight months. How old was she when your
2 husband molested her?

3 A I don't know.

4 Q Do you know how many times your husband
5 molested [REDACTED] while she was living at your
6 house?

7 A I do not know.

8 Q Did you ask your husband how many times he
9 had molested [REDACTED] while she was living at
10 your house?

11 A No.

12 Q Did you tell [REDACTED] or
13 [REDACTED] that your husband had molested [REDACTED] prior
14 to [REDACTED] coming to live with you?

15 A Would you repeat?

16 Q Did you tell [REDACTED] or
17 Amanda that your husband had molested [REDACTED] prior
18 to [REDACTED] coming to live with you?

19 A Yes. He knew that when his father
20 admitted what he did to [REDACTED] her
21 name is [REDACTED]; we call her
22 [REDACTED] -- back in the '90s. So he knew. And he
23 told [REDACTED].

24 Q Your testimony is prior to [REDACTED] coming
25 to live with you, that [REDACTED] knew that his father

1 had molested his sister?

2 MR. CORRIGAN: Objection.

3 A [REDACTED] and [REDACTED], both knew.

4 They were told whenever it was in 1990s that we had
5 that sit-down before he went --

6 Q How old were they at that time?

7 A They were teenagers. I don't remember
8 their ages.

9 Q Did you ever discuss with them at any
10 other time besides that sit-down the fact that
11 [REDACTED] had been molested by your husband?

12 A They brought it up sometimes, yes.

13 Q How old were they when they brought it up?

14 A In their teens. We all went to family
15 counseling. We talked about it.

16 Q Besides their teens, did you or they bring
17 it up at any other time?

18 A My son did.

19 Q Which son?

20 A [REDACTED]

21 Q When did he bring it up?

22 A When [REDACTED] was a toddler. He said that
23 if his father ever touched his daughter like he
24 touched his sister, that he would kill him.

25 Q Was that before he found out that [REDACTED]

1 had been molested he said that?

2 A Oh, yes. He told my husband, he said,
3 don't you ever touch my daughter like you touched my
4 sister.

5 Q Okay. And did you ever have any
6 conversations with [REDACTED] telling her that your
7 husband had admitted to molesting [REDACTED]? You
8 have to answer yes or no.

9 MR. CORRIGAN: I object to the form.

10 A No.

11 Q You never did tell [REDACTED] personally that
12 your husband had molested [REDACTED]?

13 MR. CORRIGAN: I object to the form.

14 A I never told her.

15 Q Okay. Okay.

16 A She was informed by someone else.

17 Q And did they voluntarily give you custody
18 of [REDACTED]?

19 A Yes. I didn't have custody. My son,
20 [REDACTED], lived in the house. He was a
21 custodial parent, but it was Court ordered that he
22 live in the house with me because he is disabled.
23 And the judge said that he could have the children
24 as long as he lived in our home because we could
25 help him to care for the children.

Deposition of Michelle Bibby

1 Q Do you know, was that Family Court?

2 A It was Family Court, yes.

3 Q In Berkeley County or Dorchester?

4 A Berkeley County.

5 Q Do you know when that was? Was that when

6 [REDACTED] was --

7 A When she was two, I think.

8 Q Okay.

9 A When he went to court to get custody

10 because [REDACTED] had dropped the children off at the

11 house and DSS found her in medical neglect because

12 [REDACTED], within eight hours of arriving at the house,

13 [REDACTED] had been admitted to the hospital.

14 Q For what?

15 A Upper respiratory infection, yeast
16 infection, kidney infection, UTI, dehydration.

17 Q So [REDACTED] lived with you prior to a
18 judge --

19 A Oh, yes, yes.

20 Q And [REDACTED] had dropped her off at your
21 house?

22 A And said, take these kids, I do not want
23 them.

24 Q Did she ever come visit the children?

25 A No.

Deposition of Michelle Bibby

1 Q Never?

2 A No. After their divorce, my son forced
3 her to visit with the children. And when it was her
4 visitation week, we would call and say, are you
5 going to pick the children up, do you want us to
6 drop them off? And she would say, oh, is it that
7 time already? Very, very -- I don't even want to
8 get into her.

9 Q Okay. But you did have conversations with
10 her, correct?

11 A Yes.

12 Q And the judge, when [REDACTED] was about two
13 years old, told your son that he could have the
14 child if he lived with you --

15 A Yes.

16 Q -- and your husband?

17 A Um-hum.

18 Q At any time did you tell the judge that
19 your husband had admitted to molesting your
20 daughter?

21 A No, no, I didn't.

22 Q At any time did you tell the Guardian Ad
23 Litem that your husband had admitted to molesting
24 your daughter?

25 A Yes.

Deposition of Michelle Bibby

1 Q You told the Guardian Ad Litem in the
2 case?

3 A Um-hum.

4 Q Who was the Guardian Ad Litem?

5 A [REDACTED].

6 Q Okay. He was the guardian for all of the
7 children or just [REDACTED]?

8 A [REDACTED].

9 Q Okay. You told him that your husband had
10 admitted to molesting your daughter previously?

11 A I believe I did. To the best of my
12 knowledge I did.

13 Q Did you tell anyone else?

14 A No.

15 MR. CORRIGAN: I object to the form.

16 Q Was DSS involved --

17 A Yes.

18 Q -- in the placement? Did you tell anybody
19 from DSS that your husband had molested your
20 daughter?

21 A They asked about previous cases and we
22 told them that we were on file with them.

23 Q Did you tell them what for?

24 A They never asked.

25 Q I guess I have to ask this -- did you tell

1 anyone from DSS that your husband had admitted to
2 molesting your daughter prior to [REDACTED] --

3 A No. DSS told me not to discuss it with
4 anyone. My family didn't even know.

5 Q Didn't know what?

6 A What my husband had done with my daughter.

7 Q Okay. What family members did not know?

8 A Our family. My siblings, my parents, his
9 parents, his siblings. No one was told. We were
10 told -- we were told by DSS that when he came back
11 into the home, that they felt that he was cured,
12 which now we know isn't the case, but that he was
13 cured and that we should never discuss it with
14 anyone.

15 Q That is what DSS --

16 A That is what DSS told us.

17 Q Did anyone else tell you that?

18 A No. Just DSS.

19 Q Okay. Did you seek any counseling after
20 your daughter was molested?

21 A Yes. We were in family counseling.

22 Q Did any family counselor tell you not to
23 tell anyone else?

24 A No.

25 Q Did you do anything to protect Ashley from

1 being molested by your husband?

2 MR. CORRIGAN: I object to the form.

3 A I didn't know I needed to.

4 Q Did you allow for your husband to be left
5 alone with [REDACTED]?

6 A No.

7 Q You never did? Did you ever allow him to
8 be alone with [REDACTED]?

9 A Yes. He would take her to the store or
10 whatever, yeah. They took turns, the children.

11 Q How often did you allow your husband to be
12 left alone with [REDACTED]?

13 MR. CORRIGAN: I object to the form.

14 A I don't know.

15 Q Was it over 100?

16 MR. CORRIGAN: I object to the form.

17 A No.

18 Q Her whole life you didn't -- from -- how
19 old was she whenever she admitted to you that he
20 had -- your husband had molested her?

21 A She never told. She never admitted.

22 Q How did it come about that your husband
23 was accused of molesting [REDACTED]?

24 A He admitted it to the doctor at Palmetto.

25 Q Okay. And did [REDACTED] admit to anyone that

1 it had happened?

2 A She may have admitted it to the counselor
3 at Dorchester Children's Center.

4 Q Did you do any investigating to find out
5 what she admitted happened or what she said
6 happened?

7 A No, I wasn't told. I asked and I was not
8 told.

9 Q Who did you ask?

10 A I asked the counselor.

11 Q Have you looked at any statements that
12 [REDACTED] made?

13 A I looked at my husband's Rule 5.

14 Q Okay. Did that include statements that
15 [REDACTED] had made?

16 A I don't remember.

17 Q Do you remember what [REDACTED] said in her
18 statement of what occurred?

19 A No, I don't remember.

20 Q To this date you don't remember anything
21 [REDACTED] said happened?

22 A Just that Grandpa touched her. She didn't
23 like it.

24 Q That's the only thing you know?

25 A That is the only thing I know.

Deposition of Michelle Bibby

1 Q And you have not tried to do any of your
2 own investigation to try to find out what he did to
3 your granddaughter?

4 A I was told by DSS and the Guardian Ad
5 Litem not to discuss it with her. The only
6 discussion I had with her was when DSS wanted me to
7 do a protection clarification with her, which is a
8 letter that I wrote and told her that I believed
9 what she told the counselor, very broad, because I
10 didn't know specifically, and that she was very
11 brave for doing that. And that if she ever felt
12 uncomfortable by anybody, again, in her life, to
13 come to her mother, me, to her father, to her
14 teacher or to her counselors and let them know. She
15 did that. And after four hours of interrogation,
16 she recanted.

17 Q Do you believe what she said in her
18 statement, that it actually occurred?

19 A Yes. Because December of 20 -- I don't
20 even remember -- my son has a letter. We had taken
21 jackets over to [REDACTED]'s house because when she had
22 the children she let them go outside without a
23 jacket in January, and it was cool. They would come
24 home with colds, whatever.

25 So we offered, and then in the letter that

Deposition of Michelle Bibby

1 my son wrote, he also asked that [REDACTED], her
2 stepfather, not bathe the children because she told
3 my son that she didn't like it when [REDACTED] bathed
4 her and she was uncomfortable.

5 And he asked her did [REDACTED] ever touch
6 you. She didn't understand and she said, I don't
7 like it when he gives me a bath. So we put that in
8 the letter for them -- for [REDACTED] not to allow
9 [REDACTED] to bathe the children.

10 Q When your husband was arrested for
11 molesting Ashley, how old was [REDACTED]?

12 A Five or six, I don't remember.

13 Q Just two years ago?

14 A Two years ago.

15 Q How old is she now?

16 A She is seven. She will be eight -- I
17 think she probably was six.

18 Q Okay. So from the age of -- from [REDACTED]'s
19 age of four-and-a-half months to six years old, did
20 you ever leave your husband alone in the house with
21 [REDACTED]?

22 A Probably, yes.

23 Q And approximately how many times?

24 A I have no idea.

25 Q Did you ever, from [REDACTED]'s age of

Deposition of Michelle Bibby

1 four-and-a-half months to six years old, did you
2 ever allow your husband to give [REDACTED] a bath?

3 A He never did.

4 Q From the age of four-and-a-half months to
5 six years old, did you ever allow your husband to
6 put [REDACTED] to bed?

7 A No. I didn't -- it wasn't that I allowed
8 it. He just didn't do it.

9 Q Did you ever, from the age of
10 four-and-a-half months to six years old, did you
11 ever allow your husband alone in the room with
12 [REDACTED] while you were in the house?

13 A I would have to say yes.

14 Q Do you know how many times?

15 A I have no idea.

16 Q From age four-and-a-half months to six
17 years old, did you ever allow your husband to change
18 [REDACTED]'s clothes?

19 A He helped in changing her diapers when she
20 was an infant.

21 Q Were you always around whenever he changed
22 her diapers?

23 A Unless I was at work and unless he changed
24 the diapers while my son was out of the house.

25 Q So you were working while your husband was

Deposition of Michelle Bibby

1 home with [REDACTED]?

2 A Well, my husband and my son were home with
3 [REDACTED], yes.

4 Q Where were you working?

5 A Charleston County Library.

6 Q Are you still currently working there?

7 A No, sir. I retired in April.

8 Q How long have you been working there?

9 A Thirteen years.

10 Q And so you would work 40 hours a week?

11 A Yes.

12 Q Was your husband, from the time [REDACTED] was
13 four-and-a-half months to six years old, did your
14 husband work?

15 A Yes.

16 Q Where was he working?

17 A A&W Cafeteria.

18 Q When did he work there?

19 A I don't remember the years.

20 Q Do you know how old [REDACTED] was whenever he
21 quit working there?

22 A No, I don't remember.

23 Q You would admit that he was with [REDACTED]
24 while you were working, correct?

25 MR. CORRIGAN: I object to the form.

Deposition of Michelle Bibby

1 A Yes.

2 Q And was your son working at that time?

3 A No, sir.

4 Q When did your son move in with you?

5 A When the children came in. Back in 2002
6 or 2003, whatever.

7 Q Did you ever have any conversations with
8 your husband about not touching [REDACTED]
9 inappropriately while she was living with you?

10 A No.

11 Q Now that you know that [REDACTED] was also
12 molested by your husband, do you feel like you
13 should have done more to protect her from being
14 molested?

15 MR. CORRIGAN: Objection. Calls for
16 speculation.

17 A I didn't know it happened.

18 Q Now that you know it has happened, you
19 would agree that she was molested by your husband,
20 correct?

21 MR. CORRIGAN: Objection. Asked and
22 answered.

23 Q Would you agree that your husband had
24 molested [REDACTED]?

25 MR. CORRIGAN: Objection. Asked and

Deposition of Michelle Bibby

1 A Like I said, I wasn't aware. And if I was
2 aware, he would not have been in the house.

3 Q But you would admit that you were aware he
4 had done it in the past?

5 MR. CORRIGAN: Object to the form of the
6 question.

7 A Yes.

8 Q Where in the house was [REDACTED] molested?

9 A I don't know.

10 Q Did you ever ask your husband?

11 A No.

12 Q Did you ever ask [REDACTED]?

13 A No. I haven't had contact with her.

14 Q Did you ever ask your son?

15 A No.

16 Q Have you and your son, [REDACTED]'s father,
17 ever had any conversations concerning [REDACTED]'s
18 molestation?

19 A Yes.

20 Q What did you discuss?

21 A We discussed what his father did. And my
22 son repeatedly says that, you know, he hopes his
23 father dies in jail and all that kind of stuff. He
24 has a lot of -- lot of anger towards his father.

25 Q Do you have anger towards Mr. Bibby about

1 answered.

2 MR. ANASTOPOULO: That is fine.

3 Q Would you agree that your husband molested
4 [REDACTED]?

5 MR. CORRIGAN: Objection. Asked and
6 answered.

7 Q Go ahead.

8 A Yes. Because he admitted it.

9 Q Okay. Now that you know that he has
10 admitted to molesting [REDACTED], do you feel like you
11 should have done steps to protect [REDACTED] from being
12 molested?

13 MR. CORRIGAN: Objection.

14 A No.

15 Q Do you feel guilty in any way knowing that
16 [REDACTED] has been molested by your husband?

17 MR. CORRIGAN: Objection.

18 A No.

19 Q Do you feel that you should have protected
20 [REDACTED] from your husband?

21 MR. CORRIGAN: Objection.

22 A I didn't know it was necessary.

23 Q Now that you do know, do you feel like you
24 should have done steps to protect [REDACTED]?

25 MR. CORRIGAN: Objection.

Deposition of Michelle Bibby

1 molesting --

2 A Oh, yes, oh, yes. He will never live in
3 my house again, never.

4 Q Tell me about how he got arrested. How
5 did that come about? How did Mr. Bibby get arrested
6 for this offense?

7 A When he admitted what he did, I talked
8 with the social worker from DSS and I told her to go
9 to Palmetto and to speak with him because he had
10 something to tell her.

11 Q Okay. So why did he go to Palmetto
12 Behavior?

13 A Because he was suffering from depression.

14 Q Did he tell you prior to going to Palmetto
15 Behavior that he had molested [REDACTED]?

16 A No.

17 Q Do you know when he first went to Palmetto
18 Behavior?

19 A It was either April or May, two years ago.

20 Q Okay. And the nurse at Dr. -- the family
21 doctor, what is his name?

22 A Dr. [REDACTED].

23 Q Yes, [REDACTED]. He was the one that
24 referred him to Palmetto Behavior?

25 A Yes. He was my -- my husband was

Deposition of Michelle Bibby

1 suicidal.

2 Q Were you with your husband when we went to

3 [REDACTED]?

4 A Yes.

5 Q Did your husband admit at that point that
6 he had molested [REDACTED]?

7 MR. CORRIGAN: I object to the form.

8 A No.

9 Q Did he admit to anyone at Dr. [REDACTED]'s
10 office, to your knowledge, that he had molested
11 [REDACTED]?

12 A No.

13 Q Was the referral based, to your knowledge,
14 was the referral based on depression, or was the
15 referral based on the fact that he might have done
16 some inappropriate acts?

17 A It was based on suicidal depression.

18 Q Okay. And did you go with him to Palmetto
19 Behavior?

20 A Um-hum.

21 Q What doctor did you see?

22 A I don't know.

23 Q Did you go straight from the doctor's
24 office or --

25 A Yes.

Deposition of Michelle Bibby

1 Q So you drove or he drove?

2 A I drove.

3 Q You drove on to Palmetto Behavior. What
4 happened when you got there?

5 A He filled out an intake.

6 Q And then did he admit on the intake that
7 he had molested [REDACTED]?

8 A He admitted he wasn't sure if he did.

9 Q Was that one of the questions?

10 A Yeah. Well, they took his history. They
11 asked, have you ever done, subsequent to his
12 daughter, and he said that he thinks he may have
13 inappropriately touched [REDACTED].

14 Q Okay. Were you with him when he told the
15 doctor?

16 A No.

17 Q Did you go in with him after he filled out
18 the intake?

19 A No.

20 Q You just stayed in the lobby area?

21 A No, I left.

22 Q You just left him there. Did he get
23 admitted into the hospital?

24 A Yes.

25 Q How long was he there for?

Deposition of Michelle Bibby

1 A At least 10 days. I don't know.

2 Q When did you become informed that he had
3 molested [REDACTED]?

4 A He called me a couple of days after he was
5 in there and he said that he and doctor talked and
6 he touched [REDACTED].

7 Q Did you ask him how many times?

8 A No.

9 Q Did you ask him what he had done to her?

10 A No.

11 Q Did you take [REDACTED] when he admitted to
12 you that day, did you take [REDACTED] for any
13 counseling?

14 A Yes.

15 Q When? How many days after?

16 A Probably within a week we saw a counselor.

17 Q After he admitted to you he molested
18 [REDACTED], how long before you called anyone to tell
19 them?

20 A The same day.

21 Q Who did you call?

22 A DSS.

23 Q Who came out?

24 A No one came out.

25 Q When was the first time someone came out

1 to talk with you about it?

2 A They didn't. I went to them.

3 Q When?

4 A I went to their office within a week
5 after.

6 Q Did you do anything else within that week?

7 A I called the solicitor's office.

8 Q Who did you talk to there?

9 A [REDACTED]

10 Q What did they do?

11 A They said that -- to report it to Goose
12 Creek. I am sure I reported it to Goose Creek. DSS
13 reported it as well and he was arrested.

14 Q While he was in Palmetto Behavior?

15 A No, after he came out.

16 Q After he got released from Palmetto
17 Behavior, did he come live with you?

18 A No.

19 Q He went with someone else? Did he ever
20 come back to the house after he got out of Palmetto
21 Behavior?

22 A To get his stuff.

23 Q Did he spend the night?

24 A No.

25 Q How long was he there for?

Deposition of Michelle Bibby

1 A Maybe a half hour.

2 Q Was [REDACTED] in the house when he came back
3 to get his stuff?

4 A No.

5 Q Where was she?

6 A She was with her mother.

7 Q When did you tell your son that [REDACTED] had
8 been molested?

9 A While his father was still in Palmetto.

10 Q So he came to get his stuff and where did
11 he go live?

12 A He went to live with a friend from AA.

13 Q Okay. Do you know that friend's name?

14 A No.

15 Q Do you know where they went -- where it
16 was?

17 A All I know, it was some place off of 78,
18 somewhere in Ladson is all I know.

19 Q Did you call [REDACTED]'s mother to tell her
20 that [REDACTED] had been molested?

21 A I don't remember. I think DSS called her.

22 Q Did DSS take [REDACTED] away from the house?

23 A They -- [REDACTED] and [REDACTED] were removed
24 from the house April 3 because my son popped [REDACTED]
25 in the mouth.

Deposition of Michelle Bibby

1 Q When did your husband call you to tell you
2 that he had molested [REDACTED]?

3 A About a month later.

4 Q After April 1?

5 A Yes.

6 Q So they weren't living at your house?

7 A At that time, no.

8 Q Okay. Was anybody living at your house at
9 the time he got released from Palmetto Behavior?

10 A No.

11 Q How long did it take before they arrested
12 your husband after he had been released from

13 Palmetto Behavior?

14 A I don't know.

15 Q Do you know approximately?

16 A A day, maybe. I don't know.

17 Q Did you go with your husband to Myrtle
18 Beach for any reason during this time period?

19 A In April we went to Myrtle Beach to an
20 anniversary party.

21 Q Was that middle of April, end of April?

22 A I think it was the middle of April.

23 Q Okay. And did you take your husband's
24 computer with you?

25 A Yes.

Deposition of Michelle Bibby

1 MR. CORRIGAN: I object to the form.

2 A We had planned to drop it off at the
3 Goodwill.

4 Q And how did that come about that you
5 decided to take your husband's computer to Myrtle
6 Beach?

7 A We didn't decide it. It was in the back
8 of the vehicle. We had planned on dropping it off
9 at the Goodwill, and when we got to Myrtle Beach,
10 remembered that it was still in the vehicle.

11 Q To your knowledge, when did you first put
12 the computer into the vehicle?

13 MR. CORRIGAN: Object to the form.

14 A Probably the day before we went to Myrtle
15 Beach.

16 Q Where did you and your husband end up
17 taking the computer?

18 MR. CORRIGAN: I object to the form.

19 MR. ANASTOPOULO: On what basis?

20 A I have no idea when it was. It was behind
21 a computer store, someplace in Myrtle Beach. I have
22 no idea.

23 Q What did you do, you and your husband do
24 with the computer?

25 MR. CORRIGAN: I object to the form. To

Deposition of Michelle Bibby

1 answer your question, you are referring to what
2 she did.

3 A I didn't do anything with it.

4 Q What did you see your husband do with the
5 computer?

6 A He took it out of the vehicle and he put
7 it by the dumpster.

8 Q You were with him at the time?

9 A Um-hum.

10 Q And had you seen pornography on that
11 computer prior to your husband and you taking it to
12 the dumpster?

13 MR. CORRIGAN: Objection. Please define
14 pornography.

15 Q Had you seen any pornography on the
16 computer prior to you and your husband taking it to
17 the dumpster?

18 MR. CORRIGAN: Same objection.

19 A I saw adult images on the computer and
20 told him to turn the computer off.

21 Q Were the adult images naked?

22 A For the most part, yes.

23 Q Were the adult images having sex?

24 A No.

25 Q How many times did you see pornography on

Deposition of Michelle Bibby

1 his computer?

2 A I didn't see pornography. I saw adult --

3 MR. CORRIGAN: Objection.

4 A -- explicit photos.

5 Q Naked photos?

6 A For the most part.

7 Q Do you think that is pornography?

8 A According to the new ruling, I would call
9 it -- we don't permit it at work. We don't, you
10 know, it is unacceptable. To me, I won't give it a
11 label. It is unacceptable.

12 Q Were you aware that your son had seen your
13 husband watching child pornography on that same
14 computer prior to you disposing of it?

15 MR. CORRIGAN: I object to the form.

16 A No.

17 Q Has your son ever told you -- to your
18 knowledge, has your son ever told you that he had
19 seen your husband watching child pornography on that
20 computer?

21 A He told me he saw my husband looking at
22 not pornography, but adult explicit images.

23 Q Did he ever tell you that he saw your
24 husband looking at child -- naked children pictures
25 on the computer?

Deposition of Michelle Bibby

1 A No.

2 Q Have you read the statements where your
3 son has said that he had seen your husband looking
4 at child pornography?

5 A No, I haven't.

6 Q Okay. You didn't see that in the Rule 5?

7 A No.

8 Q And why did you and your husband throw
9 that computer away in the dumpster?

10 MR. CORRIGAN: I object to the form.

11 Lumping two people together.

12 Q You were with your husband when he dumped
13 the computer, correct?

14 A I was in the car, yes.

15 Q Why did you and your husband throw the
16 computer in the dumpster in Myrtle Beach?

17 MR. CORRIGAN: I object to the form.

18 A I didn't.

19 Q Why did your husband throw the computer in
20 the dumpster in Myrtle Beach while you were in the
21 car?

22 MR. CORRIGAN: I object to the form.

23 Mischaracterizes earlier testimony.

24 A Because we couldn't find a Goodwill, so we
25 put it behind a computer store by the dumpster.

Deposition of Michelle Bibby

1 Q Why -- do you know why your husband wanted
2 to give it to a Goodwill?

3 A Because it had crashed and he figured they
4 could use it for parts.

5 Q Was this after -- your husband disposed of
6 this computer after the children were taken away by
7 DSS?

8 A Yes. But the computer had crashed prior
9 to it.

10 Q Is it your testimony at the time you were
11 with your husband when he disposed of the computer,
12 that you did not know [REDACTED] had been molested at
13 that time?

14 A That's correct.

15 Q He had not told you?

16 A No. I would not have been with him.

17 Q So then he is arrested, correct --

18 A (Witness nods.)

19 Q -- right after he gets out of Palmetto
20 Behavior. Did you go to the bond hearing and speak
21 on his behalf?

22 A No.

23 Q Did you write any statements on his behalf
24 in the criminal case?

25 A No.

Deposition of Michelle Bibby

1 Q Did you testify at the sentencing in his
2 behalf?

3 A No.

4 Q Did you give any testimony in the
5 sentencing?

6 A I believe the judge asked me what I felt
7 and I said that he was a very sick man and that he
8 needed help.

9 Q And do you know when he went to court for
10 the sentencing?

11 A June or July of last year.

12 Q In front of Judge Dennis, is that
13 accurate?

14 A I think.

15 Q That was in Berkeley County?

16 MR. CORRIGAN: Objection.

17 A I believe so.

18 Q Did you say anything else at the
19 sentencing?

20 A I don't recall.

21 Q Did you -- do you recall saying anything
22 else at the bond hearing?

23 A No, I don't recall.

24 Q He was then placed on probation, correct?

25 A I believe so.

Deposition of Michelle Bibby

1 Q And where did he go to live after that?

2 A Up the street.

3 Q Was he -- was he arrested again after he
4 had pled guilty?

5 A Yes.

6 Q What was he arrested for after that?

7 A He was arrested because he had a picture
8 of my granddaughter, and he had his erectile pump,
9 he was impotent, and his medication, and they said
10 that he had an adult movie.

11 Q Okay. So who said this, probation?

12 A His probation officer, yes.

13 Q They came over there and he had -- was it
14 a naked picture of your granddaughter?

15 A No, it was just a picture of her face
16 smiling.

17 Q A picture of your granddaughter and then
18 had an adult movie?

19 A Um-hum.

20 Q And then had an erectile pump, you said?

21 A Yes.

22 Q Anything else?

23 A No.

24 Q Nothing else?

25 A No.

Deposition of Michelle Bibby

1 Q And --

2 A Pictures of the other grandchildren, they
3 took all of the grandkids' pictures away from him.

4 Q Was there any other sexual things at the
5 house?

6 A Not to my knowledge.

7 Q Okay. And they arrested him for that.
8 Was he then arrested again for something else?

9 A No, not to my knowledge.

10 Q Was he sentenced for probation violation?

11 A Yes.

12 Q Were you at that hearing?

13 A Yes.

14 Q What did you hear that they said he had
15 done?

16 A They said he had inappropriate materials
17 in his home which was a violation of his probation,
18 was he aware of that, and he said yes. And the
19 judge sentenced him to 11 months.

20 Q Did he also mention anything else about
21 him being around at a place where children were?

22 A Oh, yes. Okay. I remember. Yes. He got
23 picked up for being at the model railroad club where
24 he was the vice president.

25 Q What is the model railroad club?

Deposition of Michelle Bibby

1 A It is where a group of gentlemen go, they
2 build trains, layouts of trains for their pleasure.
3 And because the mayor of North Charleston took over
4 their building, they relocated to The Citadel Mall
5 by Dillard's.

6 He was in there working on a layout and
7 the probation officer said he wasn't allowed to be
8 in the mall. He didn't think that working behind
9 the scenes was wrong. He was in there working on
10 the layout and they arrested him because children go
11 in there with their parents and they say that he
12 could have access to a child.

13 Q When your husband was first given
14 probation for molesting [REDACTED], do you feel like he
15 should have gone to jail for that crime instead?

16 A Yes.

17 Q How much time do you think he should have
18 gotten in jail for molesting [REDACTED]?

19 A I don't know. I don't know.

20 Q Are you glad your husband is in jail?

21 A Yes.

22 Q Why is that?

23 A Because I think he needs to realize the
24 severity of what he has done. No amount of talking
25 from me or anyone is going to teach him that. So he

1 is at a place where he has time to think on his
2 transgressions.

3 Q You have had time to think about what all
4 has happened. Do you feel like there is anything
5 else you should have changed?

6 MR. CORRIGAN: Objection. Asked and
7 answered.

8 A No. I had no idea what was going on.

9 Q Is it true that after your husband
10 admitted to molesting [REDACTED], that you had the
11 locks changed on her room and had a key to her room?

12 A Yes.

13 Q Did you also -- you hid that key from your
14 husband?

15 A Yes.

16 Q Did you and [REDACTED] have access to that
17 room?

18 A Yes.

19 Q Did you do that because -- for how long
20 did you do that for?

21 A For the rest of her time in our home.

22 Q How often would you change the hiding
23 place of the key?

24 A About once a month.

25 Q Okay. So [REDACTED] would lock herself in

Deposition of Michelle Bibby

1 the room and the only people that had access to the
2 key were you and her?

3 A Um-hum, that's correct.

4 Q And did you do that to protect [REDACTED]?

5 A Yes.

6 Q Did you feel like that needed to be done
7 to protect [REDACTED] from your husband?

8 A I felt it needed to be done to give her a
9 sense of security.

10 Q Did you feel like it was necessary to
11 protect her from your husband, though?

12 A No. Because I thought, as the counselors
13 told me, he was cured. But I also realized that she
14 had a sense of insecurity and she asked me if I
15 would put, you know, when we were in counseling one
16 day we talked about different ways that we should
17 make her feel secure. And I don't remember who
18 brought it up, a new doorknob for her room with a
19 key entry.

20 I looked at her and I said, would you like
21 that, and she said, I guess so. So I went out and
22 bought a key lock for her room and she did say she
23 felt more secure.

24 Q Okay. Because she was fearful that it
25 could happen again?

Deposition of Michelle Bibby

1 MR. CORRIGAN: I object to the form.

2 A She wanted her privacy.

3 Q Did you ever think that it could happen
4 again to her?

5 A No.

6 Q Why is that? Why would you think that?

7 A Because I was told that he was cured.

8 Q By who?

9 A By the counselor. You know, they said
10 that he had finished his counseling. DSS said that
11 he completed his counseling with flying colors and
12 they felt he was no longer a threat.

13 Q What counselors told you that he was no
14 longer a threat?

15 A I don't remember.

16 Q Do you remember anybody's name, anyone who
17 told you he was no longer a threat?

18 A DSS. And I don't think they told me he
19 wasn't a threat, per se, but you know, when we
20 finished counseling, you know, they wished us well
21 and said they thought everything would be all right.

22 Q Since your daughter was molested by your
23 husband and now your granddaughter was molested by
24 your husband --

25 A Um-hum.

Deposition of Michelle Bibby

1 Q -- but you don't feel like you should have
2 done anything else differently?

3 MR. CORRIGAN: Object to the form. Asked
4 and answered numerous times.

5 Q You have to answer yes or no.

6 A No.

7 Q Do you have any remorse over the fact your
8 daughter and granddaughter were molested?

9 A No. I wasn't involved. I had no
10 knowledge.

11 Q Are you aware that your husband had
12 molested other children?

13 A No.

14 Q Have you ever been told by your husband
15 that he molested other children?

16 A No.

17 Q Have you ever been told by anyone that he
18 molested other children?

19 A No. The [REDACTED] alleged that their
20 children were touched inappropriately by my husband.

21 Q Besides the [REDACTED], are you aware of any
22 other children that were touched inappropriately by
23 your husband?

24 A No.

25 Q Did he ever tell you that?

Deposition of Michelle Bibby

1 A No.

2 Q When did you become aware that the
3 [REDACTED] children were -- when did you become aware
4 that the [REDACTED] children had alleged that your
5 husband had molested them?

6 A After they spoke with my son.

7 Q And when was that?

8 A Late April, early May of two years ago,
9 2009.

10 Q How long had you known the [REDACTED] prior
11 to that?

12 A Probably about a year, maybe a
13 year-and-a-half.

14 Q Okay. Did you have some conversations
15 with the [REDACTED]?

16 A Yes.

17 Q Were you aware that they were coming over
18 to your house to play?

19 A The children, yes.

20 Q How often did the [REDACTED] children come
21 over to your house to play?

22 A Several times a week.

23 Q Their daughter, [REDACTED], would play with
24 [REDACTED], correct?

25 A Correct.

1 Q They were about the same age?

2 A I think [REDACTED] is a little bit younger, but
3 they were best buds, yeah.

4 Q And would you be at work sometimes while
5 your -- while the [REDACTED] children came over to play
6 with your grandchildren?

7 A Probably.

8 Q Were the [REDACTED] children left alone with
9 your husband, to your knowledge?

10 A Not to my knowledge.

11 Q But you know while you were at work they
12 were left alone with your husband, correct?

13 MR. CORRIGAN: I object to the form.

14 A No.

15 Q Who would have been there?

16 A My son.

17 Q Okay. Besides your son, it would have
18 been your husband and your son at the house,
19 correct?

20 A Yes, with the children.

21 Q And did you ever see your husband with the
22 [REDACTED] children playing with them?

23 A No.

24 Q Did you ever see him talking to the
25 [REDACTED] children?

1 A Yes.

2 Q To your knowledge, was your husband ever
3 with [REDACTED] and [REDACTED] at the same time?

4 A Probably when they were playing in the
5 backyard.

6 Q Okay. How about in the house?

7 A No.

8 Q You said in April that you became aware
9 that the [REDACTED] children were saying that they also
10 were molested by your husband?

11 A Yes.

12 Q Especially [REDACTED], correct?

13 A I didn't know it was specific to her at
14 that time.

15 Q Okay. Prior to April when the [REDACTED]
16 children said they had been molested by your
17 husband, had you ever -- did you ever tell
18 Mr. or Mrs. [REDACTED] that your husband had molested
19 your daughter?

20 A No.

21 MR. CORRIGAN: I object to the form.

22 A I told you we were told not to speak of
23 it.

24 Q Did you ever tell Mr. or Mrs. [REDACTED] not
25 to leave their children alone with your husband?

Deposition of Michelle Bibby

1 A No. I didn't think there was a reason.

2 Q Did you ever tell Mr. or Mrs. [REDACTED] that
3 it might not be safe for their children to come over
4 and play at your house?

5 A No.

6 Q Did you ever tell your daughter, [REDACTED],
7 that maybe she should talk to Mr. or Mrs. [REDACTED]
8 about what had happened to her?

9 A No.

10 Q Did you ever tell your sons to have a
11 conversation with Mr. or Mrs. [REDACTED] about what had
12 occurred with your daughter?

13 A No.

14 Q Did you do anything to protect the [REDACTED]
15 children from your husband?

16 A No.

17 Q How did you -- tell me how you first heard
18 about the [REDACTED] children alleging that they had
19 been --

20 A I got home from work and there was a
21 police car in their driveway. And I went up and
22 spoke with them to make sure everything was okay.

23 Q Okay. And what did you ask them?

24 A I just said, what happened? They said
25 that they thought that it wasn't [REDACTED], it was [REDACTED]

Deposition of Michelle Bibby

1 had been touched. [REDACTED] was crying and everything.

2 And the police officer asked me to make a
3 statement and I just -- he said, what is your, you
4 know, what do you know? I said, I know that I told
5 my son that, you know, my husband was in the
6 hospital and he made this disclosure about my
7 granddaughter. And my son called the [REDACTED]
8 because he knew that the children all played
9 together. So --

10 Q Are you glad that your son called the
11 [REDACTED] to tell them this?

12 A I think he had a right to do it.

13 Q Okay. When did you become aware that [REDACTED]
14 had said that your husband took her and [REDACTED]'s
15 clothes off and touched her tee-tee with his hands?
16 When did you first become aware that she gave that
17 statement?

18 MR. CORRIGAN: I object to the form.

19 A I didn't -- wasn't aware of that
20 statement.

21 Q You haven't heard that in any court case
22 that you have been in?

23 A I do not believe I have heard it, no.

24 Q When did you become aware that -- I am
25 going to paraphrase this -- what -- [REDACTED] has given

Deposition of Michelle Bibby

1 a statement. I am going to ask you to listen to it
2 and tell me what part of the statement, or if any;
3 that you have heard.

4 MR. CORRIGAN: May I see the statement?

5 MR. ANASTOPOULO: I am just paraphrasing
6 from the documents you have given me.

7 MR. CORRIGAN: I want to make sure I have
8 the document.

9 MR. ANASTOPOULO: Let's take a little
10 break.

11 (A recess was taken.)

12 Q Did you have a lock on [REDACTED]'s door?

13 A No.

14 Q So you didn't have a key to her room?

15 A No.

16 Q Who was sleeping in your daughter's old
17 room?

18 A [REDACTED].

19 Q That was the room with the lock?

20 A Yes.

21 (Exhibit No. 1 was marked for
22 identification.)

23 Q I am going to show you what has been
24 marked as Exhibit Number 1.

25 MR. CORRIGAN: May I see it first?

Deposition of Michelle Bibby

1 MR. ANASTOPOULO: Sure.

2 MR. CORRIGAN: I see the statement. I
3 can't read the signature. Are you telling me
4 that a small child signed that signature?

5 MR. ANASTOPOULO: Her son, not her
6 grandson.

7 MR. CORRIGAN: Sorry. What was this
8 attached to?

9 MR. ANASTOPOULO: It is the statement he
10 gave.

11 MR. CORRIGAN: Well, there are a number of
12 statements from a number of places.

13 MR. ANASTOPOULO: He gave that to the
14 police.

15 MR. CORRIGAN: I have never seen this, to
16 my recollection. I have the discovery
17 responses here. Did they come separately?

18 MR. ANASTOPOULO: It would have been from
19 the Dorchester Children's Center pamphlet
20 part -- no, it would have been in the Goose
21 Creek part, yeah. Goose Creek police.

22 MR. CORRIGAN: What I am telling you is
23 the only statements I have are typewritten.
24 Let me just read this and we may not have a
25 problem.

Deposition of Michelle Bibby

1 MR. ANASTOPOULOU: Okay.

2 MR. CORRIGAN: Can you tell me where we
3 can look -- can you show me what this was
4 attached to? I don't want to look at work
5 product, but.

6 MR. WILLEY: Goose Creek Police
7 Department.

8 MR. CORRIGAN: This is all new to me.

9 MR. WILLEY: Taken on 5-20.

10 MR. CORRIGAN: Let me have her read this
11 and we can discuss whether I can talk to her or
12 not or if she needs to.

13 Q For the record, I am going to show you
14 what has been marked as Plaintiffs' Exhibit 1 and
15 ask you to read it and let me know if you have ever
16 seen this before.

17 Have you ever seen that before?

18 A Yes.

19 Q In it your son says that he -- for the
20 past two years he had caught your husband looking at
21 child pornography on the Internet from time to time.
22 Were you aware of that?

23 MR. CORRIGAN: I object to the form.

24 Aware that the statement says that or --

25 Q First of all, were you aware the statement

1 said that?

2 A Yes. After I read it, yes.

3 Q Were you aware that your son had seen your
4 husband for the past two years prior to him being
5 arrested looking at child pornography on the
6 Internet?

7 A I don't recollect. He might have told me,
8 but I don't -- I don't remember.

9 Q If he had told you that, do you feel like
10 you should have done something to protect [REDACTED]?

11 A If he had told me, I would have told my
12 husband he wasn't, you know, to get rid of the
13 computer.

14 Q You would have told him to get rid of the
15 computer?

16 A Yes.

17 Q Is there anything else you would have told
18 him?

19 A No. Because I had no idea that that -- I
20 thought the computer was just another one of his
21 obsessions.

22 Q How often was he on the computer?

23 A Probably every day.

24 Q Had you seen him on the Internet looking
25 at inappropriate stuff?

Deposition of Michelle Bibby

1 A Several times, I caught him looking at
2 adult images and I told him to turn it off.

3 MR. CORRIGAN: I don't have those
4 written -- I can't find that statement. I
5 don't know if there are others.

6 MR. ANASTOPOULO: We will be happy to get
7 you a copy.

8 MR. WILLEY: I can get you copies.

9 MR. CORRIGAN: And if you have any others
10 like that that you intend to use.

11 (Exhibit No. 2 was marked for
12 identification.)

13 Q And just to follow up on this, if your
14 husband had been looking at child pornography for
15 two years prior to him being arrested, that would be
16 the same time that the [REDACTED] children were coming
17 over to the house, correct?

18 MR. CORRIGAN: Objection.

19 A I don't know.

20 Q I am going to show you what has been
21 marked as Plaintiffs' Exhibit 2 and ask you if you
22 can look at it and if you have ever seen that
23 document.

24 MR. CORRIGAN: I haven't seen this. I am
25 reading it. This is dated 7-'89, it doesn't

1 indicate when it was taken or who recorded it.

2 (Off-the-record.)

3 Q Back on the record. I have shown you what
4 has been marked as Exhibit 2. You were at -- let me
5 go through all of the hearings you were at. You
6 were at the bond hearing, correct?

7 A I believe.

8 Q You were at his guilty plea, correct?

9 A Yes.

10 Q You were at his probation violation
11 hearing, correct?

12 A Yes.

13 Q You were at the hearing where he was sued
14 by the [REDACTED]?

15 A Yes.

16 Q And then have you ever seen what has been
17 marked as Exhibit 2 before?

18 A I don't believe I have seen that.

19 Q What is being alleged in this statement by
20 [REDACTED], had you ever heard that before at any hearing
21 or by anyone before?

22 A I think that was talked about at the suit.

23 Q The civil suit against your husband?

24 A Yes.

25 Q In it [REDACTED] says that while she was in

Deposition of Michelle Bibby

1 [REDACTED]'s room, Mr. Bibby took their clothes off and
2 that he touched her boobs and her tee-tee with his
3 hands. That he had [REDACTED] touch [REDACTED]'s boobs and
4 tee-tee and put her mouth in those areas. [REDACTED] also
5 stated that Mr. Bibby touched [REDACTED] on her boobs
6 and her tee-tee. [REDACTED] said she touched [REDACTED] on
7 her hands and that Mr. Bibby then took his clothes
8 off. He then gave her cookies and put the cookies
9 in his mouth and he crushed the cookies and put it
10 in her butt. He then put it in [REDACTED]'s butt. She
11 said Mr. Bibby put powder in her pee-pee and that he
12 wanted her to touch his wiener and she said, no, and
13 he said yes.

