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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 2

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Appellant

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May 23, 2016

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

Re: Roderick Tucker and Shakeyra Gilbert vs. South Carolina Department of Social
Services
C.A. No.: 2015-CP-30-897
IRF NO: 15604

Dear Ms. Lancaster:

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

I would appreciate you filing the original, 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
Shakeyra Gilbert

STATE OF SOUTH CAROLINA)
)
COUNTY OF LAURENS)

IN THE COURT OF COMMON PLEAS

Rodrick Tucker and Shakeyra)
Gilbert,)

C. A. NO: 2015-CP-30-0897

Plaintiffs,)

**DEFENDANT SOUTH CAROLINA
DEPARTMENT OF SOCIAL SERVICES'
MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

vs.)

South Carolina Department of)
Social Services)

Defendant.)

TO: RODRICK TUCKER AND SHAKEYRA GILBERT, PRO SE PLAINTIFFS

This matter is before the Court on a Motion for Summary Judgment by the Defendant, South Carolina Department of Social Services, on the grounds that there is no issue of material fact in which to submit this matter to a jury.

BACKGROUND

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 a result of its investigation, DSS filed an action in the Laurens County Family Court seeking an Ex Parte Order in the Interest of Kyndal Gilbert, Case Number 2015-DR-30-0510. An Ex Parte Order was granted on August 18, 2015 giving DSS emergency protective custody of minor Kyndal Gilbert. See Ex Parte Order signed August 18, 2015 (filed August 19, 2015 a copy of which is attached hereto and made a part hereof and marked as Exhibit A.) A probable cause hearing was held the next

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day before before The Honorable Joseph C. Smithdeal, Presiding Judge of the Family Court, Eighth Judicial Circuit.

“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 wellbeing, among other things. ”

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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 is set forth in the Second Affidavit of Mindy Miyares dated April 20, 2016. (A copy of which is attached hereto and made a part hereof and marked as Exhibit B.) See Order of the Court (Judge Smithdeal; filed December 15, 2015, a copy of which is attached hereto and made a part hereof and marked as Exhibit C.) Plaintiffs requested a reconsideration by Judge Smithdeal of his ruling. A hearing was held before Judge Smithdeal on March 3, 2016, in which the 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."

 **Transcript of Record, South Carolina Department of Social Services vs. Shakerya Gilbert and Rodrick Tucker, March 3, 2016, Laurens, South Carolina. Page 13, Lines 4-16. (A copy of which is attached hereto and made a part hereof and marked as Exhibit D.)**

The Order denying the Motion for Reconsideration was confirmed by Judge Smithdeal dated April 2, 2016 and filed April 12, 2016 with the Clerk of Court's Office of Laurens County. (A copy of which is attached hereto and made a part hereof and marked as Exhibit E.) Plaintiffs subsequently filed suit against DSS, which is the subject of this Motion and individual Defendants Mindy Miyares and Deniece Shelman. Defendants Miyares and Shelman, who are DSS employees, were dismissed by Order of the Court on February 19, 2016. (A copy of which is attached hereto and made a part hereof and marked as Exhibit F.)

STANDARD OF REVIEW

Summary judgment should be granted when there are no genuine issues of material fact and the moving party is entitled to a judgment as a matter of law. Carter v. Standard Fire Ins. Co., 406 S.C. 609, 753 S.E.2d 515 (2014). In determining whether any triable issues of material fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. One may not, however, avoid summary judgment by asserting that a jury may disbelieve uncontradicted evidence. This argument, if accepted, would render summary judgment obsolete, and it is in any event at odds with Rule 56, SCRPC, and our summary judgment jurisprudence:

[R]ule 56(e), SCRPC, requires that when a motion for summary judgment is made and supported as provided by the rule, an adverse party may not rest upon the mere allegations or denials of his pleadings. The adverse party's response, including affidavits or as otherwise provided by the rule, must set forth specific facts showing there is a genuine issue for trial.

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Hoard v. Roper Hosp. Inc., 387 S.C. 539, 694 S.E.2d 1 (2010) (emphasis added).

ANALYSIS AND ARGUMENT

While Plaintiffs allege that DSS did not have such probable cause, the ruling and subsequent order of the Family Court clearly states DSS made its “prima facia showing as required by S.C. Code § 63-7-710 that probable cause did exist for DSS to take the minor child into emergency protective custody” pursuant to the Order of the Court and place her with DSS. See Affidavit of Mindy Miyares and Order of the Court (Judge Smithdeal; filed December 15, 2015). Upon making that ruling, DSS

was bound by Judge Smithdeal's ruling until or unless it was modified by a subsequent written order.¹ Plaintiffs were similarly bound by Judge Smithdeal's ruling though they had the opportunity to request his reconsideration of this matter or appeal it. Plaintiffs did request such a reconsideration by Judge Smithdeal, which was denied, but have not pursued an appeal of his ruling. The time for appeal of this Order has lapsed. As such, Judge Smithdeal's Order contains the law of the case applicable both in the Family Court proceeding and in the instant case.²

I: PLAINTIFFS CANNOT MEET THE ELEMENTS OF THEIR MALICIOUS PROSECUTION CAUSE OF ACTION

Malicious Prosecution, Plaintiffs' first cause of action, requires various elements be proven to maintain the action. Plaintiffs cannot prove most of the elements, specifically those of malice or probable cause and, as such, DSS should be awarded judgment as to that cause of action.

Probable cause to act in the underlying action is a defense to a subsequent malicious prosecution action. This element of the cause of action does not hinge on Plaintiffs' actual guilt or innocence. Deaton v. Leath, 279 S.C. 82, 302 S.E.2d 335 (1983). Rather, when reviewing the issue of probable cause, the Court must review the facts of the underlying action from the point of view of the prosecuting party, here DSS. The question is not what the actual facts were, but what the

¹ "A trial court has the discretion to change its mind and amend its oral ruling. Until written and entered, the trial judge retains discretion to change his mind and amend his oral ruling accordingly. The written order is the trial judge's final order and as such constitutes the final judgment of the court." Ford v. State Ethics Com'n, 344 S.C. 642, 545 S.E.2d 821 (S.C., 2001) (citing First Union Nat. Bank v. Hitman, Inc., 306 S.C. 327, 411 S.E.2d 681 (Ct.App.1991), aff'd, 308 S.C. 421, 418 S.E.2d 545 (1992)).

² "An unappealed ruling is the law of the case and requires affirmance." Shirley's Iron Works, Inc. v. City of Union, 403 S.C. 560, 743 S.E.2d 778 (2013). "The rule of the law of the case is a rule of practice, based upon sound policy that when an issue is once litigated and decided, that should be the end of the matter." Flexon v. PHC-Jasper, Inc., 413 S.C. 561, 776 S.E.2d 397 (Ct. App. 2015) (citing United States v. U.S. Smelting Ref. & Mining Co., 339 U.S. 186, 70 S.Ct. 537, 94 L.Ed. 750 (1950)).

prosecuting party honestly believed them to be. Lynch v. Toys "R" Us-Delaware, Inc., 654 S.E.2d 541, 375 S.C. 604 (Ct. App. 2007). Further, malice is defined as "the deliberate intentional doing of an act without just cause or excuse." In an action for malicious prosecution, malice may be inferred from a lack of probable cause to institute the prosecution. Law v. South Carolina Dept. of Corrections, 629 S.E.2d 642, 368 S.C. 424 (2006).

Although the question of whether probable cause exists is ordinarily a jury question, in an action for malicious prosecution, it may be decided as a matter of law when the evidence yields but one conclusion. Lynch v. Toys "R" Us-Delaware, Inc., 654 S.E.2d 541, 375 S.C. 604 (Ct. App. 2007). In the instant matter, there is but one conclusion – that DSS had the probable cause to remove baby KAG from Plaintiffs' residence. This is borne out not only by the *Ex Parte* Order signed on August 18, 2015 (filed August 19, 2015); and Judge Smithdeal's Order denying the Motion for Reconsideration dated April 2, 2016 (filed April 12, 2016), and the Order of Judge Smithdeal dated December 8, 2015 (filed December 15, 2015). Accordingly, DSS' actions were done under color of law, judicial directive, and particularly relevant to this case, based on probable cause without malice. Since Plaintiffs cannot prove these essential elements of their malicious prosecution cause of action, judgment should be awarded to DSS.

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II: PLAINTIFFS CANNOT PROVE THEIR ABUSE OF PROCESS CAUSE OF ACTION

The tort of abuse of process is designed to provide a remedy to someone damaged by another's perversion of a legal procedure for a purpose not intended by the procedure. Its essential elements are 1.) an ulterior purpose and 2.) a willful act in the use of the process not proper in the conduct of the proceeding. The improper purpose usually takes the form of coercion to obtain a collateral advantage, not properly involved in the proceeding itself. Regardless, "there is no liability when the process has

been carried to its authorized conclusion, *even though with bad intentions.*" Guider v. Churpeyes, Inc., 635 S.E.2d 562, 370 S.C. 424 (Ct. App. 2006) (emphasis added).

In Guider, a former employee wrongfully withheld funds from her former employer for a period of eight (8) days but then returned them via depositing them in her former employer's bank account. The employer obtained a warrant for Guider's arrest but the charge was dismissed when the employer failed to show up for Guider's hearing after her arrest. She then filed suit against her former employer for malicious prosecution and abuse of process. While the trial court denied the former employer's motions for directed verdict as to malicious prosecution and abuse of process, the Court of Appeals reversed. Specifically related to Guider's claim for abuse of process, the Court held

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"[v]iewing the facts in the light most favorable to Guider, we find the record devoid of evidence that [former employer] misused the legal process or operated with an illegitimate purpose. Instead, the evidence shows [former employer] used the legal process with the objective of seeking redress against a former employee who admittedly took and retained company funds. Moreover, when Guider returned the funds, [former employer] stopped pursuing the criminal charges against her. This is clearly a legitimate use, not a perversion, of the legal process." Id.

