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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE COURT OF COMMON PLEAS
Honorable G. Thomas Cooper, Jr.
Circuit Court Case No.: 2007-CP-40-03365

Appellant Case No. 2014-001373

Estate of Edward James Mims,
Laura M. Cole, Personal Representative.....Appellant,

v.

The South Carolina Department of Disabilities
and Special Needs, Kathi Lacy and Stan Butkus, ...Respondents.

Volume II

RECORD ON APPEAL

Patricia Logan Harrison
611 Holly Street
Columbia, SC 29205
803-256-2017
Attorney for Appellant

Kenneth P. Woodington
William H. Davidson, II
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Columbia, SC 29202-8568
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Attorney for Respondents

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MOTIONS and RESPONSES

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Edward Mims, through his guardian,
Margaret Mims,
Plaintiff)

vs.)

Babcock Center, Inc., Judy Johnson,
Tonya Bradford, Craig Stoxen, Sue Slater
Stanley Butkus, Susan Bowling, the
South Carolina Department of Heath and
and Human Services,
Defendants)

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

MOTION TO REQUEST RECUSAL

BARBARA J. SCOTT
C.C.C. & G.S.

2008 OCT -3 PM 4:41

FILED

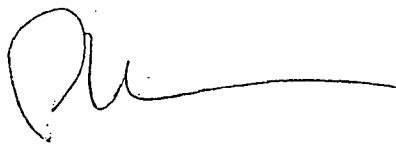
TO: Keni Woodington, Esquire, and Christian Stegmaier, Esquire, Counsel to Defendants:

PLEASE TAKE NOTICE Plaintiff Edward Mims, through his guardian, Margaret Mims, will move ten days after service hereof or as soon thereafter as may be heard for an Order respectfully requesting that Honorable Casey Manning recuse himself from this case due to conflicts of interest and the appearance of partiality toward the Babcock Center. This request is being made pursuant to Canons 2 and 3 of the South Carolina Code of Judicial Conduct. Judge Manning is a former employee of the Babcock Center and has described his fondness for the agency in many courtroom appearances. He dismissed *Madison v. Babcock Center and the South Carolina Department of Disabilities and Special Needs* and that order was subsequently reversed. In another lawsuit against an agent of the Department of Disabilities and Special Needs, brought by a disabled individual who had been injured through the negligence of an employee, Judge Manning again expressed fondness for the Babcock Center in the courtroom and he indicated that he does not agree with the decision of the South Carolina Supreme Court in

the *Madison* case which imposes a duty of care on the Babcock Center and the South Carolina Department of Disabilities and Special Needs to protect persons in their care from harm.

Plaintiff respectfully requests that this case be transferred to another judge with no prior extrajudicial relationship with the Babcock Center or the South Carolina Department of Disabilities and Special Needs.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Pl' followed by a long horizontal stroke.

Patricia L. Harrison
611 Holly Street
Columbia, South Carolina 29205
Phone (803) 256 2017
Fax (803) 256 2213
E Mail plh.cola@att.net

Columbia, South Carolina

3 October, 2008



Amy L. Neuschafer | Direct Dial: 803.255.0443 | E-Mail: aneuschafer@collinsandlacy.com

October 8, 2008

VIA UNITED STATES MAIL AND FACSIMILE

Patricia L. Harrison, Attorney
611 Holly Street
Columbia, SC 29205

Kenneth P. Woodington, Esquire
Davidson & Lindemann, P.A.
Post Office Box 8568
Columbia, SC 29202

*Re: In Re: Edward Mims
C&L File No.: 969-109*

Dear Ms. Harrison and Mr. Woodington:

Please be advised that the hearing scheduled for tomorrow afternoon at 2:00 p.m. has been continued by Judge Milling due to Christian having a conflict. He is scheduled to appear before the Court of Appeals tomorrow afternoon for oral argument in another matter. Judge Milling's law clerk has advised that this matter will be scheduled for hearing at a later date.

Thank you for your time and attention. Should you have any questions, please do not hesitate to contact me.

With kind regards, I am

Sincerely,

A handwritten signature in cursive script that reads "Amy L. Neuschafer".

Amy L. Neuschafer

ALN:lcc



FACSIMILE COVER SHEET

October 8, 2008

File No.: 969-109

Total Pages: 2

To: Patricia Harrison, Esquire
Kenneth Woodington, Esquire

Fax No.: 256-2213
806-8855

From: Christian Stegmaier

Return Fax No.: (803) 771-4484

By: Leslie Clamp

Subject: In Re: Edward Mims
C&L File No.: 969-109

Remarks: Please see attached.

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COURT OF APPEALS

oster No: 16130
earing Time: 10:15 a.m.
ourt Room: 1
ime Limits: 10 - 10 - 5
ase Title: Oakwood Landfill, Inc. and Hickory Hill Landfill, Appellants, v. South Carolina Department of Environmental Control and T & T Disposal, LLC, Respondents.
ttorneys: James W. Potter, Leon C. Harmon, and Joan W. Hartley, of Columbia, for Appellants. Etta R. Williams, of Columbia, for Respondent SCDHEC. Alex G. Shissias and John A. Hodge, of Columbia, for Respondent T&T Disposal, LLC.
ummary: Appellants in this appeal raise the issue of the authority of a county to amend a regional sold waste management plan.

oster No: 16136
earing Time: 11:00 a.m.
ourt Room: 1
ime Limits: 10 - 10 - 5
ase Title: Roberta Hardy Lewis, Appellant/Respondent, v. Joseph Terrell Lewis, Respondent/Appellant.
ttorneys: Donald Bruce Clark, of Charleston, for Appellant/Respondent. Kevin Mitchell Barth, of Florence, and Marian Dawn Nettles, of Lake City, for Respondent-Appellant.
ummary: This is a cross-appeal from a divorce decree. Roberta Hardy Lewis, the wife, argues (1) the family court should have included the husband's dental office and dental office parking lot in the marital estate; (2) the family court erred in admitting depositions of two witnesses; and (3) the family court erred in failing to award her reasonable attorney's fees. Joseph Terrell Lewis, the husband, argues (1) the family court erred in dismissing his motion to dismiss the divorce action and to seek an annulment based on the alleged invalidity of the wife's overseas divorce from one of her prior husbands; (2) the wife should have been denied alimony based on a legal impediment to the parties' marriage and her alleged adultery; (3) the family court erred in finding the marital home had been transmuted into marital property and including the entire net equity in the marital estate; (4) the family court erred in its valuation of certain marital assets; (5) the family court erred in awarding the wife certain expert fees; and (6) the terms to effectuate the equitable distribution of the marital assets were unfair and constituted an abuse of discretion.

oster No: 16144
earing Time: 2:00 p.m.
ourt Room: 1
ime Limits: 10 - 10 - 5
ase Title: Patricia H. Freezon, Appellant, v. Burkett Systems, Inc. and Federated Mutual Insurance Company, Respondents.
ttorneys: Dennis N. Cannon, Jr., of Camden, for Appellant. Grady L. Beard and Marcy J. Lamar, of Columbia, for Respondents.

Summary: In this workers' compensation matter, Appellant argues the circuit court erred in affirming the decision of the Appellate Panel to deny benefits (1) when sufficient evidence was presented to satisfy the requirements of Section 42-11-10 of the South Carolina Code (Supp. 2007); (2) where there was undisputed evidence that Appellant had a pre-existing respiratory condition that was aggravated by exposure to mold at her place of employment; and (3) where the Appellate Panel applied a narrow interpretation of § 42-11-10 inconsistent with case law.

Case No: 16121

Hearing Time: 2:45 p.m.

Court Room: 1

Time Limits: 10 - 10 - 5

Case Title: Carolina Chloride, Inc., Appellant, v. Richland County, SC, Respondent.

Attorneys: Edward D. Sullivan, Christian Stegmaier, and Amy L. Neuschafer, of Columbia, for Appellant. Michael B. Wren, William H. Davidson, II, and Andrew F. Lindemann, of Columbia, for Respondent.

Summary: This is an appeal of a directed verdict involving the purchase of real property in Richland County. Appellant argues the trial court erred (1) in excluding testimony of the former Zoning Administrator; (2) in ruling as a matter of law there is no right to rely on the representations of government employees; (3) in ruling as a matter of law that Richland County had no duty to Carolina Chloride; (4) in ruling as a matter of law that the Tort Claims Act provides immunity for Richland County; (5) in finding no evidence of gross negligence by Richland County; (6) in ruling there was no deprivation of substantive due process by Richland County; and (7) in ruling there was no government taking by Richland County.

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kip Navigation

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Richland County Respondent,

v.

Carolina Chloride, Inc. Appellant.

Appeal From Richland County
Reginald I. Lloyd, Circuit Court Judge

Opinion No. 4462
Heard October 9, 2008 – Filed November 25, 2008

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED

Edward D. Sullivan, Christian Stegmaier and Amy L.
Neuschafer, all of Columbia, for Appellants.

Andrew F. Lindemann, William H. Davidson III and Michael
B. Wren, all of Columbia, for Respondent.

PIEPER, J.: Carolina Chloride, Inc. appeals a directed verdict involving the zoning of real property in Richland County. We affirm in part, reverse in part, and remand.

FACTS

In November of 1996, Carolina Chloride purchased 7.67 acres of land in Richland County from IBM for \$85,000. Prior to the purchase, Carolina Chloride's realtor contacted the Richland County Planning and Zoning Department ("County") to inquire about the zoning of the IBM property. Carolina Chloride required M-2 zoning for heavy industry because it planned to use the property for storing and distributing calcium chloride, a nonhazardous chemical used for ice or dust control on roads and for treating drinking water. In response to the inquiry, County allegedly informed the realtor of the property's M-2 zoning designation.[1]

The month after purchase of the property, Carolina Chloride's president, Robert Morgan ("Morgan"), went

to County seeking a building permit. The Zoning Administrator, Terry Brown, told Morgan he believed the County zoned the property M-2, but there was a question about the tax map. The following day, the Zoning Administrator wrote Morgan a letter confirming County zoned the property M-2.

Over the ensuing six years, Carolina Chloride invested more than four hundred thousand dollars to improve the property, including building a mini-warehouse business. In order to build and maintain the businesses on the property, Carolina Chloride sought multiple licenses, certificates, and permits from County. Either the Zoning Administrator or other authorized County employees approved all such requests with each reflecting M-2 zoning.

In 2002, Morgan began negotiating the sale of the business with Allen, Johnette and Luke Watson ("the Watsons"). In pursuit of Carolina Chloride's purchase, the Watsons entered discussions with a bank to obtain financing, reviewed Carolina Chloride's financial records, and created a business plan for their intended expansion of the company. After continued discussions, Morgan agreed to sell Carolina Chloride and all its assets for 1.1 million dollars; however, Morgan and the Watsons never reduced the agreement to writing.

Thereafter, Carolina Chloride and the Watsons contacted John W. Hicks ("Hicks"), County's employee authorized to inform citizens whether their intended property use conformed to applicable zoning ordinances. Carolina Chloride sought County's approval for the Watsons' planned expansion of Carolina Chloride's property. On February 13, 2003, Hicks advised Carolina Chloride the property was zoned rural (RU). Hicks further advised that the current use of the property did not conform to the zoning ordinances; therefore, County would not permit any future expansion of the property. Hicks did state Carolina Chloride could continue its non-conforming use and could petition the Planning Commission to amend the zoning map to reflect M-2 zoning. As a result, the Watsons decided they did not want to purchase Carolina Chloride alleging RU zoning "totally killed the sale."

In August of 2003, Carolina Chloride petitioned to change the property's zoning from RU to M-2. On November 4, 2003, Richland County Council approved the request and amended the zoning map. Carolina Chloride subsequently filed suit against County alleging multiple causes of action associated with the unsuccessful sale of Carolina Chloride's property.

At trial, County denied all claims and asserted defenses under the South Carolina Tort Claims Act. During trial, the court refused to allow Carolina Chloride to read sections of Terry Brown's deposition to the jury because Terry Brown was no longer the Zoning Administrator. At the end of Carolina Chloride's case in chief, the trial court granted County's motion for directed verdict on all causes of action. Carolina Chloride filed a motion to reconsider, which the trial court denied. Carolina Chloride now appeals.[2]

ISSUES

- I. Did the trial court err in excluding the testimony of the former Zoning Administrator?
- II. Did the trial court err as a matter of law in finding Richland County did not owe a duty to Carolina Chloride?
- III. Did the trial court err as a matter of law in finding the Tort Claims Act provided Richland County with immunity?
- IV. Did the trial court err in finding no evidence of gross negligence by Richland County?

governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained herein." S.C. Code Ann. § 15-78-40 (2005).

Recently, this court reversed an order of summary judgment where the trial court, relying on § 15-78-40, determined the government could only be held liable under the Tort Claims Act if a private individual could be held liable for similar conduct. Quail Hill, L.L.C. v. County of Richland, 379 S.C. 314, 665 S.E.2d 194 (Ct. App. 2008). This decision, however, did not hold our state's Tort Claims Act lacked a private analogy mandate; instead, this decision merely emphasized the summary judgment procedural posture of the case and the absence of state precedent supporting or opposing a private sector analogy requirement. Moreover, Quail Hill expressly acknowledged persuasive federal authority supporting the trial court's interpretation of § 15-78-40.

In United States v. Olson, 546 U.S. 43 (2005), the United States Supreme Court analyzed a provision of the Federal Tort Claims Act similar to § 15-78-40. The federal provision allows tort actions against the United States government "under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." 28 U.S.C. § 1346(b)(1). The Court noted the words, "like circumstances" do not restrict a court's inquiry to the same circumstances, but require it to look further afield." Olson, 546 U.S. at 46 (internal citations omitted). The Court suggested a further inquiry to determine whether an analogous situation could exist in which a private individual could be found liable for the same conduct. Id. at 47. In essence, the Court concluded if a private citizen could be held liable for negligently performing a task, then the government could be held liable for negligently performing a similar task.

Here, we need not resolve the private analogy question. Carolina Chloride argues County negligently maintained its zoning records resulting in Carolina Chloride's injury. Even if a private analogy is required, this claim is analogous to allegations of negligence against a private hospital or private school for negligently maintaining an individual's records. For example, an analogy may be present where, as a result of negligently maintaining a patient's medical records, a hospital gives a patient his or her wrong blood type causing the patient harm. Similarly, an analogous situation may exist where a private school sends the wrong transcript to a former student's potential employer and, as a direct result, the employer does not hire the former student. In both instances, the private entities could be held liable for negligently maintaining an individual's records and thereby causing the individual's injury. Therefore, a private individual analogy does exist where a private individual or private entity could be held liable for similar conduct as alleged herein. Accordingly, the trial court erred in granting summary judgment against Carolina Chloride based on the absence of a private sector analogy.

In addition to finding Carolina Chloride's claims barred under § 15-78-40, the trial court alternatively found § 15-78-60(4) of the Tort Claims Act barred Carolina Chloride from relief. Carolina Chloride, however, argues the trial court erred because this Court is bound by our recent Quail Hill decision. We agree.

Section 15-78-60 of the Tort Claims Act contains affirmative defenses exempting the government from liability. The governmental entity bears the burden of establishing an affirmative defense under § 15-78-60. Pike v. South Carolina Dep't of Transp., 343 S.C. 224, 230, 540 S.E.2d 87, 90 (2000). The exceptions listed in § 15-78-60 should be liberally construed to limit liability. Steinke, 336 S.C. at 396, 520 S.E.2d at 154. Section 15-78-60(4) provides that the government is not liable for injuries resulting from: "adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies." S.C. Code Ann. § 15-78-60(4) (2005).

because the public duty rule does not apply to its negligence claims. We agree.

To establish liability in a negligence action, the claimant must show: (1) a duty of care owed by the defendant to the plaintiff; (2) breach of that duty; and (3) damages resulting from the breach. Bishop v. South Carolina Dep't of Mental Health, 331 S.C. 79, 88, 502 S.E.2d 78, 82 (1998). Statutes, contractual relationships, property interests, and other special circumstances may give rise to an affirmative legal duty to act. Madison ex rel. Bryant v. Babcock Ctr., Inc., 371 S.C. 123, 136, 638 S.E.2d 650, 656-57 (2006). "When, and only when, the plaintiff relies upon a statute as creating the duty does a doctrine known as the 'public duty rule' come into play." Arthurs ex rel. Estate of Munn v. Aiken County, 346 S.C. 97, 103, 551 S.E.2d 579, 582 (2001).

In Arthurs, our state's supreme court analyzed whether the Tort Claims Act and the public duty rule were incompatible. Id. at 102, 551 S.E.2d at 581-82. While the court did confirm the viability of the public duty rule, the court clarified what types of situations could give rise to the rule. Id. at 105, 551 S.E.2d at 583. Accordingly, only when the plaintiff relies upon a statute as creating the duty does the public duty rule come into play. Id. at 103, 551 S.E.2d at 582. In other words, "where the duty relied upon is based upon the common law . . . then the existence of that duty is analyzed as it would be were the defendant a private entity." Trousdell v. Cannon, 351 S.C. 636, 641, 572 S.E.2d 264, 266-67 (2002) (analyzing the implications of the holding in Arthurs) (internal quotations omitted).

Here, Carolina Chloride asserts a negligence claim based upon the common law duty to exercise reasonable care. Specifically, Carolina Chloride argues County breached its duty of reasonable care when County's authorized employee mistakenly informed Carolina Chloride the subject property was zoned for rural use rather than heavy industrial use. Carolina Chloride does not base its negligence claims on any statutory duty. Because Carolina Chloride relies on a common law duty and not a statutory duty, the trial court erred in applying the public duty rule. See Trousdell, 351 S.C. at 641, 572 S.E.2d at 267 (holding the public duty rule did not bar an alleged breach of the common law duty to exercise reasonable care).

Nevertheless, Carolina Chloride's claims may still be barred under an exception to the waiver of immunity enumerated in the South Carolina Tort Claims Act. See Madison, 371 S.C. 123, 142, 638 S.E.2d 650, 660 (stating "[w]hen a governmental entity owes a duty of care . . . under the common law and other elements of negligence are shown, the next step is to analyze the applicability of exceptions to the waiver of immunity . . . asserted by the governmental entity."). Accordingly, we now address whether the exceptions County raised bar Carolina Chloride's negligence claim.

III. Sovereign Immunity

Carolina Chloride asserts the trial court erred in finding County immune from liability under Section 15-78-40 of the South Carolina Tort Claims Act.

The South Carolina Tort Claims Act ("the Tort Claims Act" or "the Act") constitutes the exclusive civil remedy for any tort committed by a governmental employee while acting within the scope of the employee's official duties. S.C. Code Ann. § 15-78-200 (2005). The Tort Claims Act does not create causes of action, but removes the common law bar of governmental immunity. Arthurs, 346 S.C. at 105, 551 S.E.2d at 583. The Act is a limited waiver of sovereign immunity. Steinke v. South Carolina Dep't of Labor, Licensing, and Regulation, 336 S.C. 373, 393, 520 S.E.2d 142, 152 (1999).