14 She started crying, spanking her, and he
15 called her nigger and motherfucker. She then stated
16 that she touched [REDACTED]'s mouth with her hand and
17 she put her mouth on [REDACTED]'s boobs and tee-tee.
18 [REDACTED] then stated that she saw sex on a movie and
19 that in the movie she saw boobs and a wiener.

20 MR. CORRIGAN: Is there a question?

21 Q Are you aware of all of these allegations?

22 A Only since I heard them.

23 Q Do you believe the statement that [REDACTED]
24 gave?

25 A That wasn't [REDACTED]'s statement.

1 Q I mean [REDACTED]; do you believe the statement
2 [REDACTED] gave?

3 A No.

4 Q Why is that?

5 A Because I have never heard my husband say
6 MF and I have never ever heard him call somebody
7 nigger. And it would be sick, the things that she
8 said. It is just sick.

9 Q And that is the reason -- is that the only
10 reason you don't believe [REDACTED]?

11 A Yes. Because I am sure that if that
12 happened, they would have come and told somebody.

13 Q Who would have?

14 A Either [REDACTED] or [REDACTED]. And when did it
15 happen? During the day? You know, there was always
16 more children around and things going on. I mean,
17 somebody else would have known if this happened.

18 Q And because of that, you are saying
19 that -- do you think [REDACTED] is telling the truth?

20 A I don't think [REDACTED] is telling the truth..

21 MR. CORRIGAN: Objection. You have read a
22 selective part of that document and
23 deliberately, I think, skipped certain aspects.

24 MR. ANASTOPOULO: She can comment on any
25 of it..

Deposition of Michelle Bibby

1 MR. CORRIGAN: She doesn't have it in
2 front of her now; you do.

3 Q Do you believe that [REDACTED] was molested by
4 your husband?

5 A No, I don't.

6 Q Why not?

7 A Because I asked him point-blank and he
8 told me, no. And whenever he has been caught or
9 questioned about something he has done, he will
10 'fess up to it.

11 Q Has your -- throughout your marriage, has
12 your husband ever lied to you about anything?

13 A Not that I am aware of.

14 Q Why do you think a six-year-old would make
15 up allegations like this?

16 MR. CORRIGAN: Objection.. Pure
17 speculation. Witness is not qualified to give
18 such testimony.

19 Q Do you have an opinion on why a child
20 would say these allegations?

21 MR. CORRIGAN: Same objection.

22 A Because she was coached, is all I can say.
23 And that she has seen pornography that her parents
24 watched.

25 Q What evidence do you have of that?

1 A My son has said that he watched movies at
2 their house.

3 Q Which son said that?

4 A [REDACTED].

5 Q Did he say any children were around?

6 A No. I never asked him.

7 Q Okay. So because of that you think she
8 was coached?

9 A I think -- I believe she was coached.

10 Q Okay. If your husband had not admitted to
11 doing what he did to [REDACTED], would you have believed
12 [REDACTED]?

13 A Yes.

14 Q Now, why would you believe [REDACTED] and not
15 [REDACTED]?

16 A Because if [REDACTED] told me what was
17 happening and I confronted him, he would tell me.
18 He did, when I -- when my daughter, when I found out
19 about my daughter and I confronted him, he admitted
20 what he did.

21 Q What if --

22 A And he started crying, and he did the same
23 thing when I found out about [REDACTED] and I confronted
24 him, he started crying. When I told him what they
25 said, he said that never happened.

Deposition of Michelle Bibby

1 Q And do you think it is just coincidental
2 that a child the same age as Ashley who was playing
3 over at your house would also say that she was
4 molested at the same time [REDACTED] was?

5 MR. CORRIGAN: I object to the form.

6 A Would you repeat?

7 Q Do you think it is a coincidence that a
8 child the same sex, same age, playing with [REDACTED] at
9 the same time she is getting molested said the same
10 thing happened to her? Do you think it is just a
11 coincidence?

12 A I don't know when [REDACTED] was molested so I
13 can't answer that.

14 Q If your husband had not admitted, if he
15 said he had not molested [REDACTED], would you have
16 believed [REDACTED]?

17 A I would have taken her to the doctor and I
18 would have had someone forensically interview her,
19 yes, I would have done that.

20 Q Would you have believed her just from her
21 saying it?

22 MR. CORRIGAN: I object to the form.

23 Asked and answered.

24 A Yes.

25 Q Knowing what you know now about [REDACTED]

1 being molested, do you feel like you should have put
2 a lock on her door?

3 MR. CORRIGAN: Objection.

4 A I had no knowledge that it happened. And
5 if I thought there was anything going on, he
6 wouldn't have been in the house.

7 Q The question was knowing what you know
8 now, you know he did molest [REDACTED], you know he did
9 molest your daughter, do you feel that you should
10 have put a lock on [REDACTED]'s door?

11 MR. CORRIGAN: Objection. Calls for pure
12 speculation. And it is not a question that
13 could be answered.

14 MR. ANASTOPOULO: You can only object to
15 the form.

16 Q Do you feel like you should have put a
17 lock on [REDACTED]'s door?

18 MR. CORRIGAN: I object to the form and I
19 object to impossible questions being asked.

20 MR. ANASTOPOULO: That is fine.

21 Q You can answer.

22 A If I had known, if I had any suspicion
23 that anything would happen to [REDACTED], I would have
24 put a lock on her door, but he would not have been
25 in my house.

Deposition of Michelle Bibby

1 Q Let me show you once again what has been
2 marked as Exhibit Number 1. Your son also wrote
3 that at the bottom, it says, my father vacated the
4 computer from the premises in fear of being told on
5 by my children or myself.

6 That is completely different than what you
7 are saying the reason the computer was removed from
8 the house.

9 MR. CORRIGAN: Objection. Pitting
10 witnesses, not appropriate.

11 Q Correct? Isn't that correct? It is
12 completely different from what you say happened?

13 A It is different. I was told that the
14 computer was down, that it had crashed or whatever
15 the term is, and that he wanted to take it to
16 Goodwill.

17 Q Do you believe your son's statement where
18 it says your husband vacated the computer from the
19 premises in fear of being told on by his children or
20 himself -- told on by my children or myself; do you
21 agree with that statement?

22 A I don't know.

23 Q What evidence do you have that [REDACTED]
24 [REDACTED] was coached?

25 MR. CORRIGAN: Objection. Asked and

1 answered.

2 A I was told, I don't remember by whom, I
3 don't remember if it was in a Rule 5 or not, but
4 that it was alleged that [REDACTED] and [REDACTED] were in
5 Ashley's bedroom and that Mr. and Mrs. [REDACTED] were
6 in there, as my husband and I were in there, as my
7 son was in there, and we watched and cheered as
8 [REDACTED] and [REDACTED] were molested. Now, if that was the
9 case, we would all be under the jailhouse if I had
10 any notion of that.

11 Q I didn't understand what you said.
12 Explain that one more time.

13 A Somewhere stated that [REDACTED] said that she
14 and [REDACTED] were in my daughter's room, that Mr. and
15 Mrs. [REDACTED] were in that room, [REDACTED] was in that
16 room, [REDACTED] and [REDACTED] and my son were in that room,
17 and we were all cheering my husband on while he
18 touched them.

19 Q You stated you have seen a document saying
20 this?

21 A There is something written somewhere. My
22 son told me that he saw this or he was told this by
23 the solicitor. That is why I don't believe any of
24 this.

25 Q Have you seen that document?

Deposition of Michelle Bibby

1 A I don't believe I have.

2 Q Okay. So you are -- that is the only --
3 is that the only evidence that you have that [REDACTED]
4 was coached?

5 A I think that would be enough. What
6 parent, what parents would witness something like
7 that and laugh and not do a dang thing about it?

8 Q So --

9 A We would all be culpable of his actions if
10 we sat and watched it.

11 Q So do you believe Mrs. [REDACTED] was in the
12 room while your husband was molesting [REDACTED]?

13 A No, I don't.

14 MR. CORRIGAN: I object to the form.

15 A I don't believe it.

16 Q Then that is what you are saying was in a
17 document?

18 A That is somewhere, my son told me.

19 Q Okay. If you don't believe it, why would
20 you think that -- how does that -- I don't
21 understand how that document infers that the child
22 was coached.

23 MR. CORRIGAN: Objection. That is not a
24 question.

25 A Because --

Deposition of Michelle Bibby

1 MR. CORRIGAN: You don't have to answer.

2 There is no question pending.

3 A Okay.

4 Q I don't understand it. Do you believe
5 that a child that is molested can have potential
6 negative outcomes after they have been molested?

7 MR. CORRIGAN: Objection. Not qualified
8 to testify to the questions you are asking.

9 Q You can answer.

10 A Would you state the question again?

11 Q Do you believe a child that is molested
12 can have potential negative outcomes after they have
13 been molested?

14 A Outcomes of what?

15 Q Negative outcomes. They can have all
16 sorts of things, nightmares, they could have
17 suicidal tendencies, they can have behavioral
18 problems, fear, post-traumatic stress? Do you
19 believe any of those negative outcomes can be
20 attributed to a child being molested?

21 MR. CORRIGAN: Objection.

22 A I don't know. I haven't read any case
23 reports.

24 Q Now, there was a \$2.5 million judgment
25 against your husband for the molestations he did on

Deposition of Michelle Bibby

1 the [REDACTED] children. You are aware of that,
2 correct?

3 A Yes.

4 Q And do you think that that amount was fair
5 to be awarded to them for what your husband had
6 done?

7 MR. CORRIGAN: Objection.

8 A No.

9 Q Why is that?

10 MR. CORRIGAN: I would instruct the
11 witness not to answer this line of questioning.
12 You are asking her to second-guess a judge.
13 You failed to mention it was a default
14 declaration and he is not --

15 MR. ANASTOPOULO: It is my understanding
16 you can object to the form of the question, so
17 we will have to certify them and bring that up
18 to a judge, if you are instructing her not to
19 answer.

20 Q Do you own your house?

21 A Yes.

22 Q Who is the house registered in, whose
23 name?

24 A Both of ours.

25 Q The [REDACTED] is in both of your

Deposition of Michelle Bibby

1 names?

2 A Yes.

3 Q Do you or your husband own any other real
4 property?

5 A Just our vehicles.

6 Q Have you talked to any attorney -- I don't
7 want to -- how much is your house worth
8 approximately? How much is it appraised at?

9 A The appraised value by the City is
10 \$85,000.

11 Q How much is owed on it?

12 A I don't know.

13 Q You own some cars, you said?

14 A We have two vehicles.

15 Q Any other personal property or real
16 property?

17 A None.

18 Q Does your husband have any type of
19 retirement?

20 A Military retirement.

21 Q Okay. How much is he getting in military
22 pay a month?

23 A \$1,400, I think.

24 Q Is that currently going to you?

25 A Currently, yes.

Deposition of Michelle Bibby

1 Q Are you aware that with this judgment that
2 the [REDACTED] can go after your house?

3 MR. CORRIGAN: I object to the form.

4 Q Are you aware of that?

5 A That they can go after my house? They can
6 try.

7 Q Do you have any attorney representing you
8 on that?

9 A On my house?

10 Q Yeah.

11 A No.

12 Q Did any of your other children ever
13 complain about any things done by your husband to
14 them, any physical abuse?

15 A Yes.

16 Q Which one?

17 A Both of my boys, but it wasn't sexual
18 abuse. It was that when I was not home he would hit
19 them.

20 Q All right. Did you do anything to protect
21 your sons from being hit by your husband?

22 A Took my boys to counseling. I reported my
23 husband to DSS when Donald was six years old because
24 he spanked him and left bruises.

25 Q When you say he hit them, what -- can you

1 describe -- did you ever witness any of the
2 hittings?

3 A On occasion.

4 Q What did you witness?

5 A I witnessed him trying to hit my sons when
6 they were teenagers and always in trouble. If I
7 thought he was overboard, I would jump in.

8 Q What would you consider overboard?

9 A When he started smacking them.

10 Q In the face?

11 A Yeah. Well, no, he never really hit them
12 in the face. It was pushing, shoving, you know,

13 being -- trying to be intimidating and --

14 Q Did this happen a lot?

15 A Well, it depends on how you qualify a lot.

16 Q Okay. How many times a week?

17 A Maybe once a month or something.

18 Q Did you ever -- did you ever have to take
19 any of your children to the doctor or a hospital
20 from being hit by your husband?

21 A No.

22 Q Were your children in fear of him?

23 A I don't think so.

24 Q What kind of things would you do to
25 protect your two boys from being hit?

Deposition of Michelle Bibby

1 A I would jump in and I would tell my
2 husband to go cool off somewhere.

3 Q Have your children ever discussed how they
4 felt about how their father treated them?

5 A In their adult years, yes, we have
6 discussed it.

7 Q What would they say?

8 A Well, they would say that when I wasn't
9 around, that he would push them around and stuff and
10 that he was mean.

11 Q Were they in fear?

12 A No. I think they just -- I don't know how
13 they felt. I know that they are angry with him for
14 their lack of a father because they didn't consider
15 him to be a father when they were growing up. That
16 he acted more loving and more paternal towards the
17 grandchildren than he ever treated them.

18 Q Your one son describes what happened to
19 [REDACTED] as a rape. Do you feel like it was a rape?

20 A In a broad sense of the word, it was a
21 very traumatic thing. And maybe not a physical rape
22 but a mental or emotional rape, yeah, maybe.

23 Q You said your husband was impotent. How
24 long has he been impotent for?

25 A He has had problems since probably about

1 10 years.

2 Q Did you ever watch pornography with him?

3 A He made me watch about maybe four or five
4 movies, but I hated them and I would tell him turn
5 it off or I would read a book, you know, I just --
6 but the doctors told him to -- that that might be
7 stimulating for him and it might help his problem,
8 but it didn't. I never wanted to be used after he
9 watched one because it wasn't me he was wanting.

10 Q Did he ever try to get you to do anything
11 with any sexual devices?

12 MR. CORRIGAN: Objection. Instruct the
13 witness not to answer.

14 Q You can answer.

15 MR. CORRIGAN: No. I just instructed her
16 not to answer. That is a question even in this
17 case way beyond the pale. It has absolutely no
18 relevance whatsoever.

19 Q Are you aware of when the probation office
20 came to his house and there was a sexual device
21 there?

22 A Yes.

23 Q Is that a device that he had used with --
24 do you know why he had that device there?

25 A It was to excite himself, I guess. I

Deposition of Michelle Bibby

1 don't know.

2 Q Had you ever seen a device like that in
3 your house before?

4 A Yes.

5 Q And -- but it is a vibrator, correct?

6 A Yes.

7 Q Where did he keep that?

8 A In his drawer.

9 Q You were aware of that throughout -- how
10 long did he have it at your house?

11 A I have no idea.

12 Q But you were aware it was there?

13 A Yes.

14 MR. CORRIGAN: Objection. Asked and
15 answered.

16 Q Have you, since the molestation of [REDACTED]
17 and allegations of the [REDACTED] children, have you
18 sought any help?

19 A Yes.

20 Q Who have you been going to? Who have you
21 gone to?

22 A [REDACTED].

23 Q Where is she?

24 A Goose Creek Center for Mental Health on
25 Redbank Road.

Deposition of Michelle Bibby

1 Q Who else?

2 A I saw Mr. [REDACTED] at Dorchester Counseling
3 Center for -- DSS requested that I go for victim's
4 counseling.

5 Q That is Dorchester Counseling Center?

6 A Yes.

7 Q Who was -- I'm sorry?

8 A I think his last name was [REDACTED].

9 Q Anybody else you can think of?

10 A No, I think that's all.

11 Q Have you received any treatment for not
12 protecting the children?

13 A No.

14 Q Has that ever been part of your treatment
15 plan?

16 A No.

17 Q Have you had any discussions with any
18 counselors about what you should have done to
19 protect the children that were molested?

20 MR. CORRIGAN: I object to the form of the
21 question.

22 A (Witness shakes head.)

23 Q Answer yes or no.

24 A No.

25 Q When you saw [REDACTED] at Goose Creek

Deposition of Michelle Bibby

1 Center, how many times have you been to her?

2 A I can't say. I don't know offhand.

3 Q What does she work on with you?

4 A Just dealing with the stress of all of the
5 different legal things that are -- have happened in
6 the last two years, and working with my grandson.

7 Q Have you been receiving any help on -- do
8 you feel like you need to receive any help on what
9 you can do to protect other children?

10 A No. I have took the -- that -- what is it
11 called? A course for fighting and defending
12 children against sexual abuse. I forget what it's
13 called. It was offered through the Charleston
14 County system and I went to the course. Off the top
15 of my head I have forgotten what it's called.

16 Q Even though two children have been
17 molested right under your roof, you still are trying
18 to get custody of how many children?

19 A Two.

20 MR. CORRIGAN: Objection.

21 Q You feel that is appropriate?

22 A Yes.

23 Q Who did your husband go to after he was --
24 he went to Palmetto Behavior? Who else did he go to
25 for treatment?

Deposition of Michelle Bibby

1 A I have no idea. I know he did, but I have
2 no idea because that was between him and the courts
3 and the probation officer. We are separated.

4 Q Prior to him pleading guilty, who did he
5 go to?

6 A I don't know.

7 Q You weren't in court when they read
8 assessment on him by a doctor?

9 A Oh, [REDACTED].

10 Q Dr. [REDACTED]?

11 A Yeah.

12 Q Who referred him to Dr. [REDACTED]?

13 A I don't know.

14 Q Do you remember what was said in court
15 that Dr. [REDACTED] -- what he had said or what was in
16 his report?

17 A He said that he was -- I can't remember
18 off the top of my head.

19 Q Who paid for Ms. [REDACTED], legal fees, to
20 represent your husband?

21 A He did.

22 Q Did you go with him?

23 A To a couple of the meetings.

24 Q And you -- and it was to strategize how to
25 keep him out of jail?

Deposition of Michelle Bibby

1 MR. CORRIGAN: Objection. Subject to
2 marital privileges and attorney-client
3 privilege. Go ahead and ask the next question.

4 Q Was your reason for going with him to the
5 attorney's office, was it to support him?

6 A No. It was to find out where we stood
7 with all of the legal matters that were going on.
8 And our primary purpose in the beginning was how I
9 could get custody of [REDACTED] and [REDACTED].

10 Q Who has custody of them now?

11 A Their mother has temporary custody.

12 Q You don't think that is appropriate?

13 A No.

14 Q You feel like you are the better custodial
15 parent, even though she was molested right under
16 your roof?

17 MR. CORRIGAN: I object to the form.

18 A I didn't know she was molested under my
19 roof.

20 Q Assuming what [REDACTED] said is correct, what
21 happened to her, do you feel like you owe the
22 [REDACTED] an apology?

23 MR. CORRIGAN: Objection.

24 A Do I owe them an apology? No. It was
25 not -- I was not involved in the alleged incident.

1 Q If their daughter was molested by your
2 husband, do you feel any sympathy for the [REDACTED]?

3 MR. CORRIGAN: Objection. Speculation.

4 A If their daughter was touched by my
5 husband, I have sympathy for the child, not the
6 parents.

7 Q If the child was molested by your husband,
8 do you now feel like you should have told them that
9 your daughter was molested years ago?

10 A No.

11 MR. CORRIGAN: Objection. Speculation.

12 A Because I was directed by officials of the
13 State not to say anything.

14 Q Do you feel that you should have told the
15 [REDACTED] that your son had seen your husband
16 watching child pornography on the Internet on
17 numerous times?

18 A No, because he was friends with them and I
19 am sure he would have said something to them.

20 Q So do you feel like he should have said
21 something instead of you?

22 A Yes, because I never saw child pornography
23 in my house.

24 Q Did you ever tell the [REDACTED] that you
25 had a special lock for your daughter's room?

1 A Why would I? No.

2 Q And then you never told them that you had
3 a lock for that room and that you and her were the
4 only ones with a key?

5 A No.

6 Q How do you think we would know that that
7 happened?

8 MR. CORRIGAN: Objection. You are asking
9 a witness how you know something?

10 Q Do you know how we would know that?

11 A No.

12 Q Do you feel like you should have told them
13 that before their daughter was molested instead of
14 after?

15 MR. CORRIGAN: Objection.

16 A No.

17 Q When did you first take a course on
18 spotting sexual abuse?

19 A After the fact.

20 Q Which fact?

21 A After my husband told me that he touched
22 Ashley.

23 Q What did they teach you that you should do
24 to spot sexual abuse?

25 A There were signs to look for in the child.

1 It also said that a lot of children are
2 inappropriately touched by family members, by
3 community members, whatever, and they never tell.
4 And then there are those that tell. And
5 some of the symptoms that they would have, their
6 actions. And some, yes, I did realize after that
7 class that [REDACTED] did exhibit.

8 Q What were those?

9 A Frequent UTIs and reverting back to
10 bedwetting. And then there was, you know, different
11 things that you can do or ways to be with your
12 children or don't let them play at the park by
13 themselves. Just different things, you know, when
14 they are out in the neighborhood know the parents
15 and make unscheduled visits.

16 Q Do they teach you whether or not you
17 should ever leave them alone with someone who had
18 been -- admitted sexually molesting other children?

19 A It might have said in there, I am not
20 sure.

21 Q Said never leave them alone?

22 A I said I am not sure.

23 Q Did they also teach you that you should
24 inform other parents not to leave their children
25 alone with a person that you suspect of molesting --

Deposition of Michelle Bibby

1 A I don't remember.

2 Q You admit that you knew that Daniel Bibby,
3 Senior, was left alone with the plaintiff [REDACTED]
4 [REDACTED] and [REDACTED]?

5 A No.

6 MR. CORRIGAN: I object to the form.

7 Q You don't admit that?

8 A I don't admit that they were ever alone
9 because there was always other children in the
10 house, and my son; if they, in fact, came in,
11 because my husband did not permit the children in
12 the house. I am the one when I was home who let the
13 children in the house.

14 Q Do you admit or not that you knew Daniel
15 Bibby, Senior, had the propensity to engage in
16 sexual activity with minors prior to the [REDACTED]
17 children coming into your house?

18 MR. CORRIGAN: I object to the form.

19 A I know that he touched my daughter. I was
20 told that he was no longer a problem, that this
21 behavior was no longer a problem.

22 Q Do you admit that you owe a duty to people
23 coming into your house to make sure they are safe
24 while they are visiting there?

25 MR. CORRIGAN: Objection. Instruct you

Deposition of Michelle Bibby

1 not to answer a legal question. She is not a
2 lawyer.

3 MR. ANASTOPOULO: Certify that question,
4 ma'am.

5 MR. CORRIGAN: You don't have to certify.
6 That is not the procedure anymore.

7 Q Do you admit you should keep the place
8 safe for people coming into your house?

9 A My house is safe. My husband is no longer
10 living with me.

11 Q Do you think it would have been
12 inappropriate to leave the [REDACTED] children alone
13 with your husband?

14 A If they did, but they never were alone
15 with him.

16 Q But the question is do you think it would
17 be inappropriate to leave your husband alone with
18 any of the [REDACTED] children?

19 A Knowing what I know today, probably, yes.

20 Q When the [REDACTED] children were at your
21 house, do you think it would have been inappropriate
22 to leave your husband alone with any of the [REDACTED]
23 children?

24 MR. CORRIGAN: Objection.

25 A To my knowledge, they never were alone

Deposition of Michelle Bibby

1 with my husband.

2 Q But if they were, do you think it would be
3 appropriate to leave any of the [REDACTED] children
4 alone with your husband?

5 MR. CORRIGAN: Objection. Asked and
6 answered.

7 MR. ANASTOPOULO: She hasn't answered the
8 question.

9 MR. CORRIGAN: I disagree. Objection.
10 Asked and answered.

11 MR. ANASTOPOULO: Well, I can ask it
12 again.

13 MR. CORRIGAN: Until the point it becomes
14 abusive, yes.

15 Q Do you think it would be inappropriate to
16 leave your husband alone with any of the [REDACTED]
17 children at the time the [REDACTED] children were
18 there?

19 A I didn't think it was inappropriate at the
20 time. They never were alone with him.

21 MR. CORRIGAN: Objection to that question.

22 Q Your husband was in jail for 137 days
23 prior to him being sentenced, is that correct?

24 A I don't know.

25 Q Does that sound about right?

Deposition of Michelle Bibby

1 A I guess. I don't know.

2 Q Have you ever talked to Mr. and

3 Mrs. [REDACTED] about the allegations of their children
4 being molested?

5 A Not since all of this happened.

6 Q At the time it happened, did you talk to
7 them?

8 A Briefly that day, yes.

9 Q What did you say?

10 A That if it had happened, I was sorry.

11 Q Your testimony, sitting here today, you do
12 not believe it happened?

13 A I do not believe it happened.

14 Q It is your testimony that you believe that
15 the children are not telling the truth?

16 A That's correct.

17 Q Do you believe the children would lie
18 about something like that?

19 A If they are coached, yes.

20 Q Now, the police arrested your husband for
21 what happened to the [REDACTED] children, correct?

22 A Yes.

23 Q Did a preliminary hearing occur, do you
24 know? Were you at a preliminary hearing where they
25 determine probable cause, do you remember that?

Deposition of Michelle Bibby

1 A I don't remember.

2 Q In April, you said that the children were
3 taken away from your house prior to your husband
4 being arrested. Why were they taken away?

5 A I told you my son popped his son in the
6 mouth for talking back and there was a bruise on my
7 grandson's face. But he had been tumbling with the
8 [REDACTED] children in their front yard that same day,
9 so we don't know whether the bruise came, because
10 the bruise was up here and not here. But the DSS
11 worker contended that my son's hand was so big that
12 it left a bruise on his forehead.

13 Q Do you believe your son did it?

14 A That he smacked his son, yes, I do.
15 Because he called me at work and told me that he
16 popped his son in the mouth. I told him, I said,
17 why? He said, because he is being a fresh mouth to
18 me and back talking. I told him, I said, that is
19 not the way to handle that.

20 Q Your husband was put on a \$20,000 bond, is
21 that correct?

22 A Maybe. I don't remember.

23 Q Was he ever let out on bond?

24 A No, I don't think so. I don't remember.

25 Q You don't remember if he get out after he

Deposition of Michelle Bibby

1 was put on bond?

2 A I don't think so. I don't remember.

3 Q Had he ever been arrested for anything
4 prior to this incident?

5 A Back in New Jersey before we got married
6 he had a DUI.

7 Q Did your husband have a drinking problem?

8 A He was a recovering alcoholic. He has 27
9 years sober.

10 Q You said he had a gambling problem?

11 A He gambled away his paycheck for about
12 five years, yeah.

13 Q What would he gamble on?

14 A Poker machines.

15 Q To your knowledge, did your husband ever
16 get up in the middle of the night and go into
17 another room?

18 A He used to get up and go into the living
19 room and read.

20 Q How do you know he went into the living
21 room and not somewhere else?

22 A Because if I -- if I felt him get up or if
23 I woke up and he wasn't there, I always got up to
24 make sure he was all right because he had breathing
25 problems.

Deposition of Michelle Bibby

1 Q How often would he get up in the middle of
2 the night and go in another room?

3 A I couldn't tell you. I don't know.

4 Q The place in Dorchester you said you were
5 going to, what is the name?

6 A Dorchester Counseling Center.

7 Q How many times did you go there?

8 A About eight.

9 Q Is that the same place as the Dorchester
10 Children's Center?

11 A No, it is different.

12 Q Is DSS still involved in the case?

13 A No, they have closed the case.

14 Q Who is your Court-appointed attorney on
15 that, do you remember?

16 A I think it was [REDACTED] was my son's
17 attorney and [REDACTED] represented me.

18 Q You paid her?

19 A Yes, sir. Actually my husband paid her.

20 MR. ANASTOPOULO: I think that's it.

21 EXAMINATION

22 BY MR. CORRIGAN:

23 Q I have a couple of questions. Can I have
24 Exhibit Number 2? And if I may have the rest of the
25 document?

1 Mrs. Bibby, you were asked a whole series
2 of questions starting out by some version of if [REDACTED]
3 was abused, you would have to accept her statement.
4 Would you agree that those type questions have been
5 presented to you?

6 A No.

7 Q No? Okay. The question I have is you
8 have been asked to assume [REDACTED] was abused by Daniel
9 Bibby. You were asked numerous questions. Do you
10 recall that?

11 A Yes.

12 Q And Exhibit Number 2 that Mr. Anastopoulo
13 read extensively from states that [REDACTED] provided
14 disclosure of sexual abuse against Mr. Daniel Bibby,
15 Senior. [REDACTED] provided disclosure of sexual abuse
16 against [REDACTED] [REDACTED] provided
17 disclosure of sexual abuse against her brother, [REDACTED]
18 [REDACTED]. And [REDACTED] provided disclosure of
19 exposure to pornography against Mr. Daniel Bibby.

20 If you are to accept the premise that
21 whatever [REDACTED] said was true, would you then have to
22 accept that [REDACTED] was sexually abused by [REDACTED]
23 [REDACTED] and her brother?

24 A If I accepted that that Mr. Bibby, Senior,
25 was, then, yes.

Deposition of Michelle Bibby

1 Q Have you ever seen the forensic interviews
2 that were taped?

3 A No.

4 MR. CORRIGAN: If I could have marked as
5 2A the first six pages.

6 (Exhibit No. 2A was marked for
7 identification.)

8 Q Now, taking this document as a whole, have
9 you seen this before today?

10 A I don't believe so. I don't think I have.

11 Q If you go to the last page with
12 recommendations, who are those recommendations
13 directed toward?

14 A Mr. and Mrs. [REDACTED].

15 Q So this would appear to be a document
16 having to do with Dorchester Children's Center
17 forensic interview report?

18 A Um-hum.

19 Q And the [REDACTED]?

20 A Yes.

21 MR. CORRIGAN: That's all I have. Thank
22 you.

23 EXAMINATION

24 BY MR. ANASTOPOULO:

25 Q [REDACTED] and Daniel Bibby,

Deposition of Michelle Bibby

1 Senior, that is the same name, Daniel Bibby,
2 correct?

3 A Yes.

4 Q Are you aware that they concluded later on
5 when she was talking about [REDACTED]
6 that she meant Daniel Bibby, Senior?

7 A Yes.

8 Q And you are aware there has never been any
9 allegations against your son, correct?

10 A Right.

11 Q And the allegations of the brother made
12 was that your husband had included him, are you
13 aware of that?

14 MR. CORRIGAN: I object to the form.

15 A No.

16 Q And [REDACTED] brother was seven years
17 old, is that correct?

18 A I have no idea of his age, seven or eight.

19 MR. ANASTOPOULO: No further questions.

20 (The deposition concluded at 2:05

21 P.M.)

22

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Deposition of Michelle Bibby

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF CHARLESTON)

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I, Wanda S. Buckner, Registered Professional Reporter, Certified Realtime Reporter and Notary Public for the State of South Carolina, at Large, do hereby certify that the witness in the foregoing deposition was by me duly sworn or affirmed to testify to the truth, the whole truth, and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and location therein stated; that the testimony of the witness and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed by computer-aided transcription; that the foregoing is a full, complete and true record of the testimony of the witness and of all objections made at the time of examination; and that the witness was given an opportunity to read and correct said deposition and to subscribe to the same.

Should the signature of the witness not be affixed to the deposition, the witness shall not have availed himself/herself of the opportunity to sign or the signature has been waived.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal, this 20th day of July, 2011, at Charleston, Charleston County, South Carolina.

Wanda S. Buckner

Wanda S. Buckner
NCRA Registered Professional Reporter
NCRA Certified Realtime Reporter
My Commission Expires: August 20, 2013

Deposition of Michelle Bibby

CERTIFIED QUESTION

1

2

3 Page 88, Line 4:

4 Q And do you think that that amount was fair
5 to be awarded to them for what your husband had
6 done?

7

8 Page 102, Line 23:

9 Q Do you admit that you owe a duty to people
10 coming into your house to make sure they are safe
11 while they are visiting there?

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COPY

1 IN THE COURT OF COMMON PLEAS
2 FOR THE STATE OF SOUTH CAROLINA
3 BERKELEY COUNTY
4 CASE NO: 2010-CP-08-3732

5 DEPOSITION OF [REDACTED]

6 [REDACTED] as Parent and Natural Guardian of

7 [REDACTED], [REDACTED], and [REDACTED]

8 PLAINTIFFS,

9 vs.

10 DANIEL BIBBY, SR., and MICHELLE BIBBY,

11 DEFENDANTS.
12
13 -----

14 WITNESS: [REDACTED]

15 DATE: JULY 7, 2011

16 TIME: 2:55 P.M.

17 LOCATION: ANASTOPOULO LAW FIRM
18 2850 Ashley Phosphate Rd., Ste. B
19 North Charleston, SC 29418
20 -----

21 REPORTED BY:
22 WANDA S. BUCKNER
23 NCRA Registered Professional Reporter
24 NCRA Certified Realtime Reporter
25 CLARK & ASSOCIATES
P.O. Box 73129
North Charleston, SC 29415
(843) 762-6294

A P P E A R A N C E S

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5870 Core Rd.
North Charleston, SC 29406
(843) 974-6495

ALSO PRESENT: MR. [REDACTED]

MICHELLE BIBBY

EXAMINATION

BY MR. CORRIGAN

Certificate of Reporter

104

Deponent's Correction Sheet

105

EXHIBITS

(There were no exhibits marked.)

1 [REDACTED]
2 being first duly sworn or affirmed, testified as
3 follows:

4 EXAMINATION

5 BY MR. CORRIGAN:

6 Q Would you please state your full name?

7 A It's [REDACTED].

8 Q [REDACTED].?

9 A [REDACTED], [REDACTED].

10 Q And that was your maiden name?

11 A Yes, sir.

12 Q One of the things that I want to go over
13 in some preliminary matters is that we need to speak
14 up so we can hear each other --

15 A Okay.

16 Q -- and the court reporter can understand
17 what we are saying.

18 A Okay.

19 Q Also, I need to stop and let you finish
20 whatever answer you are giving, and if you would let
21 me finish my question, that would be very helpful,
22 because once again, the court reporter has a little
23 more trouble when two people are talking taking down
24 everything that is said.

25 A Okay.

1 Q Also, as you are doing, all of the answers
2 should be in verbal form because we all, to some
3 degree, talk with our hands, nod our head, say
4 uh-huh or huh-uh, and that is also difficult to get
5 a proper record.

6 A Okay.

7 Q When I am referring to the record, you
8 understand that this is testimony taken under oath
9 just as if you were in a court of law?

10 A Yes, sir.

11 Q And that it will be transcribed by our
12 court reporter into a booklet form for use by the
13 Court and the attorney?

14 A Yes, sir.

15 Q Have you ever given a deposition before?

16 A No, sir, I have not.

17 Q Is there any reason why you could not give
18 truthful testimony here today?

19 A No, sir.

20 Q Are you on any medications that would
21 affect your understanding or ability to answer my
22 questions?

23 A No, sir.

24 Q Are you on any medication?

25 A Yes, I am.

1 Q What medications are you on?

2 A In November I had back surgery and at
3 night I take a pain medicine and a muscle relaxer to
4 help at night.

5 Q What was the problem with your back?

6 A I had to have two of my discs taken out
7 and my -- fused together, my lower back.

8 Q Was that because of an accident or --

9 A No, sir.

10 Q -- just naturally occurred?

11 A It is something I received from my father.
12 He has the same problem.

13 Q It's not fun, back surgery.

14 A Yes, sir. I tried to do everything not to
15 have it done, so --

16 Q Who was your surgeon?

17 A [REDACTED]

18 Q Where was the surgery done?

19 A The surgery was done at Trident Hospital.

20 Q Okay. Can you give me your Social
21 Security number?

22 A It is [REDACTED].

23 Q Date of birth?

24 A [REDACTED]

25 Q I learned the other day that children are

1 given a Social Security number apparently the second
2 they are born. Do you know your children's Social
3 Security number?

4 A I do -- I have them on the card, yes. I
5 carry them with me.

6 Q Can I get those? There is a law that
7 requires that information.

8 A There you go.

9 Q All right. I have [REDACTED]
10 [REDACTED].

11 [REDACTED]
12 And [REDACTED].

13 Q I want to make sure I am seeing on [REDACTED],
14 those last couple of digits. --

15 A It's 4180. [REDACTED]'s is 4179. It's only off
16 by one because they are twins. They were born 10
17 minutes apart so they are one number off each other.

18 Q What is your current residence address?

19 A It is [REDACTED]
20 [REDACTED]. That is in Goose Creek.

21 Q How long have you lived there?

22 A I moved there in the middle of February of
23 this year.

24 Q I think I know the answer, but who lives
25 there with you?

1 A My husband and my three kids.

2 Q Where did you live before that?

3 A We were living at my mom's house after I
4 had my surgery and I was until he got done training
5 with the DOD and that is when we moved into [REDACTED]

6 [REDACTED]

7 Q Where did your husband go for the DOD
8 training?

9 A He went to Arkansas.

10 Q How long were you at your mother's house
11 recovering?

12 A I was at my mother's house from November 1
13 to February, the middle of February of last year and
14 then this year.

15 Q Okay. What is your mother's name?

16 A Her name is [REDACTED]. She is
17 called [REDACTED].

18 Q How does she spell [REDACTED]?

19 A [REDACTED]

20 Q [REDACTED]. And where does she live?

21 A [REDACTED]. That is in Goose
22 Creek as well.

23 Q Do you have any other relatives living in
24 this area?

25 A I have my grandmother.

1 Q Okay.

2 A I have my sister and my brother-in-law,
3 but my sister passed way. So it is just my
4 brother-in-law and my two nephews.

5 Q All right. As far as family members, are
6 any of them over the age of 18 and living in
7 Berkeley County?

8 A My brother-in-law and my grandmother.

9 Q What is your grandmother's name, in case
10 she shows up on a jury panel?

11 A [REDACTED]

12 Q Okay. And your brother-in-law's name?

13 A [REDACTED]

14 Q And does your mother work or --

15 A No, she stays at home. My mother and my
16 father are both disabled.

17 Q They don't live together?

18 A No, I'm sorry. My dad lives with my mom
19 as well.

20 Q What is his first name?

21 A [REDACTED]. And last name is [REDACTED] as
22 well.

23 Q What is the nature of your mother's
24 disability, generally speaking?

25 A My mom is hearing impaired and that's

1 pretty much -- she is hearing impaired.

2 Q How about your father?

3 A My father was -- he has two of his
4 vertebrae in his neck fused together and he has
5 severe back problems and knee problems. And he
6 is -- he is on disability from the company that he
7 was working at which was American Equipment.

8 Q How long has he -- has it been since he
9 worked?

10 A I would say about maybe five years.

11 Q All right. And what does your
12 brother-in-law do?

13 A He is an electrician at J. W. Aluminum.

14 Q And his two children, tell me their names?

15 A [REDACTED] and [REDACTED].

16 Q How old are they?

17 A [REDACTED] is 14 -- 15 -- excuse me -- and
18 [REDACTED] is 13.

19 Q They have lost their mother?

20 A Yes.

21 Q How did that happen?

22 A She died on June 21 of 2008. She had
23 surgery and somehow or another the medicine mixed in
24 and she basically just went to sleep.

25 Q What hospital would that have been?

1 A It wasn't in the hospital. She died at
2 home. They lived on Teaneck in Goose Creek as well.

3 Q So she had had surgery?

4 A Yes, sir. It was surgery, it was in and
5 out surgery, so she was at home at the time she
6 passed away.

7 Q Do you know who the doctor was that was
8 involved with the surgery?

9 A No, sir, I don't.

10 Q Let's go back to covering where you have
11 lived over the last few years. Before you were in
12 the hospital and moved in with your mom, where were
13 you living?

14 A I have lived at [REDACTED] I
15 was renting that place. And when the lease came up
16 is when we moved in with my mom. Before that I
17 lived at [REDACTED].

18 Q How long were you at [REDACTED]

19 A A year-and-a-half, or a year.

20 Q What part of town is that?

21 A It is the same subdivision as [REDACTED], I
22 think.

23 Q Where is [REDACTED]

24 A It is back behind Wendy's on Red Bank
25 Road.

1 Q These are all in Berkeley County?

2 A Yes, sir. Do you need to go back later
3 than that?

4 Q Yeah, tell me --

5 A Yeah, because --

6 Q Let me ask you this. How long were you at
7 [REDACTED]

8 A Almost two-and-a-half years.

9 Q Okay. I need to go a little further back.

10 A Okay. Before Pandora, I lived in
11 Jacksonville, Florida, for seven months.

12 Q What were you going down there?

13 A That is where my husband's family lives,
14 so when he got out of the Marine Corps we went back
15 down there.

16 Q Okay. Can you remember the address
17 exactly?

18 A I think it is [REDACTED]

19 Q Was that -- is that his parents' address?

20 A Yes, sir. That is his parents' address.

21 Q What section of Jacksonville?

22 A Duval county. It is --

23 Q The whole city is the county, as I
24 understand it.

25 A Yeah.

1 Q Is there a name for the section?

2 A I don't think there was, no, not that
3 section, because I know there is Orange -- there is
4 different -- but that was basically --

5 Q Were you living across the river, if you
6 go to downtown?

7 A We were closer to Mayport. We were along
8 the line to Mayport.

9 Q Got you.

10 A About maybe 20 minutes away from downtown.

11 Q Okay. Where were you living before that?

12 A Before that we were living in Beaufort,

13 South Carolina, on [REDACTED] which is the Marine
14 Corps Air Stations base housing. I lived on -- I
15 know I was living on [REDACTED] but I am not
16 sure exactly of the numbers, but we were living
17 there.

18 Before that I was living up in Camp
19 Lejeune, North Carolina, which is Jacksonville,
20 North Carolina. We were living on [REDACTED] on
21 base there.

22 Q All right. Where did you meet your
23 husband?

24 A I met him in high school.

25 Q Where did you attend high school?

1 A I attended high school at Goose Creek
2 High.

3 Q And what year did you graduate?

4 A 1998.

5 Q Are you and your husband -- I was going to
6 ask you the same age. Did you graduate in the same
7 class?

8 A No, he graduated in 1999. He was a year
9 behind me.

10 Q And did you grow up in Goose Creek?

11 A Yes, sir. I was born and raised here.

12 Q Okay. When did you get married?

13 A I got married December 20, 1999.

14 Q That was your first marriage?

15 A Yes.

16 Q That was your husband's first marriage?

17 A Yes, sir.

18 Q High school sweethearts?

19 A Yeah.

20 Q Are you currently working?

21 A No, sir, I am not.

22 Q When was the last time you worked?

23 A The last time I worked was at ICORP, which
24 was in 2008, and I had started right before my
25 sister had passed away. I left shortly after that.

1 I did not handle my sister dying very well at all
2 and I was plunged into a real bad depression because
3 of it.

4 Q What did you do for ICORP?

5 A I worked for the call center with
6 DirectTV side of it. I was customer service for
7 DirectTV.

8 Q Where did you work before that?

9 A I worked at Friedman's Jewelers. I
10 started down in Jacksonville, Florida. I came up
11 here. I was working at Summerville. I was the
12 manager of the North Charleston store and I was
13 assistant manager of the Summerville store before
14 they shut down.

15 Q Why did you leave Friedman's Jewelers?

16 A They went out of business.

17 Q That would be a good reason.

18 A Yeah.

19 Q That was the job you had when you came
20 back from Jacksonville?

21 A Yes, sir.

22 Q And did you work with them until they
23 closed?

24 A I did. I worked -- well, I actually had
25 two weeks left because, like I said, my sister had

1 passed away and I had started another job. So I was
2 basically there until the end, yeah.

3 Q What year was that?

4 A In 2008.

5 Q Do you recall what short time it was you
6 worked at ICORP?

7 A It was from -- I left Friedman's in March,
8 and I would say I was there about four months
9 because I was trying to work after she died but it
10 just wasn't doing good.

11 Q That would be 2008 also?

12 A Yes.

13 Q Have you worked in any other field? Not
14 to go through every job you have had, but since
15 graduating from high school have you done --

16 A I have been a stay-at-home mother. I had
17 my twins, I was away from my family, and I didn't
18 want them being put in day care. So until he got
19 out of the Marine Corps, I stayed at home with them.

20 Then we kind of flipped roles. He got out
21 of the Marine Corps and I started working. We came
22 back up here and he started working at Best Buy, but
23 ICORP was my last job. I have been a stay-at-home
24 mom ever since then.

25 Q When did your husband enter the Marine

1 Corps?

2 A In 1999, in September. As a matter of
3 fact, he went to boot camp September 1 of '99.

4 Q Did he go to our in-state training for the
5 Marines?

6 A Yes. He went to Parris Island and
7 graduated boot camp December 10 of 1999.

8 Q Did he receive an honorable discharge?

9 A Yes, sir, he did.

10 Q Do you remember the date of that?

11 A It was -- I think it was October 31 of
12 2006, I do believe. I might be off. It might be in
13 September, but it was around then.

14 Q And did he serve overseas?

15 A Yes, he did. He served seven months over
16 in Iraq. That would be at the same time I had my
17 daughter, [REDACTED], so he was not here for her when she
18 was born.

19 Q And any particular reason other than
20 having completed his service that he left the
21 Marines?

22 A No. It was really hard when he didn't get
23 to see [REDACTED] for the first five months of her life
24 and he decided he didn't want to miss any more, so
25 he just started working with his counselor on

1 getting out. And they had no problems with him
2 because he had a perfect service record. Never got
3 in trouble, he was never punished, nothing. He has
4 had a perfect service record, so they had no
5 problems with it.

6 Q Okay. His parents have moved to
7 Jacksonville at some point after he graduated from
8 Goose Creek?

9 A Yes, sir. They moved down to Jacksonville
10 in, I think it was the summer of 2001 because they
11 were still packing their houses after I had my
12 twins. So I think they officially moved after --
13 officially was down there by 2002, but they were in
14 the process of moving, so, yeah.

15 Q So Mr. [REDACTED], your husband, grew up in
16 Goose Creek also?

17 A Yes, sir, he did.

18 Q Who is the pediatrician for your children?

19 A They go to Dr. [REDACTED] at MUSC Family.

20 That is the same doctor as me and my husband.

21 Q He is a general family practitioner?

22 A Yes, sir.

23 Q How long have they been going to see him?

24 A Ever since I have, so I would say since
25 2010, middle of 2010.

1 Q Who was the children's doctor before that?

2 A It was -- they were down in Beaufort with
3 the Navy Hospital. Every doctor they have ever had
4 has been with the Navy Hospitals that we have been
5 around. There was a period of time when me and my
6 husband didn't have insurance and if they had to go,
7 if they needed anything, they would go to the
8 emergency room. But normally, my kids are -- they
9 are pretty good about not being sick, so it wasn't
10 as hard as it was with -- by the time we got
11 insurance, everything, we got them checked up and
12 [REDACTED] shots and ready for school.

13 Q Did you request a packet of their medical
14 records when you were leaving the military?

15 A Yes, sir, we did.

16 Q Do you have copies of that?

17 A No, sir, I didn't. I turned it over to
18 the doctors.

19 Q The doctors at MUSC?

20 A Yes, sir.

21 Q When was the last time any of your
22 children had a checkup?

23 A As far as -- [REDACTED] is going through one
24 right now because she is sick, and [REDACTED] and [REDACTED]
25 would have been in April.

1 Q Is that a preventive care visit or is
2 it --

3 A It was, but Neil was also having problems
4 with his stomach. He kept getting sick, but [REDACTED]'s
5 was just to make sure she was doing okay.

6 Q Okay. When did you first meet any of the
7 Bibby family?

8 A I first met [REDACTED], she came over to
9 introduce herself because [REDACTED] and [REDACTED] had saw
10 my kids outside playing. And she introduced
11 herself. And I let her know that the kids were
12 welcome to come over as long as I was home.

13 And in June, I met [REDACTED],
14 by my cousin. My cousin had come over to see me.
15 It was the same time my sister had died. And he had
16 told me that [REDACTED] has knew [REDACTED] and that is how I
17 was introduced to [REDACTED], it was by my cousin
18 [REDACTED].

19 Q And did you and your husband and [REDACTED]
20 [REDACTED], become friendly?

21 A Yes, we did.

22 Q Did the children play together over at
23 your house at times?

24 A Yes, sir. At first, that's all they did
25 was play over at my house because I was not the

1 type -- I am not the type of parent to let me kids
2 run around without my -- they had to be where I
3 could see them. So at first, they were playing just
4 at my house.

5 Q All right. Did they then at some point go
6 down and play in the yard at the Bibbys' house?

7 A Yes, they did. [REDACTED] came over one day
8 and said it would be okay for my kids to go over
9 there. And I made it clear to Danny as long as
10 somebody was watching them, I had no problem with
11 it. He told me that they would be. And they were
12 coming back and forth.

13 Q Meaning at play time, they were, --

14 A He said that they were being watched and
15 it would -- sometimes they would be over there for
16 maybe like five minutes, and sometimes they would be
17 right back.

18 So constantly, they were coming in and out
19 at some certain points in time. If I didn't see one
20 I could always see the other one coming and just
21 letting me know that they were okay.

22 Q How close were the two houses?

23 A Very close. It is right across the street
24 diagonally. So --

25 Q So is there a house directly across the

1 street from the Bibbys' and then you are next to it
2 or --

3 A No. We were diagonally across from each
4 other. So her house is right here and mine is like
5 right here.

6 Q Do you recall the date you moved into the
7 house?

8 A Yes, sir. I don't know the exact date,
9 but I think it was like February 15 of 2008.

10 Q Were you renting?

11 A Yes, sir, we were.

12 Q Who were you renting from?

13 A Goose Creek Property Management.

14 Q Do you know who actually owned the house?

15 A No, sir. I don't.

16 Q When you moved into that house, were you
17 working?

18 A Yes, sir. I was working at Friedman's.

19 Q And was your husband working?

20 A Yes, sir. He was working at Best Buy.

21 Q Okay. What was your schedule?

22 A Mine was crazy. I was a manager, so I was
23 there pretty much all of the time, especially after
24 I moved out because it was Valentine's Day and
25 Mother's Day and those are the busiest holidays,

1 besides Christmas. And so I was working. I would
2 work about 45 hours a week, maybe more.

3 Q When would you go in?

4 A I would go in at 9 o'clock in the morning
5 and we shut down at 7 during the week and 8 during
6 the weekends. But in holiday times, we would be
7 open at 7:30 and not close until 10:30.

8 Q Okay. And what were your husband's hours,
9 if you know?

10 A He worked part-time at first, so it would
11 be no more than 30 hours a week. And then when we
12 moved into the house he was working full-time hours.

13 His work was normally closing hours, so he
14 would go in midafternoon and close and not come home
15 until like 10:30.

16 Q All right. What were your provisions for
17 childcare at the time you moved into his house?

18 A My mother. My mom has always been my
19 baby-sitter.

20 Q And would your mother come to your house
21 or would you take the children over to hers?

22 A They would go to her house.

23 Q How would they get there?

24 A Me, I would take them. Either me or my
25 husband would take them.

1 Q When would they be picked up on a normal
2 day?

3 A A normal day would probably be between
4 either 7 o'clock and 8 o'clock, depending on who got
5 off first.

6 Q Has your mother mentioned seeing
7 Mrs. Bibby in recent months?

8 A Yes, she has.

9 Q Has she indicated that she has raised her
10 voice at Mrs. Bibby?

11 MR. ANASTOPOULOS: I object to the form.

12 A My mom is hard of hearing, she is
13 completely deaf. She wears a cochlear implant, so
14 she is not going to know how loud she is being, so
15 that could be possible. But it wasn't -- it is just
16 she cannot help it.

17 Q She is completely cognizant of what she is
18 saying, is she not?

19 A Yes, she is.

20 Q Have you encouraged her to say things to
21 Mrs. Bibby or around Mrs. Bibby regarding this
22 incident that the lawsuit is about?

23 A No, sir. Actually, I have done the
24 opposite. I was telling my mom not to say anything
25 because I was doing what I was told because I did.

1 not want that happening. So I did yell at my mom
2 for -- she just does that, she was sorry. She is
3 hurt; my whole family is.

4 Q All right. After you graduated from high
5 school, did you or have you gone for any formal
6 education?

7 A Yes. I was at Trident Tech and then I was
8 at University of Phoenix.

9 Q What were you studying?

10 A At Trident Tech, I was doing computer
11 graphics. And then I switched to medical --
12 associate in medical like billing and stuff like
13 that.

14 Q Have you finished that program?

15 A No, sir. My grandfather died last year
16 and I have -- I took a break.

17 Q When did your grandfather pass away?

18 A He died February 7 of 2010 of cancer.

19 Q Do you plan to go back and work with the
20 certification to become a medical associate?

21 A Yes, sir.

22 Q Did you go into -- I know they have a
23 building here, but do you do your study over the
24 computer?

25 A I was doing the computer, yes, sir.

1 Q How about your husband? Other than all of
2 the training he received in the Marines, has he gone
3 to --

4 A He had, while he was still in the Marine
5 Corps, he was going to Park University. He was
6 trying to get a degree in criminal justice. When he
7 got out of the Marine Corps, he -- he was trying to
8 become a cop and realized that he had to do more
9 studies.

10 And so when he moved back up here, he
11 started to go back online. I think it was at -- he
12 went to Phoenix also. But he is taking a break. He
13 was close to it, but he took a break because he was
14 having to train to go for DOD. Once he gets
15 settled, he is going to go back to Phoenix and
16 finish getting his degree.

17 Q Why was he training with DOD?

18 A Because that is where he got his recent
19 job.

20 Q Who does he work for?

21 A The Department of Defense. He works over
22 at the Joint Base Charleston in Air Force.

23 Q He's a civilian employee of the Department
24 of Defense?

25 A He is a civilian cop by them, yes. He is

1 a cop.

2 Q He is working security at one of the
3 bases?

4 A He was a security guard, but now he is a
5 DOD police officer. It is not a security guard. He
6 is actually a police officer for the government,
7 so --

8 Q Okay. There is a need for that degree
9 from --

10 A Well, he has -- a family friend of mine
11 who was already working there who helped him get in
12 and his qualifications, they helped and they will
13 help him continue to get his degree with the
14 criminal justice.

15 Q All right. Before the incidents with
16 [REDACTED], were there any incidents of sexual
17 abuse in your family that you know of?

18 A Never. Nobody in my family has ever gone
19 through any of this.

20 Q How about your husband's family, if you
21 know?

22 A No, sir.

23 Q How did you find out that there was a
24 problem?

25 A I received a text message from [REDACTED].

1 [REDACTED], saying that his father had raped his
2 daughter. And then I got another text message
3 shortly after that saying I need to go ask my kids
4 if anything had happened.

5 Q So [REDACTED], sent you a text saying
6 that you should go ask your children if anything had
7 happened to them?

8 A Yes, sir.

9 Q All right. Were you home alone or was
10 anyone else there?

11 A I was actually at Wal-Mart shopping
12 groceries with my husband. And my mom had [REDACTED] and
13 the twins were at school.

14 Q Okay. What school were they attending?

15 A Goose Creek Primary.

16 Q How long were they at Goose Creek Primary?

17 A The twins have been there for the full --
18 until third grade, and they have moved to Sedgefield
19 Intermediate and [REDACTED] is still in Goose Creek
20 Primary.

21 Q Okay. And when you got the text, what did
22 you do?

23 A When I got the text I went straight to
24 [REDACTED]'s school and I pulled [REDACTED] out of school and
25 asked her, I said, did anything -- would you like to

1 tell me anything that happened over at Mr. Danny's
2 house. At first she would -- she wouldn't even look
3 me in the eye. And she kept looking around and I
4 told her that, I said, it is okay to tell me
5 whatever. It is okay. Nothing is going to happen.

6 That is when she told me that he had
7 touched her chest. And when she went to run away
8 from him, like I taught her how to, he told her that
9 if she told anybody he would kill her.

10 Q When did you give her instructions on how
11 to handle this type of situation?

12 A When [REDACTED] was five years old when we were
13 getting ready to put her into school, I basically
14 did the whole, don't talk to strangers, don't go to
15 anybody's car, if anybody touches you and makes you
16 feel uncomfortable, to let me know. I told [REDACTED] and
17 [REDACTED] both that.

18 Q At the same time?

19 A Yes, sir. We sat them down together.

20 Q Did you follow any texts or guidelines
21 from somewhere?

22 A No, sir.

23 Q So this is just a conversation you had
24 with your children?

25 A Yes, sir.

1 Q All right. And so you spoke to [REDACTED], and
2 what happened next?

3 A After that I pulled myself together
4 because I was -- I was obviously very upset about
5 everything. I had to -- I mean, I went back to my
6 mom's house. I left the twins in the house and it
7 was just me and [REDACTED] and my dad and [REDACTED]. And I
8 asked, I said, would you like -- I did the same
9 thing. I said, would you like to tell me anything
10 that might have happened over at the Bibbys' house?

11 For [REDACTED] it was completely different
12 because she started talking. She said, yes, ma'am,
13 he was -- he had fondled me, he had touched me, I
14 had to do stuff to [REDACTED]. And at that moment I
15 stopped her and I went home and I called the police.
16 I did not want the police -- I left my kids at my
17 mom's house and I called the police. And my husband
18 was with me when they came over.

19 Q Okay. You had this conversation at your
20 mother's house?

21 A Yes, sir.

22 Q And you did not speak to your son at that
23 point?

24 A No, sir, I didn't. I just said I had
25 enough. I had -- to me, that was ample enough for

1 me to go and call the police and that is what I did.

2 Q Okay. And did [REDACTED] use the term fondle?

3 A No. She said that he touched her pee-pee.

4 Q Okay. Do you recall any other exact words
5 that she used?

6 A Not at that time, no.

7 Q All right. Who was in the room when you
8 had this conversation?

9 A My husband and my father.

10 Q Where was your mother at that time?

11 A She was inside with the twins.

12 Q And what police force did you call?

13 A I went home and I called Goose Creek
14 because my parents live in Berkeley County but do
15 not live in the city of Goose Creek. So I had to go
16 home in order to call Goose Creek Police Department.

17 Q When you called them, what did you tell
18 them?

19 A I told them that I had received a text
20 from a friend saying that their father had molested
21 their daughter and I think that my children were
22 part of it and I needed to make a complaint and to
23 get charges started.

24 Q Okay. And what did they say?

25 A They said they would be out there in five

1 to ten minutes, and it didn't take them long at all.

2 That is when an officer came out.

3 Q When you went home, did your husband go
4 with you?

5 A Yes, he did.

6 Q Did any of the children?

7 A No, sir, they did not.

8 Q All right. About what time of day was it
9 when you made the phone call?

10 A I would say about 3:30.

11 Q Okay.

12 A I can't forget that day.

13 Q What day was that?

14 A It was -- it had to be a Tuesday or
15 Wednesday. It was in the middle of the week.

16 Q Do you remember the date?

17 A I think it was -- I think it was the 19th,
18 but I am not sure.

19 Q What month?

20 A April.

21 Q What year?

22 A 2008 -- excuse me, 2009. Sorry.

23 Q When Goose Creek Police Department showed
24 up, who showed up?

25 A It was -- I don't remember the officer's

1 name, but he was by himself. He got -- he got my
2 statement and he told me that I needed to write out
3 what I had found out.

4 I showed him my phone, I showed him the
5 text messages. And he had also talked to my
6 husband. And then at that time when I was writing
7 my statement is when Michelle -- Mrs. Bybee came
8 over and started talking about what her husband had
9 talked about.

10 Q Was the police officer there?

11 A Yes, sir. She also gave a statement while
12 he was there also.

13 Q Okay. And she wasn't hesitant to say what
14 she had learned?

15 A No. She just said that -- she said she
16 was sorry and that she -- she never meant anything
17 bad to happen like that.

18 Q Okay. Did she say anything else to you?

19 A She told us about how he -- that he
20 admitted to hurting [REDACTED]. She did not go into any
21 detail on what happened. And she also said -- she
22 was talking about the computer, about how she got
23 rid of it. And she said that if we needed anything,
24 to let me know. She would help out. And then that
25 is when she gave the officer her statement.

1 Q Did you overhear anything in regard to her
2 giving a statement?

3 A Only the fact that her husband admitted to
4 stuff. She did not go into detail on what. And she
5 got rid of the computer.

6 Q Okay. And so she mentioned a computer
7 twice out there. Was it in your driveway?

8 A Yes, sir. And she also wrote it in the
9 statement that she gave the police officer.

10 Q All right. How long do you think the
11 police officer was there?

12 A I would say about 30 minutes.

13 Q Okay.

14 A Because I was -- I was very upset. I was
15 crying. I was crushed. And I didn't know what to
16 do. I didn't know how to react. And he was giving
17 me advice on what to do and what steps to take after
18 he left.

19 And he told me not to ask any more
20 questions to the kids to be able -- so I could take
21 them to the Dorchester Children's Center and they
22 would know how to ask them. And that is what I did.
23 That is how -- I went to the Dorchester Children's
24 Center because they told me.

25 I also had the victim's advocate in Goose

1 Creek, she also helped out with the Dorchester
2 Children's Center, too.

3 Q When did you take the children?

4 A I would say maybe three weeks, three or
5 four weeks after I initially found out.

6 Q And why did you wait three to four weeks?

7 A I had to wait for their appointment. They
8 gave me an appointment time, but unfortunately, they
9 said that they were actually really busy at the
10 time.

11 Q Who did you talk to at the Dorchester --

12 A I talked to [REDACTED].

13 Q You told her that you believed that your
14 children had been sexually abused and she gave you
15 an appointment three or four weeks later?

16 A No. She is the woman I talked to
17 initially at first when I called. I was talking to
18 the secretary and she said the forensic appointments
19 were -- that is how they went. So I didn't know to
20 question how fast it was. But as soon as she said
21 to take them there, that is what I did. They made
22 an appointment.

23 Q Okay. Between the time you took them to
24 the center and when you had spoken to the police
25 officer, did you do anything else in regard to this

1 matter?

2 A No, sir.

3 Q Did you speak to [REDACTED]?

4 A Yes I did. I asked him how he was doing.

5 Q What did he say?

6 A He said he was not doing good. He said
7 that he didn't know what happened. All he knows is
8 that [REDACTED] was abused in that way. And at the time
9 he wasn't allowed to even see [REDACTED] or [REDACTED]
10 because they had been taken away from him. And he
11 was distraught.

12 Q Did you have any other conversations with
13 [REDACTED]?

14 A No, not before they went to go see
15 Dorchester Children's Center.

16 Q Were you aware that interviews at the
17 Dorchester Children's Center were taped?

18 A Yes, I did.

19 Q Have you reviewed those tapes?

20 A No, sir, I did not. I was -- I did not --
21 I did not receive a copy of it.

22 Q And did you ever speak to a solicitor?

23 A [REDACTED], yes, sir.

24 Q And were charges brought against
25 Mr. Bibby, Senior?

1 A Yes. The first charges were for [REDACTED],
2 and then there was a gap in between because the
3 Detective [REDACTED] that was working the case, from
4 what the police officer said, she was taken ill.
5 And there was almost a couple of months gap between
6 the time that [REDACTED] -- he was charged for [REDACTED] and
7 then when [REDACTED]'s was brought up.

8 But I had called the chief of police three
9 times to find out what was taking so long and how
10 the case was going. I was also continuously calling
11 Mrs. [REDACTED]' office as well.

12 Q Okay. Who was the police chief that you
13 were calling, what is his name?

14 A I can't remember his name but it is the
15 police chief of Goose Creek. It was Detective
16 [REDACTED]'s boss -- [REDACTED]'s boss.

17 Q Detective [REDACTED]?

18 A She. She is the detective that the case
19 was assigned to.

20 Q When that case was assigned to her, did
21 you see her? Did she come see you?

22 A She came -- actually, I was at every trial
23 that he had, for [REDACTED], I was there for the bond,
24 the preliminary, everything. Every time I saw her
25 she would ask how I was doing and she would let me

1 know what was going on with the case.

2 Q And you also called Ms. [REDACTED] a number
3 of times?

4 A Yes, sir, I did.

5 Q What was her role?

6 A She was the prosecutor. She was the one
7 that was in charge of prosecuting the case.

8 Q What happened to the prosecution of the
9 case?

10 A She brought us in and said that he had
11 pled guilty and [REDACTED] was having a hard time dealing
12 with it. She was not -- she was not very
13 comfortable talking about it to Mrs. [REDACTED], so
14 she said that they -- since he had pled guilty she
15 was going to try to keep [REDACTED] and them out of it and
16 he was going to be charged for that.

17 Q Charged for what?

18 A For abusing [REDACTED], and as far as I knew,
19 I thought it was also for my kids. I just found out
20 that the charges were dropped.

21 But as far as I knew, he was -- being the
22 reason that we weren't going to go to trial is so my
23 kids wouldn't have to go to court and he had already
24 pled guilty to the matter of it.

25 Q But you understand now that he pled guilty

1 to inappropriately touching [REDACTED]?

2 A Yes, sir, I do.

3 Q And he was not prosecuted for any actions
4 involving your children, correct?

5 A Yes, sir.

6 Q Those charges were dismissed?

7 A Yes, sir.

8 Q Did you have -- since you understood that,
9 have you discussed that with Mrs. [REDACTED]?

10 A I have tried. I have been talking with
11 Mrs. [REDACTED].

12 Q What have you and Mrs. [REDACTED] discussed?

13 A I have been told that the charges can be
14 brought back up if there is more proof of it.

15 Q Okay. Do you know who did the interviews
16 at the Children's Center?

17 A [REDACTED], [REDACTED] did. She did the three of my
18 kids.

19 Q Where is she now?

20 A I am not sure. When I called back, when I
21 called to set up counseling, they had told me that
22 she had left. So I am not sure where she went.

23 Q Had you ever worked with -- had your
24 children seen the woman that you brought to court
25 for Mr. Bibby's plea?

1 A I do believe she was one of the people
2 that was helping, but I am not sure. With
3 everything that they did with my kids, I wasn't
4 allowed -- I wasn't back there. I didn't see it. I
5 wasn't present at the time. They said that they do
6 that to make sure that there is no coaching. They
7 have certain ways to ask questions to keep people
8 from coaching the kids. So I was not present when
9 she was being questioned. I was not -- I was
10 nowhere around. I was told afterwards what was
11 going on.

12 Q All right. Did you talk with Nancy after
13 the interview?

14 A Yes, I did.

15 Q What did she tell you?

16 A They told me that I needed to bring [REDACTED]
17 back because it was unclear because she would say
18 that Mr. Danny and then Mr. Bibby, and it was
19 brought up about my son. And they said that they
20 would like [REDACTED] to come back at a later date so they
21 could retalk to her. That is what I did..

22 Q Did you talk to Nancy after the second
23 interview?

24 A Yes.

25 Q What did y'all talk about?

1 A She told me it was disclosed that the
2 Mr. Bibby and Mr. Danny was the same person and that
3 she believed everything that [REDACTED] said against him.
4 That she also talked to me about my son, about
5 movies. And I said that -- she talked to me about
6 making sure everything is put up, which was -- that
7 is what did happen. There was nothing like that in
8 my house.

9 And she told me to be strong and that it
10 was not my fault, that -- because I had started
11 taking this very hard. I had lost my sister and I
12 couldn't -- I felt like I let my kids down. I
13 couldn't protect them. And I found out that it is
14 not my fault. I am a good mother and I am doing
15 everything I can to fight for them.

16 Q Okay.

17 A And she did disclose that she repeated
18 what she said about Mr. Bibby as being -- it was
19 true.

20 Q Have you seen transcripts of these --

21 A I did, when I got the report from Goose
22 Creek.

23 Q Of the interview from Dorchester
24 Children's Center?

25 A Yes, sir.

1 Q Where did you get those?

2 A Goose Creek. I picked them up before the
3 trial against Mr. Bibby.

4 Q Picked them up at Goose Creek Police
5 Department?

6 A Yes, sir, yes, sir.

7 Q Now, did anyone else interview [REDACTED]?

8 A By Forensic, or what do you mean by
9 interview?

10 Q I mean anyone in an official capacity talk
11 to your children about the allegations?

12 A The only people that talked to them were
13 the Dorchester Children's Center, Mrs. [REDACTED] and
14 her assistant, and Detective [REDACTED].

15 Q Okay. Do you know the name of
16 Mrs. [REDACTED] assistant?

17 A No, I don't. I think it is [REDACTED],
18 I think. I am not sure.

19 Q [REDACTED] left without letting you know that
20 she was leaving, but have you asked the Children's
21 Center where she is?

22 A They said they couldn't -- they said she
23 went to start her own practice. They didn't really
24 get into it.

25 Q All right. Have you ever gotten an answer

1 from the solicitor's office as to why they dropped
2 the charges?

3 A No, sir.

4 Q Let's go back to the time you had called
5 and made the appointment with the Children's Center.

6 A Um-hum.

7 Q What was the next thing that you did?

8 A I waited for the appointment. After they
9 had their forensic interview, I was told about -- I
10 needed to bring [REDACTED] back so she could have an STD
11 test done. [REDACTED] also went back and [REDACTED] also went
12 back so they could have their privates checked and
13 make sure there was no signs of abuse. [REDACTED] did
14 not have to do the testing but [REDACTED] did. She had to
15 get a year's tests to make sure she didn't have any
16 STDs, because at one point in time [REDACTED] said his
17 father had, I think it was hepatitis, and to be on
18 the safe side they tested her. Fortunately she does
19 not have anything to that effect. They have been to
20 MUSC and then they went to MUSC for two months and
21 then I pulled them out of treatment.

22 Q Okay. Let's go back a second. There was
23 someone who did medical or handled medical issues at
24 the Children's Center?

25 A Yes, sir. I think her name was Lisa. She

1 was based out of MUSC, but she goes to the office
2 and she does that other part of the forensic
3 interview. And they saw her. Well, the girls did,
4 not my son.

5 Q And is this person a doctor?

6 A I do believe she was, yes. Either a
7 doctor or a nurse practitioner.

8 Q And this person would have conducted the
9 physical examination?

10 A Yes, sir.

11 Q Then you indicated that the children were
12 at MUSC for two months.

13 A Yes, sir.

14 Q You mean they were in some program there?

15 A Yes, yes, sir. Yes, sir. Yes, sir.

16 Q What program were they in?

17 A [REDACTED] told me about how MUSC had the best
18 group of psychiatrists to help with kids that have
19 been traumatized by sexual abuse or a crime. The
20 first couple of appointments they had was basically
21 them talking to my kids, asking them questions.
22 They talked to us, asked about family life and how
23 they have been acting. Because I had brought up
24 concerns that I had about the way [REDACTED] was talking.
25 She stated on more than one occasion that she wanted

1 to kill herself. She said she is unclean.

2 My daughter is seven years old now. At
3 the time she was five years old saying this. They
4 were teaching -- they were basically giving me
5 advice on how to handle everything, how to handle
6 [REDACTED]'s temper. My daughter did not give up her
7 pacifier until last year. So a lot of things she
8 was reverting back to, I was concerned about.

9 And at the same time my husband was being
10 seen at the VA for PTSD, so I started seeing -- I
11 was just afraid that I was hurting them more, so I
12 pulled them out.

13 Q Why do you think you were hurting them
14 more by seeing these psychiatrists?

15 A I was watching my husband go through the
16 same thing that my kids were going through and it
17 was killing him inside. He was falling apart. He
18 was depressed. And I was afraid if they sat and
19 talked about it, it would get worse. I didn't know.

20 I am a first-time mother. I never had to
21 go through anything like this. My kids have never
22 experienced anything, not even in my family. I did
23 not -- I didn't know what to do.

24 Q Did this group that specialized in this
25 area have a name?

1. A It was in the MUSC mental health system.
2 I would have -- I have the card at home, but I don't
3 remember the name exactly. I think it was forensic
4 crime -- it was the crime unit for children, I
5 think.

6 Q Do you remember who you talked to?

7 A I talked to a few people. The kids got
8 interviewed by two different women. And then I was
9 talking to a gentleman named [REDACTED] and he was the
10 one talking to me. And then I don't remember the
11 two women's names that were actually talking to the
12 kids because we were taken in separate. They did
13 the kids alone and they did me and my husband alone.

14 Q And were there records for these visits?

15 A There should be, yes.

16 Q Do you have copies?

17 A I do not have copies but I can go and
18 attain the copies.

19 Q Would you, and get those to your attorney?

20 A Yes, sir, I can.

21 Q Do you know how many different employees
22 at MUSC talked to them during this two-month period?

23 A I am not really sure. I know that there
24 was three counselors. I was talking to one; there
25 was two women. But other than those women I am not

1 sure if anybody else was in the room with them or
2 not.

3 Q Okay. Was this two months -- well, pardon
4 me.

5 How did the two months fall with the three
6 to four weeks before the appointment?

7 A No, this was after the appointments. This
8 was after the charges were brought against
9 [REDACTED] (sic), so then going to MUSC was afterwards.

10 Q So what did you do after you report the
11 matter and made the appointment and had to wait
12 three or four weeks?

13 A I had to -- I went to -- I was going to
14 Goose Creek. I was talking to the victim's
15 counselor. I talked to the victim's counselor from
16 Berkeley County. I was calling and asking the
17 detectives questions. I talked to Dorchester
18 Children's Center to make sure -- it seemed like
19 every time I was trying to do something, I wasn't
20 sure I was doing it right.

21 I did not talk to the solicitor in that
22 time because she hadn't even come into the picture
23 yet. So basically, it was just the detective at
24 Goose Creek and the women at -- the people helping
25 me at the Dorchester Children's Center.

1 Q During that time did you have them checked
2 out by the family doctor?

3 A No. I did not. I asked the victim's
4 counselor and she said that she would -- it would be
5 best just to let the forensic people go look over
6 them first.

7 Q You weren't concerned that there might be
8 something that needed immediate attention if they
9 had been abused?

10 A I was very concerned about it, but I
11 didn't know at the time. I had never had to go
12 through this. So I was calling these people and
13 listening to the advice that these people were
14 giving me because I assumed they knew what they were
15 doing.

16 Q Did you call your family doctor?

17 A Yes, I did. I called my family doctor and
18 I called my husband's counselor as well.

19 Q When you called the family doctor, what
20 did he say?

21 A He said to go with what the detective is
22 telling me unless -- unless it is dire to her health
23 and anything like that, to bring her in, but if not,
24 just to wait and let them talk to her.

25 Q How was the determination made as to

1 whether either of your daughters had a problem that
2 was dire to their health?

3 A Because when Mr. Bibby -- when I found out
4 about this, he had already been away from the other
5 kids for a good -- for about a month. So he was --
6 my daughters stopped coming over to their house as
7 soon as [REDACTED] left.

8 And in that time, I was the one helping
9 them, bathing them, and I did not see anything that
10 I looked at. I checked them from head to toe. And
11 I called my doctor and I listened to what everyone
12 was telling me to do. I was listening to the
13 detectives, the victims' helpers, and I was going by
14 what I was told.

15 Q When do you think that this abuse
16 happened?

17 A I think it happened before -- it started
18 before or right after my sister died. But I am not
19 sure. I really don't know. [REDACTED] can talk about how
20 it happened, what happened, but since she was so
21 young she didn't really understand the concept of
22 time. So even the Dorchester Children's Center says
23 that. She really doesn't know how long it was.

24 Q When did you ever let your children go
25 into the house at Mr. Bibby's?

1 A Right before I found out about anything, I
2 had gotten comfortable with their family. They gave
3 me no reason for me not to trust them. When she was
4 at work and Danny was at home with their father,
5 they would be over there. I mean, nobody said
6 anything. I didn't think -- I didn't have any
7 reason to not let them go over and play.

8 I do know plenty of times where [REDACTED]
9 would be outside or [REDACTED] would run an errand, my
10 kids would still be over there playing. I always
11 made sure either I would hear them. My husband
12 bought me a camera that if I had to go to the
13 bathroom I could go inside and still see what was
14 going on with them.

15 They were over there a lot. They were
16 over at my house. They would be running in and out.
17 They were running in and out of her house.

18 Q Where was this camera placed?

19 A Out in the window facing outside. It
20 would hook up wireless to my laptop.

21 Q There were times, if I understood what you
22 just said, that [REDACTED], [REDACTED]'s father --

23 A Yes, sir.

24 Q -- would leave the house and leave the
25 children unsupervised?

1 A His father would be there.

2 Q Whoever -- did you ever ask his father to
3 supervise your children?

4 A No, sir.

5 Q Has he ever told you that he asked the
6 father to supervise your children?

7 A [REDACTED] did, yes.

8 Q When did he tell you that?

9 A I asked about -- the first time I asked
10 was when I noticed that she wasn't home and [REDACTED]
11 was getting ready to leave. And I said, do I need
12 to call my kids home? [REDACTED] was like, no, my dad is
13 there, I won't be that long. Just keep an ear out
14 and everything will be fine. And I trusted him.

15 Q But you did not call your children home?

16 A No, I did not.

17 Q How long would [REDACTED] be gone in these
18 circumstances?

19 A He would go to the gas station. I would
20 say no more than 20 minutes. And most of the time I
21 would see my son run back over or I would see my
22 daughter and I would ask, what is [REDACTED] doing. They
23 would tell me they are in [REDACTED]'s room playing. I
24 had no indication that anything would be wrong with
25 them.

1 Q During this entire time when your children
2 would run over and you would ask them what is going
3 on, they never mentioned anything about Mr. Bibby,
4 Senior?

5 A No, they did not.

6 Q And how many times do you think this
7 situation occurred, that Mr. Bybee, Senior, was in
8 the house and your children were in the house and
9 [REDACTED], left?

10 A From what my son said, he knows of two
11 separate times that he was there that [REDACTED] was not
12 there, Mrs. Bibby was working, and he was outside
13 swinging with [REDACTED] and [REDACTED] and there would be
14 other kids in the neighborhood, not just mine, there
15 was other kids there, too. My son has told me about
16 how he had been in there. He was made to watch some
17 of the stuff that happened with [REDACTED] and [REDACTED].

18 I was told that they were threatened. And
19 so when I asked my kids why didn't -- they said,
20 Mommy, we don't want you to die.

21 So my kids were being threatened, so that
22 would be why they didn't tell me what was going on.
23 They were too scared.

24 Q How many times do you think [REDACTED] or [REDACTED]
25 were abused?

1 A I have no clue.

2 Q But you only know of two times?

3 A From what my son said.

4 Q Well, from your own knowledge, how many
5 times do you allege that Mr. Bibby was in -- Senior,
6 was in the Bibby house with your children and no one
7 else?

8 A I would say about four or five times.

9 Q One of these dates -- you said two times
10 your son said that situation existed. When do you
11 think the others are?

12 A Me watching my kids. Me watching his
13 comings and goings. I am not the type of mother who
14 sends their kids outside and not know what is going
15 on. I know what is going on. It was either me
16 outside with them, my neighbor's kids were outside
17 so we would be outside talking.

18 And I know a couple of times toward the
19 end I know he was there alone with my kids because
20 [REDACTED] would say, hey, I am going to the store, be
21 right back, they are okay. Just so I do know that.

22 Q Okay. But you referred to a couple of
23 times near the end. You mean near when you got the
24 text about [REDACTED]?

25 A Right before the kids were taken away.

1 Q Okay. You never walked across the street
2 and into the Bibby house to see what was going on?

3 A Yes, I did. I would go over there and
4 they would -- I would hear them. If I didn't hear
5 them, I would go over there to see what was going
6 on. I would go in the backyard and I would talk to
7 them and I would -- I would go over and check on
8 them.

9 Q My question was did you ever go inside the
10 Bibby house?

11 A Yes, I have been inside the house.

12 Q Did you ever go inside the Bibby house to
13 check on the children and the circumstances where
14 you thought they might not be supervised by [REDACTED],
15 [REDACTED]?

16 A No, sir, I did not.

17 Q Any reason why you did not?

18 A I didn't think my kids were not being
19 supervised. If I thought my kids weren't being
20 supervised, they wouldn't be there.

21 Q When you first moved there and met
22 Mr. Bibby, Senior, would that be someone you would
23 hire to baby-sit the children?

24 A I did not meet Mr. Bibby, Senior. I met
25 his wife.

1 Q I am talking about after you moved in and
2 were living there.

3 A After I talked to her, I didn't see a
4 problem because she told me that -- I found out that
5 she was a Catholic. I found out that her husband
6 was in the Navy. My husband was in the Marine
7 Corps.

8 I had no reason not to trust her. I saw
9 that she had her grandkids. She looked like a good
10 grandmother to me. She was caring for them. She
11 took care of them. I had been to birthday parties
12 where she was throwing -- I never saw anything
13 wrong.

14 Q You responded to my question about
15 Mr. Bibby, Senior, by talking about Mrs. Bibby. My
16 question has to do -- did you ever meet Mr. Bibby?

17 A Yes, I did.

18 Q How many times did you meet him?

19 A I met him maybe two or three times at
20 birthday parties.

21 Q Okay. And my original question was is it
22 someone you would pick to baby-sit your children?

23 A At the point in time, yeah. He looked
24 like a normal -- he looked like a grandfather. He
25 was clean-cut, he was well-kept. I mean, he was

1 never disrespectful to me. He seemed like he was
2 nice to the kids, so I had no reason not to trust
3 him..

4 Q All right. And what time of day do you
5 think these events occurred?

6 A It had to be in the afternoon because by
7 5 o'clock my kids were in the house. So I would say
8 by the time -- they would get out of school about
9 2:30. So anywhere between 2:30 and 4:30 that I
10 think is when it happened.

11 Q You would get home at 8?

12 A By the time my kids were playing with
13 Michelle's grandkids, I was not working at the time.

14 Q Okay. So you were a stay-at-home mom?

15 A By that time, yes. My kids did not start
16 going over to her house to play until I stopped
17 working and I was at home with them all of the time.

18 Q Did you and [REDACTED], sit in
19 lawn chairs and watch the children?

20 A Yep, we sure did.

21 Q Have you ever watched any X-rated videos
22 in the privacy of your home?

23 A Yes, when my kids are sleeping, I did.

24 Q How often would that occur?

25 A Not very often.

1 Q Do you know whether your parents discussed
2 this incident with your children during the time
3 period from their report to the police until the
4 forensic interviews?

5 A No, sir, they did not. Because I was told
6 by the officer that came out to the house that day
7 that nobody needs to ask them any questions until
8 they can be seen by Dorchester Children's. So, no,
9 my family did not ask them any questions.

10 Q All right. So if I understand your
11 testimony, you reported a crime, they took a set of
12 statements and told you to wait four weeks to see
13 the forensic interviewer?

14 A I don't think it was four weeks. I knew I
15 had to wait a couple of weeks. It was between two
16 to three weeks, two to four weeks. But it was not
17 that long because it happened and everything -- I
18 can't remember exactly the date that they went, but
19 it wasn't that far. There wasn't a huge gap in
20 between the time that I found out to the time that I
21 took them to the Dorchester Children's Center. I
22 know I had to wait for the first available
23 appointment. But as soon as I found out, I did
24 everything that I was told to do.

25 Q Why are you suing Mrs. Bibby?

1 A After I found out what happened to my
2 children, the same day that we were giving
3 statements I was told by [REDACTED], that his
4 mom -- that this had happened to his sister and that
5 his mom knew about it. And I hadn't been a mom that
6 long, but I would never let my kids be around
7 anything like that. It wouldn't take -- I wouldn't
8 even need to know about family history. All it
9 would have been was just, I don't think -- don't
10 leave the kids there while my husband is alone, just
11 make sure I am around. It wouldn't have took much
12 to tell me not to let my kids go over there.
13 Because if I would have known what would have
14 happened in that house, my little girls would have
15 never been over there, never.

16 Michelle Bibby is the first person that I
17 have actually let my kids go and play with. I am a
18 very -- my mom used to say I keep my kids in a
19 bubble and she was right. I wouldn't -- I did not
20 have baby-sitters. I had my mom. When I was
21 working, it was my mom or my husband. My kids never
22 went to daycare. They didn't go to school until
23 they went to Goose Creek Primary.

24 My kids would not play outside unless I
25 was there. My kids never went to anybody else's

1 house.

2 Q Do you have any information that your kids
3 were in any way harmed when they were in the company
4 of Mrs. Bibby?

5 A Not that I am aware of, no.

6 Q And have you told me everything that you
7 know about the incidents with Mrs. Bibby's daughter?

8 A Yes, sir.

9 Q Do you realize that was 14 years before
10 this incident?

11 A I understand that, but those are my little
12 girls. My little girl was four years old when this
13 started. So to me it doesn't matter, because if he
14 did it once to his own daughter he would do it
15 again.

16 And he didn't have to do it to my little
17 girl. She didn't know, she didn't know any
18 different. She didn't know those words that she
19 said. My children don't even watch rated R movies.
20 She doesn't have to go through what she is going
21 through right now.