In the instant case, this Court is faced with not one, but two Family Court Orders finding that DSS had probable cause to remove minor KAG from Plaintiffs' residence and custody, as well as the Order denying the Motion for Reconsideration. Plaintiffs claim DSS acted with certain bad intention, but assuming for arguments sake, Plaintiffs proved those allegations, that alone does not suffice to meet the elements of this cause of action. Instead, Plaintiffs cannot show that DSS' actions were anything but the proper use of the legal process to ensure the safety of minor KAG until certain situations were remedied. Those actions were not only justified in the eyes of the Family Court, but specifically

required by it due to the two Family Court Orders compelling DSS to act as it did. Accordingly, Plaintiffs' cannot prove their claim for abuse of process and it should be dismissed.

III: THE TORT CLAIMS ACT DOES NOT WAIVE IMMUNITY AGAINST A STATE AGENCY FOR A DEFAMATION OF CHARACTER – SLANDER CAUSE OF ACTION

Notwithstanding that truth is an absolute defense to defamation and, as shown above, there are two Family Court Orders finding in favor of DSS' presentation of evidence in the underlying Family Court matters. Pursuant to the South Carolina Tort Claims Act ("SCTCA"), a governmental entity is not liable for a loss that results from "employee conduct ... which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude." S.C. Code Ann. §15-78-60 (17) (2015) (emphasis added). The only Defendant in this case is DSS, a state agency. Plaintiffs assert they "must prove the defendant acted with actual malice." The SCTCA clearly excludes a governmental entity's liability for an individual's loss stemming from a state employee's conduct that constitutes actual malice. Thus, Plaintiffs' cause of action for defamation of character – slander must be dismissed. See Gause v. Doe, 317 S.C. 39, 451 S.E.2d 408 (Ct. App. 1994) (slander claim against Myrtle Beach Police Department dismissed by Court because Plaintiff would have to prove actual malice to support claim and SCTCA excludes governmental liability for actual malice).

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IV: PLAINTIFFS CANNOT PROVE THEIR GROSS NEGLIGENCE CAUSE OF ACTION

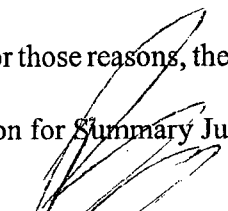
"In order to establish a claim for negligence, a plaintiff must show: (1) the defendant owes a duty of care to the plaintiff; (2) defendant breached the duty by a negligent act or omission; (3) defendant's breach was the actual or proximate cause of the plaintiff's injury; and (4) plaintiff suffered an injury or damages. First, the court must determine,

as a matter of law, whether the law recognizes a particular duty. If there is no duty, the defendant is entitled to a judgment as a matter of law.”

Doe v. Wal-Mart Stores Inc., 393 S.C. 240, 711 S.E.2d 908 (S.C. 2011). In this instant case, Plaintiffs have not even alleged a duty owed by DSS to them, much less a breach of that duty, proximate causation, or damages. Thus, on its face, Plaintiffs’ claim for negligence must fail. However, assuming again for arguments sake that Plaintiffs’ Amended Complaint did allege such things, Plaintiffs cannot *prove* such a duty or any breach. DSS’ actions were reviewed by the Family Court on two separate occasions, and were justified by it in both of its Orders finding probable cause for DSS to remove minor KAG from Plaintiffs’ custody and residence. Accordingly, Plaintiffs’ alleged cause of action for negligence was not properly pled, cannot stand, and should be dismissed.

CONCLUSION

Based on the above, Plaintiffs’ claims for malicious prosecution, abuse of process, defamation of character – slander, and gross negligence fail as a matter of law. Plaintiffs either have not properly pled those causes of action and/or cannot prove them. Further, there are no triable issues of material fact that could lead a jury to find in Plaintiffs’ favor. For those reasons, the South Carolina Department of Social Services respectfully requests that the Motion for Summary Judgment be granted.



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May 23, 2016

Spartanburg, South Carolina

LAURENS COUNTY
FAMILY COURT

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

IN THE FAMILY COURT
AUGUST 19 4 40 PM
FOR THE THIRD JUDICIAL CIRCUIT
LANCASTER
C/A No.: 2015-DR-30-570

South Carolina Department of
Social Services,

Plaintiff,

EX PARTE ORDER

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

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.

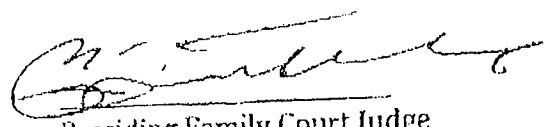
Plaintiff alleges that probable cause exists to believe that, by reason of abuse or neglect, there exists imminent and substantial danger to this minor child's life, health, or physical safety in the following particulars:

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.

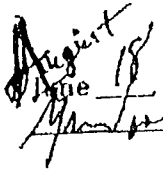
An SCDSS investigation allegedly revealed that the minor child was living in the home Defendants share, which was in a sordid condition and smelled strongly of urine. The minor child was observed to have no age-appropriate bed and was without adequate clothing. Further investigation revealed that Defendant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

7-630 unless there are compelling reasons for SCDSS 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



2015

South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF LAURENS)

IN THE COURT OF COMMON PLEAS

Rodrick Tucker and Shakeyra Gilbert,)
)
)

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

Plaintiffs,)
)

**SECOND
AFFIDAVIT
OF
MINDY MIYARES**

vs.)
)

South Carolina Department of Social Services)
)
)

Defendant.)
)

PERSONALLY appeared before me, Mindy Miyares, who being duly sworn, deposes and states that I am an employee with the South Carolina Department of Social Services, and was an employee of the South Carolina Department of Social Services during the time of the investigation of the plaintiffs which is the subject of this action. I am familiar with the facts and circumstances of this lawsuit. Based upon the information obtained during my investigation I issued an Affidavit of Imminent and Substantial Danger dated August 13, 2015, the day of the Ex Parte Hearing which was submitted to the Family Court. My Affidavit of Imminent and Substantial Danger states as follows, to-wit:

“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 (sp) 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 acts detailed above, placement of the minor child known as the "minor child" with Defendants would place the children in imminent and substantial danger.
9. SCDSS is concerned for the minor child's well being 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.”

I issued on that same date an Affidavit of Reasonable Efforts, which was also submitted to the Family Court which states as follows, to-wit:

“Affiant, being duly sworn as a representative of the South Carolina Department of Social Services (SCDSS), states the following:

1. Affiant is the caseworker/investigator currently assigned to the above-referenced case;
2. Plaintiff was unable to offer preventive/protective services to defendants to prevent the necessity for removal of the child for the following reasons:
SCDSS was not involved with this family at the time the report was received and law enforcement placed the children into protective custody.
There were no known suitable relatives for placement.
3. Spartanburg County Department of Social Services currently has an open treatment case with Rodrick Tucker and he is non-compliant at this time.

Further, Affiant sayeth not.”

I held a meeting with the Shakeyra Gilbert and Rodrick Tucker prior to the Ex Parte hearing in an attempt to prevent the legal removal of the minor child by issuing a safety plan. I attempted to explain to Ms. Gilbert and Mr. Tucker the situation, and what was needed to be done by the two of them to avoid the Ex Parte hearing, and the potential that the Court would order that the minor child be taken into emergency protection. I explained my concerns with the house, the unsafe living condition for the minor child, and the current open case with Mr. Tucker.

Mr. Tucker and Ms. Gilbert refused to sign any documents stating that they would make the necessary changes that we had discussed in order to avoid the removal of the child. The refusal of Mr. Tucker and Ms. Gilbert to sign a safety plan left SCDSS with no alternative except to proceed with the Ex Parte hearing.

On behalf of my employer, the South Carolina Department of Social Services, I adhered to the Ex Parte Order of the Family Court in which the Court had stated that "Leaving the child known as the unborn child in the custody of the Defendants would place the children in imminent and substantial danger." The Family Court further ordered that "emergency protective custody of the child to SCDSS."

Prior to the final hearing in this matter, Shakeyra Gilbert, the mother of the minor child, was able to prove to the SCDSS that appropriate clothing and a bed had been obtained for the minor child, and the minor child was no longer in imminent and substantial danger. The minor child was returned to the custody of the mother, Shakeyra Gilbert, and the case was dismissed by the SCDSS.

THE DEPONENT FURTHER SAYETH NAUGHT.

Mindy Miyares
MINDY MIYARES

SWORN TO BEFORE ME THIS 20 DAY
OF April, 2016

Dale S. [Signature] (SEAL)
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 4-27-11

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.

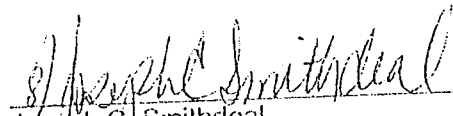
J. All parties and the GAL shall have full and complete access to and be allowed to review on reasonable notice any records from any source which led to the allegations of child abuse or neglect; or

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.**

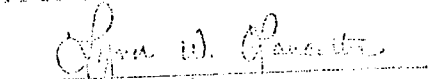
IT IS SO ORDERED.



Joseph C. Smithdeal
Judge, Family Court
Eighth Judicial Circuit

December
November 8, 2015
Greenwood, South Carolina.

A TRUE COPY OF ORIGINAL



Lynn W. Lenoir
Lawrence County Clerk & C.A.

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EXHIBIT D

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State of South Carolina
County of Laurens

Family Court

South Carolina Department
of Social Services)
)
)
 v.)
)
 Shakeyra Gilbert and)
 Rodrick Tucker)
)
 Defendants.)

Transcript of Record
15-DR-30-510

March 3, 2016
Laurens, South Carolina

B E F O R E:

The Honorable Joseph C. Smithdeal, Judge.

A P P E A R A N C E S:

Rosemerry Commander, Esquire
Attorney for SC Department of Social Services

Shakeyra Gilbert, Pro se

Rodrick Tucker, Pro se

Stacy L. Sheppard, RPR
Circuit Court Reporter

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I N D E X

WITNESSES DIRECT CROSS REDIRECT RECROSS

(There were no witnesses.)

E X H I B I T S

NO. DESCRIPTION ID. EVD.

(There were no exhibits.)

1 (The following proceedings were held on
2 March 3, 2016.)

3 **THE COURT:** All right. What's the first case?

4 **MS. COMMANDER:** This is docket number
5 2015-DR-30-510, the Department of Social Services
6 versus Shakeyra Gilbert and Rodrick Tucker. Both
7 defendants are present in the courtroom. Present
8 for the Department of Social Services is Porsche
9 Thomas Moore.

10 It's my understanding that this case was
11 dismissed at the merits hearing, and the probable
12 cause order was issued thereafter. And they filed a
13 motion for reconsideration in this matter. And if I
14 may, I have a copy of an affidavit from the
15 Department.

16 **THE COURT:** The defendants have a copy of that?

17 **MS. COMMANDER:** Yes, Your Honor.

18 **THE COURT:** All right. So, let's see,
19 Ms. Gilbert, this is your motion, I believe.

20 **MS. GILBERT:** Yes, sir.

21 **THE COURT:** Okay. Happy to hear from you.

22 **MS. GILBERT:** What, sir?

23 **THE COURT:** Do you want to say anything?

24 **MS. GILBERT:** I can't hear you.

25 **THE COURT:** Do you want to say something? Do

1 you want to argue?

2 **MS. GILBERT:** Yeah. I just don't understand
3 what evidence they had -- they have presented for
4 the baby to be removed.

5 **THE COURT:** Okay. Anything else?

6 **MS. GILBERT:** No, that was all.

7 **THE COURT:** Okay. Thank you very much.

8 Mr. Tucker, would you like to have an argument?

9 **MR. TUCKER:** Yes, Your Honor. Based on -- I
10 mean, if there's probable cause, then DSS -- I don't
11 -- we didn't -- they didn't present no evidence, no
12 nothing. The only thing they said, that the baby
13 didn't have a crib and they didn't like how the
14 house smelled. And based on that, they felt like
15 they needed to remove the child, but I just don't
16 see how is that -- how the baby -- based on them two
17 situations, how the baby was in immediate danger for
18 them to remove the baby.

19 And then going back later on in the -- after
20 the probable cause hearing, them stating that, you
21 know, they put in -- they, you know, the affidavits
22 and their motions, why they needed to remove the
23 baby saying that they didn't have clothes -- the
24 baby didn't have clothes, the house didn't have no
25 windows and all that. And then later on at the same

1 hearing, the merits hearing, saying they didn't say
2 that, but yet it's clearly on the paper that they
3 did, you know, on the affidavits, it's saying that
4 they did say it and then later on saying that they
5 didn't say it.

6 It seemed like they just put that on there just
7 as -- for the Court to grant them probable cause to
8 remove the baby when they really didn't have a
9 reason based on just not having a crib.

10 If that was the standard, Your Honor, a crib, I
11 mean, it wouldn't be -- I'm pretty sure a bunch of
12 people wouldn't have a baby if that was just a
13 standard by itself.

14 **THE COURT:** So are you saying that the
15 Department, at the probable cause hearing, presented
16 testimony that established only that there was lack
17 of a crib?

18 **MR. TUCKER:** And then they said they didn't
19 like how the house smelled. And the house was
20 clean -- the house was clean. They didn't say it
21 was in disarray or nothing like that.

22 **THE COURT:** So you're saying offensive smell
23 and no crib; right?

24 **MR. TUCKER:** Yeah. They didn't -- I mean, I
25 didn't smell nothing. But at the same hearing, Your

1 Honor, they even said theirselves -- when they came, I
2 was in the process of changing my stepmother. So
3 when they knocked on the door early in the morning,
4 I had done stopped what I was doing. You know,
5 she's disabled. So I had to come out of her room,
6 you know, then come into the living room, then stop
7 changing her while they come in.

8 So, I mean, if you're changing a, you know, a
9 70-year-old woman with no legs and she can't do
10 nothing for herself, if you're changing her and
11 that's the only thing they seen, the house clean,
12 but they smelled something when you're changing
13 somebody, an elderly lady, it had an offensive
14 smell, I mean, of course, you're going to have --
15 you can't -- I'm pretty sure if you walked in a
16 nursing home and they was changing people in there,
17 you wouldn't remove them kind of people. That's the
18 same situation.

19 **THE COURT:** Did you happen to get a transcript
20 of that hearing?

21 **MR. TUCKER:** No, Your Honor. We just -- today
22 Mr. -- our attorney, he just presented me with the
23 cost, I guess he had just got it today, for the
24 transcript. So we didn't have time to order it.

25 **THE COURT:** Okay. Anything else you want to

1 say?

2 MR. TUCKER: No, Your Honor. Thank you.

3 THE COURT: All right. Ms. Commander.

4 MS. COMMANDER: Just briefly, Your Honor. The
5 probable cause hearing was held. And it's my
6 understanding that Attorney Benjamin Shealy was here
7 at that point, but he presented the case. And as
8 you well know that, according to the statute,
9 hearsay statements are allowed. And the whole
10 purpose of the probable cause hearing is just to
11 determine if there's reason -- a reasonable reason
12 to believe that a child is subject to abuse or
13 neglect.

14 At that time, Your Honor, the Court felt that
15 there was reason to believe that the child was being
16 abuse or neglect -- or subject to, excuse me, abuse
17 and neglect according to the statute. As such, we
18 did not see reasons to actually have the probable
19 cause order -- the whole issue of probable cause
20 actually reconsidered.

21 A hearing was held. I believe Ms. Shakeyra had
22 a chance to -- Shakeyra Gilbert had a chance to
23 question the witnesses at that time. Mr. Rodrick
24 was also present. He had a chance to also question
25 those witnesses that were presented to the Court.

1 And if I'm not -- if I'm not incorrect, I believe
2 even an affidavit might have been introduced to the
3 Court from the defense side.

4 We just say that the order that was issued that
5 relates to this probable cause hearing shall stand.

6 **THE COURT:** Okay. Well, I'm looking at the
7 probable cause order. For whatever reason -- the
8 hearing was held on August 19th, apparently, I was
9 presiding, but it wasn't filed until mid December.
10 It wasn't signed until first week in -- or second
11 week of December and then wasn't filed until
12 December 15th.

13 And it looks like sorted condition, smelled
14 strongly of urine, no age appropriate bed, child was
15 low birth weight or at least -- or premature or at
16 least low birth weight and sharing a bed with the
17 defendants. And there was an open case. Looks
18 like, Mr. Tucker, you might have had an open case in
19 another --

20 **MR. TUCKER:** Yes, Your Honor, but what they
21 didn't tell you --

22 **THE COURT:** I'm not finished yet. It looks
23 like there was an open case centered around domestic
24 violence with another woman, which was indicated for
25 abuse and neglect in Spartanburg, and that,

1 Mr. Tucker, it says -- according to the order now, I
2 don't have an exact recollect -- I don't have a real
3 recollection of the actual hearing, that's why I
4 asked about a transcript. But it also indicates
5 that you had not complied with the treatment from
6 the 2014 case. Apparently, that's the reason that
7 the Court found probable cause to protect the minor
8 child at that time. Go ahead.

9 MR. TUCKER: Your Honor, that case or whatever
10 that was, that wasn't even against me, though.
11 That's what they -- they say that it's an open case
12 against me, it was not even against me. I was the
13 victim in that and they used that against me, that
14 they didn't put all the details in there, only that
15 it was a situation involving me, and the case wasn't
16 even against me. And they say I didn't comply,
17 because I don't live in Spartanburg for -- so
18 Spartanburg, ain't nobody never even contacted me
19 for me to comply or whatever else they wanted me to
20 do.

21 And we did question the witnesses, Your Honor,
22 at that hearing. And I think her name, Ms. Miyares,
23 I asked her about the sorted conditions and she said
24 -- she said she's just reading it on what's on
25 whoever called it in. She said she didn't even

1 notice it. She said she's just reading whatever --
2 whoever reported something, but she said she didn't
3 notice that herself, that she just telling you what
4 she was told, when she the one was coming out there.

5 And the baby -- it might have been a low birth
6 weight, Your Honor, but by the time -- he had
7 already been in the hospital, so by the time he was
8 with us, it was not a low birth weight.

9 **THE COURT:** Okay. The child was born January
10 -- excuse me -- July 22nd.

11 **MR. TUCKER:** Yes, Your Honor.

12 **THE COURT:** And the child was taken into
13 emergency protective custody, what, August -- let's
14 see if I can find that. When was the child taken
15 into emergency protective custody?

16 **MS. COMMANDER:** August 18th, Your Honor.

17 **THE COURT:** Okay. So less than a month old?

18 **MR. TUCKER:** Yes, Your Honor. But the hospital
19 kept it until it was safe for it to had gain enough
20 weight.

21 **THE COURT:** Was the child sleeping in the bed
22 with you and Ms. Gilbert?

23 **MR. TUCKER:** She had -- there was a thing in
24 there, Your Honor, you know, like you can buy -- we
25 bought it at Target where it go in the middle of us

1 and it sleep -- it divide -- it's like two little
2 things right here on each side where the baby sleep
3 in the middle.

4 **THE COURT:** Was there any testimony to this
5 effect?

6 **MR. TUCKER:** No. They didn't want to hear it.
7 We showed them at the house.

8 **THE COURT:** Any affidavits to that effect?

9 **MR. TUCKER:** I don't know what I put on the
10 affidavit, if they've got a copy of it.

11 **THE COURT:** I'm not sure I saw an affidavit in
12 the file.

13 I don't think I saw an affidavit. There
14 doesn't appear to be any affidavit in the Court's
15 file that was submitted during the hearing.
16 Anything else?

17 **MR. TUCKER:** No, Your Honor.

18 **THE COURT:** Okay. So you're basically just
19 disputing --

20 **MR. TUCKER:** Oh, yeah.

21 **THE COURT:** Go ahead.

22 **MR. TUCKER:** And also, like I said, they really
23 -- you said they didn't file it till December and
24 all that, because after -- after we, you know, after
25 it was dismissed and all, we filed a civil suit.

1 And I guess that's why they filed it so late because
2 I don't know if -- that's how --

3 **THE COURT:** You say after it was dismissed, you
4 filed a civil suit?

5 **MR. TUCKER:** Yes, Your Honor. And that's why
6 -- I guess, that's why they filed that. That's what
7 -- I mean, they only filed that after they had --
8 after the civil suit, and then they filed an amended
9 answer to that civil suit incorporating everything
10 from that probable cause order I guess. So that's
11 why we're here today.

12 **MS. COMMANDER:** And, Your Honor, if I may
13 address that portion of it. At every probable cause
14 hearing, any time that we -- the normal protocol
15 when DSS comes to court, we have to actually
16 document what took place in court. It has to be put
17 on paper, and that is why that was actually done,
18 because the hearing was done in August and it had to
19 be memorialized on paper, so that's why that order
20 was actually submitted to the Court. It has nothing
21 to do with any type of civil action.

22 **THE COURT:** An order results from every
23 hearing. I don't know the reason for the delay.
24 It's usually much quicker than that. It's usually
25 -- the order is usually issued within 30 days

1 ordinarily. I don't know the reason. I'm not privy
2 to that reason that the order was not signed and
3 filed until December -- filed in mid December.

4 But without anything more, Mr. Tucker and
5 Ms. Gilbert, I'm going to deny, respectfully, the
6 motion for reconsideration. I'll find that the --
7 according to the order, according to what you --
8 I've heard your testimony -- or your statements,
9 I've heard the statement of the Department of Social
10 Services and based on that, I find that the order --
11 the underlying order was appropriate under the
12 circumstances. Okay?

13 **MR. TUCKER:** Yes, sir.

14 **THE COURT:** All right. Any questions?

15 **MS. GILBERT:** No.

16 **MR. TUCKER:** No, Your Honor.

17 **THE COURT:** All right. Y'all have a great day.

18 **MR. TUCKER:** You, too. Thank you.

19 **MS. COMMANDER:** Thank you, Your Honor.

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END OF PROCEEDINGS

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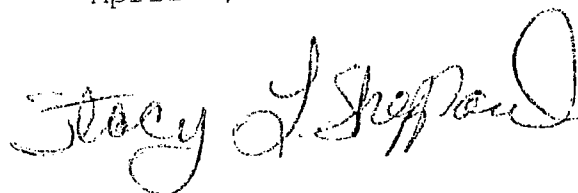
C E R T I F I C A T E

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3 STATE OF SOUTH CAROLINA
4 COUNTY OF LAURENS
5

6 I, the undersigned, Stacy L. Sheppard, Circuit
7 Court Reporter for the Eighth Judicial Circuit of
8 the State of South Carolina, do hereby certify that
9 the foregoing is a true, accurate and complete
10 transcript of record of all the proceedings had and
11 the evidence introduced in the hearing of the
12 captioned cause, relative to appeal in the Family
13 Court for Laurens County, South Carolina, on the 3rd
14 of March, 2016.

15 I do further certify that I am neither of kin,
16 counsel, nor interest to any party hereto.
17

18 April 1, 2016

19
20 

21 Stacy L. Sheppard, RPR
22 Circuit Court Reporter
23
24
25

STATE OF SOUTH CAROLINA
LAURENS COUNTY
COURT OF COMMON PLEAS
COUNTY OF LAURENS

IN THE FAMILY COURT
EIGHTH JUDICIAL CIRCUIT

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

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

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

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

1
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."

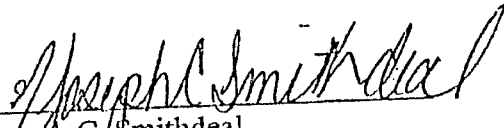
The Court inquired as to if Defendants had a chance to cross-examine the witnesses that provided testimony at the time of the probable cause hearing. The Defendants indicated that they did, in fact, have an opportunity to cross-examine the witnesses.

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

LAURENCE LAIBASTER

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

2015 FEB 24 PM 12:48

Rodrick Tucker and Shakeyra Gilbert,
Plaintiffs,

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

LAURENCE LAIBASTER
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

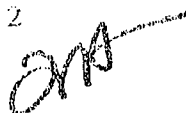
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and Deniece Shelman. The two individuals were employees of the South Carolina Department of Social Services, and Affidavits were presented to the Court by Ms. Miyares and Ms. Shelman stating that they were employees of the South Carolina Department 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

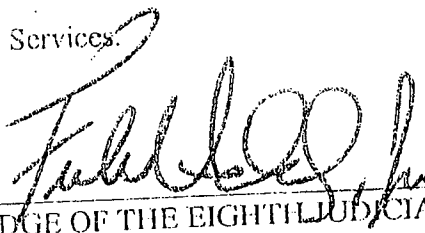


must be substituted as the party defendant.”

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.

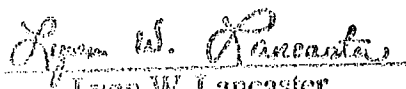


JUDGE OF THE EIGHTH JUDICIAL CIRCUIT

Feb. 19, 2016

A TRUE COPY OF ORIGINAL

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Lynn W. Lancaster
Laurens County CCCP & CS

CERTIFICATE OF SERVICE

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

I hereby certify that I have on this 23rd day of May, 2016 served the Defendant SCDSS' Memorandum in Support of its Motion for Summary Judgment by sending it by email to the following email addresses:

rodrikt221@gmail.com

ShakeyrrGilbert@gmail.com

Belinda H. Byers
Belinda H. Byers, Paralegal

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

Rodrick Tucker and Shakeyra Gilbert,

Plaintiffs,

vs.

SCDSS,

Defendant.

IN THE COURT OF COMMON

PLEAS

CASE NO.: 2015-CP-30-897

MEMORANDUM IN OPPOSITION TO
MOTION FOR SUMMARY JUDGEMENT

The Plaintiffs in this action file this memorandum in opposition to Defendants Motion for Summary Judgment.

FACTS

On or about August 17, 2015, DSS employees (DSS) visited the home of the Plaintiff Tucker. DSS first spoke to the Plaintiffs on the front porch of the home before being allowed to step into the living room. DSS went no further than the living room of the home. Plaintiff Tucker explained to DSS that prior to their arrival early that morning he was in the process of changing and bathing his disabled stepmother. DSS then asked if the minor child had a crib to which Plaintiffs responded she did not because she had only been there a night and Plaintiff Gilbert planned on returning to Tennessee where she resided. DSS then stated that until Shakeyra left that she should consider using a dresser drawer as a crib. DSS was never in a position in the home to observe whether or not the minor child had "adequate clothing." The home was not in a

“sordid condition” nor were there any broken windows. DSS left the home and later called back asking for the Plaintiffs to come to the DSS office for a meeting. At the meeting DSS attempted to force Plaintiffs to sign a “safety plan” agreeing to their child being removed from the home because of an alleged open DSS case involving Plaintiff Tucker in Spartanburg. DSS also claimed that Plaintiff Tucker was “not complying with his treatment plan” in Spartanburg. At no time has Plaintiff Tucker ever been a party to any supposed treatment plan referenced by DSS. Plaintiffs refused to sign the safety plan without an attorney and DSS employee Deniece Shelman attempted to force the Plaintiffs into agreement with threats of taking the minor child into foster care. Mrs. Shelman alleged that the minor child was being abused and neglected due to the simple fact that the child did not have a crib. Upon being threatened by Mrs. Shelman and hearing her statements, Plaintiff Tucker used profanity towards Mrs. Shelman. Mrs. Shelman and Mindy Miyares took great offense to the profanity and disrespect displayed by Plaintiff Tucker and stated something along the lines of, “We gonna get that baby out of that house one way or another, we do this all day every day.” Shelman also stated that she “had something for disrespectful people.” Shortly after, DSS made the Plaintiffs wait in the lobby for 30 minutes then finally came back out and said we were free to leave. 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.

At around 6 p.m. that same day, DSS came to the Plaintiffs home with an Ex Parte order for custody of the minor child. The next day, a probable cause hearing was held in Family Court, shortly before the hearing was to start, DSS gave the Plaintiffs copies of various affidavits alleging various things including that the house was in sordid condition, had broken windows, Plaintiff Tucker was on probation for CDV, Shakeyra Gilbert had bruises on her arms and that

the minor child did not have adequate clothing. None of these things are or ever were true and the Defendants willfully and intentionally made these misrepresentations to the Court in order to punish the Plaintiffs for speaking disrespectfully to them. Based on these misrepresentations the Family Court found probable cause under 63-7-20 (20) for the minor child to be placed into DSS custody. During the time the minor child was in DSS custody, the Defendants repeatedly suggested to Plaintiff Gilbert that if she would leave the home they would return the child to her. Defendants never did any follow up visits or did any other type of investigating during the time they had the minor child. On or about October 15, 2015, prior to the merits hearing in Family Court, DSS called Plaintiff Gilbert and again made the same offer to drop the case and give the minor child back if she would leave the home. Plaintiff Gilbert refused and stated she would contest the merits of DSS's case. At the merits hearing, DSS voluntarily dismissed the case against the Plaintiffs:

SUMMARY OF ARGUMENT

In its Motion for Summary Judgement the Defendant relies on the fact that a Family Court judge made a determination that probable cause existed for the minor child to be taken into DSS custody and as such issued an Order stating such. Defendant also relies on the fact that a Motion to Reconsider was denied. However probable cause being found is the issue in this case. The sole issues of this case are: (1) whether or not DSS used misrepresentations, false statements, and omissions to initiate the proceedings against the Plaintiffs; and (2) whether or not the Family Court found probable cause based on these misrepresentations, false statements, and omissions by DSS. DSS has provided numerous affidavits suggesting that DSS employee Mindy Miyares observed the following: that the house was in sordid condition, had broken windows,

Plaintiff Tucker was on probation for CDV, Shakeyra Gilbert had bruises on her arms and that the minor child did not have adequate clothing. However Plaintiffs contend that Mrs. Miyares never observed any of these things and simply stated these things to bolster up her chances of a Family Court Judge granting DSS an Ex Parte order. *

To make our case we point to Mrs. Miyares's letter to her legal team (**LETTER TO LEGAL TEAM**) describing her "concerns." Nowhere in her letter does she mention the minor child not having adequate clothes nor does she reference seeing any broken windows or bruises on Plaintiff Gilberts arms. She only references that she smelled urine based on Plaintiff Tucker changing his stepmother when she arrived. Mrs. Miyares, as a normal part of her job would have surely dictated this in a letter to DSS attorneys seeking an Ex Parte order, as these would be major concerns if they had truly been observed. Also, at the time she requested the order from her attorneys, she had been to the house twice and talked with Plaintiff Gilbert in person twice (**LETTER TO LEGAL TEAM**). She would have surely expressed broken windows and bruises as one of her concerns, yet she did not. Also, having reviewed Plaintiff Tucker's SLED background report prior to typing the letter to her legal team, Mrs. Miyares should have known as a matter of fact that Plaintiff Tucker was not on probation for CDV as she led the Family Court to believe (**SLED ARREST REPORT**). Also, as evidenced by the photos attached to the Complaint of this action, the house was clearly not in a sordid condition. *Based on all this there are clear issues of genuine material fact as to whether or not Mrs. Miyares actually observed the things she claimed to observe in her affidavits. There is also a clear issue of genuine material fact as to whether or not the Family Court would have granted the Ex Parte or the Probable Cause Order had Mrs. Miyares not made the misrepresentations, false statements and omissions she did.*

The Defendant candidly points out that they have not one but two Orders establishing probable cause pursuant to SC 63-7-20 (20). However, as previously stated, the Orders establishing probable cause aren't the issues of this case. Therefore, the Orders cannot be the "law of the case", especially when there are allegations that such Orders were obtained by fraud.

ANALYSIS

MALICIOUS PROSECUTION

The Defendant claims that Plaintiffs cannot prove the elements of malicious prosecution. These elements are (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.

The first three elements are not in dispute as DSS caused to be instituted original judicial proceeding against the Plaintiffs. These proceedings were ultimately terminated in the Plaintiff's favor.

As for the malice requirement, malice is defined as the deliberate, intentional doing of an act without just cause or excuse. Plaintiffs have provided two affidavits (EXHIBITS A AND B) proving that the DSS employees made statements that they were "going to get the baby one way or the other". These statements were made directly after a heated verbal exchange between Plaintiff Tucker and DSS employees. DSS has not presented any evidence contrary to these statements having been made. As previously stated DSS had no just reason to institute proceedings against the Plaintiffs without probable and secondly without having performed any type of investigation that could have even turn up a reason to institute such proceedings. But, for

arguments sake, even if we assume the DSS employees presented evidence that they did not make the threats and threatening statements, malice could still be inferred by the lack of probable cause. Law v. S.C. Dep't of Corrections, 368 S.C. 424, 629 S.E.2d 642 (2006). Based on the affidavits provided, there are still issues in dispute as to whether or not there existed probable cause.

In regards to the probable cause requirement, as previously stated above, the issues in dispute in this case are if DSS had a probable cause order but whether or not Mrs. Miyares actually observed the things she claimed to observe in her affidavits. There is also a clear issue of genuine material fact as to whether or not the Family Court would have granted the Ex Parte or the Probable Cause Order had Mrs. Miyares not made the misrepresentations, false statements and omissions she did. The Plaintiffs have provided three affidavits in addition to the letter from Mrs. Miyares to her legal team that show by a preponderance of the evidence that Mrs. Miyares simply did not observe the things she swore to in her affidavits. These misrepresentations caused a violation of the Plaintiffs due process rights guaranteed under the Fourth Amendment of the United States Constitution that afford them the exclusive and fundamental right to raise their children as they see fit. " *We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected. We have little doubt that the Due Process Clause would be offended "if a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest. "* " Quilloin v. Walcott, 434 U.S. 246 (1978).

The Defendant cites Lynch V. Toys R Us- Delaware in its Motion for Summary Judgement. DSS claims that the evidence yields only one conclusion, that DSS has probable

cause. However as in Lynch, Plaintiffs have submitted evidence suggesting that probable cause did not exist at the time DSS instituted its action. "In this case, evidence was presented to support Lynch's claim that Toys "R" Us lacked probable cause to believe she had committed shoplifting, and malice may be inferred from a lack of probable cause to institute the prosecution action. Id., 368 S.C. at 437, 629 S.E.2d at 649."

Accordingly, we ask that the Court deny the Defendants' motion for Summary Judgement on the malicious prosecution claim.

ABUSE OF PROCESS

The Defendant also claims the Plaintiffs cannot prove the elements of the abuse of process claim. These elements are: 1) an "ulterior purpose," and 2) a "willful act in the use of the process not proper in the conduct of the proceeding.

"An ulterior purpose exists if the process is used to gain an objective not legitimate in the use of the process." First Union Mortgage Corp. v. Thomas, 317 S.C. 63, 74, 451 S.E.2d 907, 914 (Ct. App. 1994). In the present case, we allege that the ulterior purpose of DSS was to force the Plaintiffs into complying with safety plans and treatment plans, all the while knowing there was no evidence or probable cause at all to warrant DSS intervention. Another ulterior purpose alleged was to force Plaintiff Gilbert to leave the home of Plaintiff Tucker. This ulterior purpose is further evidence by DSS "indicating" the Plaintiffs for abuse and neglect although they had performed no investigation, and without evidence to support the indication of abuse and neglect.

This ulterior purpose can further be implied by the willful acts of the Defendant that were not authorized or legitimate.

As to the second, or "willful act" element, our supreme court has stated that "some definite act . . . not authorized by the process or aimed at an object not legitimate in the use of the process is required. *Hainer, 328 S.C. at 136, 492 S.E.2d at 107*. In this instance, there are not one but two willful improper acts. The first act was Mrs. Miyares swearing and affirming to multiple affidavits stating facts she knew to be untrue. The second act was Mrs. Miyares giving false testimony to facts she knew to be untrue. These acts are neither authorized nor legitimate in the use of Family Court probable cause proceedings. These acts were done with the express intent to pervert the course of justice and to mislead the Family Court.

As such, we ask the Court to deny the Defendant's Motion for Summary Judgement on the abuse of process claim.

DEFAMATION OF CHARACTER – SLANDER

In regards to the defamation of character claim, the Plaintiffs would respectfully ask pursuant to SCRPC 19 (a) (1)-(2), that the Court join Mindy Miyares and Deniece Shelman in the individual capacities in the interests of just adjudication. In an Order dated February 9, 2016, the Court dismissed both parties in accordance with the SCTCA. However, the Court stated it would entertain motions to rejoin the parties if Plaintiffs provided evidence of fraud, malice, or that the parties' actions were not in the course of their duties. Plaintiffs have provided three affidavits that show evidence all three things. Additionally the defamation of character claim was never against DSS itself but rather Deniece Shelman.

GROSS NEGLIGENCE

Gross negligence is the intentional conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do." Etheredge v. Richland Sch. Dist. One, 341 S.C. 307, 310, 534 S.E.2d 275, 277 (2000). To establish a claim for gross negligence a Plaintiff must establish (1) the Defendant owes a duty of care to him, (2) the Defendant breached that duty by negligent act or omission, (3) Defendant's breach was the actual or proximate cause of Plaintiff's injury, and (4) Plaintiff suffered an injury or damages.

The Defendant alleges that we, the Plaintiffs, have not even alleged a duty owed by DSS to us. However, this duty is stated in our Amended Complaint in paragraph 76. *DSS is required to conduct a thorough investigation before removing children from their parents, and DSS did not do so in this case.* This duty is evidence by Section 63-7-920 (a)(1) of the South Carolina Code of Laws. Being the subject of a DSS investigation, the Plaintiffs were owed a duty by DSS to complete a thorough investigation before deciding to remove our child. This duty is further evidence by Bass V. DSS, "*DSS cannot remove a child unless there is an unreasonable safety threat to the child, and that the standard practice is to keep children in the home when possible.* Lastly this duty is evidenced by Jensen v. S.C. Dep't of Soc. Servs., 297 S.C. 323, 331-32, 377 S.E.2d 102, 106-07 (Ct.App.1988), which held that the sections mandating DSS investigate and intervene to remove an endangered child from the home create a special duty.

Having established that DSS owes us a duty, we now point to specific things DSS did to breach that duty. (1) falsely claimed to witness broken windows at the Plaintiffs home, (2) falsely claimed to observe the minor child to be without adequate clothing, (3) falsely claimed that Plaintiff Tucker was on probation for CDV, (4) falsely claimed to witness bruises on Plaintiff Gilberts arms, (5) gave sworn testimony attesting to observing things she knew to be

untrue, (6) signed sworn affidavits stating things she knew to be untrue, (7) attempted to force Plaintiffs into a safety plan knowing she did not have adequate or just cause, (8) failed to perform a thorough pre-EPC investigation, (9) failed to perform a thorough post EPC investigation, and (10) refused to place the minor child with suitable relatives even though mandated by policy to do so. These breaches are all evidenced by the attached affidavits. These breaches were the direct cause of Plaintiff's missing time with their child, rights and access to their child being taken away and emotional pain.

Accordingly, we the Plaintiffs, ask that the Court deny DSS's motion for Summary Judgment on all causes of action.

By: Rodrick Tucker
Rodrick Tucker
Shakeyra Gilbert
Shakeyra Gilbert

Spartanburg, South Carolina
May 31, 2016

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LAURENS)
)
Rodrick Tucker and Shakeyra Gilbert)
 Plaintiffs,)
)
SCDSS)
 Defendant.)
)

IN THE COURT OF COMMON PLEAS

AFFIDAVIT OF RODRICK TUCKER

Docket No. 2015-CP-30-897

PERSONALLY appeared before me, Rodrick Tucker, who being duly sworn, deposes and states the following:

On August 17, 2015, I was at my home helping my stepmother bath and get dressed. It was approximately 8:30 when I heard my dogs barking which let me know someone was at the gate. I finished putting my stepmothers clothes on and I went outside to see two women who identified themselves as DSS employees. The two ladies, Mindy Miyares and another woman, told us about a report they had received and we discussed the report. The ladies then asked to come inside to see if we had furniture to which I agreed. I explained to the women that shortly prior to their arrival I had was just getting my stepmother dressed and bathed and changing her bedside pan. The two ladies went no further than the living room and spoke with us about getting a crib and then they left. The following morning, DSS called stating she wanted us to come into the office to which we wanted to know why. Upon meeting with Mindy Miyares and Deniece Shelman at the DSS office, they attempted to force us into signing a "safety plan" which she stated my baby would have to go live with someone else. Shakeyra and I asked her why our baby needed to go live with someone else and she stated that because our baby was being abused and neglected. I told her we couldn't sign anything until our attorney reviewed it and Mrs. Shelman, in an attempt to scare me I guess, stated that she would get the baby out of the house one way or another. After she said that, I lost my temper and I cursed them out. Both ladies took offense to my language and Mrs. Shelman said to me, "YEA I SEE YOU GOT A MOUTH ON YOU, BUT DON'T WORRY I GOT SOMETHING FOR DISRESPECTFUL PEOPLE", and told us to leave and wait in the lobby. About thirty minutes later they came back out and said that we could leave and that someone would be in touch. Later on that day, Mrs. Miyares and Mrs. Shelman showed up at the house with the police saying they had an ex parte order for the baby. The next day, during a probable cause hearing, Mrs. Miyares gave us affidavits saying that she

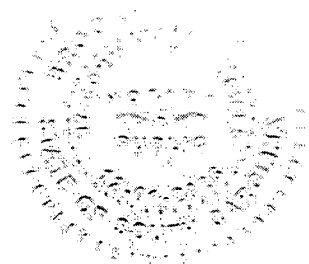
observed our home to be poor condition, broken windows, smelled of urine, my baby didn't have adequate clothes and that I was on probation for CDV. NONE OF THOSE THINGS WERE TRUE. Mrs. Miyares further testified to the same things under oath, knowing that these things were not true. The judge found probable cause based on these things and DSS was allowed to retain custody of our baby.

Over the next two months, we were only allowed to see our child two times. When we asked that our baby be placed with family members, DSS refused. Even though most of our family members met DSS requirements. DSS would not agree to a placement with family unless we would go along with their treatment plan. We attended a "family conference" with DSS outlining their concerns with us and it was during that conference that Mrs. Shelman told everyone in attendance that she had been to my home and saw that it was in "total disarray" and "just nasty". I took great offense to this because Mrs. Shelman has never been inside my home nor was it in disarray or nasty. During another meeting, Mrs., Shelman called Shakeyra out of the room and told her she would give her baby back if she would agree to a treatment plan and leave my house. We had no subsequent contact with DSS other than them offering us treatment plans which we rejected. They never came back to the house nor did they try to investigate anything. On the morning of the merits hearing Mindy called Shakeyra's phone again and said they would dismiss the case if she would leave the home and she again refused. Once we arrived at court, DSS dismissed the case against us.

FUTHER AFFIANT SAYETH NOT

Sworn to and Subscribed before me)
31 day of mg, 2016)
[Signature])
Notary Public for South Carolina)
My Commission expires 12-1-25)

[Signature]
Signature of Affiant



STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LAURENS

Rodrick Tucker and Shakeyra Gilbert

Plaintiffs,

AFFIDAVIT OF SHAKEYRA GILBERT

SCDSS

Defendant.

Docket No. 2015-CP-30-897

PERSONALLY appeared before me, Shakeyra Gilbert, who being duly sworn, deposes and states the following:

On August 17, 2015, I was at my boyfriend Rodrick Tucker's house. I had been there since the past Friday. Prior to me going there, my mother had told me that if I went to his house she would call DSS because she does not like Rodrick. I guess she made good on her promise because that Monday, at around 8:30 a.m., DSS showed up to the house. The two ladies, Mindy Miyares and another unidentified woman, spoke with us on the porch and then asked to come inside. Prior to DSS arriving, Rodrick was in the process of bathing and changing his stepmother's bedpan and he advised them of this when they asked to step inside. Once inside, the two ladies stepped into the living room and went no further. They were never in a position to determine whether or not my baby had clothes or not. Nor did they even ask about clothes. They simply suggested that we get a crib and in the meantime the baby may have to sleep in a dresser drawer. However after that the DSS employees left. The following morning, DSS called stating she wanted us to come into the office to which we wanted to know why. Upon meeting with Mindy Miyares and Deniece Shelman at the DSS office, they attempted to force us into signing a "safety plan" which she stated my baby would have to go live with someone else. I immediately inquired as to why my child needed to go live with someone else and she stated that my baby was being abused and neglected. Upon hearing this, my boyfriend got upset and he exchanged words with Mrs. Shelman and Mrs. Miyares. They were very upset that he had cussed at them and Mrs. Shelman said that she "had something for disrespectful people. After that she ordered us to wait in the lobby. About thirty minutes later they simply said we could leave and someone would be in touch. Later on that day, Mrs. Miyares and Mrs. Shelman showed up at the house with the police saying they had an ex parte order for my baby. The next day, during a probable cause hearing, Mrs. Miyares gave us affidavits saying that she observed our home to be poor condition, broken windows, smelled of

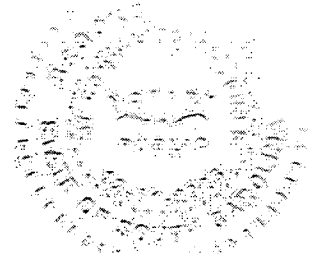
urine, my baby didn't have adequate clothes and that Rodrick was on probation for CDV. NONE OF THOSE THINGS WERE TRUE. Mrs. Miyares further testified to the same things under oath, knowing that these things were not true. The judge found probable cause based on these things and DSS was allowed to retain custody of my baby.

During the next two months, we were only permitted to see our child twice. DSS also refused to place our baby with any of our family members. Rodrick's mom passed a background check and a house visit and they still refused to let my baby go to her home for no reason but to try to make me comply with their treatment plan. During a family conference meeting, Mrs. Shelman told everyone she had been to our home and it was in disarray and nasty. Mrs. Shelman has never been to our home yet alone inside of it. At another meeting with DSS, Mrs. Shelman called me out of the room and said that she was willing to give my baby back to me if I would take parenting classes and leave Rodrick's home. Her exact words were, "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 going to keep KAG. It aint hurting nobody but you. What's so hard about signing a treatment plan and getting your baby back?" I responded to her, "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." We had no subsequent contact with DSS other than them offering us treatment plans which we rejected. They never came back to the house nor did they try to investigate anything. I never had any conversation with DSS discussing me having obtained clothes or a crib, they never asked. My only direct interaction with DSS was when they offered to give me baby back if I would leave Rodrick's home and take parenting classes and I refused. On the morning of the merits hearing Mindy called me again and said they would dismiss the case if I would leave the home and I again refused. I told her we would contest the merits of DSS's case in court. Once we arrived at court, DSS dismissed the case without stipulation.

FUTHER AFFIANT SAYETH NOT

Sworn to and Subscribed before me)
31 day of May, 2016)
RA)
Notary Public for South Carolina)
My Commission expires 12-1-25)

Shavyn Sierra
Signature of Affiant



STATE OF SOUTH CAROLINA)
)
COUNTY OF LAURENS)
)
Rodrick Tucker and Shakeyra Gilbert)
)
Plaintiffs,)
)
SCDSS)
)
Defendant.)
)
)

IN THE COURT OF COMMON PLEAS

AFFIDAVIT OF LINDER DANDY

Docket No. 2015-CP-30-897

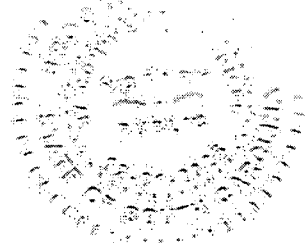
PERSONALLY appeared before me, Linder Dandy, who being duly sworn, deposes and states the following:

On August 17, 2015, I was at my house. My stepson, Rodrick was helping me get ready for the day when the dogs started barking. When the dogs start barking that usually means someone is outside. So he finished helping me put my clothes on and went to answer the door. A short while later I heard him come back into the house with some women so I opened my room door to see who it was and there was a white lady and a black lady who I later learned were DSS. I heard them talking about them getting a crib for the baby and after that they left. My house was clean and in no way was it in any bad condition whatsoever. The only thing they might have smelled was my bed pan being emptied five minutes before they walked in the door. They never went no further than the living room either. I didn't hear them say one word about the baby having clothes or not having clothes. The next day they came back with the police wanting the baby. When we went to the courthouse in Greenwood, the same lady was on the stand telling the judge she saw broke windows and that my house was nasty. Those things are lies and are not true. Anyway I guess they let DSS keep the baby but we had to go to a family meeting. At the family meeting, a new lady named Deniece told everybody she saw my house to in disarray and that it was nasty. I never even saw that lady until that meeting so there is no way she ever been to my house. Some months later they finally got the baby back.

FUTHER AFFIANT SAYETH NOT

Sworn to and Subscribed before me)
31 day of Aug 2016)
[Signature])
Notary Public for South Carolina)
My Commission expires 12-1-25)

[Signature])
Signature of Affiant)





SLED CATCH
Citizens Access to Criminal Histories

Results

Name **RODRICK TUCKER**
DOB **1993 03 10**
Gender **Male**

Maiden Name
SSN *******4234**

Transaction **QMIT132150**
Date of Check **January 05, 2016 at 13:21**



The record is based on a search using Last Name, First Initial, Gender, and Date of Birth, and SSN Only. Compare all identifying data given for record subject with screening subject. Fingerprint comparison is recommended as the most reliable means to identify a record subject.

INTERNET RAP SHEET REQUEST
ORI-SCLED0000 SID-SC01942428 FBI-***** PUR-E
ATN-WEB, ACCOUNT

AUTHORIZED USE ONLY. ***** CONTACT CONTRIBUTING
AGENCY FOR SPECIFIC/MORE DATA ABOUT CHARGES AND/OR DISPOSITIONS.
BECAUSE ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME, A NEW COPY
SHOULD BE REQUESTED WHEN NEEDED FOR SUBSEQUENT USE.

PAGE-01 DATE-01/05/2016 TIME-13:16:56
REQ ORI-SCLED0000 S C LAW ENF DIV
SID-SC01942428 FBI-
NAME-TUCKER, RODRICK RASHAD SEX-M RACE-B
HEIGHT-509 WEIGHT-150 EYES-BRO HAIR-BLK SKIN- BORN-SC
FPC- HENRY-
1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAFIS

DATE RECORD ENTERED--N/A DATE OF LAST UPDATE--12/02/2015

ADDITIONAL IDENTIFIERS	BIRTH				
NAME	DATES	MARKS	SOC. SEC	MISC NUM	
TUCKER, RODRICK RASHAD JAMAIN	03101993				
TUCKER, RODRICK					
TUCKER, RODRICK RASHAD					
TUCKER, RODRICK RASHOD					
TUCKER, RODERICK RASHOD					
TUCKER, RODRICK RASHAD JAMINE					

TAT HAND
TAT L HND
TAT CHEST

TUCKER, RASHAD
TUCKER, RODRICK RASHOD JAMAIN

CONTRIBUTOR/SUBJECT DOA/RCVD CHARGE/DISPOSITION/ETC

TUCKER, RODRICK RASHAD 05/11/2010
SC0420100 SPARTANBURG PD
CASE-05029910
ATN-422100165782
WARR-66942EX
CIT-22-5-150, 03-560-MISDEMEANOR

ARREST CHARGE -BREACH OF
PEACE
OFFENSE DATE-05/11/2010

PALM PRINTS AVAILABLE

TUCKER, RODRICK ROSHAD JAMAINE 03/27/2012
SC0440100 UNION PD
CASE-0412000760
ATN-44D000002394
WARR-52957FR
CIT-56-5-2920-MISDEMEANOR

ARREST CHARGE -RECKLESS DRIVING
OFFENSE DATE-03/27/2012
PHOTOGRAPH AVAILABLE
PALM PRINTS AVAILABLE

TUCKER, RODRICK 05/23/2012
SC0420100 SPARTANBURG PD
CASE-05-0554-12
ATN-422100194430
WARR-J015267
CIT-16-11-510(B)(3)-MISDEMEANOR

ARREST CHARGE -MALICIOUS INJURY TO PERSONAL PROPERTY <\$2000
OFFENSE DATE-05/23/2012
PALM PRINTS AVAILABLE

WARR-J015269
CIT-16-17-722(C)-MISDEMEANOR

ARREST CHARGE -FILING FALSE POLICE REPORT
OFFENSE DATE-05/23/2012

TUCKER, RODRICK 07/11/2012
SC0420100 SPARTANBURG PD
CASE-20120711
ATN-422100196257
WARR-0000000000 @
CIT-56-7-80(F)-MISDEMEANOR

ARREST CHARGE -TRAFFIC/FAILURE TO APPEAR
OFFENSE DATE-07/11/2012
PALM PRINTS AVAILABLE

TUCKER, RODRICK ROSHAD 02/28/2013
SC0420000 SPARTANBURG CNTY. SO
CASE-00000000
ATN-422100203741
WARR-2013A42101 @
CIT-16-25-20(A)-MISDEMEANOR

ARREST CHARGE -CRIMINAL DOMESTIC VIOLENCE 1ST OFFENSE
OFFENSE DATE-02/28/2013
PALM PRINTS AVAILABLE

TUCKER, RODRICK RASHOD 07/26/2014
SC0420000 SPARTANBURG CNTY. SO
CASE-20140726
ATN-422100219441
WARR-2014A4210202357
CIT-16-25-20(A)-MISDEMEANOR

ARREST CHARGE -CRIMINAL DOMESTIC VIOLENCE 1ST OFFENSE
OFFENSE DATE-07/26/2014
PALM PRINTS AVAILABLE

CIT-16-25-20(A)-MISDEMEANOR
DOC-15GS4202151
WARR-2014A4210202357

COURT CHARGE 01-CRIMINAL DOMESTIC VIOLENCE 1ST OFFENSE

COURT DISP-NON-CONVICTION;
DISM/NOL PROS/PROS ENDED
COURT DATE-05/08/2015
ATN-422100219441

TUCKER, RODRICK RASHAD JAMINE 07/31/2014
SC0420100 SPARTANBURG PD
CASE-07079014
ATN-422100219587
WARR-2014A4210102985
CIT-16-17-495(A)-MISDEMEANOR

ARREST CHARGE -TRANSPORT
CHILD OUTSIDE OF STATE(3
DAYS)
OFFENSE DATE-07/31/2014
PALM PRINTS AVAILABLE

CIT-16-17-495(A)-MISDEMEANOR
DOC-15GS4201353
WARR-2014A4210102985

COURT CHARGE 01-TRANSPORT
CHILD OUTSIDE OF STATE(3
DAYS)
COURT DISP-CONVICTED;3YRS
SUS 3YRS PROB/ CFTS 6DYS/
PTUP AFTER SUCCESSF
COURT DATE-05/07/2015
ATN-422100219587

TUCKER, RODRICK RASHAD 09/22/2014
SC0420100 SPARTANBURG PD
CASE-09000214
ATN-422100221371
WARR-BW20142556
CIT-20-7-1350-MISDEMEANOR

ARREST CHARGE -CONTEMPT OF
FAMILY COURT BY ADULT(CIVI
L
OFFENSE DATE-09/22/2014
PALM PRINTS AVAILABLE

TUCKER, RODRICK RASHAD 11/30/2014
SC0300200 CLINTON PD
CASE-0000032535
ATN-30D200005288
WARR-94341FY
CIT-16-25-20(A)-MISDEMEANOR

ARREST CHARGE -CRIMINAL DOMES
TIC VIOLENCE 1ST OFFENSE
OFFENSE DATE-11/30/2014
PHOTOGRAPH AVAILABLE
PALM PRINTS AVAILABLE

CIT--MISDEMEANOR
DOC-30
WARR-94341FY

COURT CHARGE 01-CRIMINAL
DOMESTIC VIOLENCE*
COURT DISP-NON-CONVICTION;
NOT GUILTY/BENCH TRIAL
COURT DATE-11/30/2015
ATN-30D200005288

TUCKER, RASHAD 05/02/2015
SC0420100 SPARTANBURG PD
CASE-05006212
ATN-422100227735
WARR-11452GS
CIT-16-17-530-MISDEMEANOR

ARREST CHARGE -PUBLIC DISORDE
RLY CONDUCT
OFFENSE DATE-05/02/2015
PALM PRINTS AVAILABLE

SC042015G SPARTANBURG PPP 05/07/2015 CUSTODY STATUS-PROBATION
CASE-SC0420
CIT-16-17-495(A)-MISDEMEANOR

COURT CHARGE 01-TRANSPORT
CHILD OUTSIDE OF STATE (3
DAYS)
COURT DISP-CONVICTED; 3 YRS
SS TO 3 YRS PROB
ATN-42P000509651

@ - WARRANT OCCURS WITH MORE THAN ONE SID NUMBER

BASED ON SEARCH OF SCLED CJIS CCH FILE USING SID/SC01942428
THIS CRIMINAL HISTORY RECORD IS FOR SOUTH CAROLINA ARRESTS AND
CONVICTIONS ONLY AND IS BASED ON THE INFORMATION PROVIDED. SINCE
CHANGES MAY OCCUR DAILY A NEW INQUIRY SHOULD BE MADE AND NO SUBSEQUENT
USE OF THIS RECORD IS ALLOWED.

INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING FIREARM OR AMMUNITION
PURSUANT TO FEDERAL GUN CONTROL ACT OF 1968

INFORMATION SUBMITTED TO SLED CCH INDICATES THIS INDIVIDUAL HAS BEEN
CONVICTED OF A MISDEMEANOR IN WHICH AN OFFENDER COULD RECEIVE IN EXCESS OF
TWO (2) YEARS OF CONFINEMENT, ACCORDING TO THE SOUTH CAROLINA CODE OF LAWS.
THEREFORE, THIS PERSON IS INELIGIBLE TO SHIP, TRANSPORT OR RECEIVE ANY
FIREARMS OR AMMUNITION, AFFECTED BY INTERSTATE OR FOREIGN COMMERCE AS
DEFINED BY THE GUN CONTROL ACT OF 1968 (18.U.S.C. 922(G)).

** S C CJIS END OF RECORD **

8/18/2015

Exparte:

Case Name: Shakeyra Gilbert

<u>Mother:</u> Shakeyra Gilbert DOB: 5/17/1996 SS#: 249-99-2224 Address: 206 Oak St. Clinton, SC 29325	<u>Father:</u> Rodrick Tucker DOB: 3/10/1993 SS#: 250-91-4234 Address: 206 Oak St. Clinton, SC 29325
<u>Child:</u> Kyndal Gilbert DOB: 7/22/2015	

Current Situation:

Laurens County DSS received a report that Reporter states that mom Shakeyra Gilbert gave birth to little girl Kyndal on 7/22/2015. Reporter states that child was born 6 weeks early and only weight 4 lbs. Reporter states that baby was released from the hospital on yesterday. Reporter states mom has moved in with her paramour Roderick Tucker. Reporter states that Mr. Tucker is very abusive to Ms. Gilbert. Reporter state that while Ms. Gilbert was pregnant he beat her leaving black eyes and bruises from head to toe. Reporter stated that Mr. Tucker will hit, choke and beat Ms. Gilbert. Reporter states that Mr. Tucker has a history of being abusive. Reporter states that the home that Ms. Gilbert and child is living in is nasty and dirty with trash all in the front yard and trash in the house. Reporter states that home has busted out windows. Reporter sates that home has very little furniture and smells like urine. Reporter state mom does not have a crib or a bassinet for the child to sleep in. Reporter state that mom only has a handful of clothes for the child. Reporter states that Mr. Tucker and Ms. Gilbert steal from Walmart and are involved in fraudulent activity. I went to the home on 8/17/2015 to make initial contact with the family. I met with Rodrick and Shakeyra. When I walked into the home there was an overpowering smell of urine. Rodrick told me that he was the caregiver for his stepmother and that he was just changing her as I came to the home. Shakeyra told me that Kyndal sleeps in the bed with Shakeyra and Rodrick. I expressed my concerns of co sleeping and that Kyndal needed a safe place to sleep. Kyndal was born six weeks early. I advised that they may need to use a dresser drawer or laundry basket to allow the child to sleep. When I got to the office this morning to put my dictation in the system, I realized that Rodrick Tucker has an open DSS case in Spartanburg County. According to dictation, he's not being compliant with Spartanburg County. That case was indicated against Rodrick Tucker for Substantial Risk of Physical Abuse. The case was indicated on 6/20/2014 and Rodrick has not completed his treatment plan. Rodrick is supposed to complete parenting classes. This case involved physical altercation between Tabitha Martin and Rodrick Tucker.

I was concerned about the open Spartanburg case and the co sleeping arrangements. I talked with my supervisor and was advised to conduct another home visit and look for possible relatives to be a kinship caregiver. I called to speak with Shakeyra and Rodrick picked up the phone and asked me what I wanted. I explained I needed to meet with Shakeyra and Rodrick. Rodrick demanded to know what the discussion was about and told me that he couldn't come to me because he was waiting on someone to come fix his water at the home. I explained that I could come to him. I told him I had some things to arrange and

then I would be over to the home. Clinton Public Safety assisted me to the home shortly after our conversation. As I was pulling down the street, I observed Rodrick and Shakeyra leaving the residence. I tried to call their phone and couldn't get an answer. He later called me and asked me "Why in the hell I sent law enforcement to the house?" Rodrick then decided to come to DSS and meet me at 1:00pm. I talked to him and Shakeyra about the concerns I had with the home, unsafe sleeping, and current open case. Rodrick said that the current case had nothing to do with this case. I tried to explain the concerns and that the parents needed to find a kinship caregiver for the baby. Rodrick stated that he refused to sign anything because his attorney said no to sign anything. Rodrick and Shakeyra wouldn't tell DSS where the baby was, but said that she was with a babysitter who was family.

My biggest concerns are:

The family is co-sleeping. This is very risky for a baby, especially a premature baby.
Rodrick has an open case for substantial risk of physical abuse and is not compliant.
Rodrick and Shakeyra are refusing access to the child.
Rodrick is on probation for CDV.

If you need any more information, let me know.

Thanks,

Mindy

STATE OF SOUTH CAROLINA)
)
COUNTY OF LAURENS)

IN THE COURT OF COMMON PLEAS

Rodrick Tucker and Shakeyra Gilbert,)
)
)

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

Plaintiffs,)
)
)

**SECOND
AFFIDAVIT
OF
MINDY MIYARES**

vs.)
)
)

South Carolina Department of Social Services)
)
)

Defendant.)
)
)

PERSONALLY appeared before me, Mindy Miyares, who being duly sworn, deposes and states that I am an employee with the South Carolina Department of Social Services, and was an employee of the South Carolina Department of Social Services during the time of the investigation of the plaintiffs which is the subject of this action. I am familiar with the facts and circumstances of this lawsuit. Based upon the information obtained during my investigation I issued an Affidavit of Imminent and Substantial Danger dated August 13, 2015, the day of the Ex Parte Hearing which was submitted to the Family Court. My Affidavit of Imminent and Substantial Danger states as follows, to-wit:

“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 (sp) 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 acts detailed above, placement of the minor child known as the "minor child" with Defendants would place the children in imminent and substantial danger.
9. SCDSS is concerned for the minor child's well being 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.”

I issued on that same date an Affidavit of Reasonable Efforts, which was also submitted to the Family Court which states as follows, to-wit:

“Affiant, being duly sworn as a representative of the South Carolina Department of Social Services (SCDSS), states the following:

1. Affiant is the caseworker/investigator currently assigned to the above-referenced case;
2. Plaintiff was unable to offer preventive/protective services to defendants to prevent the necessity for removal of the child for the following reasons:
SCDSS was not involved with this family at the time the report was received and law enforcement placed the children into protective custody.
There were no known suitable relatives for placement.
3. Spartanburg County Department of Social Services currently has an open treatment case with Rodrick Tucker and he is non-compliant at this time.

Further, Affiant sayeth not.”

I held a meeting with the Shakeyra Gilbert and Rodrick Tucker prior to the Ex Parte hearing in an attempt to prevent the legal removal of the minor child by issuing a safety plan. I attempted to explain to Ms. Gilbert and Mr. Tucker the situation, and what was needed to be done by the two of them to avoid the Ex Parte hearing, and the potential that the Court would order that the minor child be taken into emergency protection. I explained my concerns with the house, the unsafe living condition for the minor child, and the current open case with Mr. Tucker.

Mr. Tucker and Ms. Gilbert refused to sign any documents stating that they would make the necessary changes that we had discussed in order to avoid the removal of the child. The refusal of Mr. Tucker and Ms. Gilbert to sign a safety plan left SCDSS with no alternative except to proceed with the Ex Parte hearing.

On behalf of my employer, the South Carolina Department of Social Services, I adhered to the Ex Parte Order of the Family Court in which the Court had stated that "Leaving the child known as the unborn child in the custody of the Defendants would place the children in imminent and substantial danger." The Family Court further ordered that "emergency protective custody of the child to SCDSS."

Prior to the final hearing in this matter, Shakeyra Gilbert, the mother of the minor child, was able to prove to the SCDSS that appropriate clothing and a bed had been obtained for the minor child, and the minor child was no longer in imminent and substantial danger. The minor child was returned to the custody of the mother, Shakeyra Gilbert, and the case was dismissed by the SCDSS.

THE DEPONENT FURTHER SAYETH NAUGHT.

Mindy Miyares
MINDY MIYARES

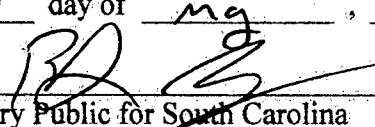
SWORN TO BEFORE ME THIS 20 DAY
OF April, 2016

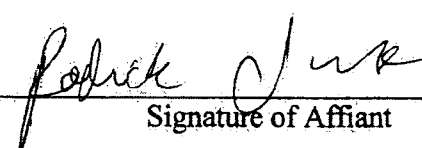
Paul S. [Signature] (SEAL)
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 4-27-21

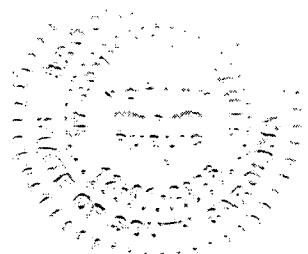
observed our home to be poor condition, broken windows, smelled of urine, my baby didn't have adequate clothes and that I was on probation for CDV. NONE OF THOSE THINGS WERE TRUE. Mrs. Miyares further testified to the same things under oath, knowing that these things were not true. The judge found probable cause based on these things and DSS was allowed to retain custody of our baby.

Over the next two months, we were only allowed to see our child two times. When we asked that our baby be placed with family members, DSS refused. Even though most of our family members met DSS requirements. DSS would not agree to a placement with family unless we would go along with their treatment plan. We attended a "family conference" with DSS outlining their concerns with us and it was during that conference that Mrs. Shelman told everyone in attendance that she had been to my home and saw that it was in "total disarray" and "just nasty". I took great offense to this because Mrs. Shelman has never been inside my home nor was it in disarray or nasty. During another meeting, Mrs., Shelman called Shakeyra out of the room and told her she would give her baby back if she would agree to a treatment plan and leave my house. We had no subsequent contact with DSS other than them offering us treatment plans which we rejected. They never came back to the house nor did they try to investigate anything. On the morning of the merits hearing Mindy called Shakeyra's phone again and said they would dismiss the case if she would leave the home and she again refused. Once we arrived at court, DSS dismissed the case against us.

FUTHER AFFIANT SAYETH NOT

Sworn to and Subscribed before me)
31 day of mg, 2016)
)
Notary Public for South Carolina)
My Commission expires 12-1-25)


Signature of Affiant



Certificate of Appellants

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

September 23, 2016

Shakeyra Gilbert

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

RECEIVED

OCT 11 2016

SC Court of Appeals

Rodrick Tucker

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