

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Unpublished Opinion No. 2015-UP-209
Appellate Case No. 2013-002058

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S.C. SUPREME COURT

Elizabeth Hope Rainey, as the Appointed Guardian ad
Litem to [REDACTED], a minor.....Petitioner,

v.

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

Of whom

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

Appendix

Volume of III of III

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STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

ELIZABETH HOPE RAINEY,
AS THE APPOINTED GUARDIAN
AD LITEM TO [REDACTED]
A MINOR,

PLAINTIFF,

-VS-

CA NO. 2011-CP-86-04508

CHARLOTTE MECKLENBURG
HOSPITAL AUTHORITY D/B/A
CAROLINAS MEDICAL CENTER,
SOUTH CAROLINA DEPARTMENT
OF SOCIAL SERVICES,
BRUCE BRYANT AS THE
CONSTITUTIONAL OFFICER OF
THE SHERIFF OF YORK
COUNTY, THE YORK COUNTY
SHERIFF'S DEPARTMENT AND
YORK COUNTY,

DEFENDANTS.

DEPOSITION OF REV. LARRY WILLIAMS-

ROCK HILL, SOUTH CAROLINA

OCTOBER 25, 2012

COPY

REPORTER: SHIRLEY DALLAS-GERRALD, CVR-CM

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1 Deposition of Rev. Larry Williams, taken before me,
2 Shirley Dallas-Gerrald, CVR-CM, a Notary Public for the
3 State of South Carolina, in the law offices of the Shaw
4 Law Firm, Rock Hill, South Carolina, commencing at 10:05
5 a.m. on October 25, 2012 in accordance with the South
6 Carolina Rules of Civil Procedure.

7 It was stipulated by and between Counsel for the
8 Plaintiff(s) and Counsel for the Defendant(s) that this
9 deposition is taken for any purpose allowed under the
10 South Carolina Rules of Civil Procedure.

11 That the signing of the transcript of deposition
12 by the witness is waived.

13 * * * * *

14 Rev. Larry Williams, first being duly sworn, deposes and
15 says as follows:

16 E X A M I N A T I O N - (By Mr. Todd)

17 Q Your name, please?

18 A Larry Williams.

19 Q Mr. Williams, my name is Monty Todd, and I
20 represent the Charlotte Mecklenburg Hospital
21 Authority in a lawsuit that's been filed against
22 them on behalf of [REDACTED]. You've been listed as
23 a witness in the case, and I understand you're
24 married to Owen's grandmother.

25 A That's correct.

Deposition of Rev. Larry Williams

1 Q You've been listed. So this is my opportunity to
2 ask you about who you are and about what you know
3 about the lawsuit.

4 A Okay.

5 Q Now, have you ever given a deposition before?

6 A No.

7 Q Well, you've been sworn to tell the truth by the
8 court reporter so you're under oath just as you
9 would be before a judge and a jury; do you
10 understand that?

11 A Yes, sir.

12 Q And if I ask you a question, you don't hear it, you
13 don't understand it, for any reason you're not sure
14 about that question, if you'll ask me to repeat it
15 or rephrase it I'll be happy to do so. If you need
16 to take a break for any reason let me know. I'll
17 be happy to let you take a break.

18 A Okay.

19 Q And I'm going to ask you a lot of questions about
20 yourself that may go back some time and if you've
21 given me an answer that's an estimate or an
22 approximation, just let me know so the record will
23 reflect that.

24 A Okay.

25 Q Now, have you reviewed any records or writings or

1 anything to prepare for this deposition?

2 A I actually read my wife's deposition and also my
3 step-daughter just to find out what a deposition --
4 what all takes place.

5 Q So to kind of give you an idea of the
6 question/answer process - - -

7 A Right.

8 Q And are you represented by a lawyer?

9 A No.

10 Q Other than reading your wife and - - - is Kayla,
11 would she be your step-daughter or did you ever
12 adopt her officially?

13 A No. No. She's my step-daughter.

14 Q But other than reading your wife and your step-
15 daughter's deposition, did you read anything else
16 or do anything else to prepare for the deposition?

17 A No, sir.

18 Q Do you know who Elizabeth Hope Rainey is?

19 A I do.

20 Q Who is she?

21 A She's an attorney.

22 Q Does she have any first-hand information about this
23 case to your knowledge?

24 A Not to my knowledge.

25 Q Now, what's your birthday?

Deposition of Rev. Larry Williams

- 1 A 4-2-59.
- 2 Q Where were you born?
- 3 A Columbia, South Carolina.
- 4 Q And what's your education?
- 5 A I have a GED and took some classes at Midland Tech
- 6 and York Tech.
- 7 Q How far did you go in school?
- 8 A I went to the ninth grade.
- 9 Q Where? What school?
- 10 A Langford Junior High in Augusta, Georgia.
- 11 Q So you were born in Augusta. Where did you grow up
- 12 - - - I'm sorry, you're born in Columbia. Where
- 13 did you grow up?
- 14 A The first 14 years of my life was in Augusta.
- 15 Q And did you leave Augusta when you were 14?
- 16 A Yes, sir.
- 17 Q Where did you go?
- 18 A We moved to Columbia with my mom.
- 19 Q Are your mother and father still alive?
- 20 A No.
- 21 Q Do you have any brothers or sisters?
- 22 A I do.
- 23 Q How many?
- 24 A We just lost a brother. There's three boys and two
- 25 girls.

Deposition of Rev. Larry Williams

- 1 Q And so at one time there were four of you?
- 2 A Four boys and two girls at one time.
- 3 Q Do any of your siblings live in York County?
- 4 A Yes.
- 5 Q Let me ask you about the ones that live in York
- 6 County.
- 7 A You want names?
- 8 Q Please.
- 9 A Carl Williams, he's the baby ~~brother~~er. And Charlene
- 10 Blackwelder, those are the two.
- 11 Q What does Carl ~~do~~? Is he - - -
- 12 A He's a pastor.
- 13 Q And where is he a pastor?
- 14 A Lighthouse Pentecostal Holiness in Fort Mill.
- 15 Q He is married?
- 16 A He is.
- 17 Q What's his wife's name?
- 18 A Pam.
- 19 Q Where is she from originally?
- 20 A Williston.
- 21 Q Do you know whether Pam has relatives in York
- 22 County other than your brother?
- 23 A Yes, she's got relatives here.
- 24 Q What would their last names be?
- 25 A She's got some Blackwelders and that's it, most of

1 them Blackwelders.

2 Q Now, is Charlene Blackwelder, is she in law
3 enforcement?

4 A She is.

5 Q And she's your sister?

6 A She is.

7 Q Where do your other brothers and sisters live? Do
8 they live in South Carolina?

9 A Yes.

10 Q Where in South Carolina?

11 A Columbia and North Augusta.

12 Q I know you've got one brother who is a pastor. Any
13 other siblings that are pastors or - - -

14 A My oldest brother is a chaplain.

15 Q And what's his name?

16 A Elbert Williams.

17 Q Where is he a chaplain?

18 A He's in Columbia.

19 Q And he's a chaplain for whom?

20 A For his church, Life Springs.

21 Q Is that a Pentecostal church as well?

22 A (Indicating yes)

23 Q Now, one thing I should have told you this is when
24 you shake your head, I understand your answer
25 perfectly. But she doesn't like to interpret so if

1 you will, answer with words. I'll help us with the
2 record.

3 A Okay.

4 Q You'll probably forget because if I were in your
5 case I'm sure I'd forget too. All right. Why did
6 you drop out of school in the ninth grade?

7 A Family - - - when the divorce took place.

8 Q Your mother and father divorced?

9 A Yes, sir.

10 Q ~~And~~ you were living in Augusta?

11 A ~~I was.~~

12 Q And what did you ~~do~~ after the divorce? Did you
13 live with your ~~mother~~ or father or somebody else?

14 A I went and lived with my brother.

15 Q In Columbia?

16 A ~~Yes,~~ sir.

17 Q And how were you at that time?

18 A Fifteen.

19 Q After you moved to Columbia you didn't do any
20 further high school?

21 A No, sir.

22 Q When did you get your GED?

23 A I got my GED probably in 1981 maybe.

24 Q Put that down as an estimate.. We won't hold you to
25 an exact date.

1 A Okay.

2 Q So you moved to Columbia, if my math is right, some
3 time around 1974?

4 A Correct.

5 Q And what did you do when you got to Columbia? Did
6 you work or what did you do?

7 A When I became of age to work, I did take a job in
8 Columbia.

9 Q Well, when you moved with your brother when you
10 were 15--were you going to any kind of school?

11 A Not at that time.

12 Q What were doing during ~~the~~ time period?

13 A I guess just enjoying being a teenager, I guess, at
14 that time.

15 Q How old were you when you first went to work?

16 A Sixteen.

17 Q And where did you go to work?

18 A I went to work for Locke Screen.

19 Q Is that tee shirt printing?

20 A They made screen doors and screen windows.

21 Q How long did you work with them?

22 A Probably maybe a year.

23 Q Any other jobs? I know now you're a reverend.

24 what other jobs have you held before you became a
25 pastor?

- 1 A I did take a job in Columbia working in the
2 slaughterhouse and really hated it.
- 3 Q What were you slaughtering?
- 4 A Hogs.
- 5 Q Hogs. I can see why that would be a - - -
- 6 A Yeah.
- 7 Q You were earning your money doing that.
- 8 A Yeah. Gave us a ham for a bonus at Christmastime.
- 9 Q Well, that's appropriate.
- 10 A Yeah.
- 11 Q How long did you work in the slaughterhouse?
- 12 A Not long.
- 13 Q When did you become a reverend? Are you a reverend
14 or a pastor; what would be the term?
- 15 A Either.
- 16 Q Either one works?
- 17 A Either.
- 18 Q When did you become a reverend?
- 19 A 1995. Maybe 1995.
- 20 Q We'll put that down as an approximation.
- 21 A Okay.
- 22 Q Did you have to do any kind of education or
23 training, or what did you have to do to become a
24 reverend?
- 25 A Yes, sir. Yes, sir. We got what we call the

Deposition of Rev. Larry Williams

1 school of Ministry. The IPHC has a school of
2 ministry and there's classes that you're required
3 to attend.

4 Q Okay. And you use IPHC?

5 A International Pentecostal Holiness Church.

6 Q And did you take those classes online or did you go
7 to some school?

8 A We went to the school there at our conference.

9 Q And where is that?

10 A Lake City, South Carolina.

11 Q And did you have to move to Lake City to attend
12 classes or - - -

13 A We had to travel.

14 Q How long were the classes?

15 A Classes would - - - they would vary. It just
16 depended on what - - - what topic and what we were
17 studying at that time.

18 Q What about you told me about the job with Locke
19 Screen that was a year and then a job with the
20 slaughterhouse, it was a short period of time.
21 What were you doing between, say, '75 and '95 when
22 you became a pastor?

23 A Well, '75 and '95 I had gotten in some trouble with
24 the law and served some time.

25 Q You were convicted of a crime?

Deposition of Rev. Larry Williams

- 1 A Yes, sir.
- 2 Q What was the crime?
- 3 A Armed robbery and burglary.
- 4 Q And when did you commit those crimes?
- 5 A '78.
- 6 Q How much time did you serve?
- 7 A Nine years and three months.
- 8 Q So from '78 to '87?
- 9 A That's correct.
- 10 Q What institution?
- 11 A Mostly Manning.
- 12 Q And when you got out in '87 what did you - - -
- 13 well, did you take any classes while you were in
- 14 prison, any kind of - - -
- 15 A I did.
- 16 Q What did you take in prison?
- 17 A I had took - - - that's where I went to Midland
- 18 Tech in Columbia; public speaking, economics,
- 19 theater, English 101, English 102. I was lacking
- 20 probably 20 credits to get an Associates.
- 21 Q So that was going to be my next question. You
- 22 anticipated it. Did you get you a degree?
- 23 A Well, no.
- 24 Q Have you gone back since then to take classes to
- 25 get a degree?

Deposition of Rev. Larry Williams

- 1 A Not since then.
- 2 Q So when you got out in '87 what did you do?
- 3 A I went to work for Lamar's Auto Electric.
- 4 Q Where is that?
- 5 A 1031 Latham Drive in Rock Hill.
- 6 Q What did you do for Lamar Auto Electric?
- 7 A I did diagnostic checks on vehicles and rebuilt
- 8 starters, alternators and generators.
- 9 Q How long were you with Lamar?
- 10 A Twelve and a half years.
- 11 Q And so when you were with Lamar you were taking
- 12 classes in Lake City?
- 13 A Yes.
- 14 Q And during that time you became a reverend - - -
- 15 A Right. Exactly.
- 16 Q - - - or pastor?
- 17 A Yes, sir.
- 18 Q Other than the armed robbery and - - - Was it armed
- 19 robbery and grand larceny?
- 20 A Burglary.
- 21 Q Burglary. Any other crimes other than those two
- 22 crimes?
- 23 A No, sir.
- 24 Q When you were convicted were they different events?
- 25 A Same.

Deposition of Rev. Larry Williams

- 1 Q Okay.
- 2 A Just young and dumb.
- 3 Q Any other criminal convictions?
- 4 A No.
- 5 Q Now, why did you leave Lamar after twelve and a
6 half years?
- 7 A To pastor a church.
- 8 Q Did you actually found a church?
- 9 A No, ~~that~~'s not correct. The church was already
10 founded.
- 11 Q Well, you read your wife's deposition.
- 12 A I did.
- 13 Q Okay. So that was - - - you started with an
14 existing church?
- 15 A Right. Exactly.
- 16 Q Now, when you started with them did you start as an
17 assistant pastor or did you immediately become the
18 pastor, the head pastor, I guess?
- 19 A Well, I sat under my pastor at my - - - my home
20 church for five years. That's when I was going to
21 school ministry and, you know, preparing to become
22 a pastor. But when I took this church, I went as
23 the senior pastor.
- 24 Q Okay. So let me make sure I got the churches.
25 Your home church is what?

Deposition of Rev. Larry Williams

1 A It was Lighthouse. The one that my brother pastors
2 now.

3 Q And that's in Fort Mill?

4 A Right.

5 Q And what did you do for Lighthouse?

6 A For Lighthouse I did - - - I was associate pastor,
7 worked in children's ministry, worked in the youth
8 ministry, worked the prison ministry, every aspect
9 of the ministry I worked in it.

10 Q Now, was that a paid position?

11 A No.

12 Q When you left you went to the other church, what
13 was the name of the other church?

14 A Faith Family Christian Center.

15 Q Now, when you became the pastor there were you an
16 associate pastor or were you the head pastor?

17 A I was the head pastor.

18 Q Now, was that a paid position?

19 A Yes.

20 Q Were you recruited by - - - I was raised in a
21 Presbyterian church and now I'm in a Methodist
22 church but was there a pulpit committee that came
23 and recruited you or how was it that you became the
24 head pastor at Faith?

25 A I became the head pastor at Faith as the existing

- 1 pastor that was there was going back to school to
2 get his Masters degree in theology and he
3 recommended me for that ministry.
- 4 Q Had you done any work with that church, Faith?
5 Tell me again, Faith - - -
- 6 A Faith Family Christian Center.
- 7 Q Where is that located?
8 A It's behind the Rock Hill airport now known as
9 Runway.
- 10 Q Runway?
11 A Yep, they renamed it.
- 12 Q The church?
13 A (Indicating yes)
- 14 Q It's now called Runway - - -
15 A Runway.
- 16 Q - - - Pentecostal Church?
17 A I don't think it's got that on the sign, but it's
18 Runway.
- 19 Q Runway Church?
20 A (Indicating yes)
- 21 Q When did you become the head pastor at what was
22 then Faith Family Christian Center? Did I get the
23 name right?
- 24 A You did.
- 25 Q Okay.

Deposition of Rev. Larry Williams

1 A 1996 I believe.

2 Q And how long did you stay as the pastor there?

3 A I'm thinking 16 years.

4 Q Sixteen years would be when you left, that would be
5 2012, so you left this year?

6 A No, then it must not be 16 years.

7 Q You just tell me when you left, I can do the math.

8 A I've been in Aiken three years.

9 Q If my math is correct and I think I can subtract
10 three, you left some time in 2009?

11 A Correct.

12 Q Why did you leave?

13 A Change.

14 Q Okay.

15 A Change is good - - -

16 Q Okay.

17 A - - - and it was good for my family at the time.

18 Q I know enough about churches to know it's a very
19 political organization. Were there any kind of
20 politics involved in the church that you were the
21 head pastor that was, you know, causing any kind of
22 controversy or anything like that that - - -

23 A No, sir.

24 Q Okay. You weren't asked to leave or - - -

25 A No, sir.

Deposition of Rev. Larry Williams

- 1 Q Did you leave on good terms?
- 2 A I did.
- 3 Q Why was it good for your family to leave Rock Hill
4 to go to, is it Aiken?
- 5 A Aiken. Yes, sir. I went through a 23-year divorce.
- 6 Q Well, we ask you about your marital history then.
- 7 A Okay.
- 8 Q You're currently married to - - -
- 9 A Charlotte.
- 10 Q - - - Charlotte. She's not here, but she might
11 read your deposition so I hope you get the wedding
12 date right.
- 13 A Okay.
- 14 Q When did you marry her?
- 15 A September 26, 2000 - - -
- 16 Q She didn't get it right the first time either so
17 you're okay.
- 18 A - - - yeah, 2008/2009.
- 19 Q And you had been previously married? How many
20 times?
- 21 A Once.
- 22 Q And your previous wife was whom?
- 23 A Her name was Sherry.
- 24 Q What's her maiden name?
- 25 A Pender.

Deposition of Rev. Larry Williams

- 1 Q where is she from originally?
- 2 A Williston.
- 3 Q When were you married?
- 4 A I was married April the 11th, I believe, 1986.
- 5 Q Had you just gotten out of prison when you got
- 6 married?
- 7 A I married her in prison.
- 8 Q How did you meet her?
- 9 A My brother's wife and her are sisters.
- 10 Q So your brother's current wife? Which brother is
- 11 that?
- 12 A Carl, the one that pastors the Lighthouse Church.
- 13 Q All right.
- 14 A We married sisters.
- 15 Q When were you divorced?
- 16 A I was divorced in 2008.
- 17 Q What were the reasons for the divorce?
- 18 A I'm thinking the wife wanted a different path. She
- 19 was tired of ministry.
- 20 Q Where did you get the divorce; was it York County?
- 21 A Here in York County.
- 22 Q Now, who filed for divorce? Was it like a divorce
- 23 on separation or were there grounds? Did somebody
- 24 have to specify grounds for the divorce?
- 25 A No, we came into agreement. She actually filed for

1 the divorce. She wanted the divorce.

2 Q Did she allege anything like mental or physical
3 cruelty or adultery; was any of that involved?

4 A No. She said we got so busy fixing everybody
5 else's lives that she lost something along the way
6 and she can't get it back.

7 Q If you had to use the term would it be
8 irreconcilable differences?

9 A That would be.

10 Q Where is she now, your ex-wife?

11 A She lives here in Rock Hill.

12 Q Is she remarried?

13 A Yes.

14 Q What's her name now?

15 A Sherry Anderson.

16 Q Does she work outside the home?

17 A She does.

18 Q Where does she work?

19 A She works for Comporium.

20 Q What does Comporium do?

21 A Comporium: communication, internet, telephone.

22 Q Now, when did you meet Charlotte?

23 A I met Charlotte in - - - shortly after my divorce.

24 Q How did you meet her?

25 A I was doing a funeral of a young man that his

Deposition of Rev. Larry Williams

1 parents went to my church and he - - - he got drunk
2 and laid down in the road, passed out on the road
3 and a car ran over him and killed him. I was doing
4 the funeral for that family, and we were taking
5 food and things to the house. And we had a lot of
6 traffic running in and out because my church is
7 very supportive when things like that takes place.
8 And Charlotte was staying next door to where I was
9 visiting, and she would be out at the fence when I
10 would drive by. I stopped and we started talking
11 and that was it.

12 Q When was that?

13 A That was in 2000 - - - right after - - - shortly
14 right after our - - - my divorce.

15 Q And it was either 2008 or 2009?

16 A '9.

17 Q And it sounds to me like it was a short - - - well,
18 it sounds like you got married fairly soon after
19 you met her.

20 A That's correct.

21 Q How long was the courtship?

22 A Probably about six months maybe.

23 Q Now, who was she living with when you were courting
24 her or dating her?

25 A I don't know. I have no idea what the lady's name

Deposition of Rev. Larry Williams

- 1 was.
- 2 Q I'm sorry?
- 3 A I have no idea what that lady's name was.
- 4 Q She was living with another lady?
- 5 A She was living with some other folks, yes.
- 6 Q And she has children?
- 7 A Charlotte has children? Yes.
- 8 Q Her children are ~~Kayla~~ - - -
- 9 A And Aaron.
- 10 Q I'm sorry?
- 11 A ~~Aaron~~.
- 12 Q Aaron. And Aaron is a boy?
- 13 A Aaron's a boy.
- 14 Q Is it spelled with an A?
- 15 A A.
- 16 Q ~~Where~~ where were Aaron and Kayla living?
- 17 A Aaron was staying with his - - - with his uncle in
- 18 Nebraska. Kayla was staying with Michael's
- 19 parents.
- 20 Q Now, did Kayla and Michael ever get married?
- 21 A No.
- 22 Q They never got married did they?
- 23 A No.
- 24 Q Did they ever join your church?
- 25 A No.

- 1 Q Did they come to your church - - -
- 2 A Yes.
- 3 Q Did they come on a regular basis?
- 4 A Pretty regular.
- 5 Q And at the time you and Charlotte were dating Kayla
- 6 was living in Charlotte with Michael's family?
- 7 A Concord.
- 8 Q Concord? Now, when you married Charlotte did
- 9 Charlotte move in with you?
- 10 A Yeah.
- 11 Q And where did the two of you live?
- 12 A We lived [REDACTED].
- 13 Q And I'm making an assumption, it was just the two
- 14 of you.
- 15 A Right.
- 16 Q Was anybody else living with you?
- 17 A Not at the time.
- 18 Q Now, do you have children through your marriage to
- 19 Sherry?
- 20 A I do.
- 21 Q How many?
- 22 A Three.
- 23 Q And their names?
- 24 A Caleb, with a C. Josiah and Hannah.
- 25 Q How old's Caleb?

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- 1 A Caleb is 18.
- 2 Q And Josiah?
- 3 A Josiah is 14. Hannah is 13.
- 4 Q Where do your children live?
- 5 A They live with their mom.
- 6 Q Is that in Rock Hill?
- 7 A Yes, sir.
- 8 Q What's your relationship with your children?
- 9 A Very good.
- 10 Q Are they members of your church?
- 11 A No.
- 12 Q Do they go to your brother's church?
- 13 A No.
- 14 Q Where do they go - - -
- 15 A They do go my church. When they're with me, yes,
- 16 they do attend my church when they're with me.
- 17 Their mom doesn't go to church. I wish she would
- 18 get back in church.
- 19 Q Do you have joint custody or do you have visitation
- 20 or what's the deal with your children?
- 21 A We have joint custody.
- 22 Q And do your children live with you - - -
- 23 A They live with their mom. I get them every third
- 24 weekend and then I get them every time they have a
- 25 long weekend, a four-day weekend from school or a

- 1 three-day weekend from school. I get all that.
2 And then we work it out through the holidays.
3 Summertime it's two weeks on, two weeks off.
- 4 Q Now, when I deposed Charlotte Aaron, was going to
5 Thornwell in Clinton. Is he still there?
- 6 A He is.
- 7 Q Does he go to Clinton High School or does Thornwell
8 have a school there at Thornwell?
- 9 A Thornwell has a school.
- 10 Q So he's in school at Thornwell?
- 11 A Correct.
- 12 Q And living at Thornwell?
- 13 A Correct.
- 14 Q How old is he now?
- 15 A Fourteen.
- 16 Q How often do you see Aaron?
- 17 A He was home last weekend. Had a four-day weekend
18 last weekend.
- 19 Q So he came to Augusta or Aiken?
- 20 A Aiken.
- 21 Q So your children are living in Rock Hill, but they
22 visit you in Aiken as you just told me?
- 23 A Correct.
- 24 Q Now, what's the name of the church you're the
25 pastor of now?

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1 A Fountain of Life Fellowship.

2 Q I'm trying to remember this because you've given me
3 a lot of personal information that - - -

4 A Okay.

5 Q So you became an associate pastor in '95. When did
6 you become the head pastor at the church that's now
7 Runway?

8 A Okay, I was the associate pastor not just in '95.
9 I was an associate pastor for five years prior to
10 going to Runway.

11 Q What period is that?

12 A That would be probably '90, maybe '90.

13 Q So '90 to '95?

14 A '90 to '95.

15 Q And then when did you go, what year did you - - -
16 is '96/'95's when you went to - - -

17 A That's when I went to Faith Family Christian
18 Center.

19 Q Now, I suspect that as a pastor a lot of people
20 share their burdens with you - - -

21 A Correct.

22 Q - - - and you get a lot of information about
23 people's troubles and problems. During the time
24 that you are pastor, have you ever had a situation
25 where you thought that one of your members of your

1 church was abusing one of their children?

2 A No.

3 Q As a pastor if you suspect that you've got somebody
4 in your church who is abusing a child, do you have
5 any kind of duty to report that to any kind of
6 state agency?

7 A Sure. Yeah.

8 Q What is your obligation there?

9 A My obligation is to report it to the authorities if
10 we get - - - if I had a person to come into my
11 office and said they suspected that their child was
12 being abused by a family member or whatever, yeah,
13 it would be my duty to report it to the
14 authorities.

15 Q And who would you report it to, DSS?

16 A I would probably - - - yeah, I would probably - - -
17 probably the law enforcement first and talk to them
18 and then probably go from there.

19 Q But you never had that situation come up?

20 A No, never.

21 Q Now, when you married Charlotte in September of - -
22 - and we're not sure, 2009/2008 - - -

23 A 2009. Yeah.

24 Q - - - 2009, when you moved in together where were
25 Michael and Charlotte living then? I know they

1 moved to a trailer park near your house at some
2 point.

3 A You mean Michael and Kayla?

4 Q Yes, what did I say?

5 A You said Michael and Charlotte.

6 Q I'm sorry.

7 A Michael and Kayla.

8 Q I'm sorry.

9 A Yeah, they lived in a mobile home park.

10 Q So when you got married they had moved to the
11 mobile home park and somewhere close to your house?

12 A They never lived with us.

13 Q I understand that.

14 A Yeah. Yeah, they lived in the mobile home park.
15 Correct.

16 Q But what I'm trying to find out is they were in
17 Concord for a period of time - - -

18 A Right.

19 Q - - - but then they moved to the mobile home park
20 near your house?

21 A Correct.

22 Q When you were married to Charlotte, were Michael
23 and Kayla living in the mobile home park at that
24 time?

25 A Yes.

1 Q Now, when they were living in that mobile home
2 park, September, October, November of 2009, how
3 often would you visit them?

4 A Not very often. Charlotte visited a lot more than
5 I did. Mine was occasionally because I was pretty
6 busy.

7 Q I understand you had a full-time job - - -

8 A Right. Right.

9 Q - - - and it's 24/7 with you.

10 A Right.

11 Q I'm just trying to get a - - - occasionally is a
12 pretty open term. But would it be - - -

13 A I saw them more at my house than at their house.

14 Q Would you see them once a week?

15 A Yes.

16 Q And sometimes it'd be at your house and
17 occasionally, occasionally I'm using a vague term
18 myself - - -

19 A Correct.

20 Q - - - you'd visit their house?

21 A Correct.

22 Q How many times a month do you think you would go
23 into Kayla and Michael's house?

24 A I might would go there maybe twice a month, if
25 that.

- 1 Q Was [REDACTED] born after you and Charlotte got married?
- 2 A Yes.
- 3 Q He was born in October?
- 4 A He was born in 9-9-9.
- 5 Q Okay. September 9th.
- 6 A Yeah.
- 7 Q All right.
- 8 A No, we got married on September the 26th so, yeah,
- 9 we probably wouldn't have been married then.
- 10 Q He was born a couple of weeks before you got
- 11 married?
- 12 A Before we got married, correct.
- 13 Q Were you there when he was born, when [REDACTED] was
- 14 born?
- 15 A Yes.
- 16 Q Between, you know, September, October, November of
- 17 2009, how often would you have visited Michael and
- 18 Kayla and [REDACTED] in their mobile home?
- 19 A In their home? Probably - - - whenever I would go
- 20 to Michael and Kayla's home, it was nothing to just
- 21 - - - we'd never just go in and just sit around and
- 22 talk. Ours was going by to pick Owen up or coming
- 23 in to say hi and, you know, it was never not any
- 24 long lengthy visits.
- 25 Q Okay.

1 A But we went once a week, maybe once a week,
2 something like that.

3 Q And it'd be short visits - - -

4 A Short visits, correct.

5 Q - - - for you? And your wife was keeping [REDACTED] - -
6 -

7 A Right. Right.

8 Q - - - during some parts of the week?

9 A Right.

10 Q But with you it'd be a short visit?

11 A Correct.

12 Q But would there be times when [REDACTED] and Kayla and
13 Michael would come to your house and stay for
14 awhile?

15 A Sure. Sure, they would come and we would have
16 dinner together and play board games together and,
17 yeah, hang out.

18 Q When you were observing Michael and Kayla around
19 [REDACTED] did you ever see anything that made you
20 suspect that either one of them might cause some
21 harm to [REDACTED]?

22 A Never.

23 Q Did your wife, Charlotte, did she ever confide in
24 you that she had some concerns that Michael might
25 somehow harm [REDACTED] either intentionally or

1 unintentionally?

2 A No.

3 Q Did you ever have any concerns about Kayla or
4 Michael's parenting skills?

5 A No.

6 Q Now, did you ever go to any of [REDACTED]'s doctor
7 visits?

8 A No.

9 Q Do you know who his doctors were in December? I
10 think December the 4th of 2009 he went to the ER at
11 Piedmont and then was transferred to Levine's in
12 Charlotte. Did you go to any visits to Sunshine
13 Pediatrics or to Riverview when Owen went in
14 November?

15 A No.

16 Q Did you get any information about those visits or
17 how Owen was doing?

18 A Yeah. Yeah, I got some information from those.

19 Q Do you remember anything about what you learned?

20 A Well, I think one time they said that he had strep
21 throat or something like that and that they were
22 treating it. And I knew that [REDACTED] was crying a
23 lot. I don't know if he had colic or what, you
24 know, at that time but he did cry a lot at that
25 time. But not a whole lot of information.

1 Q Now, when [REDACTED] was taken to Piedmont on December
2 the 4th 2009, did you go to Piedmont with your
3 wife? I understand she was there.

4 A No, I didn't go.

5 Q Sometime during the night or early morning of
6 December 5th did you learn that [REDACTED] had been
7 transferred to Levine's in Charlotte?

8 A Yes, sir.

9 Q What did you learn?

10 A I learned that they had transported him by
11 ambulance to Levine Hospital, that Charlotte had
12 said that they had found some - - - some blood
13 behind his eyes or something and that they really
14 didn't know what was going on. And then I prepared
15 to go to Levine to the hospital.

16 Q Do you know what time you got that call?

17 A From Charlotte? It was probably late in the
18 evening, later on towards late evening probably.

19 Q And I could be wrong. I only to get to ask
20 questions, I don't get to testify. My
21 understanding is they went to - - - and this may,
22 may not be right or not. But my understanding is
23 on the 4th, like the late afternoon of the 4th or
24 evening of the 4th, they went to Piedmont.

25 A I recall that, you know, it was probably somewhere

1 around 4:30, 5 o'clock maybe because - - - or right
2 at getting dark because I remember I was putting
3 Christmas lights up on the house at that particular
4 time when we got the phone call, and I had to get
5 my stuff together. And I had my kids so I had to
6 make sure my kids were taken care of and all that
7 before I even could make a move to go. So, yeah,
8 it was probably late evening.

9 Q Did you go to Levine's - - -

10 A I did.

11 Q - - - on the 5th?

12 A I did.

13 Q Do you know what time you got there?

14 A It could have been somewhere around 10:00 or 11:00
15 maybe. Yeah, it had to be late because I know when
16 you go - - - I know when you go to Piedmont you're
17 going to be there three or four hours or better.

18 Q So we're going to put that down as a guess - - -

19 A Yes, it would be - - -

20 Q - - - to what time.

21 A - - - it would be the evening, - - -

22 Q All right.

23 A - - - late evening.

24 Q Where was [REDACTED] when you got there? Was he in a
25 room, was he in the ER, or do you know where [REDACTED]

1 was?

2 A Owen was on the -- I think the intensive care unit
3 at Levine. He was in a room.

4 Q Was there a sitter in the room?

5 A I don't recall. Everything was just happening so
6 fast, and I don't recall whether there was one or
7 not.

8 Q How long did you stay when you went to Levine's
9 your first visit?

10 A Probably stayed through the night.

11 Q Did you learn what [REDACTED]'s condition was?

12 A Not at that point, not on that first - - - no, not
13 on that first day.

14 Q All right.

15 A No.

16 Q The first day, was it a Saturday?

17 A I think it was.

18 Q And I guess you were going to have to preach the
19 next morning?

20 A On Sunday, yes.

21 Q According to the record [REDACTED] was admitted to
22 Levine's at 4:45 in the morning on December the
23 5th. I got a calendar here and see if I can - - - I
24 think the 5th was Saturday.

25 A Saturday, yeah.

- 1 Q So you got to Levine some time on Saturday, - - -
- 2 A Probably.
- 3 Q - - - you think late Saturday afternoon?
- 4 A Late Saturday.
- 5 Q When you got there do you remember what the
- 6 concerns were about [REDACTED]?
- 7 A Yeah, we had concerns. We were just trying to
- 8 figure out what had happened to [REDACTED]. We didn't
- 9 know really exactly what was going on at that time.
- 10 Q At that time had he been diagnosed with having the
- 11 small subdural hematomas?
- 12 A Yes. Well, I remember the - - - I remember a
- 13 physician being in there that had some type of
- 14 light or something that was trying to look behind
- 15 his eyes at that time. I do remember that.
- 16 Q Do you know what kind of doctor that was? Was he a
- 17 neurosurgeon, or neurologist, or ophthalmologist,
- 18 or do you know?
- 19 A Probably an ophthalmologist I would think is
- 20 checking behind the eyes.
- 21 Q Are you guessing because he was looking in the
- 22 eyes? Do you remember him saying I'm Doctor so-
- 23 and-so, I'm an ophthalmologist?
- 24 A No, I don't remember.
- 25 Q So you're just making an assumption that he's an

1 ophthalmologist because he's looking in the eyes?

2 A Correct.

3 Q Did you have any discussions with that doctor?

4 A It seems like the doctor was telling us that, at
5 that time, that they had seen some blood behind the
6 eyes.

7 Q And this was at Levine's?

8 A Right.

9 Q Do you remember any discussions about any ~~concerns~~
10 about some kind of abuse to [REDACTED]?

11 A Well, Dr. Bailey came in, I don't remember what Dr.
12 Bailey's first name was, but Dr. Bailey was in the
13 - - - came in the room and we questioned him what
14 had taken place with [REDACTED]. And he said that it
15 could be one of the two things. He said it could
16 have happened at birth but pretty much ruled that
17 out. And then he threw his hands up like - - -
18 like a shaking motion and said shaking. I remember
19 that very well.

20 Q And what day was that?

21 A That was probably - - - that may have been
22 Saturday. It may have been later Saturday.

23 Q Do you know what kind of doctor Dr. Bailey was, his
24 specialty?

25 A A neurologist.

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1 Q When Dr. Bailey said that did that cause any
2 concern to you that someone had abused [REDACTED]?

3 A Well, I didn't know at the time whether - - -
4 whether someone had abused him or what because he
5 never determined - - - he never gave us
6 specifically what had happened to [REDACTED]. He never
7 said anything - - - he never gave us any specifics
8 on what happened to [REDACTED] at that time.

9 Q So you think that Dr. Bailey, who's name you
10 remember, came in - - -

11 A Right.

12 Q - - - while you were there - - -

13 A Right.

14 Q - - - and you think it was that Saturday?

15 A Yes.

16 Q And he said something about there being blood
17 behind his eyes?

18 A He didn't say that.

19 Q Oh, okay.

20 A The other doctor said that.

21 Q Did you observe Dr. Bailey doing in exam of [REDACTED].

22 A At that time, yes, he was - - - I don't recall
23 exactly what he did but he had - - - I'd assume he
24 was doing an exam on him. I'm not sure.

25 Q And after he did the exam, he had a discussion with

1 whom?

2 A He had a discussion with Charlotte and myself there
3 in the room when he did the shaking motion with his
4 hands.

5 Q Were Kayla and Michael in the room at that time?

6 A I don't recall.

7 Q So you know that Charlotte was there and you were
8 there - - -

9 A We were there.

10 Q Did you question him about what was going on with
11 [REDACTED]?

12 A Once he did the shaking motion, he ~~left~~ the room.

13 Q Tell me how that discussion came up about you said
14 that he said it could be something at birth or it
15 could be from shaking.

16 A Right.

17 Q Did he say anything else?

18 A No.

19 Q How did that discussion come up; did he volunteer
20 that to you, or did you or your wife question him,
21 or I'm just trying to - - -

22 A We questioned him. We were questioning him what
23 had happened to [REDACTED], what did he think. You know,
24 what did he think happened to [REDACTED].

25 Q Did he give you any information about what he found

1 with [REDACTED]?

2 A No.

3 Q But there was a discussion about what could it have
4 caused it?

5 A That was all that was said.

6 Q And he said it could have been something at birth
7 or it could have been [REDACTED] could have been shaken?

~~8~~ A Right. Correct.

~~9~~ Q And you don't remember whether Michael and Kayla
10 were in the room at that time?

~~11~~ A I'm not sure.

~~12~~ Q So it could have been, may have been, may not have
13 been?

14 A Correct.

15 Q Now, once Dr. Bailey said that, did you and your
16 wife have any discussions about whether or not you
17 thought that either Kayla or Michael had shaken
18 Owen?

19 A We never discussed it. We didn't really know what
20 was taking place at that time.

21 Q Now, you know that you're not supposed to shake a
22 baby?

23 A Correct.

24 Q And you're aware of the hazzards and complications
25 of shaking a baby?

1 A Correct.

2 Mr. Shaw - Objection.

3 Q Did you have any discussions with Michael or Kayla
4 that they should not shake [REDACTED]?

5 A No.

6 Q Do you know whether your wife had any discussions
7 with them that they should not shake [REDACTED]?

8 A No.

9 Q Did you ever question Michael or Kayla about
10 whether or not they had shaken [REDACTED]?

11 A No.

12 Q Did you have any suspicions at that time that
13 Michael or Kayla might have shaken [REDACTED]?

14 A No. I knew something had happened to [REDACTED]. I
15 didn't know - - - Kayla and Michael never showed
16 any aggressiveness with this child. Never. I
17 never seen it.

18 Q And in December of 2009 did you have any suspicion
19 whatsoever that they might have done some harm to
20 [REDACTED]?

21 A No.

22 Q Did you question them when you had this discussion
23 with Dr. Bailey or any time thereafter - - -

24 A No.

25 Q - - - in December about whether or not they had

1 done anything to cause harm to [REDACTED]?

2 A I think that we did. I think that we talked with
3 them and asked them and they said no.

4 Q When did that conversation take place?

5 A Probably - - - Charlotte and I talked about it
6 first and then we questioned Michael and Kayla and
7 they said no.

8 Q And do you have any reason to disbelieve them?

9 A No reason to disbelieve them whatsoever.

10 Q Now, before January did you have any suspicion that
11 Michael had intentionally harmed [REDACTED]?

12 A No.

13 Q Did you have any suspicion they had unintentionally
14 harmed [REDACTED]?

15 A No.

16 Q You were there that Saturday. How long did you
17 stay at Levine's on that Saturday the 5th?

18 A Probably late, late in the evening. I probably
19 stayed probably up till probably around 11 o'clock
20 maybe, 10:00 or 11 o'clock, because I had to go
21 home and prepare, you know, to preach the next
22 morning.

23 Q How long were you there? You got there late
24 afternoon. You're there four or five hours?

25 A Four or five hours or more. Yes.

- 1 Q Four to seven hours, somewhere in that time?
- 2 A Somewhere in - - - right.
- 3 Q Now, did you go back to Levine's on Sunday the 6th?
- 4 A I did.
- 5 Q When did you go back on the 6th?
- 6 A It probably was around - - - I probably arrived
- 7 there maybe around 2:00, 3 o'clock maybe.
- 8 Q Okay. I understand these times are - - -
- 9 A Right.
- 10 Q - - - you know, I don't expect you to remember
- 11 exactly.
- 12 A Right. Right.
- 13 Q But sometime mid afternoon Sunday?
- 14 A Yes, sir.
- 15 Q Now, when you were there on the 5th do you remember
- 16 whether or not there was a sitter in the room with
- 17 Owen?
- 18 A I never recalled a sitter. If they were there we
- 19 were just - - - you know, so much going on. I
- 20 don't recall. I really don't recall the sitter
- 21 being there at that time.
- 22 Q Did [REDACTED] have his own room?
- 23 A Yeah.
- 24 Q There were any other children in the room?
- 25 A No.

- 1 Q How big was the room?
- 2 A About as big as this room is. It's a nice-size
- 3 room.
- 4 Q And I was going to say, because it sounds like - -
- 5 -
- 6 A Yeah.
- 7 Q - - - there were a lot of people in the room.
- 8 A Yeah, it was a nice-size room.
- 9 Q And Charlotte, your wife, she spent the night - - -
- 10 A Yeah.
- 11 Q - - - with ~~her~~.
- 12 A Correct.
- 13 Q All the entire time he was there?
- 14 A Right.
- 15 Q And I think Kayla stayed there the entire time.
- 16 A Right.
- 17 Q Do you know whether Michael stayed the entire time?
- 18 A Michael stayed - - - I don't know if it was the
- 19 entire time because I wasn't there the entire time
- 20 so he may have left when I left. I don't know.
- 21 But Michael was pretty there. Every time I'd show
- 22 up he'd be there.
- 23 Q So when you were there on Sunday, and I think
- 24 you've answered this question but I want to make
- 25 sure, do you remember whether or not there was a

1 sitter in the room when you were there on that
2 Sunday, December the 6th?

3 A I'm not sure.

4 Q Did you see any doctors in the room that Sunday?

5 A Doctors come in and out. People were coming in and
6 out, you know, they were checking his vital signs.
7 They're - - - you know, there's people in and out
8 of the room.

9 Q Did you have any conversations with any of those
10 people about how [REDACTED] was doing?

11 A Yeah. Yeah. The one that checked his eyes, she
12 was doing that continuously and she says it's
13 clearing up, getting better. .

14 Q I see. Do you know whether that was a doctor or a
15 nurse?

16 A I'm thinking that it was a - - - I'm thinking it
17 was a female doctor. I'm thinking that it was a
18 female doctor.

19 Q Was she black or white?

20 A White.

21 Q You don't know her name?

22 A No.

23 Q Did you talk with her about how [REDACTED] was doing?

24 A Yeah, she said he was getting better.

25 Q Did you talk to her about what had caused his

- 1 problems?
- 2 A No.
- 3 Q Did she say anything about what may have been
- 4 causing the issues he was having?
- 5 A No.
- 6 Q You were observing [REDACTED]. How did he appear to you?
- 7 A Getting better.
- 8 Q What was different about [REDACTED] on Sunday? Was
- 9 anything different about him on Sunday than his
- 10 normal self? It was a poor question. Was anything
- 11 unusual about [REDACTED] when you saw him on Sunday about
- 12 his way he looked or his behavior or - - -
- 13 A He just seemed to be - - - he just seemed to be
- 14 getting back to his normal self.
- 15 Q And how was he different from normal on Sunday?
- 16 A Different from normal from the first day?
- 17 Q Yes, sir.
- 18 A From the first day, he wasn't - - -
- 19 Q Actually Saturday is what I - - -
- 20 A Yeah, he wasn't as active. He wasn't - - - he
- 21 wasn't, you know, really cheerful, you know, making
- 22 sounds and. you know, that. And the next day he
- 23 was - - - he was cackling and he was, you know, he
- 24 was - - - he was being - - - he was being a baby.
- 25 Q So on Saturday he was a little bit, I'll say,

1 subdued; is that correct?

2 A Correct.

3 Q And then on Sunday the 6th you thought he was back
4 to his normal self?

5 Mr. Shaw - Objection.

6 A Well, he seemed to be getting better.

7 Q Okay.

8 A I didn't say he was back to his normal self but he
9 seemed to be getting - - - he seemed to be
10 progressing.

11 Q On Sunday how was he different from his normal
12 self?

13 A On Sunday? He was - - - I'm sorry, ask the
14 question - - - repeat the question.

15 Q I'm just saying you said he was getting close to
16 his normal self on Sunday. And I'm just saying
17 what was different, you know, how was - - - As I
18 understand, he was almost back to his normal self
19 but not quite so I'm just trying to find out what
20 the difference was.

21 A He's just - - - his color, his color's coming back,
22 he's - - - he's not as active as he was before the
23 whole entire situation but he was - - - he was
24 getting better. I saw him progressing each day
25 that he was there he was progressing.

1 Q Now, you didn't have any discussions with anybody
2 about what may have been the cause of what was
3 making him, I think you used the term subdued, a
4 little bit subdued. Did you have any discussions
5 with any of the doctors on that Sunday about what
6 may have - - -

7 A No.

8 Q - - - led to that?

9 A No.

10 Q Did you have any discussions with DSS, anyone from
11 DSS, either that Saturday or Sunday?

12 A I'm thinking that it was that Saturday that one of
13 the case workers from DSS talked to me and my wife,
14 and they had asked if we would consider taking Owen
15 into our custody until they did an evaluation. And
16 we both said yes. And my wife signed a paper, we'd
17 never seen that paper, but she did sign a paper for
18 us to be able to take [REDACTED] for an evaluation.

19 Q Did you know why DSS was involved?

20 A Yes.

21 Q And what was your understanding of why DSS was
22 involved?

23 A Because any time that a child would go to a
24 hospital and be removed from that hospital going to
25 another hospital for - - - that has more ability to

1 diagnosis the situation with the child and they
2 must have felt that it was something, the extreme
3 happened to this child, I don't know.

4 Q Okay.

5 A And I think that's probably why DSS came.

6 Q Were you aware that DSS was involved because there
7 was some concern about some abuse to [REDACTED]?

8 Mr. Shaw - Objection.

9 A I wasn't aware of that but that's possible.

10 Q You knew it's not normal for DSS to get involved
11 when a child's in the hospital?

12 A Well, DSS gets involved not just with a child in
13 the hospital but neglect outside of a hospital. I
14 mean, they get - - - they get involved for children
15 period when - - - when they suspect any kind
16 neglect.

17 Q Okay. So it your understanding that DSS was
18 involved because there was a concern about some
19 type of neglect - - -

20 Mr. Shaw - Object.

21 Q - - - or abuse?

22 A I did not - - - I did not know what their
23 involvement was at that time.

24 Q All right. What - - -

25 A I think they were - - - they were probably doing -

1 - - I don't know if they were doing an
2 investigation at that time or trying to figure out
3 what was going on at that time, but I don't know.
4 I really don't know what their involvement was at
5 that time.

6 Q But you knew that DSS, they'll get involved if
7 there's a concern about some neglect or some abuse?

8 A Well, sure.

9 Q And so when they were involved that Saturday, you
10 knew that that was certainly one of the
11 possibilities they were involved?

12 A It could be - - - yeah, that could be a
13 possibility.

14 Q Now, did you ask the DSS case worker why DSS was
15 involved?

16 A No.

17 Q Well, did they ask you about taking custody of [REDACTED]
18 or that was - - -

19 A I was there when they asked Charlotte.

20 Q Did you ask them why they were making that inquiry?

21 A No.

22 Q What did you suspect the reason they were making
23 that inquiry was?

24 A So that they could do their investigation to try to
25 come to terms what happened to [REDACTED]

1 Q Did you have any other meetings with DSS, any other
2 contact with DSS?

3 A Not that I can recall.

4 Q Did the case worker question you about what you
5 thought might have happened to [REDACTED]?

6 A No.

7 Q Did they ask you about whether or not you thought
8 that Michael or Kayla may have harmed [REDACTED]?

9 A No.

10 Q If they had asked you that, what would you have
11 said?

12 A If they would have asked me that, it would have - -
13 - it would have threw a flag up, and I would have
14 probably - - - I'd have probably asked more
15 questions.

16 Q Of whom?

17 A From - - - I'd ask more question from - - - from
18 Levine, from - - - and from DSS because I'm under
19 the assumption that they're working together.

20 Q What would you have asked?

21 A What would I have asked?

22 Q Yes, sir.

23 A If they would have came and said that they were - -
24 - they were determined what had - - - that there
25 was possible physical abuse to [REDACTED], I would have -

1 - - I would have asked what are you going to do
2 about it, what's going to be done? Are we going to
3 call law enforcement? Are we going - - - are we
4 going to set up a safety plan for my child - - -
5 for my grandson? How are you going to take care of
6 him? What are you going to do with matter? That
7 would be what I'd ask.

8 Q Anything else you would have asked?

9 A No.

10 Q Have you ever been involved in investigating a case
11 of potential abuse or neglect?

12 A No.

13 Q Do you have any training as a guardian, guardian ad
14 litem?

15 A No.

16 Q Now, did you give any information to DSS; did you
17 volunteer any information that you thought Michael
18 or Kayla may have either intentionally or
19 accidentally harmed [REDACTED]?

20 A No, I would never even give - - - even offer any
21 information like that if I've never saw any
22 physical abuse or any kind of threat to the child
23 at all between either one of the parents.

24 Q And you had not seen any?

25 A I had not seen any.

- 1 Q And you didn't suspect anything like that?
- 2 A No.
- 3 Q Now, on Monday, did you visit on Monday, Levine's
- 4 on Monday the 7th?
- 5 A I was there every day.
- 6 Q When were you there on the 7th?
- 7 A I'm not sure on the times. I'm really not because
- 8 I was in and out doing ministry and other
- 9 obligations, and I was ~~just~~ in and out. So I can't
- 10 say exactly what time I was there on all of these
- 11 days. I just know that I was in and out.
- 12 Q Yes, and I know your job just isn't on Sunday, - -
- 13 -
- 14 A Right.
- 15 Q - - - you've got a lot to do - - -
- 16 A Correct.
- 17 Q - - - all the time.
- 18 A Yes, sir.
- 19 Q So you were there, but you can't say what time of
- 20 the day?
- 21 A No, sir.
- 22 Q Do you remember any discussions with any doctors or
- 23 nurses at Levine's on that Monday the 7th?
- 24 A No, sir.
- 25 Q Do you remember how [REDACTED] was doing on Monday the

1 7th?

2 A [REDACTED] was - - - was progressively - - - he was
3 getting better each day. As the days progressed he
4 was - - - he was showing signs of improvement.

5 Q Now, my understanding he was discharged on Tuesday
6 the 8th; is that correct?

7 A I think maybe.

8 Q Was he back to normal on that Tuesday from your
9 observation?

10 A Yes.

11 Q Was he back to normal on the 7th from your
12 observation?

13 A He was getting there, yes.

14 Q So close to normal on the 7th?

15 A Yes, sir.

16 Q And then back to normal on the 8th?

17 A Yes, sir.

18 Q Based on what you could see about [REDACTED], did you see
19 any reason that he needed to stay in the hospital
20 to have medical care?

21 A No.

22 Q Did you have any further contact at all with DSS?

23 A Not myself.

24 Q Now, once [REDACTED] was discharged did you or your wife
25 make any efforts to keep a closer eye on Michael

1 and Kayla and their parenting of [REDACTED]?

2 A No. And reason being if we - - - if there would
3 have been a red flag up for us at the hospital, if
4 there would have been a counseling with all of us
5 involved, Kayla, myself, my wife, and if we would
6 have been instructed to watch for this, we're - - -
7 we're not qualified to do what you guys do. You
8 guys are trained to do what you do. You're trained
9 to see things that we aren't trained to see. And
10 therefore, we was trusting everybody to do what
11 they are trained and qualified to do. Had they
12 give us some instructions and said look, you,
13 Charlotte and Larry, you need to have a closer eye
14 on them, you need to watch them, you need to do
15 this or you need to do that, we would have followed
16 those instructions. If there was any suspicion at
17 all, we would have followed any instructions that
18 was given to us, but we didn't have any
19 instructions given to us.

20 Q Well, did you or Charlotte do anything to keep a
21 closer eye on Michael and Kayla and their care of
22 Owen - - -

23 A Yeah.

24 Q - - - after he was discharged in December?

25 A Yeah. They were around us a lot. They were in - -

1 - they were in and out. We had Christmas going on
2 and they were - - - there were going to church.
3 They were in church. Michael's - - - we have a
4 Christmas play. Michael's playing a character in
5 the Christmas play. Yeah, our lives seemed to have
6 gotten back to normal. And we were just glad to be
7 able to get out of the hospital and be able - - -
8 it was around Christmastime. We had a lot going
9 on. I have a lot going on in ministry, and we were
10 glad to get out of the hospital. We were glad that
11 Owen was doing better and we're home.

12 Q Now, during all that time you spend with Michael
13 and Kayla and [REDACTED] over the holidays, did you see
14 anything that made you suspect that Michael or
15 Kayla at any time had ever intentionally or
16 unintentionally harmed [REDACTED]?

17 A No.

18 Q Did you have any further contact with DSS?

19 A Not myself.

20 Q Do you know whether your wife did?

21 A I don't believe so.

22 Q Did you ask Michael or Kayla about - - - now, were
23 you aware that they signed a safety plan with DSS?

24 A Yes.

25 Q How were you aware of that?

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- 1 A By Kayla shared that with us.
- 2 Q What did she tell you?
- 3 A She told us that they had to keep an eye on [REDACTED]
4 and make sure that his physical - - - he didn't
5 change - - - watch and make sure he had no change
6 of - - - go back, so to speak, and start - - - have
7 some more difficulties, physical difficulties, to
8 watch him in that manner and to kind of watch out
9 for - - - for Michael. And even at that time they
10 didn't know that Kayla hadn't done something. But
11 they were giving her all this information to do.
12 So and then they said that they were take parenting
13 classes, I believe.
- 14 Q When did Kayla tell you about this safety plan?
- 15 A It was probably shortly after the release from the
16 hospital.
- 17 Q Okay. So sometime either the day [REDACTED] was
18 discharged in December or maybe the next day?
- 19 A Correct.
- 20 Q So what you learned is that Kayla was supposed to
21 watch out for Michael - - -
- 22 A And keep an eye on [REDACTED].
- 23 Q - - - and there was going to be some parenting
24 classes?
- 25 A Parenting classes. Correct.

- 1 Q Did she say anything about DSS was going to come in
2 and do a home inspection of their home?
- 3 A Yes.
- 4 Q Okay. You remember she discussed that?
- 5 A (Indicating yes)
- 6 Q I understand you - - -
- 7 A Yes, sir.
- 8 Q And then do you remember anything about they had to
9 go back to either Levine's or another hospital for
10 additional radiology studies?
- 11 A Yes. Yes, I remember that.
- 12 Q Did you go back when they had that radiology study
13 with [REDACTED]?
- 14 A No, sir.
- 15 Q Were you aware that Kayla and Michael did take [REDACTED]
16 back?
- 17 A Yes.
- 18 Q Did you learn what kind of radiology study it was?
- 19 A No.
- 20 Q Did you learn what the results were?
- 21 A Yeah, everything turned out fine.
- 22 Q How was [REDACTED] doing of the holidays?
- 23 A Owen was great.
- 24 Q Was he back to his normal self?
- 25 A He was doing good.

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1 Q Do you know whether [REDACTED] had any visits with his
2 regular pediatrician between December when he was
3 discharged from Levine and January when he went
4 back to Levine?

5 A I'm not sure. I know Kayla pretty much kept up
6 with her visits with the pediatrician. She was
7 good at that.

8 Q Now, you don't remember a sitter being in the room
9 with Owen when you visited in Levine's in December?

10 A (Indicating no)

11 Q If there was a sitter in the room, would that have
12 raised a red flag for you?

13 A It may have and it may have not. But just - - - I
14 would have just figured that was procedure,
15 protocol.

16 Q Well, you make a lot of hospital visits as a
17 pastor?

18 A I do.

19 Q Have you visited a child in the hospital and there
20 been a sitter in the room when the mother and
21 father are staying there around the clock?

22 A I've never experienced that. I experienced police
23 officers out there when inmates have been in or a
24 security guard.

25 Q You're still doing the prison ministry?

- 1 A Yes, we still do that.
- 2 Q And I guess depending on what the prisoner, what
3 his convictions are, there may be more than one - -
4 -
- 5 A Correct.
- 6 Q - - - guard out there.
- 7 A That's correct.
- 8 Q Now, other than Dr. Bailey, did you talk with any
9 doctors at Levine's about [REDACTED] during that December
10 visit?
- 11 A No, sir.
- 12 Q Did you make any attempts to talk to any of the
13 doctors at Levine's about [REDACTED]?
- 14 A No, sir.
- 15 Q Did you make any attempt to have any follow-up with
16 the DSS case worker or with DSS about [REDACTED] in
17 December?
- 18 A No, sir.
- 19 Q Did you talk with your sister about what had
20 happened to [REDACTED]? Your sister that the police - -
21 -
- 22 A Police officer.
- 23 Q - - - is she a police officer?
- 24 A She's a police officer, yes.
- 25 Q And is she a detective?

1 A She was a detective for Rock Hill for 20-something
2 years.

3 Q Did you feel like you had a need to talk with your
4 sister, the police officer, about what had happened
5 to [REDACTED]?

6 A We discussed about [REDACTED] being in the hospital.

7 Q And what did you discuss with your - - - is it
8 Charlotte Blackwelder?

9 A Charlene Blackwelder.

10 Q Charlene.

11 A Yeah.

12 Q What did you discuss with Charlene?

13 A We just discussed that he was in the hospital, and
14 we didn't know exactly what his diagnosis was there
15 at the hospital and that's pretty much what we
16 talked about.

17 Q Did you raise with her any suspicions about any
18 kind of abuse or neglect involving [REDACTED]?

19 A No.

20 Q And I guess you didn't have any suspicion of abuse
21 or neglect?

22 A No, not at that time. No.

23 Q Now, have you ever been involved in a parenting
24 class yourself either as a teacher or a student?

25 A No.

1 Q Do you know when DSS has a parenting class what it
2 involves?

3 A No.

4 Mr. Todd - why don't we take a break. We've
5 going for a little over an hour and we'll come
6 back and I'll finish up.

7 A Okay.

8 whereupon - A recess was taken.

9 Mr. Todd (Resuming)

10 Q Pastor Williams, we talked about the
11 hospitalization in December and your interaction
12 with [REDACTED] and Kayla and Michael during December.
13 Was there a time when Michael and Kayla separated
14 in late December or early January for a brief
15 period?

16 A Yes, she made him leave.

17 Q When was that?

18 A I don't know the exact date.

19 Q What was the reasons he had to leave? Did it have
20 anything - - - was there any concern that he might
21 be harming [REDACTED], or was it have to do with him not
22 working, or do you know?

23 A Not working. Not working.

24 Q Now, during December was your wife spending a lot
25 of time keeping [REDACTED]?

1 A Correct.

2 Q And so how often would she be keeping [REDACTED]?

3 A Sometimes it was like every other day. It even got
4 to the point at one time I told Charlotte that she
5 needs to tell Michael no, that he needs to be a
6 responsible dad and take on responsibility himself.
7 And then we - - - she did that. And then after the
8 second incident, I felt really bad because I felt
9 like I pushed him - - - pushed her into that,
10 making that decision. And it was - - - so if I had
11 any inclination at all that Michael was harming
12 that child I would have never ever told her to make
13 him take care of that child. So I have to live
14 with that.

15 Q Do you know how long he was gone before Kayla let
16 him come back or allowed him to come back?

17 A He may have been gone a week maybe.

18 Q And did your wife keep [REDACTED] that entire week?

19 A Pretty much while Kayla worked. Yeah. Yeah.

20 Q Do you know whether or not your wife had any action
21 with DSS between the December hospitalization and
22 the January hospitalization at Levine's?

23 A The December and the January?

24 Q Yes, after the - - - what I'm trying to find out is
25 after [REDACTED] was discharged on, I believe it's

1 December the 8th, did your wife have any kind of
2 contact or interaction with anyone at DSS?

3 A If she did, I don't recall it.

4 Q When did you learn that [REDACTED] was going back to the
5 hospital in January of 2010?

6 A I was headed to - - - Charlotte and I were going to
7 Columbia, I had to do a funeral, and just before we
8 got on the interstate, on 77 south, he - - - I got
9 a phone call and it was Michael on the phone and he
10 was - - - I could tell he was very upset and he
11 stated it's [REDACTED], he's having seizures
12 and I don't know what's happened and we're headed
13 to the hospital. And I immediately turned around
14 and went back to the house and Charlotte got her
15 car and Charlotte went to the hospital. And I had
16 obligations to this family to do this funeral, and
17 I couldn't last minute just try to pull something
18 together so I went on to Columbia and did the
19 funeral. And then after the funeral was over with,
20 I went to Levine.

21 Q Do you know what day of the week it was? It's was
22 January - - -

23 A I don't - - - I don't recall.

24 Q Is January 10th - - -

25 A Okay.

1 Q When you got to Levine's what did you learn?

2 A When I had got to Levine, [REDACTED] was in intensive
3 care, and he was hooked up to all these machines.
4 And Charlotte was there. Kayla had already gone.
5 I don't know if - - - I don't know if Michael and
6 Kayla drove themselves to the jail, but I know that
7 they were gone when I got there. And I knew that
8 this was very, very serious.

9 Q I guess in the days of cell phones you probably had
10 telephone calls from Charlotte as you were headed -
11 - -

12 A Right. Right.

13 Q - - - and did you learn that there was a concern
14 about abuse?

15 A Yeah, I learned that they had airlifted him. The
16 time before, he went by ambulance but this time he
17 was airlifted to Levine. And, yeah, I realized it
18 was very, very serious.

19 Q When did you learn that there was a concern about
20 somebody having abused [REDACTED]?

21 A The second time.

22 Q Did you learn it when you were driving - - -

23 A Well, after - - -

24 Q - - - from the funeral, or did you learn it when
25 you got there that night, or was it the next day?

1 That's just what I'm trying to find out.

2 A No, I learned - - - I learned it when I was - - -
3 when I was driving to the funeral, Charlotte had
4 called me and told me they were airlifting him.
5 And she said it was bad. She said it was bad. And
6 I really couldn't - - - I wanted to get this
7 funeral over with as quickly as possible to get
8 back to the hospital.

9 Q I'm not making my question clear.

10 A Right.

11 Q I understand you learned that [REDACTED] was in serious
12 condition. But what I'm trying to find out, when
13 did you learn that there was a concern that
14 somebody had intentionally harmed him?

15 A After the second incidence.

16 Q Okay. When? Was it that first day?

17 A It was - - - it was that first day.

18 Q How did you learn about that?

19 A When I got to the hospital really and when I found
20 out that they were taking - - - they had asked
21 Michael and Kayla to come to the - - - to come to
22 the Moss Justice Center. And then it was shortly
23 after that, I think a few hours after that, they
24 had a confession from Michael. And that's - - -
25 that's when I knew definite that he was - - - he

1 was shaken.

2 Q Before that time, before you learned that Michael
3 had confessed, did you suspect that Michael or
4 Kayla or - - - well, did you suspect that Michael
5 had intentionally harmed [REDACTED]?

6 A Up until - - - up until the - - - until law
7 enforcement had taken - - - till he had got a
8 confession, I didn't know who had harmed Owen at
9 that time. I didn't know, not until we got the
10 confession. Once we got the confession then, yeah.
11 And then on - - - on hindsight over here after the
12 second incident, then looking back, looking back,
13 there was some probably some signs there but we
14 were just so involved in it, you know, so connected
15 to it that we probably just missed those signs. I
16 don't know. But on hindsight, after over here, you
17 know, you realize then when you're over here, your
18 grandchild has lost 75 percent of his brain
19 activity, and his brain's swelling, and they've got
20 tubes in him and got all this in him, then - - -
21 then you're saying oh, my God, what - - - did I
22 miss something, you know. But - - -

23 Q well, in hindsight did you - - -

24 A - - - it was too late.

25 Q In looking back, was there something you think you

1 missed, even in hindsight?

2 A No. No, not really. Because - - - because the
3 thing is is that - - - that we had - - - they
4 showed no evidence. They showed no signs of
5 physical abuse whatsoever, Kayla or him. If they -
6 - - all of this stuff was done behind the scene to
7 where - - - to where they just showed no signs. If
8 they had showed some signs, if we'd have had - - -
9 if we'd have had domestic violence or we'd have had
10 - - - if he'd had showed some type of anger that he
11 was capable of doing something like that, yeah,
12 sure, but he didn't show any of that.

13 Q Do you know whether or not Michael had ever done
14 anything to harm Kayla?

15 A No. No, she'd probably whip him. No, there was
16 never any evidence of any kind of abuse on Michael
17 whatsoever. Michael's more of a laid back person,
18 and he was kind of quiet. Now, when we did have
19 game nights and stuff he would open up and, you
20 know, we would have fun and he would interact and
21 stuff, you know. But Michael was more of a - - -
22 he was more of a conservative type, you know. But,
23 no, if we had any kind of knowledge that he was
24 abusing his child in any kind of way, any kind of
25 way.

- 1 Q So even in hindsight, you looking back, - - -
- 2 A Right.
- 3 Q - - - you couldn't even hindsight, - - -
- 4 A No.
- 5 Q - - - see anything that would - - -
- 6 A No.
- 7 Q - - - lead you to suspect that he would harm [REDACTED]?
- 8 A No. No. But truly feel bad about it afterwards,
- 9 you know.
- 10 Q What about did [REDACTED], did he have any - - - I'm
- 11 sorry, did Michael, did you ever see anything that
- 12 make you think that he might be doing drugs or
- 13 alcohol?
- 14 A No, Michael never did drugs and never drank.
- 15 Never. Never seen him do any of that. No.
- 16 Q Now, in January did you have any discussions with
- 17 any of the doctors or staff about what had happened
- 18 to [REDACTED], about how his injury had occurred?
- 19 A Yes.
- 20 Q Who did you talk to?
- 21 A We were in the intensive care unit at that time and
- 22 Dr. Bailey was there and there was probably a whole
- 23 team of nurses and doctors and it was just - - -
- 24 the room was just filled up with people. I
- 25 remember Dr. Bailey being very, very angry at us,

1 all of us, like we had done something. You know,
2 that - - - I don't know if he - - - I don't know if
3 he was mad because [REDACTED] had returned to the
4 hospital or he was mad because he missed it, the
5 diagnosis. I don't know. But - - -

6 Q Did you talk to him?

7 A Yeah, but he was very gruff. He was very - - - we
8 talked to him and he was very, very gruff with us
9 with his answers and stuff. And they were really
10 busy, really busy at that time trying to give [REDACTED]
11 the best care that they could give him at that time
12 and it was a lot of trauma. And it was just - - -
13 it was a horrible, horrible thing to have to go
14 through.

15 Q Do you remember anything Dr. Bailey said? You told
16 me about his demeanor.

17 A Yeah. Yeah, he talked about his brain swelling.
18 He talked about that it would swell to 75 percent.
19 And he said if the brain did not begin to shrink
20 that they would have to drill into his skull to
21 relieve pressure which they had to do. And they
22 had to go into his spine to relieve pressure there
23 also. He talked about the condition of [REDACTED] that
24 he may not make it through this. It was - - - it
25 was just a very, very horrific time.

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1 Q Now, in the ICU were y'all allowed to be in the
2 room with him in the ICU while this treatment was
3 going on?

4 A We were allowed to go in at certain times. We
5 would go in and out.

6 Q Unfortunately we all have friends or relatives at
7 one time in the ICU and typically they'll let one
8 person visit at certain intervals. Is that the way
9 it was then?

10 A Yeah. And it finally got to the point to where
11 they would just let us all go in because they just
12 - - - they weren't expecting him to live. And so
13 it got to the point to where - - - at first they
14 was limiting the visits and stuff but then it got
15 to where they were allowing more to go in at those
16 times.

17 Q Now, [REDACTED] was in the hospital in January for weeks.

18 A Right.

19 Q And was he getting extensive care during that time?

20 A Yeah.

21 Q Was there ever an issue about you and your wife not
22 being allowed access to [REDACTED]?

23 A Yeah.

24 Q When was that?

25 A This was during the second incidence in January and

1 we were - - - they took him off all the life
2 support. And the doctors - - - well, the ethical
3 committee came in and says that the ethical thing
4 to do is to - - - that when they take him off life
5 support that he may not live. And so we took him
6 off and when we took him off the life support, he
7 was gasping for breath. I remember the nurses
8 saying that he would tire out and probably just
9 quit. well, he never did. And the next day they
10 were going to make a mold, a heart-shaped mold, out
11 of mortar and stick his foot in it and give it to
12 Kayla when he passes. They never got that because
13 he would pull his leg out every time they tried.
14 And then they came and said - - - I think it was
15 Dr. Bailey. Maybe Dr. Bailey - - - there's a whole
16 team of doctors that come in at one time. And they
17 were asking me - - - asking us have we considered
18 Hospice, that the quality of life for [REDACTED] just
19 wasn't there, you know. I had dealt with Hospice
20 on many occasions with some of my church folks, and
21 I didn't want to take [REDACTED] home and have Hospice
22 come into my house and him die at home because I
23 had other siblings in house. And so then I
24 remembered the Hospice Center, Hospice House here
25 and a really nice facility. I called them and

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1 talked with them. And they said they didn't know
2 whether they would take an infant, they'd never
3 taken an infant before, but they'd check with their
4 supervisor and were going to call me back and said
5 they'd take him. So they took him into Hospice.
6 And when we got into Hospice he - - - they started
7 giving him morphine, and I remember the chaplain
8 coming in and telling us to prepare for his death,
9 and the cemetery where we wanted to get him buried
10 and all this, you know, and just really, really
11 just some tough decisions to make. And he was
12 there probably two days and then he started making
13 a sucking sound like he really was starving, which
14 he was. And Charlotte got really concerned about
15 it, and she called her brother in Nebraska, he's a
16 Hospice doctor, and she got his opinion. And he
17 said well, sis, if it'll make you feel better just
18 give him a little bit of sugar water. And so the
19 nurse got some sugar water in a syringe and started
20 giving him sugar water and he started just drinking
21 it like - - - without aspirating. He wasn't
22 aspirating at all. And so then the doctor decided
23 that he was try a little more water. So he tried
24 about three ounces and he took it down without
25 aspirating. And then he said well, let me try some

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1 Pedialyte. And he tried Pedialyte, and he took the
2 pedialyte down with aspirating. So the next
3 morning he ordered formula for [REDACTED]. And so [REDACTED]
4 was drinking four and five ounces of formula
5 without aspirating on each feeding, no problem.
6 And so the Hospice doctor there decided the best
7 they would do is send him back to Levine for
8 rehabilitation. So we get back to Levine for
9 rehabilitation and as soon as we walk in the door
10 at Levine they stopped his feedings, totally took
11 them away. I was upset. I was because he was
12 doing so well, and he wasn't aspirating. The
13 doctor even at the Hospice, you know, he's seen all
14 that. And so they took his feedings away. And
15 then took him away from us. And they would hold
16 [REDACTED] out like this in their hand, and they would
17 give him a bottle. And he had to have that four
18 ounces drank within 20 minutes, if not they were
19 going to tube him up. And no love, no bonding,
20 holding him out here. And you know yourself
21 infants, they take their time. They do. When they
22 drink, they're going to take their time. But
23 anyway, they took those feedings away from us and
24 then they started tubing him back up and we were
25 totally against it. At this particular time on the

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1 second incidence, they did meet with us around a
2 table like we're here with - - - with Dr.
3 Wunderlich, had DSS workers, had law enforcement,
4 everybody was around the table. And when I walked
5 in the room, Kayla and I walked in the room, and
6 when I walked in the room they were talking about
7 all of [REDACTED]'s disabilities. He's got to have
8 multiple doctors assigned to his life for the rest
9 of his life. He's got to have multiple medical
10 equipment for the rest of his life. They were
11 talking about all his bad. And I sat down in the
12 chair and I said - - - I looked at Ms. Wunderlich
13 and I said look, there's no - - - I'm not here to
14 disrespect you. I said but what about the fact
15 that when we brought back up here out of Hospice
16 that he was drinking four and five ounces of
17 formula without aspirating. What about the fact
18 that the right side of his body was not even moved
19 and was paralyzed and now he's kicking them all. I
20 said what you have done is you have handicapped him
21 from the moment he came in this door. And I said
22 that we brought him back up to Levine not for you
23 to take away the ability of what he can do but to
24 assist at what he can't do. What he can't do. And
25 at that moment, that moment, they got a court

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1 order, they got a court order, and went against
2 what we really wanted to do at that time. And when
3 they got the court order, they got a restraining
4 order and asked Charlotte and I to leave the
5 hospital. When we would do our visitations, they
6 would let Charlotte and I come up and do
7 visitations, we couldn't go to [REDACTED]'s room and
8 visit with him. They'd make us visit right out - -
9 - they'd pull him in a ~~wagon~~ and make us visit
10 right out there at front like we were criminals. I
11 mean, they treated us like we were just - - - it
12 was really uncalled for, the way we were treated.
13 And we have been through this with [REDACTED], and we
14 have fought for him. And we will continue to fight
15 for [REDACTED] because [REDACTED] deserves everything that he
16 can get. Because I feel in my spirit that this
17 should have not happened to [REDACTED]. This should have
18 not.

19 Q And when you say this, what do you mean?

20 A What I mean is that he shouldn't be in the
21 condition that he's in right now with losing 70
22 percent of his brain activity, blind, tube fed.
23 And he's probably going to be that way the rest of
24 his life. Because I feel like that the ones that
25 are trained, the ones that are qualified to do what

1 they do, they didn't do it. They let it slip
2 through and that's why [REDACTED]'s the way he is today.

3 Q Well, let go back now to the tube feeding, - - -

4 A Okay.

5 Q - - - when [REDACTED] was returned from Hospice to
6 Levine. There was a discussion about whether or
7 not to have [REDACTED] be tube fed, and you and Charlotte
8 disagreed with that?

9 A Yeah, and I just explained the reason why. I mean,
10 you as a grandparent, if you would have been there
11 and you saw your grandchild feeding the way he was
12 feeding without aspirating, without having and
13 difficulties whatsoever, you'd have probably got
14 upset too.

15 Q And I understand it's a difficult situation. I'm
16 just trying to find out - - -

17 A Yeah.

18 Q - - - kind of what happened.

19 A I understand.

20 Q I get to ask questions.

21 A Okay. Go ahead. I'm sorry.

22 Q And so I guess you as grandparents and Kayla as
23 mother, there was a discussion about whether or not
24 [REDACTED] should be tube fed; is that what the
25 discussion was?

- 1 A Correct?
- 2 Q And so I guess there was some - - - you and Kayla
3 and Charlotte talked about it and decided that you
4 didn't want [REDACTED] to have a tube and have tube
5 feedings?
- 6 A (Indicating) And the reason why is because we had
7 been told that kids that are tube fed has a
8 tendency to get infections, and we were more
9 concerned about whether this was going to enhance
10 the quality of his life or if this was going to
11 bring danger to his quality of life.
- 12 Q And I'm trying to find out, [REDACTED] had been to
13 Hospice, he was back.
- 14 A Right.
- 15 Q Now, at that time was [REDACTED] still - - - was it under
16 like end of life care or was that, at that time,
17 were they trying to treat [REDACTED] so that he could
18 survive and not that kind of end of life care that
19 you - - -
- 20 A They felt - - - I guess they felt like they were
21 trying to treat [REDACTED] so he could survive. Yes.
- 22 Q So - - -
- 23 A I think their intentions were right.
- 24 Q They felt like what would be best for [REDACTED] to have
25 him survive was the tube feeding.

1 A Correct.

2 Q And you felt like, no, the best thing for [REDACTED] to
3 survive is to be bottle fed?

4 A I felt like if they would have worked with him a
5 little bit more that I felt like they took his
6 sucking ability away and took all of his ability to
7 drink away.

8 Q Now, I mean, looking back do you think that [REDACTED]
9 would have been able to survive without being tube
10 fed?

11 Mr. Shaw - Objection.

12 Q As far as I know, you don't have any medical
13 training. I guess I shouldn't ask you that - - -

14 A Right. Right. Right.

15 Q - - - but just based on what you saw.

16 A If he was able to continue to drink his bottles the
17 way he was doing without aspirating and without
18 having any difficulties, I think he would have
19 survived that way. But by tubing him up - - - He's
20 surviving that way now and I'm grateful for it.
21 I'm grateful now that we have him with us, and
22 we've accepted the quality of life that we have
23 with [REDACTED] now. We accept that. But back then
24 during that time, during the trauma and everything
25 that we were going through at that time, whenever

1 you see your grandchild making some progression,
2 you're grateful for that. You want to see that,
3 you know. And that was the only reason why we were
4 offensive when they were talking about putting the
5 tube back in. But basically we want what's best
6 for Owen. That's what we want.

7 Q You don't have any reason to think that the doctors
8 and staff at Levine's - - -

9 A Well, no. No.

10 Q - - - you felt like they felt like they were doing
11 what was right for [REDACTED]?

12 A Exactly. Exactly. I do.

13 Q Now, it sounds like there was visitation under
14 supervision. How long did that last?

15 A That lasted until Owen left the hospital.

16 Q And when he left the hospital, did he go to a rehab
17 facility or did he go home?

18 A They put him in foster care. He was in two foster
19 homes.

20 Q How long was he in foster care?

21 A He was in foster care probably I want to say maybe
22 six months maybe, maybe longer.

23 Q And I'm not looking for an exact.

24 A Yeah, maybe - - - maybe six months or longer.

25 Q Okay. Now, did you have any discussion during that

1 time, this is in 2010, about [REDACTED] - - - you told me
2 that in December that you had a brief discussion
3 with DSS and you were questioned about you and
4 Charlotte keeping [REDACTED].

5 A Right.

6 Q Now, were there discussions in 2010 with you and
7 Charlotte keeping [REDACTED]? I know eventually you're
8 keeping him, but I'm talking about - - -

9 A Yeah, there was - - -

10 Q - - - before he went to foster care.

11 A Yeah, there was discussions about it, but Charlotte
12 had something on her criminal record that hindered
13 us from doing that, a domestic violence, and that
14 hindered us from being able to do that. And that
15 really hurt to not be able to take him into our
16 home. But really to be honest with you, even the
17 first time, whether they gave him to us or put him
18 in foster care, if they had put him in foster care
19 the first time I'd have been okay with that, until
20 they found out what happened to him. He wouldn't
21 be in the condition that he's in now.

22 Q Well, let me ask you about this. You talked about
23 there was a DSS - - - you and Charlotte, offered to
24 keep Owen before he went into foster care - - -

25 A (Indicating yes)

- 1 Q - - - and there was some investigation. And, of
2 course, you've got the armed robbery conviction.
3 Did that - - -
- 4 A Thirty years ago though.
- 5 Q All right.
- 6 A And a pardon.
- 7 Q You've been pardoned?
- 8 A Yes, I've been pardoned.
- 9 Q Your civil rights restored?
- 10 A Right.
- 11 Q And Charlotte had a criminal domestic violence
12 charge, conviction? When was that?
- 13 A I'm not aware of the date on that. That happened
14 before I met her.
- 15 Q Who gave you the pardon? Was it the governor?
- 16 A The governor.
- 17 Q Which one?
- 18 A Riley.
- 19 Q Because that was back in the 80s. Were you still
20 in jail when you got pardoned?
- 21 A No.
- 22 Q You were out of jail?
- 23 A Yeah, I was out of jail.
- 24 Q Do you think [REDACTED] would have been able to survive
25 without the feeding tube - - -

1 Mr. Shaw - Objection.

2 Q - - - from your view as a layman?

3 A Do I think that he was - - -

4 Q Survive?

5 A Maybe not.

6 Q He can't survive today?

7 A No, he can't survive today without it. No. No, he
8 has no ability of consuming anything right now
9 other than the feeding tube.

10 Q Has Michael, to your knowledge, has he ever
11 confessed that he ~~did~~ anything to harm [REDACTED] in
12 November or December of 2009?

13 A No.

14 Q Have you had any contact at all with Michael since
15 he has gone to jail?

16 A No, sir.

17 Q Did you have any contact with him after December -
18 - - I'm sorry, did you have any contact with him
19 after he confessed?

20 A No.

21 Q Now, [REDACTED]s living with you and your wife now?

22 A Yes, sir.

23 Q And Kayla's living with you?

24 A No, Kayla has her own place.

25 Q What involvement does Kayla have with [REDACTED]?

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1 A Kayla, she comes over in the evenings and gives him
2 his bath sometimes. Her days off, she will get him
3 on her day off and spend the day with him. Any
4 time that she has free time other than work, she
5 tries to involve him. Even when she goes with her
6 friends, goes to a friend's house, she'll take [REDACTED]
7 with her. So she's very involved in his life too.

8 Q Where's she working now?

9 A She works for Verizon.

10 Q Do you get any kind of financial assistance from
11 any kind of agency or any kind of entity for - - -

12 A Charlotte gets a check for [REDACTED] every month.

13 Q And that comes from whom?

14 A Disability, is that where it's coming from?

15 Q From Social Security disability?

16 A Yes, something like that. Yes, sir.

17 Q How much is it?

18 A Six hundred and something.

19 Q Is anybody else providing any support, any entity
20 or any - - -

21 A No.

22 Q Is Kayla making any payments?

23 A No. She'd buy his clothes though and she'll help
24 provide diapers and, you know, supply what he has
25 need of.

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1 Q Have you had any names other than Larry Williams?

2 A No.

3 Q There was an incident in Levine's where your wife
4 was holding [REDACTED] in a rocking chair and the rocking
5 chair tipped over. Were you present when that
6 happened?

7 A No, I came up that morning afterwards.

8 Q How was [REDACTED] doing then? I mean, did he have any
9 kind of bruise or anything ~~after~~ the rocking chair
10 incident?

11 A I didn't see anything.

12 Q Is Kayla making any efforts to regain custody of
13 [REDACTED] presently?

14 A Not at the moment.

15 Q Other than Dr. Bailey, have you talked to any of
16 the doctors ~~at~~ Levine's and Dr. Wunderlich about
17 [REDACTED] and what his condition was?

18 A No. Dr. Bailey did tell us - - - he took us in a
19 room and showed us the MRI, showed us a picture of
20 [REDACTED]'s brain and showed us what to look for, showed
21 us the damage of his brain. I remember that.

22 Q What relatives do you have - - - You have a brother
23 and sister living here. Any other relatives that
24 you have in York County?

25 A No.

1 Q We may not want your first cousin on the jury.

2 A No.

3 Q Have you ever heard anyone use the term
4 nonaccidental trauma before this lawsuit?

5 A Not before this, no, sir.

6 Q Did you ever look at the safety plan that Kayla
7 signed?

8 A No.

9 Q Have you looked at it since this lawsuit?

10 A No, sir.

11 Q Before December 4th, 2009 did you ever see any
12 bruises on [REDACTED]?

13 A He did have a bruise one time and I think, if I'm
14 not mistaken, said they either dropped the remote
15 maybe from the TV. That's the only one that I've
16 seen.

17 Q Do you know when that was; was that in November?

18 A Probably somewhere around there.

19 Q Did [REDACTED]'s behavior change?

20 A No.

21 Q Did you see anything with [REDACTED] that made you
22 concern that it - - -

23 A No concern at all. No, sir.

24 Q Any other time you see any bruises?

25 A No, sir.

1 Q What about in December, did you observe any bruises
2 on him when he was in the hospital in Levine's in
3 December?

4 A Not that I can recall.

5 Q No bruises or - - - and you said his color was
6 returning, that he was a little bit - - - when you
7 say his color wasn't quite back to normal, - - -

8 A well, he wasn't - - - you know, he wasn't eating
9 right, you know, and what not. And, you know, when
10 you're not eating right and what not and just
11 looked fatigued, you know.

12 Q I'm sorry, looked?

13 A Fatigued.

14 Q Fatigued?

15 A I guess, yeah.

16 Q Have you had any medical training, first aid
17 training?

18 A The only medical - - - yeah, CPR.

19 Q Other than CPR, any kind of medical training?

20 A No. I worked at an infirmary when I was in prison.
21 I worked at an infirmary. We seen a lot of - - - a
22 lot of activity there. I worked real close with a
23 couple of nurses there.

24 Q What was your job in the infirmary?

25 A I was a clerk.

1 Q I'm betting you weren't working on children in the
2 infirmary?

3 A No. No. No. No. No.

4 Q Okay.

5 A And some of them kids - - - and some of them guys
6 acted like children.

7 Q Was that people with colds and flus or was it
8 people who had gotten in fights with other inmates
9 or some of both?

10 A Yeah, some of - - - all of the above.

11 Mr. Todd - I believe that's all the questions
12 I have at this time. I suspect my friends
13 here to my left may have some questions.

14 EXAMINATION - (By Mr. Frawley)

15 Q Reverend Williams, my name is Pat Frawley. I'm an
16 attorney with the Davis Law Firm in Lexington. And
17 when you mentioned Locke Screen, when you worked at
18 Locke Screen was that in Lexington?

19 A Yeah.

20 Q Is it I-20?

21 A (Indicating yes)

22 Q I am defending the South Carolina Department of
23 Social Services in this case, and I've got some
24 questions. I'm going to try not to plow the same
25 ground that Mr. Todd has plowed. If I do ask you

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1 some questions that you've heard already, I
2 apologize for that. I've got a script, and I tried
3 to cut some stuff out of this.

4 A Okay.

5 Q What is your current address?

6 A [REDACTED] Aiken, South Carolina.

7 Mr. Frawley - Let's go off the record a
8 second.

9 (Off the record)

10 Q Now, you testified a little bit earlier, you're a
11 minister so you are a mandated reporter of abuse
12 and neglect for children; is that correct, is that
13 your understanding?

14 A No.

15 Q So it's not your understanding that if you hear of
16 or you discover abuse or neglect that you are
17 mandated by law - - -

18 A Yeah, exactly. Exactly. Yeah, okay.

19 Q Okay. So you are mandated by South Carolina
20 statute to report it to somebody, law enforcement
21 or DSS?

22 A Exactly. Yes, sir.

23 Q Okay. And I think you indicated that your
24 inclination would be if you knew about it you'd
25 report it probably to law enforcement, and you

1 assume that they would then pass it on to DSS?

2 A Exactly.

3 Q And you and Ms. Williams were married September
4 26th. Was it 2008 or 2009?

5 A I'm thinking probably '9, 2009.

6 Q So you were married shortly after [REDACTED] was born?

7 A Right.

8 Q Okay. That would be 2009 then. After you and Ms.
9 Williams were married, Kayla's never really lived
10 with y'all has, she while you have been husband and
11 wife?

12 A No.

13 Q Because after you were married [REDACTED] had just been
14 born, and Kayla and Michael and [REDACTED] lived in their
15 mobile home trailer?

16 A Right.

17 Q And you may have covered this with Mr. Todd, but
18 how long were you and Ms. Williams dating,
19 courting, in your relationship before you were
20 married?

21 A Probably about six months.

22 Q Six months? In those six months, I take it you got
23 to know her son, Aaron, and her daughter, Kayla?

24 A Correct.

25 Q And did you develop a good relationship with both

1 of them?

2 A Yes.

3 Q Was Kayla at the time that you and Ms. Williams
4 were dating or leading up to your marriage, was
5 Kayla then with Michael?

6 A Yes.

7 Q Now, they didn't get married but was she living
8 with him then?

9 A Yes.

10 Q If you knew Ms. Williams for about six months
11 before you married and you married about maybe
12 three weeks after [REDACTED] was born, when you and Ms.
13 Williams first met, Kayla was already expecting a
14 child, correct?

15 A Right.

16 Q When you first met Michael during the period of
17 time that you and Ms. Williams were getting to know
18 each other before you were married - - - well, let
19 me ask it a different way. How many times before
20 you and Ms. Williams were married had you had
21 occasion to meet or be with Michael to interchange
22 with him or discuss with him?

23 A Very few times because they were still living in
24 Concord at that time and so that was not quite
25 often.

1 Q And when they were living in Concord you'd
2 mentioned that they were living with Michael's
3 parents in Concord, right?

4 A Michael's parents, correct.

5 Q Did Ms. Williams at that time as far as you could
6 tell have any kind of relationship with Mr. and Ms.
7 Carduff at that time, or were they kind of - - -

8 A Getting to know each other.

9 Q Okay.

10 A Yes.

11 Q They were estranged or they weren't adverse to each
12 other?

13 A No.

14 Q Okay.

15 A No.

16 Q And you said that when [REDACTED] was born you were at
17 the hospital, correct?

18 A Correct.

19 Q How did you find out about his impending birth?

20 A I was actually in my office at the church, and
21 Charlotte came in my office and said I have
22 something to tell you. I was thinking she wrecked
23 the car. That's what I was thinking. And she told
24 me that Kayla was pregnant and so that's how I
25 found out.

1 Q That she was fixing to deliver?

2 A Oh, you're talking about deliver?

3 Q Yes.

4 A I thought you were talking about conception, when
5 she conceived. No, deliver, when I found out she
6 was going to deliver, gosh, probably the very same
7 day that she was going to deliver. I was there
8 that day.

9 Q Was delivery induced or was it she just woke up one
10 morning and says it's time and going to the
11 hospital?

12 A Yeah, it was like that.

13 Q Okay.

14 A It wasn't induced.

15 Q It wasn't induced?

16 A No.

17 Q But you bring up a point that Charlotte had told
18 you at some point in your office that Kayla was
19 pregnant. Was she excited about the pregnancy, was
20 she kind of wary about the pregnancy because Kayla
21 was not married at the time?

22 A Well, she was - - - She was excited about the
23 pregnancy but she was a little disappointed too,
24 you know, because she wasn't married and because of
25 she just wasn't expecting it..

1 Q How did Charlotte appear to like Michael at that
2 time? Sometimes - - - I have three sons - - -

3 A Yeah. Right. Right.

4 Q - - - and sometimes you like their significant
5 other, sometimes you don't. Did she appear to like
6 Michael at that time or was she in the process of
7 warming up to him; how was that?

8 A She was in the process of warming up to him and,
9 you know, she was just getting to know him.

10 Q After [REDACTED] was born, you were there at the
11 hospital. When he was discharged, when he and
12 Kayla were discharged from the hospital after the
13 birth, did Michael and Kayla have their own place
14 or did they go back to Concord?

15 A No, they had their own place.

16 Q Had their own place. So when they went home to
17 their own place did you and Charlotte visit them,
18 come see the new baby?

19 A Yeah. Of course.

20 Q We're only talking three and half or four months
21 between his birth and the first injury. Let's talk
22 about the first month. In that first month, how
23 frequently would you and Charlotte go to Michael
24 and Kayla's home. Now, I know you said earlier
25 that we would go there with some frequency but

1 usually it was short. We'd go there, pick up [REDACTED]
2 and leave.

3 A Right.

4 Q In that first month, how frequently would you visit
5 and were the visits as you had earlier
6 characterized, I mean, just picking him up and
7 leaving or were you going there with such a young
8 baby, visiting the baby there and then leaving?

9 A Yeah. Charlotte was there more than me.

10 Q Okay.

11 A She was there a lot more than me. And she would go
12 and stay awhile, you know.

13 Q Okay.

14 A And but as far as myself, I wouldn't. But he was
15 at our house a lot because I'm working. He was
16 there with us a lot.

17 Q And I remember from her deposition that Kayla
18 pretty much worked up to the time that the baby was
19 born - - -

20 A She did.

21 Q - - - and then returned to work shortly after that,
22 correct?

23 A Kayla's always been a good worker.

24 Q Was Michael working at that time?

25 A No, not from the beginning.

1 Q Okay.

2 A He wasn't. I actually got him a job with - - - One
3 of my church members worked at Food Lion, and I
4 talked to her and she got him a job at Food Lion.

5 Q Now, do you remember you having visited there at
6 their home, you mentioned that Charlotte went there
7 most the time, but do you remember occasions when
8 you would have gone there in that first month?

9 A Oh, yeah. Oh, yeah. Because I remember Charlotte
10 and I going in and painting their nursery.

11 Q Okay.

12 A We painted their nursery.

13 Q After the baby was born or before?

14 A Before the baby was born.

15 Q Okay.

16 A I'd go there occasionally.

17 Q But Charlotte went more frequently?

18 A Yeah, she did.

19 Q In that first three and a half, four months,
20 Charlotte kept Owen a good bit, correct?

21 A Correct.

22 Q And to the point that you mentioned at some point
23 that Michael needs to step up and take care of that
24 himself, correct?

25 A Exactly.

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1 Q And on your criminal history you said you'd gotten
2 a pardon from Governor Riley, correct?

3 A Right.

4 Q Are you a member of any state or national
5 organizations as a minister?

6 A Yeah, The International Pentecostal Holiness
7 Church.

8 Q IPHC?

9 A IPHC, yes, sir.

10 Q Any others besides that?

11 A No.

12 Q Are you a member or were you a member when you were
13 in the Rock Hill area of any social organizations
14 in the Rock Hill area, any fraternal organizations,
15 anything like - - - In Columbia, we have a thing
16 called The Oliver Gospel Mission where homeless
17 people could stay there at night. Did you
18 participate in any of those type organizations - -

19 -

20 A No.

21 Q - - - in the Rock Hill area?

22 A No.

23 Q Okay.

24 A we did support some folks, some organizations, like
25 Pilgrims Inn, whatnot. You know, we would take

1 some Christmas and food and stuff to Pilgrims Inn.

2 Q And Monty probably got this, but what was the name
3 of the church that you were pastor over while you
4 were in the Rock Hill area?

5 A Faith Family Christian Center.

6 Q In the times that you would have visited Kayla and
7 Michael's home in that first three and half months
8 before the December 4th injury or when they would
9 have visited your home, did you have occasion to
10 observe Kayla as a mom with [REDACTED], interacting with
11 Owen?

12 A Yes.

13 Q And how would you characterize her as a mother
14 during that period of time?

15 A A good mother.

16 Q Okay, a good mother.

17 A A good mother.

18 Q Now, a good mother's a conclusion. There's certain
19 things you would have seen that when you total
20 those up in your head it comes to the conclusion of
21 a good mother.

22 A Right.

23 Q Can you tell me what it is that you would have seen
24 about Kayla interacting with [REDACTED] that led you to
25 the conclusion just a moment ago that she was a

1 good mother then?

2 A well, she would - - - she would feed him, she would
3 change his diaper, she would burp him. I mean,
4 she'd just - - - you know, she'd just did
5 everything that a mom would do.

6 Q She was attentive to him?

7 A Yeah, very attentive.

8 Q And when babies get to the point that they're not
9 just staring, where they're actually interacting
10 with people, did [REDACTED] appear to interact with her?

11 A Yeah.

12 Q Knew where mom was?

13 A Right.

14 Q when you and Charlotte would keep [REDACTED], what did
15 you do when you would keep him?

16 A Whenever I would keep [REDACTED]?

17 Q well, let me fix that. I've got grandkids.

18 A Right.

19 Q And when I had grandkids - - - I mean, when I was a
20 dad I'd change diapers - - -

21 A Oh, yeah.

22 Q - - - and still remember the image of my youngest
23 son when we got him home, he was preemie, picking
24 up his ankles to wipe him off. When we first got
25 there, there were no butt checks there, which

1 impressed me.

2 A Right. Yeah.

3 Q So I've changed diapers, and I've done that as a
4 father. Now, as a grandfather, I did it a little
5 bit but I was - - - I guess because it'd been so
6 long since I'd done it.

7 A Right.

8 Q As a step-grandfather, did you change diapers?

9 A Yeah.

10 Q ~~okay.~~

11 A Sure.

12 Q okay. So when you and Charlotte would keep [REDACTED]
13 you'd still participate in the care of the child,
14 correct?

15 A Exactly. Yeah.

16 Q ~~Would~~ it be an accurate assessment to say that
17 Charlotte probably did more in that regard than you
18 did?

19 A Yeah.

20 Q And that would be expected.

21 A Right.

22 Q I mean, my wife probably does more with my
23 grandkids.

24 A There were times that he would, you know, stay the
25 night with us, [REDACTED] would stay the night with us,

1 and wake up the next morning and he'd be on my
2 chest, you know, - - -

3 Q Okay.

4 A - - - and he'd be cackling and going on, you know.
5 You know, we had some good times.

6 Q Now, I asked the question about Kayla as a mom.
7 What about Michael as a dad, did you have occasion
8 to observe Michael with [REDACTED], see them interacting
9 where you ~~can~~ reach a conclusion as to what kind of
10 father Michael was? Up to that first injury, not
11 in retrospect, but what you recall having seen in
12 those first four months.

13 A Yeah, I would see Michael holding him. I would see
14 Michael whenever we would be at the church and
15 Kayla would be active doing something, Michael
16 would be taking care of him. I'd see Michael play
17 with him, you know, and talk to him and interact
18 with him. Yeah.

19 Q Did Michael change diapers?

20 A Yeah.

21 Q Did Michael feed [REDACTED]?

22 A Yeah.

23 Q Was Michael attentive? When he had the care of
24 [REDACTED] and you were able to see it, was Michael
25 attentive to [REDACTED]?

- 1 A Yeah, unless he was at my house and Charlotte was
2 there, and grandma was there.
- 3 Q Oh, grandma would have preempted that chance?
- 4 A Right. Right.
- 5 Q Did [REDACTED] appear to recognize Michael as his dad
6 from what you could see? Obviously you can't get
7 in [REDACTED]'s head but did it appear to you that when
8 Michael picked up [REDACTED] [REDACTED] was responsive to
9 Michael picking him up?
- 10 A Yeah. He'd buckle him in his car seat and, you
11 know, he would take him to - - - yeah, he'd
12 interact with him.
- 13 Q Now, you read both Charlotte's deposition and
14 Kayla's deposition, correct?
- 15 A (Indicating yes)
- 16 Q And that's a yes?
- 17 A Yes, sir.
- 18 Q And do you remember reading in both those
19 depositions that each of them testified that they
20 had some concern about the way Michael would pick
21 [REDACTED] sometimes?
- 22 A Yes.
- 23 Mr. Shaw - Objection.
- 24 Q Okay.
- 25 A Yes, sir.

1 Q You do remember having seen them?

2 A Yes, I remember that.

3 Q And their concern was that maybe sometimes he
4 wouldn't secure the child's head as he should have?

5 A (Indicating yes)

6 Mr. Shaw - Objection.

7 Q So that so is yes?

8 A Yes.

9 Q Okay. The reason I say that is uh-huh and huh-uh -
10 - -

11 A I understand.

12 Q - - - phonetically sound the same.

13 A I understand.

14 Q I want to make sure you say yes - - -

15 A Yes.

16 Q - - - it comes out as a yes and when no, a no. Did
17 you have any occasion to see that, where he would
18 pick him up and maybe not secure his head as a
19 parent ideally should do?

20 A Never seen him.

21 Q And you understand what I'm talking about when I
22 say secure his head?

23 A Yes.

24 Q That babies, their heads will flop around?

25 A Yes. Yes.

Deposition of Rev. Larry Williams

1 Q I know you read in the depositions but did either
2 Kayla or Charlotte, before the December injury,
3 tell you that they had concern about the way
4 Michael was picking up the child? And I'm not
5 saying he did it every time. I'm just saying - - -

6 A Yeah.

7 Q - - - that had mentioned that it happened often
8 enough that it caused them some concern and they
9 said that.

10 A Yes.

11 Q Did either of them say that to you before the
12 December injury?

13 A They never said it to me.

14 Q Okay.

15 A I never seen that until I read the depositions.

16 Q So if the two of them had that concern, they never
17 relayed that to you before the December injury?

18 A Correct.

19 Q In fact, they never relayed it to you at all and
20 you didn't know about it until you read it in the
21 deposition?

22 A Correct.

23 Q Did either Kayla or Charlotte ever relay anything
24 to you before the December injury indicating some
25 concern on their part about the quality of

1 Michael's care of [REDACTED]?

2 A No.

3 Q And I think you'd said that when you saw Michael
4 caring for [REDACTED] you had no reservations about the
5 quality of his care for [REDACTED].

6 A No.

7 Q After the December 4th injury but before the
8 January 11th or January 10th injury, did either
9 Charlotte or Kayla indicate to you any concerns
10 they had about Michael's being able to care for the
11 child?

12 A No.

13 Q You mentioned board games y'all played. What kind
14 of board games did you play?

15 A We played Dominos. That was one of the favorite
16 games there.

17 Q I understood that Michael played video games. Did
18 you play video games?

19 A No.

20 Q Neither do I.

21 A I don't have time.

22 Q But it is your understanding that Michael did play
23 video games?

24 A Yes, he did.

25 Q And the video - - - the controller that at some

1 point, and I think in November, had fallen and
2 bruised [REDACTED]'s head. Was it your understanding
3 that that was a television remote control, or was
4 it a video game controller, or do you know?

5 A I don't know.

6 Q Will you agree with me that of everyone in your
7 family, which would include you, Charlotte, Kayla -
8 - - well, you, Charlotte and Kayla, that Kayla was
9 probably the closest person to Michael with regard
10 to him confiding in her, her confiding in him, and
11 her being able to see him caring for [REDACTED]?

12 A Correct.

13 Q I mean, you and Charlotte would have got a look at
14 that - - -

15 A Right.

16 Q - - - a good bit but Kayla was probably in a better
17 position to see everything. She could see behind
18 the curtain whereas you and Charlotte maybe
19 couldn't?

20 A Correct.

21 Q And you used the term behind the scenes. If
22 anybody could see behind the scenes, and I'm not
23 saying Kayla could, - - -

24 A Right.

25 Q - - - but if anybody could, Kayla would have been

1 in the best position to do that, certainly a better
2 position than either you or Charlotte, correct?

3 A Correct.

4 Q Now, after you got word that [REDACTED] had been injured
5 on December 4th and then I think you got the call
6 Saturday, December 5th?

7 A From the first injury?

8 Q First injury.

9 A No, I got the call from the hospital - - - I mean,
10 not - - - I got the call from Kayla, - - -

11 Q Okay.

12 A - - - I got a call Kayla on that evening of the - -
13 - that he was injured - - -

14 Q Okay.

15 A - - - on that evening probably - - - I'm saying
16 probably somewhere around 4:30, 5 o'clock, 6:00,
17 somewhere around in that area - - -

18 Q Okay.

19 A - - - because I remember that very, very good
20 because I was putting lights up on the house.

21 Q And that would have been a Friday and then he went
22 to Levine's early, early, early in the morning - -

23 -

24 A Right. Correct.

25 Q - - - on Saturday the 5th - - -

- 1 A Correct.
- 2 Q - - - is that your understanding?
- 3 A (Indicating yes)
- 4 Q When Kayla called you and said that he was injured
- 5 or he was sick - - - I use the term injured but all
- 6 they knew was that he was sick, - - -
- 7 A Right.
- 8 Q - - - there was something wrong with him.
- 9 A Right.
- 10 Q They get him to Levine's and they find at some
- 11 point that he's got a couple of small hematomas,
- 12 correct?
- 13 A Well, he goes to Piedmont first.
- 14 Q Piedmont first - - -
- 15 A First, and then - - -
- 16 Q - - - but then it got to Levine's.
- 17 A - - - Levine, yes.
- 18 Q And at Levine's somebody tells Kayla or you or
- 19 somebody that he's got a couple of small hematomas,
- 20 correct?
- 21 A Right.
- 22 Q How did you find out about the hematomas; from a
- 23 doctor, from Charlotte, from Kayla?
- 24 A I found out from the - - - from the doctor that was
- 25 examining him, the eyes. That's when I was told.

1 Q When they examined the eyes, do you know what
2 they're looking for in the eyes?

3 A They're looking for blood behind the eyes.

4 Q Retinal hemorrhaging?

5 A Yes. Yes.

6 Q Do you know if they said any retinal hemorrhaging
7 in December?

8 A Yes.

9 Q And you know that because the doctor told you that?

10 A Because - - - yeah.

11 Q And you know he's looking for it?

12 A Right. Right.

13 Q But do you know if he found it?

14 A Yes.

15 Q After you found that there were these two small
16 hematomas and retinal hemorrhaging, did you ask
17 Kayla and Michael, or did you ask anybody, how is
18 this caused?

19 A Other than Dr. Bailey.

20 Q And you mentioned Bailey said it can only happen
21 two ways, one from birth and then the other is - -
22 - and did he actually use the word shaken or did he
23 just use the gesture of shaking?

24 A Used the gesture.

25 Q So he used the gesture, didn't use the word

- 1 shaking, and then - - -
- 2 A No, he used both.
- 3 Q Oh, so he said shaking - - -
- 4 A He said - - - yeah, shaking. He used them both.
- 5 Q And then rather than explaining that, he
- 6 immediately left the room?
- 7 A Yes.
- 8 Q Okay.
- 9 A Yeah, he did - - - he finished doing what he was
- 10 doing and walked out of the room.
- 11 Q I mean, nobody said hold on a second?
- 12 A No.
- 13 Q My grandkid's got hematomas and retinal
- 14 hemorrhaging, you just said - - -
- 15 A No.
- 16 Q - - - it could happen because he's shaken, come
- 17 back and explain to me a little bit more; nobody
- 18 asked that?
- 19 A No.
- 20 Q I mean, did you have trouble connecting the dots
- 21 from what you'd seen of Michael and Kayla as
- 22 parents and then this doctor saying there's only
- 23 two ways it could happen at birth but we're going
- 24 to dismiss that and shaking? Did you have some
- 25 difficulty making the leap from your understanding

- 1 that they're good parents to suddenly we got a kid
2 with a brain bleed, and it's maybe the result of
3 shaking; did you have a problem with that?
- 4 A well, those questions, we questioned Kayla and
5 Michael and asked them, you know, did you - - -
- 6 Q well, that's my next question.
- 7 A Yeah, we asked them.
- 8 Q what - - -
- 9 A And they said no.
- 10 Q okay.
- 11 A We asked them what happened to this child, you
12 know.
- 13 Q okay.
- 14 A After Dr. Bailey made his statement we definitely
15 questioned them.
- 16 Q okay.
- 17 A And then when we questioned them they said no. So
18 we had no reason to doubt them because we never saw
19 any kind of injury, never say any kind of physical
20 abuse by either one of them.
- 21 Q what question did you ask them to which they
22 answered no?
- 23 A Did you do any - - - was there - - - what happened
24 to the child? Did you guys do anything to the
25 child?

1 Q okay.

2 A That was the question.

3 Q okay. And in asking that question, are you
4 assuming that what they would have done to the
5 child would have been intentional? Because this
6 has been mentioned earlier, and it's been mentioned
7 a lot in this case, intentionally harmed him.
8 Michael intentionally harmed the kid. I mean, he
9 pled guilty. He's in jail now. Your wife was in a
10 rocking chair that tipped over and the child hit
11 his head on the wall. If that kid had been hurt as
12 a result of that, that would not have been your
13 wife intentionally harming your grandson, would it?
14 She would never intentionally harm your child.

15 A No, she wouldn't.

16 Q But would you agree with me that if in tipping that
17 rocking chair over backwards and the child hitting
18 his head on the wall, the child had been injured,
19 the child still would have been injured but it
20 would not have been an intentional act; would you
21 agree with that?

22 A Right.

23 Q Now, obviously Michael's pled guilty to having done
24 something with the child. Have you ever heard him
25 say that - - - Let me give you an example. I have

1 another case I'm defending DSS where we have a
2 seven-month-old child whose babysitter, the
3 daycare, for whatever reason, the kid was crying,
4 whatever it was, the kid's got a problem. And we
5 later find out she's got three finger marks on the
6 left side of her face where apparently the
7 babysitter slapped her, a seven-month-old kid. So
8 clearly that's not a mistaken injury, - - -

9 A Okay.

10 Q - - - that's a slap. That's an intentional act.

11 A Right.

12 Q Have you heard anything from Michael or from
13 anybody indicating that Michael did something, the
14 equivalent of slapping a child or that maybe he
15 couldn't get the kid to be quiet and shook him? Do
16 you know how that injury occurred?

17 A No.

18 Q Have you seen any statement from Michael of how the
19 injury occurred, whether it was an intentional slap
20 or whether we got a young father who is not taking
21 care of the child the way he should obviously in
22 retrospect and shook the kid when he maybe should
23 not have?

24 A No.

25 Q So when we're using the term intentionally harmed

1 him, obviously he was injured, but do we know that
2 Michael Carduff intentionally harmed his son other
3 than the fact he's pled guilty to criminal charges?

4 Mr. Shaw - Objection to the form.

5 A Do we know that he intentionally harmed his son?

6 Q Yes.

7 A I think so.

8 Mr. Todd - In December. You mean in ~~December~~?

9 A You mean - - -

10 Q well, I'm talking about January.

11 Mr. Shaw - Objection.

12 A Yeah.

13 Q In January obviously the child was shaken and
14 that's what Michael has said, that he was shaken.
15 But do we know that he shook the child with the
16 intention of injuring the ~~child~~ - - -

17 Mr. Shaw - Objection.

18 Q - - - or that the injury was a by-product of him
19 shaking the child?

20 Mr. Shaw - Objection.

21 Q I guess that's a minor point because it doesn't
22 matter, he's pled guilty.

23 A Right. Right.

24 Q But do you know whether he did something with
25 criminal intent when he shook that child?

1 A No, I don't know.

2 Mr. Shaw - Objection.

3 A I don't know.

4 Q Okay.

5 A I'm not trained and qualified to see what you guys
6 see. You guys are trained, you've been trained,
7 you've been to school to do your job. I haven't
8 been trained for that. You see things that - - -
9 you look for things that we don't look for, we
10 don't look for.

11 Q Okay. We're not talking about what we're trained
12 to see and then how we get our information.

13 A Okay.

14 Q Well, when you heard about the subdural hematomas
15 and the retinal hemorrhaging and you asked Michael
16 and Kayla, did you guys do something to [REDACTED], how
17 could this have happened, they both disclaimed any
18 knowledge of what could have happened to Owen on
19 their watch that would have caused his injuries,
20 correct?

21 A Right.

22 Q Now, had you and Charlotte kept Michael between
23 Thanksgiving, which I think was November 26th that
24 year, and December 4th?

25 A Kept Owen you mean?

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1 Q In that week, one-week period?

2 A Probably.

3 Q Do you remember Thanksgiving that year?

4 A I do.

5 Q Do y'all have everybody over for Thanksgiving; how
6 does that work?

7 A Yes. Yes, we have folks over for Thanksgiving.

8 Q On that particular Thanksgiving, were Michael and
9 Kayla and [REDACTED] at your home?

10 A Yes.

11 Q We've got the December 4th injury and you get there
12 - - - let me make sure I'm clear on this because -
13 - - December 4th was a Friday. They're at Piedmont
14 for some period of time and eventually they get to
15 Levine's early, early the morning of December 5th
16 which is a Saturday; is that your understanding?

17 A Yes.

18 Q And you're there for some period of time. Sunday
19 the 6th you have services, correct?

20 A Correct.

21 Q And you've gone to take care of those services?

22 A Right.

23 Q And I think you testified when Mr. Todd asked you
24 questions that you got to Levine's about 2:00 to
25 3:00 p.m. on the 6th, correct?

Deposition of Rev. Larry Williams

1 A Correct.

2 Q Now, I will tell you for purposes of my questioning
3 that DSS got the intake call December 6th. So the
4 first DSS has notice of it is, I think, 5:01 p.m.
5 on December 6th.

6 A Okay.

7 Q Do you remember Sunday somebody from DSS coming to
8 the hospital, a case worker from DSS?

9 A I don't remember. They were in and out. I can't
10 give - - -

11 Q But you do you remember somebody from DSS coming at
12 some point?

13 A Yes.

14 Q When you said they were in and out, in the room
15 that [REDACTED] was in for the December 4 injury, you
16 said he was in his own room, private room?

17 A He was on the children's ward in a room, yes.

18 Q And you said the room was approximately the size of
19 this conference room we're in today, correct?

20 A Probably.

21 Q And you said they were in and out. When you were
22 there - - - You would have been there, correct?

23 A (Indicating yes)

24 Q Charlotte would have been there?

25 A (Indicating yes)

- 1 Q Yes?
- 2 A Yes.
- 3 Q Kayla and Michael, were they there all the time or
4 were they in and out?
- 5 A Kayla was there pretty much all the time.
- 6 Q Okay.
- 7 A Now, I don't know about Michael because Michael
8 could have left when I wasn't there - - -
- 9 Q Okay.
- 10 A - - - so I don't know. But he was there when I was
11 there.
- 12 Q If Michael had left, he's not leaving to go to work
13 because he doesn't have a job then, right?
- 14 A Right.
- 15 Q [REDACTED] obviously would have been there. Medical
16 staff, doctors and nurses would be in and out,
17 correct?
- 18 A Correct.
- 19 Q Sitting here today do you have a recollection of a
20 DSS case worker coming there and can you visualize
21 what she looked like, what he looked like?
- 22 A I remember the case worker coming and that was when
23 they asked us if we would take [REDACTED] into custody.
- 24 Q Okay.
- 25 A I don't remember her name, who she was, but I do

1 remember her talking to Charlotte and I about that.

2 Q Can you describe her for me?

3 A She was a black lady.

4 Q Late 20s or early 30s?

5 A Probably.

6 Q Okay.

7 A Yeah.

8 Q And she would have given you her name but you can't
9 remember her name?

10 A Right.

11 Q When she was there did you see her - - - did she
12 also talk to Kayla?

13 A She may have.

14 Q Okay.

15 A I didn't experience that conversation.

16 Q Now, it was your understanding that if DSS is
17 there, the purpose for them being there is to
18 investigate what happened; was that your
19 understanding?

20 A I'd assume so. Yes, sir.

21 Q And it's not your understanding that DSS always
22 gets called to the hospital anytime a baby comes
23 into the hospital; that's not your understanding,
24 right?

25 A No.

1 Q So there's got to be something that triggers DSS
2 coming to the hospital as this case worker did?

3 A Yes.

4 Q And this case worker got there and asked you and
5 Charlotte if you would be able to care for the
6 child during their investigation?

7 A Correct.

8 Q Now, would you agree with me ~~that~~ when DSS is
9 called to the hospital and ~~comes~~ for purposes of
10 conducting an investigation, that if their
11 investigation leads them to the conclusion that
12 they have to remove that child, they need to have
13 some place to that child; would you agree with that
14 statement?

15 A Yes.

16 Q Would you also agree with the statement that it is
17 better for DSS, if they remove a child, to place
18 that child with family than with foster care?

19 A Yes.

20 Q So it would be reasonable for DSS to check with
21 family early in the process to see if there is
22 family with which they can leave this child if the
23 child has to be removed; would you agree with that
24 statement?

25 A Yes.

1 Q So did it alarm you in any way that this case
2 worker is talking to you and Charlotte about y'all
3 possibly being the family placement for this child
4 if the child had to be removed?

5 A We just figured it's protocol.

6 Q So it did not alarm you?

7 A No.

8 Q Other than that first time that you spoke with the
9 DSS case worker, did you speak with her on any
10 subsequent dates? That's a 25 cent way of saying
11 did you ever talk to this lady again after that?

12 A Not that I can recall.

13 Q Now, I know after the second injury there is a long
14 period of time - - -

15 A Right.

16 Q - - - where there are DSS people to talk to. What
17 I'm going to focus on is the time up to that second
18 injury, in the intervening five weeks or whatever
19 it is. After this first meeting with the DSS case
20 worker, do you recall having met with another DSS
21 case worker, someone else who identified herself as
22 being with DSS, either in person or on the
23 telephone phone before the second injury? Now, I'm
24 talking about you now, not anybody else.

25 A During that time there's so much going on at that

1 time, it's hard to think back over the time from
2 when it happened to now and be precise because
3 there's so much going on at that time.

4 Q Right.

5 A I don't recall.

6 Q But would you agree with me - - - now, introspect
7 we can look back and we can connect the dots now.

8 A Right.

9 Q But wouldn't you agree ~~with~~ that in determining
10 what was done or what should have been done at that
11 time it's important to know what people knew and
12 when they knew it; would you agree with that?

13 A Information is important, yes.

14 Q Right.

15 A Yes.

16 Q Not only knowing information's important but when
17 you know that information, that's important too,
18 correct?

19 A Yeah.

20 Q Because you don't get a Mulligan, you don't get a
21 do-over, do you?

22 A Right.

23 Q In fact, you are obviously kicking yourself a
24 little bit over your mentioning to Charlotte that
25 this young man needs to step up and take care of

1 his son when, in fact, that's exactly what should
2 have happened and that's exactly what you should
3 have said and it wouldn't have mattered, that you
4 did the right thing there and none of that's on
5 you. Do you understand that?

6 A Yes, sir.

7 Q Because you had no basis for suspecting Michael and
8 that he would harm his child, correct?

9 A Correct.

10 Mr. Shaw - Objection of the form.

11 Q Well, that's what you just testified to, right,
12 throughout today ~~that~~ that you had no reason to suspect

13 - - -

14 A That's correct.

15 Q - - - that Michael Carduff would do anything to
16 harm his child?

17 A Correct.

18 Q Now, I've got this in quotes that you had said
19 something about what are you going to do with this
20 matter. And I understand the situation you were
21 in, what are you guys going to do. You know,
22 talking probably I guess to DSS and to Levine's:
23 what are you guys going to do about this. You knew
24 DSS was involved, but you had not yourself seen or
25 expected that there was abuse and neglect involved

1 with this child's injury, correct?

2 Mr. Shaw - Objection. I'm not sure there was
3 a question in there. What's the question?

4 Mr. Frawley - It probably went two or three
5 different ways so let me - - -

6 Q And I usually say this at the beginning of
7 depositions too. If I ask you a question you don't
8 understand, because I've got a script and obviously
9 I've totally bollixed this question. If I ask you
10 a question and you don't understand it or it's at
11 all ambiguous to you, I want you to feel
12 comfortable asking me to rephrase it as just
13 happened.

14 A Okay.

15 Q I don't want you answering anything that's a bad
16 question. That was a bad question. So the quote I
17 gave was what are you going to with this matter.
18 And that's my quoting, my recollection of what you
19 said earlier. What did you mean by that and who
20 were you addressing that to?

21 A I'm addressing - - - I'm addressing Levine. I'm
22 addressing DSS. I'm addressing law enforcement.
23 And the reason why I'm addressing it is because,
24 like I've always said, you guys are trained.
25 You're trained to look for things and to see things

1 that we're not trained to look and look for and
2 things that we're not - - - we just don't see the
3 way you guys have been trained to see things, and
4 that's what I mean by that. Because the fact is if
5 you - - - if you saw anything as DSS, if you saw
6 anything as Levine, if you've seen anything as law
7 enforcement that brought suspicion in any kind of
8 way, in any kind of way, you guys are trained to
9 see that ~~kind~~ of stuff. And if you've seen that
10 kind of stuff and don't act upon it to protect my
11 grandson, protect my grandson, that's what I mean
12 by the question.

13 Q well, let's talk about what DSS is trained to do.

14 A Okay.

15 Q They came to the hospital so they did respond to
16 the intake assuming that there was a call to DSS on
17 December 6th, correct?

18 A Yes.

19 Q I mean, you saw the lady at the hospital so she
20 showed up?

21 A Yes.

22 Q She met with people there and she asked questions.
23 You saw that didn't you?

24 A Yeah.

25 Q She got with you and Charlotte who were family to

1 see about possible family placement; they did that
2 didn't they?

3 A They did.

4 Q Do you know if they made a law enforcement inquiry?

5 A I don't know.

6 Q Had they done a law enforcement inquiry, what they
7 would have found was that you had a charge that at
8 that point was 21, 22 years old at that point and
9 that your charge had been pardoned, correct?

10 A Correct.

11 Q They would have found that Charlotte Williams had a
12 CDV in the past and maybe a DUI. They'd have found
13 that, correct?

14 A Correct.

15 Q And they'd have found nothing on either Kayla or
16 Michael, correct?

17 A Correct.

18 Q I mean, as far as you know Michael had no criminal
19 record did he?

20 A Right. No.

21 Q So if they did a law enforcement inquiry, if they
22 did that law enforcement inquiry on December 6th or
23 December 16th, they would have found nothing on
24 Michael Carduff that would have cast suspicion on
25 how he dealt with his son, correct - - -

- 1 A Correct.
- 2 Q - - - at least in a law enforcement inquiry, right?
- 3 A Yes, sir.
- 4 Q Right. The answer to that is yes?
- 5 A Yes.
- 6 Q Do you know if they set up a home visit where they
- 7 went out to Michael and Kayla's home and saw the
- 8 two of them interact with [REDACTED]?
- 9 A Yes.
- 10 Q They did do that?
- 11 A They did a home visit but when they went in for the
- 12 home visit all they did was just look at Owen's
- 13 living area and that was it and bye.
- 14 Q Were you there when they did it?
- 15 A No, that's what I was told by Kayla.
- 16 Q Okay. who told you that?
- 17 A Kayla.
- 18 Q By Kayla.
- 19 A Kayla.
- 20 Q By Kayla who - - -
- 21 A Kayla - - -
- 22 Q - - - was the mom of the child who wound up in the
- 23 hospital again, correct?
- 24 A Right.
- 25 Q So - - -

- 1 A But there's no suspicions. So you said there was
2 no record on Kayla. There's no record on Michael.
3 But you're just going to go in and just look at the
4 crib and look at the living facility and then walk
5 out? No.
- 6 Q Well, first your knowledge of what took place in
7 that home, you're getting that from Kayla; you
8 weren't there, correct?
- 9 A No, I wasn't there. No.
- 10 Q They did do a home visit and whatever it is they
11 looked at, they did go to the home, correct?
- 12 A Right. They went to the home. Yes.
- 13 Q You know that from Kayla?
- 14 A I do know that.
- 15 Q So far as you know they walked in, looked at the
16 crib and - - -
- 17 A Right.
- 18 Q - - - that's all but they did go do that?
- 19 A Exactly.
- 20 Q Do you know if it took them three calls to Kayla to
21 be able to set up a time when they can do that?
- 22 A I didn't know that.
- 23 Q Do you know if they had calls to Charlotte to get
24 statements from Charlotte about what she thought
25 was going on with Kayla and with Michael?

1 A I didn't know.

2 Q Mr. Todd asked you whether you'd heard the term
3 nonaccidental trauma. Do you understand what that
4 is?

5 A I do now.

6 Q It's a term of art that it looks like something had
7 happened here and it's not an accident.

8 A Right.

9 Q It's not like a child falling down and hitting his
10 head, something a little more than that happened?

11 A Exactly.

12 Q And you understand there's some indications of that
13 are the retinal hemorrhaging; do you know that?

14 A Yes.

15 Q Do you know how DSS gets their information for the
16 special training and the insight they're supposed
17 to have into abuse and neglect cases?

18 Mr. Shaw - Objection.

19 Q Do you know how they get it?

20 A No.

21 Q They talk to witnesses, do you know that? They
22 talked to you didn't they?

23 A Yes.

24 Q Do you know if they talked to Charlotte?

25 A I'm sure they probably did.

Deposition of Rev. Larry Williams

1 Q So would you agree with me that one way for them to
2 find out if there are problems or potential
3 jeopardy issues with Michael Carduff is they have
4 to talk to the people around Michael Carduff to see
5 what they say about him; would you agree with that?

6 A Yeah, I agree with that. When you're doing an
7 investigation like what you guys are doing, the
8 child's at harm. He's at harm. You know something
9 happened. Nonaccidental trauma means it's possible
10 that this child was neglected. In some type of way
11 he was abused. Okay. And by you not taking
12 responsibility and moving that child out of the
13 home until you complete your investigation, until
14 you get some kind of lead way to what happened to
15 this child, then you're wrong.

16 Q So it's your understanding that there was a
17 diagnosis of nonaccidental trauma from that first
18 injury?

19 A That's what you just told me.

20 Q That's your understanding? That's not what I just
21 told you. I asked you if you knew what
22 nonaccidental trauma was. Clearly there was - - -

23 A Then - - - yeah, - - -

24 Q - - - nonaccidental trauma on January 11.

25 A Right.

1 Q But it is your understanding that there was a
2 diagnosis of nonaccidental trauma from December 6?

3 A Yeah, that possible nonaccidental trauma, right?

4 Q That's your understanding of it?

5 A That's my understanding of it.

6 Q And where did you get that understanding?

7 A When the doctor said shaking and when the doctor
8 said it could be at birth, that he ruled out - - -
9 he ruled the birth and went to the shaking, that -
10 - - that even right there says that it's
11 nonaccidental, nonaccidental trauma. They just
12 didn't want to admit that - - - they didn't want to
13 say anything that it's possible that this child was
14 injured, but we're going to let him go home anyway,
15 and that's what they done. That's what everybody
16 done. They just let - - - they just let him go.

17 Q Would you agree with me that DSS cannot just remove
18 a child from someone's home without some evidence
19 indicating that there's nonaccidental trauma?

20 Mr. Shaw - Objection.

21 A Repeat the question.

22 Q Would you agree with me that DSS cannot remove a
23 child from someone's home unless there's some
24 evidence indicating that there was nonaccidental
25 trauma?

1 Mr. Shaw - Same objection.

2 A If that's their policy. If that's their police. I
3 don't know what their policy is.

4 Q well, I mean, if your child falls down in the
5 backyard and skins his knee, should DSS be able to
6 come in and remove your child to investigate how he
7 fell down and skinned his knee?

8 Mr. Shaw - Objection.

9 A No. I think that determines on the seriousness of
10 it.

11 Q well, what if your child falls down and hits his
12 head on the sandbox out back?

13 Mr. Shaw - Same objection.

14 Q I mean, just the injury itself is not what dictates
15 whether DSS - - -

16 A Right.

17 Q - - - can remove a child; would you agree with that
18 statement?

19 A I do.

20 Q There's got to be some indication that there's an
21 injury there and that there's some reasonable
22 expectation, some evidence, supporting that it was
23 the result of abuse and neglect; would you agree
24 with that?

25 Mr. Shaw - Objection.

1 A Yes.

2 Q I'm going to ratchet it back a little bit and I
3 apologize if I've gone - - -

4 A That's fine.

5 Q - - - too long. Now, Michael and Kayla's job
6 situations, Kayla was working and Michael wasn't,
7 correct?

8 A Correct.

9 Q And Michael, if he's not working, it's reasonable
10 to expect that he should be staying home taking
11 care of the kid, correct - - -

12 A Correct.

13 Q - - - instead of pawning him off on grandma and
14 then doing whatever it is he was doing?

15 A Correct.

16 Q And in fact that's where you got to the point where
17 you said Michael needs to step up and take care of
18 his own son?

19 A Correct.

20 Q Now, that dynamic created some stress between Kayla
21 and Michael didn't it, that she was having to work
22 and he's not?

23 A Yes.

24 Q And it had created enough stress that she'd kicked
25 him out of the house, I think it was New Year's Eve

1 of 2009, he was out for about a week, correct?

2 A Correct.

3 Q Do you know if that was ever reported to DSS?

4 A No, I don't know.

5 Q I mean, do you think that's something that should
6 have been reported to them for them to evaluate
7 whether there's stressors in that home that may
8 lead to this child being injured?

9 Mr. Shaw - Objection.

10 A No.

11 Q So you don't think that's something that should
12 have been reported?

13 A I don't think so. I think that's something they
14 could work out between the two of them.

15 Q And in fact they appeared to have worked something
16 out because he came back - - -

17 A Right.

18 Q - - - about four days before the boy was injured,
19 correct?

20 A Exactly. Yes.

21 Q Did the fact that there was stress between Kayla
22 and Michael with regard to the job situation cause
23 you any concern for [REDACTED]'s well-being?

24 A No.

25 Q Did the fact that Michael kept deferring to

1 Charlotte to care for the child cause you any
2 concern that Michael maybe wasn't taking as good a
3 care of [REDACTED] as he should have when he did have
4 him?

5 A No.

6 Q Had you had any concern you would not have
7 suggested to Charlotte that Michael needs to take
8 care of [REDACTED] correct?

9 A Right. I was thinking that he just wanted to have
10 his time to go play video games with his friends.

11 Q You mentioned that you were aware of a Hospice
12 House here. And I know we've got it somewhere in
13 there - - -

14 A Right.

15 Q - - - but when you say Hospice House here you were
16 indicating something with your hand as if it's in
17 the area. Can you give me the street that that's
18 on?

19 A It's on Herlong.

20 Q Herlong? Okay. But it's a Hospice House located
21 here in Rock Hill, correct?

22 A Rock Hill. What's this highway where the hospital
23 is?

24 Mr. Shaw - It's India Hook. I'll interject,
25 it's India Hook.

1 Q I mean, we got it documented somewhere.

2 A Okay.

3 Q But when you talked about you had had some contact
4 with a Hospice House here as a minister, that's the
5 one you were talking about?

6 A Yes, sir.

7 Q Has anybody from DSS told you that they should have
8 removed [REDACTED] from Michael and Kayla after that
9 December 4th injury but before the January 11
10 injury?

11 A No.

12 Mr. Frawley - Reverend Williams, I appreciate
13 your patience. That's all I've got.

14 EXAMINATION - (By Mr. Settana)

15 Q Reverend Williams, I'm Dan Settana. I represent
16 the York County Sheriff's Department and York
17 County.

18 A Yes, sir.

19 Q Let me ask you, do you know anybody who currently
20 works at the York County Sheriff's Department?

21 A Do I know anybody?

22 Q Do you have any friends there, any former members
23 of your church?

24 A I knew Mr. Caldwell - - -

25 Q Okay.

Deposition of Rev. Larry Williams

1 A - - - because we did jail ministry there at York -

2 - -

3 Q Detention Center?

4 A - - - Detention Center. Yes, sir.

5 Q He wasn't involved in this case though was he?

6 A No.

7 Q Anybody else?

8 A No, sir.

9 Q How about at York County itself?

10 A No, sir.

11 Q You don't know the legal relationship between York
12 County and the sheriff's department do you?

13 A No.

14 Q Do you know if York County had anybody involved in
15 this incident at all?

16 A Do I know if York County - ---

17 Q Yes.

18 A Yes, they were involved.

19 Q Who?

20 A What's her name? Is it Amanda Carter? Is that one

21 - - -

22 Q Okay, from the sheriff's department?

23 A From the sheriff's department, yes.

24 Q Okay. No. No. I don't mean the sheriff's
25 department.

1 A Oh, you're talking - - - okay.

2 Q Yes, in York County.

3 A No.

4 Q And you said you did prison ministry, and I know
5 you just mentioned the detention center. Have you
6 ever done any Department of Corrections facilities?

7 A All over.

8 Q Which ones?

9 A Kirtland, Broad River, Camille Graham, McCormick,
10 Goodman.

11 Q And are you still doing them at the Department of
12 Corrections facilities?

13 A Not as many. Not as many. We do lower Savannah
14 Pre-release Center, and we do - - - what's the name
15 of that other place? Trenton. Those are the two
16 we're doing now.

17 Q At the time of this incident back in January of
18 2010, you spoke to Lieutenant Carter or Sergeant
19 Carter, correct?

20 A Carter?

21 Q Yes, Amanda Carter.

22 A Yeah, Amanda Carter.

23 Q Did you speak to anyone else from the sheriff's
24 department?

25 A I can't remember.

1 Q The night they took Michael Carduff to the
2 polygraph exam, did you go over to York for that
3 exam?

4 A No. I was at the hospital. I was at Levine.

5 Q Do you know who took Michael that night?

6 A No. I don't know - - - I don't know if Kayla drove
7 him or somebody drove - - - or he drove himself. I
8 don't - - - I don't - - -

9 Q Okay.

10 A - - - I don't recall.

11 Q Back in December - - - and I'm jumping around
12 because I really cut way down on what needs to be
13 asked. Back in December, the December incident,
14 okay, at Levine, did you see any police officers
15 there, any law enforcement?

16 A In December? No.

17 Q How about did you go to Piedmont Medical Center
18 when [REDACTED] was at the Piedmont Medical Center in
19 December?

20 A No. No.

21 Q Personally, do you know of any law enforcement
22 officers who met with either your wife or with
23 Kayla or with Michael?

24 A Not that I'm aware of.

25 Q Have you spoken to anybody who said all right,

1 these law enforcement officers spoke to Michael and
2 Kayla at the hospital, at any hospital, in
3 December?

4 A No.

5 Q Now, you keep saying that law enforcement is
6 trained to spot abuse and neglect cases or, you
7 know, injuries that may have been caused by abuse.
8 Who told you that they were trained to do that?

9 A Trained to protect.

10 Q But what training are they given to spot abuse and
11 neglect.

12 A I'm sure they - - -

13 Mr. Shaw - Objection.

14 A - - - I'm sure they probably, you know, watch
15 videos and - - - I mean, what kind of - - - what
16 kind of police department would it be or DSS or the
17 hospital if we don't - - - if we're not equipped,
18 you know.

19 Q Let me ask you about what your knowledge is. And
20 if you don't know, that's fine.

21 A Okay.

22 Q What training has the York County Sheriff's
23 Department been giving or what training do they
24 give to their officers regarding abuse and neglect?

25 A I don't know.

1 Mr. Shaw - Objection.

2 Q Okay.

3 A I don't know.

4 Q And what signs or symptoms are they trained to spot
5 in abuse and neglect cases?

6 Mr. Shaw - Objection.

7 A I'm not sure.

8 Q And under what situations are they required to
9 intervene in abuse and neglect cases?

10 Mr. Shaw - Same objection.

11 A If they suspect that there's any harm or threat
12 done to an individual.

13 Q Okay.

14 A That's why they're law enforcement.

15 Q And do you know what policies or statutes or
16 regulations require, state, what you just said?

17 A No, sir.

18 Q You're just saying that based on your common sense;
19 would that be correct?

20 A Right. Correct.

21 Q No one's told you this is when law enforcement is
22 supposed to get involved have they?

23 A No.

24 Q And you haven't had any training as to when law
25 enforcement's supposed to get involved have you?

Deposition of Rev. Larry Williams

- 1 A No, sir.
- 2 Q I think Mr. Frawley asked you, but you never called
3 the police about [REDACTED] well-being, have
4 you?
- 5 A No.
- 6 Q And you never called the police and said [REDACTED]
7 [REDACTED] is in danger, [REDACTED] is injured, - -
8 -
- 9 A No.
- 10 Q - - - you need to get involved, have you?
- 11 A No.
- 12 Q Let me be a little more specific. Before the
13 December 4th incident, you never called law
14 enforcement about [REDACTED]
- 15 A No.
- 16 Q In December, did law enforcement ever call you or
17 speak to you about [REDACTED] [REDACTED]?
- 18 A Not that I can recall.
- 19 Q Did anyone from law enforcement speak to you about
20 Michael or Kayla?
- 21 A No.
- 22 Q Now, in the January incident, you did speak to law
23 enforcement, correct?
- 24 A Correct.
- 25 Q And you spoke to Ms. Carter?

1 A Right.

2 Q Was that at the hospital that you first spoke to
3 her?

4 A Yes.

5 Q What was the substance of that conversation?

6 A To try to find out what was happening.

7 Q She was trying to find out what was happening?

8 A Yeah, is what she was - - - yeah, she was - - - she
9 was doing her investigation at the time.

10 Q Can you remember any specific quotes by Ms. Carter
11 to you or to you - - - by you to Ms. Carter from
12 that conversation?

13 A No.

14 Q How many conversations did you have with her?

15 A We must have talked to her - - - I must have talked
16 to her a couple of times I guess.

17 Q Okay.

18 A I'm not sure.

19 Q Were you ever alone or were you always within the
20 company of your wife?

21 A We were always in the company of my wife, and we
22 were always just out in the waiting area.

23 Q I know you just said you don't remember specific
24 comments. That's not unusual. Do you remember,
25 you know, the gist of the conversation? Can you

- 1 paraphrase it? Can you just tell me what was
2 discussed?
- 3 A No, not really.
- 4 Q And before this January incident was there any
5 reason to call the police or law enforcement about
6 [REDACTED] [REDACTED]s well-being?
- 7 A No.
- 8 Q Correct me if I'm wrong. Did this happen on a
9 Sunday or a Monday, ~~the~~ January incident?
- 10 A Sunday night.
- 11 Q Sunday night.
- 12 A It was a Sunday night. Yeah.
- 13 Q I remember because just before I wasn't sure if it
14 was the day of or the day before they - - - that
15 there had been a church service.
- 16 A Yeah, we had church service, and we invited Kayla
17 and Michael and the whole family over for dinner.
18 Kayla came and Michael stayed home with Owen.
- 19 Q So did any of them come to church that day?
- 20 A Yeah. All of them at church.
- 21 Q So the baby was at church?
- 22 A Yeah.
- 23 Q And I know obviously you were about your job that
24 day. You were working.
- 25 A Right.

1 Q Did you notice how the baby was doing that morning
2 though at the service?

3 A He seemed to be doing fine.

4 Q Was the baby making any noise? And I don't mean
5 disrupting the service. But I mean just - - -

6 A He'd always make noise when the praise and worship
7 would start.

8 Q Sure.

9 A He just really, really enjoyed it.

10 Q And he didn't do that that morning?

11 A Yeah.

12 Q Did he appear to be normal and in good health that
13 morning?

14 A He did.

15 Q And then you had dinner afterwards?

16 A At my house.

17 Q What time is the dinner at?

18 A Well, we went directly after church so it's
19 probably around 1 o'clock maybe, somewhere around
20 1:00. I know we probably didn't get to eat
21 probably till somewhere around 2:00, 2:30 because
22 Charlotte's preparing the meal. But we got to the
23 house probably about 1:00, a little after.

24 Q And you said Kayla was there by herself?

25 A Yeah.

- 1 Q Michael took [REDACTED] home?
- 2 A He went home.
- 3 Q And they lived right around the corner from you?
- 4 A Yes.
- 5 Q Okay. At that point in time did anybody seem
- 6 concerned that there was anything wrong with [REDACTED]?
- 7 A No.
- 8 Q And had your wife been able to hold [REDACTED] that
- 9 morning at the church service?
- 10 A Yes.
- 11 Q And did she mention that there was anything wrong
- 12 with [REDACTED] that morning?
- 13 A No.
- 14 Q We're almost done here. All right. Now, you knew
- 15 in December that DSS had instituted a safety plan,
- 16 correct?
- 17 A Yes.
- 18 Q And that wasn't something you found out in January
- 19 that had occurred in the past; you knew it as it
- 20 was going on, correct?
- 21 A I knew that as Kayla explained it to me.
- 22 Q Okay.
- 23 A When she was talking to Charlotte about it, I was
- 24 listening to the conversation.
- 25 Q And that conversation would have been some time in

1 December, correct?

2 A Yes. Correct.

3 Q And would that have been close to the time that
4 Owen had gone to the hospital, to Levine in
5 December? I mean, would it - - - Let me rephrase
6 that. Was that conversation going on while Owen
7 was still at Levine in December?

8 A That conversation that we had was after he was
9 released, after he was home. That's when I found
10 out about the plan.

11 Q Was it a day later, a week later, two weeks later?

12 A Just a day later.

13 Q Just a day later?

14 A Just a day later, yeah.

15 Q So shortly after he was released from Levine you
16 knew DSS was involved, correct?

17 A Yes.

18 Q And you knew they were doing some kind of safety
19 plan, correct?

20 A According to what Kayla was telling us, yes.

21 Q And you knew even before this incident that DSS got
22 involved when children were suspected to be
23 injured, correct, by their parents or by someone?

24 A Yeah, I always thought DSS would get involved if
25 there was a seriousness of the - - - of the harm to

1 the child, if they - - - if they had any kind of
2 suspicion or whatever.

3 Q Sure. And so when you found out they were involved
4 did you think they were involved because they had a
5 suspicion about Kayla or Michael harming Owen?

6 Mr. Shaw - Objection.

7 A I didn't know what they - - - I just felt they were
8 involved because it was a part of protocol, was a
9 part of what they do as DSS.

10 Q And what I'm getting to is when you found out a day
11 after that, did you have a suspicion that Kayla or
12 Michael were harming [REDACTED] and thus DSS needed to be
13 involved?

14 A I never had a suspicion that they were harming - -
15 - that they were doing the child any harm.

16 Q So you just thought it was DSS protocol.

17 A Exactly.

18 Q And you didn't think the child was in any danger?

19 A No.

20 Q Okay.

21 A If I thought the child was in any danger, I'd have
22 never made him step up and be a dad. I'd have
23 never pushed him back into that situation.

24 Q Now, we discussed your sister, Ms. Blackwelder, she
25 was a police officer - - -

- 1 A Correct.
- 2 Q - - - at the time, correct?
- 3 A Correct.
- 4 Q Is she still with any police force?
- 5 A Tega Cay.
- 6 Q Tega Cay. And at the time she was with Rock Hill?
- 7 A Correct.
- 8 Q And for just for the record, Rock Hill Police
- 9 Department?
- 10 A Rock Hill Police Department.
- 11 Q Did she ever as a police officer work with abused
- 12 and neglected children?
- 13 A I'm sure she did.
- 14 Q Do you know if her job duty at any point in time
- 15 was to identify and investigate cases of abuse and
- 16 neglect for children or adults?
- 17 A I'm sure if she suspected it, yes.
- 18 Q Do you know if that was her specific duty?
- 19 A If that was her specific duty?
- 20 Q Yes.
- 21 A I'd just assume as being a police officer it would
- 22 be every police officer's duty.
- 23 Q But you don't know if she was ever specified to do
- 24 that?
- 25 A No.

1 Q Did you ever discuss with her, whether before or
2 after this incident, what law enforcement is
3 supposed to do in cases of abuse or neglect?

4 A I don't recall.

5 Q Did you ever call her when DSS in December
6 instituted its safety plan or started to institute
7 a safety plan; did you ever call her and ask her
8 what's this all about?

9 A No.

10 Q Did you ever discuss it with her prior to [REDACTED]'s
11 injury?

12 A No.

13 Q Did you speak to her in December 2009?

14 A In December? Yeah, we've talked, of course. Of
15 course we talked.

16 Q December you have the holidays coming up, - - -

17 A Right.

18 Q - - - would you talk to her around the holidays?

19 A Yeah, probably. Yeah.

20 Q Would you have told her that your grandson or step-
21 grandson had just spent a couple of days at the
22 hospital in Charlotte?

23 A She knew he was in the hospital.

24 Q Did you tell her that the doctor had told you the
25 baby may have been shaken?

1 A I don't recall.

2 Q Did you tell her that DSS had a safety plan begun?

3 A No.

4 Q Okay.

5 A I try not to talk to her about law stuff because
6 she is bombarded with that every day. And it's
7 like my friends will call sometimes and they would
8 say - - - you know, they know my sister's in law
9 enforcement, and they'd want to get some
10 information, and I just wouldn't even pass the
11 information to her, you know, because she is
12 involved and she has - - - she has to uphold her
13 integrity as a police officer. And she just - - -
14 we're family. We're family.

15 Q Sure.

16 A If we talk, we just talk family stuff.

17 Q Well, my family unfortunately knows that I'm a
18 lawyer ask me all too many legal questions.

19 A Right. Exactly.

20 Q You didn't feel the need in this well, hey, I'm
21 getting into your line of work, - - -

22 A No.

23 Q - - - I'm getting into - - - you can give me some
24 insight into what's going on here, let me pick your
25 brain? That never crossed your mind?

Deposition of Rev. Larry Williams

1 A No. No. I mean, I could have but I chose not to.

2 Q If you had felt it was important, would you have
3 called her?

4 A I don't know.

5 Q Let me ask you. If DSS or law enforcement had
6 stepped in in early December 2009 and taken that
7 baby and put it in a foster home, not with you or
8 your wife, but in a foster home completely outside
9 the family, you think you would have then called
10 your sister and said hey, they took our grandson?

11 A Sure. Sure. I would have. Yeah. Yeah.

12 Q Okay.

13 A Sure, I would have.

14 Q But you didn't think the situation was serious
15 enough to discuss it with your sister?

16 A No. No. And if they would have took Owen out and
17 put him in a foster home, you know, at that
18 particular time if they had any kind of suspicions
19 or whatnot that there was any kind harm to this
20 child and they took him out and put in him a foster
21 home until they did an investigation, if they
22 thought there was some activity going on there, I'd
23 be totally in - - - totally in agreement with that.

24 Q Since the January incident and Owen was harmed,
25 have you spoken with your sister since then about

1 law enforcement's involvement and what they did or
2 didn't do and what they should have done in this
3 case?

4 A I did talk with my sister on one occasion and that
5 was when I was - - - we were asked to be removed
6 from the hospital. I did talk to her about that.

7 Q Okay.

8 A And she was very concerned about that also. And
9 that was the only time ~~that~~ I really even talked to
10 her about it.

11 Q You know, that was up in Charlotte, correct?

12 A Correct.

13 Q So that wasn't the York County Sheriff's Department

14 - - -

15 A No.

16 Q - - - ~~that~~ had anything to do with removing you
17 from the hospital, correct?

18 A Oh, no. Mecklenburg.

19 Q You mentioned after all this happened you came into
20 a conference room with the doctors, and I think you
21 said DSS was there, and you said law enforcement
22 was there; is that correct?

23 A I'm thinking there - - - everybody was there.

24 Q Which law enforcement was there; do you know what
25 agency?

1 A I'm thinking York County is what I'm thinking.

2 Q And do you know who from York County was there at
3 that time?

4 A No. It could have been Amanda Carter. I'm not
5 sure. I'm not sure.

6 Q Did the police at that time, to your memory,
7 participate in the discussion while you were in
8 that conference room?

9 A No, the only one that participated in the
10 discussion was the doctor and the DSS.

11 Mr. Settana - That's all I have. Thank you.

12 FURTHER EXAMINATION - (By Mr. Todd)

13 Q Now, you said you read Kayla and Charlotte's
14 depositions. Did you read any other depositions in
15 this case?

16 A No.

17 Q You told me when Charlotte testified, she testified
18 about you founded a church but that wasn't correct?

19 A Right.

20 Q Were there any things in Charlotte or Kayla's
21 deposition that you felt like you needed - - - that
22 weren't accurate, that you feel like you need to
23 correct?

24 A Not at this point.

25 Q Now, you've been a minister, either associate or

Deposition of Rev. Larry Williams

1 the head minister, for 20-odd years give or take a
2 few years.

3 A Right.

4 Q When you were the minister at the church in Fort
5 Mill, how big a congregation was that?

6 A He probably had about 125, 130.

7 Q During those five or six years did anybody in that
8 congregation, did any of them ever harm their child
9 intentionally? Was there any child abuse?

10 A ~~Not~~ that I know of. If there was anything like
11 ~~that~~ the senior pastor would have taken care of
12 that. I wasn't the senior pastor at that time.

13 Q And you were the head pastor or senior pastor since
14 '95 at first church in - - -

15 A Right. Faith Family - - -

16 Q - - - by the airport in Rock Hill?

17 A - - - Faith Family Christian Center, yes.

18 Q And how big a congregation is that?

19 A We probably had about 125, 130.

20 Q During those 15, 16 years, did any members of that
21 congregation intentionally - - - did any of them
22 commit child abuse on any of their children that
23 you're aware of?

24 A Not that I'm aware of.

25 Q What about since you've been in Aiken, what size

1 congregation is that church?

2 A It's about the same.

3 Q The natural order of things is the parents protect
4 their children, they don't harm them.

5 A Right.

6 Q Now, being a minister are there any lessons from
7 the Bible that you think are applicable to this
8 situation?

9 Mr. Shaw - Objection.

10 Q I don't know whether there are - - -

11 A Well, the only one that I can think about is when
12 Herod sought to kill Jesus as a baby, and he made a
13 decree to kill every male child of the age of two
14 and under.

15 Q Why do you think that's applicable?

16 A Because it's bringing harm to a child.

17 Q And that would apply to Michael?

18 A Oh, I don't know. I don't know.

19 Q Other than that can you think of any other lessons?

20 A No.

21 Mr. Todd - well, then that's all I have.

1 Whereupon - Deposition concluded at 1:12 p.m

Signing of Transcript Shirley Dallas-Gerrald, CVR-CM
of Deposition By Notary Public/Court Reporter

Witness Waived

(Recorded deposition tapes retained fifteen days from
date of certification or until transcript has been
signed in cases when signature is not waived.)

Deposition of Rev. Larry Williams

1 Q And you make assignments?

2 A Yes. I'm -- I'm not for sure the -- what the
3 rotation was at that time of how I received the
4 case, but, obviously, I was the -- the worker that
5 was -- the worker that was the next one up for a
6 case in which it was me.

7 Q Okay. And, in addition to you with [REDACTED],
8 your supervisor was involved in the case. And
9 that's --

10 A Yes.

11 Q -- Krista Hinnant?

12 A Yes, sir.

13 Q And there was a decision to get legal staff
14 involved, correct?

15 A Yes.

16 Q And then was there somebody involved named -- whose
17 initials are P.M.W.?

18 A Phyllis Moore Ward.

19 Q Ward?

20 A Yes.

21 Q And so, I guess, when you -- when you have -- when
22 you have decisions to make about a child, DSS is --
23 is the entity that has to make the decision if the
24 child is going to be -- or recommend whether or not
25 the child will be removed from his parents or

1 whether or not the child will stay with his parents
2 or some other disposition, correct?

3 A Yes.

4 Q So that decision is usually not made by just one
5 person at DSS; is that correct?

6 A That is correct.

7 Q All right. So the -- the people who would've been
8 making the decision about [REDACTED], who were
9 they? Who -- who was the group? As I understand,
10 it would've been a group decision?

11 A Yes, sir.

12 Q All right. Well, let me -- let me just ask you to
13 look at -- at 1354 -- 1353 and 1354. Do you know
14 whose handwriting that is on those two pages?

15 A For the involved staff? Or the signatures?

16 Q Well, if you look -- are you looking at 1353 and
17 54?

18 A Yes, sir.

19 Q It says on 1353, "Baby in hospital. Two subdural
20 hematomas. Unknown how baby received. Hospital
21 cannot determine if accidental or non-accidental."
22 Whose writing is that, if you know?

23 A Supervisor, Krista.

24 Q Okay. So that's Ms. Hinnant's --

25 A Yes.

1 Q -- writing? All right. And then on the back it
2 says, "Does child go to daycare -- the bay --
3 daycare"?

4 A Yes.

5 Q "Baby supervised at all times." And then it says,
6 "Discharged to parents"?

7 A Yes.

8 Q And then, "Refer to LE." LE would be law
9 enforcement?

10 A Yes, sir.

11 Q All right. Now was that what the decision was made=
12 when the group met?

13 A Yes.

14 Q And there were some inquiries to be made to -- in
15 addition to the decision about "Discharge to
16 parents" and "Refer to law enforcement," and then
17 there was some additional follow-up to be done?

18 A Yes.

19 Q And it says, "Involved staff." Is that "A. Woods"?

20 A Yes, sir.

21 Q Or is that Ward?

22 A Woods.

23 Q Who is A. Woods?

24 A She was an attorney for the department at that
25 time.

1 Q Okay. And was she -- work full time for DSS?

2 A Yes, sir.

3 Q And then the other people involved were Krista
4 Hinnant and you?

5 A Yes, sir.

6 Q Would there have been any other people involved --
7 would Mrs. Ward or Mrs. Stewart -- have they been
8 -- would they have been involved in the meeting
9 where it was -- where DSS determined that the child
10 would be discharged to his parents?

11 A If there were other staffings, yes, they would have
12 been involved.

13 Q And you say "if there had been other staffing."

14 A Yes.

15 Q Do you know whether there was or there was not?

16 A I -- I cannot recall because I -- I do know that
17 there were several staffings in which I was not
18 involved in this case because I was out on other
19 cases along with this case as well.

20 Q So -- and, as I understand it, once the child is
21 discharged from the hospital, DSS is continuing to
22 follow up and to evaluate the -- the situation?

23 A Yes, sir.

24 Q And so there would've been other meetings with
25 other -- with other -- would there have been other

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Case No. 2011-CP-46-4508

RECEIVED

JAN 24 2014

SC Court of Appeals

Elizabeth Hope Rainey, as the
Appointed Guardian ad Litem to
[REDACTED], a minor

Appellant

v.

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

Defendants

Of whom

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

Respondent.

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STATEMENT OF ISSUES ON APPEAL

1. Whether a specialty children's hospital accepting transfer of an infant who was a suspected child abuse victim had a duty to assess the child's family environment for risks to the infant's safety and to communicate its assessment to other decision makers involved in discharging the infant from the hospital?
2. Whether Appellant presented evidence that the hospital breached its assessment and communication duties proximately causing [REDACTED]'s permanent injuries?

STATEMENT OF THE CASE

Three-month old [REDACTED] was home alone with his father Michael Carduff on December 4, 2009, when [REDACTED] got real stiff, turned red, and appeared to be straining. (R. p. 411). Michael and [REDACTED]'s mother Kayla Lythgoe took [REDACTED] to the emergency room at Piedmont Medical Center ("PMC"). When reporting on [REDACTED]'s condition, Michael and Kayla told PMC doctors "we thought he was dead." (R. p. 388). After triage and an examination, [REDACTED] was transferred to Carolinas Medical Center's Levine Children's Hospital ("CMC") in Charlotte, North Carolina. [REDACTED] was admitted to CMC during the morning hours of December 5, 2009, and medical tests were performed to determine the cause of his physiological symptoms. A computed tomography ("CT") scan revealed a subdural hematoma, i.e. bleeding on his brain. (R. p. 448; 478).

CMC activated procedures for care of a suspected child-abuse victim by notifying the York County division of the South Carolina Department of Social Services ("DSS") and utilizing a "CHS¹ Suspected Abuse and Neglect" form. (R. p. 341-352). CMC policy also required the hospital to consult its on-staff medical social workers. According to CMC policy, the social stability of a patient's home environment is a distinct and independent factor for CMC personnel to consider during a patient's hospitalization, especially at the time of the patient's anticipated discharge. (R. p. 341-42). During [REDACTED]'s hospitalization from December 5-8, 2009, his family was contacted by CMC social workers Katie Harrison and Laura Newmark. (R. p. 835 at P. 9, lines 2-17; R. p. 873 at P. 162, lines 16-21).

¹ CHS refers to Carolinas Healthcare System which includes CMC and other medical facilities in North and South Carolina.

CMC officials were concerned about suspected abuse and posted a sitter in [REDACTED]'s hospital room. (R. p. 532; R. p. 581). During the four day period, [REDACTED]'s grandmother told a CMC nurse that [REDACTED] suffered a bruise just weeks earlier while in Michael's care and Michael had no explanation for the injury. After the subdural hematoma was diagnosed, neither parent could explain how the injury happened. Ms. Harrison and Ms. Newmark took very brief notes of their conversations with Michael, Kayla, and a couple other family members but did not interview extended family members. (R. p. 227).

When a neurosurgeon examined [REDACTED] the night before his discharge, [REDACTED] was medically cleared for discharge but drew no conclusion on the social environment Kayla and Michael presented for [REDACTED]. (R. p. 589). The following day, [REDACTED] was discharged to his parents. The required safety plan was not attached to [REDACTED]'s chart at the time of his discharge. (R. p. 532). A few weeks later, Michael was again left alone with [REDACTED]. As he had many times before, Michael "got frustrated with" [REDACTED] to the point of being "angry" with the infant. (R. p. 390) When Michael left his house to take [REDACTED] for a car ride, Michael "shook" [REDACTED] in an effort to get [REDACTED] to quiet down. (R. p. 411). Michael later admitted to police officers he dropped [REDACTED] down a set of concrete stairs that same night while [REDACTED] was in his car seat. (R. p. 392). Hours later, Michael and Kayla noticed [REDACTED] was in distress. Instead of crying, [REDACTED] was suffering from multiple seizures. (R. p. 392)

[REDACTED] was again rushed to PMC and later transferred to CMC where he was diagnosed with a new subdural hematoma, retinal hemorrhaging, and persistent seizures. (R. p. 478). Doctors determined [REDACTED] suffered an anoxic brain injury and had a very

poor prognosis. He was unable to either see or hear. [REDACTED] received morphine for his pain and was eventually placed in hospice care. After a period of hospice care, [REDACTED]'s medical outlook began to improve. He was released from hospice but had suffered serious, permanent injuries. (R. p. 478). Michael pled guilty to child abuse and is currently in prison.

On December 1, 2011, Appellant Elizabeth Hope Rainey filed the current suit as [REDACTED] guardian ad litem. (R. pp. 22-36). The suit alleged negligence claims against CMC, DSS, the York County Sheriff Bruce Bryant, and the York County Sheriff's Office. (R. pp. 22-36). After a period of discovery, CMC moved for summary judgment on February 26, 2013, and a hearing was held before the Honorable S. Jackson Kimball on April 18, 2013. On May 13, 2013, Judge Kimball issued an order granting CMC summary judgment on the basis that CMC did not have a duty to retain [REDACTED] in its custody when DSS arranged for the child's discharge. (R. pp. 6-14). Believing the court misconstrued her duty argument and misapplied South Carolina proximate cause law, Appellant filed a Motion for Reconsideration and supporting memorandum on May 22, 2013. (R. pp. 602-13). Appellant's motion was heard on August 14, 2013, and Judge Kimball issued a Form 4 order denying Appellant's motion the same day. (R. pp. 15-16). Appellant timely filed and served a Notice of Appeal on September 10, 2013. (R. pp. 916-17).

STANDARD OF REVIEW

To grant a motion for summary judgment, the court must find that "there is no genuine issue as to any material fact." Rule 56(c), SCRCP. The judge is not to weigh the evidence but rather to determine if there is a genuine issue for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). For claims where the preponderance of evidence burden applies, "the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

In determining whether any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the party opposing summary judgment. Summer v. Carpenter, 328 S.C. 36, 42, 492 S.E.2d 55, 58 (1997); Pye v. Aycock, 325 S.C. 426, 431, 480 S.E. 2d 455, 457 (Ct. App. 1997). Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Brockbank v. Best Capital Corp., 341 S.C. 372, 379, 534 SE 2d 688, 692 (2000); Moriarity v. Garden Sanctuary Church of God, 534 S.C. 150, 511 S.E.2d 699 (Ct. App. 1999). "Because it is a drastic remedy, summary judgment should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues." Carolina Alliance for Fair Employment v. S.C. Dep't of Labor, Licensing & Regulation, 337 S.C. 476, 485, 523 S.E.2d 795, 799 (Ct. App. 1999). On appeal, the court "applies the same standard used by the trial court" when reviewing a summary judgment order. Epstein v. Coastal Timber Co., 393 S.C. 276, 281, 711 S.E.2d 912, 915 (2011).

ARGUMENT

I. THE CIRCUIT COURT ERRED IN CONCLUDING CMC OWED NO DUTY TO PATIENT [REDACTED]

A. South Carolina law governing construction of tort duty is clear.

The circuit court erred in granted summary judgment to CMC by concluding the hospital owed [REDACTED] no duty. The Court's conclusion overlooked South Carolina law governing construction of a tort duty. Negligence is the breach of a duty of care owed to a plaintiff by a defendant. Savannah Bank, N.A. v. Stalliard, 400 S.C. 246, 251, 734 S.E.2d 161, 163 (2012). Plaintiff bears the burden of establishing that a duty of care is owed to him by the defendant. Trask v. Beaufort County, 392 S.C. 560, 566-67, 709 S.E.2d 536, 539 (Ct. App. 2011). A tort duty is simply "the obligation to conform to a particular standard of conduct toward another." Nelson v. Piggly Wiggly Central, Inc., 390 S.C. 382, 391, 701 S.E.2d 776, 781 (Ct. App. 2010) (quoting Moore v. Weinberg, 373 S.C. 209, 221, 644 S.E.2d 740, 746 (Ct. App. 2007)).

A legal duty may arise from a number of different sources including a "statute, a contractual relationship, status, property interest, or some other special circumstance." Jensen v. Anderson County Dep't of Soc. Servs., 304 S.C. 195, 199, 403 S.E.2d 615, 617 (1991). A statutory provision is only one of the sources from which a tort duty may arise. The duty Appellant asserts in her Complaint is not invalid simply because it is not explicitly stated in a statute. Similarly, CMC's duty to report suspected child abuse derived from S.C. Code Ann. § 63-7-310 (1976) does not exclude an assessment and communication duty that Appellant asserts in her Complaint nor does it invalidate the assessment duty. The duty which flows to the Plaintiff and the minor child arises from

the special relationship between the parties, which is a recognized source of tort duty as stated in Jensen.²

The existence of a legal duty is closely associated with the relationship between plaintiff and defendant. A court finds a duty when “the parties have some relationship recognized by law” to support the duty asserted. Andrade v. Johnson, 356 S.C. 238, 245, 588 S.E.2d-588, 592 (2003). Since a tortfeasor’s duty “arises from his relationship to the injured party,” the circuit court was required to examine any relationship CMC had with Owen C. S.C. State Ports Auth. v. Booz-Allen & Hamilton, Inc., 289 S.C. 373, 376, 346 S.E.2d 324 (1986). A close relationship or one in which the plaintiff looks to the defendant for assistance supports a duty. Ravan v. Greenville County, 315 S.C. 447, 457, 434 S.E.2d 296, 301-02 (Ct. App. 1993) (quoting S.C. State Ports Auth., 289 S.C. at 377, 346 S.E.2d at 326).

CMC had a relationship with [REDACTED] that supported a legal duty. CMC accepted [REDACTED] as a patient as a transfer from Piedmont Medical Center at CMC, a specialized facility “designed to care for the physical and emotional needs of children and their families.”³ CMC provided medical care to [REDACTED], including assessment of injury and assessment of risk of further injury. The care rendered by medical professionals at CMC included care by physicians, nurses, social workers and others. The testimony of [REDACTED]’s CMC doctors and social workers shows a close, sustained relationship in which

² Judge Kimball concluded Appellant’s “effort to create a common law duty ... ignores basic rules of statutory construction.” (R. p. 13). Appellant is not sure of the Court’s meaning. As Appellant discussed in her Motion for Reconsideration, her duty claim was in no way relying on any statutory provision but was instead asserting a common law duty. (R. p. 604).

³ About Us, Levine Children’s Hospital, available at <http://www.levinechildrenshospital.org/body.cfm?id=6>.

CMC personnel had physical contact with [REDACTED] to perform medical exams, spoke with [REDACTED]'s family members multiple times over several days, and observed family members interactions with one another and with [REDACTED]. [REDACTED]'s age and physical condition made him vulnerable and CMC was charged with providing him medical and social services.⁴ The hospital recognized some risk to [REDACTED], because they actually assigned a baby sitter for the duration of his hospital stay. There was a recognized danger and harm to [REDACTED] that CMC recognized. CMC accepted him as a patient and took it upon themselves to assign a sitter to his room. CMC accepted him as a patient and provided medical testing and documentation. CMC accepted him as a patient and provided a social work assessment. By virtue of the actions of CMC, it is clear, that not only was there a duty in these situations but that CMC accepted this duty.

Several state supreme courts have found a special relationship between hospital and patient in a variety of circumstances. See Niece v. Elmview Group Home, 929 P.2d 420, 424 n. 2 (Wash. 1997) ("the relationship between a hospital and its vulnerable patients is a recognized special relationship"); Henderson v. Gunther, 931 P.2d 1150, 1155 (Colo. 1997) (en banc) ("special relationships such as ... a hospital and a patient have been found to impose a duty of care"). It is well understood that hospital medical staff members owe duties to people they accept as patients. The same principle applies to hospital social work staff members. CMC's duty to care for [REDACTED] (whether a doctor, nurse, social worker or sitter) in an acceptable manner was not changed by virtue of the status of the provider of care.

⁴ During the hearing on CMC's summary judgment motion, Judge Kimball seemed to agree that CMC owed Owen C. certain duties during his hospitalization. See (R. p. 100, lines 1-3) ("I will grant you that [CMC] had a duty while they had the care, custody, and control of the child when [he] was there for evaluation and treatment.").

B. The Circuit Court's Order inaccurately stated the duty Appellant asserted in her negligence claim against CMC.

Judge Kimball's Order misstated the duty Appellant asserts CMC had and breached in its interactions with [REDACTED] in December 2009. The circuit court's ultimate conclusion is flawed because the Court considered the legal sufficiency of a duty Appellant did not assert and a duty that is not essential to Appellant's claim for relief. Throughout the Order, the circuit court focused on CMC's supposed duty to personally deny custody of [REDACTED] to his parents or a duty for CMC to personally and indefinitely refuse to discharge [REDACTED] from the hospital. See (R. p. 6) (discussing duty "to refuse to release the child back to his parents"). The Order indicated that Appellant sought to impose a duty on CMC to refuse a DSS instruction to release the child to his parents. (R. p. 10). Going one step further, the Order concludes Appellant's proposed duty would have required CMC to "withhold custody" or "remove a child from the custody of his parents." (R. pp. 10-11). The duty argument must fail, the circuit court concluded, because compliance with the duty Appellant sought to impose could subject CMC to a tort claim for false imprisonment or even criminal liability for kidnapping. (R. p. 11).

However, Appellant's negligence claim against CMC did not rely on a duty to withhold custody or remove [REDACTED] from his parents' custody in contravention of a DSS directive. Instead, Appellant alleged CMC owed duties to (1) assess [REDACTED]'s injuries and home environment from a social work perspective; (2) communicate with DSS personnel regarding CMC's assessment; and (3) potentially intervene on [REDACTED]'s behalf. The Complaint plainly states that CMC's duty related specifically to the assessment CMC had a duty to perform on its patient and his home environment while the patient was in CMC's facility. Appellant alleged CMC had a duty to "adequately

consider or determine whether [REDACTED] could be safely discharged into the care of his parents,” “adequately recognize or adequately consider” [REDACTED]’s earlier injuries, “implement...adequate additional assessment” of [REDACTED]’s home environment, and to “reasonably determine whether [REDACTED]’s parents were qualified to assume his care.” (R. p. 28).

Since the circuit court analyzed the wrong alleged duty, it reached the wrong conclusion. Certainly, South Carolina common law would not impose a duty on CMC to perform illegal or criminal acts. CMC’s compliance with the duty asserted in the Complaint could never result in falsely imprisoning or kidnapping an infant, as the Order suggests. See (R. p. 11). Appellant contends that CMC had a special relationship with its infant patient that served as the basis for the hospital’s duty to conduct a reasonable psychosocial assessment of [REDACTED]’s injuries and his home environment while Owen was at CMC.⁵ Appellant further contends that CMC breached this duty by attempting an assessment but falling far short of the standard for a competent assessment as indicated in CMC’s own assessment standards and as discussed by expert witnesses. Finally, Appellant contends that CMC’s assessment and communication breaches were a proximate cause of [REDACTED]’s damages. This assertion is also supported by testimony

⁵ During the hearing on Appellant’s Motion to Reconsider, the circuit court acknowledged the actual duty argument Appellant asserted in her Complaint. (R. p. 169, lines 10-14) (“I suppose that your argument is that...if the hospital had done more investigation, the DSS would’ve said, ‘Don’t release the child’”). Judge Kimball rejected the claim as requiring the court to accept unreasonable inferences. (R. p. 169, lines 14-17) (“But I think...there are inferences that you want me to draw that are not reasonable and issues of fact that are not genuine”). As discussed in more detail in Section II, Appellant believes the Court’s holding is not compelled by the evidence presented and was improper at the summary judgment state of litigation.

from two expert witnesses. The circuit court misconstruction of the duty aspect argument is the source of its erroneous conclusion.

C. Alternatively, CMC voluntarily undertook a duty to perform a psychosocial assessment of [REDACTED]'s home environment.

Tort duty formation is generally limited to those sources stated in Jensen. However, a party can face liability even without reference to a duty created by these sources if the party voluntarily undertakes a service and fails to exercise reasonable care in performing the service. Creighton v. Coligny Plaza Ltd. P'ship, 334 S.C. 96, 115, 512 S.E.2d 510, 520 (Ct. App. 1998) ("A person who voluntarily undertakes to perform an act must use due care in the performance of that act"). A party "assumes" a duty he otherwise would not have if he voluntarily engages in some service on behalf of another. Miller v. City of Camden, 329 S.C. 310, 314, 494 S.E.2d 813, 815 (1997).

A voluntarily assumed duty has long been recognized in South Carolina. Johnson v. Robert E. Lee Acad., Inc., 401 S.C. 500, 504, 737 S.E.2d 512, 514 n. 3 (Ct. App. 2012)(collecting cases). The voluntarily assumed duty doctrine is rooted in and governed by a Restatement section that reads as follows:

One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking if

- (a) His failure to exercise such care increases the risk of such harm; or
- (b) The harm is suffered because of the other's reliance on the undertaking.

Id. at 504, 737 S.E.2d at 514 (quoting Restatement (Second) of Torts § 323).

Even if the Court affirms the circuit court's ruling that Appellant has failed to establish CMC owed a duty based on South Carolina statutory or common law, CMC's

conduct toward [REDACTED] was sufficient to apply the voluntarily assumed duty doctrine. CMC personnel acknowledged the efforts they undertook to assess [REDACTED]'s condition and the potential danger posed by his surroundings. Ms. Newmark testified that she tried to determine the social conditions surrounding [REDACTED]'s subdural hematoma. (R. p. 841 at P. 36, lines 5-9). Ms. Newmark later acknowledged that she and social worker Katie Harrison aided in CMC's psychosocial assessment for [REDACTED]. (R. p. 857 at P. 99, lines 5-11). CMC acknowledges undertaking a duty to assess [REDACTED]'s situation and communicate that assessment to DSS. CMC also voluntarily chose to create the Juvenile Abuse Policy in which CMC specifically outline the contours of the assessment/communication duty it chose or felt compelled to perform. CMC must be charged with a duty to perform its undertaking with reasonable care. With the support of CMC's policies and expert testimony discussed below, Appellant presented evidence to the circuit court indicating CMC failed to exercise reasonable care in performing this voluntarily assumed duty.

II. APPELLANT PRESENTED EVIDENCE ON ALL REMAINING ELEMENTS OF HER NEGLIGENCE CLAIM AGAINST CMC.

A. CMC breached its intra-admission assessment duty to [REDACTED].

i. The standard of care required CMC personnel to investigate specific issues and complete certain documents.

In a negligence claim, a party breaches its duty by deviating from the applicable standard of care. The content of a party's legal duty, i.e. the standard of care "may be established and defined by the common law, statutes, administrative regulations, industry standards, or a defendant's own policies and guidelines." Madison v. Babcock Ctr., Inc., 371 S.C. 123, 140, 638 S.E.2d 650, 659 (2006). This is not the legal question regarding a

duty's existence but a factual inquiry into the scope of duty. See Stallings v. Ratliff, 292 S.C. 349, 353, 356 S.E.2d 414, 417 (Ct. App. 1987) ("Breach of duty is a fact question to be decided by the jury on the evidence presented in each case"). Also, unlike the legal question of duty, the factual standard of care issue may be addressed by expert testimony. See Elledge v. Richland/Lexington School Dist. Five, 352 S.C. 179, 189, 573 S.E.2d 789, 794 (2002) (noting "expert's opinion on what the applicable standard of care is"); Rule 702, SCRE ("If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue...").

Appellant submitted two expert affidavits and CMC's own policies as evidence on the standard of care for CMC in discharging its social work duty to patients like ██████████⁶ Dr. George Savarese, a licensed social worker and J. Kevin Moore, a former CMC administrator provided expert testimony on the standard of care for CMC's assessment and communication duties. See (R. pp. 209-239; 529-34). Neither CMC's motion nor the Circuit Court's order questioned the experts' qualifications or the reliability of their assertions.

CMC has internal policies specifically related to actions required by doctors, social workers, and other hospital staff in instances of suspected child abuse or neglect. These policies state the standard of care for the CMC personnel that treated and otherwise cared for ██████████. CMC policy PR 110.03 sets the standard of care for CMC personnel for "Juveniles Suspected of Being Abused or Neglected." (R. pp. 341-63) ("Juvenile Abuse

⁶ The expert affidavits were not offered, as Judge Kimball suggested, to create a duty not recognized by law. See (R. p. 12). As outlined in Section I above, Appellant's duty argument is based on CMC's relationship with the suspected child abuse victim in its care as well as CMC's voluntary assumption of a duty to perform a psychosocial assessment of Owen C.'s home environment.

Policy”). By its own terms, the Juvenile Abuse Policy is intended to set the required course of action “in cases of suspected abuse or neglect.” The Juvenile Abuse Policy’s procedures certainly applied to [REDACTED]’s December 2009 hospitalization. Three-month old [REDACTED] presented to CMC with two subdural hematomas, which the hospital deemed an “apparent life threatening event.” (R. p. 448). CMC policy requires its agents and employees to be suspicious of child abuse for any injury to a child under six months old. (R. p. 347). Thus, the standard of care required CMC to comply with the provisions of the Juvenile Abuse Policy in treating [REDACTED] in December 2009. Policies are not the only way to establish the standard of care owed by a provider.

Additionally, there are industry standards and accepted national standards in regard to the care to be rendered to a minor child in a situation like the one involving [REDACTED]. Dr. Savarese cited several standards that govern all medical social workers in the performance of an assessment and communicating an assessment’s results to others involved in the decision making process. (R. p. 210-214). These standards are formulated by the National Association of Social Workers (“NASW”). Specifically, the standards require social workers to “provide ongoing assessment” of the child’s environment” which specifically includes the collection of “comprehensive information” to be used in the formation of treatment strategies. (R. p. 211) (citing NASW Code of Ethics Section 2.03). Also, the standards indicate that a social worker is part of the “interdisciplinary team” caring for any vulnerable child and a social worker must “collaborate with other professionals...in and outside of their practice setting to enhance all aspects of the client and family system’s care.” (R. p. 212).

CMC's Juvenile Abuse Policy imposes several obligations on CMC doctors, social workers, and other personnel in the treatment of suspected child abuse victims. First, the DSS office in the child's home county must receive notice of the hospitalization. Second, LCH staff must "Complete CHS Suspected Child Abuse and Neglect form (SCAN)" for the patient and document all positive exam findings on a SCAN form. Third, there must be a consult with a "CHS Clinical Care Management Social Worker" for the purpose of conducting an "assessment process." CMC's "Child Abuse and Neglect Algorithm," a flow chart of required activities in suspected child abuse cases, also notes the requirement of a medical social worker's involvement in the assessment and treatment process. (R. p. 363). Regardless of any assessment or investigation required of DSS or law enforcement, CMC policy outlines the contours of CMC social workers' independent duty to assess patients in [REDACTED]'s position and communicate an assessment's results to social services. Ms. Newmark acknowledged her job entails certain assessment duties. (R. p. 869 at P. 147, lines 3-9).

The psychosocial assessment must explore certain specific issues to meet the standard of care imposed by the Juvenile Abuse Policy. A CMC social worker must determine whether (1) a child's parents have caused or allowed infliction of a serious physical injury—i.e. whether the suspected victim meets the Juvenile Abuse Policy's definition of an "abused juvenile"; (2) parents offer a "logical explanation...consistent with the age, pattern, and severity of the injury"; (3) parents are guilty of any "inappropriate parental behaviors" during the child's hospitalization; and (4) it is safe for the child to be discharged back to the parents' care. Plaintiff's expert Dr. George Savarese, a licensed social worker, stated by affidavit that there are certain "basic

elements” of a psychosocial assessment performed by any competent social worker. (R. p. 216). These basic elements include a child’s developmental history and temperament as well as characteristics of the parents including social/financial stressors, demographic risk factors (e.g. age/maturity level, educational history, and socioeconomic status), attitude toward parenting, and any relational issues between mother and father. These are standards that can be created by the policies at CMC but are also standards imposed on any social worker involved in [REDACTED]’s care.

The Juvenile Abuse Policy not only requires CMC social workers to include certain issues in psychosocial assessments for suspected child abuse cases, it also requires the social worker to take certain actions in response to an assessment’s results. The Juvenile Abuse Policy is clear that a social worker must respond assertively before a child’s discharge when an assessment indicates a high risk of abuse. This standard of care is distinct from the medical care provided by CMC doctors and nurses. Specifically, the Juvenile Abuse Policy states:

When medically cleared, do not discharge child until disposition has been determined by medical social worker and DSS and the safety plan has been placed on the chart in writing, if applicable.

(R. p. 343, 363) (emphasis in original)

Based on an assessment’s results, a social worker must also take efforts to prevent a vulnerable child from being placed in a dangerous environment. If an assessment shows that it is potentially unsafe for a child to be returned to his parents, the social worker should first contact DSS to see whether the department, in concert with law enforcement, will use its authority to place the child in emergency protective custody. If an assessment indicates a high risk for abuse and DSS chooses not to intervene, a CMC

social worker has a duty to exercise the authority granted by North Carolina law to seek a court order to retain temporary custody of a suspected abuse victim. See N.C. Gen. Stat. § 7B-308 (2005). The use of this statute is part of the general duty to use reasonable care in rendering of services to a child. Though a North Carolina Statute, it is what a reasonable hospital and its employees and agents would use in discharging care to a child.

ii. Appellant produced evidence that CMC breached its assessment and communication duties in several ways.

A defendant breaches its legal duty by deviating from the established standard of care. Whether a defendant's conduct deviates from the standard of care is another question of fact for which a plaintiff may offer expert testimony: Elledge, 352 S.C. at 188, 573 S.E.2d at 794 (noting "experts were allowed to offer their opinions" that "relate to breach of a duty").

CMC's social workers breached the standard of care in their assessment, communication, and efforts to intervene on ██████'s behalf. (R. p. 215). Ms. Harrison and Ms. Newmark worked together to conduct a psychosocial assessment ignoring issues CMC policies required them to address and issues any competent assessment would include. Katie Harrison was the weekend social worker who initially worked on ██████'s case on December 5-6, 2009. Social work's duties were then handed over to Laura Newmark, LCH's weekday social worker. Between these two social workers, the psychosocial assessment of ██████'s care was merely six quarter-page entries in ██████'s medical record. See (R. pp. 380-381; 587). The assessment's brief entries contain "minimal" information and "do[] not explore or probe any of the areas that a competent psychosocial assignment should." (R. p. 217). Plaintiff's experts also note a deviation

from the standard in the way in which Ms. Harrison and Ms. Newmark handled the transition from the weekend to the weekdays. Ms. Newmark's entries in the assessment make clear that she simply "rubberstamped" Ms. Harrison's bare-bones assessment while failing to ask the necessary questions to address the family's abuse risk profile. (R. p. 217).

The social workers' assessment lacked the breadth and rigor the standard of care required. Ms. Newmark described her investigation of [REDACTED]'s subdural hematoma as limited to "tak[ing] a history from the parents on [whether] there [had] been any recent trauma." (R. p. 841 at P. 36, lines 5-9). The tough yet vital questions were not asked of [REDACTED]'s parents. For those instances where questions were asked, the social workers were overly deferential to the parents' answers. Ms. Newmark viewed her assessment duty as nothing more than obtaining the parents' "story" regarding the source of the injury and the child's history. See (R. p. 873 at P. 162, line 16 - P. 163, line 2). According to Dr. Savarese, a competent social worker would interview parents and then investigate their claims rather than simply acquiring and accepting a parent's explanation. (R. p. 215).

Ms. Harrison and Ms. Newmark had at their disposal many different options to conduct a competent psychosocial assessment. The social workers should have interviewed extended family members including the paternal grandparents and father's step-brother who could have provided additional context to understand the home environment to which [REDACTED] was released. (R. p. 227). There is no indication that the social workers requested police or prior treatment records for [REDACTED] or his parents. (R. p. 227). Social workers also typically use standardized child abuse screening tools and

other “risk assessment instruments” to aid in the assessment process. CMC social workers should have employed these devices in [REDACTED]’s case to meet the standard of care. (R. p. 228).

The assessment breaches contributed to the social workers’ failure to comply with their communication duties. The other participants in [REDACTED]’s case (DSS and law enforcement) “depend upon the hospital’s assessment of risk, which is based on a combination of both medical and psychosocial data.” (R. p. 237). DSS would have considered input from hospital sources in making DSS case decisions including “any concerns that they have.” (R. p. 686, lines 6-12). ~~Ms.~~ Newmark acknowledges CMC had a duty to “report to DSS” and “provid[e] them with up-to-date information.” (R. p. 695, line 20). However, by conducting an incomplete, surface level psychosocial assessment, CMC’s social workers were not in a position to make the required communications. (R. p. 231). The psychosocial data CMC had a duty to obtain remained uncovered and was not reported to DSS as required by the standard of care including CMC’s own Juvenile Abuse Policy. In sum, ~~the~~ social workers were required to “communicate accurately the potential risk of harm to the child” posed by the parents or parental home environment. Ms. Harrison and Ms. Newmark did not make the required communications on this “family risk profile.” (R. p. 231).

The Juvenile Abuse Policy and Plaintiff’s experts establish that CMC’s social workers had a clear responsibility related to a patient’s discharge as part of their assessment and communication duties. ~~Ms.~~ Newmark refused to acknowledge these duties, claiming her responsibility was to be “a liaison between the medical team and DSS.” (R. p. 835 at P. 10, line 24 – P. 11, line 1). This claim is inconsistent with CMC’s

policy requiring social workers to be part of the process in determining Owen's disposition. (R. p. 343). Ms. Newmark's efforts to disavow these responsibilities are concerning from a hospital policy and hospital administration perspective. The Juvenile Abuse Policy also included an admonition that a written plan be in the chart before discharge. A formal written plan was not placed in the chart as required by the policy and its absence is a violation of CMC's duty.

Plaintiff's hospital administration expert J. Kevin Moore notes deviations from the standard of care in the efforts of Ms. Newmark and other CMC agents to deem their actions as reasonable simply because non-accidental trauma was not conclusively established by medical tests. (R. pp. 531-532) ("medical clearance is not synonymous with 'ready for discharge' and cannot be treated as such under CMC policy"). Dr. Cheryl Courtlandt, Owen's treating physician, made clear at her deposition that [REDACTED]'s medical tests did not eliminate the possibility that [REDACTED] was abused. Dr. Courtlandt testified that some elements presented concern for non-accidental trauma. From a medical perspective, "it could not be determined whether or whether not he had been the victim of child abuse." (R. p. 630 at P. 45, lines 13-21).

Additionally, the Juvenile Abuse Policy makes clear, medical substantiation is only one factor a hospital must consider when determining the conditions of a child's discharge. In circumstances like these, CMC agrees that it should err on the side of caution. (R. p. 629 at P. 41, lines 1-13). By failing to assess [REDACTED]'s risk, communicate an adequate assessment to DSS, and by failing to intervene at [REDACTED]'s discharge when they knew or should have known the medical tests could not rule out non-accidental trauma, CMC social workers failed to err on the side of caution. (R. p.

534) (hospital “failed to take actions which would or could have averted subject exposure to and possibilities for ongoing abuse”).

B. CMC’s breaches of duty were a proximate cause of [REDACTED]’s injuries.

Proximate causation is an essential element of any negligence cause of action. Burnett v. Family Kingdom, Inc., 387 S.C. 183, 191, 691 S.E.2d 170, 175 (Ct. App. 2010). This element requires proof of both “causation in fact and legal cause.” Small v. Pioneer Mach., Inc., 329 S.C. 448, 463, 494 S.E.2d 835, 842 (Ct. App. 1987) (citing Hurd v. Williamsburg County, 363 S.C. 421, 428, 611 S.E.2d 488, 492 (2005)). Causation in fact is established by proof that the injury “would not have occurred but for the defendant’s negligence.” Cody P. v. Bank of Am., N.A., 395 S.C. 611, 620, 720 S.E.2d 473, 478 (Ct. App. 2011) (citing Mellen v. Lane, 377 S.C. 267, 278, 659 S.E.2d 236, 245 (Ct. App. 2008)). Legal cause is established by determining foreseeability, a factor which focuses on “whether the injury is the natural and probable consequence of the alleged negligent act.” Id. As the Cooke court noted, “[p]roximate cause is generally a question for the jury.” 741 F. Supp. at 1214; see also Ballou v. Sigma Nu Gen. Fraternity, 291 S.C. 140, 147, 352 S.E.2d 488, 493 (Ct. App. 1986) (“Only in rare or exceptional cases may the question of proximate cause be decided as a matter of law”). Summary judgment on proximate cause is inappropriate where the plaintiff has produced “some evidence.” Cooke, 741 F. Supp. at 1214.

The circuit court’s ruling is framed wholly in terms of CMC’s alleged absence of duty. As discussed in Section I, Appellant believes the circuit court misunderstood the duty CMC owed, and Appellant raised this issue with the circuit court in her Motion for Reconsideration. There are also indications, however, that the circuit court did not

believe that an assessment and communication error by CMC during [REDACTED]'s hospitalization could be a proximate cause of injuries [REDACTED] suffered weeks later at the hands of his father. See (R. pp. 101-102; R. p. 169). Without further explanation, the circuit court's order on Appellant's Motion for Reconsideration noted but did not identify "inferences, suppositions, and conclusions that are not supported by the extensive discovery in this case." (R. p. 15).

CMC's social workers breached the standard of care applicable to their assessment, communication, and intervention. As a direct and proximate result of those breaches, [REDACTED] has suffered severe brain injuries and impairments with which he must deal for the rest of his life. [REDACTED] can move only via a wheelchair and will forever have the mind of a one year old child. He cannot walk or talk. He will never walk or talk. This child was beaten savagely by his father. If CMC had done its job, it is reasonably foreseeable there would have been a different outcome in this case.

Plaintiff has submitted expert affidavits on the proximate cause issue. Expert testimony is an appropriate means of providing evidence on proximate cause. See e.g., Schmidt v. Courtney, 357 S.C. 310, 592 S.E.2d 326, 335 (Ct. App. 2003). The "causal chain" leading to [REDACTED]'s current condition started with the grossly insufficient psychosocial assessment performed by CMC's social workers. (R. p. 238). A competent assessment would have contained information CMC was under a duty to communicate to [REDACTED]'s medical team, DSS, and law enforcement.

Pertinent information was easily available to Ms. Harrison and Ms. Newmark had they properly performed their assessment responsibilities. (R. p. 219). This is evident from the information obtained when a fuller inquiry was undertaken after the January

2010 catastrophic injury [REDACTED] suffered. For example, (1) Michael acknowledged that his relationship with Kayla was strained since [REDACTED]'s birth; (2) Kayla acknowledged Michael's poor parenting skills and apathy toward [REDACTED]; and (3) the maternal grandmother reported stress between the grandparents and Kayla regarding Michael's conduct and disposition toward [REDACTED] (R. pp. 219-222).

A proper assessment in December 2009 would have revealed these pertinent facts and would have been included in the information communicated to other decision makers involved in the discharge of [REDACTED] to his parents. Instead, "dangerously inaccurate information was communicated, beginning with the hospital's social worker's deficient assessment of the psychosocial risk factors and her lack of comprehension of the resulting inherently high-risk of potential harm to the child." (R. p. 238). CMC's social workers not only failed to acquire needed information during their assessment; they also failed to properly construe the evidence right before their eyes. [REDACTED] was admitted to CMC with a subdural hematoma for which his parents could not offer a satisfactory explanation. While medical tests for non-accidental trauma were inconclusive, construing these results as conclusive evidence of an accidental injury was not a reasonable response. The night before [REDACTED] was discharged, CMC neurosurgeon noted [REDACTED] was, from a medical perspective, ready for discharge but only "under supervision." (R. p. 589).

Had this information been collected, properly analyzed, communicated, and utilized in December 2009, [REDACTED] would not have been discharged to his parents without supervision. Instead, he would have been taken into emergency protective custody by South Carolina authorities, remained at CMC, or discharged to some

caregiver other than his parents. More likely than not, [REDACTED] would not have been in Michael Carduff's custody in January 2010 when Michael inflicted the severe injuries from which Owen C. currently suffers. This is not Appellant's supposition, it is the opinion of Appellant's expert witnesses. Dr. Savarese, a licensed social worker experienced in interactions between hospital social workers and state social services authorities, concluded that but for CMC's standard of care breaches "it is more likely than not this child would have been placed into custody with some other person than the custodial parents and the tragic situation in January 2010 would have been avoided." (R. p. 238). Kevin Moore, a former CMC hospital administrator concluded the "negligent actions or failure to act in contravention of clear suspicions of abuse and policy requirements caused and/or contributed to the injuries of [REDACTED] in January 2010." (R. p. 534).

Judge Kimball disagreed with Dr. Savarese and Mr. Moore's conclusion that [REDACTED]'s injuries were caused by CMC's assessment/communication failings or their conclusion that permanent injuries stemming from abuse by the father was reasonably foreseeable to CMC. This holding is an error of law. Summary judgment may not be based on a court's disagreement with the evidence presented. Instead, the circuit court's order may stand only if there is no evidence from which a reasonable jury could conclude that Michael nearly fatal beating of his son was reasonably foreseeable to CMC and no evidence CMC's inadequate assessment and communication of the family's abuse risk profile was part of the chain of events leading to [REDACTED]'s injuries. Appellant's uncontested expert testimony provides the requisite evidentiary showing to defeat summary judgment based on proximate cause.

Cases from other jurisdictions show that an assessment duty breach during a suspected child abuse victim's hospitalization can be a proximate cause of the victim's subsequent abuse injuries even if those injuries occur months after the child is discharged from the hospital. In Gaines v. Cumberland County Hospital System, Inc., 692 S.E.2d 119 (N.C. App. 2010), a young boy was taken to the emergency room with a broken wrist for which the boy offered inconsistent explanations.⁷ Additional medical tests revealed other injuries in various stages of healing. None of the medical personnel notified the state department of social services regarding the injuries. Id. at 121. Three months later, the boy returned to the hospital with a traumatic brain injury. Ultimately the boy was rendered a quadriplegic with permanent brain damage. Id. at 122.

The Gaines court considered whether the plaintiff presented evidence that the hospital's breaches in the standard of care proximately caused the boy's permanent injuries. Id. The plaintiff offered expert testimony to prove the required causal connection. The hospital had child abuse policies requiring reports of suspected child abuse and completion of an "abuse/neglect screen" as part of its admission assessment process. Id. at 123. There was evidence in the record that the hospital staff did not complete the required assessment forms. Id.

The plaintiffs offered the expert testimony of a doctor with privileges at the hospital. She testified that the hospital breached the standard of care by, among other things, failing to properly screen the boy for child abuse. The expert also concluded that

⁷ Gaines has some factual distinctions from the present case (e.g. presence of earlier injuries evident on child's medical scans, abuser's outstanding warrants at time of inadequate hospital assessment) but none of them detract from the court's conclusion that a jury question on proximate cause can be created by an expert who testifies that an adequate assessment would have led DSS to intervene in a way that would have removed the child from the environment where the later permanent injuries were suffered.

the boy's permanent injuries, suffered three months after the hospitalization where he was improperly screened, were proximately caused by the assessment failures. Id. at 124. The expert explained that had the hospital performed the proper assessment and properly communicated its results to North Carolina DSS, then the boy would not have been removed from the home in which he ultimately suffered permanent injury. Id. Even though the plaintiff's expert was opposed by a DSS witness, the court found sufficient evidence of proximate cause to submit the issue to a jury. Id. at 125.

In doing so, the court rejected the hospital's claim that the plaintiff's expert testimony was speculative in its conclusion as to how DSS would respond to the information the hospital would have gathered from a properly performed assessment. Since the plaintiff's expert had substantial experience with both DSS and the hospital, her testimony regarding DSS's likely response to a properly communicated assessment was non-speculative and sufficient to create a jury question even when opposed by a DSS witness. Id. at 124 (noting expert's "extensive experience").

As cited above, Appellant's two expert witnesses assert that [REDACTED] would not have been in Michael's care in January 2010 had CMC properly performed its assessment and communication duties in December 2009 because DSS would have contacted law enforcement and would have not permitted [REDACTED] to return or remain in his abuser's custody. The experts' conclusions were unopposed for purposes of CMC's summary judgment motion. Plus, Appellant's experts are intimately familiar with hospital social work (Dr. Savarese is a licensed social worker) and the operations of CMC (Mr. Moore is a former CMC senior vice president and chief operating officer). In keeping with South

Carolina proximate cause principles and supported by Gaines, Appellant presented proximate cause evidence sufficient to defeat CMC's summary judgment motion.

Similarly, Appellant's proximate cause showing is not undone by the intervening criminal act of Michael Carduff. the intervening criminal act of a third party does not automatically sever the causal chain between a defendant's negligent conduct and a plaintiff's injuries. In fact, "where the injury at the hand of the intervening party was within the general range of consequences which any reasonable person might foresee as a natural and probable consequence of the negligent act," then the defendant remains a proximate cause. Shepard v. S.C. Dep't of Corr., 299 S.C. 370, 375, 375 S.E.2d 37, 37 (Ct. App. 1989). Plaintiff need not prove the "particular chain of events" was foreseeable but only that the injury the criminal inflicted was "within the general range of consequences which any reasonable person might foresee." Cody P., 395 S.C. at 621, 720 S.E.2d at 478 (citing Shepard 299 S.C. at 375, 385 S.E.2d at 38). It was very foreseeable that allowing [REDACTED] to be returned to the care of the person(s) most likely responsible for causing the brain injury diagnosed on December 5, 2009, would lead to further injury or even death.

Several different types of evidence may be used to demonstrate that a defendant could reasonably foresee injuries ultimately perpetrated by the criminal act of an independent third party. Expert testimony may be used to establish foreseeability. An expert with knowledge of the defendant's business may testify regarding the types of harms the defendant anticipates in its business. See Cody P., 395 S.C. at 621-22, 720 S.E.2d at 478 (considering banking expert's testimony that banks anticipate theft). The defendant's policies and procedures may also demonstrate that it foresees certain types of

harms may flow from its negligent conduct. In Cody P., the defendant's policies and procedures established rules to guard against certain harms. Id. at 622, 720 S.E.2d at 478. The policies themselves were some evidence that the defendant foresaw the types of harms it took the time and effort to guard against. Id.

Child abuse at the hand of a child's parent lies at the core of what the Juvenile Abuse Policy is designed to prevent. Before a child is discharged from the hospital, the Policy requires consideration of whether "it is unsafe for the juvenile to return to his or her parent." (R. p. 343). Competent social workers in the position of Ms. Harrison and ~~Ms.~~ Newmark recognize that their work is designed to prevent caretaker abuse of vulnerable children. They also recognize the risk of child abuse associated with "plac[ing] the child under the control of the two primary suspected potential perpetrators." (R. p. 237). Michael Carduff's conduct in 2010 was foreseeable to CMC and does not break the chain of causation between CMC's negligence and ~~the~~ injuries.

In sum, Appellant produced evidence from which a jury could conclude that CMC breached its assessment and communication duties during ~~the~~'s December 2009 hospitalization and that these breaches were a proximate cause of ~~the~~'s permanent injuries suffered in January 2010. However, proximate cause does not require that a negligent act precisely coincide with the damage it causes. In fact, a negligent act may "remain active" for liability purposes even if a third party's negligent act occurs in the interim. Mellen v. Lane, 377 S.C. at 282, 659 S.E.2d at 247 (citing State v. Burton, 302 S.C. 494, 498, 397 S.E.2d 90, 92 (1990)). The trier of fact must only determine whether the type of injury the plaintiff ultimately suffered was foreseeable to the defendant "at the

time of the alleged breach.” Parks v. Characters Night Club, 345 S.C. 484, 491, 548 S.E.2d 605, 609 (Ct. App. 2001). Appellant’s experts provided the requisite showing and the circuit order erred in granting CMC summary judgment.

CONCLUSION

CMC owed [REDACTED] a duty of care and Appellant presented evidence demonstrating CMC breached its duty resulting in catastrophic, permanent injuries. Appellant has met her obligation in this case to show duty, breach of duty, causation and damages. Based on the foregoing arguments, Appellant respectfully requests an order reversing the circuit court’s summary judgment order.

Respectfully submitted,



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January 24, 2014

Rock Hill, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Case No. 2011-CP-46-4508

Elizabeth Hope Rainey, as the
Appointed Guardian ad Litem to
[REDACTED] a minor

Appellant

v.

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

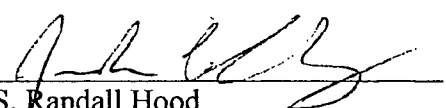
Of whom

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

CERTIFICATE OF COUNSEL

Counsel hereby certifies that the following briefs comply with Rule 211(b), SCACR:

- (1) Final Brief of Appellant; and
- (2) Final Reply Brief of Appellant.


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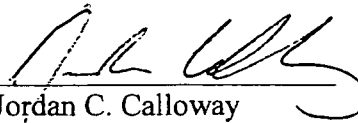
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Authority d/b/a Carolinas Medical
Center is the Respondent.

PROOF OF SERVICE

The undersigned hereby certifies that on this 24th day of January, 2014, he served counsel for the Defendants with copies of the **Final Brief of Appellant, Final Reply Brief of Appellant, and Certificate of Compliance** in this matter by mailing a copy of the same by mail to the following address:

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

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

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SC Court of Appeals

Elizabeth Hope Rainey, as the Appointed

Guardian ad Litem to [REDACTED], a minor Appellant,

v.

The Charlotte-Mecklenburg Hospital Authority d/b/a
Carolinas Medical Center, South Carolina Department
of Social Services, and Bruce Bryant, the

Constitutional Office of the Sheriff of York County,

The York County Sheriff's Department, and York County Respondents.

FINAL BRIEF OF RESPONDENT, THE CHARLOTTE-
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STATEMENT OF ISSUES ON APPEAL

1. Did the Court correctly hold that the Charlotte-Mecklenburg Hospital Authority did not breach any duty to [REDACTED] when it discharged him to his parents after being instructed to do so by DSS.
2. As an additional sustaining ground, is the Charlotte-Mecklenburg Hospital Authority entitled to immunity for its participation in the investigation into the December 4, 2009 injuries suffered by [REDACTED] pursuant to South Carolina Code section 63-7-390?

STATEMENT OF THE CASE

On December 4, 2009, [REDACTED]'s parents took him to Piedmont Medical Center for medical attention. On December 5, 2009, the physicians at Piedmont Medical Center transferred [REDACTED] to Levine Children's Hospital at the Charlotte-Mecklenburg Hospital Authority (hereinafter "CMHA") for further medical attention. On December 6, 2009, physicians at Levine Children's Hospital ordered a CT scan. The CT scan revealed a subdural hematoma that raised a suspicion of a non-accidental injury.

Following this CT scan, Levine Children's Hospital notified the York County Department of Social Services ("DSS") of the possibility that [REDACTED] may have been a victim of a non-accidental trauma. Upon notification of the suspicion, DSS began its investigation regarding [REDACTED]. While DSS was conducting its investigation, the admitting physician at Levine Children's Hospital ordered and performed additional tests and diagnostic studies on [REDACTED], including consults from ophthalmology and neurosurgery. The results of these consults and studies revealed essentially normal findings. (Deposition of Dr. Courtlandt, pp. 35-36; 41-42) (R. pp. 695-696, 701-702).

Additionally, [REDACTED]'s family members were interviewed. Neither the plaintiff's mother nor his maternal grandparents suspected that anyone had abused, or would abuse, [REDACTED]. (Deposition of Kayla Lythgoe [mother] p. 144, l. 19 to p. 146, l. 8 (R. pp. 813-814); Deposition of Charlotte Williams [maternal grandmother] p. 49, ll. 2-22; p. 52, l. 19 to p. 53, l. 1 (R. pp. 887-888); Deposition of Larry Williams [step maternal grandfather] p. 32, l. 16 to p. 34, l. 2 (R. S-9 - S-10)) . Levine Children's Hospital advised DSS that physicians evaluating [REDACTED] could neither rule in nor rule out non-accidental trauma as

the cause of [REDACTED]'s injury. (Deposition of Dr. Cheryl Courtlandt, p. 61, l. 25 to p. 65, l. 21 (R. pp. 633-635); p. 137, ll. 16-20 (R. p. 653)).

After four days in the hospital, Levine Children's Hospital advised DSS that [REDACTED] was medically stable and ready for discharge. DSS instructed Levine Children's Hospital to discharge [REDACTED] to custody and care of his parents. DSS indicated it had investigated, entered into a safety plan with [REDACTED]'s parents, and would conduct a home study/investigation. (Deposition of DSS employee Krista Hinnant, p. 26, l. 6 to p. 27, l. 22 (R. pp. 686-687); p. 31, l. 22 to p. 33, l. 15 (R. pp. 691-695); p. 80, l. 17 to p. 81, l. 5 (R. pp. 740-741)); (Deposition of DSS employee Divondra Hill, p. 71, l. 21 to p. 74, l. 23) (R. pp. S-42 – S-45). Pursuant to DSS's directives, Levine Children's Hospital discharged [REDACTED] to his parents on December 8, 2009. (Deposition of Laura Newmark [social worker at Levine Children's Hospital] p. 133, l. 21 to p. 140, l. 7) (R. pp. 866-867)

On January 11, 2010, approximately five weeks after discharge, [REDACTED] returned to Levine Children's Hospital with a significant brain injury. His father, Michael Carduff, later pled guilty to abusing [REDACTED] and causing his January 2010 brain injury.

The Appellant, Elizabeth Hope Rainey, as the Appointed Guardian ad Litem to Owen, ("Rainey") subsequently filed this lawsuit against multiple parties, including CMHA. After discovery, CMHA moved for summary judgment on the ground that it did not owe [REDACTED] a duty. CMHA additionally moved for summary judgment on the ground that it was immune from civil liability pursuant to South Carolina Code section 63-7-390. The court subsequently granted the motion for summary judgment on the basis that no duty was owed by CMHA to [REDACTED]. The court denied CMHA's motion as it relates to the immunity argument.

STANDARD OF REVIEW

Summary judgment is appropriate when it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999); Young v. South Carolina Dep't of Corrections, 333 S.C. 714, 511 S.E.2d 413 (Ct. App. 1999); Rule 56(c), SCRCP. In ruling on a summary judgment motion, the Court should consider the pleadings, depositions, interrogatory answers, admissions, and affidavits in determining whether there is a genuine issue of fact for trial. See Thomas v. Waters, 315 S.C. 524, 526, 445 S.E.2d 659 (Ct. App. 1994). "A motion for summary judgment on the basis of the absence of a duty is a question of law for the court to determine." Oblachinski v. Reynolds, 391 S.C. 557, 560, 706 S.E.2d 844, 845 (2011).

ARGUMENT

I. APPELLANT RAINEY FAILED TO ESTABLISH THAT CHARLOTTE-MECKLENBURG HOSPITAL AUTHORITY OWED [REDACTED] A DUTY.

A. The CMHA did not owe a duty to [REDACTED] to refuse to discharge him to his parents when he was medically cleared for discharge and after DSS instructed Levine Children's Hospital to discharge [REDACTED] to his parents.

Rainey, both at the hearing before the trial court and in her brief to this Court, alleges that Levine Children's Hospital should not have discharged [REDACTED] into the custody of his parents on December 8, 2009, surmising that had he not been discharged into the custody of his parents at that time, his father would not have injured him on January 11, 2010. The crux of Appellant's claim is that Levine Children's Hospital was legally required (i.e. owed a duty) to take some action to prevent [REDACTED] from being discharged into the custody of his parents. This argument is without merit, however, as the trial court properly found that CMHA is not vested with any authority to keep or remove a child from the custody of his parents or to refuse to discharge a child to his parents when the child is medically cleared and ready for discharge from the hospital. Accordingly, the trial court's decision granting summary judgment must be affirmed.

In order to prove negligence, a plaintiff must show first that a defendant owes a duty of care to the plaintiff. Steinke v. S.C. Dep't of Labor, Licensing and Regulation, 336 S.C. 373, 387, 520 S.E.2d 142, 149 (1999). The determination of the existence of a duty is one of law for the court. See Doe ex rel Doe v. Wal-mart Stores, Inc., 393 S.C. 240, 246, 711 S.E.2d 908, 911 (2011). "The existence of a duty owed is not incidental to a cause of action for negligence; it is an indispensable element of the plaintiff's case. The question of liability for negligence cannot arise at all until it is established that the one who has been negligent owed some duty to the person who seeks to make him liable for

his negligence.” Sharpe v. South Carolina Dept. of Mental Health, 292 S.C. 11, 354 S.E.2d 778 (Ct. App. 1987)(Bell, J., concurring) (citation omitted).

The breach of a legal duty is essential to negligence and such legal duty is that which the law requires to be done or forbore with respect to a particular individual or the public at large. Without a violation of such a legal duty, there is no negligence. South Carolina Electric & Gas Co. v. Utilities Construction Co., 244 S.C. 79, 88, 135 S.E.2d-613, 617 (1964). See also Brown v. South Carolina Insurance Co., 284 S.C. 47, 324 S.E.2d 641 (Ct. App. 1984), cert. dismissed, 290 S.C. 154, 348 S.E.2d 530 (1986) (negligent conduct becomes actionable only when it violates some specific legal duty owed to the plaintiff)

“Generally, duty is defined as the obligation to conform to a particular standard of conduct toward another.” Moore v. Weinberg, 373 S.C. 209, 221, 644 S.E.2d 740, 746 (Ct. App. 2007). A legal duty can be created by statutes, a contractual relationship, status, property interest, or some other special circumstance. Madison ex rel Bryant v. Babcock Cntr., Inc., 371 S.C. 123, 136, 638 S.E.2d 650, 656-57 (2006) (citations omitted). Foreseeability of injury, in the absence of a duty to prevent that injury, is an insufficient basis on which to rest liability. South Carolina State Ports Authority v. Booz-Allen & Hamilton, Inc., 289 S.C. 373, 346 S.E.2d 324 (1986) (citations omitted). 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. Faile v. S.C. Dep’t of Juvenile Justice, 350 S.C. 315, 334, 566 S.E.2d 536, 546 (2002).

In the present case, the trial court correctly found that CMHA did not owe a duty to ██████ to complete a home study or home evaluation and did not owe ██████ a duty to

refuse to discharge him to his parents when ordered to do so by DSS. This decision by the trial court was based upon the fact that the duties to perform such assessments and make decisions regarding custody of minors who may be abused or neglected lies with DSS, with the assistance of law enforcement and the family court system.

The State, through the passage of Title 63 (the Children's Code), has legislatively determined what roles law enforcement, the judiciary, the Department of Social Services, and private individuals play in allegations of abuse or neglect of minor children that protects both the rights of the children and the parents. With the exception of a reporting requirement, however, the Legislature has sought to make various governmental entities responsible for the intervention into families for the protection of minors who may be abused or neglected. See South Carolina Code Ann. § 63-7-10(A) (2010). ("Any *intervention by the State* into family life on behalf of children must be guided by law, by strong philosophical underpinnings, and by sound professional standards for practice.) (emphasis added); see also S.C. Code Ann. § 63-7-10(A)(12) ("*Should removal of a child become necessary, the state's foster care system* must be prepared ...") (emphasis added); S.C. Code Ann. § 63-7-10(A)(13) ("*The Department of Social Services staff who investigates serious child abuse and neglect reports with law enforcement* must be competent in law enforcement procedures, fact finding, evidence gathering, and effective social intervention and assessment.") (emphasis added).

DSS, law enforcement agencies, and the family court system are the only entities empowered with the ability to seize custody of a child, investigate child abuse/neglect allegations, prosecute such cases when warranted, and adjudicate issues which may result in the temporary or permanent removal of children from their home. See S.C. Code Ann.

§ 63-7-660 (2010) (DSS may remove a child from his or her home and has legal custody of the child thereafter if there is probable cause to believe abuse or neglect has occurred); see also South Carolina Dept. of Social Services v. Randy S., 390 S.C. 100, 700 S.E.2d 250 (Ct. App. 2010) (noting that Section 63-7-1660(A) grants DSS, and only DSS, the authority to petition the family court to remove a child from custody of a parent if DSS “determines by a preponderance of evidence that the child is an abused or neglected child”); see also South Carolina Department of Social Services v. Pritchard, 329 S.C. 242, 495 S.E.2d 242, 244 (Ct. App. 1997) (same); Doe v. Marion, 373 S.C. 390, 645 S.E.2d 245 (same).

Contrary to the assertions of Rainey, the immediate and temporary removal of a child from the custody of his parents is generally allowed only by law enforcement personnel. See S.C. Code Ann. § 63-7-610(A) (2010) (“A law enforcement officer investigating a case of suspected child abuse or neglect or responding to a request for assistance by the department as it investigates a case of suspected child abuse or neglect has authority to take emergency protective custody of the child pursuant to this subarticle in all counties and municipalities.”); S.C. Code Ann. § 63-7-620(A) (2010) (“A law enforcement officer may take emergency protective custody of a child”). Once a law enforcement officer has taken custody of the child, he must immediately notify the local Department of Social Services office so that an investigation can begin. See S.C. Code Ann. § 63-7-610(B) (“Immediately upon taking emergency protective custody, the law enforcement officer shall notify the local office of the department responsible to the county in which the activity under investigation occurred.”); S.C. Code Ann. § 63-7-630 (2010) (“When an officer takes a child into emergency protective custody under this

subarticle, the officer immediately shall notify the department.”). After DSS receives this report from law enforcement, it has twenty-four hours to investigate whether grounds exist for it to seek custody of the child from the family court system. See S.C. Code Ann. § 63-7-640 (2010) (“The department shall conduct within twenty-four hours after the child is taken into emergency protective custody by law enforcement or pursuant to ex parte order a preliminary investigation to determine whether grounds for assuming legal custody of the child exist”). Even then, if DSS finds that it should take custody of the child, it must seek an order from the family court justifying its position that such intervention is warranted. See S.C. Code Ann. § 63-7-660 (2010) (“If the department determines after the preliminary investigation that there is probable cause to believe that by reason of abuse or neglect the child's life, health, or physical safety is in-imminent and substantial danger, the department may assume legal custody of the child The department may exercise the authority to assume legal custody only after a law enforcement officer has taken emergency protective custody of the child or the family court has granted emergency protective custody by ex parte order, and the department has conducted a preliminary investigation pursuant to Section 63-7-640.”); see also S.C. Code Ann. § 63-7-740 (2010) (defining the family court’s role in *ex parte* orders); S.C. Code Ann. § 63-7-1610 et seq. (2010) (setting forth in detail the judiciary’s role in child abuse and neglect cases).

Though the State is heavily involved in the evaluation and protection of abused or neglected children, the involvement of private individuals or entities in suspected child abuse and neglect cases is limited. The duties owed by private individuals under the

State's comprehensive scheme is limited to an obligation to report, and even then, the duty to report is imposed upon a small group of designated people.

South Carolina Code § 63-7-310 requires certain persons to report suspected child abuse or neglect. Under this section, physicians, nurses, healthcare professionals, and other designated people are required to report suspected child abuse or neglect to the county Department of Social Services or to a law enforcement agency in the county where the child resides. This section states, in relevant part:

A physician, nurse, . . . or any other . . . health professional . . . must report in accordance with this section when in the person's professional capacity the person has received information which gives the person reason to believe that a child has been or may be abused or neglected as defined in Section 63-7-20.

. . .

(D) Reports of child abuse or neglect may be made orally by telephone or otherwise to the county department of social services or to a law enforcement agency in the county where the child resides or is found.

South Carolina Code Ann. § 63-7-310 (Supp. 2012). It is uncontested that CMHA, in accordance with its obligations under South Carolina Code § 63-7-310, reported the suspected child abuse to DSS. No other statute, however, imposes a duty on CMHA to do anything other than report the suspected abuse. Accordingly, once the duty to report was satisfied, CMHA had no further duty to [REDACTED] regarding the investigation of suspected abuse.¹ Moreover, even if CMHA had failed to report the suspected abuse, it still could not be held liable, as the statute does not create a private right of action. Doe v. Marion, 373 S.C. 390, 645 S.E.2d 245 (2007) (upholding dismissal of an action against

¹ CMHA owed [REDACTED] a duty to render medical care to him in accordance with the standard of care, but there is no allegation that was not done in this case.

a physician for failure to report under S.C. Code Ann. § 63-7-310 and holding that violation of this statute does not create a private cause of action).

Rainey attempts to expand the reporting obligation owed by CMHA by arguing that CMHA was required to perform a home study and required to complete a social work assessment on [REDACTED]'s parents. The trial court properly rejected such attempts, as neither the common law nor any statutory law imposes such a duty on CMHA or any medical care provider. Rather, the duty to assess and seek judicial custody of a child is solely that of DSS. See S.C. Code Ann. § 63-7-920 (2010) (setting forth the authority of DSS to conduct an investigating child abuse and neglect cases and setting for the statutory requirements for such investigation).

There is no statutory authority for CMHA to perform a home study, interview parents, or petition the court for an *ex parte* order preventing the return of a child, and Rainey has pointed to none. At most under the law, a hospital ~~may~~ retain custody of a child for 24 hours if the hospital believes that the child has been neglected and that they are waiting for a law enforcement officer to arrive and ~~determine~~ whether the officer should take the child into emergency protective custody. See South Carolina Code Ann. § 63-7-750 (2010). This statute, however, is inapplicable to the facts of this case. DSS was already involved, and DSS had already made the determination that the child could be returned to his parents upon discharge.

Moreover, any argument that CMHA could have used the authority granted by N.C. Gen. Stat. § 7B-308(2005) to retain custody of [REDACTED] is without merit. N.C. Gen. Stat. § 7B-308 only allows a hospital to retain a child for 12 hours if further medical treatment is required and the parents attempt to leave with the child or more time is

needed to notify DSS. Moreover, under that section, if the child is not in his country of residence, DSS must transfer the case to the child's county of residence. In this case, that would have been York County DSS, who was already involved in the case.

In an effort to get around the fact that CMHA had no authority to retain [REDACTED] after being told by DSS to discharge him and no authority to conduct a home study, Rainey submitted an expert's affidavit which alleges that Levine Children's Hospital "abrogated a duty or responsibility to [REDACTED]" The expert's conclusions are based on the expert's interpretation of hospital accreditation standards and internal hospital policies. The trial court properly rejected the affidavit because the existence of a duty is a matter of law for the court and cannot be created through affidavit.

In South Carolina it is well settled that expert testimony on issues of law is inadmissible. Dawkins v. Fields, 354 S.C. 58, 66, 580 S.E.2d 433, 437 (2003) (citations omitted); Hermitage Indus. v. Schwerman Trucking Co., 814 F. Supp. 2d 484, 486 (D.S.C. 1993). Because the determination of the existence of a duty is a legal question, the plaintiff cannot create a duty through expert testimony or internal policies and procedures when the duty does not exist at law. See Trotter v. State Farm Mut. Auto. Ins. Co., 297 S.C. 465, 480, 377 S.E.2d 343, 351 (1988) (opinion testimony cannot create a duty that does not exist at law); Citizens and Southern National Bank of South Carolina v. Lanford, 313 S.C. 540, 443 S.E.2d 549 (1994) (Supreme Court summarily affirmed trial court ruling that internal policies and procedures do not create a duty between the parties where one does not exist at law); Johnson v. Robert E. Lee Academy, Inc., 401 S.C. 500, 737 S.E.2d 512 Ct. App. 2012 (rejecting expert affidavit as it pertained to existence of a duty). See also, e.g., Nat'l Convenience Stores, Inc. v. Matherne, 987

S.W.2d 145, 149 (Tex. Ct. App. 1999) (“expert testimony is insufficient to create a duty where one does not exist at law”); Richter v. Van Amberg, 97 F. Supp.2d 1255 (D.N.M. 2000) (even where expert testimony is necessary in legal malpractice case, expert cannot create a legal duty); Hi-Tech Eng’g, Inc. v. Buiten, 2002 WL 31928573 at *4 (Mich. Ct. App. Nov. 12, 2002) (“the testimony of an expert cannot create a factual question concerning a duty where the law has not recognized one”). Thus, the Appellant may not create or expand the legal duties of CMHA through submission of expert testimony or an internal policy and the trial court correctly rejected such attempts.

Moreover, the trial court properly applied the rules of statutory construction to conclude that no duty was owed by CMHA in this case. In South Carolina, courts “must presume that the legislature did not intend a futile act, but rather intended its statutes to accomplish something.” Denene, Inc. v. City of Charleston, 352 S.C. 208, 212, 574 S.E.2d 196, 198 (2003) (citing TNS Mills, Inc. v. S.C. Dep’t of Revenue, 331 S.C. 611, 503 S.E.2d 471 1998). If broad duties to report and prevent child abuse existed at common law as contended, the Legislature’s passing of a statute creating only a duty to report would be futile, as such a duty would have already existed. Additionally, had the Legislature wanted to create an obligation on the part of hospitals to perform home studies, it could have done so.²

The argument that CMHA had a duty to conduct an assessment of [REDACTED]’s home environment and report its findings to DSS is erroneous. CMHA’s only duty was to report suspected child abuse, as set forth by statute. By statute, the duty to investigate the suspected child abuse and to take action where appropriate is charged to DSS. Had the

² Of course, such a statute would be constitutionally suspect, since parents have a constitutional right to raise their children absent a compelling governmental interest. It is doubtful the determination of whether such interest existed in a case by case basis could be granted to a private entity.

Legislature sought to impose the duty on hospitals to investigate child abuse or withhold children from their parents who were suspected of neglect or abuse, it could have passed a statute stating including hospitals as being those entities which were allowed to remove a child from his parents' custody, petition the family court, conduct home studies, and given them the authority to do everything the Legislature empowered DSS to do. However, under the comprehensive statutory scheme enacted by the Legislature, those obligations are imposed upon DSS, law enforcement, and the family court system.

While Rainey claims that CMHA breached a duty of care to [REDACTED] by discharging him into the custody of his parents, CMHA had no right to refuse to discharge [REDACTED] to the care of his parents. Because it did not have the right to withhold the child, it could ~~not~~ have had the duty to refuse to do so. Rather, CMHA complied with the only duty imposed upon it by reporting its suspicion of a non-accidental trauma to the DSS. The decision on whether or not [REDACTED] should be discharged to his parents was a decision for DSS, not for Levine Children's Hospital.

B. CMHA did not have the duty or authority to assess [REDACTED]'s home environment.

In an effort to get around CMHA's lack of duty or authority to retain [REDACTED] once it was ordered to discharge him into the care of his parents, Rainey asserts that CMHA should have adequately considered whether [REDACTED] could be discharged into the care of his parents, considered [REDACTED] earlier injuries, assess [REDACTED]'s home environment, and to determine whether [REDACTED] parents were qualified to assume his care. Rainey further claims that a social worker at Levine Children's Hospital's conducted an incomplete assessment because she did not include an assessment of [REDACTED]'s home environment.

(See Appellant's Initial Brief, pp. 8-9) The argument that CMHA owed a duty to do these things is without merit.

In making the argument that a home study should have been done and that [REDACTED]'s parents should have been evaluated for their fitness as parents, Rainey cites no statute or case law to support a claim that such a duty exists on behalf of CMHA. Rainey cites no statute or case law that would give CMHA the right to enter [REDACTED]'s home for an assessment or any right to interview [REDACTED]'s parents or any other relative to determine their fitness. Rainey cites no statute or case law that allows a social worker or any other employee of a North Carolina hospital to exercise the statutory rights given to DSS to intrude upon a parent-child relationship in South Carolina in order to conduct home studies and reach custody decisions. Rainey cites no statute or case law that allows *any* private entity to petition a family court for custody in contravention of DSS's statutory authority to make such decisions as it pertains to potentially abused or neglected children. Finally, regardless of how Rainey wishes to portray the alleged duty, Rainey contends without any citation of authority that CMHA should not have returned the child to his parents upon being ready for medical discharge.

As outlined extensively above, the Legislature has placed the duty of investigating suspected child abuse with DSS. DSS staffed this case with an attorney and multiple case workers, conducted an investigation, and conducted a home inspection. (See deposition of Krista Hinnant, pp. 32-36) (R. pp. 692-696) Divondra Hill, a case worker for DSS, performed a home inspection of [REDACTED]'s home on December 21, 2009, prior to the second incident between [REDACTED] and his father. Neither [REDACTED]'s mother, Kayla Lythgoe, nor his maternal grandparents, Charlotte and Larry Williams, who spent considerable time in

█████'s home, suspected that anyone had or would abuse █████ prior to his father admitting to such abuse in January of 2010. DSS did not seek emergency protective custody of █████ following this December 21, 2009 home study by DSS. It was certainly within DSS's right; however, no one else had the right to seek such custody. Rainey never explains what information a Levine Children's Hospital's social worker could have uncovered that was not revealed to DSS in its investigation. Even if Rainey could point to some additional information that Levine Children's Hospital may have uncovered that DSS did not, the law does not impose a duty to conduct such an inspection or assessment.

C. Levine Children's Hospital did not assume a duty.

Finally, Rainey argues that CMHA voluntarily assumed a duty to perform a full social work evaluation including home assessments and custody determinations when Levine Children's Hospital assessed █████'s physical condition and the possibility that his injuries were caused by non-accidental trauma. The trial court correctly rejected this argument.

Rainey cites the Restatement (Second) of Torts § 323 and Johnson v. Robert E. Lee Academy, Inc., 401 S.C. 500, 737 S.E.2d 512 (Ct. App. 2012), in support of her argument that CMHA assumed a duty. Neither Johnson nor the Restatement (Second) of Torts § 323 are applicable to this case because Levine Children's Hospital (1) did not assume any duty to do an assessment of Owen's home environment, (2) did not increase the risk of harm to Owen, and (3) no one relied on Levine Children's Hospital to do a home assessment.

"An affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance." Hendricks v. Clemson

Univ., 353 S.C. 449, 456, 578 S.E.2d 711, 714 (2003). "Ordinarily, the common law imposes no duty on a person to act." Id. at 456-57, 578 S.E.2d at 714. However, under certain situations, the law may impose a duty to act where one has voluntarily undertaken a duty. This proposition is set forth in Restatement (Second) of Torts § 323. This section states:

One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if
(a) his failure to exercise such care increases the risk of such harm, or
(b) the harm is suffered because of the other's reliance upon the undertaking.

Restatement (Second) of Torts § 323.

As noted previously, Levine Children's Hospital did not undertake to provide an assessment of [REDACTED]'s home environment. It did not volunteer to determine the fitness of [REDACTED]'s parents, and it did not volunteer to investigate [REDACTED]'s home environment. Levine Children's Hospital, as it is required by statute to do, reported that [REDACTED] may have been the victim of child abuse when a CT scan revealed that [REDACTED] had suffered a subdural hematoma. The hospital social workers interviewed the parents to determine how the subdural hematoma may have occurred; the parents, however, did not have an explanation. Levine Children's Hospital reported its findings and suspicions to DSS which conducted its own investigation which continued after [REDACTED]'s discharge into the custody of his parents. At no time did Levine Children's Hospital assume a duty to conduct or attempt to conduct an investigation of [REDACTED]'s home situation or the fitness of

his parents to retain custody. Accordingly, the argument that CMHA assumed a duty is untenable.

Rainey argues that a social worker at Levine Children's Hospital, Ms. Laura Newmark, acknowledged that she and another social worker, Katy Harrison, undertook a duty to assess [REDACTED]'s home situation. While the social worker at Levine Children's Hospital suggested to DSS that DSS should conduct a home study of [REDACTED]'s home environment, Levine Children's Hospital never undertook to conduct the assessment of [REDACTED]'s home environment and never represented to DSS or anyone else that it would conduct such an assessment. (See Deposition of Laura Newmark, pp. 10-11) (R. p. 835) Rather, Newark testified that her role was to share information with DSS about [REDACTED]'s medical work-up and trust DSS to complete its investigation and do a home assessment that the hospital social workers cannot do, as they have no authority to enter someone's home or compel interviews. (See Deposition of Laura Newmark, pp. 10-11 (R. p. 835); p. 69, ll. 4-23 (R. p. 850)). Rainey's argument that CMHA assumed a duty is a mischaracterization of the record in this case, as what Rainey actually contends is that because the hospital did any social work evaluation or assessment, they were required to do all of the social work evaluations or assessments, even when they did not volunteer to undertake a duty and had no authority to conduct such an investigation. This is not the law.

Furthermore, in order for a duty to exist under Restatement (Second) of Torts § 323, CMHA's alleged assumption of a duty would have had to increase the risk of harm to [REDACTED]. Restatement (Second) of Torts § 323. There is no evidence that Levine Children's Hospital or its employees did anything to increase the risk of harm to [REDACTED].

as DSS was performing its own investigation, required the parents to enter into a safety plan, and two weeks later conducted its own home study.

Moreover, under Restatement (Second) of Torts § 323, one must show reliance upon the assumption of a duty. There is no evidence that anyone relied upon CMHA to conduct a home study or a social work evaluation of [REDACTED] and his family. DSS opened its own investigation and entered into a safety plan with [REDACTED]'s parents. DSS conducted its own home inspection of [REDACTED]'s home. [REDACTED]'s parents were aware of DSS's involvement in the case and that DSS would be continuing to investigate and be involved after discharge. Levine Children's Hospital did nothing to create any reliance in [REDACTED]'s family or DSS that it was taking over the investigation into [REDACTED]'s home environment.

Finally, even if it could be argued that CMHA undertook a duty to [REDACTED] because it interviewed his parents in an effort to determine the cause or origin of the subdural hematoma, CMHA was free to cease an alleged social work role in [REDACTED]'s case at any time because nothing it did increased the risk of harm to [REDACTED]. DSS not only conducted its own investigation, DSS is the only entity given legal authority to conduct such an investigation and remove [REDACTED] from custody of his parents. See Restatement (Second) of Torts § 323, cmt c. ("The fact that the actor gratuitously starts in to aid another does not necessarily require him to continue his services. He is not required to continue them indefinitely, or even until he has done everything in his power to aid and protect the other. The actor may normally abandon his efforts at any time unless, by giving the aid, he has put the other in a worse position than he was in before the actor attempted to aid him. . . . He may without liability discontinue the services through mere caprice, or because of personal dislike or enmity toward the other. Where, however, the actor's

assistance has put the other in a worse position [because the other] has been induced to forego other opportunities of obtaining assistance, the actor is not free to discontinue his services where a reasonable man would not do so.”); see also Underwood v. Coponen, 367 S.C. 214, 625 S.E.2d 236 (Ct. App. 2006) (noting that landowners-occasional trimming of his tree did not create a duty for which he can be held liable, as even if he had assumed a duty to trim the trees, he could have abandoned the duty at any time so long as his actions did not increase any risk that might have existed) (citing Staples v. Duell, 329 S.C. 503, 506, 494 S.E.2d 639, 641 (Ct. App. 1997) (noting that landowner’s patrolling the area for dead trees did not increase the risk of harm, as it did not hasten the decay of trees or affect when or where the trees would fall). Rather, CMHA merely aided the authorities in determining how █████ came to suffer a subdural hematoma. █████ did not miss other opportunities of assistance, as he was being assisted by DSS, the entity charged with assisting him.

Moreover, public policy weighs against finding CMHA voluntarily assumed to a duty to █████ merely because it cooperated with the authorities. The public policy of not imposing a duty outlined in Johnson, supra, Underwood, supra, and Staples, supra, is likewise applicable to this case. In not imposing a duty in each of those cases, the court noted the failure to impose a duty actually promoted good public policy. The court noted that to impose a duty in those cases would create “the highly undesirable precedent” of encouraging people to never inspect their land, thus potentially creating a greater harm. In Johnson, the Court noted that “contorting the Restatement to create a precedent that may have a chilling effect on cooperation with the authorities or other conduct that inures to the public good is ill-advised and poor public policy.” Johnson, 401 S.C. at 505, 737

S.E.2d at 514. Such is the situation here. If this Court were to impose liability on CMHA for not conducting what Rainey alleges was a complete-social work assessment and home study, the decision would result in hospitals refusing to interview the parents or relatives at all to avoid any liability. No acts which could be labeled by a plaintiff as "social work" would be done by hospitals in an effort to avoid liability. The better public policy is to encourage hospitals to provide as much additional information as possible to DSS.

II. AS AN ADDITIONAL SUSTAINING GROUND, THE TRIAL COURT'S DECISION SHOULD BE AFFIRMED BECAUSE THE CHARLOTTE-MECKLEBURG HOSPITAL AUTHORITY IS IMMUNE FROM LIABILITY.

As an additional sustaining ground, CMHA is immune from civil liability under this statute because [REDACTED] reported and participated in the investigation into the possible abuse of [REDACTED]. South Carolina has provided immunity for those who report or participate in investigations under Title 63. South Carolina Code section 63-7-390 provides:

A person required or permitted to report pursuant to Section 63-7-310 or who participates in an investigation or judicial proceedings resulting from the report, acting in good faith, is immune from civil and criminal liability which might otherwise result by reason of these actions. In all such civil or criminal proceedings, good faith is rebuttably presumed. Immunity under this action extends to full disclosure by the person of facts which gave the person reason to believe that the child's physical or mental health or welfare had been or might be adversely affected by abuse or neglect. (emphasis added)

S.C. Code Ann. § 63-7-390 (2010).

Rainey alleges that CMHA should be liable to [REDACTED] because the Levine Children's Hospital's investigation into the home environment of [REDACTED] was not adequate and that though Levine Children's Hospital undertook some investigation, it should have

done more. Rainey, therefore, admits that CMHA participated in a DSS investigation that started after a report of possible abuse under Title 63. Under section 63-7-390, anyone “who participates in an investigation” is immune from civil liability. Thus, if Levine Children’s Hospital participated in the investigation with DSS, but did not perform a sufficient investigation as alleged by the plaintiff, Levine Children’s Hospital and CMHA are entitled to immunity under this statute nonetheless. To hold otherwise ignores the plain language of the statute and would inhibit the sharing of information obtained by medical providers with DSS.

The statute in question does not provide immunity if someone has acted in bad faith. The South Carolina Supreme Court has defined bad faith as follows:

The opposite of good faith, generally implying or involving actual or constructive fraud, or a design to deceive or mislead another, or a neglect or refusal to [fulfill] some duty or some contractual obligation, not prompted by an honest mistake as to one’s rights or duties, but by some interested or sinister motive.

Estate of Carr ex rel. Bolton v. Circle S Enterprises, Inc., 379 S.C. 31, 664 S.E.2d 83 (Ct. App. 2008) quoting State v. Griffin, et al., 100 S.C. 331, 84 S.E. 876 (1915). See also Hoskins v. Aetna Life Ins. Co., 452 N.E.2d 1315 (Ohio 1983) (“A lack of good faith is the equivalent of bad faith, and bad faith . . . embraces more than bad judgment or negligence. It imports a dishonest purpose, moral obliquity, conscious wrongdoing, breach of a known duty through some ulterior motive or ill will partaking of the nature of fraud.”). The burden to establish bad faith is on the plaintiff.

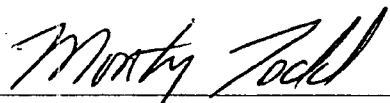
In the case at bar, Levine Children’s Hospital reported to DSS that Owen might have been a victim of child abuse. Levine Children’s Hospital cooperated with DSS in its investigation. There is no allegation in the plaintiff’s Complaint nor is there any proof in

the record that Levine Children's Hospital or its employees acted with a dishonest purpose, with conscious wrongdoing, or was motivated by an ulterior motive or ill will. Rather, the only evidence is that Levine Children's Hospital reported that Owen may have been a victim of child abuse and then cooperated with DSS in its investigation of the matter by sharing the findings of the medical team with DSS. Thus, not only can Rainey not show that CMHA breached any duty of care to [REDACTED] CMHA is immune from liability under S.C. Code Ann. §63-7-390.

CONCLUSION

The crux of the plaintiff's case is that CMHA should have refused to discharge [REDACTED] to his parents after being advised to do so by DSS. CMHA had neither the authority or duty to take such action nor did it have the duty or authority to conduct an investigation of [REDACTED]'s home environment. Because the plaintiff cannot establish any duty which CMHA breached, the trial court's Order should be affirmed.

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January 24, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

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

RECEIVED

JAN 24 2014

SC Court of Appeals

Elizabeth Hope Rainey, as the Appointed
Guardian ad Litem to [REDACTED], a minor Appellant,

v.

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

CERTIFICATE OF COUNSEL FOR FINAL BRIEF OF RESPONDENT

Counsel for Respondent certifies that the Final Brief of Respondent, The Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Medical Center, complies with Rule 211(b) of the South Carolina Appellate Court Rules.

Respectfully submitted,

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PROOF OF SERVICE

I, the undersigned legal assistant, of the law offices of Sowell Gray Stepp & Laffitte, LLC, attorneys for Respondent, The Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Medical Center, do hereby certify that I have served counsel in this action with a copy of the Certificate of Counsel for Final Brief of Respondent by mailing a copy of same to counsel via United States Mail, postage prepaid, at the following address(es):

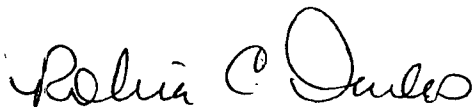
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I, the undersigned legal assistant, of the law offices of Sowell Gray Stepp & Laffitte, LLC, attorneys for Respondent, The Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Medical Center, do hereby certify that I have served counsel in this action with three copies of the Final Brief of Respondent by mailing three copies of same to counsel via United States Mail, postage prepaid, at the following address(es):

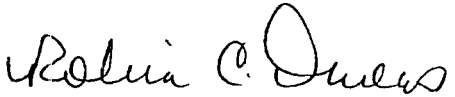
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of York County, the York County
Sheriff's Department, and York County

Of whom

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

Respondent.

RECEIVED

JAN 24 2014

Defendant
SC Court of Appeals

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REPLY ARGUMENT

I. APPELLANT DOES NOT CLAIM CMHA HAD A DUTY TO CONTRAVENE A DSS DIRECTIVE OR REFUSE TO RELEASE [REDACTED] FROM ITS CUSTODY.

A. CMHA's brief opposes the imposition of a duty Appellant does not assert.

A majority of The Charlotte-Mecklenburg Hospital Authority's ("CMHA") brief is premised on the notion that Appellant's duty argument is limited to a claim that CMHA was required by law to disobey a South Carolina Department of Social Services ("DSS") directive to release [REDACTED] to his parents' custody. CMHA portrays Appellant's claim in this way throughout its brief. Initial Br. of Resp't at 5 ("CMHA did not owe a duty to [REDACTED] to refuse to discharge him"); at 14 (Appellant "claims that CMHA breached a duty of care to [REDACTED] by discharging him into the custody of his parents"); at 15 (arguing Appellant contends "CMHA should not have returned the child to his parents"). CMHA claims Appellant made this argument "both at the hearing before the trial court and in her brief to this court." *Id.* at 5. This statement overlooks Appellant's duty assertion clearly expressed in her argument to the circuit court and its brief to this court. Appellant's oral argument before Judge Kimball and her brief make clear that she is not asserting a duty to retain custody or refuse a DSS directive. *See* Initial Br. of Appellant at 8 ("Appellant's negligence claim against CMC did not rely on a duty to withhold custody or remove [REDACTED] from his parent's custody"). (R. p. 131, line 24 – 132, line 1) ("my argument today does not go to the authority of DSS to discharge this child from the hospital").

CMHA inaccurately portrays Appellant's position as an effort to pit CMHA against DSS and require CMHA to perform an act grounded in social service decisions in

a way that directly contravenes a DSS social service directive. CMC's approach bears a certain surface level appeal in that, if Appellant's duty argument was truly contingent on a hospital supplanting DSS placement decisions, then Appellant would be advocating an overhaul of South Carolina's social service ecosystem. However, since Appellant's duty argument does not depend on CMHA holding [REDACTED] against DSS's will, CMHA's brief presents a false choice. Nothing in Appellant's claim asks the court to remove statutorily granted power from DSS, apply DSS statutory imposed duties to hospitals, or interpose hospitals in a role South Carolina law (supposedly) grants exclusively to DSS. CMHA's devotion to a "refusal to discharge" duty analysis renders much of its brief unresponsive to Appellant's claim.

B. CMHA's ~~duties~~ to assess and communicate assessment results are recognized by South Carolina law.

CMHA's duty and its breach occurred before [REDACTED]'s discharge with the effects of CMHA's breach reaching the date of discharge and beyond. CMHA's special relationship with its infant patient created a duty for CMHA to conduct a psychosocial assessment and communicate the assessment's results to DSS. CMHA recognizes this duty and maintains on-staff social workers and social work policies to govern its performance of this duty. In this case, CMHA social workers attempted an assessment but did not follow CMHA policy and did not adequately communicate important information from the assessment to DSS before [REDACTED] was discharged. If CMHA had properly performed its assessment and communication duties, then DSS would have made an alternative decision on placement and [REDACTED] would likely not have been exposed to the permanent injuries he suffered in January 2010. (R. p. 238) (but for

CMC's standard of care breaches "it is more likely than not this child would have been placed into custody with some other person than the custodial parents).

CMHA cites various South Carolina Children's Code provisions establishing child abuse investigative powers for DSS and other state entities. Initial Br. of Resp't at 7. CMHA then notes that the Code does not include similar provisions for hospitals beyond the statutory duty to report suspected abuse. CMHA ultimately concludes that there can be no hospital duty to assess because the Code does not specifically establish the duty. Initial Br. of Resp't at 10. CMHA's conclusion does not line up with the duty formation language in Madison v. Babcock Center, Inc., 371 S.C. 123, 638 S.E.2d 650 (2006), which CMHA cites earlier in its brief. CMHA claims that since only the reporting duty is codified in a statute, "CMHA had no further duty to  beyond the report. Initial Br. of Resp't at 10. However, legal duties are not limited to obligations imposed by statute. As CMHA acknowledged earlier in its brief, Madison identifies several sources of a legal duty including the parties' relationship and other special circumstances. Initial Br. of Resp't at 6 (citing Madison, 371 S.C. at 136, 638 S.E.2d 656-57). Appellant's duty assertion is based on the parties' hospital-patient relationship and, alternatively, CMHA's voluntarily assumed assessment duty.

CMHA also argues that assessments are exclusively a function of DSS in coordination with the family court system. Initial Br. of Resp't at 7. However, CMHA's policy clearly acknowledges the hospital's assessment duty. For example, in CMHA's "Child Abuse and Neglect Algorithm," if CMHA's medical team identifies a child for whom abuse is suspected, then the team must "[c]onsult CHS Clinical Care Management Social Worker to assist with assessment process." (R. p. 363) ("Algorithm") (emphasis

added). CMHA social worker Laura Newmark testified that the hospital had a duty to “do a complete workup” of [REDACTED]’s situation. (R. p. 844 at P. 47, lines 6-12). CMHA social worker duties include working with CMHA doctors and nurses to determine whether it is safe for a juvenile to return to his parents. (R. p. 849, at P. 65, lines 17-21).

CMHA policy also states activities required as part of the assessment process. Policy PR 110.03 states “the procedure that should be followed in cases of suspected abuse or neglect.” (R. p. 341). Fundamentally, this policy requires CMHA to participate in the determination of whether a patient meets the definition of an “abused juvenile.” (R. p. 341). CMHA medical providers must “consult CHS clinical care management social worker to aid in the assessment process.” (R. p. 342). A child is an “abused juvenile” if his parent “inflicts or allows to be inflicted serious physical injury.” CMHA social workers were required to examine the evidence of parental injury to [REDACTED] to meet its core policy duty of determining whether [REDACTED] was an “abused juvenile.” Additionally, CMHA’s procedures for “Evaluation and Management of Suspect Child Abuse or Neglect” required several assessment related activities. CMHA was required to examine any explanation given by the child’s parents for injuries the child sustained. (R. p. 347). CMHA social workers were also responsible for determining whether [REDACTED]’s mother and father had engaged in “inappropriate paternal behaviors.” (R. p. 352).

The compartmentalization CMHA proposes, i.e. CMHA performs medical tests and DSS performs all social work activities, is also in conflict with the record. Both CMHA and DSS indicate greater CMHA responsibility in social service decisions than CMHA now claims. Ms. Newmark testified that CMHA social workers “work with” DSS in assessing a suspected child abuse victim’s safety. (R. p. 849 at P. 68, lines 17-20; R. p.

851 at P. 74, lines 17-19) (Ms. Newmark describes her role as personally “working with DSS” related to patient discharge); (R. p. 854 at P. 85, line 17) (“we work with DSS”). DSS witnesses testified that a hospital has a role in assessing a suspected child abuse victim. A typical DSS investigation would include interviewing hospital personnel and “tak[ing] to consideration any concerns that they have.” (R. p. 686 at P. 26, lines 6-9).

DSS supervisor Krista M. Hinnant also testified that DSS and the hospital can have overlapping social work responsibilities for a suspected child abuse case. DSS “[a]bsolutely” looked to the hospital for help in making DSS case decisions. K. Hinnant (R. p. 686 at P. 26, lines 10-12). DSS worker Dirvondra Hill also testified that a hospital, through its social workers, was responsible for providing DSS “information regarding the parents’ cooperation.” (R. p. 505 at P. 42, lines 14-18). DSS relies on information provided by hospital staff including hospital social workers. Clearly, CMHA’s role in [REDACTED]’s case went beyond the medicine. CMHA maintained on staff social workers and drafted CMHA social work policies specifically because CMHA recognized its role in suspected child abuse cases extends beyond the medicine.

C. CMHA’s assessment and communication failures proximately caused [REDACTED]’s permanent injuries.

CMHA also argues that any assessment and communication deficiencies could not have been a proximate cause of [REDACTED]’s injuries because of DSS’s important role in determining when and how a patient is discharged from the hospital. Initial Br. of Resp’t at 15. Initially, it is important to note that CMHA policy indicates that discharging a patient is a joint decision between DSS and CMHA social workers. (R. p. 363) (“When medically cleared, do not discharge child until disposition has been determined by medical social worker and DSS”). Additionally, [REDACTED]’s situation is similar to the one

described in Gaines v. Cumberland County Hospital System, Inc., 692 S.E.2d 119 (N.C. App. 2010), cited in Appellant's Initial Brief. Initial Br. of Appellant at 24-26. In Gaines, the hospital's breach included assessment failures and the court found competent evidence that these failures were a proximate cause of injuries suffered months later at the hand of a third party. Notably, CMHA makes no effort to distinguish Gaines or its duty and proximate cause principles that are directly on point to this case. Ultimately, Gaines is based on the effect a hospital's proper assessment would have had on DSS's placement decision and an innocent child's resulting exposure to an abuser. Proper hospital conduct would have affected North Carolina DSS's decision and eliminated the child's exposure to the abuser. The same principles apply here and show that CMHA errs in its assertion that Appellant contends CMHA "should not have returned the child to his parents." It is not that CMHA should not have returned [REDACTED] to his parents but that DSS **would not** have returned Owen C. to his parents had CMHA conducted a proper assessment and properly communicated its results to DSS.

CMHA argues Appellant has failed to show what additional information CMHA social workers would have uncovered had they performed the assessment required by law and outlined by hospital policy. Initial Br. of Resp't at 16. Extensive information about [REDACTED]'s family life and future abuse risk potential was available to CMHA social workers and would have been uncovered by a proper assessment. (R. pp. 219-224). Proper interviews of [REDACTED]'s parents would have revealed a troubling picture of family dysfunction and child abuse triggers. Based on information [REDACTED]'s parents later revealed, Appellant's expert and license social worker George Savarese concluded

CMHA social workers could have uncovered the same information in December 2009 had their assessment followed CMHA policy and general social work standards.

For example, a proper interview with [REDACTED]'s father Michael may have revealed that Michael had a criminal history and that the relationship between [REDACTED]'s parents was significantly "stressed" since [REDACTED] was born. (R. p. 219). Michael may have also acknowledged the past instances where he "would get frustrated with [REDACTED]'s crying and pat him in the back hard." (R. p. 219). A proper interview with [REDACTED]'s mother Kayla would have revealed Michael's hesitation or apathy when caring for [REDACTED]. Kayla was concerned that Michael "wasn't aware of how fragile a child could be." (R. p. 220) (quoting R. p. 788 at P. 44, lines 3-6). Interviews with [REDACTED]'s maternal grandparents would have also revealed prior bruising suffered by [REDACTED] while in Michael's care. (R. p. 223). This is just a small selection of the information a proper assessment would have revealed and forms part of the basis for Appellant's experts' opinions that DSS would not have placed [REDACTED] in his parents' custody if CMHA performed a proper assessment and communicated its results before [REDACTED]'s discharge.

II. CMHA'S SOCIAL WORKER TESTIFIED THAT SHE UNDERTOOK A PSYCHOSOCIAL ASSESSMENT DUTY FOR [REDACTED]'S BENEFIT.

CMHA claims that it undertook no duty to perform a psychosocial assessment. However, CMHA conduct meets all required elements of Restatement (Second) of Torts § 323 and the voluntarily assumed duty doctrine applies in this case. CMHA contends that it did not actually undertake any social service duty while [REDACTED] was a patient at its hospital. Initial Br. of Resp't at 17. It is clear that CMHA social workers were actively involved in [REDACTED]'s hospitalization in their role as licensed social workers. (R. p. 834 at P. 8, lines 5-23). CMHA social workers Laura Newmark and Katie Harrison had

various interactions with [REDACTED]'s parents as part of their work as licensed social workers. (R. p. 841 at P. 36, lines 1-4).

CMHA appears to argue that Ms. Newmark and Ms. Harrison's interactions with the parents were limited to a medical inquiry as to the cause of [REDACTED]'s subdural hematoma. Initial Br. of Resp't at 17. In other words, CMHA argues that its social workers interviewed [REDACTED]'s parents only for the purpose of determining the cause of [REDACTED]'s injury and for no purpose related to the quality of the home to which [REDACTED] might be discharged. CMHA's argument is not supported by Laura Newmark's testimony. Ms. Newmark admitted that she participated in an "assessment" not a medical inquiry. (R. p. 857 at P. 99, lines 8-11). Ms. Newmark also acknowledged that the assessment CMHA social workers performed in [REDACTED]'s case was the assessment outlined in CMHA Policy 110.03 described above. (R. p. 857 at P. 99, lines 5-11). Policy 110.03 requires "Evaluation and Management" of suspected child abuse victims.

The procedures required for this assessment include evaluation of parents' explanations for a child's injuries and any evidence of inappropriate parental behavior. This is the social service assessment CMHA social workers acknowledge performing and this is the assessment Appellant alleged that CMHA social workers performed improperly by omitting actions required by policy. Appellant is not attempting to assign blanket social service responsibility to CMHA to the exclusion of DSS, as CMHA suggests in its brief. Initial Br. of Resp't at 18. Instead, Appellant asks the court to recognize the social service duty CMHA chose to undertake, endeavored to outline in its corporate policies, and failed to perform as required.

III. THE CIRCUIT COURT CORRECTLY REFUSED TO APPLY SOUTH CAROLINA'S STATUTORY REPORTER IMMUNITY.

The circuit court properly concluded South Carolina's statutory "[r]eporter immunity from liability" does not apply in this case. (R. pp. 13-14) (citing S.C. Code Ann. § 63-7-390). The South Carolina Children's Code requires certain classes of individuals to report instances of suspected child abuse or neglect to DSS or law enforcement. S.C. Code Ann. § 63-7-310(A), (D). The duty to report applies to any "physician," "nurse," "medical...professional," and "social or public assistance worker." Id. An individual subject to § 63-7-310's duty who fails to report suspected abuse or neglect may face criminal liability. S.C. Code Ann. § 63-7-410. The Children's Code also confers immunity on mandatory reporters for civil and criminal liability arising from the performance of their reporting duty. S.C. Code Ann. § 63-7-390. CMHA argued that the immunity provision entitled it to summary judgment on Plaintiff's negligence claim. However, the conduct underlying Plaintiff's claim does not fall within the immunity's scope and the circuit court correctly refused to apply the immunity.

To embolden various professionals interacting with children to meet their statutory obligation and help DSS/police address the public welfare problem of child abuse and neglect, immunity is provided for claims related to a report of suspected child abuse. The immunity provision's limited reach is clear from its language. Under § 63-7-390, a "person required or permitted to report...is immune from civil and criminal liability which might otherwise result by reason of these actions." The proper construction of this statute clearly indicates that immunity is limited. See In re Campbell, 379 S.C. 593, 599-600, 666 S.E.2d 908, 911 (2008) ("The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature"). Legislative intent

“should be ascertained primarily from the plain language of the statute.” Thompson v. Cisson Constr. Co., 377 S.C. 137, 157, 659 S.E.2d 171, 181 (Ct. App. 2008). The statute’s plain language indicates the immunity is limited to “these actions,” i.e. actions described and mandated by § 63-7-310 and other provisions within the same article of the Children’s Code.

This immunity provision is not intended to provide reporters blanket immunity for post-report conduct. Recognizing the statute’s plain language, the South Carolina Attorney General’s office has concluded the immunity applies only “for reports made of abuse or neglect.” Op. S.C. Att’y Gen. 06-22 (Jan. 26, 2006); see also Op. S.C. Att’y Gen. 04-6 (Jan. 7, 2004) (statute provides immunity for reporter “by reason of his or her reporting in good faith” suspected abuse); Op. S.C. Att’y Gen. 95-224 (Nov. 27, 1995) (Children’s Code provides “standards set by law for reporting and immunity for doing so”).¹ Although there are no reported cases specifically interpreting § 63-7-390 or its predecessor, this Court’s handling of a similar statute is instructive. In Williams v. Watkins, 379 S.C. 530, 665 S.E.2d 243 (Ct. App. 2008), the Court addressed whether the Omnibus Adult Protection Act’s reporter immunity provision (S.C. Code Ann. § 43-35-75) immunized a psychologist from an alleged abuser’s claims for defamation and intentional infliction of emotional distress. The statute in question granted immunity to a reporter for potential liability that may arise “by reason of this action.” The Court held that immunity was limited to “potential liability flowing from the report.” Williams, 379 S.C. at 537, 665 S.E.2d at 247.

¹ These opinions commented on former S.C. Code Ann. § 20-7-540, the reporter’s immunity statute’s location before the Children’s Code was moved to Title 63 of the Code.

CMHA's allegedly negligent conduct does not flow from its report of suspected child abuse to DSS. CMHA policies required the hospital's agents to perform several acts in response to [REDACTED]'s presentation. At the very least, the hospital was required by its own policies to (1) report the case to DSS; (2) complete a SCAN form; and (3) conduct a competent and thorough psychosocial assessment before Owen's release. K. Moore Aff. at 2. CMHA's improper conduct is based on the assessment and communication obligations imposed by CMHA policy and not on the statutory obligation to report.

CMHA asks the court to construe § 63-7-390 to immunize non-reporting related conduct of an individual with a statutory ~~duty~~ to report child abuse. This interpretation goes beyond the plain meaning of the statute's language and must be rejected. Additionally, CMHA's proposed interpretation also fails to further the statute's legislative objective. This statutory framework is intended to "save abused and neglected children from injury and harm by establishing an effective reporting system and encouraging the reporting of children in need of protection." See Op. S.C. Att'y Gen. (June 22, 1990). Granting immunity to CMHA for alleged violation of its common law and internal policy duties to conduct an assessment does nothing to protect children or encourage reports of suspected child abuse.

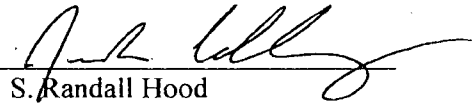
Reporter immunity is designed to prevent claims against a reporter based on the report's veracity or the reporter's motivation. The statutory language supports this view in that it includes a rebuttable presumption of good faith. To support the statutory goal of encouraging reports of even "suspected" child abuse, the legislature grants reporters immunity from defamation, emotional distress, and privacy tort claims for good faith reports See Williams, 379 S.C. at 532, 665 S.E.2d at 244 (applying reporter immunity to

defamation and intentional infliction of emotional distress claims). This strikes the proper balance between encouraging reports and preventing vindictive, bad faith reports.

Finally, CMHA argues that the conduct alleged in Appellant's negligence claim is covered by the immunity statute because it relates to "an investigation or judicial proceedings resulting from the report." Initial Br. of Resp't at 21-23. However, CMHA's negligent acts and omissions actually relate to CMHA's common law duties to assess and communicate as documented in its policies. Section 63-7-390 immunity applies only to reports and conduct comprising part of an investigation/judicial proceedings "resulting from the report." The social service work CMHA was required to perform and undertook to provide [REDACTED] arose from CMHA's duties to its patient and was not "resulting from" CMHA's suspected abuse report to DSS. In short, CMHA owed its assessment/communication duties regardless of the later arising DSS investigation, and CMHA's negligent conduct cannot be deemed to "result" from the report. In sum, Plaintiff's negligence claim against CMC does not allege conduct covered by the reporter's immunity and the immunity provision does not apply to this case.

CONCLUSION

Based on the arguments above and those in her Initial Brief, Appellant respectfully requests that the Court reverse the circuit court's order granting summary judgment to CMHA.


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January 24, 2014
Rock Hill, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Case No. 2011-CP-46-4508

Elizabeth Hope Rainey, as the
Appointed Guardian ad Litem to
[REDACTED] a minor

Appellant

v.

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

Of whom

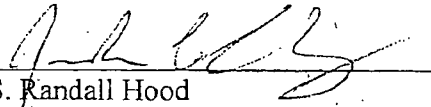
Charlotte-Mecklenburg Hospital
Authority d/b/a Carolinas Medical
Center is the

Respondent.

CERTIFICATE OF COUNSEL

Counsel hereby certifies that the following briefs comply with Rule 211(b), SCACR:

- (1) Final Brief of Appellant; and
- (2) Final Reply Brief of Appellant.


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January 24, 2014
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APPEAL FROM YORK COUNTY
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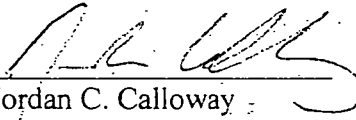
Charlotte-Mecklenburg Hospital
Authority d/b/a Carolinas Medical
Center is the Respondent.

PROOF OF SERVICE

The undersigned hereby certifies that on this 24th day of January, 2014, he served counsel for the Defendants with copies of the **Final Brief of Appellant, Final Reply Brief of Appellant, and Certificate of Compliance** in this matter by mailing a copy of the same by mail to the following address:

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