22 Q Do you think that all of the things she
23 said happened occurred?

24 A Yes, sir, I do. I have no reason not to
25 trust my daughter, none whatsoever. [REDACTED] is not --

1 none of my kids have been bad. I have had to work
2 with their school about the ways [REDACTED] has acted out
3 afterwards. Her teachers know about it. I have to
4 go in at the beginning of every school year to let
5 them know that my daughter was a victim of a crime,
6 and if she starts crying in the middle of classroom,
7 this is why. If she talks about killing herself,
8 this is why. I don't wish this on anybody.

9 Q What teacher said she said this in front
10 of her?

11 A She hasn't said it about killing herself
12 in front of any of her teachers, but she has had a
13 good bit of crying for no reason. Kids that -- a
14 kid would walk over and, you know, mess with her and
15 she would start crying hysterically.

16 I talked to the counselor, I talked to the
17 principals, I talked to everybody at the school
18 about what is going on to try to make sure that she
19 is okay. I don't trust anybody anymore because of
20 this.

21 And I just -- I go in there and I let them
22 know [REDACTED] is a very emotional person right now. I
23 used to have a happy little four-year-old. Now my
24 seven -- now that she is seven, she talks about
25 being unclean. She talks about killing herself.

1 She talks about being dirty. She talks about why
2 did this happen to me.

3 Q Do you have any idea where she has learned
4 these terms?

5 A No, I don't. But she didn't learn it from
6 my house.

7 Q I am talking about her saying that she is
8 dirty and things like that. How does a
9 four-year-old know to use those terms?

10 A The counselor said it is because of what
11 he was telling her, that Mr. Bibby on several
12 occasions said she was unclean and dirty. If she --
13 if she would go and tell me, that I would think that
14 and I wouldn't want her anymore. So she heard it
15 from him.

16 Most of the stuff that she talks about
17 now, wieners, all of that, she did not hear from me,
18 she heard from him. Because I have a little boy and
19 I have two little girls. I cannot just let my
20 daughter walk around going -- they have names for
21 their private areas and it is not that. So she did
22 not learn from me. She learned it from him.

23 Q You say she learned it from him. You mean
24 she learned that she was unclean and all of these
25 other statements from Mr. Bibby, Senior?

1 A She heard that she was unclean, she heard
2 that she was dirty. [REDACTED], on her own, said she
3 wanted to kill herself. My sister died. She knows
4 about death. My grandfather died. She knows about
5 death. My daughter has sat there and said, Mommy, I
6 don't want to be here anymore, I want to go to
7 heaven where Aunt Donna is so it's safe.

8 Q Did your sister kill herself?

9 A No, she did not.

10 Q Was there any investigation?

11 A There was an autopsy that said it was an
12 accidental overdose because of the medicine. She
13 did not kill herself.

14 Q Did anyone mention that possibility in
15 front of your children?

16 A No, never. They wouldn't have enough
17 nerve to say that in front of me because I loved my
18 sister. I have one sister and now she is gone.
19 They would have not -- no, nobody said that in front
20 of her at all.

21 Q Are any of the children currently in
22 therapy?

23 A They are not at this moment in time. [REDACTED]
24 is put on a waiting list to go to the Dorchester
25 Children's Center. I asked her if that is where she

1 wanted to go because she was comfortable because she
2 knows those people. She said, yes. And that is
3 what I have taken the steps to do.

4 Q Since you heard about [REDACTED], they have
5 been to MUSC for two months. Have they seen any
6 other psychologists or counselors or psychiatrists?

7 A Not since then. I didn't know about
8 [REDACTED] until I picked up the report from Goose Creek
9 about what [REDACTED] had said. So at the time all this
10 was going on, I had no clue what [REDACTED] was saying
11 at all. I had no contact with [REDACTED] and I was not
12 her guardian, so there was no reason why I would
13 know about any of that.

14 Q I am referring to what we started with,
15 that you got a text from [REDACTED]'s father.

16 A Yes.

17 Q And you talked to [REDACTED]'s father shortly
18 after that.

19 A The only thing that I was told is that he
20 said his dad molested his daughter. There was no
21 details at all.

22 Q That is all I am asking.

23 A Sorry. I misunderstood the question. I'm
24 sorry.

25 Q From that point to the present, the

1 sessions at MUSC that you took them out of are the
2 only counseling or psychiatric care they have had?

3 A Along with the Dorchester Children's
4 Center, yes.

5 Q What counseling have they gotten from the
6 Dorchester Children's Center?

7 A They got -- [REDACTED] got -- was talked to
8 about how to control her crying. And they talked to
9 her while she was being there. And then I moved her
10 to the MUSC. And then I thought that I was doing
11 more damage to her by making her talk about what
12 happened, so I took her out.

13 Q Okay. You have not taken her back to
14 anyone and you are on a waiting list, is that my
15 understanding?

16 A I talked to the Children's -- Dorchester
17 Children's Center and I was given facts about how it
18 would be better and it would help her heal. And as
19 soon as I did that, I put her in to try to get that
20 so she has been waiting on that, yes.

21 Q And there is no question that you have
22 followed the advice of the DSS officials and other
23 officials in handling the situation?

24 A Yes, sir.

25 Q And you wouldn't have a problem with

1 Mrs. Bibby doing the same thing?

2 A Not at all. I have nothing to hide. I
3 didn't coach my children. So that is not a problem.

4 Q All right. Well, you heard earlier that
5 the DSS officials told her not to tell anyone. So
6 if she is following the DSS official's advice just
7 like you are, aren't y'all doing the same thing?

8 MR. ANASTOPOULO: Object to the form.

9 A No, I am not. Because I am protecting my
10 children. If she was trying to protect kids, she
11 would not let them be alone with him, especially
12 knowing that what he did, about the physical abuse,
13 what he has done to her, what he has done to his
14 sons, what he has done to his daughter, there is a
15 big difference.

16 Q Now, was Mrs. Bibby ever called when her
17 son was leaving the house and y'all were leaving the
18 kids in the house with Mr. Bibby, Senior?

19 A I am not sure what [REDACTED] did, but [REDACTED],
20 that was -- I would assume that was [REDACTED].

21 Q You never called the library and told
22 Mrs. Bibby that your children were in her house when
23 she wasn't there?

24 A No, sir. I didn't know -- because she had
25 already made it clear that my kids were more than

1 welcome to come over to her house and play with the
2 grandkids any time they wanted to.

3 Q Any time they wanted to, when she was not
4 there?

5 A Yes. She never said they couldn't come
6 over with her not being there. She didn't say that
7 they couldn't come over if Danny was not home. None
8 of that was ever said.

9 Q So they could come over at midnight, they
10 could come over at 7 --

11 A As long as the kids were outside playing,
12 my kids could go over to her house and play.

13 Q Do you have any information that
14 Mrs. Bibby knew anything about any abuse of children
15 by Daniel Bibby, Senior, between the time he
16 molested his daughter and when [REDACTED]'s situation
17 came up?

18 MR. ANASTOPOULO: I object to the form.

19 A I'm sorry, can you repeat that?

20 Q Sure. Do you have any information that
21 Mrs. Bibby has any knowledge of any abuse by Daniel
22 Bibby of any child between the time in 1995
23 involving his daughter and then the incident with
24 [REDACTED]?

25 MR. ANASTOPOULO: I object to the form.

1 A No, I don't. But a lot of the things that
2 I have been told about the Bibbys, they have been
3 lies. So I honestly don't know what to believe. I
4 don't know if my kids and [REDACTED] and her daughter
5 was the only one. I pray that there were no other
6 victims, but honestly and truthfully, I have no
7 clue. Because to me, it seems like he has done this
8 more than once. So there could be no telling how
9 many kids that he could have hurt.

10 Q Anyone else come forward since he has been
11 charged?

12 A Not that I am aware of, no.

13 Q Who has spoken to you about the Bibbys?
14 You mentioned you have heard all sorts of lies about
15 them; who?

16 A Michelle, Danny, I have talked to them.
17 Michelle told me that -- she talked to me about
18 going to Myrtle Beach and dumping the computer. I
19 was told about her having to hide the key from her
20 husband to keep him away from her daughter. And
21 after finding that out, I started noticing that she
22 was going to every case with him. Every time he was
23 in court, she was there.

24 Not only was she coming over to my house
25 to ask me questions about how is the case going, has

1 the police found out anything, I put a restraining
2 order out on her and her family so they could not
3 come in my house. They could not come on my
4 property.

5 And then I found out they had the bond
6 amended and Mrs. Bibby spoke for him to be able to
7 come back to the house. He showed up around
8 11 o'clock one night. I was outside with my
9 nephews; the dogs were going to the bathroom. I saw
10 him. I called the police because he wasn't supposed
11 to be there.

12 I found out that bond was amended so he
13 could come home and do housework and pick up his
14 stuff. He showed up on three other occasions and I
15 moved. I left, I broke my lease. I got my kids
16 away from them.

17 Q So the people you are talking about that
18 gave you the information that turned out to be lies
19 was Mrs. Bibby?

20 A Yes, and her son.

21 Q And her son, your former friend, [REDACTED]?

22 A Yes, yes.

23 Q Okay. Did you hear your attorney a little
24 earlier today threaten to take her home away?

25 MR. ANASTOPOULO: I object to the form.

1 A I didn't hear her threatened. No, sir,
2 sorry, I didn't.

3 Q Did you have -- did you hear any questions
4 about who owned the home?

5 A Yes, sir. Because your client, Michelle,
6 has come to me, along with her son, saying that they
7 are going to take everything that was in his name
8 and turn it over to Michelle so he couldn't get in
9 trouble. I have heard that, yes, sir.

10 Q What do you think he has?

11 A I don't know. I really don't care about
12 him. But I know that people have been coming to me.
13 I have had her son trying to find me. I didn't even
14 want to give my address a few minutes ago because I
15 am afraid that somebody is going to come hurt me and
16 my kids.

17 Q Has anyone hurt you or anyone in your
18 family since all of this began?

19 A Her son has been trying to find me. Her
20 son was calling my family, my brother-in-law. When
21 I was moving, I had one of her neighbors follow me
22 out of the housing neighborhood with my mom because
23 they were trying to figure out where I lived. So,
24 yes, I have been harassed by them. Yes, sir, I
25 have.

1 Q Someone trying to locate you is harassing
2 you?

3 A Yes, sir.

4 Q And you are talking about the person who
5 notifies you and told you to go check your children,
6 you don't want to talk to that person?

7 A No, sir, I don't, because that person also
8 knew about his sister being molested and nobody told
9 me. I don't need people around my children that are
10 going to -- if I was told that, that this would have
11 happened, my kids would have never even been over to
12 that house and I would have never become friends
13 with any of them because I don't do that. I don't
14 put my kids in danger. I don't -- I am not going
15 to -- I would, no, so I do not hang out with them,
16 no.

17 Q I didn't ask whether you hung out with
18 them. You are accusing this gentleman of harassing
19 you because you say he is trying to get in touch
20 with you. Do you have any idea why he wants to get
21 in touch with you?

22 A No.

23 Q Okay.

24 A But when someone is calling my -- going on
25 Facebook trying to look my family up, going on My

1 Space, going to bars, that is, to me, harassment.
2 And that, to me, is him trying to figure out where I
3 am.

4 Q Who told you he went on Facebook looking
5 for your family?

6 A He did. My brother-in-law did.

7 Q When did you talk to [REDACTED],
8 about going on Facebook?

9 A It was when he went in and I found out
10 that he watched the forensic video of my children.
11 I told him to leave me alone, stay off Facebook, to
12 stay away from my family and don't come around me
13 again or I will pick up the restraining order again.

14 Q Okay. You told me what you would do. I
15 am trying to figure out how you know that [REDACTED]
16 [REDACTED] was looking on Facebook and the other places
17 you mentioned trying to find out where you lived.

18 A Because the people that he was asking came
19 back to me and told me. They said, what do we need
20 to do. I just said, don't talk to him anymore. The
21 people and friends that he contacted, they contacted
22 me and I told them not to talk to him, don't tell
23 him where I live, and that was the end of it.

24 Q Who told you that Mr. Bibby, Senior, and
25 any member of his family are trying to move assets?

1 A Her son did. Her son said in front of my
2 husband, and I think it was -- yeah, it was me and
3 my husband, and he was sitting there talking. And
4 he said that, [REDACTED], you need to be careful because
5 if my dad thinks that you are going to go after him
6 he is going to try to do whatever he can to get rid
7 of everything he has and out of his name.

8 That is what I was told. This was before
9 I even had anything done. This was when I was
10 finding out everything. [REDACTED] told me that I should
11 not trust anybody, that I didn't need to be giving
12 anybody advice, I need to stay away from them.

13 Q Okay. So the source of all this
14 information, then, are the Bibbys themselves?

15 A Michelle has said on her own about what
16 her husband has done to her daughter, about what she
17 was trying to do to keep him from hurting her
18 daughter. And [REDACTED] has also said that his
19 daughter -- that his sister was molested because of
20 her father.

21 As soon as I found out that -- that this
22 was known and I could have kept my kids away, if
23 somebody would have just said, don't leave them over
24 there, I didn't need to find out what happened to
25 his daughter. All they had to do was, don't let

1 them go over unless I am there, don't leave them
2 there by themselves with their dad; that was it.
3 But that never happened. I cannot forgive or be
4 friends with somebody that knew that knowledge and
5 just could not tell me.

6 Q So it is your understanding that
7 Mrs. Bibby would allow your children to come over to
8 the house when she was not there?

9 A Yes.

10 Q How do you know that?

11 A Because they were over there when she
12 wasn't there.

13 Q If she is not there, how does she know
14 that they are there?

15 A Because I talked to her almost every other
16 day before I found out about this. I was always
17 going over. I would ask to borrow sugar. I would
18 go over. We would talk about the kids.

19 At one point in time she was giving me
20 some of the clothes that her grandson and her
21 granddaughter couldn't fit in anymore and they were
22 giving them to me.

23 I talked to her all of the time. And
24 there was no indication ever that I should not have
25 my kids over there when she is not there, none.

1 That was never said. It was always that my kids
2 were welcome to play if her grandkids were outside
3 playing.

4 Q Outside playing?

5 A Yes.

6 Q Okay. So what she told you was that they
7 were welcome in her yard if they were playing
8 outside, right?

9 A And that it was also put -- we talked and
10 she asked if [REDACTED] or if [REDACTED] could come over and
11 play in [REDACTED]'s room because [REDACTED] and [REDACTED] loved
12 playing with the stuffed animals. And Mrs. Bibby
13 did not want her to get them messed up or dirty.
14 They were her baby dolls. They would go in her room
15 and play with her baby dolls.

16 Q That was when Mrs. Bibby was there?

17 A Yes. Even when she wasn't there and even
18 when she knew that they were over there playing in
19 the house while she was at work, nothing was said.

20 Q All right. Other than Mrs. Bibby not
21 telling you about the incidents with her daughter,
22 what else do you think Mrs. Bibby did wrong?

23 A She shouldn't let a man that shouldn't be
24 around kids be around kids. If somebody hit my
25 children and left bruises, that person would not be

1 around my kids. To me, hearing some of the stuff
2 that -- I'm sorry, I just --

3 Q You heard that she had been hit, right?

4 A Yes, sir, I did. Me and her talked about
5 it before because my husband has PTSD. And at one
6 point in time I was talking to her about it because
7 her husband was in the military as well and I didn't
8 know what to do. My sister had died and my family
9 was falling apart.

10 Q You mentioned earlier that you found out
11 she was Roman Catholic, right?

12 A Yes, I did.

13 Q Are you Roman Catholic?

14 A I am converting into one, yes, sir,
15 because my husband is and I want my children to be.

16 Q Do you know what the rules about marriage
17 are, and were, particularly at the time?

18 A Yes, sir, I do. I know that a Catholic,
19 it is against their religion to get a divorce. And
20 I think that God would forgive her if she divorced
21 him after all of the stuff he has done to innocent
22 children. To me, I don't think that would be a
23 problem.

24 So I might be turning into a Roman
25 Catholic, but in my eyes, what God said is right or

1 wrong that should matter and it should matter that
2 kids should not be touched. They should not be
3 turned into victims. They should not be molested.
4 They should not have to go through any of that.

5 And I don't care who it is, it doesn't
6 matter. Kids should not be treated like that. If
7 you have a child, that child didn't ask to be
8 brought into the world. It just wants you to
9 protect it. To me, she was not protecting them.
10 And I take grave offense to that.

11 Q Okay. What else did Mrs. Bibby do wrong?

12 A She just didn't protect the kids. To me
13 there should be nothing else. Those are my kids..
14 Those are other -- those are her grandkids. There
15 shouldn't be anything else. To me that was it.

16 Q Well, I am asking you specifically what
17 did she do wrong.

18 MR. ANASTOPOULO: I think she has
19 answered; asked and answered. She didn't
20 protect the kids.

21 MR. CORRIGAN: You don't need to answer.
22 She needs to answer.

23 MR. ANASTOPOULO: She answered it three
24 times.

25 MR. CORRIGAN: That is fine. How many

1 times did you ask the same question and
2 insisted that you could?

3 A She didn't protect my kids. She didn't
4 protect her grandkids. And she didn't protect her
5 daughter, that is what she did wrong.

6 Q What did you expect her to do?

7 A As a mother, I expect her to take care of
8 children. It doesn't matter whose they are. It
9 doesn't matter that they are strangers or not.

10 A child is a child. A child is innocent
11 and a child can't defend itself. So if I would
12 expect my family to do that, I would expect anybody
13 to do that.

14 Q What did she do to cause -- what did she
15 do to cause wrongful infliction of emotional
16 distress to a bystander?

17 A She knew what her husband was capable of
18 and she didn't say anything. She knew her husband
19 could not be trusted around little girls. This
20 whole thing could have been avoided.

21 Q Well, is it not more correct to say that
22 her husband had transgressed against his daughter
23 and that is what she knew?

24 MR. ANASTOPOULO: I object to the form.

25 A Allowing him to come back into a house

1 where he had already hurt her kids and her, to me
2 that speaks in everything. She let it happen. She
3 let it keep happening and she didn't try to stop it.

4 Q Have you had any counseling since this?

5 A No, sir. I have been more worried about
6 my children and my husband.

7 Q Are you familiar with the concepts of
8 battered wife syndrome and people who are
9 victimized?

10 A Yes, sir. Like I said, my husband suffers
11 from PTSD. I have had a really -- it doesn't
12 matter, because a mother should protect her kids. A
13 grandmother should protect her grandchildren. And
14 in my eyes, when it first happened, all of that,
15 years ago, it should have been the first and last
16 time. Because you should care more about your kids
17 and protect them.

18 Q All right. You are talking about her
19 grandchildren. Her grandchild that was involved in
20 the incidents was under the custodial care of her
21 father, is that your understanding?

22 A Actually, my understanding of it was that
23 [REDACTED] lived there but his mom took care of them
24 because [REDACTED] was -- he was having a rough time. He
25 was not the best person, but he was not the worst

1 person.

2 And my understanding was that Danny was
3 there, but it was mostly Mrs. Bibby taking care of
4 [REDACTED], [REDACTED] and [REDACTED]

5 Q But do you know what the legal status was
6 as far as the custodial parents?

7 A [REDACTED] said that he had -- that his mom did
8 have custody of [REDACTED] and that he had partial custody
9 with her with [REDACTED] and [REDACTED]. That was my
10 understanding.

11 Q You said I think several times that [REDACTED]
12 [REDACTED], knew about what happened to his
13 sister?

14 A Yes, he did. I found out after everything
15 because he called me crying saying that he should
16 have told me what happened a long time ago and I
17 could have protected my kids. So, yeah, he did say
18 that.

19 Q Did he say he didn't expect anything to
20 happen after 14 years?

21 A Actually, no. He said that he had talked
22 to his mother on several occasions about what her --
23 he had caught his father doing. And it seemed like
24 nobody cared. He said that he had talked to his mom
25 numerous times about what he was catching him doing

1 on the computer. And [REDACTED] has apologized I don't
2 know how many times because of everything he did
3 know and that he didn't stop.

4 Q On what occasions did the gentleman that
5 you won't speak to apologize?

6 A He apologized after he text messaged me
7 because he didn't even call me. I got a text. Then
8 my husband called him. And every time I talk to
9 him, he is sorry. That's all he can say is he is
10 sorry. But I just -- it is my choice whether I want
11 to be his friend or not. And I don't want to be
12 because the knowledge was there; nobody bothered to
13 mention it.

14 Q How many conversations did you have with
15 [REDACTED], from the time he texted you until
16 you cut off all contact?

17 A I only talked to him, I would say, maybe
18 four or five times afterwards. My husband wanted to
19 cut him off completely at first and I was the
20 kindhearted one, thinking that he is going through
21 the same thing I am going through. But when we
22 started finding out all of the information, we cut
23 all ties with him. I have cut ties with some of my
24 family because they still talk to [REDACTED], so --

25 Q Who is that?

1 A That would be my cousin.

2 Q [REDACTED]?

3 A Um-hum. I don't talk to him anymore.

4 Q When was the last time you talked to him?

5 A When I put the restraining order against
6 Mrs. Bibby and he texted me asking what did -- why.
7 I told him it was because she was coming over trying
8 to ask about what was going on with the case and
9 turning around and she wasn't out for my interest
10 anymore. She was covering her end to make sure to
11 find out what I knew about what was going on with
12 him. That is when I had the restraining order put
13 on and I lost him.

14 Q Okay.

15 A So I will be happy to choose my kids over
16 somebody like that any day. My kids mean more to
17 me, so --

18 Q You and Mrs. Bibby had been exchanging
19 information since you moved to the block, right?

20 A Yes.

21 Q [REDACTED] lived at your house for a
22 short amount of time and his mother paid part of
23 your rent?

24 A He stayed in my house for three weeks and
25 she did help us out. And then I told [REDACTED] that we

1 could not do it anymore and I asked him to leave.

2 And he moved out.

3 Q And --

4 A This was before I found out what happened
5 to -- this was before [REDACTED] I found out about any
6 of it, so --

7 Q I understand. But even after you found
8 out about [REDACTED] you had conversations up to a
9 point with Mrs. Bibby?

10 A Yes, I did.

11 Q And you then came to a conclusion that she
12 was somehow pumping you for information to help
13 Mr. Bibby?

14 MR. ANASTOPOULO: I object to the form.

15 A Actually, she came over one day and tried
16 to tell me that the court date was canceled when it
17 wasn't. And that was the day that I put the
18 restraining order, because she was trying to get me
19 to not show up for one of the bond hearings. And I
20 took that as offense and I made it to where she
21 couldn't come over and bother me anymore.

22 So I didn't -- I had proof. I was getting
23 ready to go do something against him and she was
24 trying to come over and tell me it wasn't right and
25 that the bond was being dropped and he was going to

1 be moving back in. That is when I cut off all ties
2 with her.

3 Q She said those specific things, that the
4 hearing had been canceled, that the bond was going
5 to be dropped, and he was moving back in?

6 A Yes, sir. That is the same night that I
7 also called the police because he showed up and I
8 called the police. I saw him, I was outside. I
9 couldn't figure out why their car was coming down
10 the street with no headlights on until it pulled
11 into her driveway and I saw it was his truck. I
12 called Goose Creek police officers.

13 They came out and that is when I was told
14 that they both went back and she made it possible
15 for him to be able to come home. That is when I
16 found out that. And I would say two weeks after
17 that I moved out because of that reason.

18 Q Did you observe him spend the night at
19 that house?

20 A He stayed four hours; I fell asleep. I
21 can tell you every time that he came home because
22 every time he came home, my girls were in their room
23 crying hysterically. So there was no short-term.
24 He was coming over and staying two and three hours
25 at a time. I kept calling Goose Creek. They kept

1 saying they can't do anything about it because to me
2 they said I would be harassing him.

3 But he stayed longer and longer. He was
4 taking things in and out of the house. I called the
5 police about the guns, about the computer, about
6 everything that I saw because I was trying to keep
7 him away from my kids.

8 Q But my question was did you see him spend
9 the night?

10 A By the time I left -- by the time I went
11 to sleep, I would say about 3 o'clock, he was still
12 there. 3 o'clock in the morning. And when I woke
13 up at 7, his truck -- if he would have left, he came
14 back early in the morning. So he might not have
15 stayed the night, but by the time I was sleeping he
16 was there. By the time I woke up he was back, so.

17 Q How many times was that?

18 A I would say a couple. As a matter of
19 fact, I called and asked the solicitor, I said, the
20 gentleman that lived next door to us, his name is
21 [REDACTED] he works for the school board, he was the
22 one cutting their grass. And I brought it up to
23 Mrs. [REDACTED]. I said, you made a bond amendment
24 for him to cut grass and somebody else is doing it.
25 He was just coming over and doing whatever.

1 But after the third time of him coming in,
2 I moved my kids out. I broke my lease, I messed my
3 credit up, I got my kids out of there.

4 Q When you called the police these various
5 times when you saw him, did they file a report?

6 A They came out the first time. And then
7 the second two times they said that they know that
8 bond has been amended, and unless he stays or tries
9 to look over at the house or come near me, they
10 can't keep harassing him.

11 Q The first officer, the first time you
12 called, did he write a report?

13 A Yes, sir, he did.

14 Q Do you have a copy of that report?

15 A I gave Mr. Akim all of my copies. I don't
16 have anything with me. But I do have copies of it,
17 yes, sir. I have copies of the report that I wrote.
18 I have copies of the restraining order. I have all
19 of those.

20 Q Did you give a copy of the restraining
21 order to Mr. Anastopoulo?

22 A Yes, I did.

23 Q After the first call to the police, there
24 was a report written up, you called two other times
25 and they did not write up a report?

1 A Yes, sir.

2 Q Did you go to the dispatch?

3 A Yes, sir, I did. Well, I called Goose
4 Creek, so, yes, dispatch.

5 Q Okay. So your case against Mrs. Bibby is
6 that she didn't tell you about the incident with her
7 daughter and she didn't protect the children, is
8 that what are you telling me?

9 MR. ANASTOPOULO: I object to the form.

10 A Actually, to me, it is negligence. She
11 neglected to warn me, she neglected to keep my kids
12 safe. That is neglect.

13 Q So she was -- she neglected to protect
14 children, is that your case?

15 A Yes, sir.

16 MR. ANASTOPOULO: I object to the form.

17 Q Okay. Have you turned over any or all of
18 your documents having to do with any of this to
19 Mr. Anastopoulos?

20 A Yes, sir, I have.

21 Q Do you have copies of reports from MUSC?

22 A I will get those. Like I stated before, I
23 will get those and I will get those turned in to him
24 and for you.

25 Q I meant to ask at the beginning, can you

1 give me the dates of birth of these children?

2 A [REDACTED] and [REDACTED] were born [REDACTED] 01.

3 Then [REDACTED] was born [REDACTED], 2005 -- yeah, '5..

4 Q Has [REDACTED] been diagnosed with any
5 conditions like ADHD or autism?

6 A Oh, no, sir.

7 Q Have you seen any diagnosis for [REDACTED] from
8 any doctor or psychologist that she has emotional
9 issues?

10 A Yes, sir. The doctors at MUSC said she
11 had PTSD. So does [REDACTED].

12 Q Did they tell you how they treat PTSD --

13 A PTSD.

14 Q -- in children?

15 A Yes, they did. They talked about talking
16 and basically just letting them know that it is okay
17 to talk about it. And to -- they said if I keep
18 letting her talk about it, she will get comfortable
19 and she will be able to heal that way by talking.

20 But when I was watching my husband go
21 through it and I was watching them go through it,
22 [REDACTED] was always crying. [REDACTED] was never happy. Her
23 school, she was doing bad in school. She couldn't
24 be around strangers. She didn't want to be around
25 men. She was -- [REDACTED] doesn't trust anybody. My

1 son -- and I honestly thought I was hurting them
2 more by having them talk about it. That is why I
3 took them out of the MUSC program.

4 But I have been reading up because I read
5 up on his PTSD. I have been talking to his
6 counselor at the VA. And I also talked to a lady at
7 Dorchester Children's Center. And they said the
8 best way to deal with PTSD is to be able to talk
9 about what happened and what part of the trauma that
10 they have to go through, not relive it, but talk to
11 it until -- talk about it until they are okay to
12 talk about it and it doesn't hinder them anymore, it
13 doesn't upset them. That hopefully she will be able
14 to heal the rest of the way.

15 But I still could end up dealing with her
16 being oversexual when she becomes a teenager. I
17 have to worry about depression. My family has a
18 history of depression. And that just made it even
19 worse for her.

20 I have to worry about later on in the
21 years when she becomes a mother what might happen to
22 her. I have looked a lot of things up and I have
23 been trying to study this and learn it so I know how
24 to help my husband and I know how to help my kids.

25 Q How is your husband doing with his

1 treatment?

2 A He is doing very well. He is doing
3 extremely well. It is amazing that even though my
4 family has gone through so much with my husband, my
5 sister and my grandfather, my children, we are
6 closer as a family now. And I know if it wasn't for
7 them, that he wouldn't be here. And if wasn't for
8 him, I wouldn't be here. Our kids are the best
9 thing in the world to us and he is doing remarkable.
10 He has everything under control. He has a really
11 good job now.

12 Our lives are finally starting to look
13 like there could be a silver -- you know, a bright
14 future. And that is all I want to keep working
15 towards, getting my family better and healing.

16 Q The depression that runs in your family,
17 is it more situational or chemical?

18 A Situational.

19 Q Who has suffered from depression?

20 A My mom and my dad.

21 Q How about your grandparents?

22 A Not my grandparents. My mom, like I said,
23 she is completely deaf. And that was very hard on
24 her. She lost her hearing completely after I was
25 born. So there was a brief time that she was able

1 to hear.

2 My father lost his father before I was
3 ever born of a heart condition. My father didn't go
4 past the ninth grade. So he has learning
5 disabilities that he has to deal with and that is
6 what brought on their depression. So it was
7 medicine and working with counselors they have
8 gotten better.

9 Q You haven't seen any signs of learning
10 disorders in your children?

11 A No, sir. As a matter of fact, that was
12 the first thing that I did check because I have a
13 learning disability. I have dyslexia. I needed to
14 make sure that my kids, if they did have something,
15 I could catch it right away. But my kids are --
16 they said that they are well balanced. They make As
17 and Bs. I mean, they are really good.

18 Q Let me make sure I have this clear in my
19 head. Back to 2009, where were the twins, if
20 anywhere, in school? They have changed all of the
21 names. It used to be kindergarten.

22 A [REDACTED] was not in -- [REDACTED] wasn't in school,
23 so they had to be in second grade when this
24 happened. [REDACTED] went to school -- they are almost
25 like two years behind each other. So my kids are

1 the -- yeah, they were in the third grade because --
2 the second grade because they had third grade last
3 year. So they were in second grade at the time and
4 [REDACTED] wasn't in school. Now [REDACTED] is going into
5 second grade and my twins are going to fourth grade.

6 Q Okay. So back in 2009, [REDACTED] was not in a
7 formalized --

8 A In 2009, she was in kindergarten. 2008
9 she wasn't in school, but 2009 she had kindergarten.

10 Q Which kindergarten?

11 A Regular, it wasn't pre-K or anything. It
12 was just kindergarten at Goose Creek Primary.

13 Q And the twins were in second grade where?

14 A At Goose Creek Primary.

15 Q Okay. And today where is everybody?

16 A [REDACTED] is in Goose Creek Primary. She is
17 going into the second grade. And [REDACTED] and [REDACTED] are
18 at Sedgefield Intermediate going into the fourth
19 grade.

20 Q Sedgefield?

21 A Yeah.

22 Q Okay. They always change the names of all
23 of the schools.

24 A Yeah, they did.

25 Q And they are making As and Bs?

1 A Yes, they are. My son -- well, [REDACTED] and
2 [REDACTED] have a little bit of a talkative problem, but I
3 mean, everything is normal.

4 Q And [REDACTED] and the twins are at the
5 appropriate grade level?

6 A Yes, they are.

7 Q Do they see a counselor at school as far
8 as talking about problems or anything?

9 A Yes. They talk to their school counselor
10 at -- I think it is [REDACTED]. But she was the one
11 that I went to initially. And Mrs. [REDACTED], which
12 is their principal, that is who I initially went to
13 to let them know about -- they would be missing
14 school because of certain dates and stuff.

15 So they said anytime I needed anything or
16 if I see something, [REDACTED] and [REDACTED] and [REDACTED] have all
17 went to see her. And I am not sure who the
18 counselor is at Sedgefield Intermediate, but
19 Mr. [REDACTED] has been working with [REDACTED] and [REDACTED],
20 too.

21 Q Have they discussed this issue that we are
22 here about today with those counselors and school
23 people?

24 A [REDACTED] and [REDACTED] have talked to Mrs. [REDACTED]
25 about it, yes. [REDACTED] not so much. [REDACTED] is still

1 very uncomfortable talking to people, but she will
2 go talk to her. If she starts crying and stuff like
3 that, she will talk to her, but not too much about
4 what happened.

5 [REDACTED] and [REDACTED] can talk a little bit
6 better but [REDACTED] can't. But it is still -- it is
7 something I think [REDACTED] is going to have to work on
8 because she is not -- she doesn't understand what
9 happened to her. And until she can get that, I
10 don't think she is going to know how to deal with
11 it.

12 So that is what the Dorchester Children's
13 Center is going to help me and her do. We are going
14 to go together so I can know how to help her, and if
15 anything else happens later on in life, I will know
16 how to deal with the situation that might come from
17 what happened to her.

18 Q Going back -- I'm sorry -- for a minute to
19 the depression issue, you said that you have
20 suffered from depression, right?

21 A Yes.

22 Q Were you put on medication?

23 A No, I won't take medication for that.

24 Q Has anyone in your family, when they have
25 this problem, taken medication?

1 A My dad took Prozac, but then they took him
2 off. And I think my mom is currently taking
3 something because not only does she have to deal
4 with my sister, her father is the one that died and
5 she is not handling what happened to my kids well,
6 so she is -- I am not sure what she is on right now,
7 though.

8 Q Do you have any first cousins?

9 A Yes, I do. [REDACTED] and [REDACTED] are my first
10 cousins on my mom's side. And then I forgot, I
11 have -- my uncles live up in Moncks Corner. And I
12 have one girl that, Roseanne, she is also my first
13 cousin.

14 Q What are your uncle's names?

15 A [REDACTED]

16 Q Okay.

17 A And [REDACTED] are my
18 first cousins.

19 Q Any depression or learning disorders that
20 you know of?

21 A No, no, no. I think my uncle [REDACTED] might
22 be slow at reading, but not like my father. I think
23 mostly it is just my dad with that one learning
24 disability, so --

25 Q Who diagnosed your dyslexia?

1 A Dr. [REDACTED] is who I used to go to and
2 that is who -- he is a pediatrician over at Trident.
3 I used to -- I used to go to resource so I would
4 have an IEP and that -- that basically is the school
5 doctor that did it.

6 Q It is classic dyslexia, meaning
7 switching --

8 A I switch my numbers and stuff around.

9 Q Words and whatnot?

10 A Yeah, yeah.

11 Q Did you go through a course of treatment
12 to improve that?

13 A Well, I had resource every day, so I would
14 have to have help with like my schoolwork and
15 homework and stuff like that. But there was no
16 really treatment. I just learned how to work with
17 it and slow down and reread and make sure I go over
18 my stuff right.

19 I didn't really -- towards when I
20 graduated high school, I really didn't have too much
21 of a problem with it. I learned how to handle it.

22 Q Any other emotional issues in your family
23 circle we just talked about, your blood relations?

24 A No.

25 Q Where were the twins born?

1 A They were born in Wilmington, North
2 Carolina.

3 Q At the Navy Hospital?

4 A No, not at the Navy Hospital. Since I had
5 twins, I had to go an hour away at Wilmington. It
6 is New Hanover Medical Center. It was higher
7 equipped for the NICU in case my twins had to be put
8 in there. [REDACTED] was born at Beaufort Memorial.

9 Q All of the records that the Navy Hospital
10 and clinics could find, they got together for you?

11 A Yes. Everything, every time we moved they
12 put our package together and we would hand it over
13 to the doctor.

14 Q Moving around as you did, were you able to
15 get [REDACTED], for example, the well checkups each year?

16 A Yes, sir, yeah. The only time that we did
17 not have insurance is right after he got out of the
18 Marine Corps and it wasn't actually -- it was like
19 December or January. And then by the time I moved
20 up here in March, I had insurance and I put them on
21 my insurance.

22 Before that, they had Medicaid. So, it
23 went from Navy Hospital to that little bit of lapse
24 of not having insurance to Medicaid, and then they
25 were put on my insurance.

1 Q Your three children like to draw?

2 A Yes, they do.

3 Q Like to play with soldiers or dolls or
4 both?

5 A My girls don't really -- well, [REDACTED] likes
6 to play with ponies and [REDACTED] likes to play, not
7 dolls, per se. My son has Transformers. He never
8 really got into the Army people.

9 Q I thought they were the Army people.

10 A Well, they don't look like it anymore. He
11 builds and actually gets on the Internet and learns
12 how to put them together and makes -- my son knows
13 how to take a camcorder and he makes Transformer
14 movies, so.

15 Q He is going to be famous?

16 A Sure. And [REDACTED] is my star. She loves to
17 sing and dance.

18 Q So they sound like they are creative
19 children.

20 A Yes.

21 Q They are involved in arts and
22 storytelling, whatnot?

23 A Yeah, yeah, yeah.

24 Q In the area I am still more perplexed, I
25 don't understand, when a crime like this is

1 reported, other than the Goose Creek police force
2 taking statements, they didn't insist upon taking
3 the children to an emergency room or a doctor?

4 A No, sir. And I asked. I asked the person
5 that came in -- I asked that -- he wasn't a
6 detective, he was an officer. And I asked him, I
7 said -- I asked like a thousand questions. What do
8 I do, how do I do this, what is going to happen?
9 And I mean, I said, do I need to take them to the
10 doctor to the emergency room?

11 And he said that -- he said, first of all,
12 we are going to go do the statements. He said then
13 they will get -- the detective will be assigned the
14 case, and then she will -- then I need to call the
15 Dorchester Children's Center and set up a forensic
16 interview. And he said if I need anything in
17 between now and then, I was -- I did call the Goose
18 Creek victim's advocate or the Berkeley County
19 victim's advocate. He said try -- he said don't
20 talk to the kids about the case. He said it is
21 better to let the forensic people interview them
22 because they will know how to ask the questions that
23 I could not ask right.

24 So I trusted him. Like I said, my family
25 has never -- I have never had any -- anything like

1 this happen. The worst thing that has happened is
2 getting called that my sister was gone. That is the
3 only thing that the family has ever had to go
4 through.

5 So I took what he was saying and what the
6 victim's advocate was saying. I just entrusted in
7 them because I didn't know any better. I mean, I
8 have never had to --

9 Q So between those times, during this time
10 period -- excuse me -- when the police report was
11 taken and when you finally had your appointment, you
12 basically were making phone calls to a lot of
13 people?

14 A Yes.

15 Q The children didn't see anyone?

16 A No, no. The one thing that I have learned
17 with my children is me and him, we don't want to
18 fight in front of them, we don't talk about adult
19 stuff in front of them, we don't watch adult movies
20 around, you know. I was raised that kids are not
21 supposed to know what adults are supposed to be
22 doing.

23 Especially in this case, I did not want to
24 hurt them any more than what could have already been
25 done, so anything that I did, my kids were never

1 around. They were not around when I was talking to
2 the police, anything like that. They were never
3 around.

4 Even when I was talking to the lady at
5 Dorchester Children's Center, they were out in the
6 waiting room with my mom. I would not talk about
7 this in front of them at all, they weren't around at
8 all.

9 Q I asked you earlier if you believed
10 everything that was in the statements or reports
11 that [REDACTED] said happened. This is a slightly
12 different question.

13 Do you think there are any events or facts
14 having to do with this that are not in the report
15 that your children might have told you?

16 A I do, yeah.

17 Q What is that?

18 A My son, when he was initially asked
19 questions, he would not answer. He didn't want to
20 talk about it at all. Later, he had come to me and
21 said he didn't want to lose his best friend, Foster.
22 They were in the same class together. He said he
23 needed to talk about what was going on. He sat down
24 and talked to me.

25 And he said that he had to see [REDACTED] and

1 [REDACTED] doing things, that they didn't have their
2 clothes on. He said that -- and he was -- he was in
3 detail. She was touching her private area with her
4 mouth. And I asked him, I said, why didn't you come
5 tell me? He said that he was told that if he did,
6 he was going to get killed. He said that [REDACTED] was
7 told the same thing, so was [REDACTED].

8 Q By Mr. Bibby?

9 A Yes, yes, yes.

10 Q Okay.

11 A Because I couldn't understand. I had
12 talked to [REDACTED] and [REDACTED] about strangers. I didn't
13 have a chance to talk to [REDACTED] because I thought she
14 was still too young. And I think back every single
15 day on what I could have done differently if there
16 was any signs. And it kills me because I never -- I
17 never left them anywhere. I didn't go out. I don't
18 go to bars. I don't drink. The day I became a mom
19 that was my job.

20 Q Foster is not mentioned in --

21 A No, sir, he is not.

22 Q Did your son explain where he might have
23 been when all of this was going?

24 A He said [REDACTED] and [REDACTED] was outside with
25 [REDACTED]. When he was pulled in, he said [REDACTED] was

1 coming behind him and his grandpa made him go back
2 outside. He said that little [REDACTED] would be out in a
3 minute and he would ask a question.

4 Q How about [REDACTED]?

5 A [REDACTED] was playing with [REDACTED]. [REDACTED] was
6 playing with [REDACTED] or [REDACTED] was talking to me. I
7 became good friends with [REDACTED] and I had talked to
8 [REDACTED] a lot because --

9 Q He was a big boy?

10 A Yeah, he is a good boy. He told me
11 about -- I was talking about my sister passing away
12 and he told me that he got sad because of a neighbor
13 that was living next to me, she had died. She had
14 fell and she was in a nursing home and he was
15 talking about how it upset her. And I was talking
16 about how it was okay to cry and because of my
17 sister.

18 But most of the time [REDACTED] said that when
19 it was -- when [REDACTED] and [REDACTED], they were the only
20 ones in the house. [REDACTED] would stay away. She --
21 she wouldn't come. She didn't come to me, but she
22 would be outside with [REDACTED] and [REDACTED] and there was
23 two other -- there is a little boy named [REDACTED] and
24 there was also two other girls.

25 Q Do you know the last names of [REDACTED] or

1 the full names of any of these --

2 A No, I don't. I just remember it being

3 [REDACTED]'s best friend.

4 Q Anything else that you are aware of that
5 involves this matter that is not in any of these
6 reports and we haven't talked about today?

7 MR. ANASTOPOULO: I object to the form.

8 A No. I mean, [REDACTED] pretty much said it all.

9 I believe her. My daughter has no reason to lie.

10 So --

11 Q I am just --

12 A Everything she knows is in that, and

13 everything she has told me is the same as what she
14 has said. So other than my son coming to me, that's
15 it. I mean.

16 Q I am just trying to make sure that I have
17 the full story.

18 A Yes.

19 MR. CORRIGAN: If I have the full story,
20 that's all the questions that I have.

21 MR. ANASTOPOULO: Thank you.

22 (The deposition concluded at 5:00

23 P.M.)

24

25

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON)
3

4 I, Wanda S. Buckner, Registered
5 Professional Reporter, Certified Realtime Reporter
6 and Notary Public for the State of South Carolina,
7 at Large, do hereby certify that the witness in the
8 foregoing deposition was by me duly sworn or
9 affirmed to testify to the truth, the whole truth,
10 and nothing but the truth in the within-entitled
11 cause; that said deposition was taken at the time
12 and location therein stated; that the testimony of
13 the witness and all objections made at the time of
14 the examination were recorded stenographically by me
15 and were thereafter transcribed by computer-aided
16 transcription; that the foregoing is a full,
17 complete and true record of the testimony of the
18 witness and of all objections made at the time of
19 examination; and that the witness was given an
20 opportunity to read and correct said deposition and
21 to subscribe to the same.

22 Should the signature of the witness
23 not be affixed to the deposition, the witness shall
24 not have availed himself/herself of the opportunity
25 to sign or the signature has been waived.

26 I further certify that I am neither
27 related to nor counsel for any party to the cause
28 pending or interested in the events thereof.

29 Witness my hand, I have hereunto affixed
30 my official seal, this 21st day of July, 2011, at
31 Charleston, Charleston County, South Carolina.

32 *Wanda S. Buckner*

33 Wanda S. Buckner
34 NCRA Registered Professional Reporter
35 NCRA Certified Realtime Reporter
36 My Commission Expires:
37 August 20, 2013

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF BERKELEY)

C.A. No. 2010-CP-08-3732

[REDACTED] as Parent and
Natural Guardian of [REDACTED]
and [REDACTED]

Plaintiff,

v.

DANIEL BIBBY, SR. and MICHELE
BIBBY,

Defendants.

**DEFENDANT'S ANSWERS TO
PLAINTIFFS' REQUESTS TO
ADMIT**

TO: AKIM A. ANASTOPOULO, ESQ., ATTORNEY FOR THE PLAINTIFF:

Defendant Michele Bibby, by and through her undersigned attorneys, hereby responds to Plaintiffs' Requests to Admit pursuant to Rule 36 of the South Carolina Rules of Civil Procedure as follows:

1. Admit that you have no evidence to support a defense or affirmative defense that Plaintiff's Complaint fails to state a claim upon which relief can be granted.

ANSWER: Objection. This is not a proper Request for Admission pursuant to Rule 36 of the South Carolina Rules of Civil Procedure. The Defense would not have been asserted if it was thought inappropriate.

2. Admit that you knew or should have known that Daniel Bibby Sr. fondled your daughter [REDACTED] when she was a minor.

ANSWER: Admit that I learned of this when my daughter was older and that occurred around 1995.

Rec. On Appeal 283

3. Admit that you knew or had reason to know that Daniel Bibby Sr.'s propensities for sexual activities toward minors.

ANSWER: Denied. This incident with my daughter was followed by action from DSS, counseling for both Daniel Bibby and my daughter. I was instructed by the state officials at DSS to allow Daniel Bibby back into her home so the family could reconcile. This was directed by DSS and not my decision. No other instances occurred or came to my attention until Daniel Bibby told others that he thought he had acted inappropriately with [REDACTED]

4. Admit that you knew or should have known that Daniel Bibby Sr. was left alone with the Plaintiffs: [REDACTED], [REDACTED], and/or [REDACTED].

ANSWER: Denied. These children were not allowed in the house except when I was there. To my knowledge, their mother was caring for them at all times.

5. Admit that you knew or should have known that Daniel Bibby Sr. had the propensity to subject Plaintiffs to sexual activity.

ANSWER: Denied. I had no way to know.

6. Admit that you knew or should have known that Plaintiffs were subjected to sexual activities involving Daniel Bibby Sr.

ANSWER: Denied. I cannot admit something that did not happen.

7. Admit that you owe a duty to ensure the safety and well being of invitees/licensees to your house while they are visiting the same.

ANSWER: Objection. This is an improper Request which neither seeks an admission of fact or a relevant fact to the law. Further, it sets up a legal question that does not apply to this case.

8. Admit that you failed to report Daniel Bibby Sr.'s illegal sexual activities toward Plaintiffs.

ANSWER: Admit. I could not report something that did not happen.

9. Admit that you failed to take any reasonable action whatsoever to prevent Daniel Bibby Sr.'s illegal sexual activities toward Plaintiffs.

ANSWER: Denied. I cannot admit or deny taking or not taking action for something that did not happen.

10. Admit that you had knowledge of Daniel Bibby Sr.'s possession of child pornography.

ANSWER: Denied. I was aware that my son destroyed a computer set-up by Daniel Bibby Sr. that had access to adult sexual images.

11. Admit that you assisted or had knowledge of Daniel Bibby Sr.'s disposal of a computer containing pornographic material.

ANSWER: Denied.

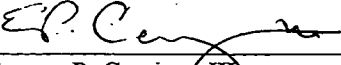
12. Admit that it was unreasonable to leave Daniel Bibby Sr. alone with Plaintiffs in your house.

ANSWER: I cannot admit something that did not occur.

13. Admit that a reasonable person would have reported the abuse to authorities and Plaintiff's parents.

ANSWER: Objection. The request is so inexact so it is impossible to answer but I cannot admit or deny something that did not happen. The incident reported to me by Daniel Bibby regarding my granddaughter was immediately known to her father and reported to the authorities..

CORRIGAN & CHANDLER LLC



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ATTORNEYS FOR THE DEFENDANTS
DANIEL BIBBY SR. and MICHELLE BIBBY

Charleston, South Carolina
July 11, 2011

Rec. On Appeal 286

1147 COLLEGE PARK RD
LOT 51
LAWSON SC 29405

☐ Victim ☒ Witness ☐ Suspect

OCA: 2009-1661

Goose Creek Police Department
Statement Cover Sheet

Name: [REDACTED] Race: W Sex: M DOB: 06/12/1978
Address: [REDACTED] City: Goose Creek State: SC
Home Number: [REDACTED] Work Number: [REDACTED] Other/E-mail: [REDACTED]
Height: 6'1" Weight: 225 lbs Hair: BL Eyes: BR SSN: [REDACTED] 5957
DL Number/State SC DL [REDACTED]

Waiver

This statement is being prepared for me or in the presence of LT. [REDACTED] of the Goose Creek Police Department. I am furnishing this statement on my own free will with no promises or threats being made for or towards me of any kind. By affixing my signature below I affirm that the contents provided within this statement are true and believable to the best of my knowledge and are an accurate depiction of the accounts as I observed them. I further acknowledge that I have been advised that providing false information to the police is a violation of South Carolina Code of Laws, 1985: 16-17-725 (Giving false information to a police officer). This statement is being provided to the police at 519 N. LOUSE CREEK BLVD.

(location)

Signed: [REDACTED] Date: 05-05-09 Time: 1824 ☐ AM ☒ PM
Witness: [REDACTED] Witness: [REDACTED]

Advice of Miranda Rights

- ☐ You have the absolute right to remain silent
- ☐ Anything you say can and will be held against you in a court of law
- ☐ You have the right to an attorney and have him/her present during questioning if you wish
- ☐ If you cannot afford an attorney, one will be appointed to represent you before any questioning if you wish
- ☐ If you decide to answer questions without an attorney present, you still have the right to stop answering questions at any time during the interview

Acknowledgement: I have read, or had read to me the above Miranda Rights and I fully understand what my rights are. I am willing to answer questions and provide a written statement at this time. I do not wish to be represented by an attorney at this time. I fully understand what I am doing and the consequences of my actions by cooperating with the police. I am making this statement on my own free will with no promises or threats being made for or towards me of any kind. No pressure or coercion of any kind has been used against me.

Signed: [REDACTED] Date: [REDACTED] Time: [REDACTED] ☐ AM ☐ PM
Witness: [REDACTED] Witness: [REDACTED]

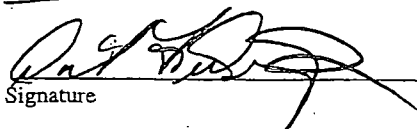
I have received a copy of this statement: [REDACTED]
Rec. On Appeal 287

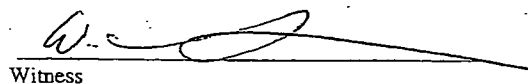
~~The~~ Today on May 5, 2009 at about 12:30-13:00 hrs my mother and brother showed up at where I have been staying the past few weeks to tell me that my father Daniel FRANKS Bibbig SR raped and molested my daughter [REDACTED].

They told me that he confessed to a psychiatrist at Palmetto Psychiatric Hospital about doing bad things to my daughter.

Since 12/08/09 I have noticed that my daughter wouldn't let me hug her, bathe her, or even give her a kiss on her cheek. My son [REDACTED] has started to shy away from hugs from me also.

For the past 2 yrs I have caught my father looking at child pornography on the internet from time to time. I have threatened to turn him in if he kept doing it. April 6 2009 my children were removed from [REDACTED] By D.S.S. and my father VACATED the computer from the premises IN FEAR OF BEING told on by my children or myself.


Signature


Witness

FILED

2011 APR 25 AM 9:10

CLERK OF COURT
BERKELEY COUNTY, SC

20 APRIL, 2011

IT MAY CONCERN,

I AM WRITING THIS STATEMENT IN REFERENCE
TO THE ALLEGED CHARGES PLACED AGAINST ME
IN CASE # 2010-CR-08-3732

NEVER HAVE I CAUSED ANY HARM TO THE MENTIONED
CHILDREN. I HAVE NEVER BEEN SEXUALLY ABUSED OR PHYSICALLY
ABUSED.

AND I DID NOT LET THEM INTO THE HOUSE FOR THE
SIMPLE REASON THAT I HAD SOME GRANDS TOYS HOMES
WITH THEM IN HAND. DID NOT KEEP PUT TOYS AWAY.

AND I NEVER LOOKED THEM IN THE HOUSE, OR A ROOM IN
THE HOUSE, AND I NEVER SHOWED THEM ANY PICTURES OF
MEN & WOMEN NUDZ & PERFORMING SEXUAL ACTS.

SINCE I DO NOT HAVE THE LIST OF CHARGES
PLACED AGAINST ME, I CAN NOT REFUTE EACH AND
EVERY CHARGE, AS I DO NOT REMEMBER THEM SINCE I DID NOT
DO THEM.

I DO NOT HAVE A LAWYER TO
REPRESENT ME IN THIS CASE BECAUSE ALL CHARGES
WERE DROPPED, AND THEY WERE REMOVED FROM THE
RECORD.

I APOLOGIZE FOR THE SLOPPY WRITING, I DO NOT
HAVE A TABLE TO SIT AT AND WRITE.

AGAIN, I NEVER EVER HARMED THOSE CHILDREN.

THANK YOU FOR TAKING THE TIME TO READ THIS LETTER.

CCDC

Charleston SC 29405

Daniel F. Bibby Sr.

DANIEL F. BIBBY N

BERKELEY COUNTY COURT.
300 California Ave.
Mound Creek B.C.

DANIEL BIRBY, SR.
#1377709
CHAS. COUNTY DET. CTM.
N. CHASSC 29405

Sirs.

I AM WRITING THE COURT TO ASK FOR RELIEF ON
CASE NUMBER 2010-CP-08-3772 RESPONSE WAS FILED
ON 4-25-2011

HL50-

I AM CURRENTLY IN CARCER IN THE CHARLSTON
COUNTY DETENTION CENT AND HAVE BEEN SINCE
OCTOBER 2010, LESS WEEKS FOR DIFFERENT OFFENSES

MY CHARGES FOR THE [REDACTED] CASES
WERE DROPPED IN CRIMINAL COURT.

I AM IN VERY POOR HEALTH WITH
CHARCO MARIS TOOTH AND OTHER PHYSICAL +
MEDICAL HEALTH PROBLEMS.

I DENY EVERY AND ALL ACCUSATION MADE
BY [REDACTED] AGAINST ME. THE RULE 5
FILMS SHOW THE CHILDREN WERE COERCED
AND CONFUSED.

AND, I ASK THAT A PUBLIC DEFENDER BE
ASSIGNED TO ME FOR CASE #2010-CP-08-3772
AS I CAN NOT AFFORD A LAWYER.

P.S. WASHN'T OURS WITH [REDACTED] SINCERLY
T. BOZCHOD Court Clerk

2011 MAY -2 PM 2:13

FILED

Daniel Birby
DANIEL BIRBY

2010 - CP - 08 - 3132

Daniel Bibby Sr.
5522 Garrett St.
North Charleston SC 29405

Akim Anastopoulos
2850 Ashley Phosphate Rd.
North Charleston, SC 29406

Re: Mediation

Mr. Anastopoulos,

I received your request for mediation February 14, 2012. Your clients were awarded a 2.5 million dollar judgment against me for charges that were dropped. You served the notice of a Judgment hearing on me while I was incarcerated on another matter. As you know, Charleston County Detention Center does not allow collect calls to the outside unless the party called approves the contact prior to the call and sets up an account. Do you know any attorney who will do this? Due to this I was unable to retain council. There was no way I could have responded, not understanding the law with no way to retain an attorney to respond in my behalf. You took this as your opportunity to "win" the judgment by default against me.

Again, I tell you, that I did not commit the actions that [REDACTED] has levied against me. She perjured herself on the stand by telling falsehoods and yet you are both set on collecting monies that I do not have and never will have. I cannot afford representation in this matter and State Farm will not represent me. If you are set on mediation, your client will have to pay the cost of this action.

Please send the ^{APR 06} ~~APR~~ form you wish me to file.

Respectfully,

Daniel Bibby Sr.

Daniel Bibby, Sr.

Cc: Clerk of Court
Berkeley County
Moncks Corner, SC

2012 FEB 17 PM 1:39
MARY P. BRYANT
CLERK OF COURT
BERKELEY COUNTY, SC

FILED

*Additionally: (4) one copy is BEKO SENT TO
STATE FARM FIRE + CASUALTY CO. CLAIMS DEPT.*

NK

*JS
W*

Rec. On Appeal 291

App'x 292

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2010-CP-08-3732

Jane Roe, as parent and natural guardian of
Judy Roe, James Roe, and Joyce Roe, minor
children under the age of eighteen (18).....Appellants,

v.

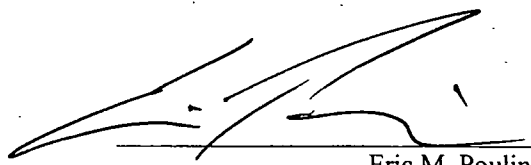
Daniel Bibby, Sr., and Michelle Bibby

Of whom, Michelle Bibby is.....Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material
proposed to be included by the parties and not any other material.

October 3, 2013



Eric M. Poulin
Anastopoulos Law Firm, LLC
2557 Ashley Phosphate Road
North Charleston, SC 29418

Rec. On Appeal 292

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

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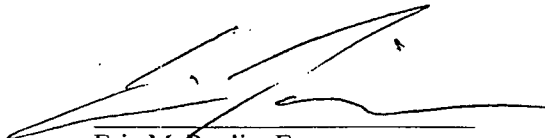
Daniel Bibby, Sr., and Michelle Bibby

Of whom, Michelle Bibby is.....Respondent.

PROOF OF SERVICE

I certify that I have served a copy of the Record on Appeal on Michelle Bibby by depositing a copy of it in the United States Mail, postage prepaid, on October 7, 2013, addressed to her attorney of record, Eugene P. Corrigan, III, Post Office Box 547, Charleston, South Carolina, 29402.

October 7, 2013



Eric M. Poulin, Esq.
S.C. Bar No.: 100209
Anastopoulo Law Firm, LLC
2557 Ashley Phosphate Rd.
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(843) 614-8888

Attorney for Appellant

RECEIVED

OCT 09 2013

SC Court of Appeals

Other Counsel of Record:

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(866) 215-5602

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2010-CP-08-3732

Jane Roe, as parent and natural guardian of
Judy Roe, James Roe, and Joyce Roe, minor
children under the age of eighteen (18).....Appellants,

v.

Daniel Bibby, Sr., and Michelle Bibby

Of whom, Michelle Bibby is.....Respondent.

FINAL BRIEF OF APPELLANTS

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North Charleston, SC 29418

Attorney for Appellants

RECEIVED

OCT 29 2013

SC Court of Appeals

TABLE OF CONTENTS

Table of Authorities.....	ii
Statement of Jurisdiction.....	1
Statement of Issues on Appeal.....	1
Statement of the Case.....	1
Statement of Facts.....	2
Standard of Review.....	5
Argument.....	5
I. The Trial Court erred in granting Respondent's Motion for Summary Judgment because Respondent owed a duty to warn Appellants by way of their special relationship and, more fundamentally, because there is evidence on the record to show that Respondent was negligent under basic principles of premises liability law.....	6
A. Respondent had a duty to warn Appellants arising out of their special relationship and the circumstances alleged in Appellants' Complaint.....	6
B. Respondent had a duty to warn Appellants as a matter of basic premises liability law.....	13
Conclusion.....	18

TABLE OF AUTHORITIES

Cases (Authoritative)

<u>Bishop v. S.C. Dept. of Mental Health</u> , 331 S.C. 79, 502 S.E.2d 78 (1998).....	7, 9
<u>Burns v. South Carolina Comm’n for the Blind</u> , 323 S.C. 77, 448 S.E.2d 589 (Ct. App. 1994).....	14
<u>Byerly v. Conner</u> , 307 S.C. 441, 415 S.E.2d 796 (1995).....	6
<u>Doe v. Batson</u> , 345 S.C. 316, 548 S.E.2d 854 (2001).....	8
<u>Faile v. S.C. Dept. of Juvenile Justice</u> , 350 S.C. 315, 566 S.E.2d 536 (2002).....	7
<u>Helms Realty, Inc. v. Gibson-Wall Co.</u> , 363 S.C. 334, 611 S.E.2d 485 (2005).....	5
<u>Holloman v. McAllister</u> , 289 S.C. 183, 186, 345 S.E.2d 728, 729 (1986).....	5
<u>Hurst v. East Coast Hockey League</u> , 371 S.C. 33, 637 S.E.2d 560 (2006).....	14
<u>Neil v. Byrum</u> , 288 S.C. 472 (1986).....	14
<u>Osborne v. Adams</u> , 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001).....	5
<u>Singleton v. Sherer</u> , 377 S.C. 185, 659 S.E.2d 196 (Ct. App. 2008).....	14
<u>South Carolina State Ports Authority v. Booz-Allen & Hamilton, Inc.</u> , 289 S.C. 373, S.E.2d 324 (1986).....	5
<u>Verenes v. Alvanos</u> , 387 S.C. 11, 690 S.E.2d 771 (2010).....	5

Cases (Persuasive)

<u>Barmore v. Elmore</u> , 83 Ill.App.3d 1056, 403 N.E.2d 1355(1980).....	16
<u>Doe v. Batson</u> , 338 S.C. 291, 525 S.E.2d 909 (Ct. App. 2000), <u>partially</u> <u>vacated</u> , 345 S.C. 316, 548 S.E.2d 854 (2001).....	7, 8, 11, 12, 13, 15
<u>Doe v. Franklin</u> , 930 S.W.2d 921 (Tx.App. 1996).....	9
<u>D.W. v. Richard Bliss and Carol Bliss</u> , 279 Kan. 726, 112 P.3d 232 (2005).....	16
<u>Eric J. v. Betty M.</u> , 76 CalApp.4 th 715 (CalCt.App.1999).....	16, 17

<u>Funkhouser v. Wilson</u> , 89 Wash.App. 644, 661, 950 P.2d 501, 509 (1998).....	9
<u>Gritzner v. Michael R.</u> , 598 N.W.2d 282 (Wis. Ct.App. 1999) <u>aff'd in part</u> , <u>rev'd in part on other grounds</u> , 611 N.W.2d 906 (Wis. 2000).....	8
<u>Hackett v. Smith</u> , 630 So.2d 1324 (La.Ct.App. 1993).....	12
<u>J.S. and M.S. v. R.T.H.</u> , 155 N.J.330, 714 A.2d 924 (1998).....	16, 17
<u>Romero v. Superior Court</u> , 89 Cal.App.4 th 1068, 107 Cal.Rptr.2d 801 (Ct.App. 2001).....	8
<u>Thibeault v. Seifert</u> , 388 So.2d 244 (Fla.Dist.Ct.App. 1980).....	16
<u>Wood v. Astleford</u> , 412 N.W.2d 753 (Min.Ct.App. 1987).....	12
<u>Youngblood v. Schireman</u> , 53 WashApp. 95, 765 P.2d 1312 (1988).....	16

Statutes

S.C. Code Ann. § 14-3-330:.....	1

Rules

Rule 56(c), SCRCP.....	5

Other Authorities

62 Am.Jur.2d Premises Liability § 409.....	15
Restatement (Second) of Torts § 315 (1965).....	6, 7, 13

STATEMENT OF JURISDICTION

This appeal arises out of an Order of the Circuit Court granting Respondent's Motion for Summary Judgment and dismissing Appellants' causes of action with prejudice.

The trial court's final judgment was entered on October 12, 2012 and disposed of all claims of all parties. Appellants filed a Notice of Appeal on November 2, 2012. This Court has jurisdiction to entertain the appeal and correct errors of law pursuant to S.C. Code Ann. § 14-3-330.

STATEMENT OF ISSUES ON APPEAL

I. Did the Trial Court err in finding that Respondent owed no duty to Appellants, and therefore granting Respondent's Motion for Summary Judgment and dismissing Appellants' claims with prejudice?

STATEMENT OF THE CASE

Appellants, minor children under the age of eighteen (18), allege that they were sexually molested at the hands of their neighbor, Daniel Bibby, Sr. The various instances of molestation all allegedly occurred in a house owned jointly by Mr. Bibby and his wife, the Respondent, Michelle Bibby ("Respondent"). On October 15, 2010, Appellants filed suit in the Court of Common Pleas, Berkeley County, alleging as against Daniel Bibby causes of action for Assault, Battery, False Imprisonment, and Intentional Infliction of Emotional Distress, and alleging as against Respondent causes of action for Negligence and Wrongful Infliction of Emotional Distress on a Bystander.

Daniel Bibby failed to file a responsive pleading and, on May 16, 2011, Appellants' obtained a default judgment against him. Respondent Michelle Bibby did

Answer and, ultimately, filed a Motion for Summary Judgment, alleging that she owed no duty to these Appellants.

Respondent's Motion for Summary Judgment was argued before the Honorable R. Markley Dennis, Jr. on July 10, 2012, and the Court took the matter under advisement. During the period of advisement, the Court permitted the parties to submit supplemental memoranda in support of their respective positions. The supplemental memoranda were submitted July 12, 2012. Subsequently, by Order filed October 12, 2012, the Circuit Court Granted Respondent's Motion for Summary Judgment and dismissed Appellants' claims with prejudice.

It is from that Order that Appellants appeal. Appellants' Notice of Appeal was served on the Respondent on November 2, 2012.

STATEMENT OF FACTS

Michelle and Daniel Bibby were married September 13, 1969. (R. p. 77, lines 5-7). The Bibby's had three children, [REDACTED] and [REDACTED] ("[REDACTED]"). (R. p. 70, lines 6-23). In or around 1995, when [REDACTED] was 16, [REDACTED] disclosed to a family friend that her father, Daniel Bibby Sr., had sexually molested her when she was younger. (R. p. 85, line 6-p. 86, line 4). Respondent confronted her husband about these allegations and Mr. Bibby admitted to Respondent that he had touched their daughter inappropriately. (R. p. 92, lines 2-6). The molestation was reported to DSS and Daniel Bibby, Sr. was removed from the house and placed in counseling. (R. p. 86, lines 11-21). Sometime thereafter, Mr. Bibby was permitted to return to the household. (R. p. 86, lines 23-25-p. 22, lines 1-3).

¹ [REDACTED]'s married name is [REDACTED].

Upon Mr. Bibby's return to the household, Respondent had a lock installed on [REDACTED]'s bedroom door, and took precautions to hide the key from her husband. (R. p. 128, lines 9-15).

In 2008, Appellants moved into the neighborhood. Appellants' house was diagonally located across the street from Respondent's house. (R. p. 199, lines 22-25-p. 200, lines 1-9). Appellant Jane Roe and Respondent became friendly. Shortly after Appellants moved in, Respondent came over to introduce herself to Appellant Roe. (R. p. 198, lines 8-12). Respondent's grandchildren were approximately the same age as the minor Appellants² and the children became friends. (R. p. 278, lines 20-22). At the time, one of Respondent's adult children was living at Respondent's house along with two of Respondent's grandchildren. (See generally R. pp. 66-178).

The minor Appellants and Respondent's grandchildren often played with each other and visited each others' houses. (See R. p. 199, lines 5-12, R. p. 132, lines 20-25). Respondent was aware that the Appellant minors were coming into her house to play with her grandchildren (R. p. 132, lines 17-19) and informed Appellant Roe that the children were welcome anytime. (R. p. 243, lines 24-25-p. 244 lines 1-2). Respondent admits that she was not always present at her house when the minor Appellants were over. (R. p. 133, lines 4-7). Respondent also admits that she remembered and was aware of her husband's prior sexual abuse of their daughter (R. p. 110, lines 3-7). However, Respondent never informed Appellants of these prior acts of sexual abuse. (R. p. 134, lines 24-25-p. 135, lines 1-16).

² Appellant Roe had three minor children. The oldest were twins: one boy referred to herein as "James" and one girl referred to herein as "Joyce." Appellants youngest child was a girl, who is referred to herein as "Judy." Pursuant to this Court's Order Regarding Personal Identifiers, Appellants' actual names have been redacted because this matter involves allegations of sexual abuse.

In April of 2009, Daniel Bibby, Sr. admitted to a counselor that he had been molesting his granddaughter. (R. p. 103, lines 22-24). Upon learning of this admitted molestation, Appellant Roe became fearful that Mr. Bibby might have been molesting her minor children as well. (R. p. 205; lines 23-25-p. 206, lines 1-7). Appellant first discussed the matter with her oldest daughter, "Joyce," who confirmed that Mr. Bibby had touched her chest and threatened to kill her if she told anybody. (R. p. 207, lines 6-9). Appellant's youngest daughter, "Judy," revealed similar accusations. (R. p. 208, lines 11-14). Appellant immediately called the police. (R. p. 208, lines 14-15). Appellants were referred to the Dorchester Children's Center and Appellant Judy was forensically interviewed. (R. p. 212, lines 19-24).

During her interview, Judy revealed that Mr. Bibby touched her. (R. p. 143, lines 1-19). Judy stated that Mr. Bibby held her in a room with Mr. Bibby's granddaughter and that Mr. Bibby took his clothes off and forced the children to take their clothes off. Id. Judy further stated that Mr. Bibby touched her "boobs" and her "tee tee" with his hands and that Mr. Bibby made Judy touch the granddaughter's boobs and tee tee as well. Id. Judy also disclosed exposure to pornography in the Bibby household. Id.

Appellant Roe testified that she had no knowledge of Mr. Bibby's prior sexual abuse of his daughter and that she had no reason to suspect that it was unsafe for her children to play at the Bibby household. (R. p. 233, lines 8-25-p. 234, lines 1-3). Appellant further testified that she never would have allowed her kids to visit the Bibby household had she been warned of Mr. Bibby's sexual propensities. (R. p. 236, lines 13-15).

STANDARD OF REVIEW

Summary judgment is “an extreme remedy to be cautiously invoked.” Holloman v. McAllister, 289 S.C. 183, 186, 345 S.E.2d 728, 729 (1986). Summary judgment should only be granted “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 the moving party is entitled to judgment as a matter of law. Rule 56, SCRPC. When reviewing the grant of summary judgment, the Appellate Court applies the same standard that governs the trial court. Helms Realty, Inc. v. Gibson-Wall Co., 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005). An appellate court may decide questions of law with no particular deference to the trial court. Verenes v. Alvanos, 387 S.C. 11, 690 S.E.2d 771 (2010). “On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below.” Osborne v. Adams, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001). This Court therefore has the authority to review this question presented *De Novo*.

ARGUMENT

A “cause of action for negligence requires: 1) the existence of a duty on the part of the defendant to protect the plaintiff; 2) the failure of the defendant to discharge the duty; 3) injury to the plaintiff resulting from the defendant’s failure to perform.” South Carolina State Ports Authority v. Booz-Allen & Hamilton, Inc., 289 S.C. 373, 346 S.E.2d 324, 325 (1986). Because there is at least a scintilla of evidence that could allow a reasonable jury to find in Appellants’ favor as to each element, the trial court erred in

granting summary judgment for Respondent and the order should be reversed and the matter remanded for a trial on the merits.

I. The Trial Court erred in granting Respondent's Motion for Summary Judgment because Respondent owed a duty to warn Appellants by way of their special relationship and, more fundamentally, because there is evidence on the record to show that Respondent was negligent under basic principles of premises liability law.

A cause of action for negligence requires one to breach her duty owed to another. See Byerly v. Connor, 307 S.C. 441, 443, 415 S.E.2d 796, 798 ("Without a violation of . . . a legal duty, there is no negligence."). A legal duty can be established in many ways. The duty might be heightened or different depending upon the nature of the relationship between the parties. Moreover, an owner or possessor of land may owe certain duties to those who are invited or allowed entry upon the land.

In the present action, the trial court erred in finding that Respondent owed Appellants no duty. The trial court erred in finding that no special relationship existed between Respondent and Appellants. Even in the absence of such a relationship, the trial court should have considered Respondent's liability under basic premises liability law and erred in ruling upon the weight of the evidence. Under either theory, or both, the order of the trial court should be reversed and the matter remanded for a trial on the merits.

A. Respondent had a duty to warn Appellants arising out of their special relationship and the circumstances alleged in Appellants' Complaint.

Generally, one has no duty to control the dangerous conduct of another or to warn a potential victim of such conduct. Restatement (Second) of Torts, § 315 (1965). However, such a duty may arise where, "a special relation exists between the actor and

the third person which imposes a duty upon the actor to control the third person's conduct; or, a special relationship exists between the actor and the other which gives the other a right to protection." Id. (**emphasis added**). Multiple South Carolina cases have addressed and adopted the first prong in various instances. See, e.g., Bishop v. S.C. Dept. of Mental Health, 331 S.C. 79, 502 S.E.2d 78 (1998)(holding defendant was aware that mother had made specific threats of harm toward child in the past, and that defendant breached its duty to warn of mother's release); Faile v. S.C. Dept. of Juvenile Justice, 350 S.C. 315, 566 S.E.2d 536 (2002)(holding department had independent duty to control and supervise a known dangerous juvenile in its custody). However, the question of whether there is a duty to warn minor children of potential sexual abuse in order to avoid the potential for child molestation is an issue of first impression.

Although the legal issue is novel, this is not the first time our Court of Appeals has considered the question. In Doe v. Batson, 338 S.C. 291, 525 S.E.2d 909 (Ct. App. 2000), partially vacated, 345 S.C. 316, 548 S.E.2d 854 (2001), the Court considered a similar scenario. In Batson I, a number of minors were sexually assaulted by a 27 year old man who still lived at home with his mother. The minors brought suit against the perpetrator's mother, alleging that the molestations occurred in her house, that she knew her son had young boys in his bedroom, and that she was negligent for failing to warn or act. Id. In reviewing the trial court's grant of summary judgment in favor of the mother, the Court of Appeals considered the special relationship test and noted, "case law from other jurisdictions lends credence to Doe's assertion that Batson had a duty to warn in this case." Id. at S.C. 301, S.E.2d 914.

The issue ultimately made it to the South Carolina Supreme Court. The Supreme Court agreed with the Court of Appeals that summary judgment was improper because discovery had not yet been completed, but explicitly vacated the portions of the Court of Appeals' opinion discussing liability. Batson II, 354 S.C. 316, 323, 548 S.E.2d 854. However, in vacating those portions of the opinion, the Supreme Court did not express disapproval of the reasoning. Instead, the Supreme Court noted, "The paucity of the record makes it impossible for us to determine the merits of Doe's argument. Whether Batson had a cognizable duty will be determined after the record has been more fully developed." Id. Therefore, although Batson I is not strictly precedential, the opinion of the Court of Appeals nonetheless sheds valuable and well reasoned light on the issue.

Indeed, case law from other jurisdictions does tend to lead credence to Doe's assertion, and the assertion of Appellants in the present matter, that a duty to warn of potential sexual abuse might arise in the context of a special relationship. For instance, the Wisconsin Court of Appeals stated, "We think it self evident that an adult who voluntarily takes on supervision, custody or control, even on a temporary basis, of a visiting child...stands in a special relationship to such child for purposes of the child's 'protection' under [The Restatement]." Gritzner v. Michael R., 598 N.W.2d 282 (Wis. Ct.App. 1999) aff'd in part, rev'd in part on other grounds, 611 N.W.2d 906 (Wis. 2000).

Some states require actual knowledge of the offender's propensities. See, e.g., Romero v. Superior Court, 89 Cal.App.4th 1068, 1083, 107 Cal.Rptr.2d 801, 812 (Ct.App. 2001)("We...hold as a matter of law that an adult defendant who assumed a special relationship with a minor by inviting the minor into his or her home will be deemed to have owed a duty of care to take reasonable measures to protect the minor against an

assault by another minor invitee while in the defendant's home when the evidence and surrounding circumstances establish that the defendant had actual knowledge of, and thus must have known, the offending minor's assaultive propensities.").

Other states require only constructive knowledge. See, e.g., Doe v. Franklin, 930 S.W.2d 921, 928 (Tx.App. 1996)("If [defendant] knew or should have known of her husband's proclivities, she should have taken steps to ensure that Doe would not be placed in harm's way or to otherwise ensure that her husband would not be in a position to act on his temptations"); Funkhouser v. Wilson, 89 Wash.App. 644, 661, 950 P.2d 501, 509 (1998)("we must determine whether there is sufficient evidence that a rational trier of fact should be allowed to determine whether the risk of harm was reasonably foreseeable at the time [plaintiffs] were molested.").

South Carolina has already adopted the "constructive knowledge" test in other circumstances. See, Bishop, 331 S.C. (holding it is not necessary for the injuring party to have made a threat while under the defendant's control or custody. All that is required to impose a duty to warn is that the defendant knew or should have known of a specific threat made to harm a specific person).

In the present case, there is more than a scintilla of evidence on the record from which a reasonable jury could find that Respondent had a special relationship with the Appellant victims. Respondent readily admits to knowing that the Appellants were coming over to her house to play. (R. p. 132, lines 17-19). Furthermore, she admits that the Appellant children were there at her invitation. (R. p. 167, lines 12-13)("I am the one when I was home who let the children in the house."). Based upon Respondent's own admissions, the other evidence on the record, and the reasonable inferences to be drawn

therefrom, the trial court erred in holding, as a matter of law, that no special relationship existed between the Respondent and the minor Appellants.

Moreover, there is evidence on the record of a specific threat. Whether this Court applies an actual knowledge or constructive knowledge test is almost immaterial in this instance because the Respondent admits to having actual knowledge of her husband's prior propensities toward pedophilia: (R. p. 110, lines 3-7)(Admitting she was aware that her husband had molested their daughter in the past). The trial court improperly overlooks this evidence, noting that the prior molestation occurred approximately 15 years earlier and holding, "There were no other incidents between then and the time Plaintiffs moved into the neighborhood. [Respondent] had no knowledge that her husband was a danger, believing the incident between Mr. Bibby and their daughter was an isolated event and that furthermore, he was rehabilitated according to the Department of Social Services." (R. p. 3).

This analysis is made in error both because it goes to the weight of the evidence, and because it mischaracterizes the evidence on the record. The passage of time between the alleged molestations does not, as a matter of law, negate the fact that Respondent had actual knowledge of her husband's proclivities to commit such acts. Whether Respondent truly believed her husband was "rehabilitated" or not is a question of fact for the jury. Indeed, a reasonable jury could conclude, as science would seem to dictate, that a pedophile can never be truly cured. More importantly, there is evidence on the record to even suggest Respondent, herself, did not actually believe that her husband had been rehabilitated. When her husband returned to the house after the first instance of sexual abuse on their daughter, after the counseling which Respondent allegedly believes to

have rehabilitated Mr. Bibby, Respondent nevertheless proceeded to install a lock on her daughter's door and took steps to hide the key from her husband. (R. p. 128, lines 9-15).

This action could lead to the reasonable inference that, in fact, Respondent did not believe her husband had been rehabilitated, but rather was concerned that he would re-offend. Simply put, it is for the jury to decide whether to lend credibility to Respondent's rehabilitation theory or not.

Furthermore, the passage of time, alone, does not prove as a matter of law that Mr. Bibby was rehabilitated. Clearly he was not, as he admits to re-offending. Indeed, a long passage of time (coincidentally the time when no minor children were living in the house) might suggest a lack of opportunity, rather than a lack of desire. More importantly, the trial court's finding that "there were no other incidents" is not exactly supported by the evidence on the record. In a statement to police, [REDACTED] admitted that, for at least two years leading up to the alleged molestation of Appellants, he had caught his father looking at child pornography on the internet. (R. pp. 287-288). Moreover, [REDACTED] informed Appellant Roe that he had brought his father's pornography watching to the attention of his mother on several occasions. (R. p. 257, lines 21-25-p. 258, lines 1-3). Respondent admits to having been with Mr. Bibby in Myrtle Beach when he disposed of the computer in a dumpster behind a building. (R. p. 119, lines 16-25-p. 120, lines 1-7). This presents a scintilla of evidence from which a rational juror could surmise Respondent's knowledge of her husband's continuing propensities.

In this matter, just as in Batson I, there is ample evidence of specific harm. As the Court of Appeals reasoned in Batson I, "the specific persons to be harmed were readily

identifiable as the minor males brought to Batson's home and taken to her son's room.

At each instance, if Batson knew or should have known of their presence and the threat of harm her son posed to them, but failed to warn them, such may constitute a failure to warn of a specific threat to a specific victim." Batson, 338 S.C. at 301. This case is even more egregious as there is no indication that Batson had a known history of molestation, where here the record supports actual knowledge of Bibby's propensities, and actual knowledge of Appellants' presence in Respondent's house.

To the extent the trial court relies upon cases such as Hackett v. Smith, 630 So.2d 1324 (La.Ct.App. 1993) and Wood v. Astleford, 412 N.W.2d 753 (Min.Ct.App. 1987), such reliance is misplaced because these cases are quite distinguishable, factually, from the present matter. In Hackett, the court refuses to find a special relationship because, by the Plaintiff Guardian's own testimony and admission, the pedophile's wife was never actually entrusted with the victim's care. Instead, the Guardian admitted that the victim only visited the pedophile's house in the company of Guardian. Hackett, 630 So.2d at 1328. This is clearly inapplicable to the present case where Appellant Roe entrusted the minor Appellants' care to Respondent and was not actually present in Respondent's home when the alleged molestations occurred. Likewise, in Wood, the Court refused to find a special relationship because there was no evidence that the Defendant had prior knowledge of her husband's propensities. Wood, 412 N.W.2d at 757 ("There is scant evidence from the record, briefs, or oral arguments that Lola Astleford knew or should have known of her husband's pedophilia."). Such evidence clearly exists in the present case.

Finally, to the extent the trial court refused to consider the possibility of a special relationship because respondent “had no duty to monitor, supervise and control Mr. Bibby’s conduct (R. p. 3),” this analysis is misplaced. First, as correctly recognized in Batson I, Appellants’ claim is not based on a theory of vicarious liability, that Respondent is vicariously liable for the actions of her husband, but rather is based upon Respondent’s own negligence in breaching the duty owed under the special relationship. Indeed the special relationship test is *disjunctive*, such that Respondent owes a duty **either** where, “a special relation exists between the actor and the [molester] which imposes a duty upon the actor to control the [molester’s] conduct; **or**, a special relationship exists between the actor and the [victim] which gives the [victim] a right to protection.” Restatement (Second) of Torts, § 315 (1965). (**emphasis added**). Here, Respondent’s special relationship with Appellants is clearly supported by the evidence, and her ability to control her husband becomes immaterial.

For all these reasons, the trial court erred in finding that Respondent owed Appellants no duty arising out of their special relationship. The trial court erred in granting Respondent’s Motion for Summary Judgment and the ruling should be reversed and remanded for a trial on the merits.

B. Respondent had a duty to warn Appellants as a matter of basic premises liability law.

Even assuming Respondent owed no “special” duty to Appellants by way of their relationship, Respondent could nonetheless be liable under a premises liability theory. Because all of the alleged acts of molestation occurred on Respondent’s property, Respondent owed, and may have breached, duties to Appellants just as any occupier of land would owe to one who came upon the land with consent or permission.

To establish negligence in a premises liability action, a plaintiff must prove (1) a duty of care owed by defendant to the plaintiff; (2) defendant's breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach of duty. See Hurst v. East Coast Hockey League, Inc., 371 S.C. 33, 37, 637 S.E.2d 560, 562 (2006); Singleton v. Sherer, 377 S.C. 185, 659 S.E.2d 196 (Ct. App. 2008). Therefore, to survive a Motion for Summary Judgment, Plaintiffs must establish only a mere scintilla of evidence in support of each element.

The nature of the duty owed is dependent upon the Plaintiff's "status" upon the land. Here, it is undisputed that Appellants were licensees. (See R. p. 132, lines 17-19)(admitting that the Appellants were social guests at her house.)). A social guest is an example of a licensee. Singleton v. Sherer, 377 S.C. 185, 199, 659 S.E.2d 196, 203 (Ct. App. 2008). One who possesses, manages, or controls a property owes to a licensee the duty "to use reasonable care to discover him and avoid injury to him in carrying on activities upon the land; and to use reasonable care to warn him of any concealed dangerous conditions or activities which are known to the possessor, or of any change in the condition of the premises which maybe dangerous to him, and which he may reasonably be expected to discovery." Neil v. Byrum, 288 S.C. 472, 473 (1986).

Our Courts have already held that a victim of a sexual assault on another person's property may bring suit under a premises liability theory. See Burns v. South Carolina Comm'n for the Blind, 323 S.C. 77, 448 S.E.2d 589 (Ct.App. 1994). Therefore, the analysis turns on whether Mr. Bibby constituted a dangerous condition known to Respondent, and whether this danger was concealed.

The general state of premises liability law, as it relates to people as “dangerous conditions or activities” can be summarized as follows. “Generally, owners or occupiers of land have no duty to protect visitors to their property from the deliberate criminal conduct of third parties, because the foreseeability of the risk is slight, and because of the social and economic consequences of placing such a duty on a person. However, an exception exists if the owner, by action or omission, unreasonably created or increased the risk of injury from the criminal activity of a third party or *if it is shown that the landowner either knows or has reason to know from past experience that there is a likelihood of conduct dangerous to the safety of the visitor.*” 62 Am.Jur.2d Premises Liability § 409.

Again, in this specific context, the question is somewhat novel to South Carolina. The Batson I court seemed to suggest, at a minimum, that such a cause of action could exist in South Carolina, though this portion of the decision was also vacated by the Supreme Court. Therefore, we must address the question as a matter of first impression.

In refusing to classify Mr. Bibby as a dangerous condition or activity, the trial court first seems to call into question the credibility of Appellants’ testimony, questioning whether Mr. Bibby could be dangerous if the alleged molestation never actually occurred. (R. p. 6) (“The only evidence of any such crime was the video interview of the oldest child. She does not give a coherent story and she places several other adults in the room of Ms. Bibby’s granddaughter. Even taking into account the nature of a tale told by a child of her age, it did not make any sense.”). Once again, this analysis by the court goes to the weight of the evidence and is wholly inappropriate in a summary judgment setting. Whether the Appellants’ allegations make sense or not is a question for the jury.

Moreover, it almost belies common sense to suggest that, as a matter of law, a rational jury could never find Mr. Bibby culpable of molesting Appellants in light of his admission to molesting both his granddaughter, who is roughly the same age as Appellants, and his own daughter years ago when she was that age.

The trial court goes on to dismiss this theory by relying upon a case out of Kansas, D.W. v. Richard Bliss and Carol Bliss, 279 Kan. 726, 112 P.3d 232 (2005), and a case out of California, Eric J. v. Betty M., 76 CalApp.4th 715 (CalCt.App.1999). Again, however, this reliance is misplaced. The cases upon which the trial court rests its analysis are factually dissimilar to the case at hand. Moreover, these cases appear to represent the minority view among the states. Kansas has done away with traditional distinctions between duties owed in a premises liability setting. Bliss, 112 P.3d at 241. Thus, the Bliss Court is addressing the question from an entirely different legal angle. Likewise, Betty addresses the liability of a landowner for criminal acts committed against a guest by **another guest**. Betty, 76 CalApp.4th at 723.

The court fails to take notice of the numerous other states who seemingly do allow a premises liability action under these circumstances. See, e.g., Thibeault v. Seifert, 388 So.2d 244 (Fla.Dist.Ct.App. 1980); Barmore v. Elmore, 83 Ill.App.3d 1056, 403 N.E.2d 1355(1980); Youngblood v. Schireman, 53 WashApp. 95, 765 P.2d 1312 (1988). Indeed, to the extent this Court must look to other jurisdictions, the facts and law presented by J.S. and M.S. v. R.T.H., 155 N.J.330, 714 A.2d 924 (1998) seem most instructive to the case at bar. In R.T.H., parents brought an action on behalf of their children against a husband and wife, Plaintiff's neighbors, alleging that the husband had assaulted the minor children and that the wife was negligent in failing to warn of or

prevent the assault. In a lengthy opinion, the New Jersey Supreme Court reasoned that, where a spouse has actual knowledge or special reason to know of the likelihood of her spouse engaging in sexually abusive behavior, the spouse must warn of the harm. Id. The Court stated, “we conclude that there is sound, indeed compelling basis for the imposition of a duty on a wife whose husband poses the threat of sexually victimizing young children. Id. at 935.

This reasoning is compelling indeed. Common sense, alone, dictates that a pedophile creates an unreasonably dangerous condition in the presence of young children. There seems little difference between a pedophile and, say, a beehive. Each is dangerous. In either scenario, where a landowner knows or has reason to know of its existence, that landowner should, in South Carolina, have a duty to warn licensees on her premises if the danger is concealed. This is particularly true where the pedophile or otherwise dangerous person, as here, is a permanent presence at the residence, rather than a mere guest as contemplated in the Betty case. This does not, as the trial court suggests, impose a duty on Respondent to “hunt out any new residents living anywhere in an undefined area to tell them of an incident that happened decades earlier.” (R. p. 4). Instead, it imposes only a duty to warn those unsuspecting guests who Respondent chooses to allow on her property or those with whom Respondent chooses to undertake a special relationship as set forth more fully above. Thus, the breadth and scope of the duty, in cases like these, are always determined by the homeowner herself. If she does not wish to subject herself to the duty, she simply should not allow children access to her property.

There is no logical reason, nor is there any binding legal authority, to draw a distinction between a dangerous inanimate concealed condition on one’s property and a

dangerous resident pedophile. South Carolina should not draw such a distinction and should treat both dangers as one in the same, requiring a homeowner with knowledge to warn those unsuspecting guests who are proper licensees on the premises.

There is evidence on the record to support a conclusion that Mr. Bibby did, in fact, molest Appellants, rendering him dangerous. Moreover, Appellant testified that she was unaware of Bibby's dangerous propensities. "They gave me no reason not to trust them." (R. p. 228, lines 2-3). "I had no reason not to trust [Respondent]. I saw that she had her grandkids. She looked like a good grandmother to me...I never saw anything wrong" (R. p. 233, lines 8-13). "[Mr. Bibby] looked like a normal – he looked like a grandfather. He was clean-cut, he was well-kept. I mean, he was never disrespectful to me. He seemed like he was nice to the kids, so I had no reason not to trust him." (R. p. 233, 23-25-p. 234, lines 1-3). Furthermore, proximate cause seems clear. Appellant testified, "if I would have known what would have happened in that house, my little girls would have never been over there, never." (R. p. 236, lines 13-15). Respondent admits that she never warned Appellants of her husband's propensities or past acts of molestation. (R. p. 134, lines 24-25-p. 135, lines 1-16).

Accordingly, all of the elements for a premises liability action are supported by evidence on the record. The trial court's ruling should be reversed and this matter remanded for a proper trial on the merits.

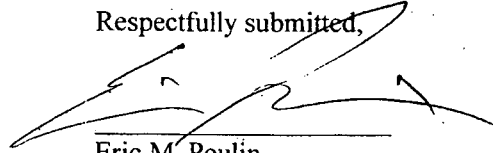
CONCLUSION

For the reasons stated, the Order of the trial court should be reversed. This action should be remanded to the Circuit Court for a trial and final determination on the merits.

[Signature on Following Page]

October 23, 2013

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Eric M. Poulin', written over a horizontal line.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2010-CP-08-3732

Jane Roe, as parent and natural guardian of
Judy Roe, James Roe, and Joyce Roe, minor
children under the age of eighteen (18).....Appellants,

v.

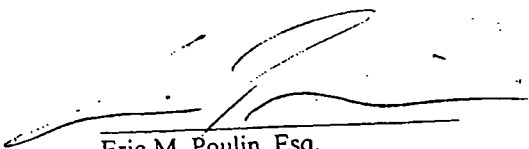
Daniel Bibby, Sr., and Michelle Bibby

Of whom, Michelle Bibby is.....Respondent.

CERTIFICATE OF COUNSEL

I certify that Appellants' Final Brief and Final Reply Brief each comply with Appellate
Court Rule 211(b)

November 26, 2013


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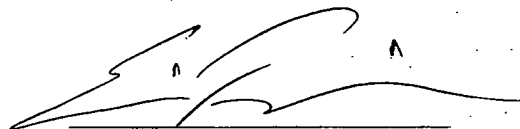
Daniel Bibby, Sr., and Michelle Bibby

Of whom, Michelle Bibby is.....Respondent.

PROOF OF SERVICE

I certify that I have served a copy of Appellant's Final Brief and Appellant's Reply Brief
on Michelle Bibby by depositing a copy of it in the United States Mail, postage prepaid, on
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THE STATE OF SOUTH CAROLINA
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APPEAL FROM BERKELEY COUNTY
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SC COURT OF APPEALS

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Jane Roe, as parent and natural guardian of
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children under the age of eighteen (18) Appellants,

v.

Daniel Bibby, Sr., and Michelle Bibby

Of whom, Michelle Bibby is Respondent.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	iii
STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE.....	2
STATEMENT OF FACTS.....	3
STANDARD OF REVIEW	7
ARGUMENT.....	8
I. THE CIRCUIT COURT CORRECTLY GRANTED SUMMARY JUDGMENT BECAUSE MRS. BIBBY DID NOT HAVE A DUTY TO WARN APPELLANTS UNDER EITHER A "SPECIAL RELATIONSHIP" THEORY OR A PREMISES LIABILITY THEORY.....	8
A. Appellants Have Not Established the Applicability of the "Special Relationship" Exception, Including The Requisite Knowledge of Any Specific Threat.....	10
1. Appellants Failed to Prove a Special Relationship Between Mrs. Bibby and the Minor Appellants.....	10
2. Appellants Failed to Prove That Mrs. Bibby Had Knowledge of a Specific Threat of Harm To a Specific Individual.	13
B. Appellants Failed to Establish a Duty to Warn under a Premises Liability Theory of Recovery.....	18
II. THE CIRCUIT COURT CORRECTLY GRANTED SUMMARY JUDGMENT, IN ANY EVENT, BECAUSE THERE IS NO ADMISSIBLE EVIDENCE TO SUBSTANTIATE THE ALLEGATIONS OF ABUSE.	24
CONCLUSION	26

TABLE OF AUTHORITIES

Cases

<i>Ballou v. Sigma Nu General Fraternity</i> , 291 S.C. 140, 352 S.E.2d 488 (1986).....	11
<i>Bishop v. South Carolina Dep't of Mental Health</i> , 331 S.C. 79, 502 S.E.2d 78 (1998).....	10, 11
<i>Burns v. S.C. Comm'n for the Blind</i> , 323 S.C. 77, 448 S.E.2d 589 (Ct. App. 1994)	18, 19, 20, 21
<i>Carolina Chloride, Inc. v. Richland County</i> , 394 S.C. 154, 714 S.E.2d 869 (2011).....	8, 26
<i>Chakrabarti v. City of Orangeburg</i> , 403 S.C. 308, 743 S.E.2d 109 (Ct. App. 2013)	8
<i>D.W. v. Bliss</i> , 112 P.3d 232 (Kan. 2005)	23
<i>Doe v. Batson</i> , 338 S.C. 291, 525 S.E.2d 909 (Ct. App. 1999)	12
<i>Doe v. Batson</i> , 345 S.C. 316, 548 S.E.2d 854 (2000).....	12
<i>Doe v. Marion</i> , 361 S.C. 463, 605 S.E.2d 556 (Ct. App. 2004)	8
<i>Doe v. Marion</i> , 373 S.C. 390, 645 S.E.2d 245 (2007).....	11, 13, 14, 17
<i>Doe v. Wal-Mart Stores, Inc.</i> , 393 S.C. 240, 711 S.E.2d 908 (2011).....	8, 10, 12, 13
<i>Eric J. v. Betty M.</i> , 76 Cal. App. 4th 715 (Cal. Ct. App. 1999).....	21, 22, 23
<i>Faile v. S.C. Dep't of Juvenile Justice</i> , 350 S.C. 315, 566 S.E.2d 536 (2002).....	9, 11
<i>Feld v. Merriam</i> , 485 A.2d 742 (Pa. 1984).....	20, 21
<i>Fleming v. Rose</i> , 350 S.C. 488, 567 S.E.2d 857 (2002)	7
<i>Gilmer v. Martin</i> , 323 S.C. 154, 473 S.E.2d 812 (Ct. App. 1996)	14
<i>Hackett v. Schmidt</i> , 630 So.2d 1324 (La. Ct. App. 1993).....	13, 22
<i>Hall v. Fedor</i> , 349 S.C. 169, 561 S.E.2d 654 (Ct. App. 2002).....	17, 25
<i>Hansen v. DHL Laboratories, Inc.</i> , 316 S.C. 505, 450 S.E.2d 624 (1994)	7, 17, 25

<i>Hoard v. Roper Hospital, Inc.</i> , 387 S.C. 539, 694 S.E.2d 1 (2010)	15
<i>I'On, L.L.C. v. Town of Mount Pleasant</i> , 338 S.C. 406, 526 S.E.2d 716 (2000)	25
<i>J.S. and M.S. v. R.T.H.</i> , 714 A.2d 924 (N.J. 1998)	24
<i>Neil v. Byrum</i> , 288 S.C. 472, 343 S.E.2d 615 (1986)	21, 22
<i>Oblanchinski v. Reynolds</i> , 391 S.C. 557, 706 S.E.2d 844 (2011)	14
<i>Rayfield v. S.C. Dep't of Corrections</i> , 297 S.C. 95, 374 S.E.2d 910 (Ct. App. 1998)	12
<i>Rogers v. S.C. Dep't of Parole and Community Corrections, et al.</i> , 320 S.C. 253, 464 S.E.2d 330 (1995)	11
<i>SC Dep't of Social Services v. Doe</i> , 292 S.C. 211, 355 S.E.2d 543 (1987)	26
<i>Singleton v. Sherer</i> , 377 S.C. 185, 659 S.E.2d 196 (Ct. App. 2008)	18, 19, 20, 24
<i>T.A. v. Allen</i> , 669 A.2d 360 (Penn. Super. Ct. 1995)	20, 22
<i>Theisen v. Theisen</i> , 394 S.C. 434, 716 S.E.2d 271 (2011)	21
<i>Turner v. Milliman</i> , 392 S.C. 116, 708 S.E.2d 766 (2011)	7
<i>Wood v. Astleford</i> , 412 N.W.2d 753 (Minn. Ct. App. 1987)	17
Other Authorities	
F.P. Hubbard & R.L. Felix, <i>The South Carolina Law of Torts</i> , 126 (4 th Ed. 2011)	19
Rules	
Rule 56(c), SCRCP	7
Rules 801-802, SCRE	25

STATEMENT OF ISSUES ON APPEAL

- I. DID THE CIRCUIT COURT CORRECTLY GRANT SUMMARY JUDGMENT ON THE GROUNDS THAT RESPONDENT OWED NO AFFIRMATIVE DUTY TO WARN APPELLANTS UNDER EITHER A "SPECIAL RELATIONSHIP" THEORY OR A PREMISES LIABILITY THEORY?**

- II. DID THE CIRCUIT COURT CORRECTLY GRANT SUMMARY JUDGMENT, IN ANY EVENT, BECAUSE THERE IS NO ADMISSIBLE EVIDENCE TO ESTABLISH THE ALLEGATIONS OF ABUSE?**

STATEMENT OF THE CASE

This case centers on whether a wife has an affirmative duty to warn a third-party that her husband might commit a criminal act.

Appellant Jane Roe (“Roe”), on behalf of her three minor children (the “minor Appellants”¹) (together with Roe, “Appellants”) brought this action in the Berkeley County Court of Common Pleas in October 2010. (R. pp. 10-21). The Complaint asserted various causes of action against Defendants Daniel Bibby, Sr. (“Mr. Bibby”) and, his wife, Michelle Bibby (“Mrs. Bibby” or “Respondent”), arising out of the allegation that Mr. Bibby sexually molested one of Roe’s children, “Judy Roe.” (R. p. 12, ¶ 8). Mrs. Bibby answered the Complaint in January 2011, denying the allegations. (R. pp. 22-25). Separately, Mr. Bibby submitted several documents to the Circuit Court, denying the allegations, but Roe ultimately obtained a default judgment against him. (R. p. 289; R. p. 290; and R. p. 291).

Mr. Bibby is not a party to this appeal. By way of background, the claims asserted against him included assault, battery, false imprisonment, intentional infliction of emotional distress, and wrongful infliction of emotional distress on a bystander. (R. pp. 10-21). As against Mrs. Bibby, Roe asserted causes of action for negligence and wrongful infliction of emotional distress on a bystander. The former claim was asserted on behalf of Judy Roe and the latter on behalf of Roe’s other two children, “James Roe” and “Joyce Roe.” (R. pp. 16-19, ¶¶ 43-55; R. pp. 19-20, ¶¶ 56-62). Following discovery, on April 17, 2012, Mrs. Bibby moved for summary judgment. (R. pp. 26-33). The Honorable R. Markley Dennis Jr., held a hearing on July 10, 2012, after which he granted

¹ For purposes of anonymity, the minor Appellants are referred to herein as James, Joyce and Judy.

the motion. (R. pp. 48-65). Judge Dennis issued a formal Order on October 21, 2012, dismissing the case against Mrs. Bibby with prejudice. (R. pp. 2-9). Roe appealed to this Court in November 2012.

On appeal, Roe argues that the Circuit Court erred in dismissing her negligence claim against Mrs. Bibby. Roe's theory of liability is that Mrs. Bibby owed an affirmative duty to warn Roe that Mr. Bibby might engage in the conduct alleged. The Circuit Court disagreed with Roe, finding that Mrs. Bibby owed no affirmative duty to warn as a matter of law. Thus, Roe presently argues that South Carolina law should be expanded to recognize such a duty under either a "special relationship" analysis or a premises liability analysis.

STATEMENT OF FACTS

Mrs. Bibby, 65, is a mother of three and grandmother of five. She is currently retired, following thirteen years of service to the Charleston County Public Library. (R. p. 108, lines 2-11). During the time at issue, Mrs. Bibby was still working and had legal custody of a minor grandson. This grandson had lived with Mrs. Bibby since he was four months old. (R. p. 71, lines 10-14). Mr. Bibby had a career in the Navy and married Mrs. Bibby in 1969. (R. p. 77, lines 5-7 and 20-21). They were still together during the time in dispute, but had separated by the time Appellants commenced this lawsuit. (R. p. 75, lines 5-8).

Sometime in 2002 or 2003, Mrs. Bibby's youngest son, [REDACTED], moved back into the family home in Goose Creek, along with his minor son and daughter. (R. p. 109, lines 4-6). [REDACTED] was the custodial parent of these two children and was the father of the other child of whom Mrs. Bibby already had custody. Thus,

during the time at issue, the Bibby household consisted of three adults (Mr. and Mrs. Bibby and [REDACTED]) and three children (one girl and two boys). The Bibby residence was owned jointly by Mr. and Mrs. Bibby. (R. p. 69, lines 17-20; R. p. 153, line 20-p. 154, line 2).

In or around February 2008, Roe, her husband, and three children (again, the "minor Appellants") moved into a home diagonally across from the Bibby family. (R. p. 199, lines 22-24; R. p. 200, lines 6-9). The Roe and Bibby children became friends and often played over at the Roe house. (R. p. 198, lines 22-25). One day, [REDACTED] told Roe that it would be okay for her children to come over and play with his children. (R. p. 199, lines 7-21). Other neighborhood children also played with the Roe and Bibby children, and as in many neighborhoods, the children ran back and forth between houses. (R. p. 167, lines 9-10; R. p. 228, lines 15-17; R. p. 280, lines 21-24).

During this period, Mrs. Bibby worked forty hours a week at the library. (R. p. 108, lines 4-11). Roe, on the other hand, had stopped working and was home with the kids at all times. (R. p. 234, lines 12-17). [REDACTED] also was not working. (R. p. 109, lines 2-3). Roe and [REDACTED] often sat in lawn chairs and watched the children play outside. (R. p. 234, lines 18-20). According to Roe, there was an understanding with Mrs. Bibby that Roe's children were welcome at the Bibby home, primarily when the children were outside playing. (R. p. 243, line 24-p. 244, line 12). Mrs. Bibby was generally aware that the children played together at each other's homes, but was not aware of the children ever being alone with Mr. Bibby. (R. p. 167, lines 2-13).

Mrs. Bibby and Roe enjoyed a neighborly relationship. Roe regularly talked to Mrs. Bibby and visited the Bibby home herself, whether to borrow a cup of sugar or to

pick up hand-me-downs. (R. p. 251, lines 15-22). They discussed religion, their husbands' military backgrounds, and notably, the fact that Mr. Bibby had physically abused Mrs. Bibby in the past. (R. p. 253, lines 3-9). Roe knew that [REDACTED] occasionally left all the children with Mr. Bibby while Mrs. Bibby was at work. (R. p. 228, lines 3-4; R. p. 229, line 2-p. 230, line 12; R. p. 232, lines 12-16). Roe did not advise Mrs. Bibby of that when it occurred. (R. p. 243, lines 21-24).

Sometime in April or May 2009, Mr. Bibby checked himself into a behavioral center for depression. (R. p. 112, lines 11-13). While there, he admitted to a doctor that he had molested his resident granddaughter, [REDACTED]'s daughter. (R. p. 95, lines 10-12). Thereafter, Mr. Bibby confessed the same to Mrs. Bibby. (R. p. 115, lines 2-6). Mrs. Bibby immediately asked Mr. Bibby to move out, and she called the Department of Social Services ("DSS"). (R. p. 75, lines 14-18; R. p. 115, lines 17-22). Mrs. Bibby then informed her son, [REDACTED] who, in turn, sent a text message to Roe. (R. p. 206, lines 5-8). Roe questioned her children and alleges that the two girls claimed that Mr. Bibby had touched them inappropriately. (R. p. 207, lines 6-9; R. p. 208, lines 12-14). Roe testified that she followed the advice of DSS in handling the situation and understood that Mrs. Bibby had done the same. (R. p. 204, line 21-p. 243, line 3).

Mr. Bibby has consistently denied touching the Roe children. (R. p. 145, lines 3-13). In his Court filings in this case, he stated: "Never have I caused any harm to the mentioned children [in this] case, whether it be sexual abuse or physical abuse...Again, I never, ever harmed those children." (R. p. 289). And in a subsequent filing, he reiterated: "I deny every and all accusation[s] made by [Jane Roe] against me." (R. p. 290; *see also* R. p. 291). Ultimately, Mr. Bibby was convicted of molesting his

granddaughter, but he was not prosecuted for any actions involving the Roe children, and those charges were dismissed. (R. p. 216, lines 19-20; R. p. 217, lines 3-7).

Roe contends that Mrs. Bibby should have warned her in light of an episode that had come to light some fourteen years prior. (R. p. 236, lines 1-15). In 1995, when Mrs. Bibby's daughter was sixteen years old, she reported that her father had – a few years prior to that – touched her and made her feel uncomfortable. (R. p. 86, lines 3-8). Upon learning this, Mrs. Bibby immediately called DSS. (R. p. 85, lines 8-9). Mrs. Bibby also confronted Mr. Bibby, who admitted the allegations, and Mrs. Bibby asked him to leave the house. (R. p. 85, lines 24-25; R. p. 90, lines 16-19). Subsequently, Mr. Bibby spent a month in a behavioral hospital in Florida. (R. p. 84, lines 4-25).

During that time, the Bibby family worked with DSS, and Mrs. Bibby understood that Mr. Bibby completed his counseling with “flying colors.” (R. p. 130, lines 7-12). DSS advised Mrs. Bibby to take Mr. Bibby back into the family in order to rebuild the family unit. (R. p. 86, line 23-p. 87, line 3). DSS instructed the Bibby family not to discuss the episode with anyone, and Mrs. Bibby understood that Mr. Bibby was “cured.” (R. p. 102, lines 9-14). Mr. Bibby was not prosecuted criminally. As part of the follow-up counseling provided to Mrs. Bibby's daughter, they talked about ways to make her feel more secure. (R. p. 129, lines 12-17). They decided to purchase a new doorknob for the daughter's room, with a key. (R. p. 129, lines 17-23). The lock gave her a sense of privacy until she moved out after high school, around 1997. (R. p. 94, lines 22-23; R. p. 129, line 8-p. 130, line 5).

Until 2009, when Mr. Bibby informed Mrs. Bibby of what had happened with their granddaughter, Mrs. Bibby had no knowledge of any such abuse by Mr. Bibby since

the earlier episode was disclosed and addressed in 1995. (R. p. 128, lines 3-8; R. p. 131, lines 7-24; R. p. 148, lines 4-6). Indeed, Roe admitted she has no information to the contrary. (R. p. 244, line 20-p. 245, line 1). For well over a decade, Mrs. Bibby believed, as did DSS, that Mr. Bibby was “cured.” (R. p. 130, lines 6-7).

STANDARD OF REVIEW

When reviewing an order granting summary judgment, the appellate court applies the same standard as the trial court. *Turner v. Milliman*, 392 S.C. 116, 121-22, 708 S.E.2d 766, 769 (2011). Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law. *Id.*; Rule 56(c), SCRPC. In determining whether any triable issues of material fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). “A genuine issue of fact, however, can be created only by evidence which would be admissible at trial.” *Hansen v. DHL Laboratories, Inc.*, 316 S.C. 505, 510, 450 S.E.2d 624, 627 (1994).

ARGUMENT

As noted by Appellants, a plaintiff must prove three elements to recover for negligence: (1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach. *See Carolina Chloride, Inc. v. Richland County*, 394 S.C. 154, 163, 714 S.E.2d 869, 873 (2011). “If any of these elements is absent a negligence claim is not stated.” *Chakrabarti v. City of Orangeburg*, 403 S.C. 308, 314, 743 S.E.2d 109, 112 (Ct. App. 2013). Further, as a threshold matter, “[t]he court must determine, as a matter of law, whether the law recognizes a particular duty,” and if there is no duty, the defendant is entitled to judgment as a matter of law. *Id.*; *Doe v. Wal-Mart Stores, Inc.*, 393 S.C. 240, 246, 711 S.E.2d 908, 911 (2011). Here, the Circuit Court correctly determined that Mrs. Bibby owed no duty to Appellants and, therefore, she was entitled to judgment as a matter of law. Additionally, the record is devoid of any admissible evidence that the alleged acts occurred, so Appellants cannot establish damage proximately resulting from any alleged breach of duty.

I. THE CIRCUIT COURT CORRECTLY GRANTED SUMMARY JUDGMENT BECAUSE MRS. BIBBY DID NOT HAVE A DUTY TO WARN APPELLANTS UNDER EITHER A “SPECIAL RELATIONSHIP” THEORY OR A PREMISES LIABILITY THEORY.

It is well-established that “South Carolina law does not recognize a general duty to warn of the dangerous propensities of others.” *See Doe v. Marion*, 361 S.C. 463, 471, 605 S.E.2d 556, 560 (Ct. App. 2004), *aff’d*, 373 S.C. 390, 645 S.E.2d 245 (2007) (emphasis added); *see also Wal-Mart Stores*, 393 S.C. at 247, 711 S.E.2d at 912 (“Under South Carolina law, there is no general duty to control the conduct of another or to warn a third person or potential victim of danger”). Our appellate courts, however, have

recognized certain limited exceptions to the rule. *See Faile v. S.C. Dep't of Juvenile Justice*, 350 S.C. 315, 334, 566 S.E.2d 536, 546 (2002). Appellants ask this Court to apply the exception providing that a duty to warn may arise where the defendant had a "special relationship" with the victim. *Id.* Specifically, Roe argues that Mrs. Bibby had a special relationship with the minor Appellants, which required her to act based upon certain alleged knowledge regarding Mr. Bibby.² (App. Brief, p. 6).

In the alternative, Appellants maintain that a duty should be imposed under a theory of premises liability, likening Mr. Bibby to a concealed dangerous condition on the property, such as a "beehive." (App. Brief, p. 17). Describing the scope of the would-be duty, Appellants assert that Mrs. Bibby should have warned any "unsuspecting guests" on her property or anyone else with whom she had a "special relationship." (App. Brief, p. 17). Appellants avoid expounding upon the proposed warning's content, but believe Mrs. Bibby should have advised Roe regarding the danger allegedly posed by Mr. Bibby, which necessarily would have consisted of a disclosure of their daughter's abuse over fifteen years before.

While South Carolina courts have recognized an affirmative duty to warn in certain, unrelated circumstances, the law has not been, and should not be, expanded to recognize the duty advocated by Appellants, particularly on these facts.

² In *Faile*, the Supreme Court set forth five (5) exceptions to the general rule that one does not have an affirmative duty to act. 350 S.C. at 334, 566 S.E.2d at 546. There are two (2) exceptions for "special relationships," one of which involves the defendant's relationship with the alleged injuror and one of which involve the defendant's relationship with the alleged victim(s). *See id.* Though Appellants were less specific below, their appellate argument clearly and exclusively alleges the latter type of potential special relationship (*i.e.* with alleged victim(s)). (App. Brief, pp. 6, 13). On appeal, Appellants do not, and cannot, advance any argument that Mrs. Bibby had the ability to supervise and control Mr. Bibby, the alleged injurer. Further, they purport to disclaim any categorization of their argument as one based on vicarious liability. (App. Brief, p. 13).

A. Appellants Have Not Established the Applicability of the “Special Relationship” Exception, Including The Requisite Knowledge of Any Specific Threat.

Under the special relationship exception, a defendant “may have a common law duty to warn potential victims . . . when [1] the defendant ‘has the ability to monitor, supervise, and control an individual’s conduct’ and when [2] ‘the individual has made a specific threat of harm directed at a specific individual.’” *Wal-Mart Stores*, 393 S.C. at 247, 711 S.E.2d at 912 (quoting *Bishop v. South Carolina Dep’t of Mental Health*, 331 S.C. 79, 86, 502 S.E.2d 78, 81 (1998)). In this case, Appellants have failed to establish either prong of the special relationship test. They did not present evidence sufficient to demonstrate (1) that Mrs. Bibby had the ability to monitor, supervise and control the minor Appellants; and (2) they did not present evidence of a specific threat to a specific individual.

1. Appellants Failed to Prove a Special Relationship Between Mrs. Bibby and the Minor Appellants.

In order to establish a special relationship, Appellants must prove that Mrs. Bibby was able to “monitor, supervise, and control [the minor Appellants’] conduct.” *Wal-Mart Stores, Inc.*, 393 S.C. at 247, 711 S.E.2d at 912 (finding that retailer/film developer had no special relationship with abuse victim depicted in photographs). Importantly, this is not a case where Mrs. Bibby was the minor Appellants’ counselor, teacher, or day-care provider. Instead, Mrs. Bibby was the joint owner of a home in or around which neighborhood children occasionally played, as they did at other homes in the neighborhood. (R. p. 199, lines 18-21). Additionally, Mrs. Bibby worked a 40-hour week. (R. p. 108, lines 9-11). Neither Roe nor [REDACTED] worked, and it was their children who played together. (R. p. 234, lines 12-20). Though Appellants maintain that

Mrs. Bibby said that the children were “welcome” and knew that the children played at the house (App. Brief, p. 9), these facts, even viewed in the light most favorable to Appellants, do not give rise to the type of special relationship necessary to alter the common law and impose an exceptional duty on Mrs. Bibby.

The facts of this case are nothing akin to those of other cases in which the appellate courts have either explicitly or implicitly recognized a special relationship. *See, e.g., Doe v. Marion*, 373 S.C. 390, 645 S.E.2d 245 (2007) (assuming special relationship between psychiatrist and patient/injurer); *Faile*, 350 S.C. 315, 566 S.E.2d 536 (finding special relationship between Department of Juvenile Justice and dangerous juvenile/injurer over whom it had custody per court order); *Bishop v. South Carolina Dep't of Mental Health*, 331 S.C. 79, 86, 502 S.E.2d 78, 81 (1998) (finding special relationship between Department of Mental Health and involuntarily-committed patient/injurer in its custody); *Rogers v. S.C. Dep't of Parole and Community Corrections, et al.*, 320 S.C. 253, 464 S.E.2d 330 (1995) (assuming special relationship between state agencies charged with prisoner parole and prisoner/injurer who was being released from custody (but finding no specific threat)); *Ballou v. Sigma Nu General Fraternity*, 291 S.C. 140, 352 S.E.2d 488 (1986) (finding that fraternal organization had duty to initiate who had become helplessly drunken from alcohol furnished to him by fraternity) (cited by *Faile* Court as example of special relationship between defendant and victim). In the instant case, by contrast, there was no professional, organization, or treatment provider charged with the care of the minor Appellants in any of the ways exemplified in the case law recognizing special relationships.

In light of the absence of supporting precedent, Appellants turn to the vacated opinion of the Court of Appeals in *Doe v. Batson*, 338 S.C. 291, 525 S.E.2d 909 (Ct. App. 1999). In *Batson*, the Court of Appeals stated that the mother of an adult son, living at home, may have had a duty to warn identifiable victims of her son's criminal sexual conduct, if certain prerequisites were satisfied. *Id.* at 301, 525 S.E.2d at 914. First, as conceded by Appellants, *Batson* is not precedential because the Supreme Court vacated the Court of Appeals' discussion of liability. *See Doe v. Batson*, 345 S.C. 316, 323, 548 S.E.2d 854, 858 (2000). Second, there was essentially no factual record in *Batson*, so it is impossible to analogize it to this case. The mother in *Batson* is alleged to have been at home and to have known that her adult son had taken young boys into his bedroom. 338 S.C. at 295, 525 S.E.2d at 911.

In the instant case, however, there is no evidence that Mrs. Bibby "monitor[ed], supervise[d], and control[led]" the conduct of the minor Appellants in the manner contemplated by the case law on special relationships. *See Wal-Mart Stores, Inc.*, 393 S.C. at 247, 711 S.E.2d at 912; *Rayfield v. S.C. Dep't of Corrections*, 297 S.C. 95, 109-10, 374 S.E.2d 910, 918 (Ct. App. 1998) (focusing on custody and whether defendant "had charge" of individual with whom special relationship was alleged). Unlike the other adults involved in this dispute, Mrs. Bibby was working full-time and out of the house. She did not know, and does not admit, that the children were ever alone with Mr. Bibby. (R. p. 133, lines 11-16; R. p. 167, lines 2-5; R. p. 168, lines 14-15). According to Roe's own allegations, the minor Appellants went into the Bibby home while Mrs. Bibby was at work. (R. p. 227, line 24-p. 228, line 7; R. p. 234, lines 4-10). It was not Mrs. Bibby, but her adult son, who – with Roe's knowledge – allegedly and briefly left the

house while Mr. Bibby was home. (R. p. 229, line 2-p. 230, line 12; R. p. 243, lines 16-23). Roe concedes she did not advise Mrs. Bibby about this. (R. p. 243, lines 21-24). In sum, by no stretch of the facts could Mrs. Bibby be said to have custody, charge, or control over the minor Appellants in the manner contemplated by the case law.

The special relationship requirement is important because it sets a formal threshold over which a case must pass before the Court will consider imposing an exceptional duty. Further, because one is generally aware of entering into the types of relationships recognized as "special" under the law, a person in such a relationship effectively has notice of potential liability for failing to act after obtaining knowledge of certain specific threats. Mrs. Bibby simply had no such relationship with the minor Appellants in this case. Accordingly, the Circuit Court properly granted summary judgment in her favor. *See Wal-Mart Stores, Inc.*, 393 S.C. at 247, 711 S.E.2d at 912 (affirming summary judgment where defendant had no special relationship with the victim of sexual abuse); *Hackett v. Schmidt*, 630 So.2d 1324, 1328 (La. Ct. App. 1993) (finding no special relationship between defendant/wife and abuse victim merely because victim was present in defendant's home on occasion).

2. Appellants Failed to Prove That Mrs. Bibby Had Knowledge of a Specific Threat of Harm To a Specific Individual.

While necessary, the existence of a special relationship is not itself sufficient to create a duty to warn. Rather, such a duty will only arise where "the [alleged injurer] has made a specific threat of harm directed at a specific individual." *Marion*, 373 S.C. at 400, 645 S.E.2d at 250 (emphasis added). Indeed, as reiterated by the Supreme Court, "it is not simply foreseeability of the victim which gives rise to a person's liability for failure to warn; rather, it is the person's awareness of a distinct, specific, overt threat of harm

which the individual makes towards a particular victim.” *Id.* at 401, 645 S.E.2d at 251 (quoting *Gilmer v. Martin*, 323 S.C. 154, 157, 473 S.E.2d 812, 814 (Ct. App. 1996)) (emphasis added); see also *Oblanchinski v. Reynolds*, 391 S.C. 557, 562, 706 S.E.2d 844, 846 (2011) (emphasizing that “foreseeability of injury, in and of itself, does not give rise to a duty”) (emphasis in original). The “specific threat” requirement provides reasonable parameters for an affirmative duty that would otherwise become amorphous and overly-burdensome.

Appellants have failed to meet their burden on this element. To begin with, Appellants do not and cannot argue that Mrs. Bibby had knowledge of their purported abuse.³ Indeed, Mrs. Bibby denies the allegations of abuse asserted by Appellants and believes that Judy Roe was coached and potentially influenced by problems in Roe’s own home. (R. p. 144, lines 18-20; R. p. 145, line 3-p. 146, line 9; R. p. 170, lines 11-19). Secondly, there is no evidence that Mrs. Bibby had knowledge of any “distinct, specific, overt threat of harm” to the minor Appellants. In fact, there is no evidence that Mr. Bibby made any such distinct, specific and overt threat to harm them. This itself should conclude the argument and validate the entry of summary judgment. See, e.g., *Marion*, 373 S.C. at 400-01, 645 S.E.2d at 250-51 (affirming dismissal due to lack of specific and overt threat where psychiatrist failed to warn pediatrician’s patients of known “predilection for child molestation”); *Gilmer*, 323 S.C. at 157, 473 S.E.2d at 814 (affirming summary judgment due to lack of overt threat where mentally-ill employee of nursing home killed nursing home patient).

³ Though Appellants’ brief refers to allegations of abuse on behalf of both Joyce and Judy Roe (App. Brief, p. 4), the negligence claim in the Complaint is based upon the alleged abuse of Judy Roe only. (R. pp. 16-18, ¶¶ 46-51).

In the absence of the requisite threat, Appellants argue that this Court should apply a lesser standard for imposing liability, based on what Mrs. Bibby knew or should have known regarding her husband's propensities toward pedophilia and the threat he posed. (App. Brief, pp. 9-10). Even if constructive knowledge were the legal standard – and it is not – the only evidence is that Mrs. Bibby reasonably believed that her husband was “cured” following his 1995 confession and release from treatment. (R. p. 102, lines 9-14; R. p. 129, lines 10-13; R. p. 130, lines 6-12). During that time, DSS counseled Mrs. Bibby and her family to rebuild the family unit and to refrain from discussing the situation with anyone else. (R. p. 86, line 23-p. 87, line 3; R. p. 102, lines 11-14; R. p. 134, lines 22-23). Moreover, Mrs. Bibby had no indication of any recidivism by Mr. Bibby until the subsequent confession regarding their granddaughter, after the fact. Additionally, and assuming *arguendo* it is relevant, Appellants cannot show that Mrs. Bibby knew or should have known that Mr. Bibby – whatever his propensities – was a threat to the minor Appellants. Again, over fifteen years had passed since the pre-1995 incident, without notice of any further incident. Mrs. Bibby was neither responsible for, nor aware of, the minor Appellants ever being alone with Mr. Bibby. (R. p. 133, lines 11-16; R. p. 167, lines 2-5; R. p. 169, lines 15-20; R. p. 229, line 2-p. 230, line 12; R. p. 243, lines 16-24). At all times relevant hereto, there was another, stay-at-home adult in the Bibby home (██████████), who was also the parent of the three resident minors. (R. p. 133, lines 11-16). In sum, Appellants cannot establish that Mrs. Bibby knew or should have known of any active threat – much less a distinct, specific, and overt one.

In response, Appellants suggest that Mrs. Bibby might be disbelieved. (App. Brief, p. 10). This position is plainly inadequate. *See Hoard v. Roper Hospital, Inc.*, 387

S.C. 539, 549, 694 S.E.2d 1, 6 (2010) (“A plaintiff cannot create a genuine issue of material fact with the argument that the jury does not have to believe a witness”). No doubt recognizing this, Appellants contend that the following should be considered: (1) that Mrs. Bibby once installed a lock on her daughter’s door; (2) that [REDACTED] allegedly saw his father looking at child pornography on the internet; (3) that Roe testified that [REDACTED] stated that he told Mrs. Bibby about the pornography (R. p. 257, line 21-p. 258, line 3); and (4) that Mrs. Bibby was with Mr. Bibby when he disposed of his computer. (App. Brief, p. 11). These allegations do nothing to meet Appellants’ burden of proving notice of a specific threat of harm to the minor Appellants.

First, the fact Mrs. Bibby installed a lock for her daughter some fourteen years before the time at issue has no bearing on whether Mr. Bibby presented an active threat to the minor Appellants. In any event, the idea for the lock emerged from counseling as a means to give Mrs. Bibby’s daughter an added sense of security and privacy at that time. (R. p. 129, line 6-p. 130, line 5). There is no evidence of a lock having been installed or used during the time of the interactions with minor Appellants. To the contrary, the granddaughter’s door was unlocked because, again, Mrs. Bibby did not believe there was any kind of threat. (R. p. 148, lines 16-25). Second, whether and to what extent [REDACTED] saw Mr. Bibby looking at inappropriate images on the internet is completely irrelevant to what *Mrs. Bibby* knew. In any event, [REDACTED]’s statement, cited and relied upon by Appellants, is inadmissible hearsay. (App. Brief, p. 11; R. pp. 287-288). Mrs. Bibby acknowledges that she had seen Mr. Bibby looking at explicit *adult* images on the computer, of which she disapproved. (R. p. 120, line 15-p. 121, line 11; R. p. 158, lines 2-9). Third, *Roe*’s contention regarding what [REDACTED] told *her* that *he* told *Mrs. Bibby*

is similarly hearsay, and therefore inadequate to create any type of factual question. See *Hall v. Fedor*, 349 S.C. 169, 175, 561 S.E.2d 654, 657 (Ct. App. 2002) (refusing to consider hearsay evidence to refute summary judgment); *Hansen v. DHL Laboratories, Inc.*, 316 S.C. 505, 510, 450 S.E.2d 624, 627 (1994) (“A genuine issue of fact, however, can be created only by evidence which would be admissible at trial”). Fourth, the fact that Mrs. Bibby was with Mr. Bibby when he disposed of his computer is irrelevant. The computer crashed sometime prior to Mr. Bibby’s confession regarding their granddaughter. (R. p. 123, lines 1-14). He was planning to give the computer to Goodwill, but forgot to stop there and ended up leaving it behind a computer store by the dumpster. (R. p. 119, line 2-p. 120, line 7; R. p. 122, lines 19-25).

In short, the allegations relied upon by Appellants are either irrelevant to the issue at hand, inadmissible as evidence, or both. Regardless, they do not substitute for evidence of a “distinct, specific, overt threat of harm” made toward a particular victim. See *Marion*, 373 S.C. at 400, 645 S.E.2d at 250. In the absence of such evidence, the Circuit Court properly granted summary judgment in favor of Mrs. Bibby. See *Marion*, 373 S.C. at 400-01, 645 S.E.2d at 250-51; see also *Wood v. Astleford*, 412 N.W.2d 753, 757 (Minn. Ct. App. 1987) (affirming summary judgment for defendant/wife based on lack of specific threat to specific victims, though wife knew that husband had “boys” staying overnight when she was gone, had some concurrent knowledge of his involvement with “child pornographic photography,” and the facts were such to have aroused suspicion of some “aberrant behavior”).

B. Appellants Failed to Establish a Duty to Warn under a Premises Liability Theory of Recovery.

In an attempt to sidestep the analysis set forth above, Appellants argue, in the alternative, that the Court should impose a duty on Mrs. Bibby pursuant to the law of premises liability. Under this line of reasoning, liability should be assigned to Mrs. Bibby because she was the joint owner of the home where the alleged molestation occurred. As noted by Appellants, a premises liability action requires proof of all the standard elements of negligence (duty, breach of duty, and proximately caused damages). (App. Brief, p. 13). The scope and nature of a duty in a premises liability action, however, “is determined based upon the status or classification of the person injured at the time of his or her injury.” *Singleton v. Sherer*, 377 S.C. 185, 200, 659 S.E.2d 196, 204 (Ct. App. 2008).

In the instant case, Appellants maintain that they were licensees on the subject property (App. Brief, p. 14), and that they were harmed by the alleged criminal acts of a third-party, Mr. Bibby. Appellants have not cited, and cannot cite, a single South Carolina case recognizing a duty to warn a licensee with regard to an alleged criminal act committed by a third-party. Further, Appellants have failed to offer any compelling reason for the Court to break new ground in this case. Indeed, the alleged facts of this case take it outside of the conventional premises liability paradigm. In any event, Appellants cannot meet the legal standard necessary to proceed as a matter of law.

As a preliminary matter, Appellants cite *Burns v. S.C. Comm'n for the Blind*, 323 S.C. 77, 448 S.E.2d 589 (Ct. App. 1994) for the proposition that our courts “have already held that a victim of a sexual assault may bring suit under a premises liability theory.” (App. Brief, p. 14). While technically correct, Appellants’ short but sweeping description

of *Burns* omits the details that both distinguish it from this case and bear upon the application of South Carolina law to it. First, *Burns* involved an alleged duty to protect a resident of a treatment facility instead of an alleged duty to warn a third-party of an alleged threat in a residence. *Id.* at 79, 448 S.E.2d at 591. Second, and more importantly, the Court classified the plaintiff in *Burns* as an *invitee* and not a licensee – thus implicating a higher duty of care. *Id.* at 80, 448 S.E.2d at 591. Third, and most informatively, the *Burns* Court determined – as a threshold matter – that a special relationship existed between the plaintiff-victim and the defendant-residential treatment facility. *Id.*

The application of *Burns* to this case actually undermines Appellants' position on their premises liability theory of recovery. Under *Burns*, a court must determine whether a special relationship exists prior to evaluating the existence of any affirmative duty to warn of a third-party threat – even in a premises liability case.⁴ *See id.* As a matter of law, by virtue of Appellants' admitted status as licensees, no special relationship exists. Under South Carolina law, a licensee is owed "something less than a duty of due care." F.P. Hubbard & R.L. Felix, *The South Carolina Law of Torts*, 126 (4th Ed. 2011). "The duty owed to a licensee differs from the duty owed to an invitee in that the landowner has no duty to search out and discover dangers or defects in the land or to otherwise make the premises safe for a licensee." *See Singleton v. Sherer*, 377 S.C. 185, 201, 659 S.E.2d 196, 204 (Ct. App. 2008) (internal quotations omitted). Rather, a licensee can be said "to

⁴ Indeed, *Burns* provides yet another illustrative contrast to the relationship at issue in this case. The plaintiff-victim in *Burns* was a resident of a rehabilitation facility operated by the defendant commission. She was allegedly assaulted while residing in the defendant's dormitory, under the defendant's care. Though the Court did not evaluate the defendant's relationship with the alleged assailant, it appears he was a "fellow student" in the facility and presumably also under the defendant's custody and control. *Id.* at 78-80, 448 S.E.2d at 590-91. Thus, *Burns* appears to have involved established special relationships with both the victim and the injurer.

accept the premises as they are and demand no greater safety than his host provides himself." *Id.* at 201, 59 S.E.2d at 205 (emphasis added). Because licensees do not stand in a special relationship with a property owner, *per se*, Appellants cannot proceed on a premises liability theory of recovery.⁵ See *Burns*, 323 S.C. 77, 448 S.E.2d 589; see also *T.A. v. Allen*, 669 A.2d 360, 364 (Penn. Super. Ct. 1995) ("There is no special relationship between the possessor of land and a licensee which creates a duty upon the possessor of land to protect or warn licensees, whether adult or minor, against criminal acts committed on the land by a third person").

The inclusion of the special relationship prerequisite in *Burns* demonstrates that the Court of Appeals did not consider the unadorned premises liability framework sufficient to evaluate liability based on the alleged criminal conduct of third-parties. Though Appellants claim there is "little difference between a pedophile [on the property] and, say, a beehive" (App. Brief, p. 17), the differences are significant. An active – and, therefore, potentially dangerous – beehive is readily identifiable by a homeowner. The burden and risks of warning third-parties about the threat presented by an active beehive are slight. The likelihood that an independent adult will actually commit a morally-reprehensible criminal act, on the other hand, is not readily determinable. See generally *Feld v. Merriam*, 485 A.2d 742, 746 (Pa. 1984).⁶ Moreover, the burden and risks of

⁵ Even if it were conceptually possible for a "special relationship" to exist between a property owner and a licensee, the facts of this case do not support a special relationship between Mrs. Bibby and the minor Appellants for all the reasons delineated in Section I.A.1., above.

⁶ Though the facts of *Feld* are not directly analogous, the *Feld* Court had occasion to opine on the very distinction disputed by Appellants. In chastising the lower court for failing to recognize the "crucial distinction" between the risk of injury from a physical defect in the property, and the risk from the criminal act of a third person, the Pennsylvania Supreme Court stated: "In the former situation the landlord [or here, the property owner] has effectively perpetuated the risk of injury by refusing to correct a known and verifiable defect. On the other hand, the risk of injury from the criminal acts of third persons arises not from the conduct of the

warning third-parties of the potential for such behavior are great, and in some instances, the warning itself could subject the homeowner to liability. The repercussions for giving such a warning are numerous, particularly where the warning impacts the spousal relationship and children of that relationship.⁷ These factors, as well as those previously discussed, no doubt informed the development of the “special relationship” and “specific threat” tests outlined in Section I.A., above. These tests were not as refined when the *Burns* opinion was issued almost twenty years ago. In light of the progression in the law, the former analysis should apply to the exclusion of any separate assessment under the law of premises liability.

Though unnecessary, a further evaluation of this case under the law of premises liability does nothing to change the result. As noted by Appellants, a property owner owes a licensee a duty “to use reasonable care to warn him of any concealed dangerous conditions or activities which are known to the possessor, or of any change in the condition of the premises which may be dangerous to him, and which he may reasonably be expected to discover.” *See Neil v. Byrum*, 288 S.C. 472, 473, 343 S.E.2d 615, 616 (1986) (emphasis added). Appellants’ premises liability claim additionally fails because

landlord [or here, the property owner] but from the conduct of an unpredictable independent agent.” *Feld*, 485 A.2d at 746 (declining to impose duty in the latter case because it would make landlords the insurers of their tenants’ safety).

⁷ This case is not only about the duty to warn of “third-party” criminal conduct in the abstract, but of criminal conduct by one’s own spouse. As such, Appellants’ proposed expansion of liability should be approached with additional sensitivity and caution. *See generally Theisen v. Theisen*, 394 S.C. 434, 446, 716 S.E.2d 271, 277 (2011) (“It is beyond question that the public policy of this State favors the institution of marriage . . .”). One reason for the rejection of such liability in *Eric J. v. Betty M.*, 76 Cal. App. 4th 715 (Cal. Ct. App. 1999) was that any other result “would create intolerable conflicts of interest within families.” *Id.* at 730. The recognition of liability in this case would similarly create immediate conflicts, not only within families but within marital relationships.

(1) Mr. Bibby was not a “dangerous condition” on the property; and (2) Appellants have failed to establish the requisite knowledge on the part of Mrs. Bibby.

First, unlike a dangerous staircase or a “beehive,” Mr. Bibby was an independent human actor over whom Mrs. Bibby possessed no ownership. *Cf. Neil*, 288 S.C. at 474, 343 S.E.2d at 616 (determining existence of duty to warn licensee of dangerous staircase). Therefore, as a matter of law, Mr. Bibby cannot properly be categorized as a dangerous “condition” on the property giving rise to a duty to warn. On this point, the opinions of other jurisdictions are instructive. In *Hackett v. Schmidt*, 630 So.2d 1342 (La. 1993), for example, the Louisiana Court of Appeals rejected a similar attempt to use premises liability law as a separate basis for asserting liability against the wife of a child molester for failure to warn. Dismissing the plaintiff’s attempt to draw an analogy between the offender and a “hole in the floor” or “the presence of a dog,” the *Hackett* Court declared: “[T]his situation cannot be likened to a premises liability situation. . . . [The husband] is not [the wife’s] property.” *Id.* at 1329; *see also Allen*, 669 A.2d at 364 (noting that the requirement for notifying licensees of certain “conditions on the land” has no application “to the risk of injury from criminal acts of third persons”).

The California Court of Appeals engaged in a scholarly analysis of the same issue in *Eric J. v. Betty M.*, 76 Cal. App. 4th 715 (Cal. Ct. App. 1999). *Eric J.* involved a claim on behalf of a child who was molested by his mother’s boyfriend at the home of the boyfriend’s relatives. The plaintiff argued that the relatives should have warned her in light of their knowledge that the boyfriend had been convicted of felony child molestation four years earlier and released on parole. *Id.* at 717. Like the Appellants’ “beehive,” the plaintiff in *Eric J.* likened the offender to a “vicious pit bull” on the

premises. After providing a thorough discourse on the law, the California Court of Appeals disagreed. While acknowledging, “in retrospect,” that the boyfriend-offender was the “moral equivalent of a vicious pit bull,” the Court rejected any contention that he could be equated – for purposes of premises liability – to either an “inanimate, dangerous condition, or that of a dangerous animal.” *Id.* at 725-26. The Court could not square treating the offender as a “brute beast without the capacity to repent” with the fact that he was an individual released on parole with at least the *possibility* of having been rehabilitated. *Id.* at 726.

By the same token, in this case, Mrs. Bibby believed that a dark chapter had been closed after Mr. Bibby underwent treatment “with flying colors,” and they lived together for well over a decade without any report of recidivism. To treat him as a “brute beast,” or condition of the property, would be inconsistent with his status as a free and independent human actor, at least theoretically capable of rehabilitation. Because Mr. Bibby was not the property of Mrs. Bibby, she had no duty to warn under the premises liability standard applicable to licensees. *See id.*; *see also D.W. v. Bliss*, 112 P.3d 232, 243 (Kan. 2005) (affirming summary judgment for wife of offender on duty to warn claim and rejecting premises liability theory of recovery).⁸ Summary judgment is sustainable on this ground alone.

Regardless of Mr. Bibby’s status as a “condition” of the property, Appellants have not established, and cannot establish, the requisite knowledge on the part of Mrs. Bibby.

⁸ One final distinction between a beehive and a third-party criminal is that a beehive, by virtue of its nature as property, cannot be held directly accountable in a civil or criminal action. A third-party criminal, on the other hand, may be held accountable by both society and the victim. In *Bliss*, the Supreme Court of Kansas rejected the duty-to-warn action against the wife as an unwarranted attempt to convert her ownership interest “into responsibility for [her husband’s] criminal actions.” 112 P.3d at 243. Appellants in this case effectively seek to do the same.

As noted by Appellants, the analysis for liability with regard to licensees turns on whether Mr. Bibby constituted a dangerous condition “known to Respondent.” (App. Brief, p. 14) (emphasis added); *see also Singleton*, 377 S.C. at 201, 659 S.E.2d at 204 (also stating that “the [defendant] has no duty to search out and discover dangers or defects in the land”). As previously argued, Appellants have not established, and cannot establish, that Mrs. Bibby had actual knowledge of their alleged abuse (which abuse is denied). Further, Appellants have not established, and cannot establish, that Mrs. Bibby knew that Mr. Bibby was an active threat or active danger to the minor Appellants. (See Section I.A.2., above). Summary judgment is sustainable on this ground as well.⁹

For all of the foregoing reasons, this Court should affirm summary judgment in favor of Mrs. Bibby on Appellants’ premises liability cause of action.

II. THE CIRCUIT COURT CORRECTLY GRANTED SUMMARY JUDGMENT, IN ANY EVENT, BECAUSE THERE IS NO ADMISSIBLE EVIDENCE TO SUBSTANTIATE THE ALLEGATIONS OF ABUSE.

Appellants contend, without citing any support, that “[t]here is evidence in the record to support a conclusion that Mr. Bibby did, in fact, molest Appellants, rendering

⁹ Near the conclusion of their brief, Appellants cite *J.S. and M.S. v. R.T.H.*, 714 A.2d 924 (N.J. 1998) as purportedly instructive regarding their position in this case. *R.T.H.*, however, is inapposite for several reasons. First, though cited in the context of Appellants’ premises liability argument, the plaintiffs in *R.T.H.* do not appear to have based their case on a premises liability theory, and the Court did not evaluate it as such. Accordingly, the *R.T.H.* opinion has no apparent relevance to Appellants’ premises liability argument. Second, the *R.T.H.* Court followed New Jersey law in recognizing a potential duty to warn on the part of a wife without any analysis of whether a “special relationship” was present. Indeed, the term “special relationship” is conspicuously absent from the opinion and, in fact, it does not appear that one existed on the facts alleged. In this respect, the *R.T.H.* opinion is an outlier and in direct conflict with long-established law in South Carolina. Third, the defendant-wife in *R.T.H.* admitted that “at all relevant times . . . she knew or should have known of her husband’s proclivities/propensities.” *Id.* at 928. She also knew that her husband spent substantial time alone with the minor plaintiffs and, on at least one occasion, referred to them as his “whores.” *Id.* at 927. In sum, *R.T.H.* fails to support Appellants’ arguments under any theory of recovery.

him dangerous.” (App. Brief, p. 18). Because Appellants have not pointed to any admissible evidence to substantiate the allegations of molestation, they cannot establish that any failure to warn on the part of Mrs. Bibby proximately resulted in damages to them.

As noted above, “[a] genuine issue of fact . . . can be created only by evidence which would be admissible at trial.” *Hansen*, 316 S.C. at 510, 450 S.E.2d at 627. Hearsay evidence, for example, is insufficient to overcome a motion for summary judgment. *See Hall*, 349 S.C. at 175, 561 S.E.2d at 657. Though the Circuit Court did not reach this issue due to its focus on the absence of any duty, the result below may be affirmed on the additional sustaining ground that there is no admissible evidence of the alleged, underlying abuse. *See I’On, L.L.C. v. Town of Mount Pleasant*, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000).

The minor Appellants were not deposed, nor were any affidavits submitted that substantiate the underlying allegations against Mr. Bibby. Mr. Bibby admitted to molesting his granddaughter and was convicted of that offense. The charges against him related to the minor Appellants, however, were dismissed. (R. p. 216, lines 19-20; R. p. 217, lines 3-7). Further, Mr. Bibby has consistently denied touching the Roe children in his statements to Mrs. Bibby and filings with the Court. (R. p. 145, lines 7-13; R. p. 146, lines 10-25; R. p. 289; R. p. 290; R. p. 291).

In the factual section of their brief, Appellants cite Roe’s testimony about what Joyce and Judy Roe allegedly told her. (App. Brief, p. 4). Roe’s statements as to what she was allegedly told are clearly hearsay and, therefore, inadmissible. *See* Rules 801-802, SCRE. Other than Roe’s testimony, Appellants refer to portions of a forensic

interview of Judy Roe read by Roe's attorney during Mrs. Bibby's deposition. (App. Brief, p. 4; R. p. 143, lines 1-19). Appellants' counsel's statement regarding the content of Judy Roe's statement is also hearsay. The quoted forensic interview of Judy Roe is not a part of the record, but even if it were, it is an unsworn, out-of-court statement and, therefore, hearsay to the extent Appellants seek to rely on it to prove the truth of the allegations against Mr. Bibby. *See SC Dep't of Social Services v. Doe*, 292 S.C. 211, 355 S.E.2d 543 (1987) (holding that there is no "child sexual abuse" exception to the rule against hearsay).

Accordingly, there is no record of any admissible evidence substantiating the allegations against Mr. Bibby as related to the minor Appellants. Without admissible evidence to substantiate the alleged abuse, Appellants cannot establish the requisite elements of proximate cause and damages. *See generally Carolina Chloride, Inc. v. Richland County*, 394 S.C. 154, 163, 714 S.E.2d 869, 873 (2011) (setting forth necessary elements of negligence). Summary judgment should be affirmed on this additional sustaining ground.

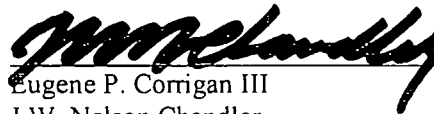
CONCLUSION

Whatever the circumstances, the molestation of a child is an abhorrent and reprehensible crime. Mrs. Bibby's defense of this case should in no way be seen as a defense of any such conduct. Mr. Bibby confessed and has been punished for the crime he committed with respect to his granddaughter. The allegations of the minor Appellants, however, have been denied, and the charges against Mr. Bibby arising from those allegations have been dismissed. This appeal is not about whether Mr. Bibby should be held accountable in any respect. The question before this Court is whether Mrs. Bibby should be held potentially liable for an alleged tort of omission. This appeal requires the

Court to determine whether the circumstances justify a departure from the common law that there is no general duty to warn of the dangerous propensities of others. On these facts, a departure from the general rule would require a wife to disclose painful and personal facts about her husband and past, intra-familial events to a third-party. Any recognition of the proposed duty, however, would no doubt have ramifications beyond the specific facts of this case, potentially creating exposure in a variety of scenarios. The facts of this case do not present the occasion for this Court to so expand the scope of tort liability in this State. The application of well-established South Carolina law requires the affirmation of the Circuit Court's order granting summary judgment in favor of Mrs. Bibby.

For all the foregoing reasons, and any others this Court may deem proper, Respondent, by and through her undersigned counsel, respectfully requests that this Court AFFIRM the Circuit Court's order granting summary judgment in her favor.

Respectfully submitted,



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MICHELLE BIBBY

October **25**, 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

R. Markley Dennis Jr., Circuit Court Judge

Case No. 2010-CP-08-3732

Jane Roe, as parent and natural guardian of
Judy Roe, James Roe, and Joyce Roe, minor
children under the age of eighteen (18) Appellants,

v.

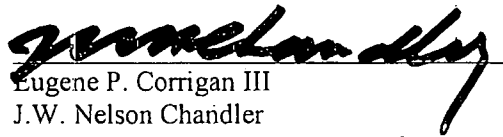
Daniel Bibby, Sr., and Michelle Bibby

Of whom, Michelle Bibby is Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b),
SCACR.

October 25, 2013



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OCT 28 2013

SC Court of Appeals

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v.

Daniel Bibby, Sr., and Michelle Bibby

Of whom, Michelle Bibby is Respondent.

PROOF OF SERVICE

I certify that I have served the foregoing **FINAL BRIEF OF RESPONDENT**
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9

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Daniel Bibby, Sr., and Michelle Bibby

Of whom, Michelle Bibby is.....Respondent.

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SC Court of Appeals

TABLE OF CONTENTS

Table of Authorities.....	ii
Introduction.....	1
Argument.....	1
I. The Trial Court erred in granting Respondent's Motion for Summary Judgment because Respondent owed a duty to warn Appellants by way of their special relationship and, more fundamentally, because there is evidence on the record to show that Respondent was negligent under basic principles of premises liability law.....	1
A. Respondent had a duty to warn Appellants arising out of their special relationship and the circumstances alleged in Appellants' Complaint.....	2
B. Respondent had a duty to warn Appellants as a matter of basic premises liability law.....	7
II. There is overwhelming evidence on the record to substantiate Appellants' Allegations of abuse against Mr. Bibby.....	9
Conclusion.....	11

TABLE OF AUTHORITIES

Cases (Authoritative)

<u>Bishop v. S.C. Dept. of Mental Health</u> , 331 S.C. 79, 502 S.E.2d 78 (1998).....	4
<u>Burns v. South Carolina Comm'n for the Blind</u> , 323 S.C. 77, 448 S.E.2d 589 (Ct. App. 1994).....	7, 8
<u>Neil v. Byrum</u> , 288 S.C. 472 (1986).....	7
<u>Singleton v. Sherer</u> , 377 S.C. 185, 659 S.E.2d 196 (Ct. App. 2008).....	7
<u>South Carolina State Ports Authority v. Booz-Allen & Hamilton, Inc.</u> , 289 S.C. 373, S.E.2d 324 (1986).....	1

Cases (Persuasive)

<u>Doe v. Franklin</u> , 930 S.W.2d 921 (Tx.App. 1996).....	3
<u>Funkhouser v. Wilson</u> , 89 Wash.App. 644, 661, 950 P.2d 501, 509 (1998).....	3
<u>Romero v. Superior Court</u> , 89 Cal.App.4 th 1068, 107 Cal.Rptr.2d 801 (Ct.App. 2001).....	3
S.C. Code Ann. § 14-3-330.....	1

Rules

SCRE 803.....	5
SCRE 804.....	5

INTRODUCTION

In this Appeal, Appellants challenge the Order of the trial court granting Summary Judgment with respect to their claims against Respondent. Specifically, Appellants allege that Appellant Judy Roe was molested at the hands of Respondent's husband, while a guest in Respondent's house. (See R. pp. 11-21). Notably, Respondent's husband had a history of molesting minor children and Respondent was aware of this history. (R. p. 110, lines 3-7). Accordingly, Appellants brought suit against Respondent on a negligence theory, both arising out of Respondent's special relationship with Appellants, and under basic premises liability law. Appellants have already obtained a Judgment against Mr. Bibby for his part in the molestation.

ARGUMENT

A "cause of action for negligence requires: 1) the existence of a duty on the part of the defendant to protect the plaintiff; 2) the failure of the defendant to discharge the duty; 3) injury to the plaintiff resulting from the defendant's failure to perform." South Carolina State Ports Authority v. Booz-Allen & Hamilton, Inc., 289 S.C. 373, 346 S.E.2d 324, 325 (1986). Because there is at least a scintilla of evidence that could allow a reasonable jury to find in Appellants' favor as to each element, the trial court erred in granting summary judgment for Respondent and the order should be reversed and the matter remanded for a trial on the merits.

- I. **The Trial Court erred in granting Respondent's Motion for Summary Judgment because Respondent owed a duty to warn Appellants by way of their special relationship and, more fundamentally, because there is evidence on the record to show that Respondent was negligent under basic principles of premises liability law.**

In her Initial Brief, Respondent addresses Appellants' theories of liability and, in turn, makes a number of sweeping generalizations that must be more fully fleshed out.

A. Respondent had a duty to warn Appellants arising out of their special relationship and the circumstances alleged in Appellants' Complaint.

Respondent argues that there is insufficient evidence to establish Respondent's ability to monitor, supervise, and control the minor Appellants' conduct. (Resp't Brief, p. 10-13). However, Respondent admits that she was aware that the Appellant minors were coming into her house to play with her grandchildren. (R. p. 132, lines 17-19. Moreover, Respondent told Appellant Jane Roe that Roe's children were welcome at Respondent's house any time. (R. p. 243, lines 24-25-p. 244, lines 1-2).

In support of this position, Appellants proffered expert testimony, by way of affidavit, from Marguerite Paul, a child care specialist with over 32 years of experience in the field of child safety. (R. pp. 34-39, R. pp. 40-43). Ms. Paul was the former Child Care Specialist and director of Child Care Licensing for the South Carolina Department of Social Services. Id. Ms. Paul opined that Respondent "invited the [minor] children into her home, making them social guests and giving her, the property owner, special responsibility to warn their parents of any danger present in her home." Id. Ms. Paul went on to state that Respondent "having knowledge of Daniel Bibby's propensity to sexually engage young children holds her to a higher standard of reporting and informing [Appellants] and to protect their children from harm." Id. Finally, Ms. Paul stated that "[Respondent] failed to act as a reasonable and prudent person would act under the circumstances..." Id.

Given this testimony, together with Respondent's own admissions, it seems apparent that there is evidence on the record to support the conclusion that Respondent stood in a special relationship with the minor Appellants.

Respondent goes on to argue that, even if she stood in a special relationship, she is not liable because she did not have knowledge of a specific threat of harm to the minor Appellants. Again, this argument ignores the ample evidence that exists, at least a scintilla of which tends to establish the opposite.

Some states require actual knowledge of the offender's propensities. See, e.g., Romero v. Superior Court, 89 Cal.App.4th 1068, 1083, 107 Cal.Rptr.2d 801, 812 (Ct.App. 2001)("We...hold as a matter of law that an adult defendant who assumed a special relationship with a minor by inviting the minor into his or her home will be deemed to have owed a duty of care to take reasonable measures to protect the minor against an assault by another minor invitee while in the defendant's home when the evidence and surrounding circumstances establish that the defendant had actual knowledge of, and thus must have known, the offending minor's assaultive propensities.").

Other states require only constructive knowledge. See, e.g., Doe v. Franklin, 930 S.W.2d 921, 928 (Tx.App. 1996)("If [defendant] knew or should have known of her husband's proclivities, she should have taken steps to ensure that Doe would not be placed in harm's way or to otherwise ensure that her husband would not be in a position to act on his temptations"); Funkhouser v. Wilson, 89 Wash.App. 644, 661, 950 P.2d 501, 509 (1998)("we must determine whether there is sufficient evidence that a rational trier of fact should be allowed to determine whether the risk of harm was reasonably foreseeable at the time [plaintiffs] were molested.").

South Carolina has already adopted the "constructive knowledge" test in other circumstances. See, Bishop, 331 S.C. (holding it is not necessary for the injuring party to have made a threat while under the defendant's control or custody. All that is required to impose a duty to warn is that the defendant knew or should have known of a specific threat made to harm a specific person).

However, whether this Court applies an actual knowledge or constructive knowledge test is almost immaterial in this instance because the Respondent admits to having actual knowledge of her husband's prior propensities toward pedophilia. (R. p. 110, lines 3-7)(Admitting she was aware that her husband had molested their daughter in the past). To overcome this, Respondent relies solely upon the passage of time between the first molestation and the molestation of Appellants.

The passage of time between the alleged molestations does not however, as a matter of law, negate the fact that Respondent had actual knowledge of her husband's proclivities to commit such acts. Nor does it preclude a reasonable jury from finding that Mr. Bibby was likely to re-offend as, in fact, he did.

This is particularly true where [REDACTED] in a statement to police, admitted that, for at least two years leading up to the alleged molestation of Appellants, he had caught his father looking at child pornography on the internet. (R. pp. 287-288). Further, he had brought his father's pornography watching to the attention of his mother, the Respondent on several occasions. (R. p. 257, lines 21-25-p. 258, lines 1-3).

Indeed, Respondent admits to having been with Mr. Bibby in Myrtle Beach when he disposed of the computer in a dumpster behind a building. (R. p. 119, lines 16-25-p.

120, lines 1-7). This presents a scintilla of evidence from which a rational juror could surmise Respondent's knowledge of her husband's continuing propensities.

Respondent argues that this statement from [REDACTED] is inadmissible hearsay. However, this is not necessarily true. As in initial matter, [REDACTED]'s testimony is not, in itself, hearsay, because his statement is one of personal knowledge (what he observed). Therefore, [REDACTED] could easily take the stand and proffer the testimony, distinguishing this from the type of evidence excluded by Hall v. Fedor, 349 S.C. 169, 561 S.E.2d 654 (Ct. App. 2002) (refusing to consider a statement that was hearsay when made) and similar cases. More importantly, the written statement, itself is likely admissible at trial under one or more of the hearsay exceptions, specifically, the business records exception under SCRE 803(8) and, if unavailable, the statement against interest exception of SCRE 804(b)(3) as [REDACTED] was seemingly exposing himself to criminal and civil liability in making this statement.

Respondent also argues that this theory of liability cannot apply because there is no evidence that she had knowledge of a specific threat of harm. In supporting this argument, Respondent relies upon a handful of cases from *other* jurisdictions, and only two from South Carolina.

In Doe v. Marion, 361 S.C. 463, 605 S.E.2d 556 (Ct. App. 2004), aff'd, 373 S.C. 390, 645 S.E.2d 245 (2007), a doctor molested one of his minor patients. For some time prior to the molestation, the doctor had been treating with a psychiatrist for his "predilection for child molestation." The patient thereafter sued the psychiatrist for failing to warn the doctor's patients of this sexual proclivity. Id. In Marion, the Plaintiffs attempted to argue that a specific threat existed because the minor was a "member of a

readily identifiable group of future patients...” id. In rejecting this argument, the Court ruled that Plaintiff failed to allege a specific threat to an “identifiable party.” Id.

The case at hand is quite distinguishable. Here, Judy Roe is specifically and easily identifiable. She is not a possible “member” of some abstract class. Instead, she is an actual person, placed in Mr. Bibby’s direct path, not only with Respondent’s actual knowledge but, indeed, by Respondent’s invitation. Thus, she was as readily identifiable as a potential victim can be, and it would have been easy for Respondent to warn her of the threat.

Likewise, in Gilmer v. Martin, 323 S.C. 154, 473 S.E.2d 812 (Ct. App. 1996), a nursing home patient was killed by a mentally ill employee of the nursing home. That employee had been treating with a psychiatrist for anxiety and depression. Id. The victim’s family sued the psychiatrist for failure to warn. However, in rejecting this argument, the Court noted that the employee had no history of violence and had never harmed any person before, or even threatened harm. Id.

Again, the present case is distinguishable because Daniel Bibby had, in fact, committed identical acts of molestation on his daughter in the past, and Respondent was well aware of these acts. Thus, it can be said that the Martin case fails on the first prong (no specific threat of harm) while the Marion case fails on the second prong (no readily identifiable victim). Here however, we have evidence of both a specific threat (previous instances of molestation and more recent instances of viewing of child pornography) and a readily identifiable victim (a minor child roughly the same age as Bibby’s prior victim who was invited into the house by the Respondent.)

For all these reasons, the trial court erred in finding that Respondent owed Appellants no duty arising out of their special relationship. The trial court erred in granting Respondent's Motion for Summary Judgment and the ruling should be reversed and remanded for a trial on the merits.

B. Respondent had a duty to warn Appellants as a matter of basic premises liability law.

Respondent also argues that she cannot be liable to Appellants on a premises liability theory and suggests that the Court would be required to "expand" existing case law to recognize such a duty. (Resp't Brief, p. 3). This hyperbole, however, is unpersuasive. South Carolina case law on premises liability is already well established and it is quite straightforward.

As Respondent suggests, the nature of the duty owed is dependent upon the Plaintiff's "status" upon the land. Here, it is undisputed that Appellants were licensees. (See R. p. 132, lines 17-19)(admitting that the Appellants were social guests at her house.)); (Resp't Brief, p. 18). A social guest is an example of a licensee. Singleton v. Sherer, 377 S.C. 185, 199, 659 S.E.2d 196, 203 (Ct. App. 2008). One who possesses, manages, or controls a property owes to a licensee the duty "to use reasonable care to discover him and avoid injury to him in carrying on activities upon the land; and to use reasonable care to warn him of any concealed dangerous conditions or activities which are known to the possessor, or of any change in the condition of the premises which maybe dangerous to him, and which he may reasonably be expected to discovery." Neil v. Byrum, 288 S.C. 472, 473 (1986).

Our Courts have already held that a victim of a sexual assault on another person's property may bring suit under a premises liability theory. See Burns v. South Carolina

Comm'n for the Blind, 323 S.C. 77, 448 S.E.2d 589 (Ct.App. 1994). Therefore, the analysis turns on whether Mr. Bibby constituted a dangerous condition known to Respondent, and whether this danger was concealed.

There is no logical reason, nor is there any binding legal authority, to draw a distinction between a dangerous inanimate concealed condition on one's property and a dangerous resident pedophile. Here, there is evidence on the record to support a conclusion that Mr. Bibby did, in fact, molest Appellants, rendering him dangerous. Moreover, Appellant testified that she was unaware of Bibby's dangerous propensities. "They gave me no reason not to trust them." (R. p. 228, lines 2-3). "I had no reason not to trust [Respondent]. I saw that she had her grandkids. She looked like a good grandmother to me...I never saw anything wrong" (R. p. 233, lines 8-13). "[Mr. Bibby] looked like a normal – he looked like a grandfather. He was clean-cut, he was well-kept. I mean, he was never disrespectful to me. He seemed like he was nice to the kids, so I had no reason not to trust him." (R. p. 233, lines 23-25-p. 234, lines 1-3) Finally, as noted more fully above, there is ample evidence to suggest that Respondent was aware of this danger.

Thus, we have, quite simply, a *prima facie* case of premises liability with respect to a licensee because we have a 1) dangerous condition (Mr. Bibby); that is 2) known to Respondent; but 3) concealed to Appellants.

In an attempt to muddy the waters, Respondent suggests that some finding of "special relationship" or duty is required, even under a premises liability analysis (Resp't Brief, p. 20). However, the existence of a special relationship has never been an element of premises liability law in South Carolina. Indeed, it would be absurd to suggest that a

business patron or social guest would have to establish the existence of a special relationship with a landowner in any other context,¹ and to so hold would require a significant departure from hundreds of years of premises liability and negligence jurisprudence.

Appellants do not seek to overhaul premises liability jurisprudence in South Carolina. Instead, we must simply apply the facts of this case to the law as it already exists. Here, all of the elements for a premises liability action are supported by evidence on the record. Once again, Respondent cites to cases from other jurisdictions but cannot stand on any precedential authority that would preclude such a recovery. Accordingly, the trial court's ruling should be reversed and this matter remanded for a proper trial on the merits.

II. There is overwhelming evidence on the record to substantiate Appellants' Allegations of abuse against Mr. Bibby.

In submitting her Initial Brief, Respondent raises the issue of proximate cause and damages for the first time. As Respondent correctly notes, "the Circuit Court did not reach this issue..." (Resp't Brief, p. 25). In fact, Respondent has never raised this issue. Respondent's Motion for Summary Judgment was devoid of any supporting grounds whatsoever and Appellants continue to contend that it failed to comply with the notice requirements of SCRCP 7(b)(1). See, e.g., (R. p. 35) Even when Respondent eventually filed her supporting Memorandum, it made no mention of this issue. Thus, the record

¹ For example, in a slip and fall case.

was built to present such evidence to the Circuit Court as was necessary to defeat the arguments that Respondent actually put forth.²

Nonetheless, the record is hardly devoid of “any admissible evidence substantiating the allegations against Mr. Bibby as related to the minor appellants” as Respondent now alleges. (Resp’t Brief, p. 26).

In fact, Appellants have already obtained a judgment against Mr. Bibby for his acts of molestation. By default, Mr. Bibby has admitted, among other things, that “on multiple occasions [he] did sexually assault [Judy Roe];” “on at least one occasion [he] attempted to sexually assault [Joyce Roe];” and “On multiple occasions [he] forced [James Roe] to watch said molestation and threatened [James Roe] to ensure his silence.” (See, generally, R. pp. 11-21)R. In entering judgment, The Honorable Roger M. Young noted that “The court heard testimony from Plaintiffs’ in support of the allegations” and that “[Bibby] failed to establish the existence of any meritorious defense to the allegations complained of in [the] Complaint.” (R. pp. 2-9)³

Additionally, during this hearing on May 16, 2011, Appellants offered Laura Schreyer, a licensed professional counselor and Assistant Clinical Coordinator, Therapist, and Forensic Interviewer at Dorchester Children’s Center, who was qualified by the Court to offer expert testimony regarding the allegations of abuse.⁴

Accordingly, there is ample evidence on the record to support Appellants’ allegations of abuse.

² Had Respondent raised this issue earlier, Appellants likely would have supplemented the record further, to include a sworn statement or deposition from Defendant Judy Roe. However, in the apparent absence of any dispute about damages, it seems ill advised to put the minor child through that situation.

³ Because this issue was not initially raised, neither the Judgment nor the transcript of expert testimony was designated in Appellants’ matter to be included in the record. Accordingly, Appellant will work with Respondent and/or file a motion seeking leave to supplement the Record in accordance with rule 212.

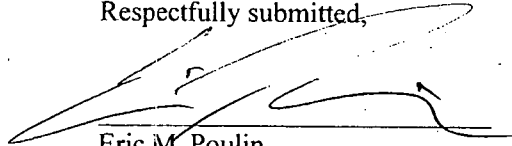
⁴ See above.

CONCLUSION

For the reasons stated, the Order of the trial court should be reversed. This action should be remanded to the Circuit Court for a trial and final determination on the merits.

October 23, 2013

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Eric M. Poulin', is written over a horizontal line.

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Attorney for Appellants

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2010-CP-08-3732

Jane Roe, as parent and natural guardian of
Judy Roe, James Roe, and Joyce Roe, minor
children under the age of eighteen (18).....Appellants,

v.

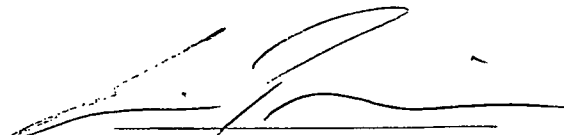
Daniel Bibby, Sr., and Michelle Bibby

Of whom, Michelle Bibby is.....Respondent.

CERTIFICATE OF COUNSEL

I certify that Appellants' Final Brief and Final Reply Brief each comply with Appellate
Court Rule 211(b)

November 26, 2013



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SC Court of Appeals

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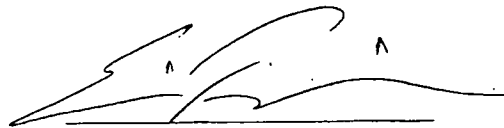
Daniel Bibby, Sr., and Michelle Bibby

Of whom, Michelle Bibby is.....Respondent.

PROOF OF SERVICE

I certify that I have served a copy of Appellant's Final Brief and Appellant's Reply Brief on Michelle Bibby by depositing a copy of it in the United States Mail, postage prepaid, on October 25, 2013, addressed to her attorney of record, Eugene P. Corrigan, III, Post Office Box 547, Charleston, South Carolina, 29402.

October 25, 2013



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Jane Roe, as parent and natural guardian of Judy Roe,
James Roe, and Joyce Roe, Minor Children Under the
Age of Eighteen, Appellants,

v.

Daniel Bibby Sr. and Michelle Bibby, Defendants,

Of whom Michelle Bibby is the Respondent.

Appellate Case No. 2012-213350

Appeal From Berkeley County
R. Markley Dennis, Jr., Circuit Court Judge

Opinion No. 5273
Heard June 11, 2014 – Filed October 1, 2014

AFFIRMED

Eric Marc Poulin, of Anastopoulo Law Firm, LLC, of
North Charleston, for Appellants.

Eugene P. Corrigan, III, and J. W. Nelson Chandler, both
of Corrigan & Chandler, LLC, of Charleston, for
Respondent.

LOCKEMY, J.: Jane Roe, as parent and natural guardian of Judy Roe, James
Roe, and Joyce Roe, minor children under the age of eighteen (minor Appellants),
(collectively with Roe, Appellants) argues the circuit court erred in granting
Michelle Bibby's (Respondent) motion for summary judgment. Appellants argue

Respondent had a duty to warn them under the special relationship exception and a premises liability theory. We affirm.

FACTS/PROCEDURAL BACKGROUND

This case involves allegations by the minor Appellants of sexual molestation by their neighbor, Daniel Bibby, Sr. The molestation allegedly occurred in a home owned by Mr. Bibby and his wife, Respondent.

Respondent and Mr. Bibby were married in 1969 and had three children. In 1995, the Bibbys' sixteen-year-old daughter disclosed that her father had sexually molested her when she was younger. Respondent confronted her husband about the allegations and Mr. Bibby admitted he had touched their daughter inappropriately. The molestation was reported to the South Carolina Department of Social Services (SCDSS) and Mr. Bibby was removed from the home and placed in counseling. Sometime thereafter, Mr. Bibby was permitted to return to the home.

In 2008, Roe, her husband, and the minor Appellants moved into a home across the street from the Bibbys. At the time, one of the Bibby's adult children was living with the Bibbys along with two of the Bibbys' grandchildren. The Bibby grandchildren and the minor Appellants became friends and often played together and visited each other's homes. Respondent was working outside the home at this time and was not always present when the minor Appellants were visiting. Respondent never informed Appellants of Mr. Bibby's prior acts of sexual abuse.

In April 2009, Mr. Bibby admitted to a counselor that he had been molesting his granddaughter. Upon learning of this admitted molestation, Roe questioned her children about any possible abuse. Minor Appellant Joyce confirmed that Mr. Bibby had touched her chest and threatened to kill her if she told anyone. Minor Appellant Judy also revealed similar accusations. Roe called the police and the minor Appellants were referred to the Dorchester Children's Center, where Judy was forensically interviewed. During her interview, Judy stated Mr. Bibby held her in a room with his granddaughter and took his clothes off and forced the children to take their clothes off as well. According to Judy, Mr. Bibby touched her breasts and vagina with his hands and made Judy touch the granddaughter as well. Judy also stated she was exposed to pornography in the Bibby household.

According to Roe, she had no knowledge of Mr. Bibby's prior sexual abuse of his daughter and she had no reason to suspect it was unsafe for her children to play at

the Bibbys' home. Roe further testified she never would have allowed her children to visit the Bibby household had she been warned of Mr. Bibby's sexual propensities. Mr. Bibby denied touching the minor Appellants. He was convicted of molesting his granddaughter, but he was not prosecuted for any actions involving the minor Appellants.

On October 15, 2010, Appellants filed suit asserting causes of action against Mr. Bibby for assault, battery, false imprisonment, and intentional infliction of emotional distress. Appellants alleged Mr. Bibby sexually assaulted Judy and attempted to sexually assault Joyce. Appellants also alleged Joyce and minor Appellant James witnessed the sexual assault of Judy. Appellants asserted causes of action against Respondent for negligence and wrongful infliction of emotional distress on a bystander.

Mr. Bibby failed to file a responsive pleading and Appellants obtained a default judgment against him. Respondent answered the complaint and denied Appellants' allegations. Thereafter, in April 2012, Respondent filed a motion for summary judgment alleging she did not owe a duty to Appellants. Respondent's summary judgment motion was heard on July 10, 2012, and the court took the matter under advisement. Subsequently, on October 12, 2012, the circuit court granted Respondent's motion for summary judgment and dismissed Appellants' claims with prejudice. This appeal followed.

STANDARD OF REVIEW

When reviewing an order granting summary judgment, an appellate court employs "the same standard applied by the trial court under Rule 56, SCRCF." *Wachovia Bank, N.A. v. Coffey*, 404 S.C. 421, 425, 746 S.E.2d 35, 37 (2013) (internal quotation marks omitted). Rule 56 provides the trial court shall grant summary judgment if "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." Rule 56(c), SCRCF. "In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party." *Quail Hill, LLC v. Cnty. of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010) (internal quotation marks omitted).

LAW/ANALYSIS

Appellants argue the circuit court erred in granting Respondent's summary judgment motion because Respondent had a duty to warn Appellants under the special relationship exception and a premises liability theory.

In order to establish a claim for negligence, a plaintiff must show "(1) defendant owes a duty of care to the plaintiff; (2) defendant breached the duty by a negligent act or omission; (3) defendant's breach was the actual or proximate cause of the plaintiff's injury; and (4) plaintiff suffered an injury or damages." *Doe v. Marion*, 373 S.C. 390, 400, 645 S.E.2d 245, 250 (2007). "An essential element in a cause of action for negligence is the existence of a legal duty of care owed by the defendant to the plaintiff." *Bishop v. S.C. Dep't of Mental Health*, 331 S.C. 79, 86, 502 S.E.2d 78, 81 (1998). "Without a duty, there is no actionable negligence." *Id.* "The existence of a duty owed is a question of law for the courts." *Washington v. Lexington Cty. Jail*, 337 S.C. 400, 405, 523 S.E.2d 204, 206 (Ct. App. 1999).

"Under South Carolina law, there is no general duty to control the conduct of another or to warn a third person or potential victim of danger." *Doe ex rel. Doe v. Wal-Mart Stores, Inc.*, 393 S.C. 240, 246, 711 S.E.2d 908, 911 (2011) (quoting *Faile v. S.C. Dep't of Juvenile Justice*, 350 S.C. 315, 334, 566 S.E.2d 536, 546 (2002)). Our courts recognize five exceptions to this rule: "1) where the defendant has a special relationship to the victim; 2) where the defendant has a special relationship to the injurer; 3) where the defendant voluntarily undertakes a duty; 4) where the defendant negligently or intentionally creates the risk; and 5) where a statute imposes a duty on the defendant." *Id.* at 246-47, 711 S.E.2d at 911-12.

Although Appellants note the issue of whether a homeowner has a duty to warn visitors of his or her spouse's admitted prior sexual abuse is a novel issue in this state, they ask this court to impose a duty to warn under the special relationship exception and a premises liability theory.

A. Special Relationship Exception

Appellants assert Respondent had a special relationship with the minor Appellants that required her to act based upon her knowledge of Mr. Bibby's prior misconduct.

"The defendant may have a common law duty to warn potential victims under the 'special relationship' exception when the defendant 'has the ability to monitor, supervise and control an individual's conduct' and when 'the individual has made a specific threat of harm directed at a specific individual.'" *Doe v. Marion*, 373 S.C. 390, 400, 645 S.E.2d 245, 250 (2007) (quoting *Bishop*, 331 S.C. at 86, 502 S.E.2d

at 81). It is not necessary for the injuring party to have made a threat while under the defendant's control or custody. *Bishop*, 331 S.C. at 88, 502 S.E.2d at 82. All that is required to impose a duty to warn is that the defendant knew or should have known of a specific threat made to harm a specific person. *Id.*

The circuit court found Respondent did not have a special relationship with Appellants because she did not have the ability to monitor, supervise, and control Mr. Bibby. Additionally, the court found Respondent had no knowledge of a specific threat to the minor Appellants.

Appellants argue that although the facts of this case present a novel issue, the issue was considered by this court in *Doe v. Batson*, 338 S.C. 291, 525 S.E.2d 909 (Ct. App. 2000) (*Batson I*), *affirmed in part, vacated in part*, 345 S.C. 316, 548 S.E.2d 854 (2001). In *Batson I*, a number of minors were sexually assaulted by a 27-year-old man who lived with his mother (Batson). The minors brought suit against Batson, alleging (1) the molestations occurred in her home, (2) she knew her son had young boys in his bedroom, and (3) she was negligent for failing to warn or act. *Batson I*, 338 S.C. at 295, 525 S.E.2d at 911. This court reversed the trial court's grant of summary judgment to Batson, finding discovery was not complete. *Id.* at 304, 525 S.E.2d at 916. In reviewing the trial court's grant of summary judgment, this court considered the special relationship test and noted, "case law from other jurisdictions lends credence to [the minor's] assertion that Batson had a duty to warn in this case." *Id.* at 301, 525 S.E.2d at 914.

The supreme court affirmed this court's finding in *Batson I* that summary judgment was improper because discovery had not yet been completed; however, the court explicitly vacated the portions of this court's opinion discussing liability. *Doe ex rel. Doe v. Batson*, 345 S.C. 316, 323, 548 S.E.2d 854, 858 (2001) (*Batson II*). In vacating those portions of the opinion, the supreme court noted, "[t]he paucity of the record makes it impossible for us to determine the merits of Doe's argument. Whether Batson had a cognizable duty will be determined after the record has been more fully developed." *Id.*

Appellants argue that "although *Batson I* is not strictly precedential, the opinion of the [c]ourt of [a]ppeals nonetheless sheds valuable and well-reasoned light on the issue." Appellants assert this case contains evidence of a specific threat (previous instances of molestation and more recent instances of viewing child pornography¹)

¹ Judy stated in her interview she was exposed to pornography in the Bibby home. Additionally, the Bibby's adult son, Daniel Bibby, Jr., told police he witnessed his

and a readily identifiable victim (a minor child roughly the same age as Mr. Bibby's prior victim who was invited into the home by Respondent).

We find the record contains no evidence Respondent had a special relationship akin to those special relationships recognized by our courts. *See, e.g., Marion*, 373 S.C. 390, 645 S.E.2d 245 (assuming special relationship between psychiatrist and patient/injurer); *Faile*, 350 S.C. 315, 566 S.E.2d 536 (finding special relationship between Department of Juvenile Justice and dangerous juvenile/injurer over whom it had custody per court order); *Bishop*, 331 S.C. at 86, 502 S.E.2d at 81 (finding special relationship between Department of Mental Health and involuntarily-committed patient/injurer in its custody); *Rogers v. S.C. Dep't of Parole & Cmty. Corr., et al.*, 320 S.C. 253, 464 S.E.2d 330 (1995) (assuming special relationship between state agencies charged with prisoner parole and prisoner/injurer who was being released from custody (but finding no specific threat)); *Ballou v. Sigma Nu Gen. Fraternity*, 291 S.C. 140, 352 S.E.2d 488 (1986) (finding a fraternal organization had a duty to an initiate who had become helplessly drunken from alcohol furnished to him by the fraternity). We note this case does not involve a commercial child care situation or other commercial arrangement. Furthermore, Appellants presented no evidence Respondent had the ability to monitor, supervise, or control the conduct of Mr. Bibby. Respondent worked full-time outside the home and was not always present when the minor Appellants were visiting.

Finally, we find the record contains no evidence Respondent had knowledge of a specific threat of harm to a specific individual. *See Marion*, 373 S.C. at 401, 645 S.E.2d at 251 ("[I]t is not simply foreseeability of the victim which gives rise to a person's liability for failure to warn; rather, it is the person's awareness of a distinct, specific, overt threat of harm which the individual makes towards a particular victim." (quoting *Gilmer v. Martin*, 323 S.C. 154, 157, 473 S.E.2d 812, 814 (Ct. App. 1996))). There is no evidence Mr. Bibby made a distinct, specific, and overt threat of harm towards the minor Appellants. Accordingly, the circuit court did not err in finding Respondent did not have a special relationship with Appellants.

B. Premises Liability

father watching child pornography in the two years leading up to the alleged molestation of the minor Appellants. According to Jane Roe, Daniel Bibby, Jr. told her he had informed Respondent on several occasions that Mr. Bibby was watching pornography.

Appellants argue that even assuming Respondent did not owe Appellants a duty to warn by way of their special relationship, she is still liable under a premises liability theory.

"To establish negligence in a premises liability action, a plaintiff must prove the following three elements: (1) a duty of care owed by defendant to plaintiff; (2) defendant's breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach of duty." *Singleton v. Sherer*, 377 S.C. 185, 200, 659 S.E.2d 196, 204 (Ct. App. 2008). "The nature and scope of duty in a premises liability action, if any, is determined based upon the status or classification of the person injured at the time of his or her injury." *Id.* South Carolina recognizes four general classifications of persons present on the property of another: adult trespassers, invitees, licensees, and children. *Id.*

Appellants contend they were licensees on Respondent's property. "Under South Carolina jurisprudence, 'a landowner owes a licensee a duty to use reasonable care to discover the licensee, to conduct activities on the land so as not to harm the licensee, and to warn the licensee of any concealed dangerous conditions or activities.'" *Id.* at 201, 659 S.E.2d at 204 (quoting *Landry v. Hilton Head Plantation Prop. Owners Ass'n*, 317 S.C. 200, 203, 452 S.E.2d 619, 621 (Ct. App. 1994)). "The duty owed to a licensee differs from the duty owed to an invitee 'in that the [landowner] has no duty to search out and discover dangers or defects in the land or to otherwise make the premises safe for a licensee.'" *Id.* (quoting 18 S.C. Jur. *Negligence* § 44 (2007)).

Appellants note the issue of whether a homeowner has a duty to warn a licensee with regard to an alleged criminal act committed by a third-party is a novel issue. However, they assert Respondent had a duty to warn Appellants because she knew from Mr. Bibby's past actions there was a likelihood of conduct dangerous to the safety of the minor Appellants.

Initially, Appellants cite *Burns v. South Carolina Commission for the Blind*, 323 S.C. 77, 448 S.E.2d 589 (Ct. App. 1994), for the proposition that our courts "have already held that a victim of a sexual assault may bring suit under a premises liability theory." While this statement is correct, *Burns* is distinguishable from the present case. First, *Burns* involved an alleged duty to protect a resident of a treatment facility instead of an alleged duty to warn a third-party of an alleged threat in a residence. *Id.* at 79-80, 448 S.E.2d at 591. Second, this court classified the plaintiff in *Burns* as an invitee and not a licensee, thus implicating a higher duty of care. *Id.* at 80, 448 S.E.2d at 591. Third, the *Burns* court determined a

special relationship existed between the plaintiff-victim and the defendant-residential treatment facility. *Id.*

We find Respondent did not owe Appellants a duty to warn under a premises liability theory. We note no South Carolina cases recognize a duty to warn a licensee with regard to prior criminal acts committed by a third-party residing on the premises. Additionally, Mr. Bibby was not found to be a continuing danger by State, and there is no evidence Respondent knew Mr. Bibby was a dangerous condition in their home or that he was abusing the minor Appellants. Respondent testified she believed the minor Appellants were untruthful regarding the alleged molestation and she did not believe Mr. Bibby molested any of the minor Appellants. Furthermore, Respondent, a lay person untrained in the recidivism of pedophilia, testified she believed Mr. Bibby was "cured" following his 1995 confession and release from treatment. Finally, a finding that Respondent had a duty to warn under a premises liability theory in this case could potentially subject homeowners to liability for failure to warn licensees of prior bad conduct, including conduct of a criminal nature, of any persons on the premises.

CONCLUSION

Based on the foregoing, we find the circuit court did not err in granting Respondent's motion for summary judgment.

AFFIRMED.

KONDUROS, J., concurs. WILLIAMS, J., dissents in a separate opinion.

WILLIAMS, J.: I respectfully dissent. I believe a homeowner has a duty to warn minor children of potential sexual abuse that could occur on the homeowner's premises under the special relationship exception and a premises liability theory. Whether Respondent breached a duty to warn Appellants of Mr. Bibby's sexual propensities in this context is an issue best decided by the jury. *See Miller v. City of Camden*, 317 S.C. 28, 31, 451 S.E.2d 401, 403 (Ct. App. 1994) (stating negligence is a mixed question of law and fact with the existence and scope of a duty being questions of law and a breach of duty being a question for the jury). As a result, I would reverse the circuit court's grant of summary judgment and remand for further proceedings.

As noted by the majority, under the special relationship exception, "[t]he defendant may have a common law duty to warn potential victims . . . when the defendant

'has the ability to monitor, supervise and control an individual's conduct' and when 'the individual has made a specific threat of harm directed at a specific individual.'" *Doe v. Marion*, 373 S.C. 390, 400, 645 S.E.2d 245, 250 (2007) (quoting *Bishop v. S.C. Dep't of Mental Health*, 331 S.C. 79, 86, 502 S.E.2d 78, 81 (1998)). It is not necessary for the injuring party to have made a threat while under the defendant's control or custody. *Bishop*, 331 S.C. at 87-88, 502 S.E.2d at 82. All that is required to impose a duty to warn is that the defendant knew or should have known of a specific threat made to harm a specific person. *Id.* at 88, 502 S.E.2d at 82.

I believe this court's rationale from *Doe v. Batson*, 338 S.C. 291, 525 S.E.2d 909 (Ct. App. 2000), is persuasive on the issue of whether Respondent had a special relationship with Appellants. Although the supreme court ultimately vacated the portion of *Batson* wherein this court found the mother could potentially be liable for her son's sexual abuse of minor boys in her home under a special relationship exception and a premises liability theory, the supreme court did not expressly disavow this court's reliance on either of those theories. *Doe ex rel. Doe v. Batson*, 345 S.C. 316, 323, 548 S.E.2d 854, 858 (2001). Rather, at issue in *Batson* was whether it was too early to dismiss the case based on the lack of discovery. *Id.* at 321, 548 S.E.2d at 857. Because relevant and crucial depositions had yet to occur, the supreme court ruled it was improper for this court to suggest sources of liability as "the paucity of the record ma[de] it impossible ... to determine the merits of [the victims'] argument." *Id.* at 323, 548 S.E.2d at 858.

Unlike *Batson*, several significant witnesses, including Respondent, minor Appellants, and Roe, have already been deposed. Testimony elicited during those depositions created at least a mere scintilla of evidence as it relates to whether Respondent either knew or should have known that Mr. Bibby posed a specific threat of harm to the children that Respondent invited into her home. *See Bass v. Gopal, Inc.*, 395 S.C. 129, 134, 716 S.E.2d 910, 912 (2011) (citing *Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009)) ("In a negligence case, where the burden of proof is a preponderance of the evidence standard, the non-moving party must only submit a mere scintilla of evidence to withstand a motion for summary judgment."); *Bishop*, 331 S.C. at 88, 502 S.E.2d at 82 (holding all that is required to impose a duty to warn is that the defendant knew or should have known of a specific threat made to harm a specific person).

Although the circuit court placed emphasis on the time lapse since Mr. Bibby had molested their daughter, the passage of time alone should not negate the possibility that Respondent knew or should have known of Mr. Bibby's sexually deviant

proclivities. Respondent knew minor Appellants were coming over to their house to play and minor Appellants' presence in their home was a result of her own invitation. Further, Respondent admitted she was aware of Mr. Bibby's prior propensities for pedophilia, as she acknowledged Mr. Bibby sexually abused their daughter in the past. Even after Mr. Bibby was removed from their home and placed in counseling, Respondent clearly appreciated the possibility of Mr. Bibby abusing their daughter again. Specifically, she testified she placed a lock on their daughter's door after Mr. Bibby returned and hid the key from him.

The majority cites to cases in which our courts have found a special relationship existed but concludes this case is distinguishable because the abuse occurred inside Respondent's home as opposed to a commercial setting. I believe the location is not dispositive for purposes of creating a special relationship. Rather, I would find Wife's act of voluntarily inviting minor Appellants into her home while knowing of Husband's prior sexual abuse and continuing sexually deviant propensities is sufficient to impose a duty in this instance. *See, e.g., Pamela L. v. Farmer*, 112 Cal. App. 3d 206 (Cal. Ct. App. 1980) (holding that a wife who invited and encouraged children to visit her premises, even though she knew that husband had molested women and children in the past and might do so again, could be held liable in negligence); *J.S. v. R.T.H.*, 714 A.2d 924 (N.J. 1998) (holding that a wife could be held liable for the negligent failure to prevent or warn the victims about her husband's sexually abusive behavior when the wife had actual knowledge or special reason to know that the husband was likely to abuse a particular person or persons); *Doe v. Franklin*, 930 S.W.2d 921 (Tex. Ct. App. 1996) (holding that a grandmother could be held liable for failure to protect her granddaughter from a known risk of sexual abuse by the grandfather).

I would find the testimony of Respondent's son, Daniel Bibby, Jr., is further evidence to support the conclusion that Respondent knew of Mr. Bibby's sexually deviant behavior toward children and that she knew he posed a risk to them. In a written statement to police, Daniel recounted that he had caught his father looking at child pornography on the Internet for at least two years leading up to the alleged molestations. Daniel also told police that Mr. Bibby discarded his computer for fear that either Daniel or Daniel's children would disclose that Mr. Bibby was using his computer for pornographic purposes. I would find the foregoing evidence regarding Mr. Bibby's apparent addiction to child pornography is particularly relevant to whether Mr. Bibby posed a specific threat of harm to minor Appellants.

I believe a jury could find Respondent liable under a premises liability theory. In coming to this conclusion, I do not intend to suggest that a homeowner could be subject to liability for failure to warn licensees of the criminal history of any person who happens upon the homeowner's premises. Nor do I urge the adoption of a rule that would impose a general duty to warn others in the surrounding vicinity of the dangerous propensities of one residing therein. Rather, I would find a homeowner owes a duty to take reasonable measures to protect children invited into his or her home from potential sexual assault when the homeowner knows or should know of the assailant's propensities.

Both parties agree minor Appellants were licensees in Respondent's home. As it relates to a licensee, a landowner has a duty

[t]o use reasonable care to warn [the licensee] of any *concealed dangerous conditions* or activities which are known to the possessor, or of any changes in the condition of the premises which may be dangerous to him, and which he may reasonably be expected to discover.

Neil v. Byrum, 288 S.C. 472, 473, 343 S.E.2d 615, 616 (1986) (internal citation omitted). Although negligence actions under a premises liability theory typically pertain to dangerous conditions or activities on one's land, our courts have permitted a sexual assault victim to bring suit for injuries inflicted by a third party under a premises liability theory. See *Burns v. S.C. Comm'n for the Blind*, 323 S.C. 77, 448 S.E.2d 589 (Ct. App. 1994); see also 62 Am. Jur. 2d *Premises Liability* § 409 (2014) ("Generally, owners or occupiers of land have no duty to protect visitors to their property from the deliberate criminal conduct of third parties[.] . . . However, an exception exists if the . . . landowner either knows or has reason to know from past experience that there is a likelihood of conduct dangerous to the safety of the visitor."). The majority finds *Burns* distinguishable because the plaintiff in *Burns* was an invitee in a treatment facility as opposed to a licensee in one's home, but, as children of tender years, I would hold that Respondent owed a heightened duty of care to minor Appellants similar to that imposed in *Burns*. See *Lynch v. Motel Enter., Inc.*, 248 S.C. 490, 494, 151 S.E.2d 435, 436 (1966) (finding owner or occupier of land may be liable for injuries to children of tender years, whether licensees or trespassers, if children are likely to come into contact with an obvious danger that could be reasonably anticipated and prevented by owner or occupier); F. Patrick Hubbard and Robert L. Felix, *The South Carolina Law of Torts*, 132-33 (4th ed. 2011) ("Special rules apply to

children because they often lack the capacity to know and appreciate the danger and to understand the culpable wrongful entry on another's premises. Where the premises contain a condition unreasonably dangerous to children, the owner/occupier owes a child a duty of care even if the child is a trespasser or a licensee.").

Under the particular facts of this case, I would find Appellants presented at least a mere scintilla of evidence from which a jury could find Respondent breached a duty of care to minor Appellants. Accordingly, I would reverse the circuit court's decision to grant summary judgment and remand this case for further proceedings.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2010-CP-08-3732

Jane Roe, as parent and natural guardian of
Judy Roe, James Roe, and Joyce Roe, minor
children under the age of eighteen (18).....Appellants,
v.

Daniel Bibby, Sr., and Michelle Bibby

Of whom, Michelle Bibby is.....Respondent.

PETITION FOR REHEARING

Appellant hereby moves and petitions, pursuant to Rules 219 and 221(a), SCAR, as well as other applicable law, for an Order granting rehearing in this case and would respectfully show that the Court may have overlooked or misapprehended certain points, as set forth below:

I. Respondent had a duty to warn Appellants because there existed a special relationship.

Appellants allege that Respondent owed a duty because there exists a special relationship between Respondent and Appellants. Such a duty may arise where, "a special relation exists between the actor and the third person which imposes a duty upon the actor to control the third

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person's conduct; **or**, a special relationship exists between the actor and the other which gives the other a right to protection." Restatement (Second) of Torts, § 315 (1965) (**emphasis added**).

In affirming the lower Court's grant of summary judgment, the majority holds that "Appellants presented no evidence Respondent had the ability to monitor, supervise, or control the conduct of Mr. Bibby." However, Appellants believe the Court has misapprehended this issue.

First, as correctly recognized in Batson I, Appellants' claim is not based on a theory of vicarious liability, that Respondent is vicariously liable for the actions of her husband, but rather is based upon Respondent's own negligence in breaching the duty owed under the special relationship. Indeed the special relationship test is *disjunctive*, such that Respondent owes a duty **either** where, "a special relation exists between the actor and the [molester] which imposes a duty upon the actor to control the [molester's] conduct; **or**, a special relationship exists between the actor and the [victim] which gives the [victim] a right to protection." Restatement (Second) of Torts, § 315 (1965). (**emphasis added**).

Here, Respondent's special relationship with Appellants is dependent upon the relationship between Appellants and Respondent, and Respondent's ability to control her husband becomes immaterial. Stated differently, the Defendant's ability to monitor, supervise, or control the actor is only relevant when respondent is alleged to have a special relationship with the actor. Such was the issue in the cases cited by this Court, e.g., Bishop v. S.C. Dept. of Mental Health, 331 S.C. 79, 502 S.E.2d 78 (1998) and Faile v. S.C. Dept. of Juvenile Justice, 350 S.C. 315, 566 S.E.2d 536 (2002).

Those cases sought to impose liability on a defendant when the person in that defendant's custody caused harm to another. This case involves the inverse type of special relationship,

where a minor in Defendant's custody is harmed by another. Thus, the appropriate inquiry is not whether Respondent had the ability to monitor the actor causing harm (Mr. Bibby); but rather, whether Respondent's relationship with Appellants was such as to give Appellant's a right of protection.

Appellants further would show that this Court overlooked or misapprehended the record in determining that "Respondent [did not have] knowledge of a specific threat of harm to a specific individual.

Some states require actual knowledge of the offender's propensities. See, e.g., Romero v. Superior Court, 89 Cal.App.4th 1068, 1083, 107 Cal.Rptr.2d 801, 812 (Ct.App. 2001)("We...hold as a matter of law that an adult defendant who assumed a special relationship with a minor by inviting the minor into his or her home will be deemed to have owed a duty of care to take reasonable measures to protect the minor against an assault by another minor invitee while in the defendant's home when the evidence and surrounding circumstances establish that the defendant had actual knowledge of, and thus must have known, the offending minor's assaultive propensities.").

Other states require only constructive knowledge. See, e.g., Doe v. Franklin, 930 S.W.2d 921, 928 (Tx.App. 1996)("If [defendant] knew or should have known of her husband's proclivities, she should have taken steps to ensure that Doe would not be placed in harm's way or to otherwise ensure that her husband would not be in a position to act on his temptations); Funkhouser v. Wilson, 89 Wash.App. 644, 661, 950 P.2d 501, 509 (1998)("we must determine whether there is sufficient evidence that a rational trier of fact should be allowed to determine whether the risk of harm was reasonably foreseeable at the time [plaintiffs] were molested.").

South Carolina has already adopted the “constructive knowledge” test in other circumstances. See, Bishop, 331 S.C. (holding it is not necessary for the injuring party to have made a threat while under the defendant’s control or custody. All that is required to impose a duty to warn is that the defendant knew or should have known of a specific threat made to harm a specific person).

In the present case, there is more than a scintilla of evidence on the record from which a reasonable jury could find a specific threat. Whether this Court applies an actual knowledge or constructive knowledge test is almost immaterial in this instance because the Respondent admits to having actual knowledge of her husband’s prior propensities toward pedophilia. (R. p. 110, lines 3-7)(Admitting she was aware that her husband had molested their daughter in the past). Therefore, the specific persons to be harmed were readily identifiable as the minor Appellants. If Respondent knew or should have known of their presence and the threat of harm her husband posed to them, but failed to warn them, the same would constitute a failure to warn of a specific threat to a specific victim.

Respondent readily admits to knowing that the Appellants were coming over to her house to play. (R. p. 132, lines 17-19). Furthermore, she admits that the Appellant children were there at her invitation. (R. p. 167, lines 12-13)(“I am the one when I was home who let the children in the house.”). Based upon Respondent’s own admissions, the other evidence on the record, and the reasonable inferences to be drawn therefrom, there is sufficient evidence to support Appellants’ contention that a special relationship existed between the Respondent and the minor Appellants.

II. Respondent had a duty to warn Appellants as a matter of basic premises liability law.

Appellants would further show that this Court may have overlooked or misapprehended

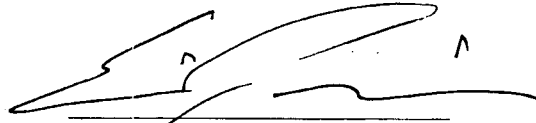
the duty arising under premises liability law. The majority found that "there is no evidence Respondent knew Mr. Bibby was a dangerous condition in their home..." because "[Respondent] testified she believed Mr. Bibby was 'cured' following his 1995 confession and release from treatment."

However, there is equally significant evidence on the record to support the opposite conclusion. When her husband returned to the house after the first instance of sexual abuse on their daughter, after the counseling which Respondent allegedly believes to have rehabilitated Mr. Bibby, Respondent nevertheless proceeded to install a lock on her daughter's door and took steps to hide the key from her husband. (R. p. 128, lines 9-15). This action could lead to the reasonable inference that, in fact, Respondent did not believe her husband had been rehabilitated, but rather was concerned that he would re-offend.

Moreover, in a statement to police, [REDACTED] admitted that, for at least two years leading up to the alleged molestation of Appellants, he had caught his father looking at child pornography on the internet. (R. pp. 287-288). [REDACTED] informed Appellant Roe that he had brought his father's pornography watching to the attention of his mother on several occasions. (R. p. 257, lines 21-25-p. 258, lines 1-3). Respondent admits to having been with Mr. Bibby in Myrtle Beach when he disposed of the computer in a dumpster behind a building. (R. p. 119, lines 16-25-p. 120, lines 1-7). This presents a scintilla of evidence from which a rational juror could surmise Respondent's knowledge of her husband's continuing propensities. The determination as to which evidence should carry more weight is one for the trier of fact, and should not have been adjudicated on summary judgment.

WHEREFORE, for the reasons stated above, and those set forth in the briefs and initial arguments, Appellants respectfully pray for a rehearing on this matter.

October 7, 2014



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2010-CP-08-3732

Jane Roe, as parent and natural guardian of
Judy Roe, James Roe, and Joyce Roe, minor
children under the age of eighteen (18).....Appellants,
v.

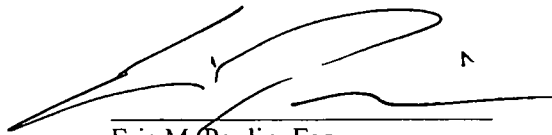
Daniel Bibby, Sr., and Michelle Bibby

Of whom, Michelle Bibby is.....Respondent.

PROOF OF SERVICE

I certify that I have served a copy of Appellants' Petition for Rehearing on Michelle Bibby by depositing a copy of it in the United States Mail, postage prepaid, on October 7, 2014, addressed to her attorney of record, Eugene P. Corrigan, III, Post Office Box 547, Charleston, South Carolina, 29402.

October 7, 2014



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SC Court of Appeals

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Reply to North Charleston Office
eric@akimlawfirm.com

October 7, 2014

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

RE: *Jane Roe v. Michelle Bibby*
Case No.: 2010-CP-08-3732
Tracking No.: 2012-213350

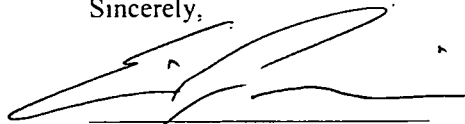
Dear Ms. Kitchings:

Please find enclosed an original and seven (7) copies of Appellants' Petition for Rehearing in this matter along with the original and one (1) copy of Proof of Service of the same. We would appreciate it if you would file the originals and return one stamped copy of the Petition and a stamped copy of the Proof of Service in the enclosed envelope.

Also enclosed is our check in the amount of \$25.00 for the filing fee.

Please do not hesitate to contact me should you have any questions.

Sincerely,



Eric M. Poulin
2557 Ashley Phosphate Road
North Charleston, SC 29418
(843) 614-8888

Cc: Eugene P. Corrigan, III (w/ enclosures)
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

R. Markley Dennis Jr., Circuit Court Judge

Case No. 2010-CP-08-3732

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SC Court of Appeals

Jane Roe, as parent and natural guardian of
Judy Roe, James Roe, and Joyce Roe, minor
children under the age of eighteen (18) Appellants,

v.

Daniel Bibby, Sr., and Michelle Bibby

Of whom, Michelle Bibby is Respondent.

**RESPONDENT'S RETURN TO
APPELLANTS' PETITION FOR REHEARING**

Respondent, by and through her undersigned counsel, and pursuant to Rule 240, SCACR, respectfully submits this Return to Appellants' Petition for Rehearing (the "Petition").

This Court correctly affirmed the Circuit Court's order granting summary judgment in favor of Respondent, Mrs. Bibby. (Opinion No. 5273, filed October 1, 2014, the "Opinion"). As noted in the Opinion, Appellants failed to establish liability under either (1) a special relationship exception or (2) a premises liability theory of recovery. Appellants' Petition, arguing the contrary, restates prior arguments and points to nothing that would change the result of this appeal.

I. The Court Correctly Found That Appellants Failed to Establish the Applicability of the Special Relationship Exception.

South Carolina law does not recognize a general duty to warn of the dangerous propensities of others. *See Doe v. Wal-Mart Stores, Inc.*, 393 S.C. 240, 246, 711 S.E.2d 908, 911 (2011). Appellants argue that this Court should apply the exception to the rule providing that a duty may arise where the defendant had a “special relationship” with the alleged victim and knowledge of a specific threat. In the Petition, Appellants argue that the Court (a) misapprehended the special relationship issue and (b) overlooked the record in determining the absence of a specific threat. (Petition, pp. 2-4). Appellants’ arguments are misplaced.

a. Appellants Have Not Shown a Special Relationship Between Respondent and the Minor Appellants.

As noted by Appellants, the law recognizes that a special relationship may exist *either* between the defendant and the alleged injurer (*i.e.* Mr. Bibby) *or* between the defendant and the alleged victims (*i.e.* the minor Appellants). Appellants have conceded the absence of the former relationship and focus exclusively on arguing the latter relationship, *i.e.* between Respondent and the minor Appellants. Appellants maintain that the Court misapprehended this issue based on its statement that “Appellants presented no evidence Respondent had the duty to monitor, supervise, or control the conduct of Mr. Bibby.” (Petition, p. 2).

The Court, however, plainly understood and noted Appellants’ contention that “Respondent had a special relationship with the minor Appellants.” (Opinion, p. 4). The Court correctly cited the caselaw setting forth the general rule and the five exceptions thereto, one of which is expressly delineated as a special relationship between the

defendant and the victim. *Wal-Mart Stores, Inc.*, 393 S.C. at 246, 711 S.E.2d at 911 (citing *Faile v. S.C. Dep't of Juvenile Justice*, 350 S.C. 315, 334, 566 S.E.2d 536, 546 (2002)). The Court went on to demonstrate the stark contrast between the type of relationship in this case and the types of special relationships actually recognized in our precedent. (Opinion, p. 5). Specifically, the Court observed that this case did not involve any type of commercial or child care situation. Rather, Mrs. Bibby worked a full-time job, outside of the home, at the time the alleged events occurred in the home. *Id.*

In determining whether a special relationship exists (with either the injurer or the victim), our courts have looked to whether the defendant had “the ability to monitor, supervise and control *an individual's* conduct.” *Wal-Mart Stores, Inc.*, 393 S.C. at 247, 711 S.E.2d at 912 (emphasis added). When the defendant-injurer relationship is at issue, the term “individual” presumably refers to the injurer, and when the defendant-victim relationship is at issue, the term “individual” presumably refers to the victim.¹ Here, the Court clearly found that Appellants had not met the requisite standard with respect to establishing a special relationship with the alleged victims. The fact that the Opinion also states that Mrs. Bibby did not have the ability to monitor, supervise or control *Mr. Bibby* – which is absolutely true and conceded by Appellants – does not somehow mean that the Court misapprehended the issue.

b. Appellants Have Not Shown that Mrs. Bibby Had Knowledge of a Specific Threat of Harm to a Specific Individual.

With regard to the “specific threat” requirement (which Appellants must also establish to advance their case under the special relationship exception), Appellants

¹ In *Wal-Mart Stores, Inc.*, for example, the Court noted that the store had no special relationship with either the injurer (the father) or the victim (the son in the photographs developed by the store) because the store did not have the ability to monitor, supervise, and control either of them. 393 S.C. at 247, 711 S.E.2d at 912.

contend that the Court overlooked certain evidence demonstrating the existence of such a threat. Specifically, Appellants argue that Mrs. Bibby had actual knowledge of Mr. Bibby's "prior propensities toward pedophilia" and knew that the minor Appellants were coming over to her house. (Petition, p. 4). Again, Appellants' arguments are unavailing.

To begin with, the facts related to these arguments have been extensively addressed and, therefore, have not been overlooked. Regardless, the allegations – on their face – fall short of what is required to establish knowledge of a specific threat. As reiterated in *Doe v. Marion*, it is not simply "foreseeability," but a "person's *awareness* of a *distinct, specific, overt threat of harm* [towards] a particular victim" that gives rise to liability. 373 S.C. 390, 401, 645 S.E.2d 245, 251 (2007) (emphasis added). The Court has not overlooked any "distinct, specific, overt" threat of harm in this case, Appellants' arguments notwithstanding.

Moreover, as Appellants concede when they point to Mrs. Bibby's knowledge of Mr. Bibby's "*prior propensities*" (Petition, p. 4, emphasis added), there is no evidence that Mrs. Bibby knew of any ongoing abuse or threat by Mr. Bibby. Indeed, there was and remains no evidence of any recidivism by Mr. Bibby during the fifteen years after he confessed, received treatment, and was released back into the home by DSS. Because Mrs. Bibby's granddaughter was also a resident of the home at the time in question, Mrs. Bibby would not have allowed Mr. Bibby to be there if she knew he was a threat. (R. p. 147, line 25-p. 148, line 6). As to the allegation related to Mrs. Bibby's knowledge of the minor Appellants coming over to play, the record is clear that Mrs. Bibby had no knowledge (and, in fact, denies) that Mr. Bibby was ever alone with the minor Appellants. (R. p. 133, lines 11-16; R. p. 167, lines 2-5; R. p. 168, lines 11-15; R. p. 169,

lines 15-20). According to Roe, the alleged molestation occurred while Mrs. Bibby was at work, out of the house. (R. p. 227, line 24-p. 228, line 7; R. p. 230, lines 6-14; R. p. 234, lines 4-10). In sum, the Court correctly ruled that Appellants failed to establish any specific threat of harm against a specific individual.

II. The Court Correctly Found That Appellants Could Not Recover Under a Premises Liability Theory of Recovery.

With respect to their alternative theory of recovery under the law of premises liability, Appellants maintain that this Court overlooked evidence that Mr. Bibby constituted a “dangerous condition” on the premises known to Mrs. Bibby. Specifically, Appellants assert (a) that Mrs. Bibby had used a lock on her daughter’s door, (b) that Mr. Bibby allegedly looked at child pornography on the internet, and (c) that Mrs. Bibby was with Mr. Bibby when he discarded his computer. (Petition, p. 5).

First, Appellants’ points on this issue are legally insufficient. As a threshold matter, Appellants concede that they were licensees. There is no precedent recognizing a duty to warn a licensee with regard to the potential criminal act of a third party. Appellants make no argument to the contrary. Additionally, though Appellants would use the law of premises liability to make an end run around the “special relationship” requirement, the case they rely upon found a special relationship between the plaintiff and the residential treatment facility in which she resided. *See Burns v. S.C. Comm’n for the Blind*, 323 S.C. 77, 80, 448 S.E.2d 589, 591 (Ct. App. 1994). Appellants have not, and cannot, establish a special relationship.

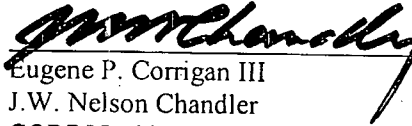
In any event, the issues raised by Appellants do not demonstrate that Mr. Bibby was a “dangerous condition” known to Mrs. Bibby. These issues have been briefed and argued and were not overlooked. The “lock” was temporally associated with the therapy

of Mrs. Bibby's daughter some fifteen years prior and, therefore, is irrelevant to what Mrs. Bibby knew at the time in question. More to the point, the granddaughter's door was unlocked during the time at issue because, again, Mrs. Bibby did not believe there was any threat. (R. p. 130, lines 2-12; R. p. 137, lines 12-20; R. p. 148, lines 16-25). As to the allegation involving the child pornography, *Roe's* self-serving testimony about what *Daniel Jr.* allegedly told *her* that *he* told Mrs. Bibby is inadmissible hearsay. (R. p. 257). Daniel Jr.'s actual statement to police is devoid of any allegation that Mrs. Bibby was aware of Mr. Bibby viewing child pornography. (R. p. 288). Finally, the fact that Mrs. Bibby was with Mr. Bibby when he discarded his computer similarly has no bearing on whether she believed him to be a "dangerous condition." She understood that his computer had crashed and that he was leaving it behind a computer store because he forgot to stop at Goodwill. (R. pp. 122-123). This did not occur until *after* the alleged events at issue (but before Mrs. Bibby learned of what had happened with their granddaughter). (R. p. 123, lines 1-16). Otherwise, she would not have been with him. *Id.* In sum, it bears repeating that this is not a case where the Respondent knew that the alleged abuse, or any abuse, was occurring.

WHEREFORE, for the reasons stated herein and in the prior briefing, Respondent respectfully submits that this Court should DENY Appellants' Petition for Rehearing.

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Respectfully submitted,



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ATTORNEYS FOR RESPONDENT
MICHELLE BIBBY

October 15, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

OCT 17 2014

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

SC Court of Appeals

R. Markley Dennis Jr., Circuit Court Judge

Case No. 2010-CP-08-3732

Jane Roe, as parent and natural guardian of
Judy Roe, James Roe, and Joyce Roe, minor
children under the age of eighteen (18) Appellants,

v.

Daniel Bibby, Sr., and Michelle Bibby

Of whom, Michelle Bibby is Respondent.

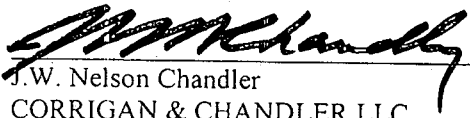
PROOF OF SERVICE

I certify that I have served the foregoing **RESPONDENT'S RETURN TO APPELLANTS' PETITION FOR REHEARING** on all parties of record by depositing a copy of it in the United States Mail, postage prepaid, on October 15, 2014, addressed to their attorneys of record as follows:

Eric M. Poulin, Esq.
Anastapoulo Law Firm, LLC
2557 Ashley Phosphate Road
North Charleston, SC 29418

Attorney for Appellants

[SIGNATURE PAGE TO FOLLOW]



J.W. Nelson Chandler

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ATTORNEYS FOR RESPONDENT

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ATTORNEYS AT LAW

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nelson@corriganhandler.com

REPLY TO:
P.O. Box 547
Charleston, SC 29402

October 15, 2014

VIA U.S. MAIL

The Honorable Jennie Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
1015 Sumter St.
Columbia, SC 29211

Re: *Jane Roe, as parent and natural guardian of Judy Roe, James Roe, and
Joyce Roe, Minor Children Under the Age of Eighteen (18), Appellants, v.
Daniel Bibby Sr. and Michelle Bibby, Defendants, Of Whom Michelle
Bibby is Respondent*
Case No. 2010-CP-08-3732
Appellate Case No. 2012-213350

Dear Ms. Kitchings:

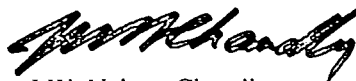
We represent Respondent Michelle Bibby in the above-referenced case. Enclosed, please find one (1) original and seven (7) copies of *Respondent's Return To Appellants' Petition for Rehearing*. Please file the original and required copies and return one of the file-stamped copies in the enclosed self-addressed stamped envelope.

By copy of this letter, we are serving opposing counsel with a copy of the same.

Should you have any questions, please do not hesitate to contact us.

With highest professional regards, I am

Sincerely yours,



J.W. Nelson Chandler

JWNC:lsb

cc: Eric M. Poulin, Esquire (w/enclosure)

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OCT 17 2014

SC Court of Appeals

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The South Carolina Court of Appeals

Jane Roe, as parent and natural guardian of Judy Roe,
James Roe, and Joyce Roe, Minor Children Under the
Age of Eighteen, (18), Appellants,

v.

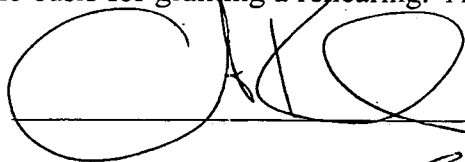
Daniel Bibby Sr. and Michelle Bibby, Defendants,

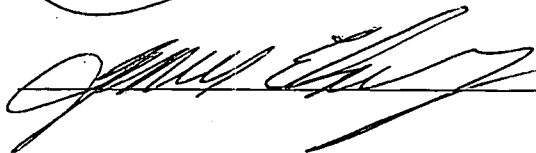
Of Whom Michelle Bibby, Respondent.

Appellate Case No. 2012-213350

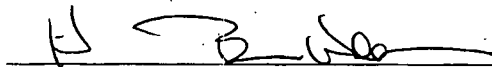
ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 J.

 J.

I would grant the petition for rehearing.

 J.

FILED

October 23, 2014

Columbia, South Carolina

cc:

Eric Marc Poulin, Esquire

Eugene P. Corrigan, III, Esquire

J.W. Nelson Chandler, Esquire

The Honorable R. Markley Dennis, Jr.