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SC Court of Appeals

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

Rodrick Tucker and Shakeyra Gilbert

Appellants,

v.

South Carolina Department of Social
Services,

Respondent.

RECORD ON APPEAL

Volume 1

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

Shakeyra Gilbert
350 Norris Street Apt 248D
Spartanburg, South Carolina 29306
(864) 402-9838
Appellant

Ronald H. Colvin
Ronald H. Colvin, P. A.
Post Office Box 6364
Spartanburg, South Carolina 29304
(864) 587-6711
Attorney for Respondent

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STATE OF SOUTH CAROLINA)
)
COUNTY OF LAURENS)

IN THE COURT OF COMMON PLEAS

Rodrick Tucker and Shakeyra)
Gilbert,)
)
Plaintiffs,)

C. A. NO: 2015-CP-30-897

vs.)

ORDER

South Carolina Department of)
Social Services)
)
Defendant.)
_____)

This matter is before this Court on a Motion for Summary Judgment brought by the Defendant South Carolina Department of Social Services. This matter was heard by me in Laurens, South Carolina on June 3, 2016. The Defendant was represented by Ronald H. Colvin of the Spartanburg Bar. The Plaintiffs were pro se and both were present at the hearing. Both parties submitted Memorandums in Support of their positions in this matter.

After listening to arguments from both parties, I was concerned that this Court might not have jurisdiction in this matter, and that jurisdiction lied exclusively in the Family Court. I agreed to hold the matter in abeyance to give me the opportunity to thoroughly review the Memorandums filed by both parties in support of their positions before issuing a ruling in this case.

In reviewing the Memorandums, I was able to determine that the facts of this case are that the South Carolina Department of Social Services (DSS) received a report on August 16, 2015, that an infant was residing in a home in a sordid condition, and investigated Plaintiffs' residence, or a residence where the Plaintiffs and their newborn baby, "KAG", were located, on or about August 17, 2015. As

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a result of its investigation, DSS filed an action in the Laurens County Family Court seeking an Ex Parte Order in the Interest of KAG, Case Number 2015-DR-30-0510. An Ex Parte Order was granted on August 18, 2015 giving DSS emergency protective custody of minor KAG. See Ex Parte Order signed August 18, 2015 (filed August 19, 2015) A probable cause hearing was held the next day before The Honorable Joseph C. Smithdeal, Presiding Judge of the Family Court, Eighth Judicial Circuit. Judge Smithdeal held that, to-wit:

“Based upon [Judge Smithdeal’s] examination of the file and the pleadings and a review of the evidence presented, [Judge Smithdeal found] that the South Carolina Department of Social Services (hereinafter the Department) ... made a prima facie showing as required by S.C. Code § 63-7-710 that probable cause did exist for the Court to take the minor child into emergency protective custody and continue[d] to exist for the minor child to remain in the physical and legal custody of the Department because there [was] probable cause to believe, based on the evidence presented by the Department that returning the minor child to the home would seriously endanger the child's physical safety or emotional well being, among other things. ”

A final hearing was scheduled in October 2015, but prior to the hearing, the South Carolina Department of Social Services agreed to dismiss the Family Court case involved in this matter. The reason for pursuing this litigation against the Plaintiffs Tucker and Gilbert, as well as the reason for dismissing this action was set forth in the Second Affidavit of Mindy Miyares dated April 20, 2016. See Order of the Family Court filed December 15, 2015. Plaintiffs requested a reconsideration of Judge Smithdeal’s ruling. A hearing was held before Judge Smithdeal on March 3, 2016, in which the

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JCH

Plaintiffs were in attendance in the courtroom and were allowed to explain their position in the Family Court matter. After hearing all arguments, Judge Smithdeal stated as follows, to-wit:

"But without anything more, Mr. Tucker and Ms. Gilbert, I am going to deny respectfully, your Motion for Reconsideration. I find that the - - according to the Order, according to what you - - I have heard your testimony or your statements, I have heard the statement of the Department of Social Services and based on that, I find that the Order - - the underlying order was appropriate under the circumstances. Okay?"

Mr. Tucker: Yes, sir.

The Court: All right. Any questions?

Mr. Gilbert: No.

Mr. Tucker: No, Your Honor."

The Order denying the Motion for Reconsideration was confirmed in writing by Judge Smithdeal on April 2, 2016 and filed on April 12, 2016 with the Clerk of Court of Laurens County. No appeal was filed in regard to Judge Smithdeal's Order Denying the Motion for Reconsideration and the time for appeal of Judge Smithdeal's Order has lapsed.

It appears to the Court that the Plaintiffs are attempting to appeal the Order of Family Court Judge Smithdeal, even though the time for appeal has lapsed, by bringing this action in the Court of Common Pleas for Laurens County.

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Article V, Paragraph 11 created the Circuit Court system in the State of South Carolina when it stated, to-wit:

“The Circuit Court shall be a general trial court with regional jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts, . . .”

In the case of South Carolina Department of Mental Health et. al. vs. State of South Carolina, (390 S.E.2d 185, 301 S.C. 75) our Supreme Court stated, to-wit:

“The Family Court is a statutory court created by the Legislature and, therefore, is of limited jurisdiction. Its jurisdiction is limited to that expressly or by necessary implication conferred by statute.”

Sections 63-3-510 and 530 establish that the Family Court has exclusive jurisdiction to hear matters such as were heard by Judge Smithdeal and to make a ruling and a final determination in this case which was done. The final Order of Judgment Smithdeal concerning the Motion for Reconsideration was not appealed, and the time to appeal has lapsed. Judge Smithdeal’s Order is the law of this case.

I have reviewed the Memorandums and supporting documentation in support of the parties. There has been no evidence submitted by the Plaintiffs to support any of their allegations set forth in either the Complaint or Amended Complaint.

It is the opinion of this Court that this Court does not have jurisdiction to hear this matter, but even if this Court has jurisdiction in this matter, based upon my review of the Court file, the Plaintiffs have failed to meet their burden of proof of establishing any evidence to support their claims as set forth in the Complaint and Amended Complaint. Jurisdiction lies exclusively in the


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Laurens County Family Court. This matter ended when the Plaintiffs failed to timely file an Appeal of the Order of Judge Smithdeal, and by not filing an Appeal, Judge Smithdeal's Order became the law of this case. My ruling not only is based on the issue of lack of jurisdiction in this matter, but also upon reviewing the information submitted, the Plaintiffs failed to meet their burden of proof of establishing any evidence to support their claim.

The Defendant's Motion for Summary Judgment is hereby granted and this matter is dismissed with prejudice as a matter of law.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that summary judgment is granted to the Defendant and the above-entitled matter is dismissed with prejudice.

IT IS SO ORDERED.



Eugene C. Griffith, Jr.
Judge Eighth Judicial Circuit

June 24th, 2016

Laurens, South Carolina

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LAURENS COUNTY
FAMILY COURT

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

South Carolina Department of
Social Services,

Plaintiff,

vs.

Shakeyra Gilbert and Rodrick
Tucker

Defendant(s)

In the Interests of:
Kyndal Gilbert; D/O/B 7/22/15

Minor(s) Under the Age of 18

2015 AUG 19 A 9 07
IN THE FAMILY COURT
FOR THE THIRD JUDICIAL CIRCUIT
LANCASTER
C/A No.: 2015-DR-30-570

EX PARTE ORDER

This matter came before me on August 18, 2015 on a Petition for an *Ex Parte* Order. Plaintiff requests that this Court, acting pursuant to that authority given under S. C. Code Ann. § 63-7-740, issue its *Ex Parte* Order, granting emergency protective custody of the minor child, who was born on or about July 22, 2015.

Plaintiff alleges that probable cause exists to believe that, by reason of abuse or neglect, there exists imminent and substantial danger to this minor child's life, health, or physical safety in the following particulars:

Based on the sworn affidavits presented to this court, it appears that Defendants, the legal custodians of the minor children, are not protecting the minor children, were aware of the abuse or neglect described in the Complaint and Affidavits, and did not report the incidents or seek assistance for the minor children.

An SCSS investigation allegedly revealed that the minor child was living in the home Defendants share, which was in a sordid condition and smelled strongly of urine. The minor child was observed to have no age-appropriate bed and was without adequate clothing. Further investigation revealed that Defendant Tucker has an open case, indicated for abuse and neglect, in Spartanburg County centered around allegations of domestic violence.

At this point, alternative placement attempts have been unsuccessful.

Leaving the child known as the unborn child in the custody of the Defendants would place the children in imminent and substantial danger.

Plaintiff has submitted sworn affidavits in support of the allegations, and I have studied the information contained therein. The affidavits and the allegations contained therein are incorporated in this order.

Plaintiff has further submitted in its affidavits that Defendants, the presumptive party to exercise temporary or permanent control over the minor child, do not consent to removal of the children.

Based upon the foregoing, I find there exists probable cause to believe that, by reason of abuse/neglect, there is imminent and substantial danger to the life, health, or physical safety of the unborn child. The person(s) exercising temporary or permanent control of the children has not consented to removal of the children. I find that SCDSS is a proper party to have emergency protective custody under such circumstances. I also find that based upon its affidavits, SCDSS exercised reasonable efforts to prevent removal. Given the emergency situation, SCDSS' actions were reasonable.

I further find that continuation in the home is contrary to the best interest of the minor children's welfare.

THEREFORE, IT IS ORDERED that:

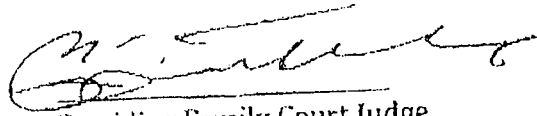
1. Emergency protective custody of the unborn child is awarded to SCDSS. SCDSS shall have full authority to provide for medical examinations, diagnoses, and other such routine and emergency medical care and treatment as may be required. SCDSS is also designated as the child's personal representative as set out in Health Insurance Portability and Accountability Act (HIPAA) regulations.

2. If requested by SCDSS, SCDSS shall be accompanied by a duly authorized law enforcement officer when it attempts to take the children into custody. It shall be the duty of the accompanying law enforcement officer to remove physically the child from the premises where the children are found.

3. SCDSS shall provide immediate written notice of the location of the children to the parents, guardian, or custodians as required by S.C. Code Ann. § 63-

7-630 unless there are compelling reasons for SCSS to believe that disclosure of this information would be contrary to the best interests of the children.

IT IS SO ORDERED.



Presiding Family Court Judge
Eighth Judicial Circuit

August
18 2015
Grant, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LAURENS)
)
 South Carolina Department of Social Services,)
)
 Plaintiff,)
)
 vs.)
)
 Shakerya Gilbert, and)
 Rodrick Tucker)
)
 Defendants,)
)
 In the Interest of:)
 Kyndal Gilbert) DOB: 07/22/15)
 A minor under the age of 18.)

IN THE FAMILY COURT
 FOR THE EIGHTH JUDICIAL CIRCUIT
 Case Number: 2015-DR-3-510

Order
 (Probable Cause Hearing)

2015 DEC 15 P 1:56
 CLARENCE L. LANCASTER
 CLERK OF COURT
 LAURENS COUNTY

PRESIDING JUDGE:	Honorable Joseph C. Smithdeal
DATE OF HEARING:	August 19, 2015
ATTORNEY FOR DSS:	Benjamin L. Shealy
ATTORNEY FOR MS. GILBERT:	Pro Se
ATTORNEY FOR MR. TUCKER:	Pro Se
CASEWORKER:	Mindy Miyares
COURT REPORTER:	Sandra Davis

This matter came before the court for a probable cause hearing pursuant to SC Code § 63-7-710(A). This court has jurisdiction over the parties and subject matter of this action, pursuant to S.C. Code § 63-7-610. Appearances at the hearing are as listed above.

Service of the pleadings in this matter was properly made.

Based upon examination of the file and the pleadings and a review of the evidence presented, I find that the South Carolina Department of Social Services (hereinafter the Department) has made a prima facie showing as required by S.C. Code § 63-7-710 that probable cause did exist for the Court to take the minor child into emergency protective custody and continues to exist for the minor child to remain in the physical and legal custody of the Department because there is probable cause to believe, based on the evidence presented by the Department that returning the minor child to the home would seriously endanger the child's physical safety or emotional well-being.

I MAKE THE FOLLOWING FINDINGS, based on the prima facie showing required by S.C. Code § 63-7-710, subsections (c) and (d), having heard the witnesses presented by the Department and having allowed the respondents to submit any affidavits and to cross-examine

the Departments witnesses as to whether probable cause existed to effect emergency removal:

1. There was probable cause for the court to take emergency protective custody and for the Department to assume legal custody of the child based on evidence that SCDSS investigation revealed that the minor child was living in the home the Defendants share, which was in a sordid condition and smelled strongly of urine; the minor child was observed to have no age-appropriate bed and the Defendant mother informed that the minor child, despite weighing only four pounds, shared a bed with the Defendants; Defendant Tucker has an open DSS case centered around allegation of domestic violence with another woman, which was indicated in 2014 for abuse/neglect in Spartanburg County; Mr. Tucker has not complied with treatment from the 2014 case; and there were no known suitable relatives to provide for the child.
2. Probable cause remains at this time because there has not been a material or substantial change in the circumstances with the parties since the EPC of the minor child occurred, and no appropriate alternative placement for the minor child has yet been located.
3. The Plaintiff made the following efforts to prevent the removal of the child: No services were offered at the time of removal as Laurens DSS had no prior knowledge of this family prior to receiving the report.
4. Reasonable efforts were not possible to prevent or eliminate the need for removal as outlines in paragraph one (1) above. I further find that reasonable services would not have allowed the child to remain safely in the home.
5. I find that continuation of the child in the home is contrary to the child's best interest and welfare.
6. I find that the child is a naturally born citizen of the United States.
7. I find that the child has not been identified as being member of a recognized Native American Indian tribe.
8. Any child support being paid for the above named child shall be redirected to the Department.
9. I find and conclude that a Guardian ad litem (GAL) shall be appointed to look after the best interest of the minor child pursuant to SC Code § 63-7-1620(1).
10. I find and conclude that should the Defendants desire to have counsel they are to hire counsel of their own choosing or apply for the appointment of counsel with the Laurens County Clerk of Court. Failure to obtain counsel prior to the next hearing will not result in a continuance of the hearing.
11. I find and conclude that the Defendants will keep the Department notified of any change of address, telephone number or any other changes effecting notice with regard to this case. If the Defendants fail to keep the Department informed of their current address and telephone number this will not be grounds for continuing future hearings based on lack of notice if the Department has mailed notice to the address of file with the Department.

THEREFORE IT IS ORDERED, ADJUDGED, AND DECREED that:

- A. The above findings of fact and conclusions of law are incorporated into the Order of the Court as

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if fully set forth herein verbatim.

B. Probable cause did exist and continues to exist for the minor child to remain in the physical and legal custody of the Department;

C. Based on the testimony presented the Court hereby retains the above listed minor child in emergency protective custody and that return of the child to the home would place the child at an unreasonable risk of harm affecting the child's life, physical health or safety, and/or mental well-being. The child cannot be protected reasonably from this harm if they are returned to the home at this time. Also, return of the child to the home would be contrary to the welfare of the child and custody of the child is granted to the South Carolina Department of Social Services. I also find that reasonable efforts were not possible to prevent or eliminate the need for removal as outlines in paragraph one (1) above and that reasonable services would not have allowed the child to remain safely in the home.

D. Custody of the minor child shall include the authority to consent to routine medical care and treatment as may be required, provide such residential placement for the child as it determines to be appropriate, and the Department is designated as the child's personal representative as set out in the Health Insurance Portability and Accountability Act (HIPAA) regulations.

E. Any child support the Defendants are currently paying on behalf of the minor child or support from third parties on behalf of the minor child involved in this case shall be redirected to SCOSS effective the date of this Order.

F. With regard to attorney or Guardian *ad litem* appointments, the Court finds as follows:

(c) The following minor child, Kendal Gilbert shall be appointed a Guardian *ad litem*.

(d) The Defendants may qualify for possible *pro bono* attorney appointments. Should Defendants wish appointed legal counsel, said defendants shall apply for said appointment through the Laurens County Clerk of Court, Laurens County Courthouse, Laurens, South Carolina. If the Defendants meet the qualifications for indigence under S.C. Appellate Court Rule 602, said Defendant(s) shall be appointed *pro bono* counsel in this case. Said Defendants may retain counsel of their own choosing or may represent themselves.

G. A referral for child support shall be made to the office of Child Support Enforcement within five (5) days of the date of this Order.

H. Temporary legal and physical custody may be transferred to a relative or non-relative upon approval by the Department and with the consent of the Guardian *ad litem* via Supplemental Order.

I. The findings made in this Order, unless otherwise noted shall not affect the rights of the Defendants to have a full trial on the merits with regards to the issue of the removal of the child from their custody and whether or not the child should continue to be removed from their custody.

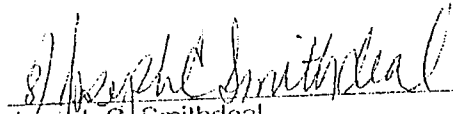
J. All parties and the GAL shall have full and complete access to and be allowed to review on reasonable notice any records from any source which led to the allegations of child abuse or neglect; or

which were conducted as a result of any allegations of child abuse or neglect, in this case, subject to the applicability of S.C. Code § 63-7-1990. Any reports, records, recordings, assessments, and evaluations, from agencies apart from DSS which were conducted as a result of any allegations of child abuse or neglect in this case must be obtained from the specific agency from which they were produced. Defendants shall provide releases for such information when required by said providers.

K. Any SSI, survivor's benefits, adoption subsidies, child support or other monies received by Defendant(s) from third parties on behalf of or for the benefit of the minor child shall be redirected by the payor to the party having custody of the child, effective immediately. In the meantime, Defendant(s) shall pay such monies to the custodial party immediately on receipt.

L. Defendants shall provide a current mailing address and telephone number to SCDSS and the GAL and shall notify them immediately of any change. **Failure to keep DSS informed of Defendant's current mailing address will not result in a continuance of the Merits hearing, or any other hearing, due to DSS being unable to locate and serve the Defendants with notice of the hearing.**

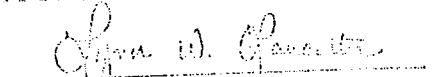
IT IS SO ORDERED.



Joseph C. Smithdeal
Judge, Family Court
Eighth Judicial Circuit

December
November 8, 2015
Greenwood, South Carolina.

A TRUE COPY OF ORIGINAL



Lynn W. Leavelle
Courtroom Clerk, CCJL & CC

4.

STATE OF SOUTH CAROLINA
LAURENS COUNTY
COURT OF COMMON PLEAS

IN THE FAMILY COURT
EIGHTH JUDICIAL CIRCUIT

COUNTY OF LAURENS

South Carolina Department of Social
Services,

2016 APR 12 P 12 25

Docket No.: 2015-DR-30-510

LYNN W. LANCASTER
Plaintiff,

vs.

ORDER DENYING
DEFENDANTS' MOTION
FOR RECONSIDERATION

Shakeyra Gilbert and Rodrick Tucker

Defendant(s).

In the Interest of:

Kyndal Gilbert

DOB: 7/22/2015

Minors under the Age of 18

ATRIUM COPY OF ORIGINAL
Lynn W. Lancaster
LAURENS COUNTY CCOP & CS

DATE OF HEARING: March 3, 2016
PRESIDING JUDGE: The Honorable Joseph C. Smithdeal
PLAINTIFF'S ATTORNEY: Rosemary Felder-Commander, Esq.
CASEWORKER: Porcha Thomas-Moore
DEFENDANT: Shakeyra Gilbert, *pro se*
DEFENDANT: Rodrick Tucker, *pro se*
COURT REPORTER: Stacy Sheppard

This matter is before the Court upon Defendants' Motion for Reconsideration of this Court's Probable Cause Order filed December 15, 2015. The Defendants moved that the Court reconsider and vacate the portion of its order that probable cause existed and continued to exist for the minor child, Kyndal Gilbert, to be placed in the legal custody of South Carolina Department of Social Services at the time of the probable cause hearing held on August 19, 2015.

All of the above listed individuals were present and all stipulated to subject matter and personal jurisdiction.

The Court reviewed the file, reviewed Plaintiff's affidavit, heard from Plaintiff's counsel and both Defendants. Since the Guardian *ad Litem* was not appointed at the time of the hearing, the Guardian *ad Litem* did not have any standing in this hearing. The hearing

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began with the Defendants addressing the court. Defendant Tucker agreed that he and Defendant Gilbert did not have a bed for the baby at the time she was born, and she was a premature baby that weighed about four (4) pounds at the time she was brought into care. Additionally, Defendant Tucker conceded that the house did smell of urine when the agency's representatives came to the house, but he stated that the home smelled that way because he was in the middle of changing the diaper of an elderly lady that he cares for when they arrived.

Plaintiff's counsel objected to the motion. She also informed the Court that the purpose of a probable cause hearing is to determine if probable cause existed for the child to be placed in SCDSS custody and continued to exist at the time of the probable cause hearing. Also, she provided the definition of probable cause pursuant to S.C. Code § 63-7-20 (20), which states, "facts and circumstances based upon accurate and reliable information, including hearsay, that would justify a reasonable person to believe that a child subject to a report under this chapter is abused or neglected."

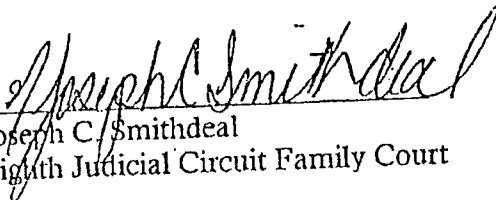
The Court inquired as to if Defendants had a chance to cross-examine the witnesses that provided testimony at the time of the probable cause hearing. The Defendants indicated that they did, in fact, have an opportunity to cross-examine the witnesses.

Additionally, the Court inquired as to if the Defendants provided any sworn Affidavits at the probable cause hearing. It was determined that they did not provide an Affidavit at the time of the probable cause hearing.

NOW THEREFORE, in light of the foregoing and based upon the statements made by the parties,

IT IS ORDERED, ADJUDGED, AND DECREED that Defendants' Motion to Reconsider the Probable Cause Order is **DENIED**. Therefore, the Court **AFFIRMS** its decision in the Probable Cause order filed December 15, 2015.

AND IT IS SO ORDERED.


Joseph C. Smithdeal
Eighth Judicial Circuit Family Court

4/2, 2016
Laurens, South Carolina.

COPY

LYNN W. LANCASTER

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF LAURENS)

2016 FEB 24 P 12:48

Rodrick Tucker and Shakeyra) C. A. NO: 2015-CP-30-897
Gilbert,)

Plaintiffs,) LAURENS COUNTY
) CLERK OF COURT

vs.)

ORDER

South Carolina Department of)
Social Services, Mindy Miyares,)
and Deniece Shelman,)

Defendants.)
)

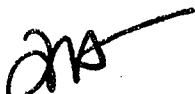
This matter is before the Court on two motions by the Defendants, the South Carolina Department of Social Services, Mindy Miyares and Deniece Shelman. The first motion is a Motion to Strike Punitive Damages, and the second motion is a Motion to Dismiss Individuals. The Plaintiffs are Pro Se. The Plaintiffs Rodrick Tucker and Shakeyra Gilbert appeared at the hearing.

The first motion involves the issue of punitive damages and whether one could seek punitive damages under the auspice of the South Carolina Tort Claims Act. Section 15-78-120(5)(b)(70) states as follows, to-wit:

“No award for damages under this Chapter shall include punitive or exemplary damages or interest prior to judgment.”

The Plaintiffs stated that they had no objection to the Motion to Strike Punitive Damages, and, therefore, the Motion to Strike Punitive Damages is granted.

The second motion involved the naming of two individuals as defendants, Mindy Miyares

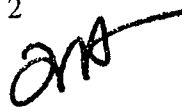

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and Deniece Shelman. The two individuals were employees of the South Carolina Department of Social Services, and Affidavits were presented to the Court by Ms. Miyares and Ms. Shelman stating that they were employees of the South Carolina Department of Social Services and that in regard to the facts and circumstances of this matter, the individuals acted within the course and scope of their employment as employees of the Defendant South Carolina Department of Social Services.

The Court has reviewed the Affidavits of Ms. Miyares and Ms. Shelman, and the Amended Complaint of the Plaintiffs in which the Plaintiffs have alleged that both Ms. Miyares and Ms. Shelman were employees and agents of South Carolina Department of Social Services, and acted under the authority of their duties as employees of the South Carolina Department of Social Services.

Mr. Tucker argued against the granting of this motion, but could not provide any evidence that said individual Defendants, Ms. Miyares and Ms. Shelman, acted in any way other than in the course and scope of their employment with the South Carolina Department of Social Services. Section 15-78-70 states as follows:

“Prior to January 1, 1989, a person, when bringing an action against a governmental entity under the provisions of this chapter, shall name as a party defendant only the agency or political subdivision for which the employee was acting, and is not required to name the employee individually, unless the agency or political subdivision for which the employee was acting cannot be determined at the time the action is instituted. In the event that the employee is individually named, the agency or political subdivision for which the employee was acting

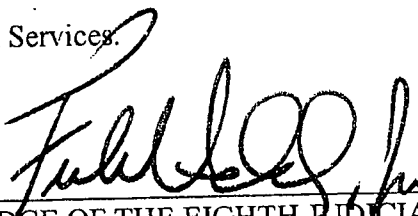


must be substituted as the party defendant.”

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Motion to Strike Punitive Damages is hereby granted, and all allegations in the Complaint as to punitive damages are hereby stricken.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Motion to Strike Individuals, Defendants Mindy Miyares and Deniece Shelman, is also hereby granted, and the names Mindy Miyares and Deniece Shelman are hereby stricken and this case shall proceed against the South Carolina Department of Social Services.

IT IS SO ORDERED.

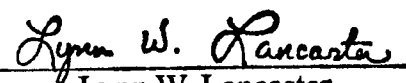


JUDGE OF THE EIGHTH JUDICIAL CIRCUIT

Feb. 19, 2016

A TRUE COPY OF ORIGINAL

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Lynn W. Lancaster
Laurens County CCCP & GS

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

RODRICK TUCKER AND SHAKEYRA GILBERT

Plaintiff(s)

2015 NOV 13 P 3:08

vs.

SC DSS, MINDY MIYARES, ET AL

Defendant(s)

CLERK OF COURT

Submitted By: Rodrick Tucker and Shakeyra Gilbert
Address: 206 Oak Street Clinton, SC 29325

SC Bar #: N/A
Telephone #: 864.868.8825
Fax #: N/A
Other: N/A
E-mail: rodrickt221@gmail.com/shakeyra96@gmail.com

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2015 -CP-30-897

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.
NON-JURY TRIAL demanded in complaint.
This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts: Constructions (100), Debt Collection (110), Employment (120), General (130), Breach of Contract (140), Other (199)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Previous Notice of Intent Case # 20 -NI- -, Notice/ File Med Mal (230), Other (299)
Torts - Personal Injury: Assault/Slander/Libel (300), Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), Other (399)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)
Inmate Petitions: PCR (500), Mandamus (520), Habeas Corpus (530), Other (599)
Administrative Law/Relief: Reinstate Drv. License (800), License Review (810), Relief (820), Permanent Injunction (830), Forfeiture-Petition (840), Forfeiture-Consent Order (850), Other (899)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript of Judgment (740), Lis Pendens (750), Transfer of Structured Settlement Payment Rights Application (760), Confession of Judgment (770), Petition for Workers Compensation Settlement Approval (780), Other (799)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Public Service Commission (990), Employment Security Commission (991), Other (999)
Special/Complex /Other: Environmental (600), Automobile Arb. (610), Medical (620), Other (699), Sexual Predator (510), Pharmaceuticals (630), Unfair Trade Practices (640), Foreign Subpoenas (650), Motion to Quash Subpoena in Out-of-County Action (660)

Submitting Party Signature:

[Handwritten Signature]

Date:

11-11-15

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

LYNN W. LANCASTER

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

2015 NOV 13 P 2:08

Rodrick Tucker and Shakeyra Gilbert,
Plaintiffs,

LAURENS COUNTY
CLERK OF COURT

vs.

South Carolina Department of Social Services,
Mindy Miyares, and Deniece Shelman, all in their
individual and official capacities,
Defendants.

IN THE COURT OF COMMON
PLEAS

CASE NO. 2015 - 30 - 897

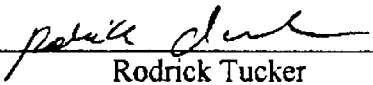
SUMMONS
JURY TRIAL REQUESTED

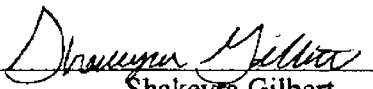
TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Clinton, South Carolina

Dated: 11-11-15


Rodrick Tucker
206 Oak Street
Clinton, South Carolina 29325
rodrikt221@gmail.com


Shakeyra Gilbert
206 Oak Street
Clinton, South Carolina 29325
shakeyra96@gmail.com

LYNN W. LANCASTER

**STATE OF SOUTH CAROLINA
COUNTY OF LAURENS**

2015 NOV 13 P 2:08

Rodrick Tucker and Shakeyra Gilbert

Plaintiffs,

vs.

South Carolina Department of Social Services,

Mindy Miyares, and Deniece Shelman, all in their
individual and official capacities,

Defendants.

**IN THE COURT OF COMMON
PLEAS FOR THE EIGHTH
JUDICIAL CIRCUIT**

LAURENS COUNTY
CLERK OF COURT

Case No.: 2015 - 30 - 897

COMPLAINT

AND NOW COME the Plaintiffs, Rodrick Tucker and Shakeyra Gilbert, who
complain of the Defendants as follows:

PARTIES

1. Plaintiff Rodrick Tucker is a citizen and resident of Laurens County, South Carolina.
2. Plaintiff Shakeyra Gilbert is a citizen and resident of Laurens County, South Carolina.
3. Defendant South Carolina Department of Social Services (DSS) is an agency of the State of South Carolina created by the General Assembly of the State of South Carolina.
4. Defendant Mindy Miyares, upon information and belief, is a citizen and resident of Laurens County, South Carolina. At the time of the incident described in this Complaint she was an employee and agent of Laurens county DSS; and acting under the authority of her duties as an employee of DSS.

5. Defendant Deniece Shelman, upon information and belief, is a citizen and resident of Laurens County, South Carolina. At the time of the incident described in this Complaint she was an employee and agent of Laurens county DSS; and acting under the authority of her duties as an employee of DSS. She is also a supervisor with DSS responsible for the conduct of her subordinates.

JURISDICTION AND VENUE

6. This action is brought pursuant to the South Carolina Tort Claims Act.
7. Venue is proper in this Court because the Defendants reside and operate in Laurens County and a substantial part of the events or omissions giving rise to the Plaintiffs' claims occurred in Laurens County.

FACTS

8. On or about August 14, 2015, DSS allegedly received a report that Plaintiff and his child's mother (Gilbert) were neglecting their newborn baby (KAG).
9. The allegations were that CDV was occurring in the home, that the home was nasty and dirty with trash inside and outside the house. That the home had broken windows, little furniture and smelled of urine as well as KAG having no crib, bassinette, or clothes.
10. On or about August 17, 2015, Defendant Miyares and another unidentified DSS employee visited the home.
11. When DSS employees arrived, Plaintiff was in the process of cleaning, bathing, and dressing his disabled step-mother who is an amputee, mentally deficient and

incontinent. Plaintiff made this fact aware to Defendant Miyares and she acknowledged it.

12. Plaintiff took photographs shortly after the DSS caseworkers left to document the home in the condition it was in upon DSS's arrival.
13. Defendant Miyares and her associate came into the living room and asked a series of questions about the allegations then left.
14. The only rooms the DSS employees saw was the living room and a glimpse of the bedroom.
15. As seen in the photo packet labeled **Exhibit A** of this Complaint, neither room was dirty, nor did the home have any broken windows. In Fact, no room in the house was dirty nor in any unsanitary manor.
16. DSS never document the Plaintiffs house to be in any unsafe, unsanitary of otherwise unsafe condition.
17. The employees stood in the living room and looked into Plaintiffs bedroom door and stated "well just try to get her a crib since she is so small." they then left the home.
18. The next morning, on August 18, 2015, Defendant Miyares called Plaintiffs phone and said that she needed to meet with both Plaintiffs.
19. On August 18, 2015, the Plaintiffs met with Defendants Miyares and Shelman at Laurens County DSS. During the meeting, the Defendants asserted that since KAG did not have a crib she was being neglected and abused and subsequently tried to force Plaintiffs to sign a "safety plan" or else they stated they would remove the baby from the home.

20. Plaintiffs refused to sign the "safety plan" and admit to neglecting KAG simply because she didn't have a crib and reminded Defendants Miyares and Shelman that no South Carolina law requires a baby to have a crib. Plaintiff then stated to the Defendants that since it was not a requirement of the law nor the abuse and neglect statutes that they didn't have grounds to seek removal of KAG.
21. Plaintiff Tucker then stated that he would like his attorney to review any kind of agreement before signing it.
22. Defendant Shelman then became angry and hostile and stated: "This is our job, we do this every day, all day. We have ways of getting our baby out of that house."
23. Plaintiff Gilbert then inquired of Defendant Shelman, "Get the baby out of the house for what though?"
24. Plaintiffs then reminded her again that a crib was not a requirement of the law or the abuse and neglect statutes and that she would, "have to find some other reason because that's not a reason to take somebody baby and you know it."
25. Upon hearing this Defendant Shelman then stated "I just told you, this is what I do every day all day, and I'll make a reason. Either way that baby getting out of there".
26. Plaintiff Tucker then stated to Defendant Shelman, "So you going to motherfucking lie on us because we won't admit to some shit we didn't do. You stupid as fuck." Defendant Shelman respond, "Yea I see you got a mouth on you, but don't worry I got something for disrespectful people."
27. Defendant Shelman then made Plaintiff and Gilbert wait in the lobby of the building for 30 minutes before coming out and saying, "Yall can leave, somebody will be in touch."

28. During the 30 minutes that the Defendants were meeting, they conspired with each other to seek an ex parte order for removal, all the while knowing that they did not have sufficient grounds to do so.
29. At approximately 6 P.M. on August 18, 2015, Defendants Miyares and Shelman, along with the other caseworker, accompanied by the police, came to the home with an Ex Parte Order for Removal.
30. The Ex Parte Order stated that DSS submitted affidavits in which they had observed the home in a "sordid condition"; that it smelled of urine, KAG had no age appropriate bed and was without adequate clothing and that Plaintiff had an open DSS case in Spartanburg County for domestic violence.
31. At a probable cause hearing held the next morning, Defendant Miyares, on behalf of DSS, submitted a Complaint for Removal as well as an Affidavit of Imminent and Substantial Danger. These are attached hereto as Exhibit B of this Complaint.
32. In its Complaint for Removal, DSS falsely claimed the following things in order to unlawfully and fraudulently convince the Family Court judge that probable cause existed to remove KAG from her Parents:
 - a. That Gilbert was a resident of Laurens County, South Carolina
 - b. That KAG was a resident of Laurens County, South Carolina.
 - c. That Gilbert had bruises on her arm.
 - d. That Plaintiff was on probation for criminal domestic violence.
 - e. That DSS conducted an investigation on 08/17/2015 and documented the Plaintiffs home to be in poor condition.

33. Defendant Miyares then falsely claimed in her Affidavit of Imminent and Substantial Danger that:
- f. "Upon my investigation, I confirmed that the house is in a sordid condition, with broke windows...."
 - g. The minor child is without adequate clothing
 - h. "...That these children would be placed in imminent and substantial danger if they were to remain in the custody of Defendants."
34. Based on the false statement presented by the Defendants the court found probable cause to allow DSS to retain custody of KAG.
35. During a "family conference meeting Defendant Shelman, falsely claimed in front of the attendees that she had witnessed the Plaintiffs home to be in "total disarray" and "just nasty"
36. These false statements hurt the reputations of the Plaintiffs and caused embarrassment.
37. During a subsequent meeting with DSS, Defendant Shelman called Plaintiff Shakeyra Gilbert out of the room and stated to her, "Listen, all you got to do is leave the house, that's all we want. I know you want your baby back. But hey, as long as you wanna sit down there the longer we gonna keep KAG. It aint hurting nobody but you. What's so hard about signing a treatment plan and getting your baby back?" Plaintiff Gilbert responded, "Because I'm not going to admit to something I didn't do. I have never neglected my child and I'm not going go along with your lies."
38. Defendant Shelman attempted to blackmail, coerce, and extort and other force the Plaintiffs into complying with her wishes in order to get KAG back, all the while

knowing that her actions were not in the scope of her duties, and not the policy of DSS.

39. The Mother of KAG, Shakeyra Gilbert, was known by the defendants to be a resident of Tennessee at the time.
40. Defendants knew and should have known that at no time ever has Plaintiff Rodrick Tucker ever been on probation for criminal domestic violence because they had Defendant Tuckers background report.
41. At no time did Shakeyra Gilbert have bruises on her arm.
42. At no time did DSS document Plaintiffs home to be in poor condition or to have broken windows.
43. At no time was DSS ever in a position in my home to document that KAG did not have adequate clothing because the defendants only went into the living room and took a slight glance into my room.
44. DSS and its agents, the defendants, knowingly submitted false statements to the Family Court to interfere with my rights guaranteed under the Fourteenth Amendment of the United Constitution.
45. On October 15, 2015, DSS admitted that there investigation turned up no evidence of abuse or neglect and the Family Court dismissed the complaint against the Plaintiffs. A true and accurate copy of the Order of Dismissal is attached hereto as EXHIBIT C of this Complaint.
46. Defendants knew that their actions were unlawful and not in the scope of their duties as representatives of DSS.

47. Defendants knowingly instituted the removal and all subsequent court proceedings, knowing that the purpose of such proceedings were not to be used to force parties into compliance with their wishes where no probable cause or any other evidence existed to make Defendant have even the slightest belief that KAG was a neglected or abused child or in any other danger as defined by South Carolina Law.
48. Defendants sought out and instituted removal proceedings with malice in response to Plaintiff Tucker speaking with what Defendant Shelman regarded as disrespectful.
49. Defendants sought out and instituted removal and subsequent proceedings in order to coerce Plaintiffs to comply with its safety and treatments plans knowing that there was no evidence that any abuse or neglect had occurred or that KAG was in any risk of danger.
50. Defendants sought out and instituted removal and subsequent proceedings in order to coerce and force Plaintiff Gilbert to move out of the home with Plaintiff Tucker.
51. Defendant's actions were therefore, intentional, grossly negligent, without slight care and reckless.
52. DSS failed to exercise slight care.
53. DSS's investigation into the alleged complaint it received was not thorough. In fact there was never any such investigation prior to the institution of removal proceedings.
54. DSS had no grounds pursuant to S.C.Code Ann. § 20-7-736 to seek removal of the Plaintiffs minor child KAG, but did so to punish Plaintiff Tuckers alleged disrespect, force Plaintiff Gilbert in leaving the home, force both Plaintiffs in to a treatment plan without just cause, and to force both Plaintiffs into submitting to the Defendants unlawful and illegitimate wishes.

FOR A FIRST CAUSE OF ACTION

Malicious Prosecution

55. The allegations of Paragraphs 1 through 54 are repeated and re-alleged as if set forth fully herein.
56. To maintain an action for malicious prosecution, a plaintiff must establish: (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in [the] plaintiff's favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage."
57. Original judicial proceedings were instituted against the Plaintiffs.
58. The Defendants caused these judicial proceedings to be instituted or instituted them.
59. The proceedings were ultimately terminated in the favor of the Plaintiffs.
60. The Defendants instituted these proceedings with malice and to punish the Plaintiff for what Defendants regarded as disrespect.
61. There was no probable cause to institute proceedings against the Plaintiffs.
62. The Plaintiffs suffered the loss of the child, irreplaceable months of their child's life and the right to govern their child as they see fit pursuant to the law.

FOR A SECOND CAUSE OF ACTION

Abuse of Process

63. The allegations of Paragraphs 1 through 62 are repeated and re-alleged as if set forth fully herein.
64. The tort of abuse of process is intended to compensate a party for harm resulting from another party's misuse of the legal process.
65. The essential elements of abuse of process are (1) an ulterior purpose, and (2) a willful act in the use of the process that is not proper in the regular conduct of the proceeding.

66. The Defendants used the legal process in an attempt to force the Plaintiffs to comply with their demands which they knew were without just cause.
67. The Defendants demands were not lawful and not legitimate pursuant to S.C.Code Ann. § 20-7-736, yet they knowingly instituted legal proceedings without just cause or excuse.
68. The Defendants instituted legal proceedings with the express and ulterior motive of (1) forcing Plaintiffs to submit to demands it had no authority to make, (2) force Plaintiff Gilbert to out of the home. (3) Punishing Plaintiff Tucker for what Defendants deemed disrespect.

FOR A THIRD CAUSE OF ACTION

Defamation of Character – Slander

69. The allegations of Paragraphs 1 through 68 are repeated and re-alleged as if set forth fully herein
70. The tort of defamation allows plaintiffs to recover for injuries to their reputation as the result of defendants' communications to others of a falsity regarding the plaintiffs.
71. In a case involving the defamation of a public official such as a DSS employee, the plaintiff must prove the defendant acted with actual malice.
72. To meet this standard, the plaintiff must show either that the defendant knew the statement was false or that the defendant made the statement with reckless disregard of its falsity.
73. Defendant Shelman knew that her statements regarding the condition of Plaintiffs home were false.
74. Defendant Shelman has never been inside the Plaintiffs home.
75. Defendant Shelman knew her statements were untrue and would hurt the Plaintiffs but still decided to make them in an attempt justify removal of the Plaintiffs minor child and to make the Plaintiffs look bad.

RELIEF

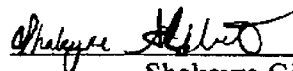
WHEREFORE, having fully set forth the allegations of their Complaint, the Plaintiffs respectfully request that judgement be entered in their favor as follows:

- A. That this Court declares that Defendant's actions violated the Plaintiffs rights;
- B. Compensatory damages;
- C. Punitive damages;
- D. A jury trial and;
- E. Such other financial and equitable relief as is reasonable and just.

November 2, 2015

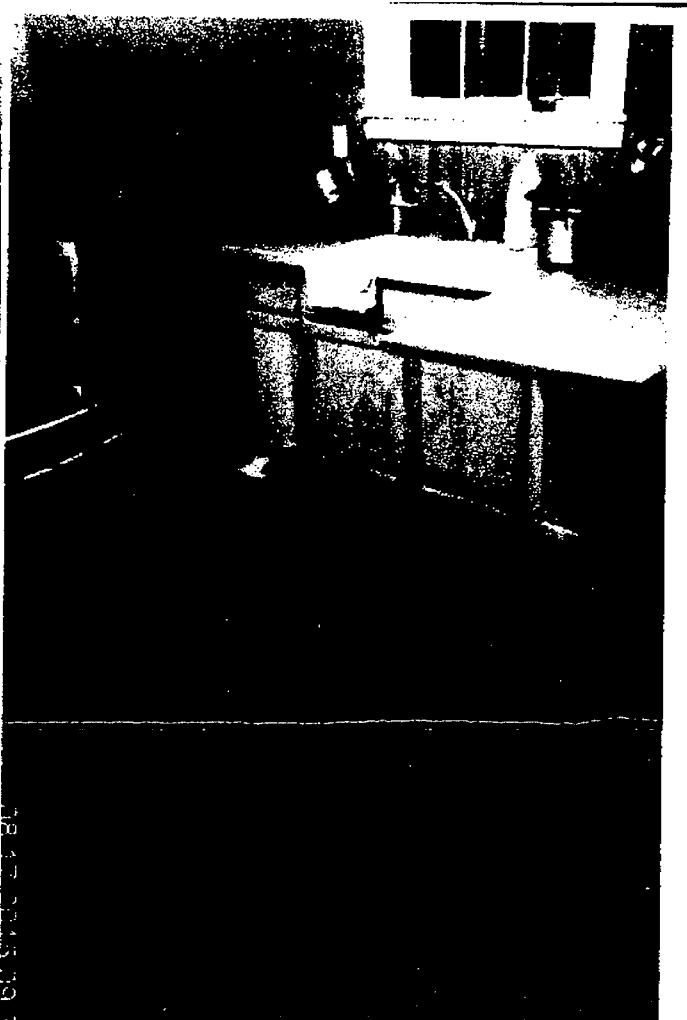
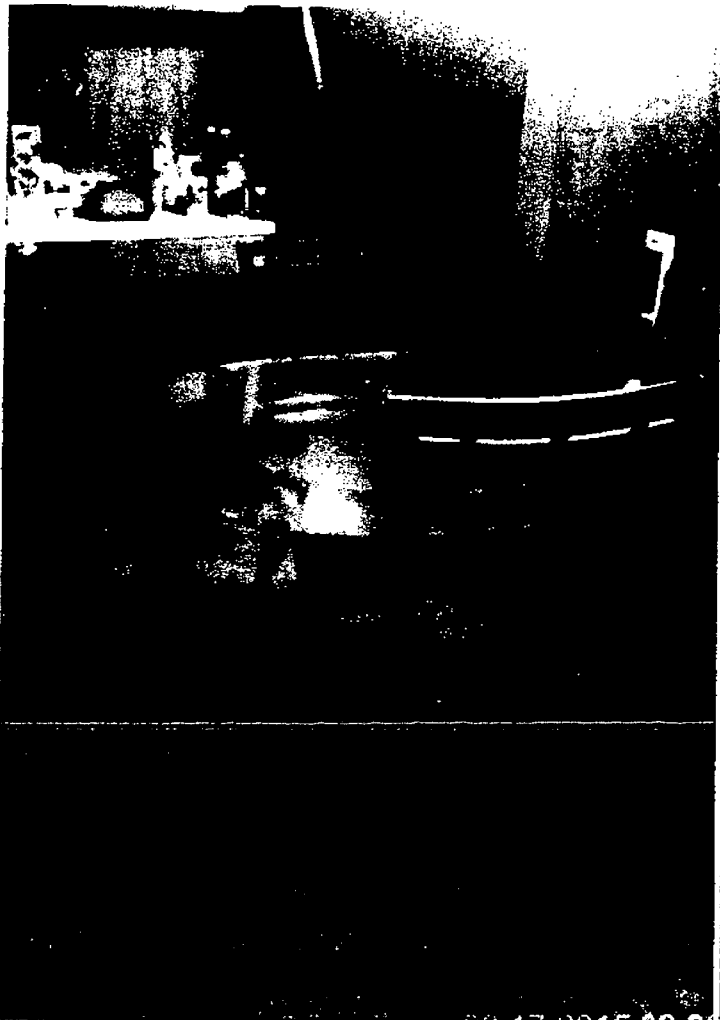


Rodrick Tucker
206 Oak Street
Clinton, South Carolina 29325
rodrickt221@gmail.com

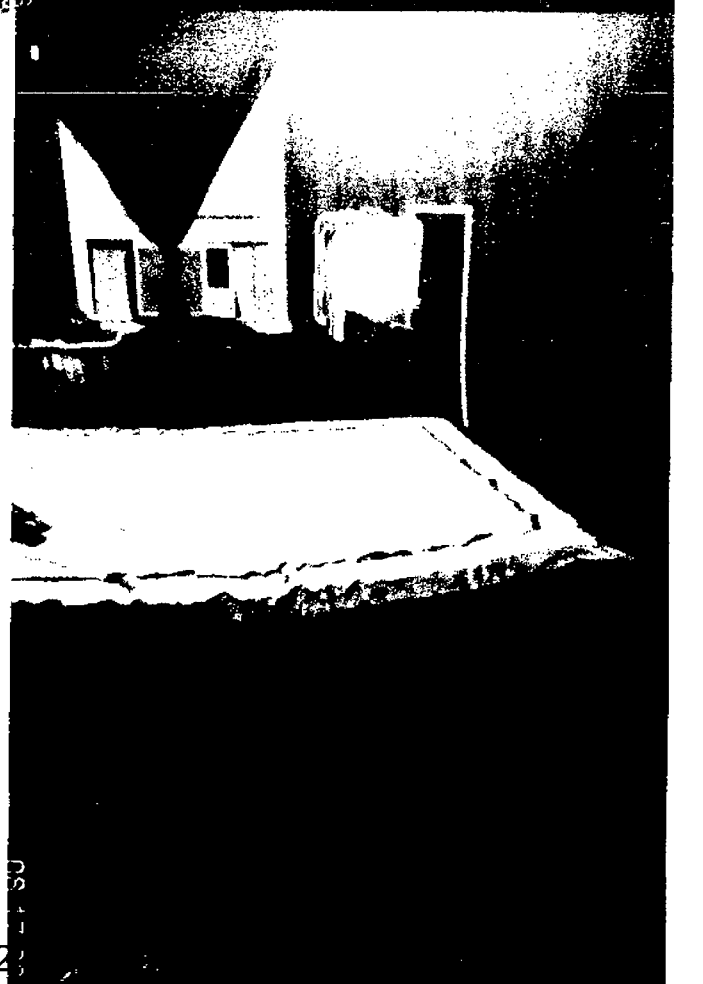
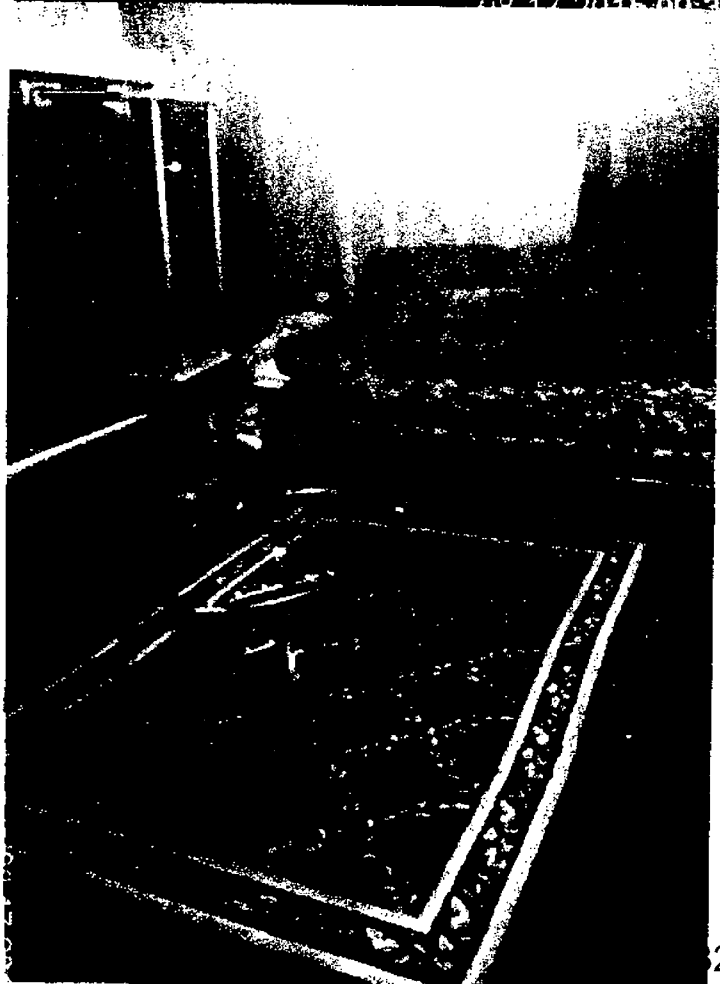


Shakeyra Gilbert
206 Oak Street
Clinton, South Carolina 29325
shakeyra96@gmail.com

EXHIBIT A



89-17-2015-00-369



3
1
2



EXHIBIT B

STATE OF SOUTH CAROLINA LAURENS COUNTY IN THE FAMILY COURT
COURT OF

COUNTY OF LAURENS

FOR THE THIRD JUDICIAL CIRCUIT

South Carolina Department of
Social Services,

2015 AUG 19 A 9 08
LANCASTER

C/A No.: 2015-DR-30-510

Plaintiff,

COMPLAINT FOR REMOVAL PURSUANT
TO S.C. CODE ANN. § 63-7-470

vs.

Shakeyra Gilbert and Rodrick
Tucker

Defendant(s)

In the Interests of:
Kyndal Gilbert; D/O/B 7/22/15

Minor(s) Under the Age of 18

South Carolina Department of Social Services (SCDSS) alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff is an agency of the State of South Carolina, with the main office located at Post Office Box 409, Laurens, South Carolina 29360, charged with the duty, among others, of protecting the health and welfare of children, including providing a suitable home environment that will assist children in enjoying a full and productive future.

2. This court has jurisdiction of the parties and of the subject matter pursuant to S.C. Code Ann. § 63-7-2520.

3. Defendant Gilbert is a resident of Laurens County, South Carolina. She is the mother of the minor children.

4. Defendant Tucker is a resident of Laurens County, South Carolina. He is the alleged birth-father of the minor children.

5. The minor child, Kyndal Gilbert, a female child, was born on 07/22/15; the child was born in Laurens County, and she is a resident of Laurens County, South Carolina.

6. The children, named above, are less than eighteen (18) years of age and reside in Laurens County at the following address: 206 Oak Street, Clinton, SC 29325.

7. The name, address, and relationship of the defendants to the children are as follows:

Name	Address	Relationship
Shakeyra Gilbert	206 Oak Street Clinton, SC 29325	Mother
Rodrick Tucker	206 Oak Street Clinton, SC 29325	Alleged Father

8. The Court has jurisdiction over the parties to this action and subject matter thereof pursuant to S.C. Code Ann. § 63-7-1640 (1976, as amended).

9. Laurens County is a proper venue for this action as the Defendants resided therein at the time the events giving rise to the causes of action below transpired.

10. Shakeyra Gilbert currently has bruises on her arms.

11. Rodrick Tucker is currently on probation for a previous criminal domestic violence charge.

STATEMENT OF FACTS

12. Laurens County DSS received a report that the minor child was born on 7/22/15 approximately six weeks early with a birth weight of four (4) pounds.

13. The report indicated that Defendant Gilbert moved the minor child in with her paramour, Defendant Tucker, who is, allegedly, very abusive.

14. The report indicated that Defendant Tucker will hit, choke, and beat Ms. Gilbert.

15. The report further indicated that Mr. Tucker's home, where Defendant Gilbert and the minor child reside, is in deplorable condition, with busted windows, little furniture, and has a strong urine odor.

16. The report further indicated that the minor child has few clothes and no age-appropriate bed.

17. Laurens County DSS conducted an investigation on August 17, 2015 and documented the house to be in poor condition with a strong odor of urine.

18. The investigating caseworker noticed that there was no age-appropriate bed and was informed that the minor child, despite weighing only four pounds, shared a bed with the Defendants.

19. Upon further review, Defendant Tucker has an open case , indicated for Substantial Risk of Physical Abuse, in Spartanburg County, for which he has not completed his treatment plan; this case involved a domestic dispute between Defendant Tucker and another woman.

FOR A FIRST CAUSE OF ACTION
(REMOVAL PURSUANT TO S.C. CODE ANN. § 63-7-1660)

20. On information and belief, the harm stated above and other factors alleged below indicate that the children are at unreasonable risk of harm. It would be contrary to the welfare of the children to remain in or be returned to the custody of defendants. The children cannot be protected adequately at this time from further harm in the custody of the defendants because:

- (a) The Defendants' home is in a dangerous and unsafe condition;
- (b) The minor child is unusually susceptible to harm given its low birth weight; and
- (c) Defendant Tucker has a history of abuse and neglect

21. The children's physical and/or mental condition is as follows: born premature with a very low birth weight.

22. The harm the children are likely to suffer as a result of the removal will be: normal separation anxiety.

23. The following steps will be taken to minimize any harm that may result from the removal of the children: supervised visitation at the discretion of SCDSS.

24. The plaintiff has made reasonable efforts to prevent or eliminate the need for the removal of the children from the custody of the defendants or has been unable to offer such services, as stated in the attached Affidavit of Reasonable Efforts (See Exhibit 1).

25. The defendants are not in agreement with the placement of the children in an alternative setting.

26. Defendant parent(s) are responsible for the support of the above named children, to be determined by the Integrated Child Support Services Division. DSS should take the necessary steps to refer the issue of child support to the Integrated Child Support Services Division no later than 5 days after receipt of this order, provided the referral has not been made previously. Child support should be retroactive from the date of the Probable Cause hearing.

27. The Court should make a determination of paternity.

WHEREFORE, having fully set forth its Complaint against the Defendants, Plaintiff prays for an Order of this Court awarding it the following relief:

A. A finding that the minor child is not a member of any federally recognized Native American tribe;

B. A finding that the minor child is not a citizen of any foreign nation such that it shall be necessary to notify a consulate;

C. A finding that the minor child has been abused or neglected as defined in in § 63-7-20 and the children cannot be protected from further harm without removal;

D. Granting emergency removal of the minor children pursuant to the *Ex Parte* powers of the Court as set out in S.C. Code § 63-7-740

E. Granting custody to the plaintiff for the purposes of placement, care, and supervision, with all rights of guardianship, including the right to place the minor children adoptively and to consent to the adoption, with authority in plaintiff to seek such routine and emergency medical care as plaintiff deems necessary, and with complete authority to plan for, participate in, and approve all educational plans and programs for the minor children;

F. Granting the authority in and to Plaintiff to seek such routine and emergency medical care for the minor children, as Plaintiff deems necessary, and grant the complete authority to plan for, participate in and approve all educational plans for the minor children;

Granting Plaintiff complete authority to plan for, participate in, and approve all educational plans and programs for the minor child;

G. Granting SCDSS access to all medical, dental, mental health, and school records, as well as any other records which may be necessary, in order to allow them to properly care for the minor child;

H. Designating SCDSS as the child's personal representative as set out in the Health Insurance Portability and Accountability Act regulations

I. Approving the plaintiff's Treatment/Placement Plan.

J. Requiring Defendants to pay the court-ordered amount of child support through the clerk of court to SCDSS.

K. Ordering Defendants to cooperate with plaintiff to make appropriate plans for the child and to notify plaintiff promptly of any change of condition and/or address;

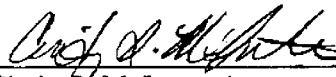
L. Granting Plaintiff full and complete access to all criminal, professional, school, medical, and other records of the child and of the Defendants, as may be necessary, including an order that defendant execute necessary releases for such records when required by providers;

M. Ordering Defendants to pay the \$100.00 fee required by S.C. Code Ann. § 63-3-370;

N. The Court make a finding that the child is an abused and/or neglected child as defined in § 63-7-20 and the child cannot be protected from further harm without intervention; and

O. For any and all further relief that the court deems necessary and proper.

S.C. DEPARTMENT OF SOCIAL SERVICES



Cindy S. McIntee, Attorney for Plaintiff
S.C. Department of Social Services
Post Office Box 409, Laurens, SC 29360
T: (864) 833-0100 / F: (864) 833-2706
Bar No.: 3835

August 18

~~2015~~, 2015

Laurens, South Carolina.

AS A RESULT OF THIS HEARING, YOU COULD LOSE YOUR RIGHTS AS A PARENT.

ALL INTERESTED PARTIES ARE ADVISED THAT AT THE MERITS HEARING, THE COURT MAY ORDER A TREATMENT/PLACEMENT PLAN. IF YOU OBJECT TO THE PLAN OR TO ANY RECOMMENDATIONS CONCERNING THE PLAN OR THE COURT'S ORDER, YOU MUST STATE YOUR OBJECTION AT THE HEARING TO THE JUDGE.

STATE OF SOUTH CAROLINA

IN THE FAMILY COURT

COUNTY OF LAURENS

LAURENS COUNTY
COURT OF COMMON PLEAS

FOR THE THIRD JUDICIAL CIRCUIT

South Carolina Department of
Social Services,

AUG 19 A 9:08 C/A No.: 2015-DR-30-

Plaintiff, ... LANCASTER

AFFIDAVIT OF IMMINENT AND
SUBSTANTIAL DANGER

vs.

Shakeyra Gilbert and Rodrick
Tucker

Defendant(s)

In the Interests of:
Kyndal Gilbert; D/O/B 7/22/15

Minor(s) Under the Age of 18

Affiant, of the South Carolina Department of Social Services ("SCDSS"), being duly sworn, states the following is true, according to his/her own knowledge or on information and belief:

1. SCDSS received a report on or about August 16, 2016 that the minor child was residing in a home in a sordid condition which smelled strongly of urine.
2. SCDSS is informed and believes that Defendant Tucker abuses Defendant Gilbert on a frequent basis and has done so for some time.
3. Upon my investigation, I confirmed that the house is in a sordid condition, with broken windows, a strong smell of urine, and no age-appropriate bed for the minor child.
4. The minor child, born prematurely with a birth weight of only four pounds, shares a bed with the parties.
5. This arrangement places the minor child in an unsafe environment given its low birth weight.
6. Defendant Tucker has an open case, indicated for abuse and neglect, in Spartanburg County which revolves around domestic violence.

7. The minor child is without adequate clothing.

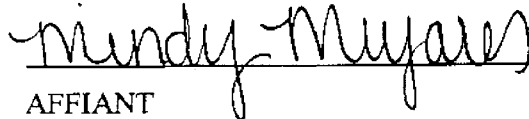
8. SCDSS believes that, based on the existing conditions and facts detailed above, placement of the minor child known as the "unborn child" with Defendants would place the children in imminent and substantial danger.

9. SCDSS is concerned for the minor children's wellbeing and feels it would be in their best interest to be placed in the legal and physical custody of the SCDSS.

10. This Affidavit is in support of SCDSS' Complaint for Removal and Termination of Parental Rights seeking legal and physical custody of the minor children in this matter.

11. SCDSS and affiant believe, based on the findings of the investigation and the history with this family, **these children would be placed in imminent and substantial danger** if they were to remain in the custody of Defendants.

FURTHER, AFFIANT SAYETH NOT.


AFFIANT

SWORN TO BEFORE ME this
18th day of August, 2015.

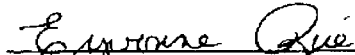

Notary public for South Carolina
My commission expires: 10/25/2016

EXHIBIT C

STATE OF SOUTH CAROLINA)

COUNTY OF LAURENS)

South Carolina Department)
of Social Services,)

Plaintiff,
vs.)

Shakeyra Gilbert)
Rodrick Tucker)

Defendant(s).)

In the interests of:)
Kyndal Gilbert (dob: 07/22/15))
Minor(s) under the age of 18.)

IN THE FAMILY COURT
EIGHTH JUDICIAL CIRCUIT
2015-DR-30-510

ORDER OF DISMISSAL

LYNN W. LANCASTER

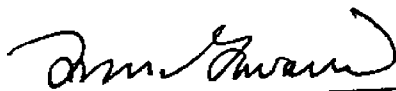
2015 OCT 15 P 4:00

LAURENS COUNTY
CLERK OF COURT

The above-entitled action was commenced on 08/19/15. The merits in this matter was scheduled to be heard before me on 10/15/15 at the Laurens County Family Court. Defendants have not filed an answer or a motion for summary judgment herein; therefore, Plaintiff moves to dismiss the above-entitled action without prejudice pursuant to Rule 41, (a)(1)(A) SCRPC.

THEREFORE, it is ordered that the above-entitled action is hereby dismissed and legal and physical custody of the child, Kyndal Gilbert, is returned to her mother, Defendant Shakeyra Gilbert.

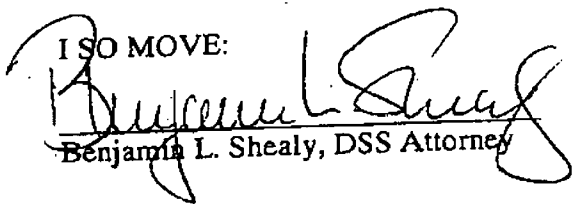
AND, IT IS SO ORDERED.



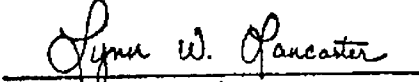
Joseph W. McGowan, III
Presiding Family Court Judge
Eighth Judicial Circuit

October 15, 2015
Laurens, South Carolina.

I SO MOVE:


Benjamin L. Shealy, DSS Attorney

A TRUE COPY OF ORIGINAL


Lynn W. Lancaster
Laurens County CCCP & GS

STATE OF SOUTH CAROLINA)
)
COUNTY OF LAURENS)

IN THE COURT OF COMMON PLEAS
(JURY TRIAL DEMANDED)

Rodrick Tucker and Shakeyra
Gilbert,)
)
)
Plaintiffs,)

C. A. NO: 2015-CP-30-897

vs.)

**ANSWER OF DEFENDANTS
SOUTH CAROLINA DEPARTMENT OF SOCIAL
SERVICES, MINDY MIYARES AND
DENIECE SHELMAN**

South Carolina Department of
Social Services, Mindy Miyares,
and Deniece Shelman, all in their
Individual and Official Capacities,)
)
Defendants.)

LAURENS COUNTY
CLERK OF COURTS

2016 JAN 11 A 10:46

LYNN W. LANCASTER

TO: RODRICK TUCKER AND SHAKEYRA GILBERT, PRO SE PLAINTIFFS

The Defendants, South Carolina Department of Social Services, Mindy Miyares and Deniece Shelman, all in their individual and official capacity answering the Complaint of the Plaintiffs respectfully state as follows:

FOR A FIRST DEFENSE

1. That the Complaint fails to state a cause of action for which relief can be granted, and the Defendants, South Carolina Department of Social Services, Mindy Miyares and Deniece Shelman, are entitled to a dismissal under the provisions of Section 12(b)(6) of the South Carolina Rules of Civil Procedure, for which dismissal the Defendants, South Carolina Department of Social Services, Mindy Miyares and Deniece Shelman in their individual and official capacity, pray.

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FOR A SECOND DEFENSE
(As to Parties)

2. That the allegations of the preceding defense is hereby realleged, and reaffirmed to the

extent that they are consistent with this defense.

3. That each and every allegation of the Complaint not hereinafter admitted, modified or explained is denied and strict proof demanded thereof.
4. That the allegations of Paragraphs 1 and 2 are admitted upon information and belief.
5. That the allegations of Paragraph 3 are admitted.
6. That the allegations of Paragraphs 4 and 5 are admitted.

FOR A THIRD DEFENSE
(Jurisdiction of Venue)

7. That the allegations of the preceding defenses are hereby realleged, and reaffirmed to the extent that they are consistent with this defense.
8. That the allegations of Paragraph 6 and 7 are admitted upon information and belief.

FOR A FOURTH DEFENSE
(Facts)

9. That the allegations of the preceding defenses are hereby realleged, and reaffirmed to the extent that they are consistent with this defense.
10. That the allegations of Paragraph 8, 9 and 10 are admitted.
11. That in regard to the allegations of Paragraph 11, the Defendants do not have sufficient information and belief in which to form an opinion, and, therefore, denies same.
12. That in regard to the allegations of Paragraph 12, the photographs allegedly taken by one of the Plaintiffs do not adequately and accurately set forth the condition of the premises as seen by agents, representatives and/or employees of the Defendant South Carolina Department of Social Services, and the remaining allegations of Paragraph 12 are denied.
13. That in regard to the allegations of Paragraphs 13 and 14, it is admitted that the Defendants performed an investigation into the living conditions, including going into the living room and bedroom, but most of the questions were asked on the porch of the house,

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and the remaining allegations of said Paragraphs 13 and 14 are denied.

14. That the allegations of Paragraphs 15, 16 and 17 are denied.
15. That in regard to the allegations of Paragraphs 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28, it is admitted that the Defendants attempted to work and cooperate with the Plaintiffs in order to create a "safety plan" concerning the minor infant of the Plaintiff Gilbert, and the remaining allegations of said Paragraphs 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28 are denied.
16. That the allegations of Paragraphs 29, 30 and 31 are admitted.
17. That in regard to the allegations of Paragraph 32, the conditions for removal pursuant to S.C. Code Ann. § 63-7-470 speak for themselves, and the remaining allegations of said Paragraph 32 are denied.
18. That in regard to the allegations of Paragraph 33, the Affidavit of Defendant Miyares speaks for itself, and the remaining allegations of said Paragraph 33 are denied.
19. That in regard to the allegations of Paragraph 34, it is admitted that the Court found probable cause to allow the Defendant DSS to retain custody of the minor child known as KAG, and the remaining allegations of said Paragraph 34 are denied.
20. That in regard to the allegations of Paragraphs 35, 36, 37 and 38, it is admitted that the agents, representatives and/or employees of the Defendant South Carolina Department of Social Services attempted to work with the Plaintiffs in the best interest of the minor known as KAG, and the remaining allegations of said Paragraphs 35, 36, 37 and 38 are denied.
21. That the allegations of Paragraphs 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53 and 54 are denied.

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FOR A FIFTH DEFENSE
(As to First Cause of Action - Malicious Prosecution)

22. That the allegations of the preceding defenses are hereby realleged, and reaffirmed to the extent that they are consistent with this defense.
23. That the allegations of Paragraph 55 are denied.
24. That in regard to the allegations of Paragraph 56, it is admitted that the Plaintiffs alleged the principles needed to prosecute an action for malicious prosecution, and it is specifically alleged that the principles have not been met and the remaining allegations of said Paragraph 56 are denied.
25. That the allegations of Paragraphs 57, 58, 59, 60, 61 and 62 are denied.

FOR A SIXTH DEFENSE
(As to Second Cause of Action - Abuse of Process)

26. That the allegations of the preceding defenses are hereby realleged, reaffirmed to the extent that they are consistent with this defense.
27. That the allegations of Paragraphs 63, 64, 65, 66, 67 and 68 are denied.

FOR A SEVENTH DEFENSE
(As to Third Cause of Action - Defamation of Character - Slander)

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M
28. That the allegations of the preceding defenses are hereby realleged, reaffirmed to the extent that they are consistent with this defense.
29. That the allegations of Paragraphs 69, 70, 71, 72, 73, 74 and 75 are denied.

FOR AN EIGHTH DEFENSE

30. That the allegations of the preceding defenses are hereby realleged, and reaffirmed to the extent that they are consistent with this defense.
31. That § 15-78-120(a)(1) of the South Carolina Tort Claims Act imposes upon Plaintiffs a maximum damages recovery in the event of a monetary verdict or ruling in Plaintiffs' favor.

32. That this defense does not constitute an admission of liability by the Defendants, South Carolina Department of Social Services, Mindy Miyares and Deniece Shelman, but instead, is pled solely as an alternative to all preceding defenses.

FOR A NINTH DEFENSE

33. That the allegations of the preceding defenses are hereby realleged, and reaffirmed to the extent that they are consistent with this defense.
34. That during the period alleged in the Plaintiffs' Complaint, the Defendants, South Carolina Department of Social Services, Mindy Miyares and Deniece Shelman, through the conduct of its agents, representative and/or employees were acting in good faith and were not acting in a malicious manner with corrupt motives. In addition, the Defendant South Carolina Department of Social Services, through the conduct of its agents, representatives and/or employees, did not violate any clearly established statutory or constitutional rights of which a reasonable person would have been aware. The Defendant, South Carolina Department of Social Services, through its agents, representatives and/or employees therefore plead the defense of qualified immunity as a complete defense and bars the Plaintiffs' Complaint.

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FOR A TENTH DEFENSE

35. That the allegations of the preceding defenses are hereby realleged, reaffirmed to the extent that they are consistent with this defense.
36. That § 15-78-120(b) of the South Carolina Tort Claims Act bars the Plaintiffs from recovery of punitive or exemplary damages or interest from the Defendants, South Carolina Department of Social Services, Mindy Miyares and Deniece Shelman, and the Defendant pray that this Court strikes any and all claims for punitive or exemplary damages.

FOR AN ELEVENTH DEFENSE

37. That the allegations of the preceding defenses are hereby realleged, and reaffirmed to the extent that they are consistent with this defense.
38. That the Defendants, South Carolina Department of Social Services, Mindy Miyares and Deniece Shelman, allege that any injuries or damages sustained by the Plaintiffs, said injuries and damages were caused by the greater negligence and the willfulness of the Plaintiffs which exceed in the negligence and the willfulness, if any, on the part of the Defendants, without which greater negligence and/or willfulness on the part of Plaintiffs the alleged injury or damage would not have occurred or been sustained, and for that reason the Plaintiffs are barred from recovery.

FOR A TWELFTH DEFENSE

39. That the allegations of the preceding defenses are hereby realleged, reaffirmed to the extent that they are consistent with this defense.
40. That alternatively the Defendants, South Carolina Department of Social Services, Mindy Miyares and Deniece Shelman, allege that any injuries or damages sustained by the Plaintiffs, said injuries and damages were caused by the negligence and/or willfulness of the Plaintiffs, combining, concurring, contributing to the negligence and/or willfulness, if any, on the part of the Defendants, South Carolina Department of Social Services, Mindy Miyares and Deniece Shelman and for that reason the Plaintiffs' recovery, if any, should be reduced in proportion to the amount of his or her own negligence.

FOR A THIRTEENTH DEFENSE

41. That the allegations of the preceding defenses are hereby realleged, and reaffirmed to the extent that they are consistent with this defense.

42. That the Defendants, South Carolina Department of Social Services, Mindy Miyares and Deniece Shelman, allege that any injuries or damages sustained by the Plaintiffs, said injuries and damages were caused by the greater negligence and the willfulness of the Plaintiffs which exceed in the negligence and the willfulness, if any, on the part of the Defendants, without which greater negligence and/or wilfulness on the part of Plaintiffs the alleged injury or damage would not have occurred or been sustained, and for that reason the Plaintiffs is barred from recovery.

FOR A FOURTEENTH DEFENSE

43. That the allegations of the preceding defenses are hereby realleged and reaffirmed to the extent that they are consistent with this defense.

44. That Section 15-78-70 of the South Carolina Code of Laws sets forth the liability for an act of a governmental employee; requirement that agency or political subdivision be named party defendant; effect of judgment or settlement, and states as follows, to-wit:

(c) Prior to January 1, 1989, a person, when bringing an action against a governmental entity under the provisions of this chapter, shall name as a party defendant only the agency or political subdivision for which the employee was acting and is not required to name the employee individually, unless the agency or political subdivision for which the employee was acting cannot be determined at the time the action is instituted. In the event that the employee is individually named, the agency or political subdivision for which the employee was acting must

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be substituted as the party defendant

45. That pursuant to the Statute of Laws of the State of South Carolina this action is barred as a matter of law as to Defendants, Mindy Miyares and Deniece Shelman in their individual and official capacities, and these Defendants pray that this action be dismissed as to said Defendants Mindy Miyares and Deniece Shelman as a matter of law.

FOR A FIFTEENTH DEFENSE

46. That the allegations of the preceding defenses are hereby realleged and reaffirmed to the extent that they are consistent with this defense.
47. That Section 15-78-60(3) provides exceptions to waiver of immunity and states as follows, to-wit:

“(3) Execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process.”

48. That this action be dismissed as a matter of law and the Defendants pray for said dismissal.

FOR A SIXTEENTH DEFENSE

49. That the allegations of the preceding defenses are hereby realleged and reaffirmed to the extent that they are consistent with this defense.
50. That Section 15-78-60(4) provides exceptions to waiver of immunity and states as follows, to-wit:

“(4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not

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limited to, any charter, provision, ordinance, resolution, rule, regulations, or written policies.”

51. That this action be dismissed as a matter of law and the Defendants pray for said dismissal.

FOR A SEVENTEENTH DEFENSE

52. That the allegations of the preceding defenses are hereby realleged and reaffirmed to the extent that they are consistent with this defense.
53. That Section 15-78-60(9) provides exceptions to waiver of immunity and states as follows, to-wit:

“(9) entry upon any property where the entry is expressly or impliedly authorized by law.”

54. That this action be dismissed as a matter of law and the Defendants pray for said dismissal.

FOR AN EIGHTEENTH DEFENSE

55. That the allegations of the preceding defenses are hereby realleged and reaffirmed to the extent that they are consistent with this defense.
56. That Section 15-78-60(23) provides exceptions to waiver of immunity and states as follows, to-wit:

“(23) institution or prosecution of any judicial or administrative proceeding.”

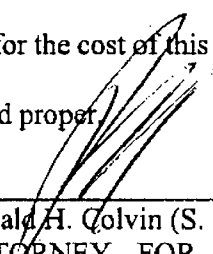
57. That this action be dismissed as a matter of law and the Defendants pray for said dismissal.

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FOR A NINETEENTH DEFENSE

58. That the allegations of the preceding defenses are hereby realleged and reaffirmed to the extent that they are consistent with this defense.
59. That the Defendants, South Carolina Department of Social Services, Mindy Miyares and Deniece Shelman, reserve any additional and further defenses as may be revealed by additional information during the course of any discovery and/or investigation as is consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, the Defendants, South Carolina Department of Social Services, Mindy Miyares and Deniece Shelman, having answered the Complaint of the Plaintiffs respectfully pray that this matter be dismissed with prejudice; for the cost of this action; and for such other and further relief as this Court deems just and proper.



Ronald H. Colvin (S. C. Bar #1346)
ATTORNEY FOR SOUTH CAROLINA
DEPARTMENT OF SOCIAL SERVICES,
MINDY MIYARES AND DENIECE
SHELMAN
1208 John B. White, Sr. Boulevard
Post Office Box 6364
Spartanburg, SC 29304-6364
(864) 587-6711 (Office)
(864) 587-1744 (Facsimile)
Ron@ronaldcolvinlaw.com

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January 8, 2016

Spartanburg, South Carolina

CERTIFICATE OF SERVICE BY MAIL

Re: Rodrick Tucker and Shakeyra Gilbert vs. South Carolina Department of Social Services, Mindy Miyares and Deniece Shelman
C. A. No.: 2015-CP-30-897

I hereby certify that I have on this 8th day of January, 2016 served the Answer of South Carolina Department of Social Services, Mindy Miyares and Deniece Shelman by depositing same in the United States Postal Services, first class, sufficient postage prepaid, with the return address clearly noted, addressed as follows:

Rodrick Tucker
206 Oak Street
Clinton, SC 29325

Shakeyra Gilbert
206 Oak Street
Clinton, SC 29325

LAURENS COUNTY
CLERK OF COURT

2016 JAN 11 A 10:47

LYNN W. LANCASTER

Belinda H. Byers
Belinda H. Byers, Paralegal

RONALD H. COLVIN, P. A.

ATTORNEY AT LAW
POST OFFICE BOX 6364
SPARTANBURG, SC 29304-6364

E-MAIL - RON@RONALDCOLVINLAW.COM

1208 JOHN B. WHITE, SR. BLVD.
SPARTANBURG, SC 29306

TELEPHONE: 864-587-6711
TELEFAX: 864-587-1744

January 8, 2016

Lynn W. Lancaster
Clerk of Court for Laurens County
P.O. Box 287
Laurens, SC 29360

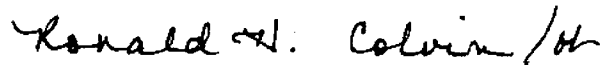
Re: Rodrick Tucker and Shakeya Gilbert vs. South Carolina Department of Social Services, Mindy Miyares, and Deniece Shelman, all in their individual and official capacities
C.A. No.: 2015-CP-30-897
IRF NO: 15604

Dear Ms. Lancaster:

I am hereby enclosing the original and one copy of the Answer of Defendants South Carolina Department of Social Services, Mindy Miyares and Deniece Shelman in the above-referenced matter, along with our Certificate of Service by Mail.

I would appreciate you filing the original and clocking the copy and returning the copy to me in the envelope provided. I appreciate your assistance in this matter.

Very truly yours,



Ronald H. Colvin

RHC/bb

Enclosures

cc: Roderick Tucker
Shakeya Gilbert

**STATE OF SOUTH CAROLINA
COUNTY OF LAURENS**

Rodrick Tucker and Shakeyra Gilbert

Plaintiffs,

vs.

South Carolina Department of Social Services,

Mindy Miyares, and Deniece Shelman, all in their
individual and official capacities,

Defendants.

**IN THE COURT OF COMMON
PLEAS FOR THE EIGHTH
JUDICIAL CIRCUIT**

CASE NO.: 2015-CP-30-897

AMENDED COMPLAINT

AND NOW COME the Plaintiffs, Rodrick Tucker and Shakeyra Gilbert, who complain of the Defendants as follows:

PARTIES

1. Plaintiff Rodrick Tucker is a citizen and resident of Laurens County, South Carolina.
2. Plaintiff Shakeyra Gilbert is a citizen and resident of Laurens County, South Carolina.
3. Defendant South Carolina Department of Social Services (DSS) is an agency of the State of South Carolina created by the General Assembly of the State of South Carolina.
4. Defendant Mindy Miyares, upon information and belief, is a citizen and resident of Laurens County, South Carolina. At the time of the incident described in this Complaint she was an employee and agent of Laurens county DSS; and acting under the authority of her duties as an employee of DSS.

5. Defendant Deniece Shelman, upon information and belief, is a citizen and resident of Laurens County, South Carolina. At the time of the incident described in this Complaint she was an employee and agent of Laurens county DSS; and acting under the authority of her duties as an employee of DSS. She is also a supervisor with DSS responsible for the conduct of her subordinates.

JURISDICTION AND VENUE

6. This action is brought pursuant to the South Carolina Tort Claims Act.
7. Venue is proper in this Court because the Defendants reside and operate in Laurens County and a substantial part of the events or omissions giving rise to the Plaintiffs' claims occurred in Laurens County.

FACTS

8. On or about August 14, 2015, DSS allegedly received a report that Plaintiff and his child's mother (Gilbert) were neglecting their newborn baby (KAG).
9. The allegations were that CDV was occurring in the home, that the home was nasty and dirty with trash inside and outside the house. That the home had broken windows, little furniture and smelled of urine as well as KAG having no crib, bassinette, or clothes.
10. On or about August 17, 2015, Defendant Miyares and another unidentified DSS employee visited the home.
11. When DSS employees arrived, Plaintiff was in the process of cleaning, bathing, and dressing his disabled step-mother who is an amputee, mentally deficient and

incontinent. Plaintiff made this fact aware to Defendant Miyares and she acknowledged it.

12. Plaintiff took photographs shortly after the DSS caseworkers left to document the home in the condition it was in upon DSS's arrival.
13. Defendant Miyares and her associate came into the living room and asked a series of questions about the allegations then left.
14. The only rooms the DSS employees saw was the living room and a glimpse of the bedroom.
15. As seen in the photo packet labeled **Exhibit A** of this Complaint, neither room was dirty, nor did the home have any broken windows. In Fact, no room in the house was dirty nor in any unsanitary manor.
16. DSS never document the Plaintiffs house to be in any unsafe, unsanitary of otherwise unsafe condition.
17. The employees stood in the living room and looked into Plaintiffs bedroom door and stated "well just try to get her a crib since she is so small." they then left the home.
18. The next morning, on August 18, 2015, Defendant Miyares called Plaintiffs phone and said that she needed to meet with both Plaintiffs.
19. On August 18, 2015, the Plaintiffs met with Defendants Miyares and Shelman at Laurens County DSS. During the meeting, the Defendants asserted that since KAG did not have a crib she was being neglected and abused and subsequently tried to force Plaintiffs to sign a "safety plan" or else they stated they would remove the baby from the home.

20. Plaintiffs refused to sign the “safety plan” and admit to neglecting KAG simply because she didn’t have a crib and reminded Defendants Miyares and Shelman that no South Carolina law requires a baby to have a crib. Plaintiff then stated to the Defendants that since it was not a requirement of the law nor the abuse and neglect statutes that they didn’t have grounds to seek removal of KAG.
21. Plaintiff Tucker then stated that he would like his attorney to review any kind of agreement before signing it.
22. Defendant Shelman then became angry and hostile and stated: “This is our job, we do this every day, all day. We have ways of getting our baby out of that house.”
23. Plaintiff Gilbert then inquired of Defendant Shelman, “Get the baby out of the house for what though?”
24. Plaintiffs then reminded her again that a crib was not a requirement of the law or the abuse and neglect statutes and that she would, “have to find some other reason because that’s not a reason to take somebody baby and you know it.”
25. Upon hearing this Defendant Shelman then stated “I just told you, this is what I do every day all day, and I’ll make a reason. Either way that baby getting out of there”.
26. Plaintiff Tucker then stated to Defendant Shelman, “So you going to motherfucking lie on us because we won’t admit to some shit we didn’t do. You stupid as fuck.” Defendant Shelman respond, “Yea I see you got a mouth on you, but don’t worry I got something for disrespectful people.”
27. Defendant Shelman then made Plaintiff and Gilbert wait in the lobby of the building for 30 minutes before coming out and saying, “Yall can leave, somebody will be in touch.”

28. During the 30 minutes that the Defendants were meeting, they conspired with each other to seek an ex parte order for removal, all the while knowing that they did not have sufficient grounds to do so.
29. At approximately 6 P.M. on August 18, 2015, Defendants Miyares and Shelman, along with the other caseworker, accompanied by the police, came to the home with an Ex Parte Order for Removal.
30. The Ex Parte Order stated that DSS submitted affidavits in which they had observed the home in a "sordid condition"; that it smelled of urine, KAG had no age appropriate bed and was without adequate clothing and that Plaintiff had an open DSS case in Spartanburg County for domestic violence.
31. At a probable cause hearing held the next morning, Defendant Miyares, on behalf of DSS, submitted a Complaint for Removal as well as an Affidavit of Imminent and Substantial Danger. These are attached hereto as Exhibit B of this Complaint.
32. In its Complaint for Removal, DSS falsely claimed the following things in order to unlawfully and fraudulently convince the Family Court judge that probable cause existed to remove KAG from her Parents:
 - a. That Gilbert was a resident of Laurens County, South Carolina
 - b. That KAG was a resident of Laurens County, South Carolina.
 - c. That Gilbert had bruises on her arm.
 - d. That Plaintiff was on probation for criminal domestic violence.
 - e. That DSS conducted an investigation on 08/17/2015 and documented the Plaintiffs home to be in poor condition.

33. Defendant Miyares then falsely claimed in her Affidavit of Imminent and Substantial Danger that:
- f. “Upon my investigation, I confirmed that the house is in a sordid condition, with broke windows....”
 - g. The minor child is without adequate clothing
 - h. “..That these children would be placed in imminent and substantial danger if they were to remain in the custody of Defendants.”
34. Based on the false statement presented by the Defendants the court found probable cause to allow DSS to retain custody of KAG.
35. During a “family conference meeting Defendant Shelman, falsely claimed in front of the attendees that she had witnessed the Plaintiffs home to be in “total disarray” and “just nasty”
36. These false statements hurt the reputations of the Plaintiffs and caused embarrassment.
37. During a subsequent meeting with DSS, Defendant Shelman called Plaintiff Shakeyra Gilbert out of the room and stated to her, “Listen, all you got to do is leave the house, that’s all we want. I know you want your baby back. But hey, as long as you wanna sit down there the longer we gonna keep KAG. It aint hurting nobody but you. What’s so hard about signing a treatment plan and getting your baby back?” Plaintiff Gilbert responded, “Because I’m not going to admit to something I didn’t do. I have never neglected my child and I’m not going go along with your lies.”
38. Defendant Shelman attempted to blackmail, coerce, and extort and other force the Plaintiffs into complying with her wishes in order to get KAG back, all the while

knowing that her actions were not in the scope of her duties, and not the policy of DSS.

39. The Mother of KAG, Shakeyra Gilbert, was known by the defendants to be a resident of Tennessee at the time.
40. Defendants knew and should have known that at no time ever has Plaintiff Rodrick Tucker ever been on probation for criminal domestic violence because they had Defendant Tuckers background report.
41. At no time did Shakeyra Gilbert have bruises on her arm.
42. At no time did DSS document Plaintiffs home to be in poor condition or to have broken windows.
43. At no time was DSS ever in a position in my home to document that KAG did not have adequate clothing because the defendants only went into the living room and took a slight glance into my room.
44. DSS and its agents, the defendants, knowingly submitted false statements to the Family Court to interfere with my rights guaranteed under the Fourteenth Amendment of the United Constitution.
45. On October 15, 2015, DSS admitted that there investigation turned up no evidence of abuse or neglect and the Family Court dismissed the complaint against the Plaintiffs. A true and accurate copy of the Order of Dismissal is attached hereto as EXHIBIT C of this Complaint.
46. Defendants knew that their actions were unlawful and not in the scope of their duties as representatives of DSS.

47. Defendants knowingly instituted the removal and all subsequent court proceedings, knowing that the purpose of such proceedings were not to be used to force parties into compliance with their wishes where no probable cause or any other evidence existed to make Defendant have even the slightest belief that KAG was a neglected or abused child or in any other danger as defined by South Carolina Law.
48. Defendants sought out and instituted removal proceedings with malice in response to Plaintiff Tucker speaking with what Defendant Shelman regarded as disrespectful.
49. Defendants sought out and instituted removal and subsequent proceedings in order to coerce Plaintiffs to comply with its safety and treatments plans knowing that there was no evidence that any abuse or neglect had occurred or that KAG was in any risk of danger.
50. Defendants sought out and instituted removal and subsequent proceedings in order to coerce and force Plaintiff Gilbert to move out of the home with Plaintiff Tucker.
51. Defendant's actions were therefore, intentional, grossly negligent, without slight care and reckless.
52. DSS failed to exercise slight care.
53. DSS's investigation into the alleged complaint it received was not thorough. In fact there was never any such investigation prior to the institution of removal proceedings.
54. DSS had no grounds pursuant to S.C.Code Ann. § 20-7-736 to seek removal of the Plaintiffs minor child KAG, but did so to punish Plaintiff Tuckers alleged disrespect, force Plaintiff Gilbert in leaving the home, force both Plaintiffs in to a treatment plan without just cause, and to force both Plaintiffs into submitting to the Defendants unlawful and illegitimate wishes.

55. The Defendants acted with malice and with the intent to harm Plaintiffs.
56. Defendant Miyares committed the crime of perjury by signing a sworn affidavit which she knew to be false.

FOR A FIRST CAUSE OF ACTION

Malicious Prosecution

55. The allegations of Paragraphs 1 through 54 are repeated and re-alleged as if set forth fully herein.
56. To maintain an action for malicious prosecution, a plaintiff must establish: (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in [the] plaintiff's favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage."
57. Original judicial proceedings were instituted against the Plaintiffs.
58. The Defendants caused these judicial proceedings to be instituted or instituted them.
59. The proceedings were ultimately terminated in the favor of the Plaintiffs.
60. The Defendants instituted these proceedings with malice and to punish the Plaintiff for what Defendants regarded as disrespect.
61. There was no probable cause to institute proceedings against the Plaintiffs.
62. The Plaintiffs suffered the loss of the child, irreplaceable months of their child's life and the right to govern their child as they see fit pursuant to the law.

FOR A SECOND CAUSE OF ACTION

Abuse of Process

63. The allegations of Paragraphs 1 through 62 are repeated and re-alleged as if set forth fully herein.
64. The tort of abuse of process is intended to compensate a party for harm resulting from another party's misuse of the legal process.

65. The essential elements of abuse of process are (1) an ulterior purpose, and (2) a willful act in the use of the process that is not proper in the regular conduct of the proceeding.
66. The Defendants used the legal process in an attempt to force the Plaintiffs to comply with their demands which they knew were without just cause.
67. The Defendants demands were not lawful and not legitimate pursuant to S.C.Code Ann. § 20-7-736, yet they knowingly instituted legal proceedings without just cause or excuse.
68. The Defendants instituted legal proceedings with the express and ulterior motive of (1) forcing Plaintiffs to submit to demands it had no authority to make, (2) force Plaintiff Gilbert to out of the home. (3) Punishing Plaintiff Tucker for what Defendants deemed disrespect.

FOR A THIRD CAUSE OF ACTION

Defamation of Character – Slander

69. The allegations of Paragraphs 1 through 68 are repeated and re-alleged as if set forth fully herein
70. The tort of defamation allows plaintiffs to recover for injuries to their reputation as the result of defendants' communications to others of a falsity regarding the plaintiffs.
71. In a case involving the defamation of a public official such as a DSS employee, the plaintiff must prove the defendant acted with actual malice.
72. To meet this standard, the plaintiff must show either that the defendant knew the statement was false or that the defendant made the statement with reckless disregard of its falsity.
73. Defendant Shelman knew that her statements regarding the condition of Plaintiffs home were false.
74. Defendant Shelman has never been inside the Plaintiffs home.

75. Defendant Shelman knew her statements were untrue and would hurt the Plaintiffs but still decided to make them in an attempt justify removal of the Plaintiffs minor child and to make the Plaintiffs look bad.

FOR A FOURTH CAUSE OF ACTION

GROSS NEGLIGENCE

76. DSS is required to conduct a thorough investigation before removing children from their parents, and DSS did not do so in this case.
77. Despite having no evidence to suggest Plaintiffs harm their minor child, DSS still sought out and removed the minor child from the parents.
78. DSS failed to conduct an investigation comes even relatively close to the thorough investigation it is required to conduct.
79. DSS's failure to complete a thorough investigation before removing the minor child was grossly negligent.

RELIEF

WHEREFORE, having fully set forth the allegations of their Complaint, the Plaintiffs respectfully request that judgement be entered in their favor as follows:

- A. That this Court declares that Defendant's actions violated the Plaintiffs rights;
- B. Compensatory damages;

- C. Punitive damages;
- D. A jury trial and;
- E. Such other financial and equitable relief as is reasonable and just.

November 2, 2015

Rodrick Tucker

Rodrick Tucker
206 Oak Street
Clinton, South Carolina 29325
rodrikt221@gmail.com

Shakeyra Gilbert

Shakeyra Gilbert
206 Oak Street
Clinton, South Carolina 29325
shakeyra96@gmail.com

STATE OF SOUTH CAROLINA)
COUNTY OF LAURENS)

LANCASTER

IN THE COURT OF COMMON PLEAS
(JURY TRIAL DEMANDED)

Rodrick Tucker and Shakeyra
Gilbert,

2016 FEB 16 A 4:05

C. A. NO: 2015-CP-30-897

Plaintiffs,

LAURENS COUNTY
CLERK OF COURT

vs.

AMENDED

ANSWER OF DEFENDANTS

South Carolina Department of
Social Services, Mindy Miyares,
and Deniece Shelman, all in their
Individual and Official Capacities,

SOUTH CAROLINA DEPARTMENT OF SOCIAL
SERVICES, MINDY MIYARES AND
DENIECE SHELMAN
TO AMENDED COMPLAINT

Defendants.

TO: RODRICK TUCKER AND SHAKEYRA GILBERT, PRO SE PLAINTIFFS

The Defendants, South Carolina Department of Social Services, Mindy Miyares and Deniece Shelman, all in their individual and official capacity answering the Complaint of the Plaintiffs respectfully state as follows:

FOR A FIRST DEFENSE

- 1. That the Complaint fails to state a cause of action for which relief can be granted, and the Defendants, South Carolina Department of Social Services, Mindy Miyares and Deniece Shelman, are entitled to a dismissal under the provisions of Section 12(b)(6) of the South Carolina Rules of Civil Procedure, for which dismissal the Defendants, South Carolina Department of Social Services, Mindy Miyares and Deniece Shelman in their individual and official capacity, pray.

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[Signature]

FOR A SECOND DEFENSE
(As to Parties)

- 2. That the allegations of the preceding defense is hereby realleged, and reaffirmed to the

extent that they are consistent with this defense.

3. That each and every allegation of the Complaint not hereinafter admitted, modified or explained is denied and strict proof demanded thereof.
4. That the allegations of Paragraphs 1 and 2 are admitted upon information and belief.
5. That the allegations of Paragraph 3 are admitted.
6. That the allegations of Paragraphs 4 and 5 are admitted.

FOR A THIRD DEFENSE
(Jurisdiction of Venue)

7. That the allegations of the preceding defenses are hereby realleged, and reaffirmed to the extent that they are consistent with this defense.
8. That the allegations of Paragraph 6 and 7 are admitted upon information and belief.

FOR A FOURTH DEFENSE
(Facts)

9. That the allegations of the preceding defenses are hereby realleged, and reaffirmed to the extent that they are consistent with this defense.
10. That the allegations of Paragraph 8, 9 and 10 are admitted.
11. That in regard to the allegations of Paragraph 11, the Defendants do not have sufficient information and belief in which to form an opinion, and, therefore, denies same.
12. That in regard to the allegations of Paragraph 12, the photographs allegedly taken by one of the Plaintiffs do not adequately and accurately set forth the condition of the premises as seen by agents, representatives and/or employees of the Defendant South Carolina Department of Social Services, and the remaining allegations of Paragraph 12 are denied.
13. That in regard to the allegations of Paragraphs 13 and 14, it is admitted that the Defendants performed an investigation into the living conditions, including going into the living room and bedroom, but most of the questions were asked on the porch of the house,

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and the remaining allegations of said Paragraphs 13 and 14 are denied.

14. That the allegations of Paragraphs 15, 16 and 17 are denied.
15. That in regard to the allegations of Paragraphs 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28, it is admitted that the Defendants attempted to work and cooperate with the Plaintiffs in order to create a "safety plan" concerning the minor infant of the Plaintiff Gilbert, and the remaining allegations of said Paragraphs 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28 are denied.
16. That the allegations of Paragraphs 29, 30 and 31 are admitted.
17. That in regard to the allegations of Paragraph 32, the conditions for removal pursuant to S.C. Code Ann. § 63-7-470 speak for themselves, and the remaining allegations of said Paragraph 32 are denied.
18. That in regard to the allegations of Paragraph 33, the Affidavit of Defendant Miyares speaks for itself, and the remaining allegations of said Paragraph 33 are denied.
19. That in regard to the allegations of Paragraph 34, it is admitted that the Court found probable cause to allow the Defendant DSS to retain custody of the minor child known as KAG, and the remaining allegations of said Paragraph 34 are denied.
20. That in regard to the allegations of Paragraphs 35, 36, 37 and 38, it is admitted that the agents, representatives and/or employees of the Defendant South Carolina Department of Social Services attempted to work with the Plaintiffs in the best interest of the minor known as KAG, and the remaining allegations of said Paragraphs 35, 36, 37 and 38 are denied.
21. That the allegations of Paragraphs 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53 and 54, 55 and 56 are denied.

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FOR A FIFTH DEFENSE
(As to First Cause of Action - Malicious Prosecution)

22. That the allegations of the preceding defenses are hereby realleged, and reaffirmed to the extent that they are consistent with this defense.
23. That the allegations of Paragraph 55 are denied.
24. That in regard to the allegations of Paragraph 56, it is admitted that the Plaintiffs alleged the principles needed to prosecute an action for malicious prosecution, and it is specifically alleged that the principles have not been met and the remaining allegations of said Paragraph 56 are denied.
25. That the allegations of Paragraphs 57, 58, 59, 60, 61 and 62 are denied.

FOR A SIXTH DEFENSE
(As to Second Cause of Action - Abuse of Process)

26. That the allegations of the preceding defenses are hereby realleged, reaffirmed to the extent that they are consistent with this defense.
27. That the allegations of Paragraphs 63, 64, 65, 66, 67 and 68 are denied.

FOR A SEVENTH DEFENSE
(As to Third Cause of Action - Defamation of Character - Slander)

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28. That the allegations of the preceding defenses are hereby realleged, reaffirmed to the extent that they are consistent with this defense.
 29. That the allegations of Paragraphs 69, 70, 71, 72, 73, 74 and 75 are denied.

FOR AN EIGHTH DEFENSE
(As to Fourth Cause of Action - Gross Negligence)

30. That the allegations of the preceding defenses are hereby realleged, reaffirmed to the extent that they are consistent with this defense.
31. That in regard to the allegations of Paragraph 76, it is admitted that DSS is required to conduct a thorough investigation before removing children from their parents, and the

Defendants did, in fact, perform a thorough and valid investigation in this case, and the remaining allegations of said Paragraph 76 are denied.

32. That the allegations of Paragraphs 77, 78 and 79 are denied.

FOR A NINTH DEFENSE

33. That the allegations of the preceding defenses are hereby realleged, and reaffirmed to the extent that they are consistent with this defense.

34. That § 15-78-120(a)(1) of the South Carolina Tort Claims Act imposes upon Plaintiffs a maximum damages recovery in the event of a monetary verdict or ruling in Plaintiffs' favor.

35. That this defense does not constitute an admission of liability by the Defendants, South Carolina Department of Social Services, Mindy Miyares and Deniece Shelman, but instead, is pled solely as an alternative to all preceding defenses.

FOR A TENTH DEFENSE

36. That the allegations of the preceding defenses are hereby realleged, and reaffirmed to the extent that they are consistent with this defense.

37. That during the period alleged in the Plaintiffs' Complaint, the Defendants, South Carolina Department of Social Services, Mindy Miyares and Deniece Shelman, through the conduct of its agents, representative and/or employees were acting in good faith and were not acting in a malicious manner with corrupt motives. In addition, the Defendant South Carolina Department of Social Services, through the conduct of its agents, representatives and/or employees, did not violate any clearly established statutory or constitutional rights of which a reasonable person would have been aware. The Defendant, South Carolina Department of Social Services, through its agents, representatives and/or employees therefore plead the defense of qualified immunity as a

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complete defense and bars the Plaintiffs' Complaint.

FOR AN ELEVENTH DEFENSE

38. That the allegations of the preceding defenses are hereby realleged, reaffirmed to the extent that they are consistent with this defense.
39. That § 15-78-120(b) of the South Carolina Tort Claims Act bars the Plaintiffs from recovery of punitive or exemplary damages or interest from the Defendants, South Carolina Department of Social Services, Mindy Miyares and Deniece Shelman, and the Defendant pray that this Court strikes any and all claims for punitive or exemplary damages.

FOR A TWELFTH DEFENSE

40. That the allegations of the preceding defenses are hereby realleged, and reaffirmed to the extent that they are consistent with this defense.
41. That the Defendants, South Carolina Department of Social Services, Mindy Miyares and Deniece Shelman, allege that any injuries or damages sustained by the Plaintiffs, said injuries and damages were caused by the greater negligence and the willfulness of the Plaintiffs which exceed in the negligence and the willfulness, if any, on the part of the Defendants, without which greater negligence and/or wilfulness on the part of Plaintiffs the alleged injury or damage would not have occurred or been sustained, and for that reason the Plaintiffs are barred from recovery.

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FOR A THIRTEENTH DEFENSE

42. That the allegations of the preceding defenses are hereby realleged, reaffirmed to the extent that they are consistent with this defense.
43. That alternatively the Defendants, South Carolina Department of Social Services, Mindy Miyares and Deniece Shelman, allege that any injuries or damages sustained by the

Plaintiffs, said injuries and damages were caused by the negligence and/or willfulness of the Plaintiffs, combining, concurring, contributing to the negligence and/or willfulness, if any, on the part of the Defendants, South Carolina Department of Social Services, Mindy Miyares and Deniece Shelman, and for that reason the Plaintiffs' recovery, if any, should be reduced in proportion to the amount of his or her own negligence.

FOR A FOURTEENTH DEFENSE

44. That the allegations of the preceding defenses are hereby realleged, and reaffirmed to the extent that they are consistent with this defense.
45. That the Defendants, South Carolina Department of Social Services, Mindy Miyares and Deniece Shelman, allege that any injuries or damages sustained by the Plaintiffs, said injuries and damages were caused by the greater negligence and the willfulness of the Plaintiffs which exceed in the negligence and the willfulness, if any, on the part of the Defendants, without which greater negligence and/or willfulness on the part of Plaintiffs the alleged injury or damage would not have occurred or been sustained, and for that reason the Plaintiffs is barred from recovery.

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FOR A FIFTEENTH DEFENSE

46. That the allegations of the preceding defenses are hereby realleged and reaffirmed to the extent that they are consistent with this defense.
47. That Section 15-78-70 of the South Carolina Code of Laws sets forth the liability for an act of a governmental employee; requirement that agency or political subdivision be named party defendant; effect of judgment or settlement, and states as follows, to-wit:
- (c) Prior to January 1, 1989, a person, when bringing an action against a governmental entity under the

provisions of this chapter, shall name as a party defendant only the agency or political subdivision for which the employee was acting and is not required to name the employee individually, unless the agency or political subdivision for which the employee was acting cannot be determined at the time the action is instituted. In the event that the employee is individually named, the agency or political subdivision for which the employee was acting must be substituted as the party defendant

48. That pursuant to the Statute of Laws of the State of South Carolina this action is barred as a matter of law as to Defendants, Mindy Miyares and Deniece Shelman in their individual and official capacities, and these Defendants pray that this action be dismissed as to said Defendants Mindy Miyares and Deniece Shelman as a matter of law.

FOR A SIXTEENTH DEFENSE

49. That the allegations of the preceding defenses are hereby realleged and reaffirmed to the extent that they are consistent with this defense.
50. That Section 15-78-60(3) provides exceptions to waiver of immunity and states as follows, to-wit:

“(3) Execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process.”

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51. That this action be dismissed as a matter of law and the Defendants pray for said dismissal.

FOR A SEVENTEENTH DEFENSE

52. That the allegations of the preceding defenses are hereby realleged and reaffirmed to the extent that they are consistent with this defense.

53. That Section 15-78-60(4) provides exceptions to waiver of immunity and states as follows, to-wit:

“(4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulations, or written policies.”

54. That this action be dismissed as a matter of law and the Defendants pray for said dismissal.

FOR AN EIGHTEENTH DEFENSE

55. That the allegations of the preceding defenses are hereby realleged and reaffirmed to the extent that they are consistent with this defense.

56. That Section 15-78-60(9) provides exceptions to waiver of immunity and states as follows, to-wit:

“(9) entry upon any property where the entry is expressly or impliedly authorized by law.”

57. That this action be dismissed as a matter of law and the Defendants pray for said dismissal.

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[Signature]

FOR A NINETEENTH DEFENSE

58. That the allegations of the preceding defenses are hereby realleged and reaffirmed to the extent that they are consistent with this defense.
59. That Section 15-78-60(23) provides exceptions to waiver of immunity and states as follows, to-wit:
- “(23) institution or prosecution of any judicial or administrative proceeding.”
60. That this action be dismissed as a matter of law and the Defendants pray for said dismissal.

FOR A TWENTIETH DEFENSE

61. That the allegations of the preceding defenses are hereby realleged and reaffirmed to the extent that they are consistent with this defense.
62. That an action had previously been brought in the Laurens County Family Court entitled South Carolina Department of Social Services vs. Shakerya Gilbert and Rodrick Tucker, C. A. 2015-DR-30-1500. This cause of action was in the interest of Kyndal Gilbert, DOB: 7-22-15. A copy of said Order is attached hereto and made a part hereof and marked as Exhibit A.
63. That by Order of The Honorable Joseph C. Smithdeal, Family Court Judge of the Eighth Judicial Circuit, Judge Smithdeal issued his Order granting the emergency removal of the minor by the South Carolina department of Social Services and finding probable cause for the minor child to remain in the physical and legal custody of the Plaintiff, South Carolina Department of Social Services for further investigation.

“I find that the South Carolina Department of Social Services

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(hereinafter the "Department"), has made a prima facie showing as required by S. C. Code 63-7-170 "That probable cause did exist for the Court to take the minor child into emergency protective custody, and continues to exist for the minor child to remain in the physical and legal custody of the Department because there is probable cause to believe, based upon the evidence presented by the Department that returning the minor child to the home would seriously endanger the child's physical safety or emotional well-being. (Exhibit B)

64. That the Order of Judge Smithdeal raises the affirmative defenses of res judicata, judicial estoppel and the law of the case which the Defendants hereby plead as affirmative defenses.

That pursuant to the laws of the State of South Carolina the Defendants respectfully request that this matter be dismissed as a matter of law.

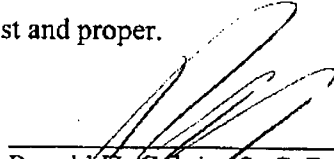
FOR A TWENTY-FIRST DEFENSE

65. That the allegations of the preceding defenses are hereby realleged and reaffirmed to the extent that they are consistent with this defense.
66. That the Defendants, South Carolina Department of Social Services, Mindy Miyares and Deniece Shelman, reserve any additional and further defenses as may be revealed by additional information during the course of any discovery and/or investigation as is consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, the Defendants, South Carolina Department of Social Services, Mindy Miyares and Deniece Shelman, having answered the Complaint of the Plaintiffs respectfully

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pray that this matter be dismissed with prejudice; for the cost of this action; and for such other and further relief as this Court deems just and proper.



Ronald H. Colvin (S. C. Bar #1346)
ATTORNEY FOR SOUTH CAROLINA
DEPARTMENT OF SOCIAL SERVICES,
MINDY MIYARES AND DENIECE
SHELMAN
1208 John B. White, Sr. Boulevard
Post Office Box 6364
Spartanburg, SC 29304-6364
(864) 587-6711 (Office)
(864) 587-1744 (Facsimile)
Ron@ronalcolvinlaw.com

February 12, 2016

Spartanburg, South Carolina

RHC
WJ

CERTIFICATE OF SERVICE BY MAIL

Re: Rodrick Tucker and Shakeyra Gilbert vs. South Carolina Department of Social Services, Mindy Miyares and Deniece Shelman
C. A. No.: 2015-CP-30-897

I hereby certify that I have on this 11th day of February, 2016 served the Amended Answer of South Carolina Department of Social Services, Mindy Miyares and Deniece Shelman to Amended Complaint by depositing same in the United States Postal Services, first class, sufficient postage prepaid, with the return address clearly noted, addressed and by email as follows:

rodrikt221@gmail.com

ShakeyrarGilbert@gmail.com

Rodrick Tucker
206 Oak Street
Clinton, SC 29325

Shakeyra Gilbert
206 Oak Street
Clinton, SC 29325

LAURENS COUNTY
CLERK OF COURT

2016 FEB 16 A 11:06

EMMA W. LANCASTER

Belinda H. Byers
Belinda H. Byers, Paralegal

RONALD H. COLVIN, P. A.

ATTORNEY AT LAW
POST OFFICE BOX 6364
SPARTANBURG, SC 29304-6364

E-MAIL - RON@RONALDCOLVINLAW.COM

1208 JOHN B. WHITE, SR. BLVD.
SPARTANBURG, SC 29306

TELEPHONE: 864-587-6711
TELEFAX: 864-587-1744

February 11, 2016

Lynn W. Lancaster
Clerk of Court for Laurens County
P.O. Box 287
Laurens, SC 29360

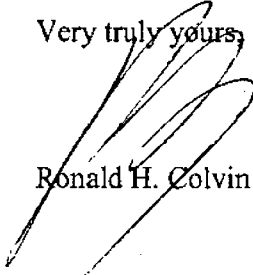
Re: Rodrick Tucker and Shakeyra Gilbert vs. South Carolina Department of Social Services, Mindy Miyares, and Deniece Shelman, all in their individual and official capacities
C.A. No.: 2015-CP-30-897
IRF NO: 15604

Dear Ms. Lancaster:

I am hereby enclosing the original and one copy of the Amended Answer of Defendants South Carolina Department of Social Services, Mindy Miyares and Deniece Shelman to Amended Complaint in the above-referenced matter, along with our Certificate of Service by Mail.

I would appreciate you filing the original, clocking the copy and returning it to me in the envelope provided. I appreciate your assistance in this matter.

Very truly yours,


Ronald H. Colvin

RHC/bb

Enclosures

cc: Roderick Tucker
Shakeyra Gilbert

RONALD H. COLVIN, P. A.

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May 23, 2016

VIA EMAIL - RODRICKT221@GMAIL.COM

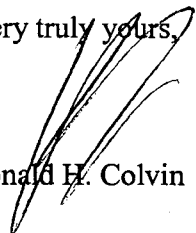
Mr. Rodrick Tucker
206 Oak Street
Clinton, SC 29325

Re: Rodrick Tucker and Shakeyra Gilbert vs. South Carolina Department of Social
Services
C.A. No.: 2015-CP-30-897

Dear Mr. Tucker:

I am enclosing a copy of Defendant SCDSS' Memorandum in Support of Its Motion for
Summary Judgment in the above-referenced matter, along with our Certificate of Service.

Very truly yours,


Ronald H. Colvin

RHC/bb

Enclosures