The trial court interpreted § 15-78-40 to require a private sector analogy for a governmental entity to be held liable under the Act. This section provides, "[t]he State, an agency, a political subdivision, and a

- V. Did the trial court err in ruling as a matter of law there was no governmental taking by Richland County?
- VI. Did the trial court err in ruling as a matter of law there was no deprivation of substantive due process by Richland County?
- VII. Did Carolina Chloride waive its governmental estoppel and promissory estoppel arguments?

STANDARD OF REVIEW

When ruling on a motion for directed verdict, appellate courts apply the same standard as the trial court viewing evidence and all reasonable inferences in the light most favorable to the non-moving party. Gadson ex rel. Gadson v. ECO Servs. of South Carolina, Inc., 374 S.C. 171, 175-76, 648 S.E.2d 585, 588 (2007). A court should deny a motion for directed verdict "when the evidence yields more than one inference or its inference is in doubt." Sabb v. South Carolina State Univ., 350 S.C. 416, 427, 567 S.E.2d 231, 236 (2002). This court will reverse only when there is no evidence to support the ruling or when the ruling is controlled by an error of law. Law v. South Carolina Dep't of Corr., 368 S.C. 424, 434-35, 629 S.E.2d 642, 648 (2006).

I. Deposition Testimony

The admission of evidence is within the sound discretion of the trial court. Gamble v. Int'l Paper Realty Corp. of South Carolina, 323 S.C. 367, 373, 474 S.E.2d 438, 442 (1996). The exclusion of evidence will not be reversed on appeal absent an abuse of discretion. Id.

The trial court prohibited Carolina Chloride from reading excerpts of the deposition of Terry Brown (the former Zoning Administrator) at trial based on Rule 32(a)(2), SCRCP. The rule provides, "[t]he deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent . . . may be used by an adverse party for any purpose." Rule 32(a)(2), SCRCP.

Carolina Chloride argues Brown qualified as an officer, director, or managing agent under Rule 32(a)(2), SCRCP. While Brown was no longer the Zoning Administrator for County when deposed, Carolina Chloride asserts he met the requirements of Rule 32(a)(2), SCRCP, as a current member of the Zoning Board of Adjustment. Carolina Chloride, however, has not demonstrated the trial court abused its discretion by excluding Brown's deposition testimony. Furthermore, Brown's current status as a member of the Zoning Board of Adjustment, in and of itself, does not require admission of the deposition under Rule 32(a)(2), SCRCP. Carolina Chloride did not lay any foundation as to why Brown's role on the Board qualifies under Rule 32(a)(2). If not admissible under Rule 32(a)(2), Carolina Chloride needed to demonstrate Brown was unavailable pursuant to Rule 32(a)(3), SCRCP, or alternatively, if Brown was available, Carolina Chloride should have called him as a witness at trial. Indeed, Carolina Chloride opined at trial that the application of Rule 32(a)(2), SCRCP, to the admissibility of Brown's deposition was "a weak argument." Consequently, the trial court did not abuse its discretion in excluding Brown's deposition at trial in the absence of the requisite foundation.[3]

II. Public Duty Rule

The trial court ruled as a matter of law County owed Carolina Chloride no "special duty," warranting a directed verdict on Carolina Chloride's negligence claims. Carolina Chloride avers this was in error

County argues the trial court did not err because any alleged damage claimed by Carolina Chloride arose as a result of County's enforcement of the zoning ordinances for which § 15-78-60(4) specifically grants governmental immunity. Carolina Chloride, however, asserts its claims did not emanate from the County's enforcement of local ordinances. In support of this assertion, Carolina Chloride argues the "mistake" or injuries in this case are directly on point with the facts considered in Quail Hill.^[4]

In Quail Hill, the petitioner purchased over seventy acres of land after a Richland County Planning Department staff member mistakenly advised him the land was zoned for his intended use. Quail Hill, 379 S.C. at 317, 665 S.E.2d at 195. After the petitioner purchased the property, another staff member informed him the property had a different zoning designation and he could not develop the land as he had intended. Id. At trial and on appeal, Richland County asserted § 15-78-60(4) as an affirmative defense arguing it was immune from liability for the incorrect zoning assessment because appellant's claims arose as a result of the enforcement of local zoning ordinances. Id. This court reversed summary judgment in favor of appellant opining the claims asserted were not connected to the enforcement of the zoning ordinance, but arose as a result of a Richland County staff member's mistaken advice to appellant. Id. Therefore, this court concluded Richland County was not immune from liability under § 15-78-60(4). Id.

Here, Carolina Chloride alleges County's mistaken zoning assessment resulted in the loss of a sale of real property and an associated business. Viewing the facts in the light most favorable to Carolina Chloride, the mistake allegedly occurred on February 13, 2003, when John Hicks, the employee authorized to inform citizens whether their property was appropriately zoned for their intended uses, informed Carolina Chloride the property at issue was zoned rural (RU) and was not zoned heavy industrial (M-2). Hicks made this determination in response to a proposal for the development of the property sent to County from the Watsons, the interested buyers. However, in the letter, Hicks rejected the Watsons' proposed plans because under RU zoning County could not permit the expansion of "the current . . . structural area."

Appellants in this case and in Quail Hill alleged a governmental entity negligently advised them of the zoning designations applicable to their properties. In Quail Hill, the mistake arguably resulted in the purchase of property that would not have been purchased had Richland County accurately advised the purchaser. On the other hand, in the case at bar, the mistake allegedly prevented the sale of property that would have been sold but for County's authorized employee mistakenly informing Carolina Chloride the property was zoned for rural use only. Regardless, both instances deal with tortious claims emanating from a governmental entity mistakenly advising someone of applicable zoning ordinances. Accordingly, since we are bound by this court's precedent, the trial court erred in ruling as a matter of law that § 15-78-60(4) barred Carolina Chloride's tort claims.

IV. Gross Negligence

Carolina Chloride argues the trial court erred in finding no evidence of gross negligence. Gross negligence is the failure to exercise slight care. Jinks v. Richland County, 355 S.C. 341, 345, 585 S.E.2d 281, 283 (2003). Generally, gross negligence is a mixed question of law and fact best resolved by the jury. Faile v. South Carolina Dep't of Juvenile Justice, 350 S.C. 315, 332, 566 S.E.2d 536, 545 (2002). If the evidence supports only one reasonable inference, then it is a question of law solely for the trial court. Worsley Cos., Inc. v. Town of Mount Pleasant, 339 S.C. 51, 56, 528 S.E.2d 657, 661 (2000). In determining whether a directed verdict was proper, this Court must construe inferences arising from the evidence in the light most favorable to the non-moving party. Gadson, 374 S.C. at 175-76, 648 S.E.2d at 588.

In arguing the trial court erred in finding no evidence of gross negligence, Carolina Chloride references depositions not presented at trial as replete with evidence of gross negligence. "We are confined to the

record in deciding issues on appeal.” Timms v. Timms, 286 S.C. 291, 294, 333 S.E.2d 74, 75 (Ct. App. 1985) (refusing to review evidence of insurance coverage outside the record on appeal). As previously indicated, the trial court did not abuse its discretion in excluding Brown’s deposition in the absence of the requisite foundation; therefore, it was not part of the record. Additionally, Carolina Chloride did not attempt to include the Gosline or Price depositions in the record during trial and did not request that the record remain open in order to supplement the record. Consequently, these depositions were not in evidence and will not be considered on appeal.

Taking the evidence in the light most favorable to Carolina Chloride, the only evidence demonstrating County failed to exercise care was in Hicks’ mistaken zoning designation of the property at issue. The presence of a mistake alone, however, is not sufficient evidence to conclude County failed to exercise slight care. Furthermore, the February 13, 2003, letter did state Hicks conferred with County’s legal department prior to making determinations about the subject property suggesting Hicks, and therefore County, did exercise some level of care. Absent evidence to the contrary, the only reasonable inference to be drawn from these facts is County, at a minimum, exercised slight care. Accordingly, the trial court did not err in granting a directed verdict in favor of County on the gross negligence claim.

V. Inverse Condemnation

Carolina Chloride further alleges the trial court erred in granting a directed verdict in favor of County on its inverse condemnation claim. We disagree.

“An inverse condemnation may result from the government’s physical appropriation of private property, or it may result from government-imposed limitations on the use of private property.” Byrd v. City of Hartsville, 365 S.C. 650, 656, 620 S.E.2d 76, 79 (2005). In essence, inverse condemnation is a governmental taking absent an eminent domain proceeding. Id. Successful inverse condemnation actions require a plaintiff to establish the government committed an affirmative, aggressive, and positive act causing damage to the plaintiff’s property. WRB Ltd. P’ship v. County of Lexington, 369 S.C. 30, 32, 630 S.E.2d 479, 481 (2006).

The only time frame in which the alleged taking could have occurred would have been after County’s February 13, 2003 letter. Prior to this event, Carolina Chloride used the property in compliance with M-2 zoning and absent any alleged governmental interference. Furthermore, Carolina Chloride cannot allege a taking subsequent to County amending the property’s zoning to M-2 on November 4, 2003, because M-2 zoning allowed all of Carolina Chloride’s and the Watsons’ intended uses. As such, the only taking, if any, occurred between February 13 and November 4, 2003.

The sole evidence Carolina Chloride presents of governmental action constituting an affirmative act is Hicks’ mistaken assessment of the zoning ordinances applicable to Carolina Chloride’s property. Even construing the facts under a favorable light analysis, this action is not an “affirmative, aggressive, positive act” damaging Carolina Chloride’s property. See WRB Ltd. P’ship, 369 S.C. at 32, 630 S.E.2d at 481; see also Quail Hill, 379 S.C. at 322, 665 S.E.2d at 198 (finding no reported case holding “a mistake may rise to the level of an affirmative, aggressive, and positive act sufficient to constitute inverse condemnation.”). Accordingly, the trial court properly granted a directed verdict in County’s favor on the inverse condemnation claim.

VI. Due Process

Carolina Chloride argues the trial court erred in finding County did not deprive Carolina Chloride of substantive due process. Substantive due process prohibits the government from depriving a person of

life, liberty, or property for arbitrary reasons. Worsley Cos., Inc., 339 S.C. at 56, 528 S.E.2d at 660. "To establish a substantive due process claim, a plaintiff must show he possessed a constitutionally protected property interest that was deprived by state action so far beyond the limits of legitimate governmental action, no process could cure the deficiency." Seabrook v. Knox, 369 S.C. 191, 198, 631 S.E.2d 907, 911 (2006). To prove a denial of substantive due process, the plaintiff must also show "he was arbitrarily and capriciously deprived of a cognizable property interest rooted in state law." Sloan v. South Carolina Bd. of Physical Therapy Examiners, 370 S.C. 452, 483, 636 S.E.2d 598, 615 (2006).

At trial, County and Carolina Chloride appear to have confused substantive and procedural due process. On appeal, however, Carolina Chloride only makes a substantive due process claim. Specifically, Carolina Chloride asserts deprivation of substantive due process because it claims County arbitrarily and capriciously changed the zoning of the property. Even assuming Carolina Chloride had a property interest in the zoning designation of its property, Carolina Chloride fails to proffer any evidence County actually changed the zoning of the property. Carolina Chloride merely evidences apparent confusion within the zoning department as to the zoning designation of the property arguably resulting in a mistake. Accordingly, the trial court did not err in granting a directed verdict in favor of County on the substantive due process claim.

VII. Governmental Estoppel and Promissory Estoppel

Issues cannot be raised for the first time on appeal, but must be raised to and ruled upon by the trial court to preserve it for appellate review. Wilder Corp., 330 S.C. at 76, 497 S.E.2d at 733.

In Carolina Chloride's statement of the issues on appeal, it argues the trial court erred as a matter of law in finding no right to rely on government employees. While reliance is an element of several causes of action, Carolina Chloride avers a right to rely on County in the context of governmental estoppel. At trial, Carolina Chloride initially argued governmental estoppel and promissory estoppel. Nevertheless, Carolina Chloride is barred on appeal from asserting governmental estoppel since it subsequently expressly waived this argument during trial. Additionally, Carolina Chloride waives promissory estoppel having failed to argue this issue in its initial appellate brief. While Carolina Chloride extensively briefs governmental estoppel and why the issues of reliance and reasonableness are questions best resolved by a jury, it specifically failed to address promissory estoppel as an issue on appeal. As such, neither of these issues are preserved for our review.

Accordingly, we affirm the trial court's decision directing a verdict as to gross negligence and inverse condemnation and reverse the trial court's decision directing a verdict in favor of County on Carolina Chloride's negligence claim and remand this negligence claim for trial.^[5] The trial court's decision is

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

SHORT and THOMAS, JJ., concur.

[1] Carolina Chloride's realtor could not recall who told him of the property's M-2 zoning.

[2] Prior to oral arguments, County filed a motion with this Court to strike materials Carolina Chloride designated for inclusion in the record on appeal, including the depositions of Terry Brown, Carl Gosline, and Geonard Price. This Court denied the motion stating County was entitled to argue in its appellate brief whether the contested items should be considered on appeal.

[3] While Carolina Chloride also references Rule 801(d)(2), SCRE in its brief on appeal, this argument was not made to the trial court and is not preserved for our review. See Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review).

[4] Carolina Chloride supplemented the record pursuant to Rule 208(b)(7), SCACR, requesting the Court consider the Quail Hill decision.

[5] We note the dissent in Quail Hill focused on the fact the appellant therein had not dealt with the employee duly authorized to deal with zoning, i.e. the Zoning Administrator. Here, the facts are different. Carolina Chloride was interacting with the Zoning Administrator or a duly authorized employee throughout the time period involved. We also note, unlike Quail Hill, this decision does not reach the governmental estoppel argument because Carolina Chloride expressly waived the issue at trial.

Form 4 RECEIVED OCT 17 2008

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2007CP4003365

Margaret Mims

vs.

Babcock Center Inc

Plaintiff

Defendant

HECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other:
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☐ See attached order;

☒ Statement of Judgment by the Court:

Continued one of the parties attorneys is before the SC court and appeals this afternoon.

Dated at Columbia, South Carolina, this 16 day of October, 2008.

[Signature]
PRESIDING JUDGE

This judgment was entered on the 16th day of October, 2008, and a copy mailed first class this 16th day of October, 2008, to attorneys of record or to parties (when appearing pro se) as follows:

Patricia Logan Harrison

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

/s/ BARBARA A. SCOTT

Clerk of Court

SCRCP APP-24/FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF RICHLAND
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2007CP4003365

Margaret Mims

vs.

Babcock Center Inc

Plaintiff

Defendant

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
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- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other:
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
- ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- ☐ Other: _____

RICHLAND COUNTY
 FILED
 2009 MAR 12 AM 9:03
 JEANETTE W. MCBRIDE
 C.C.P. & C.S.

☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☐ See attached order;☐ Statement of Judgment by the Court:

Plaintiff's Motion for continuance granted

Dated at Columbia, South Carolina, this 10 day of March, 2009.

[Signature]
 PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 2009, and a copy mailed first class this 13th day of March, 2009, to attorneys of record or to parties (when appearing pro se) as follows:

 Patricia Logan Harrison

ATTORNEY(S) FOR THE PLAINTIFF(S)

 Kenneth P. Woodington
 Joel W Collins Jr
 Christian Stegmaier

ATTORNEY(S) FOR THE DEFENDANT(S)

[Signature]
 Clerk of Court

STATE OF SOUTH CAROLINA

COUNTY OF Richland

Edward Mims

Plaintiff(s)

vs.

Sabcock Center, Judy Johnson,
SCIDSU Kathilacy Defendant(s)

(Please Print) Stanley Butkus

Submitted By: Patricia L. Harrison

Address: 611 Holly Street

Columbia, SC 29205

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2007 - CP - 400 - 3365

CORRESPONDENCE

SC Bar #: 11309

Telephone #: 803 256 2017

Fax #: 803 256 2210

Other:

E-mail: plh.colaco@att.net

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

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

☒ JURY TRIAL demanded in complaint.

☐ NON-JURY TRIAL demanded in complaint.

☐ This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.

☐ This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.

☐ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

Contracts

- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199)

Torts - Professional Malpractice

- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)
- ☐ Other (299)

Torts - Personal Injury

- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☒ Personal Injury (350), ADA
- ☒ Other (399)

Real Property

- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

Inmate Petitions

- ☐ PCR (500)
- ☐ Sexual Predator (510)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Judgments/Settlements

- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Other (799)

Administrative Law/Relief

- ☐ Reinstate Driver's License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture (840)
- ☐ Other (899)

Appeals

- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Administrative Law Judge (980)
- ☐ Public Service Commission (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other

- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Other (699)

Submitting Party Signature: [Signature]

Date: May 7, 2008

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

FOR MANDATED ADR COUNTIES ONLY

Florence, Horry, Lexington, Richland, Greenville**, and Anderson**

** Contact Respective County Clerk of Court for modified ADR Program Rules

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral within 210 days of filing of this action, and the Plaintiff shall file a "Stipulation of Neutral Selection" on or before the 224th day after the filing of the action. If the parties cannot agree upon the selection of the neutral within 210 days, the Plaintiff shall notify the Court by filing a written "Request for the Appointment of a Neutral" on or before the 224th day after the filing of this action. The Court shall then appoint a neutral from the Court-approved mediator/arbitrator list.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Case are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Cases which are appellate in nature such as appeals or writs of certiorari;
 - c. Post Conviction relief matters;
 - d. Contempt of Court proceedings;
 - e. Forfeiture proceedings brought by the State;
 - f. Cases involving mortgage foreclosures; and
 - g. Cases that have been submitted to mediation with a certified mediator prior to the filing of this action.
4. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference had been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Edward Mims, by and through his
legal guardian, Margaret Mims,)

Petitioner)

v.)

Babcock Center, Inc., Judy Johnson,)
the South Carolina Department of)
Disabilities and Special Needs,)
Kathi Lacy and Stanley Butkus,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2007-CP-400-3365

2008 MAY -7 PM 4:41
BARBARA A. SCOTT
C.C.C. & G.S.

TO: BABCOCK CENTER, INC., JUDY JOHNSON, THE SOUTH CAROLINA
DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS, KATHI LACY AND STANLEY
BUTKUS

SUMMONS

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Amended Complaint upon the subscriber at 611 Holly St., Columbia, South Carolina 29205, within thirty (30) days after the service hereof upon you, exclusive of the day of such service; and if you fail to answer the Amended Complaint within the time aforesaid, a judgment by default will be rendered against you for the relief demanded in the Amended Complaint

By



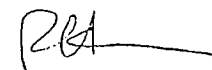
Patricia L. Harrison

611 Holly St.

Columbia, South Carolina 29205

(803)256-2017

Attorney for the Petitioner


May 8 7, 2008

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Edward Mims, by and through his
legal guardian, Margaret Mims,
Plaintiff

vs.

Babcock Center, Inc., Judy Johnson,
the South Carolina Department of
Disabilities and Special Needs,
Kathi Lacy and Stanley Butkus,
Defendants

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

AMENDED COMPLAINT

2007 CP 4003365

(Jury Trial Demanded)

2008 MAY -7 PM 4:41
BARBARA A. SCOTT
C.C.C. & C.S.

The Plaintiff, complaining of the Defendants, alleges as follows:

PARTIES

1. Plaintiff, Edward Mims is a resident of Richland County who has severe mental and physical disabilities, including profound mental retardation, which have existed from birth and are lifelong. Plaintiff is unable to speak, but he makes squawking sounds when he is in distress. He is incontinent and requires close supervision to prevent choking.
2. This complaint is brought on behalf of Edward Mims by Margaret Mims, who is the natural parent and the duly appointed guardian for Edward Mims.
3. The South Carolina Department of Disabilities and Special Needs (SCDDSN) is the state agency responsible for the administration and oversight of the MR/RD Medicaid waiver and ICF/MR Medicaid programs

which provide services to persons who have mental retardation and other disabilities.

4. The Babcock Center, Inc. is a private corporation which receives state, federal and private funds to provide services to persons who have mental retardation and related disabilities.
5. The Babcock Center has provided these services to Plaintiff in Richland County and Lexington County, however, the most substantial part of the alleged acts giving rise to the causes of action herein occurred in Richland County.
6. Individual Defendants Kathi Lacy and Stanley Butkus are employees of the South Carolina Department of Disabilities and Special Needs.
7. Defendant Judy Johnson is the Director of the Babcock Center, Inc.

JURISDICTION AND VENUE

8. Plaintiff brings this action pursuant to South Carolina Code §§ 15-15-10, 15-53-20, 15-77-50, 15-78-10, 43-33-530, 42 U.S.C. §§ 1983, 1985, 1988, the South Carolina Constitution, the United States Constitution, the Americans with Disabilities Act, the Rehabilitation Act and the common law of South Carolina.
9. Venue is in Richland County where the most substantial part of the alleged

acts giving rise to the causes of action occurred.

FACTUAL BACKGROUND

10. Plaintiff was admitted to a Babcock Center residential facility in 1999 when his mother became ill and was temporarily unable to provide for his care.
11. In accepting Plaintiff as a patient and resident, Babcock Center and SCDDSN undertook a duty and responsibility of providing care, treatment and services for Plaintiff and had the duty to exercise reasonable care in supervising Plaintiff and providing appropriate oversight, care and treatment to him.
12. Further, Babcock Center, as the caregiver for a vulnerable adult, had the duty to provide the services necessary to maintain the health and safety of the vulnerable adult.
13. Soon after Plaintiff was admitted to the Babcock Center, he began to be subjected to physical assaults and batteries, which resulted in physical injuries and psychological abuse to Plaintiff.
14. Employees of the Babcock Center, Kathi Lacy, Stanley Butkus and other employees of the SCDDSN were aware of the systemic abuse, neglect and exploitation of clients living in Babcock Center facilities.
15. SCDDSN officials failed to report these incidents of abuse, neglect and

exploitation to the appropriate authorities and they have failed to take necessary action to investigate reports of abuse and neglect.

16. When Plaintiff's mother complained of the treatment Plaintiff was receiving, as a reprisal, Babcock Center employees and employees of SCDDSN accused his mother of neglecting and/or abusing Plaintiff at home.
17. The Defendants have established a pattern and practice of bringing reprisals against parents who complain about services provided by the Babcock Center.
18. As a reprisal for making these reports to law enforcement, the Babcock Center and DDSN terminated Plaintiff's week-end home visits and falsely accused his mother of neglect.
19. Plaintiff was never injured during his week-end visits to his home, but he experienced repeated injuries while living in Babcock Center facilities.
20. When Plaintiff's mother reported to the Office of the South Carolina Attorney General that Plaintiff was being assaulted at Clusters, employees of the Babcock Center and SCDDSN caused Plaintiff to be involuntarily committed to the custody of the Department.
21. Defendants threatened Plaintiff's mother that she would not be able to see

her son if she contested the involuntary commitment.

22. Employees of the Babcock Center and SCDDSN falsely informed the Probate Court and the court-appointed guardian ad litem that Plaintiff's mother was neglecting him and that she was unable to care for Plaintiff in her home.
23. Despite these reprisals, Plaintiff's mother persisted in having this crime investigated and a Babcock Center employee confessed to beating Plaintiff.
24. After this conviction, the Babcock Center did not advise Plaintiff's mother that her allegations had been substantiated and DDSN continued to refuse the requests of Plaintiff's mother that he be released back into his mother's custody and control.
25. On or about December 16, 2001, Plaintiff was again beaten at the Babcock Center and his mother attempted to secure his release from the Babcock Center.
26. SCDDSN sent a letter on December 27, 2001 to Plaintiff's mother stating:
"We understand that you wish it were possible for him to live at home again. All of us agree that one single person is not enough people to

provide care for Edward. It is impossible because of his conditions and the fact that several different people have to be awake and around him all the time.”

27. On or about January 24, 2002, Plaintiff was repeatedly beaten at Clusters by another resident with a belt, suffering abrasions and contusions requiring treatment in the emergency room.
28. In 2002, having assumed custody and control of Plaintiff, SCDDSN transferred him to Kensington ICF/MR, a nursing facility which was also operated by the Babcock Center Plaintiff continued to experience unexplained injuries and behavioral signs indicating that he was being abused.
29. On or about July 27, 2004, Plaintiff and his bed were found to be infested with ants and he was treated at the emergency room for “ant bites all over,” however, his mother was not informed that his room at Kensington had become infested with ants.
30. On October 13, 2004, CMS, the Federal Medicaid Agency, cited the Babcock Center for Immediate Jeopardy at Kensington after finding conditions there that threatened the life and safety of clients residing there.
31. At that time, CMS cited Babcock Center for posing a threat to the health

and safety of clients living at Kensington due to inadequate training, understaffing, failure to conduct thorough investigations and failure to take appropriate actions to assure client protections.

32. During the last year that Plaintiff was at Kensington, the facility received additional Immediate Jeopardy citations for violation of health and safety standards which placed Plaintiff and other residents at risk of serious harm.
33. According to SCDDSN, during fiscal year 2004, the rate of substantiated cases of abuse, neglect and exploitation at the Babcock Center was four times the state average.
34. During this time, CMS and the South Carolina Department of Health and Human Services closed Clusters, the facility where Plaintiff had been forced to live during the first years of his involuntary confinement, for violation of health and safety standards.
35. Plaintiff continued to be subjected to neglect and unsubstantiated injuries while at Kensington and at the Babcock Center workshop he attended during the daytime hours.
36. In January of 2005, Carolina Medical Review reported that Babcock Center failed to meet federal standards for participant in the Medicaid program at Kensington and other facilities under its control.

37. Defendants Johnson, Butkus and Lacy and were advised of these violations and deficits and failed to take appropriate action to protect the health and well being of Plaintiff and other residents.
38. On March 8, 2005, the South Carolina Department of Health and Environmental Control (SCDHEC) determined that violations previously cited at Kensington had not been corrected and the facility was decertified on April 29, 2005.
39. On or about May 27, 2005, Plaintiff was found in his room at Kensington with a 4 cm laceration on his penis which was not self inflicted.
40. This injury required six or more stitches to repair and Plaintiff was returned to Kensington, a decertified facility, from the hospital instead of being taken immediately to his mother's home.
41. Defendant Johnson and the Babcock Center failed to make a timely report to law enforcement and the State Ombudsman of this sexual assault.
42. Between the time that SCDDSN assumed responsibility for the involuntary commitment of Plaintiff to the agency's care and custody and the injury which occurred on or about May 27, 2005, no one at the agency monitored the condition of Plaintiff.
43. Upon information and belief, Defendants Lacy and Butkus were informed of

this assault and they failed to make appropriate reports to law enforcement or to thoroughly investigate the incident.

44. On June 6, 7, and 8, 2005, the Babcock Center refused to allow the court-appointed Visitor into Kensington to examine Plaintiff as ordered by the Probate Court.
45. Upon information and belief, Defendant Johnson was aware of the attempts made by the court-appointed Visitor to examine the Plaintiff and she instructed Babcock Center staff not to allow the Visitor into the facility.
46. On June 9, 2007, the Richland County Probate Court issued an emergency order authorizing Plaintiff's mother to take physical custody of Plaintiff.
47. On June 10, 2005, officials at SCDDSN and the Babcock Center refused to allow Plaintiff's mother to remove him from the facility.
48. The Babcock Center and SCDDSN failed to adequately investigate the report that Plaintiff had been sexually assaulted at Kensington.
49. The Babcock Center and SCDDSN and the individual Defendants failed to investigate this and other injuries to Plaintiff and violated their duty of care to protect Plaintiff from harm.
50. After Plaintiff's mother finally succeeded in removing him from Kensington, the Defendants attempted to obstruct the proceedings for the

appointment of a guardian.

51. The individual Defendants entered into a conspiracy to deprive Plaintiff of his civil rights and his right to receive services.
52. As a reprisal, SCDDSN and Defendant Lacy denied Plaintiff's request for adult health care services, requiring Plaintiff to appeal eligibility for these services.
53. During the time Plaintiff was denied these services, the Babcock Center was allowed to retain the funding that was allocated to Plaintiff for these services.
54. Plaintiff's guardian, through her legal representative, repeatedly requested that Plaintiff's Medicaid funding be moved from the Babcock Center but SCDDSN continued to pay the Babcock Center even when services were not being provided by the Babcock Center.
55. SCDDSN has allowed the Babcock Center to pay inadequate rates to respite caregivers, while requiring higher rates of pay to caregivers working in facilities operated by the Babcock Center.
56. SCDDSN allows the Babcock Center to retain funds which are provided for these in-home services when families are unable to locate caregivers due to inadequate payment for services.

57. Upon information and belief, SCDDSN and the Babcock Center failed to pay fica taxes of respite and companion caregivers while paying these taxes for caregivers working at facilities operated by the Babcock Center.
58. Upon information and belief, SCDDSN and the Babcock Center pays in-home caregivers lower wages and requires these caregivers to pay for background checks, driving reports, TB tests and other prerequisites of employment which are paid by the Babcock Center for employees who provide services in more restrictive settings.
59. Upon information and belief, the Babcock Center pays for employees who work in more restrictive settings to attend mandatory training, but does not pay for hours spent in mandatory training of respite and adult companion caregivers.
60. Through these practices, Defendants have administered the MR/RD Medicaid waiver program so as to force individuals who have disabilities into more restrictive residential and congregate day programs in violation of the Americans with Disabilities Act.
61. Defendants have charged Plaintiff for services in excess of the cost of those services.
62. Defendants have received payments for services which failed to meet

established standards or the needs of Plaintiff to receive treatment in the least restrictive setting.

FOR A FIRST CAUSE OF ACTION
VIOLATION OF 42 U.S.C. §§ 1983 and 1988

63. Each and every allegation above, not inconsistent herewith, is realleged in full as if set forth below.
64. Individual Defendants Lacy, Butkus and Johnson, in their individual capacities, acted, as alleged herein, under color of South Carolina and federal statutes, ordinances, regulations, customs or usage.
65. Defendant SCDDSN failed to monitor Plaintiff's condition and treatment needs after involuntarily committing him to the custody of the State.
66. Through their acts, the individual Defendants, in their individual capacities, subjected Plaintiff or caused him to be subjected to deprivation of his rights, privileges or immunities secured by the Constitution and laws of the United States, which include, but are not limited to, the right to liberty and the pursuit of happiness, the right to equal protection of the laws and the right to be secure in one's person and property against unreasonable seizure.
67. Through their acts, the individual Defendants, in their individual capacities violated Plaintiff's rights granted under the Americans with Disabilities Act.

68. The acts of the individual Defendants that deprived Plaintiff of his rights, privileges and immunities secured by the Constitution or the laws of the United States, proximately caused great harm to Plaintiff for which he is entitled to recover damages.
69. In violating Plaintiff's federally-protected rights, individual Defendants Johnson, Butkus and Lacy were motivated by evil motives and intent and showed reckless and callous indifference to the federally protected rights of Plaintiff; therefore the Plaintiff is entitled to recover punitive damages.
70. The Plaintiff is entitled to recover reasonable attorney's fees and expenses of this action in accordance with 42 U.S.C. § 1988.

FOR A SECOND CAUSE OF ACTION
VIOLATION UNDER 42 U.S.C. §§ 1985 and 1988

71. Each and every allegation above, not inconsistent herewith, is realleged in full as if set forth below.
72. Individual Defendants, in their individual capacities, entered into a conspiracy.
73. The purpose of this conspiracy was to deprive, either directly or indirectly, Plaintiff of services in violation of the equal protection of the Constitution or laws of the United States or of equal privileges and immunities under the Constitution or laws of the United States.

74. The individual Defendants' acts in furtherance of this conspiracy injured Plaintiff in his person and deprived him of his rights, privileges or immunities as a citizen of the United States for which the Plaintiff is entitled to recover actual damages.
75. In injuring Plaintiff in his person and in depriving him of his rights, privileges or immunities as a citizen of the United States, the individual Defendants were motivated by evil motives and intent and showed reckless and callous indifference to Plaintiff's federally-protected rights; therefore the Plaintiff is entitled to recover punitive damages.
76. The Plaintiff is entitled to recover the reasonable attorney's fees and expenses of this action in accordance with 42 U.S.C. § 1988.
77. Plaintiff demands a trial by jury.

FOR A THIRD CAUSE OF ACTION
NEGLIGENT SUPERVISION

78. Each and every allegation above, not inconsistent herewith, is realleged in full as if set forth below.
79. The Defendants owed Plaintiff a duty of protecting the health and welfare of Plaintiff.

80. The Defendants, through the acts of individual Defendants and the officers, agents and employees of the agency and corporate Defendants, breached their duty to Plaintiff and were negligent, negligent *per se*, grossly negligent, careless, reckless, wilful and wanton in the following particulars, with each subparagraph sufficient to support the relief sought:
- a. In failing to provide proper supervision to protect Plaintiff from assault, battery and sexual assault;
 - b. In failing to provide supervision to protect Plaintiff from injury;
 - c. In failing to properly monitor Plaintiff's condition and treatment needs after initiating involuntary commitment proceedings;
 - d. In failing to provide adequate staffing needed to assure the health and welfare of Plaintiff and other residents;
 - e. In failing to thoroughly investigate reports of abuse, neglect and exploitation of Plaintiff and other residents at his facility;
 - f. In failing to discharge Plaintiff to the care of his mother;
 - g. In failing to provide services in the least restrictive setting;
 - h. In obstructing Plaintiff's discharge from the Babcock Center;
 - i. In failing to report incidents which a reasonable person would suspect might have resulted from abuse or neglect;

- j. In obstructing the attempts of Plaintiff's guardian to establish the guardianship;
 - k. In providing false and misleading information to the Probate Courts in order to prevent his discharge from the Babcock Center and the enforcement of Plaintiff's civil rights.
81. Such negligence, gross negligence, carelessness, recklessness, wilful and wanton conduct on the part of the Defendants proximately caused injury to Plaintiff for which the Plaintiff is entitled to recover actual and punitive damages, attorney fees, expert witness fees, costs and expenses.

FOR A FOURTH CAUSE OF ACTION
VIOLATION OF THE AMERICANS WITH DISABILITIES ACT
AND THE REHABILITATION ACT

82. Each and every allegation above, not inconsistent herewith, is realleged in full as if set forth below.
83. Defendants Johnson, Lacy and Butkus and SCDDSN have not provided Plaintiff with needed services in the most integrated setting appropriate to the needs of Plaintiff and have thereby violated the Rehabilitation Act and Americans with Disabilities Act.
84. Defendant DDSN has operated its programs in such a way as to prevent Plaintiff and other disabled persons from remaining in their homes by

failing to provide payment to caregivers of home-based services which is commensurate with funding provided for institutional services.

85. Defendants' official practices have caused Plaintiff to be unnecessarily segregated and at risk of returning to an institution operated by the Defendants where Plaintiff has suffered serious harm and threats of harm.
86. Defendants SCDDSN, the Babcock Center, Johnson, Butkus and Lacy have operated these programs so as to keep its institutions and workshops full.
87. Providing needed services to Plaintiff would not fundamentally alter the nature of the services, programs or activities of the State.
88. These violations of federal law are subject to repetition yet they have evaded review.
89. Plaintiff is entitled to injunctive relief and to recover for damages, including legal fees, expert fees, other litigation and court costs and such other damages, including punitive damages, occasioned by such deprivation of services.

FOR A FIFTH CAUSE OF ACTION
UNJUST ENRICHMENT

90. Each and every allegation above, not inconsistent herewith, is realleged in full as if set forth below.
91. The Defendants have received payment for staffing which was not provided

to Plaintiff.

92. These Defendants received payment for treatment which was not provided in a safe and effective manner.
93. The Defendants, Judy Johnson, the Babcock Center, Inc. and SCDDSN have realized a benefit from the payments made for these services.
94. It would be unjust and inequitable to allow the Defendants Judy Johnson, the Babcock Center, Inc. and SCDDSN to keep the payments which have been charged to Plaintiff.
95. Plaintiff is entitled to recover for damages, including legal fees, expert fees, other litigation and court costs and such other damages, including punitive damages, occasioned by Defendants' unjust enrichment.

DAMAGES

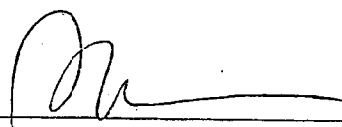
96. As the direct and proximate result of Defendants' acts and omissions set forth above, Plaintiff has experienced conscious pain and suffering and severe emotional distress.
97. Plaintiff has been deprived of needed services and has been charged with the costs of services which have not been provided, have been inappropriately and negligently provided or have been overcharged.
98. Plaintiff has been deprived of services in the least restrictive environment.

99. Plaintiff has experienced a violation of his civil, constitutional and statutory rights and is entitled to attorney fees, costs, expenses.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays unto the Court for the following relief:

100. Actual damages in an appropriate amount.
101. Punitive damages in an appropriate amount.
102. An order requiring Defendants to provide services in the least restrictive environment appropriate to the needs of the Plaintiff.
103. An order prohibiting the State from charging Plaintiff for services.
104. Attorney fees, expert witness fees, costs and expenses.
105. Such other and further relief as the Court deems just and proper.

BY: 

Patricia L. Harrison
S.C. Bar No. 11309
Attorney for Plaintiff
611 Holly Street
Columbia, South Carolina 29205
(803) 256 2017

May 7, 2008

Attorney for Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Edward Mims, by and through his legal
guardian, Margaret Mims,
Plaintiff

vs.

Babcock Center, Inc., Judy Johnson, the
South Carolina Department of Disabilities
and Special Needs, Kathi Lacy and Stan
Butkus,
Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 07-CP-40-3365

AFFIDAVIT OF MARGARET MIMS

Now comes Margaret Mims who states:

1. I am the mother and legal guardian of Edward Mims.
2. I placed Edward in the Babcock Center in a facility known as "Clusters" when I became ill in 1999.
3. Exhibit 1 contains a true and accurate chronology of incidents which occurred while Edward was in the custody of the South Carolina Department of Disabilities and Special Needs and was living at the Babcock Center.
4. In July and August of 2000, Edward was taken to the emergency room twice due to nausea and vomiting. Exhibit 1.
5. On or about August 13, 2000, Edward was beaten by Babcock Center employee, Carl Anthony. Exhibit 1.
6. I was not informed when Edward was beaten by Carl Anthony or when Babcock Center employees filed reports describing Edward being assaulted by Mr. Anthony. Exhibit 2.
7. The State Ombudsman investigated and substantiated that this assault occurred and that proper supervision was not being provided to Edward at the Babcock Center. Exhibit 3.
8. I complained about Edward being assaulted at the Babcock Center and I wrote to the Department of Disabilities and Special Needs asking for Edward to be released in 2001. Exhibit 4.

9. When I tried to remove Edward and reported that he was being beaten, the South Carolina Department of Disabilities and Special Needs and the Babcock Center joined together to prevent Edward from being discharged from Clusters by filing a petition to have Edward involuntarily committed to their custody. Exhibit 5.
10. The Babcock Center terminated my weekend visits with Edward and the South Carolina Department of Disabilities and Special Needs filed a petition to involuntarily commit him to the custody of the Department.
11. The South Carolina Department of Disabilities and Special Needs psychologist who was sent to interview Edward reported that he was "nonverbal and assumed a fetal position." Edward did not respond to the psychologist who found that his mental age was that of a person who is less than two years old. Exhibit 6.
12. If this psychologist had reviewed Edward's records, she would have seen the emergency room visits for unexplained injuries and the employee records reporting that Edward was beaten by Carl Anthony.
13. Employees of the Department of Disabilities and Special Needs told lies about me to the Probate Judge at the 2001 hearing.
14. My lawyer agreed to the petition to commit Edward because people from the Department of Disabilities and Special Needs and the Babcock Center said that if I did not agree to their petition, they would terminate my weekend visitation with Edward. Exhibit 7.
15. After Edward was committed to the Department, he continued to come home with bruises and other injuries from Clusters.
16. I asked for them to do a body check so that I would not be blamed for these injuries.
17. Carl Anthony was arrested more than a year after he assaulted my son, only after I contacted the South Carolina Attorney General's Office and they obtained an arrest warrant on October 4, 2001 and Carl Anthony pled guilty to assaulting my son. Exhibit 2-A.
18. Edward continued to be beaten at Clusters and I wrote to the South Carolina Attorney General in November of 2001 begging for my son to be returned home to live with me. Exhibit 8 and 9.
19. The Attorney General's Office told me that they do not have any authority over the Babcock Center. Exhibit 9.

20. Lois Park Mole of the South Carolina Department of Disabilities and Special Needs wrote me a letter saying that Edward has "profound mental retardation, cerebral palsy and several other severe and complex medical conditions." Exhibit 10.
21. She said that Edward's condition was so severe that no one person could provide for his care. Exhibit 10.
22. Edward is not able to communicate using words and his mental age is like that of an infant. Exhibit 11.
23. Edward makes squawking sounds if he is sick or hurts, like when he gets an ear infection.
24. Edward was repeatedly injured while he was living at the Babcock Center. Exhibit 12.
25. Many of the times when he was injured or taken to the hospital, Babcock Center staff did not tell me.
26. On February 28, 2003, the Babcock Center complained to investigators that Edward's human rights were being violated because I requested body audits before he went home for weekend visits and upon his return. Exhibit 13.
27. In November of 2003, CMS, the federal Medicaid agency issued a finding of Immediate Jeopardy due to the Babcock Center's failure to protect clients at Clusters and the facility was closed.. (By this time, Edward had been involuntarily moved to Kensington, which was also operated by the Babcock Center.) Exhibit 14.
28. On July 27, 2004, Edward was taken to the emergency room with ant bites all over his body after his bed was found to be infested with ants. Exhibit 1.
29. Edward's room mate choked to death at Kensington in September of 2004 and federal investigators declared Immediate Jeopardy because they found that Kensington was under staffed, staff was not properly trained and that his death was not properly investigated. Exhibit 15.
30. In November of 2004, investigators at Kensington reported violations of Life Safety Code Standards because the facility did not have fire doors, the governing body was not exercising its authority over general policy, budget and operating direction over the facility and the facility was in a state of disrepair. Exhibit 16.
31. In January of 2005, Carolina Medical Review, in an investigation contracted by the South Carolina Department of Health and Human Services, found that the Babcock Center ICF/MR residences did not comply with federal Medicaid standards. Exhibit 17.

32. In March of 2005, a follow up survey found that the governing body did not exercise its authority over general policy, budget and operating direction over the facility and that the facility was in still in a state of disrepair. Exhibit 18.
33. Because the Babcock Center continued to violate Medicaid health and safety regulations, Kensington lost its Medicaid certification on April 30, 2005. Exhibit 19.
34. On May 3, 2005, Dr. Johnson sent a letter informing parents that the South Carolina Department of Health and Environmental Control had terminated its Medicaid certification and informed parents that "We have been directed to begin planning for relocating the residents." Exhibit 20.
35. On or about May 27, 2005, Edward was found to have a 4 cm "gaping" laceration on his penis which was unexplained, but determined not to be self-inflicted and I reported this injury to the police because the Babcock Center had failed to report this sexual assault of my son. Exhibits 12 and 21.
36. I requested an emergency order from the Richland County Probate Court because the Babcock Center would not release Edward from Kensington.
37. The Probate Court appointed Dr. Tan Platt, who was the medical director of the Babcock Center, and Lennie Mullis, an approved provider of DDSN psychological services, to examine Edward. Exhibit 22.
38. Dr. Platt reported that Edward has profound mental retardation due to mental deficiency. Exhibit 23.
39. In his Examiner's Report to the Court dated February 17, 2005, Dr. Platt stated that Edward is "incompetent" and that he is unable to care for his personal hygiene, to prepare meals, to manage funds, to pay bills, to live independently or to take medications unsupervised. Exhibit 23.
40. Lennie Mullis attempted to examine Edward Mims at Kensington on June 6, 7 and 8, 2005, however, despite her court appointment, Dr. Judy Johnson and her staff refused to allow Examiner Mullis to have access to the facility to examine Edward. Exhibit 24.
41. Mary Katherine Bagnal was appointed by the Court as a Visitor. She reported on June 6, 2005 that Edward "does not have the receptive language skills to understand" the question of whether he needs help caring for himself or other questions she asked as a court appointed Visitor. Exhibit 25.
42. I obtained an order from the Richland County Probate Court authorizing me to remove Edward from Kensington on June 14, 2005. Exhibit 26.

43. After obtaining an order authorizing me to remove Edward from the Babcock Center facility, Babcock Center officials and the South Carolina Department of Disabilities and Special Needs attempted to prevent me from removing Edward from Kensington. Exhibit 27.
44. After obtaining the assistance of the Columbia City Police Department on June 10, 2005, to enforce the Court's order, I was finally able to secure Edward's release from the Babcock Center and take him home.
45. The attorney for the South Carolina Department of Disabilities and Special Needs appeared at the Probate Court and filed objections to Edward's release and to my being appointed as Edward's guardian. Exhibit 28.
46. Although the Department of Disabilities and Special Needs was not a party in the guardianship proceeding, its attorney contacted Edward's guardian ad litem in an attempt to prevent me from being appointed as his guardian. The attorney for DDSN sat at counsel table with my daughter, who was an employee of the Babcock Center and who opposed my appointment as guardian for Edward. Exhibit 29.
47. On the request of the Guardian ad Litem, the Probate Court judge removed this attorney from the court room, requiring him to wait in the hallway during the proceeding and I was appointed as Edward's guardian. Exhibit 30.
48. Edward has lived at home with me full time since 2005 and has not been seriously injured since he was released from the Babcock Center.
49. As a reprisal, Dr. Kathi Lacy and the South Carolina Department of Disabilities and Special Needs determined that Edward did not qualify for adult day nursing services in an attempt to force me to send him back to the Babcock Center.
50. The Babcock Center and DDSN have made false accusations against me and against Edward's caregiver and I have been fearful that his services will again be terminated in attempts to force me to return him to the Babcock Center.
51. Edward has profound mental retardation and is not capable of understanding these proceedings or of enforcing his legal rights. Exhibit 30.
52. Like a lot of other parents, I have been fearful of reprisals and have experienced reprisals when I have attempted to enforce the rights of my son, Edward Mims.
53. I am always afraid of what Judy Johnson and the officials at the Babcock Center will do to me and to Edward to get back at me for getting Edward out of an abusive situation and

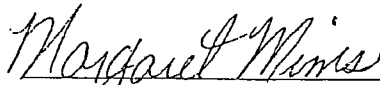
reporting them to law enforcement and other regulatory agencies.

54. Other families and employees have experienced similar reprisals for reporting abuse and have reported these fears to me and to legislators: Exhibit 32.
55. The Governor has removed a majority of DDSN Commissioners and the director of the South Carolina Department of Disabilities and Special Needs recently resigned. Exhibit 32.

FURTHER AFFIANT SAYETH NOT.

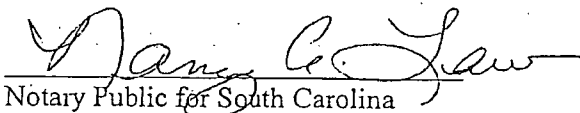
VERIFICATION

Personally appeared before me Margaret Mims on March 6, 2009 who being duly sworn says that she is the Affiant named herein and that she has read the foregoing Affidavit, the allegations herein are true to the best of her knowledge and that she believes these statements to be true.



Margaret Mims, Guardian for Edward Mims

SWORN TO BEFORE ME THIS
6th Day of March, 2009



Nancy C. Law
Notary Public for South Carolina

My Commission Expires: 1-03-2014

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Mims Depo
6.23.09

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EXHIBIT 1

Edward Mims Chronology

September 20, 2005

October 5, 1999 Edward was admitted to Babcock Center when his mother was hospitalized in 1999. His weight upon admission was 109 pounds. BC 4502. (Babcock Center records received from Babcock Center are identified as "BC" by page number are contained in Exhibit 2.) According to Edward's Pre-Admission Report: "To ensure that Edward does not rampage objects in his mouth, he also wonder at night and sleeps very little this will warrant one-one accountability for Edward." BC 4502 to 4511 and 424 to 425.

(Note that Edward was a "permanent outlier" and SCDDSN provided the Babcock Center funding for one-on-one supervision. Exhibit 3. In addition to E Band funding of approximately \$65,000.00 per year, SCDDSN paid the Babcock Center outlier funding of \$27,254.00 per year until 2004.)

November 6, 1999 "Edward has a few bruises and scratch marks on his neck. Second shift did not make us aware of this, but it is in the log when and how it happened." BC 894. (No other record of this injury was contained in the records provided to us by the Babcock Center.)

November 20, 1999 "I observed a bruise on his right arm." BC 2355.

November 21, 1999 Accident/Injury report: "I, Dustin E. Beatty, was informed that there is a bruise on his right arm." BC 2350. "I noticed a couple of scratch marks on the right side of his neck." BC 2354 and 2356.

Dec. 7-8, 1999 Edward was hit in the face with openhanded slap by another resident and treated at emergency room. Exhibit 4. (ER and physicians' records are contained in Exhibit 4 and arranged chronologically).

March 10, 2000 "Edward were laying on the bean bag with his right hand and Morgan didn't mean to run over his finger and his 3 finger on his right hand were bruise. Small skin tear to 4th r digit." BC 900.

April 14, 2000 Body audit reports "old marks on his knees." BC 1804.

May 5, 2000 "Chin under lower lip sm scratch, slight redness noted. Left shoulder sm

approx ½ cm abraded area, red. Old bruising noted both knees, rt. Hip 2 cm old bruised areas and right side mid back. No areas of concern." BC 2363.

May 26, 2000 Body audit reports "old mark on knee, old mark on back." BC 1803.

June 9, 2000 Body audit reports "old bruise on his back" and "old bruise on his left knee." BC 1806.

June 16, 2000 Body audit reports "old marks on both knees, old bruise on his back and mark on his right hip old" BC 1807.

June 23, 2000 Body audit reports "old bruise on his back and old marks on Edward knees" BC 1808.

July 4, 2000 "A bruise on the back of the right shoulder. Abrasion - rt. Shoulder." BC 2372.

July 9, 2000 Edward was served tomato juice, "0 ill effects noted." BC 3199. (Edward's chart notes allergy to tomato products.)

July 11, 2000 Nurses notes indicate a "discolored area noted lower lip. Lower lip ..deep purple bruise." BC 3199. (Bruise on lip again noted on July 16, 2000.)

July 18, 2000 ER for vomiting and abdominal pain. Taken to Lexington Urgent Care in morning and Lexington Medical Center ER in evening. Exhibit 4. Although not noted in ER records or earlier Nurses Notes, July 18 Nurses Notes refer to "several old bruises noted to left outer aspect of upper arm brownish/yellowish in color, right upper back near shoulder blade right lower back and right side of hip." BC 3199 and 3211.

July 22, 2000 Taken to Richland ER for evaluation of vomiting. IV to rehydrate. Exhibit 4 and BC 3197.

July 23, 2000 ER at Lexington Medical Center for evaluation of vomiting. Exhibit 4.

July 21-28, 2000 Nurses notes indicate that Edward sticks his hand down his throat causing him to vomit. BC 3194, 3195 and 3197.

August 4, 2000 (Late entry to Nurses Notes reported on August 7.) "Staff reported red area left shoulder collar bone, she thinks it was caused by shoulder strap in van." BC 3192.

August 6, 2000 Nurses notes state that staff reported two scrapes on back and abrasion on right knee. BC 3192. See also 2363.

August 8, 2000 ER at Palmetto Richland for nausea and vomiting. Exhibit 4.

August 11, 2000 Nurses notes record dime size are of pink tissue on right knee. BC 3191. "Sm scar noted in cocccy area pink...red area r side (flank) old brownish area to lower back area." BC 956.

August 13, 2000 Edward was beaten by Babcock Center employee, Carl Anthony. No report was made to law enforcement or to Edward's mother. Edward's mother continued to insist that he is being beaten. The Babcock Center continued to deny allegations. Exhibit 5. Nurses notes state that "abrasions on both of client's knees healing ...as are old areas on his back." BC 3191 and 3356.

August 14, 2000 Nurses notes state that client was found to have "bruised red, right eye lid and under right eye ear, scratches under his neck, rt and left side and on his back" **Weight 81 pounds**. Edward is seen by Babcock Center Medical Director, Dr. Tan Platt. BC 3191, 3356, 943 and 945. Splinter found in bottom of foot. BC 944.

August 15, 2000 Nurses notes state "attempt to eval scratched areas on torso but client started gagging and almost vomited"... "Rt eyelid remains dark red in color...Scratches on neck, sides remain red." BC 3201.

August 20, 2000 Nurses Notes indicate "bruise around right eye and scratches on neck, right and left sides of torso and on back. All areas healing." BC 3201.

August 27, 2000 "Edward had a scrape on his right knee that looked to be old. Edward had a bruise on his back right side which looked to be old." BC 2367.

August 29, 2000 Palmetto Richland ER for nausea and vomiting. Exhibit 4.

September 4, 2000 "We went to Edward Mims mother house to get him and it took 6 times for Angie to blow the horn and then I Shirlene Knightner got out of the van and went to the door. And Edward Mother saided Edward was not going anywhere and then she let Edward walk to the van got on the van and Mrs. Mims saided she don't want him to go back to that place any then she ask Edward do he want to go back and then she unlock the seat belt and got Edward off the van and she saided she were going to keep him home..." BC 2368.

September 13, 2000 Carl Anthony (Babcock Center employee who later pled guilty to having beaten Edward on August 13, 2000) was terminated. (Note the injuries which appeared on Edward's body on September 14, 2000, was he again beaten by Anthony? No explanation was provided of this new injuries.) No notice of the beating or the termination was provided to Mrs. Mims. Exhibit 5.

September 14, 2000 "bruises and scratches noted over body...has not been scratching himself. Multiple purple elongated lesion bilateral chest wall, neck, posterior ear, right eye lids and wrist and few scratches also on chest wall." BC 3356. Log maintained by Edward's one-on-one caregiver states "Edward has scratches and bruises wrote it up in accident/injury form also nurse looked at it when she did am meds."

October 13, 2000 "Old bruise on back, right upper thigh old bruise on knees." BC 965.

October 24, 2000 Edward is on one-on-one accountability. BC 3220. Report states: **"Overall, Edward's health has been essentially stable throughout the year."** No mention was made in this report of the loss of 28 pounds, repeated hospitalizations for vomiting or the beating by a Babcock Center employee, beatings by other resident or unexplained injuries.

December 2, 2000 X ray at Lexington ER for swelling of right hand. Exhibit 4.

January 14, 2001 "Scratched by another client 1/14." BC 1654.

January 15, 2001 "Take to LMC ER for eval (r) eye." BC 2613.

January 16, 2001 "Bruise on the inside of Edward right thigh." BC 885 and 1654.

January 27, 2001 Edward's mother reported scratches on Edward's scalp. "Six linear scratches noted over r temporal area of skull, 14 on the r side of the crown, 4 on the l temporal, 1 over the r ear and 1 at inner ____ of r eye." BC 1654.

March 1, 2001 Nurses note indicate a "blood clot noted on right side nose @ eye area" BC 3189.

March 4, 2001 Nurses notes record "blood clot noted below r eye." BC 3189.

March 8, 2001 Nurses notes indicate "scratch right upper leg approx 3" long, thin". BC 3189.

March 10, 2001 Nurses note refer to scratch on right leg. BC 3189.

March 19, 2001	Nurses notes indicated that staff discovered "scratch, bleeding left side of penis with bruising." Babcock Center injury report states that Edward had "Bruised (?) and open slit (scratch?) Left side penis." BC 3274.
March 20, 2001	Nurses notes state that "wound on left side penis remains bruised." BC 3190.
March 21, 2001	Nurses notes indicate "wound left side penis, area remains bruised" BC 3190.
March 22, 2001	Nurses notes state "wound left side penis bruising open areas healed." BC 3190.
March 23, 2001	Nurses notes refer to bruise on penis as "reddish brown in color." Scratch mark on thigh (reported March 10) is noted. BC 3190.
March 23, 2001	Nurses notes indicate that bruising remains on penis. BC 3190.
March 25, 2001	Edward was found to have "two small red, flat bumps on scalp above r ear and ...old red mark on r flank. White blistered area on l forearm. Dark area from old scratch on l side of penis. 3" light scratch on r thigh. Black line in nail bed of r gt toe. Questionable whitish area just to r of center of nape of neck." BC 923.
March 27, 2001	Nurses notes indicate that Edward was scratched under right eye and beside nose by another client. BC 3190 and 3333.
April 1, 2001	"Scratched under r eye by another client." BC 3190.
April 16, 2001	SCDDSN filed Petition for Judicial Admission informing the court that "Edward is fragile and carries diagnosis of cerebral palsy, seizures, hypertension, esophagitis/erosion disease. His mother is in poor health and is unable to care for him since she has limited means and resources." Edward's visits home on weekends were terminated. BC 3238. Edward had been spending most weekends at the home of his mother with <u>no</u> reported injuries. Edward's home visits were terminated. No mention was made to the court of the injury to Edward's penis or the beating by Carl Anthony.
April 18, 2001	"laceration to top of head ...dried blood noted to ___ also l side several dark red areas noted." BC 1656
April 19, 2001	"wound to top of head ...some bruising noted." BC 1656.

May 10, 2001

Letter from SCDDSN psychologist states:

"Today I made an informal assessment by behavioral observation of Edward James Mims at the Lexington Clusters ICF/MR. I also reviewed his working chart as well as interviewed his QMRP, Mr. Kevin Wise. Mr. Mims is a 29 year old Caucasian gentleman who carries diagnoses of Profound Mental Retardation, cerebral palsy, hypertension, a seizure disorder, esophagitis/erosion disease, pica, and, additionally, he is self-abusive. Because he has only one kidney, his water intake must be monitored to prevent toxicity. He is currently on a number of medications which require close monitoring as well...He is nonverbal and assumed a fetal position during my interview with him. All attempts to obtain any response from him were unsuccessful"

"Because of Mr. Mims' significant medical problems, self-injurious behavior, and his very limited ability to care for himself, it would not be in the best interest of Mr. Mims for him to be left unattended. Indeed, he is on one-on-one care at Clusters. According to staff report, Mr. Mims has made some progress since he was admitted in 1999. That is, he is now on a toileting schedule with assistance. Mr. Mims was cleanly dressed with good hygiene when I saw him today and he appeared to be well cared for.

"It is my opinion that Mr. Mims continues to need physical care and habilitation for services such as those provided by SCDDSN. Accordingly, it is recommended that he remain in a facility where such service needs can be assured." Exhibit 5.

May 26, 2001

"Staff reported client had scratched self under r eye. Small amount of bruising noted." BC 1657.

June 26, 2001

Body audit form reports "purpleness on elbows." BC 3829 Edward's mother, Margaret Mims, attempted to remove Edward from placement. BC 3218. A hearing was held on SCDDSN's Petition for involuntary commitment. SCDDSN argued that Edward was unsafe at home and should be required to remain at the Babcock Center.

July 3, 2001

"Edward has old bruise on his upper arm." BC 3864. Richland County Probate Court issued order judicially admitting Edward to SCDDSN. Exhibit 6.

July 8, 2001 "Edward has redness on his neck. Still has redness around." "Edward has the same marks redness on his neck. Only redness on neck, no other marks." BC 3828.

July 12, 2001 Body audit reports mark on left upper arm and old marks on back. BC 3863.

July 15, 2001 Red marks on neck. BC 3864.

July 16, 2001 "Client was scratched by another client. R side of nasal had a small scratched 1/4 inch - sm amt of blood oozing" BC 1660.

July 17, 2001 Body audit reports red bruise on back. BC 3837.

July 19, 2001 Body audit form states "Mark on side of nose mark on his back." BC 3831

August 19, 2001 Body audit form records "yellowish color on left side of breast and right." BC 3571.

August 21, 2001 "yellow spots" around both breast area. Upon eval old sm bruised areas noted." BC 1661.

August 23, 2001 Moved from Clusters House D to House C. BC 1661.

September 3, 2001 Accident report states "Edward slipped while being given a shower." BC 3799 and 1661.

September 4, 2001 Accident report states that Edward fell on floor of shower and "hit his behind." BC 3796 and 1662.

September 17, 2001 Safety Plan of Victim section of "Investigation of Injury" form states that Edward has a mark on left leg where socks are ____ located." Impression is that "Injury is explained. Caused by socks and/or shoes." BC 3798. No photographs taken. Babcock Center was being funded to provide one-on-one accountability at the time.

October 3, 2001 SC Attorney General obtained arrest warrant for arrest of Babcock Center employee which stated that "Carl Anthony did knowingly and willfully strike or hit Edward Mims about the head," Anthony pled guilty. No action had been taken by Babcock Center or SCDDSN to prosecute Anthony. Mrs. Mims persisted in prosecuting case through SC Attorney General's Office. Arrest warrant was not issued for more than a year after

number of medications and requires close monitoring and assistance...All parties agreed that Edward's significant special needs and complex medical conditions required more staffing and supervision than any one person could possibly provide. No one person can do it all to care for Edward." Exhibit 8.

January 6, 2002 "Have a red mark on left side of neck and small red bumps on back. Also red mark on left arm. BC 3784.

January 7, 2002 ""3" long old red scratch noted r side of neck." BC 1664. (Again noted on January 12.)

January 24, 2002 Edward was treated at Lexington Medical Center ER for abrasions and contusions after being beaten with a belt at the Babcock Center by 16 year old resident GA. "To Lex. Med. Ctr for evaluation due to severity of bruises." Babcock Center Medical Director, Dr. Tan Platt is notified. BC 3273. In the next few months, GA beat two other residents with a belt and raped the second victim, a 78 year old resident. Exhibit 9. 27 marks noted over body, areas are red in color, one area on r upper shoulder is purple in color.." BC 1644 and 1665.

January 30, 2002 "he slipped on some water that was left on floor from where another resident was mopping." BC 1665 and 4562.

February 4, 2002 Nursing notes state that Edward "fell" and that the injury was "healing well." BC 3185.

February 8, 2002 Edward injured the back of his head when he "sat in the yellow chair at my table. It collapsed. He hit the floor. He was on his back." BC 4564.

February 27, 2002 Right hand contusion treated at Lexington Urgent Care with "discoloration and bruising on his first and second fingers of his right hand...They are not sure whether he injured it or hit his hand. Exhibit 4. (Note that Edward was on one-on-one accountability at this time.) BC 3275. Nurses notes state that "results are from Edward swinging his hands and hit his hand on the door resulting in the bruise." BC 3185. Babcock Center Medical Director, Dr. Tan Platt notified. BC 3275.

March 2, 2002 Nursing note indicate bruise "possibly from swinging his hand and hitting the door."BC 3186.

March 3, 2002 Nurses notes indicate two long scratches on middle of right side of neck. BC 3792.

beating. Exhibit 5.

- October 2001 In October 2001, Babcock Center management learned of the theft of more than \$10,000.00 of funds of Clusters residents by the house supervisor of Building B. Management did not report the theft to law enforcement and no action was taken to repay the victims. The house supervisor position remained vacant for six months. The facility director of Clusters was moved the week the theft was discovered and the position remained vacant for six months. HHS Limited Scope Audit of the Babcock Center.
- November 2001 SCDDSN internal auditors learned of theft of client funds at the Babcock Center. SCDDSN did not report the theft to law enforcement or the State Ombudsman.
- December 3, 2001 X ray at Lexington Medical Center of Edward's right hand which was discolored and swollen. Exhibit 4.. An "old bruise light yellow in color" was also noted. BC 3184. Nurses note indicates scratch on right side of neck. "Possible cause of scratch r side of neck due to fingernails. Clients nails trimmed at this time. Client noted to sit on hands @ times, possible cause of bruising r middle finger." BC 3188. Babcock Center Medical Director, Dr. Tan Platt notified. BC 3277 **NOTE! See photograph documenting large abrasion on Edward's face which was not mentioned in nurse's notes - caused by fingernails??** BC 1637. Statements from staff dated December 2, 3 and 4 indicate that no one saw any marks on Edward. BC 1638 to 1643. (Edward was supposed to have one-on-one supervision.)
- December 16, 2001 "He apparently was assaulted by another client today at the Babcock Center although this was not witnessed by staff but by one of the clients ...possible corneal abrasion" treated at Lexington Medical Center. BC 3308. Where was Edward's one-on-one supervision? Body audit states "No new mark & bruise on Edward. Red bumps on his top back & right eye is bruise." BC 3778.
- December 19, 2001 Red marks on back and above right eye lid. BC 3234.
- December 21, 2001 Scrape on left hand. BC 3280. "Old blood on his sheet and shirt. Sm dk red scrape noted on l hand." BC 1664 and 4584.
- December 27, 2001 Mrs. Mims again attempted to take Edward out of the Babcock Center. Lois Park Mole of the SCDDSN wrote to her: "I understand that Edward has profound mental retardation, cerebral palsy and several other severe and complex medical conditions. He is medically fragile, takes a

March 10, 2002 Nurses note indicate that scratches on neck remain. BC 3186.

March 20, 2002 Edward was transferred to Kensington ICF/MR.

April 17, 2002. Stan Butkus, State Director of SCDDSN writes to Babcock Center Board of Directors when he cancelled a meeting which had been scheduled to discuss problems at Clusters:

"I have been in contact with Dr. Christian regarding the Babcock Center's status. He reports to me that, in his opinion, **there are no imminent threats to the health and safety of the individuals served.**" Exhibit 10. (Dr. Christian filed the Petition for Edward's involuntary commitment to SCDDSN in April 2001.)

August 29, 2002 Edward scratched himself. BC 1106.

November 24, 2002 Injury to back of leg. BC 1107.

January 8, 2003 Client pushed Edward's head into the coffee table. BC 1104.

January 14, 2003 Mrs. Mims took Edward to Palmetto Richland ER reporting Edward was unable to sleep and was "holding his hands to his eyes." Exhibit 4.

February 28, 2003 Babcock Center complained that body audits requested by Mrs. Mims were a violation of client rights. Exhibit 11.

May 20, 2003 Edward was found at 6:00 a.m. to have a "long red scratch mark extending from the left side of mount tho the side of his cheek. BC 1110.
Impression: "Edward scratch himself while sleeping." Conclusion: "Scratch on Edward face."

July 26, 2003. Palmetto Baptist ER.

August 3, 2003 Client hit Edward on the left side of the head. (Same client who pushed Edward's head into coffee table in January 2003 and pushed Edward into the wall on August 8, 2003.) BC 1109.

August 8, 2003 Client pushed Edward into the wall at the Babcock Center workshop resulting in a "scrap on his left hand." (Same client who pushed Edward's head into coffee table on January 8, 2003 and hit Edward on head on August 3, 2003..) BC 1099.

December 2003 Clusters was closed after Immediate Jeopardy is cited at one building and SCDHEC decertified a second.

July 27, 2004 Edward was taken to doctor with "ant bites all over." According to Babcock Center records "they had a storm around the center and somehow ants managed to get into the building. Some ants were found in Edward's bed..." Exhibit 4. (There is no mention in Edward's Babcock Center records of this injury.)

July 30, 2004 Edward was found to have a cut on his lower back and hair was matted when he arrived home for his weekend visit. Mrs. Mims had not been informed of the injury. It was subsequently determined by the Babcock Center that Edward "slipped out of his chair and scraped his back against the air conditioner." BC 4888.

September 25, 2004 Babcock Center resident, Billy Cothran, choked to death at Kensington. Family was informed by Babcock Center staff that Billy died of a heart attack. Autopsy requested by family found chunks of cheese sandwich in trachea. Like Edward, Billy Cothran was on a mechanically altered diet. Exhibit 12.

October 13, 2004. CMS cited Kensington for Immediate Jeopardy to the health and safety of clients due to inadequate staff training, understaffing, failure to conduct thorough investigations and failure to take appropriate action to ensure client protections. Exhibit 13.

October 28, 2004 Edward was taken to doctor for "complaint of redness around left eye since yesterday morning." Exhibit 4.

November 2, 2004 Doctor noted "Mild bruising (sic) noted around left eyelid." Exhibit 4.

November 8, 2004 Edward determined to need monitoring objective to "take small bites and small sips of liquids." 4733

November 23, 2004 SCDHEC cited Kensington for Violation of Life Safety Code.

January 2005 A monthly review for January documented no progress in the objective of toileting. 4796.

January 19, 2005 SCHHS notified Babcock Center and SCDDSN of review by Carolina Medical Review finding that Babcock Center ICF's did not meet federal Medicaid participation requirements. Exhibit 14.

March 8, 2005

SCDHEC cited Kensington for failure to correct deficiencies.

April 29-2005

Kensington decertified. Exhibit 15.

May 27, 2005

Edward was discovered to have an unexplained 4 cm "gaping laceration" on his penis. He was treated at Lexington Medical Center ER where seven stitches were required to repair the wound. Exhibit 4. The "investigation" reports conducted by Babcock Center and SCDDSN are contained in Exhibit 16. The Babcock internal investigation report states that the date of the incident is "unknown," however, a statement signed by a Babcock Center employee states:

"When getting Edward ready to go home, I took him in his room to get his shoes. After putting his shoes on, I looked him over and found that he had on no underwear. I then removed his shoes and asked him to take off his pants as I walked to get a pair of underwear. When I returned to the room Edward had his pants down and he was sitting in the chair. I then noticed the blood on the chair drop on the floor so I went and got a co-worker." (SCDDSN assessment determined that Edward does not require assistance with dressing.)

The Babcock Center internal investigation contains the following findings:

"At approximately 6:50 pm on May 27, 2005 staff ...was helping Edward Mims, supported person, get ready to go home on pass. He noticed that Edward was not wearing any underwear. According to the staff, Edward had begun undressing earlier for bed but was instructed by the staff to put his pants back on. Edward did not put his underwear back on. Mr. Heatley instructed Edward to take off his pants so that he could put some underwear on and he left the room to get a pair of underwear for him. Edward's underwear and socks are not stored in his room but in a plastic bin in the hall closet. Edward is able to dress himself with verbal prompting. Edward will undress himself when he is ready to go to bed. When Mr. Heatley returned to the room, Edward was sitting in a chair with his pants down around his ankles. Mr. Heatley noticed blood dripping from the chair to the floor."

The Babcock Center nurse:

"checked under Edward's fingernails and did not notice any skin tissue or blood that would indicate that he had scratched himself.

She stated that she and the staff checked the chair that Edward was sitting on and could not find anything that could have caused the injury."

"There were no zippers or clasps on Edward's clothing that could have caused the injury. There was no blood in his pants. The staff also checked the underwear that Edward had been wearing earlier that evening and found no signs of blood. The chair in which Edward was sitting did not have any sharp edges that could have caused the tear."

SCDHEC refused to investigate the injury since the facility had been decertified.

Instead of conducting an independent investigation, the State Ombudsman allowed SCDDSN to conduct the investigation.

Dr. Graeme Johnson, Medical Consultant for SCDDSN issued a report dated June 2, 2004. He interviewed three Babcock Center employees. He did not interview Edward's mother or staff at the Lexington Medical Center. Dr. Johnson's report contains the following findings:

"There is no history of masturbation. No history of excessive bleeding. No history of past injury to genital area. The demeanor of Mr. Mims today and that reported on by staff on the evening of the incident do not make an aggression on his person a likely explanation. The injury appears to have occurred suddenly and caused immediate bleeding...It is possible minor scratching may have caused a small skin break on the penis, that lead to this laceration." (Ignoring the finding of the nurse that there was no skin tissue or blood on Edward's fingernails.)

"He appeared to be in a caring, supportative situation when the laceration occurred and appropriate care and follow-up had been provided...The evidence I have seen, the notes I have reviewed, and interviews I have conducted, lead me to a conclusion that it is unlikely that Edward Mim's laceration was due to abusive or negligent management."

The State Omnibus Protection Act requires providers to report allegations of abuse/neglect/exploitation within twenty-four hours or one working day. The Babcock Center did not report the injury to the Ombudsman until May 31, 2005, four days after the injury. Based on the investigations

conducted by the Babcock Center and SCDDSN, the State Ombudsman issued a finding that abuse/neglect was unsubstantiated.

- June 6,7,8, 2005 Babcock Center refused to allow court-appointed examiner to visit Edward. Exhibit 17.
- June 9, 2005 Probate Court issued emergency order appointing Mrs.Mims as temporary guardian and authorizing her to determine placement. Exhibit 18.
- June 10, 2005 SCDDSN attorney, Jim Hill, instructed Babcock Center not to allow Edward to leave Kensington. Police were called and provided escort for Mrs. Mims to take Edward home from Kensington.
- June 12, 2005 Jim Hill, attorney for SCDDSN, Kathi Lacy, Deputy Director SCDDSN, two Babcock Center attorneys, the Director of Babcock Center residential services and Edward's GAL met with Judge Amy McCulloch on Sunday, June 12, 2005 to discuss SCDDSN's objection to Edward being released from Kensington. No one from SCDDSN had made contact with Edward Mims or had visited the Mims residence since Edward's involuntary admission in 2001.
- June 22, 2005 Richland County Probate Court scheduled a hearing to review Edward's judicial admission to SCDDSN Exhibit 19.
- July 6, 2005 Jim Hill, attorney for SCDDSN challenged Probate Court's authority to release Edward Mims from judicial admission at a meeting in chambers with the Judge who issued the judicial admission order.
- July 11, 2005 SCDDSN "voluntarily" released Edward from judicial admission. Exhibit 20.
- July 29, 2005 Edward's single plan of care, contained in Exhibit 21, prepared by the Richland Lexington Disabilities and Special Needs Board includes the following:

"He must be supervised at all times, as he will wander."

"Edward is allergic to tomato-based foods, nuts, gum and greasy foods. Food needs to be finely chopped. Edward is usually fed by caregivers and at least must be watched and coached constantly while eating due to being a choking hazard."

"He requires supervision at all times due to limited abilities

and impaired judgment, as well as for monitoring of seizures. Seizure medication is received on a daily basis and has been effective in managing this disorder."

"Edward is not aware of safety hazards or dangers in the community and is at risk for exploitation"

"Edward requires assistance with dressing to include zipping and buttoning..."

"Toileting assistance is required and adult diapers are needed due to toileting accidents Edward is toilet trained, however, often will not go to the restroom or ask for assistance when needed. If someone else is using the restroom, he will not knock or wait until vacant. He, instead, will soil his clothing. Edward will not seek out a facility if in an unfamiliar surrounding and will soil his clothing. Caregiver assistance is required for clean up when soiling and wetting occurs. This incontinence occurs despite scheduling and reminders to use the restroom regularly. He is currently being changed an average of 2-3 times daily at Columbia Adult Care. Reminders and monitoring are needed to ensure he wipes adequately after routine use of the toilet."

"Edward's food must be chopped finely for consumption and reminders are needed while eating to use his spoon correctly and take small bites of food. He is at risk of choking, due to having no teeth and tendency to stuff his mouth with food. He is physically fed by staff at the day program and by his mother at home the majority of the time, due to his inability to scoop small amounts of food on his spoon."

"Edward continues to attend Columbia Adult Care and progress is being made. This placement is appropriate and beneficial to Edward."

"Diapers and wipes are being received on a monthly basis."

BABCOCK CENTER CLIENT/VISITOR
ACCIDENT/INJURY REPORT

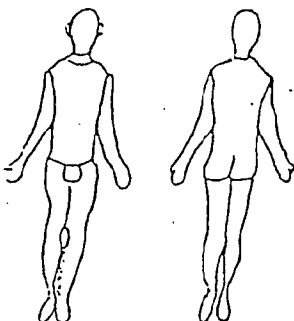
NAME: Last		First	MI	FILE	D.O.B	SEX	FACILITY
Mims		Edward	J.			☒ M ☐ F	Clusters
DATE:	TIME	LOCATION					
8-14-00	<u>am</u> pm	☐ Bathroom ☐ Dining Room ☐ Parking Lot ☐ Shower ☐ Lounge ☐ Walk ☐ Hall ☐ Bed ☐ Workshop ☐ Trip ☐ Pool ☐ Other					

Describe incident in full.

Observed scratches and bruises in am when client got up ~~for~~ get his bath and get dressed for the day.

Nature of injury

Bruise to right eye
Scratches under his neck
Bruise on right and left side
Scratches on his back



Treatment required

Areas washed &
Warm H₂O.

Others Involved (Staff and/or client(s)): Nora B. West

Carl Anthony

Nurse Notified: Jackie Derrick

Time: 7:00 AM

Person Completing Report: Nora B. West

Time: 7:00 AM

Physician Notified? Yes ☐ No ☒

Treatment By Physician Required? Yes ☐ No ☒

Was Hospitalization Necessary? Yes ☐ No ☒

Signature of Nurse: Jackie Derrick LPN

Signature of Physician If Treated: _____

Mims000943

P.P.61

G-414539

STATE OF SOUTH CAROLINA

☐ County/ ☐ Municipality of
Lexington

THE STATE
against

CARL ANTHONY

Address: 117 BIG HICKORY LANE
GASTON, SC 29043

Phone: 803-734-2222 SSN: 251-13-4656

Sex: Male Race: Black Height: 5-10 Weight: 150

DL State: SC DL #:

DOB: 02/03/1969 Agency ORI #: 0000

Prosecuting Agency: 0000

Prosecuting Officer: 0000

Offense: SIMPLE ASSAULT AND BATTERY

Offense Code:

Code/Ordinance Sec. COMMON LAW 1

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of

The accused
to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant CARL ANTHONY
on 08/13/2000

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

William G. Shockley
500 Charlie Rast Rd.
Gastonia, SC 29043
803-734-3616

☐ County/ ☐ Municipality of
Lexington

AFFIDAVIT
INV. DAVID M. ADDISON
CARL ANTHONY

Personally appeared before me the affiant
being duly sworn deposes and says that defendant
did within this county and state on 08/13/2000
State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of) violate the criminal laws of
in the following particulars:
DESCRIPTION OF OFFENSE: SIMPLE ASSAULT AND BATTERY

I further state that there is probable cause to believe that the defendant named above did do
the crime set forth and that probable cause is based on the following facts:

THAT ON OR ABOUT AUGUST 13, 2000, CARL ANTHONY DID IN LEXINGTON
COUNT, COMMIT THE ACT OF ASSAULT AND BATTERY. MORE SPECIFICALLY
CARL ANTHONY DID KNOWINGLY AND WILLFULLY STRIKE OR HIT EDWARD
MIMS ABOUT THE HEAD. AT THE TIME MR. EDWARD MIMS WAS A RESIDE
AT THE BABCOCK CENTER CLUSTERS, IN LEXINGTON, SOUTH CAROLINA.
THE ABOVE FACTS ARE TRUE AND BELIEVABLE BASED UPON STATEMENTS
GIVEN BY THE DEFENDANT, AND WITNESSES THAT PERSONALLY OBSERVED
THE DEF. STRIKE OR HIT MR. MIMS.

Sworn to and subscribed before me
on 08/13/2000

Signature of Affiant (L.S.)
Signature of Issuing Judge (L.S.)

William G. Shockley
STATE OF SOUTH CAROLINA
☐ County/ ☐ Municipality of
Lexington

Signature of Affiant
Affiant's Address ATTORNEY GENERAL OFFICE
1000 ASSEMBLY STREET
COLUMBIA, SC 29211
Affiant's Telephone 803-734-3660

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
It appearing from the above affidavit that there are reasonable grounds to believe
on 08/13/2000 defendant CARL ANTHONY
did violate the criminal laws of the State of South Carolina (or ordinance of) as set forth below:

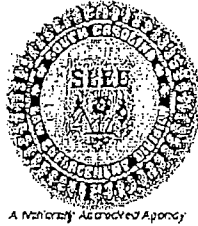
☐ County/ ☐ Municipality of
DESCRIPTION OF OFFENSE: COMMON LAW 1
SIMPLE ASSAULT AND BATTERY

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge (L.S.)
Judge's Address 500 Charlie Rast Rd
Gastonia, SC 29043
Judge's Telephone 803-734-3616
Issuing Court: ☐ Magistrate ☐ Municipal ☒ Circuit

666
ORIGINAL

0218



SLED CATCH
Carolina Access to Criminal Histories

Results

11/1/02
Prison who
injured Edward
Harris

Name Carl Anthony
Date of Birth 1959 02 03
Maiden Name
Gender Male
Transaction 000647295
Date of Check October 30, 2002 at 21:07

ARREST RECORD
S.C. Law Enforcement Division
WWW

This record is based on a search using last first initial, and date of birth. 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-SC01390255 PUR-E
ATN-WEB, CC

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-10/30/2002 TIME-21:07:44

REQ ORI-SCLED0000 S C LAW ENF DIV

SID-SC01390255 FBI-988849TB9

NAME-ANTHONY, CARL

SEX-M RACE-B

HEIGHT-510 WEIGHT-153 EYES-BRO HAIR-BLK SKIN- BORN-SC

FPC- HENRY-

1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAFIS

DATE RECORD ENTERED--10/29/2001

DATE OF LAST UPDATE--07/05/2002

ADDITIONAL IDENTIFIERS

BIRTH

NAME

DATES MARKS

SOC SEC

MISC NUM

02031959

CONTRIBUTOR/SUBJECT

DOA/RCVD CHARGE/DISPOSITION/ETC

ANTHONY, CARL

10/04/2001

SC0320000 LEXINGTON CNTY SO

ATN-980000226926

WARR-G414539

CIT-N/A-MISDEMEANOR

P.P.63

CIT-N/A-MISDEMEANOR
DOC-R84 WARR-G414539

ARREST CHARGE 01-SIMPLE AS
LT AND BATTERY
OFFENSE DATE-10/04/2001

COURT CHARGE 01-SIMPLE ASS
T AND BATTERY
COURT DISP-CONVICTED;30D O
\$225 FINE
COURT DATE-10/18/2001
ATN-980000226926

BASED ON SEARCH OF SCLED CJICS CCH FILE USING SID/SC01390255
THIS IS PROVIDED FOR THE EXPRESS PURPOSE FOR MAKING LICENSING OR
EMPLOYMENT DECISION.

** S C CJICS END OF RECORD **

Credit Card Transaction Number 3213482578ICE890021030210650



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State of South Carolina
Department of Health and Human Services

Mark Sanford
Governor

Robert M. Kerr
Director

July 28, 2003

Ms. Judy Johnson
Executive Director
Babcock Center, Inc.
P.O. Box 3817
Columbia, SC 29230

Dear Ms. Johnson:

Pursuant to authority granted by SC Codes Code of Laws (Supp. 1992) § 43-38-10 et. seq., the State Long Term Care Ombudsman reviewed the Internal Investigations conducted by the Babcock Center on behalf of Mr. Edward James Mims. The investigation also included documentation and resident record review. This investigation was conducted due to an allegation of abuse concerning the individual named above. All other complaints subsequent to this letter will be handled in accordance with the guidelines set forth in the Ombudsman Policies and Procedures manual or through the office of the Regional LTC Ombudsman. The alleged complaints and findings are as follows:

The complainant alleges that Mr. Edward Mims was abused in Lexington Clusters ICF/MR, and the incident was not reported to the Ombudsman. It was also alleged that another resident beat the resident in January 2002, and that incident was not reported to the Ombudsman. The resident who beat Mr. Mims was receiving \$170,000 per year to receive one-on-one supervision, which was not being provided.

Findings:

- Physical abuse as defined in the Omnibus Adult Protection Act was substantiated based on a review of facility records.
- Facility records document that the physical abuse incident occurred on August 13, 2000, and was reported to the Ombudsman Program on August 14, 2000.
- The complaint was reported to law enforcement and the perpetrator pled guilty to simple assault.

Bureau of Senior Services
P. O. Box 8206 Columbia South Carolina 29202-8206
(803) 898-2850 Fax (803) 255-8202

P.P.65

5 July 2

0221

The perpetrator received a 30 day suspended sentence, and was ordered to pay a \$225.00 fine and ordered to not work in the health care field.

- The staff member was terminated from the Babcock Center on September 13, 2000.
- It was substantiated that another resident repeatedly hit the resident with a belt on January 24, 2002.
- It was substantiated that the resident's Behavioral Support Plan was not followed, as staff did not complete the visual accountability as outlined.
- It was documented that the perpetrator was moved to another facility with younger residents and follow-up recommendations were made.

Conclusion:

- It is substantiated that abuse occurred and was handled in accordance with the Omnibus Adult Protection Act (OAPA).
- It is substantiated that resident-to-resident abuse occurred. The OAPA states that physical abuse does not include altercations or acts of assault between vulnerable adults. However, the incident should have been reported to the Ombudsman because of its serious nature. Although the Ombudsman Program does not have the statutory authority to investigate resident-to-resident abuse, it would investigate to determine if adequate supervision was provided. Lack of Supervision was also substantiated based on the above findings.
- It is substantiated that adequate supervision was not provided as required in the resident's Behavior Support Plan.

The Long Term Care Ombudsman concurs with the Babcock Center's internal investigation and recommendations. Therefore, no further investigation is needed.

If you have any questions regarding our review of this case, please contact me at your convenience.

Sincerely,



Ethel L. Corley
Long Term Care Ombudsman

CC: DHEC Certification Division
Ms. Margaret Mims
3301 Rosewood Drive
Columbia, SC 29205

Notice: This is confidential information from the records of the South Carolina Department of Health and Human Services. Our authorization to release this information to you does not imply permission to further disclose this information even within your own organization. Your own confidentiality standards, contractual relationships, and any applicable statutes and regulations should govern release of this information.

4-3-2001

I want to come back home

I want Edward James Mims
to come back to my house

Sincerely,
Margaret Mims

Exhibit P.67
7

TAB B

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE PROBATE COURT

James G. Christian, Ed.D.)
Director, Midlands Center,)
SC Dept. of Disabilities and)
Special Needs)
PETITIONER)

PETITION OF JUDICIAL ADMISSION

IN THE MATTER OF:)

EDWARD JAMES MIMS)
(An alleged mentally retarded)
person)

The undersigned respectfully shows to the Court:

1. That this Petition is filed pursuant to S.C. Code Ann. § 20-450 (Supp. 2000) and that this Court has jurisdiction over this matter in accordance with this statute.

2. That Edward James Mims who is presently found at Babcock Center, Inc., The Clusters, Lexington, South Carolina, is according to the information and belief of the undersigned, mentally retarded and in need of the South Carolina Department of Disabilities and Special Needs services; and because of this condition, should be so adjudged and treated in a facility or program of the South Carolina Department of Disabilities and Special Needs. The reasons for this belief are as follows:

Mr. Mims is 29 years old and profoundly retarded. His health is fragile and carries diagnosis of cerebral palsy, seizures, hypertension, esophagitis/erosion disease. He is self-abusive, non-verbal and has pica-like behavior (eats non-food items). His mother is in poor health and is unable to care for him since she has limited means and resources.

3. That the Petitioner herein has the following relationship with the allegedly mentally retarded person:
custodial/treatment.

4. That attached and incorporated in this Petition is a copy of a certificate of licensed physician or a diagnostic or forensic report from the South Carolina Department Disabilities and

01 APR 16 PM 3:43
FILED
ATY. J. J. J. J. J.
PROBATE COURT
RICHLAND COUNTY, S.C.

Mims003238

Exhibit P.68

Special Needs that the allegedly mentally retarded person is mentally retarded and who may be in need of treatment or care in a facility or program of the South Carolina Department of Disabilities and Special Needs.

5. That below are set out the names and address of those most interested in or closely related to the allegedly mentally retarded person besides the Petitioner:

Name: Margaret Mims

Relationship: Mother

Address: 3301 Rosewood Drive, Columbia, SC 29205

Phone: (803) 252-9962

Name: Diane Theriot

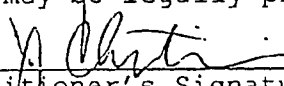
Relationship: Sister

Address: 2231 Atascadero Drive, Columbia, SC 29206

Phone: (803) 782-1790

WHEREFORE, the undersigned Petitioner prays that the Court inquire into the condition of said person and declare him to be mentally retarded and in need of the South Carolina Department of Disabilities and Special Needs services; and order admission for him to the South Carolina Department of Disabilities and Special Needs for care and treatment when appropriate space is available or take such action as may be legally proper.

Dated this 16th day of
April, 2001 at Columbia,
South Carolina.



Petitioner's Signature

Midlands Center, SC Dept. of
Disabilities and Special Needs
Address:
8301 Farrow Road
Columbia, SC 29203
Phone: (803) 935-7414

Mims003239

Stanley J. Butkus, Ph.D.
State Director
Robert W. Barfield
Deputy State Director
Administration
Robert H. Koyle, Ph.D.
Deputy State Director
Services and Supports



RECEIVED

MAY 16 2001

LEGAL SERVICES

COMMISSION:
Kitty S. Mescher
Chairman
Emilie A. Towler
Vice Chairman
Bill G. Alexander
Secretary
William E. Walsh
J. Lewis Stephens
Linda C. Kidd
Lyssa Harvey

3440 Harden Street Ext (29203)
PO Box 4706, Columbia, South Carolina 29240
V/TTY: 803/898-9600, FAX: 803/898-9653
Toll Free: 888/DSN-INFO
Home Page: www.state.sc.us/ddsn/

May 10, 2001

RECEIVED

MAY 15 2001

MIDLANDS REGION
REGIONAL DIRECTOR

James Christian, Ed.D.
Regional Director
Midlands Regional Center
8301 Farrow Road
Columbia, SC 29203

Dear Dr. Christian:

Today I made an informal assessment by behavioral observation of Edward James Mims at the Lexington Clusters ICF/MR. I also reviewed his working chart as well as interviewed his QMRP, Mr. Kevin Wise. Mr. Mims is a 29-year-old Caucasian gentleman who carries diagnoses of Profound Mental Retardation, cerebral palsy, hypertension, a seizure disorder, esophagitis/erosion disease, pica, and, additionally, he is self-abusive. Because he has only one kidney, his water intake must be monitored to prevent toxicity. He is currently on a number of medications which require close monitoring as well.

Mr. Mims was formally evaluated in 1993 using the Bayley Scales of Infant Development and the California Adaptive Behavior Scale. Results of the administration of both instruments resulted in a developmental age of 20 months and an adaptive age equivalent score of 2.08 years with a vocational age equivalence of 1.08 years. My clinical opinion, based upon my interactions with Mr. Mims and also on interview data provided by his QMRP, Mr. Kevin Wise, is that Mr. Mims continues to function in the range of Profound Mental Retardation. He is nonverbal and assumed a fetal position during my interview with him. All attempts to obtain any response from him were unsuccessful.

Because of Mr. Mims' significant medical problems, self-injurious behavior, and his very limited ability to care for himself, it would not be in the best interest of Mr. Mims for him to be left unattended. Indeed, he is on one-on-one care at Clusters. According to staff report, Mr. Mims has made some progress since he was admitted in 1999. That is, he is now on a toileting schedule with assistance. Mr. Mims was cleanly dressed with good hygiene when I saw him today and he appeared to be well cared for.

COASTAL REGION
Regional Office - Phone: 843/832-5562
1501 N. Highway 17, Summerville, SC 29485
Center - Phone: 843/873-5750

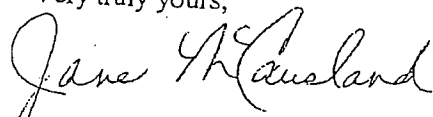
MIDLANDS REGION
Regional Office - Phone: 803/935-7412
8301 Farrow Road, Columbia, SC 29203
Midlands Center - Phone: 803/935-7500

PEE DEE REGION
Regional Office - Phone: 843/664-2601
PO Box 3209, Florence, SC 29502-3209
Center - Phone: 843/664-2600
Center - Phone: 843/332-4104

TAB D

It is my opinion that Mr. Mims continues to need physical care and habilitation for services such as those provided by SCDDSN. Accordingly, it is recommended that he remain in a facility where such service needs can be assured.

Very truly yours,

A handwritten signature in cursive script that reads "Jane McCausland". The signature is written in dark ink and is positioned above the printed name.

Jane McCausland, MS
Psychologist III

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE PROBATE COURT
CASE NO. J0001394:24

AMY T. COLLOCH
PROBATE JUDGE
RICHLAND COUNTY, S.C.

James G. Christian, Ed.D.)
Director, Midlands Region,)
SC Dept. of Disabilities and)
Special Needs)
PETITIONER)

ORDER

IN THE MATTER OF:)
EDWARD JAMES MIMS)
(An alleged mentally retarded)
person)

This matter comes before the Court upon Petition of James C. Christian, Ed.D., Director, Midlands Region, South Carolina Department of Disabilities and Special Needs (SCDDSN) pursuant to S.C. Code Ann. §44-20-450 and 460(B) (Supp. 2000). The Court recognizes that it has jurisdiction in this matter. It appears that all parties were duly notified of this Petition.

A hearing in this matter was held at Midlands Center, Columbia, South Carolina, on June 26, 2001. All parties were duly notified of this hearing and the following persons were present:

Hon. Jacqueline D. Belton	Associate Judge of Probate
Edward J. Mims	Respondent
David E. Belding, Esq.	Attorney for Respondent
James C. Christian, Ed.D.	Petitioner
James R. Hill, Jr., Esq.	Attorney for Petitioner
M. Leigh Flynn, Esq.	Guardian ad Litem
Ms. Margaret Mims	Respondent's Mother
W.D. Morris, Esq.	Attorney for Ms. Mims
Jane McCausland, MS	Psychologist, SCDDSN

Other persons and staff from Babcock Center, Inc., were also present. A diagnostic report by Jane McCausland, MS, from SCDDSN was received into evidence without objection from any party.

With consent of the Court, the parties all agreed to forego actual testimony and to present brief verbal statements for the Court's consideration. It appears from statements by the parties, the diagnostic report and records in this matter that Mr. Mims' mother admitted him to SCDDSN in October, 1999. Mr. Mims suffers from profound mental retardation, has cerebral palsy and several other severe and complex medical conditions. Mr. Mims is medically fragile, takes a number of medications and requires close monitoring and assistance.

Ms. Mims had requested her son be discharged back to her care, which precipitated this Petition. Upon agreement of all the parties, it appears that Ms. Mims will be unable to care for her son in her home. She still wants him to visit in her home. However, concern was expressed that her home needs to be in a safe condition for these visitations. In this regard, Ms. Mims has agreed to allow staff from SCDDSN and/or Babcock Center to enter her home and to advise and assist Ms. Mims in making her home a safer place for her son to visit.

The Guardian ad Litem reported to the Court that she had reviewed Mr. Mims's records, visited with him at Babcock Center and visited with Ms. Mims in her home. She agreed that Mr. Mims was mentally retarded and in need of SCDDSN services. She felt that he could not be safely discharged to his mother's home. She agreed that visitations should occur as long as the home was maintained in a safe condition. She observed that there was a great amount of love in the family and that this should be fostered.

FINDINGS OF FACT and CONCLUSIONS OF LAW

The Court wants to thank all the parties in coming together. It is apparent that all parties have Mr. Mims's best interest in mind with proposing this Consent Order. After reviewing the record in this matter, observing Mr. Mims, and hearing from the parties, I find that Mr. Mims is profoundly mentally retarded and has complex medical needs. Thus, he needs the monitorship and services offered by SCDDSN through the Babcock Center. I also find that all the parties have agreed to these findings and the report of the Guardian ad Litem, and that they wish to enter into this Consent Order.

NOW THEREFORE, IT IS ORDERED that:

1. Because of his mental retardation and special medical needs, Edward James Mims is judicially admitted to the South Carolina Department of Disabilities and Special Needs.
2. To the extent feasible and in keeping with his treatment needs, Edward James Mims shall be allowed to have weekend visits with his mother, provided, that she maintains her home in a safe condition for her son's visitation.
3. Babcock Center and/or SCDDSN staff may visit in Ms. Margaret Mims home prior to her son's visit to advise and/or assist Ms. Mims in making her home safe for her son's visit. Ms. Mims will cooperate with such visits.
4. The parties to this matter have voluntarily agreed to this Order and placed their signatures below indicating their agreement.

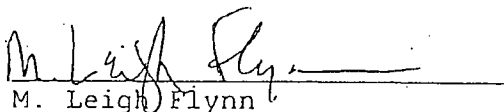
AND IT IS SO ORDERED.

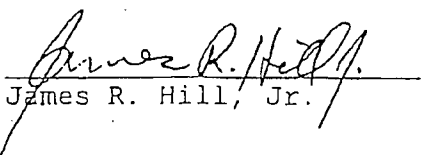
Signed this 3 day
of July, 2001
Columbia, South Carolina

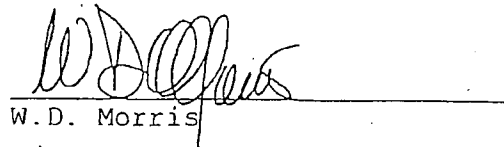

Jacqueline D. Belton
Associate Judge of Probate
Richland County

We Consent:


David E. Belding


M. Leigh Flynn


James R. Hill, Jr.


W.D. Morris

RECEIVED

DPSN

NOV 16 2001 11-13-2001

Referred to W. Teid

Answered _____

Dear Mr. Condon,

What happen to
Edward games Mims now,
Edward & my right
have been taking away
from Edward and I.

I want my son,
back home with me.
please Mr. Condon,
let my son come back
home.

I'm afraid what going
to happen to my son at
Balcock Center.

Edward, Can't talk
but I know my son

He know who cares about
him and who don't.

Went he comes home
Edward doesn't want to
go back with them to
Lubbock Center.

Edward know that I love
him and that I will take
care of him.

Edward is some one
special to me.

because Edward gave
me strength to keep going.

I always let Edward
know that Jesus made
him, some one special
and that he loves him.

I'm able to take care of
Edward at home

Went Edward was here

at home,

Edward got to Doctor. Went
he was sick, and needed to
go.

Because I took Edward to
Doctor in a cab.

Also Edward and I went
to grocery store.

Is, I send him new
clothes and sock, always come
home with some one else
clothes. one sock of one kind
and one of other kind, they
are not his, just send 6
pairs of sock. Don't know
what happen to them.

O' yes, I do furnish
his clothes to, that why
I don't understand why he
can't come home with

Some one else clothes on
instead of his clothes,

I Don't understand
why he can't come back
home.

He didn't look like he
does when at home.

Most of time he hasn't
been shaved and they don't
keep his hair cut.

I kept his hair cut and shaved.

He looks like he a throw
away went he comes home.

They have a hard time getting
him to go back with them.

I have to make Edward go
and that hurts like hell.

also his clothes stay all tumbled
up. the place could be clean.

So please help me to get
my son home. thank: Margout Williams



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

December 6, 2001

Ms. Margaret Mims
3301 Rosewood Drive
Columbia, S.C. 29205

Dear Ms. Mims,

Your letter to Attorney General Condon regarding your son, Edward James Mims, who is a client at the Babcock Center, has been referred to me for response.

The Attorney General's Office does not have any authority over the Babcock Center, or the procedures used in determining who receives services from Babcock or the Department of Disabilities and Special Needs. I can understand your concern for his well-being, however, and will forward your letter to the Department for their review.

I hope this will be helpful.

Sincerely,

A handwritten signature in cursive script that reads "Lee Teed".

Lee Teed
Director, Constituent Services

cc: Department of Disabilities and Special Needs

h:\corresp\Dec01\Mims

ey J. Butkus, Ph.D.
Director
rt W. Barfield
State Director
istration
H. Koyle, Ph.D.
State Director
and Supports



3440 Harden Street Ext (29203)
PO Box 4706, Columbia, South Carolina 29240
V/TTY: 803/898-9600, FAX: 803/898-9653
Toll Free: 888/DSN-INFO
Home Page: www.state.sc.us/ddsn/

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Ronald Forrest

December 27, 2001

Ms. Margaret Mims
3301 Rosewood Drive
Columbia, SC 29205

Dear Ms. Mims:

Ms. Lee Teed of the Attorney General's office has forwarded your letter of November 13, 2001 to the Department of Disabilities and Special Needs. In order to assist you, I read your letter and then reviewed information regarding your son's current situation.

I understand that Edward has profound mental retardation, cerebral palsy and several other severe and complex medical conditions. He is medically fragile, takes a number of medications and requires close monitoring and assistance. At this time Edward lives in Lexington in a community residence operated by Babcock Center. Whether he should continue to live there or not was reviewed in June of this year by you, your attorney, a Guardian ad Litem assigned to help Edward, an attorney assigned to help Edward and several professional staff from DDSN. All parties agreed that Edward's significant special needs and complex medical conditions required more staffing and supervision than any one person could possibly provide. No one person can do it all to care for Edward.

It is obvious Ms. Mims, that you love your son very much and took care of him in your home for many years. We understand that you wish it were possible for him to live at home again. All of us agree that one single person is not enough people to provide care for Edward. It is impossible because of his conditions and the fact that several different people have to be awake and around him all the time. This is hard to accept because you love Edward so much and miss his company. We understand and appreciate a mother's love for her son.

COASTAL REGION
Office - Phone: 843/832-5562
mison Rd., Summerville, SC 29485
Center - Phone: 843/873-5750

MIDLANDS REGION
Field Office - Phone: 803/935-7412
8301 Farrow Road, Columbia, SC 29203
Midlands Center - Phone: 803/935-7500

FEE DEE REGION
Field Office - Phone: 843/664-2655
PO Box 2329, Florence, SC 29502-3209
P.P. 80 Center - Phone: 843/664-2600
Center - Phone: 843/332-4104

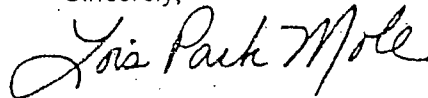
PIEDMONT REGION
Field Office - Phone: 864/938-3101
PO Box 239, Clinton, SC 29325
Whitten Center - Phone: 864/833-2733

Ms. Margaret Mims
December 27, 2001
Page 2

While Edward needs to stay at Babcock, we can help with your concerns regarding the clothes he is dressed in, his haircut, how his face is shaved and his overall appearance. By copy of this letter I am asking Ms. Tonya Flake, Consumer Advocate of Babcock Center to follow up with you personally to review your concerns and work with you and the residential staff to resolve them. You should hear from her soon.

Again, Ms. Mims, we know you love Edward very much and want the best for him. We want what's best for him too, and to work with you.

Sincerely,



Lois Park Mole
Director
Government and Community Relations

LPM/vet

cc: Ms. Tonya Flake, Babcock Center
Ms. Lee Teed, Office of the Attorney General

RICHLAND COUNTY SCHOOL DISTRICT ONE
Columbia, South Carolina

Psychoeducational Evaluation Report

CONFIDENTIAL

Full Name: Edward J. Mims Date Evaluated: 4-16-93
Date of Birth: 12-9-71
Referred by: Reevaluation Chronological Age: 21-4
Parent: Ms. Margaret Mims Race: White
Address: 3301 Rosewood Dr./29205 Sex: Male
Phone: 252-9962 School: Fairwold
Examiner: Michael Cox

Reason for Referral

Re-evaluation.

Placement at Time of Evaluation

Self Contained Class Profoundly Mentally Handicapped

Background Information

Edward is reported born one month prematurely followed by a two month hospital stay. His health has been stormy. He is reported to have kidney, heart and urinary tract problems along with orthopaedic problems.

Edward has attended classes for Profoundly Mentally handicapped (PMH) students since enrolling in Richland School District One in 1979. He graduates from Fairwold School at the end of the present school year.

Previous Test Results (4-25-90)

Bayley Scales: Age equivalent = 20 months

Test Behavior

Edward vocalized sounds but no words. He avoided looking at tasks. Most manipulative tasks required a physical as well as verbal prompt. Edward frequently attempted to grab, pinch or spit, but his affect remained flat.

MIMS, Edward
Fairwold
Page 2

Evaluation Procedures

Bayley Scales of Infant Development (BSID)
Vineland Adaptive Behavior Scale (VABS)

Evaluation Results

The Bayley Scales of Infant Development Mental Scale (BSIDMS) is designed to assess sensory-perceptual acutities and discriminations, the early stages of memory, learning, and problem solving ability, the beginnings of verbal communication, and the ability to form generalizations and classifications. Norms are available for children aged 2 months to 30 months. An approximate mental age score for older children can be estimated, but this score must be interpreted cautiously.

Edward's approximate mental age on the Bayley is twenty months, which suggests he is currently functioning in the Profoundly Mentally Handicapped range of intelligence.

Edward worked manipulative items through the thirty month level but did not work items requiring him to imitate actions or identify pictures or objects.

The Vineland Adaptive Behavior Scales (VABS) is a developmental instrument which assesses the individual's ability to independently look after social and personal needs and to assume responsibility. The Vineland samples abilities in the areas of personal self sufficiency and self care, vocational and occupational activities, communication, self direction, and social participation and social skills. It may be used with individuals from birth to adulthood. The Interview Edition was administered. The informant was Mrs. Cannizzaro, Edward's teacher.

Score Summary

	<u>Standard Score</u>	<u>Age Equivalent</u>
COMMUNICATION DOMAIN	<20	0-4
DAILY LIVING SKILLS DOMAIN	<20	1-7
SOCIALIZATION DOMAIN	<20	0-3
ADAPTIVE BEHAVIOR COMPOSITE	<20	

Standard Scores between 85 and 115 are in the Average range. Scores should be interpreted carefully as some observations may be based on estimated performance.

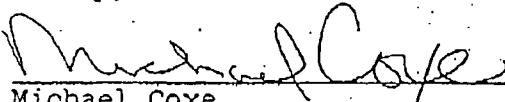
Edward's ratings on the Vineland indicate consistent and significant weaknesses across all areas of adaptive functioning.

MIMS, Edward
Fairwold
Page 3

Summary and Recommendations

Edward Mims is a twenty one year old student attending Fairwold School. This evaluation indicates that Edward is in the Profoundly Mentally Handicapped range of abilities with corresponding weaknesses in adaptive behavior skills.

It is the recommendation of this psychologist to the District's Placement Committee that Edward Mims be considered for continued eligibility in a self-contained program as a Profoundly Mentally Handicapped student. This recommendation may or may not reflect the final decision of the Placement Committee of which the psychologist is only one team member. No student is to be placed in a Special Education class on the basis of this report alone.


Michael Coxe
School Psychologist, II



EMERGENCY DEPARTMENT NOTE

PATIENT: MIMS, EDWARD J
LOCATION: HEDCC6
ADM. #: H00019739762
M.R. #: M000030054
ADMITTED: 05/27/2005
D: 05/27/2005 9:41 PM
DISCHARGED: 05/27/2005
T: 05/28/2005 7:25 AM / mrp
PHYSICIAN: MARK C JOHNSON, MD

CHIEF COMPLAINT: Laceration to penis.

HISTORY OF THE PRESENT ILLNESS: Patient is a 33-year-old male with history of severe mental retardation and resides at Babcock Center. He was noted by staff at Babcock Center tonight to have a laceration on the undersurface of his penis with some oozing of blood from the wound. They are uncertain how the wound occurred.

IMMUNIZATIONS: Reportedly up-to-date.

REVIEW OF SYSTEMS: As above.

PAST MEDICAL HISTORY: Seizure disorder, mental retardation, hypertension and GERD.

CURRENT MEDICATIONS: Review the list on nurse's notes.

ALLERGIES: None.

PHYSICAL EXAMINATION: VITAL SIGNS: Temperature 97.8, pulse 91, respirations 18, blood pressure 129/84. GENERAL: Well-appearing, nontoxic, in no acute distress. SKIN: Warm and dry. GU: Normal circumcised penis. Laceration present on the undersurface of the penis measuring 4 cm in length, gaping but did not appear to be deep involving the dermal tissues only. Small amount of oozing of blood noted.

EMERGENCY DEPARTMENT COURSE: PROCEDURE: Lidocaine cream 4% applied to wound. Wound was then prepped and draped and then additional anesthesia with buffered Xylocaine. Wound was irrigated and explored. No foreign bodies noted. Repaired using 5-0 Prolene with good wound approximation and hemostasis obtained.

EMERGENCY DEPARTMENT NOTE - H00019739762

Page 1 of 2

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SOUTH CAROLINA DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS

Critical Incident
Part II: Final Report

At approximately 6:50pm on May 27, 2005 staff, Trelas Heatley, was helping Edward Mims, supported person, get ready to go home on pass. He noticed that Edward was not wearing any underwear. According to the staff, Edward had begun undressing earlier for bed but was instructed by the staff to put his pants back on. Edward did not put his underwear back on. Mr. Heatley instructed Edward to take off his pants so that he could put some underwear on and he left the room to get a pair of underwear for him. Edward's underwear and socks are not stored in his room but in a plastic bin in the hall closet. Edward is able to dress himself with verbal prompting. Edward will undress himself when he is ready to go to bed. When Mr. Heatley returned to the room, Edward was sitting in a chair with his pants down around his ankles. Mr. Heatley noticed blood dripping from the chair to the floor. Mr. Heatley went to get another staff to help him. At that time, he did not know where the blood was coming from. Mr. Heatley and Ms. Wilson checked Edward and found that there was a tear on the bottom of his penis. Ms. Wilson cleaned Edward's wound while Mr. Heatley was on the telephone with the nurse, Maggie Mobley. Ms. Mobley told the staff to call Jan McLane because she was on-call that evening and take him to the emergency room if necessary. Ms. Mobley stated that the staff told her that he had left the room to get some underwear for Edward and when he returned to the room, he noticed the blood. Jan McLane, Nurse, was called and arrived at the facility to evaluate the injury. She stated that there was a horizontal tear just below the head of the penis on the underside. When she lifted the penis to evaluate the injury, the skin began to tear more. The skin on that area was very thin. Ms. McLane stated that she checked under Edward's fingernails and did not notice any skin tissue or blood that would indicate that he had scratched himself. She stated that she and the staff checked the chair that Edward was sitting in and could not find anything that could have caused the injury. She stated that the injury did not appear to be the result of abuse or neglect. There was no bruising, no swelling, nor any redness in the area. Edward was transported to Lexington Medical Center for evaluation and treatment. According to the staff who accompanied Edward to the hospital, the wound again tore more when the doctor examined him. He received seven stitches to close the wound. It was also recommended that Edward be seen by a Urologist. He has an appointment scheduled for June 3, 2005.

Ms. Mims, Edward's Mother, was notified of the injury. Ms. Mims decided to make a report to the police department. The police officer called the Kensington facility and talked with the staff stating that they needed to ensure that Edward received proper wound care for the injury and that an internal investigation was completed. The officer, name unknown, stated that he would follow-up with the facility in a few days. As of June 2, 2005 there has been no additional contact from the police department.

E-mail was received from Tracy Kelly, Hospital Social Worker, stating that the staff at Lexington Medical Center did not feel that Edward was in any type of imminent danger, but requested that an incident report be completed because the staff could not isolate the origin of the injury. Investigator was unsuccessful in contacting Dr. Mark Johnson, Emergency Room Physician, to obtain his opinion of the injury. Maggie Mobley, nurse, from Kensington also attempted to obtain information from Dr. Johnson and the LMC emergency department. She was unable to obtain information as to Dr. Johnson's impression of the injury. She was told that Dr. Johnson recommended that Edward be seen by an Urologist for follow-up. Investigator interviewed Tracy Kelly on June 1, 2005. Ms. Kelly stated that she had become involved in the situation on Friday night due to the unusual nature of the injury and the fact that Edward was non-verbal. Investigator asked if Ms. Kelly knew the doctors impression on the night of the injury. She stated that Dr. Johnson was not there but that she would leave him investigator's questions. Ms. Kelly stated that the nurse from Friday night was available. Ms. Kelly talked with the nurse while investigator was on the telephone. The nurse did not remember any specific information from the evaluation on Friday. Ms. Kelly stated that neither she nor Dr. Johnson felt that the injury was the result of abuse or neglect. She stated that if they had felt that this was the case, then they would not have allowed Edward to return with the staff and would have notified the authorities. Ms. Kelly stated that the staff who accompanied Edward that night to the hospital was very nice and pleasant. He did not appear to be making excuses for the injury and did not appear to be defensive when questioned about the origin of the injury. Ms. Kelly called Kensington 1 that evening and also talked with Ms. Wilson, staff. She stated that again the staff could not provide the origin of the injury but that she did not feel that they were biding anything.

On June 2, 2005 Dr. Graeme Johnson, Medical consultant, from DDSN arrived at the Kensington 1 facility to evaluate Edward's injury and assist with the investigation. Dr. Johnson also reviewed Edward's medical information, staff statements, investigator notes, accident injury record, evaluated the physical environment of Edward's room, and interviewed the nurse, Maggie Mobley. Dr. Johnson will forward his written report to investigator once it is completed. Dr. Johnson stated that he could not determine the origin of the injury but did not feel that the injury was the result of abuse or neglect.

Edward is not able to provide any information as to the origin of the injury. The staff present at the facility did not witness the injury occur. It is probable that the injury occurred while Mr. Heatley was out of the room getting Edward's underwear. There were no zippers or clasps on Edward's clothing that could have caused the injury. There was no blood in his pants. The staff also

Babcock Center - Confidential Information

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SCDDSN Critical Incident Initial Report Form, Page 5 of 6, Revised February 2005



SOUTH CAROLINA DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS

Critical Incident
Part II: Final Report

checked the underwear that Edward had been wearing earlier that evening and found no signs of blood. The chair in which Edward was found sitting, did not have any sharp edges that could have caused the tear. As the wound continued to tear with minimal evaluation of the injury, indicating a freshness and fragility of the skin in that area, it is believed that the tear was an accidental injury. Without any witnesses or objects that would provide a clear understanding of the injury, the origin remains unexplained. Based on a review of the physical environment, staff statements, nurse's evaluation, Dr. Graeme Johnson's evaluation and staff at Lexington Medical Center's evaluation, there is no reason to believe that the injury was caused by abuse or neglect.

Describe Action Taken:

Edward was evaluated by the nurse and sent to the emergency room for evaluation and treatment.

Is this incident a repeat occurrence with this consumer? ☐ Yes ☒ No

What quality assurance actions were taken to prevent the occurrence of an incident like this?

1. Nursing staff will ensure proper wound care and that Edward is seen by the Urologist.
2. Babcock Center will cooperate with the independent investigations.

Reporting: If the incident was reported to another agency with oversight of the facility/program, please indicate which agency:

Check all that apply:

☒ DDSN ☒ Ombudsman ☐ Service Coordination:
☐ DSS ☐ DHEC ☒ Other: Parent/Guardian

Reported by Whom/Title? Gilda Williams, QMRP on-call

Date: 05/27/2005

James B. Bradford
Signature of Investigator

6/2/05
Date

[Signature]
Signature of Executive Director/Facility Administrator

6/2/05
Date

This document should be forwarded to the following DDSN staff:

Tracy Thomas, Director, Quality Assurance/Quality Improvement Division, SCDDSN
PO Box 4706, Columbia, SC 29240 Fax#: 803.898.9656
and
Tom Davis, Program Coordinator, Abuse/Neglect/Exploitation/Critical Incidents, SCDDSN
8301 Farrow Rd., Columbia, SC 29203 Fax#: 803-935.6170

If the critical incident being reported is a death, then complete the Report of Death form.

Babcock Center - Confidential Information

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SCDDSN Critical Incident Initial Report Form, Page 6 of 6, Revised February 2005

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cy J. Budwas, Ph.D.
Director
rt W. Barfield
State Director
Education
Id. C. Doster
State Director
Education
K. Lacy, Ph.D.
State Director



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Toll Free: 888/DSN-INFO
Home Page: www.state.sc.us/ddsn/

MEMORANDUM

COMMISSION
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Chairman
Lyssa Harvey
Vice Chairman
J. Lewis Stephens
Secretary
Isaac B. Dickson, Jr.
Ronald Forrest
W. Robert Harrell
Edythe C. Dove

CC: Dot

~~STENOGRAPHER~~

file

ky

6-2-05

TO: Dr. Judy Johnson
Executive Director,
Babcock Center

FROM: Stan Butkus, Ph.D. *B.*
State Director

DATE: June 1, 2005

RE: Request for our Independent Investigation

I have received your letter dated June 1, 2005 requesting an independent investigation of a laceration received by Edward Mims.

It is my understanding that the Ombudsman's Office will be investigating the matter. Jon Cook of the Ombudsman's Office has agreed to let our medical consultant, Dr. Graeme Johnson, participate in the investigation.

SB/jst

DISTRICT I

301 Furrow Road, Columbia, SC 29203
Phone: 803/915-7412

Midlands Center - Phone: 803/935-7500
Whitten Center - Phone: 804/833-2733

DISTRICT II

PO Box 3209, Florence, SC 29502-3209
Phone: 843/664-2655

Coastal Center - Phone: 843/873-3700
Port Dee Center - Phone: 843/664-2600
Salemby Center - Phone: 843/332-6104

JAN-13-2005 09:31 FROM: SCDDSN 1-898-9656

TO: 9-1-8886

P: 2/4

Stanley J. Butkva, Ph.D.
 State Director
 Robert W. Barfield
 Deputy State Director
 Administration
 Ronald G. Dondor
 Associate State Director
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 Kay Ott K. Lacy, Ph.D.
 Associate State Director
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 Seytho C. Dora

MEMORANDUM

To: Mr. Ron Dozier
 Associate State Director, Operations

From: Dr. Graeme Johnson
 Medical Consultant for SCDDSN

Date: June 2, 2004

Subject: Review of Critical Incident Occurring May 27 at Kensington I House

Question:

Review of medical information for inclusion in investigation data and evaluation

Procedure:

- Review in response to request from Babcock Center
- Arranged June 1, 2005
- Kensington I visited 8:20 a.m. – 10:00 a.m. on June 2, 2005
- Brief examination Edward Mims
- Interviews – Angela Richards (QRMP for house)
 Maggie Mobly LPN (house nurse)
 Tonya Bradford (Consumer Advocate Babcock Center)
- Notes reviewed:
 - Medical chart Edward Mims
 - Current medication, nursing, physical exam notes
 - Statements of staff present May 27, 2005
 - Notes received from ER visit

DISTRICT I

1101 Thoma Road, Columbia, SC 29203
 Phone: 803/977-7412

Midlands Center - Phone: 803/977-7500
 Winters Center - Phone: 803/977-7773

PO Box 3209, Florence, SC 29502-3209
 Phone: 803/664-2655

DISTRICT II

Columbia Center - Phone: 803/977-3750
 Port Jervis Center - Phone: 803/977-3600
 Salterby Center - Phone: 803/977-4104

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A. Reconstruction of Events:

Edward has profound mental retardation and is non verbal and dependent for most care. He is on medication for hypertension, gastroesophageal reflux, seizure disorder and allergies.

As usual on Friday nights Edward was being prepared for home visit about 6:20 p.m. on May 27, 2005. During check he was found to have changed clothes but had no underpants on. He was standing in his bedroom near a chair against the wall and the caregiver left room very briefly to get clothes and on return caregiver noted Edward to be sitting with his pants around his ankles and blood drops were noted on the chair. Checking found a laceration of the shaft of the penis. This was checked by the nurse and at the time it was reported that the skin tore a little more during the manipulation to examine the cut. It is reported that further extension of the skin laceration occurred when examined in the emergency room. When examined by the nurse at the house no blood or tissue was found under Mr. Mims finger nails. No bruising, ulcers, nor swelling were noted in the area. He was taken for care to Doctors Care which was closing and then he was taken to the ER at Lexington Medical Center and treated there. A 4cm laceration (horizontal, on the ventral surface of the shaft of the penis) was repaired using 7 stitches. From oral reports of doctor notes it appears no foreign bodies or anomalies were noted. Hospital staff was reported by social worker to have assessed the situation as not indicating any danger risk to Mr. Mims and he returned to Kensington I then went home for the weekend with family as usual. Mr. Mims has returned to the cottage and he, is his usual self. The wound has been treated each day with bacitracin ointment without incident.

On examination today Mr. Mims does have a few scalp scratches, acne on his upper back and slightly long finger nails (about 1/2cm with smooth edges and second finger nails either side are dysmorphic but not sharp). He did not show distress when I explained I was a doctor and needed to look at his injury. No bruising, swelling nor tenderness were noted of scrotum, groin, penis. Urinary meatus and glans have normal circumcised appearance. On ventral surface of shaft of penis is a transverse laceration with sutures present. No swelling, no bruising, no exudates, and no evidence of any other skin irritation of penis noted.

B. Review Other Notes and Evidence:

My examination of chair he was sitting on showed no sharp areas, or protruding objects. No other sharp areas are noted on furniture close by - a rough area is on edge of drawers across room - unlikely to have been accessible in short staff absence. The clothing is reported to have had no tears or zips or button (swcalpants).

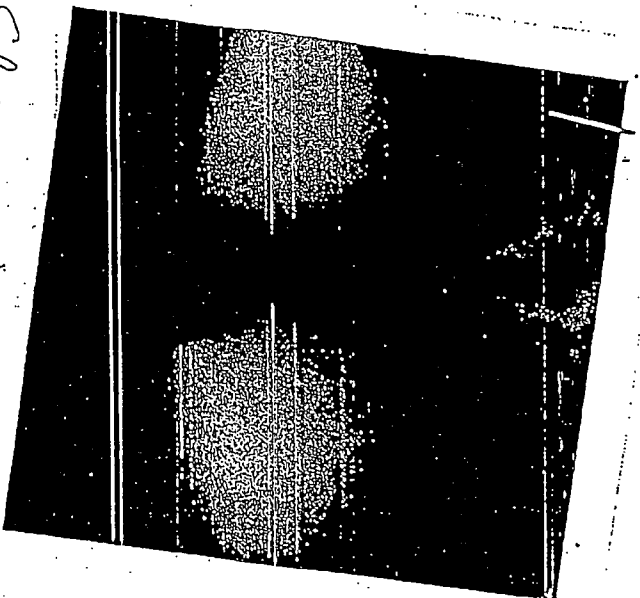
There is no history of masturbation. No history of excessive bleeding. No history of past injury to genital area. The demeanor of Mr. Mims today and that reported on by staff on the evening of the incident do not make an aggression on his person a likely explanation. The injury appears to have occurred suddenly and caused immediate bleeding. It is of note that the laceration extended easily with minimal handling. Mr. Mims forearm skin is fairly soft and fragile but groin and genital skin appears firm and have no local irritation, therefore it would not seem to be predictable that he would have trouble in the area. He does scratch himself in the scalp and cause small scratches/lacerations. It is possible minor scratching may have caused a small skin break on the penis, that lead to this laceration.

His medication regimen does not include medications that are anticipated to cause skin sensitivity nor self injurious acts. He appeared to be in a caring, supportive situation when the laceration occurred and appropriate care and follow-up has been provided.

C. Conclusion:

The evidence I have seen, the notes I have reviewed, and interviews I have conducted, lead me to a conclusion that it is unlikely that Edward Mims' laceration was due to abusive or negligent management. It is an unexpected problem that had no antecedents. His local (penile) skin appears to have been fragile at the time and the laceration may have been due to minor trauma such as fingernail scratches. Current care and findings do not however indicate a cause for this skin sensitivity. The current skin healing does not indicate likelihood of recurrence.

Cause for laceration unknown.



Edward Memo
5/27/05



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0248

When getting Edward ready to go home, I took him in his room to get his shoes. After putting his shoes on, I looked him over and found that he had on no underwear. I then removed his shoes and asked him to take off his pants as I walked to get a pair of underwear. When I returned to the room Edward had his pants down and he was sitting in the chair. I then noticed the blood on the chair drop on the floor so I went and got a co-worker.

Travis Hestley
5-27-05

5-27-05

On Friday doing Acting with Resident
In guestroom, about 1:30, when Mr. Healey
who was assisting Edward Mims in
his Bedroom on left wing, who was getting
ready to go home for the weekend.

When Mr. Healey returned to Guestroom
stating Mrs. Wilson can you come here
for a minute, and look at Edward.
I went to see what was happening
and this is what I saw, Edward was
sitting in chair in his Bedroom with
shirt and sock on with blood in
the chair. He checked Edward Mims
for injuries, asked Mr. Healey, what
happen where is that blood coming
from. His response was I don't know
I continue to check Edward Mims
for injuries, and noticed that the
blood was coming from his groin
area.

I went and called C. Rivers who was
talking with Magg's mother the nurse. Mims
before, Magg's called back and talked with
Mr. Healey. I returned to left wing. Edward
Mims Bedroom, and continued to assist him.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE MATTER OF EDWARD MIMS

CASE NUMBER 03 GC 40

00172

FILED

PROBATE COURT

03 DEC -2 PM 4:11

AMY L. FIDELLLOCH
PROBATE JUDGE
RICHLAND COUNTY, S.C.

ORDER APPOINTING PHYSICIAN/EXAMINER

- ☒ GUARDIANSHIP
☐ CONSERVATORSHIP

Upon reading the petition in the above matter, I hereby appoint Dr. TAN PLATT, MD AND LENNY MULLIS, MSW whose directed to report to this Court their findings as to the person's mental condition, utilizing the Court's established examiners guidelines, and their opinion as whether the captioned person is an incapacitated person*; and if so, whether that person needs a guardian** and/or conservator*** to be appointed by this Court for him or her.

* "Incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person or property.

** A "guardian" of an incapacitated person has the same powers, rights, and duties respecting his ward that a parent has respecting his unemancipated minor child; has custody of the person of his ward; shall make provision for the care, comfort, and maintenance of his ward and arrange for training and education; and may give consents for medical or other professional care, counsel, treatment, or service.

*** A "conservator" manages, protects, and preserves the estate, assets, money or property of any incapacitated person; and expends funds as needed for the support, care, and welfare of the person or those entitled to be supported by him.

Executed this 2nd day of December, 2003.

Angela M. Kirby
Angela Kirby, Associate, Probate Judge

OF SOUTH CAROLINA

PROBATE COURT

COUNTY OF RICHLAND

IN THE MATTER OF EDWARD MIMS

CASE NUMBER 03 GC 40 00172

DOCTOR'S AFFIDAVIT REGARDING CAPACITY

PERSONALLY APPEARED BEFORE ME

Thomasina L. Michael
Name of Notary

who being duly sworn deposes and says:

I am (Please set forth your medical credentials):

TAN J. PLATT, MD

Business address and phone:

3209 COLONIAL DR
COLUMBIA, SC 29203

803-434-6116

Date and Place of this examination:

2/17/05 - PINECLIFF FACILITY OF

I have had previous opportunities to evaluate the patient?

☒ Yes ☐ No

(If yes, indicate dates and circumstances within the last year and/or reference if you have been the patient's personal physician for a period of time and the time frame.)

I have been the patient's personal physician for several years in my role of Medical Director of
Bahrostate

Is the patient oriented to time and place?

☐ Yes ☒ No

What is the physical condition and age of the patient? (Detail any other significant factors that may be relevant to the Court.)

33 yo. with profound mental retardation, severe disorder,
and hypertension

Set forth the results of any tests which bear on the issue of incapacity and date of test:

BASED UPON MY EVALUATION OF THIS PATIENT:

☐ I DO NOT believe this patient is an "incapacitated person". I do not find any impairment by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause to the extent that he/she lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his/her person, property, or finances.

☒ I DO BELIEVE THIS PATIENT IS AN "INCAPACITATED PERSON" and in need of a Guardian and/or Conservator as I find him/her to be impaired by reason of (CHECK ALL THAT APPLY AND SET OUT AND DESCRIBE THE LIMITATIONS RESULTING FROM EACH.)

- ☐ Mental Illness
- ☒ Mental Deficiency
- ☐ Physical Illness or Disability
- ☐ Advanced Age
- ☐ Chronic Use of Drugs
- ☐ Chronic Intoxication
- ☐ Other

"Incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person or property. (Section 62-5-101 of the South Carolina Code of Laws)

condition permanent or temporary?

Can Patient perform activities of daily living?

What other information do you believe would assist the Court in making a determination of capacity?

FURTHER AFFIANT SAYETH NOT.

Physician's Signature: _____

Print Name: _____

Examiner: _____

Credentials (M.D., Ph.D., D.O., R.N.) _____

Address: _____

Telephone: _____

SWORN to before me this _____ day of _____

February 20 05

Notary Public for South Carolina

My Commission Expires: 11/09/08

FAILURE TO PROVIDE DETAILED RESPONSES TO THE QUESTIONS ON THIS AFFIDAVIT MAY
OBLIGATE YOU TO APPEAR AT THE PROBATE COURT HEARING.

All information MUST be typed or clearly printed.

STATE OF SOUTH CAROLINA

PROBATE COURT

COUNTY OF RICHLAND

IN THE MATTER OF EDWARD MIMS

CASE NUMBER 03 GC 40 00172

EXAMINER'S REPORT

Please answer the following questions concerning the above person. Please provide details at end of this form or an attached sheet of paper.

1. Have you treated this person before
If yes, give brief history. *as medical director of rehab center for several years.* Yes ☒ No ☐
2. Has this person ever been rated or found:
 disabled Yes ☒ No ☐ Unknown ☐
 mentally ill or incompetent Yes ☒ No ☐ Unknown ☐
 chemically dependent Yes ☐ No ☒ Unknown ☐
3. Can the above person:
 care for self (personal hygiene) Yes ☐ No ☒ Unknown ☐
 prepare meals and/or clean house Yes ☐ No ☒ Unknown ☐
 maintain bank accounts or funds Yes ☐ No ☒ Unknown ☐
 pay bills Yes ☐ No ☒ Unknown ☐
 live independently Yes ☐ No ☒ Unknown ☐
 operate a car Yes ☐ No ☒ Unknown ☐
 take medications unsupervised Yes ☐ No ☒ Unknown ☐
4. Would the above person benefit from:
 further education Yes ☐ No ☒ Unknown ☐
 further training Yes ☐ No ☒ Unknown ☐
 therapy of some sort Yes ☐ No ☒ Unknown ☐
 medical aids or equipment Yes ☐ No ☒ Unknown ☐
 an operation or medical procedure(s) Yes ☐ No ☒ Unknown ☐
 structured living arrangements Yes ☒ No ☐ Unknown ☐
5. Has the above person had in the last six months:
 hospitalization(s) Yes ☐ No ☒ Unknown ☐
 therapy or treatment Yes ☐ No ☐ Unknown ☐
 inpatient or outpatient surgery Yes ☐ No ☒ Unknown ☐
 major medical test(s) Yes ☒ No ☐ Unknown ☐
 psychological or psychiatric testing Yes ☐ No ☐ Unknown ☐
6. In your opinion, does this person have the mental or physical capacity to effectively manage his/her property and financial affairs
swallowing evaluation 11/17/04
 Yes ☐ No ☒
- and /or make necessary daily living and health care decisions Yes ☐ No ☒

your knowledge does this person have:

a power of attorney
a health care power of attorney or
a "living will"

Yes ☐ No ☐ Unknown ☒
Yes ☐ No ☐ Unknown ☒
Yes ☐ No ☐ Unknown ☒

8. Does the above person have any of the following coverages?

health insurance
medicare
medicaid
veteran's health care

Yes ☒ No ☐ Unknown ☐
Yes ☒ No ☐ Unknown ☐
Yes ☒ No ☐ Unknown ☐
Yes ☐ No ☐ Unknown ☒

9. