

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

Eugene C. Griffith Jr., Circuit Court Judge

Case No. 2016-001618

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SC Court of Appeals

South Carolina Department of
Social Services,

Respondent,

v.

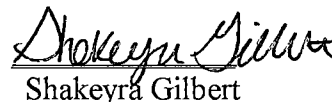
Rodrick Tucker and Shakeyra
Gilbert,

Appellants.

REPLY BRIEF



Rodrick Tucker
206 Oak Street
Clinton, South Carolina 29325
(864) 869-8825
Appellant



Shakeyra Gilbert
350 Norris Street, Apt 246D
Spartanburg, South Carolina 29306
(864) 402-9838
Appellant

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SC DSS’S ARGUMENT THAT A FAMILY COURT FOUND THAT IT MADE A “PRIMA FACIE” SHOWING OF PRABABLE CAUSE FAILS TO ADDRESS THE VERY REASON DSS WAS ABLE TO MAKE THAT SHOWING, THROUGH UNTRUE STATEMENTS, OMISSIONS AND MISCHARACTERIZATIONS OF A FLAWED INVESTIGATION PRIOR TO THE INIATTION OF ANY LEGAL PROCEEDINGS. DSS’S CLAIM THAT IT HAS NO ALLEGED OR OTHER DUTY TO APPELLANTS IS ALSO FLAWED.

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Reply to Respondents Argument 1 (D)

SC DSS'S ARGUMENT THAT A FAMILY COURT FOUND THAT IT MADE A "PRIMA FACIE" SHOWING OF PROBABLE CAUSE FAILS TO ADDRESS THE VERY REASON DSS WAS ABLE TO MAKE THAT SHOWING, THROUGH UNTRUE STATEMENTS, OMISSIONS AND MISCHARACTERIZATIONS OF A FLAWED INVESTIGATION PRIOR TO THE INITIATION OF ANY LEGAL PROCEEDINGS. DSS'S CLAIM THAT IT HAS NO ALLEGED OR OTHER DUTY TO APPELLANTS IS ALSO FLAWED.

In its Brief, DSS claims that the Appellants have not alleged a duty owed to them. This is untrue as Appellants allege in their Amended Complaint that, DSS is required to conduct a thorough investigation before removing children from their parents, and DSS did not do so in this case. *Amended Complaint, p 11, line 76*. This duty is evidenced by SC Code 20-7-650(C), *Within twenty-four hours of receiving a report of suspected child abuse or neglect, DSS must begin a thorough investigation.* The Appellants allege that DSS failed to conduct even a minimal investigation yet along a thorough one. This duty is owed not only to the minor child but to the parents and subjects of DSS investigations. DSS errs in asserting that the duty to investigate allegations of child abuse is owed only to minor children. "Just as SCDSS has the responsibility under the statutory scheme to bring meritorious allegations of child abuse and neglect before the family court, it also has the responsibility and duty to seek dismissal of those petitions subsequently determined by their investigation to be without merit." *S.C. Dep't of Soc. Servs. v. Pritcher*, 329 S.C. 242, 247, 495 S.E.2d 242, 244 (Ct. App. 1997). As shown, the duty and responsibilities in a DSS investigation is owed to all subjects of the investigation not just children

DSS also claims that the Tucker and Dandy affidavits do not provide evidence of negligence. However, both affidavits directly contradict everything DSS stated as reason for seeking the removal of the minor child. These affidavits allege that DSS made false representations of its observations, which is not only negligent but also fraudulent.

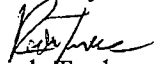
Once again DSS relies on its assertions that the Family Court found probable cause to remove the minor child. This is undisputed, however, DSS fails to recognize that fact that any untrue representations and omissions made to the Family Court ex parte or during a probable cause hearing could not be directly challenged at those hearing because such hearings are one sided. Lastly, for arguments sake, even though a family court found probable cause based on DSS's affidavits, DSS was still negligent for providing false affidavits to the Court.

CONCLUSION

The Appellants, Shakeyra Gilbert and Rodrick Tucker, reiterate their arguments as set forth in their Brief of Appellants that the Circuit Court erred in granting summary judgment to DSS.

September 7, 2016

Respectfully submitted,



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PROOF OF SERVICE OF A NOTICE OF APPEAL

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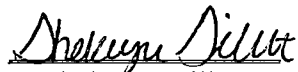
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PROOF OF SERVICE

I certify that I have served the Appellants Reply Brief on the South Carolina Department of Social Services by personally mailing a copy of it to its attorney of record, Ronald H. Colvin, at his office at 1208 John B White Sr Boulevard, Spartanburg, South Carolina 29306 on September 7, 2016.

September 7, 2016



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SC Court of Appeals

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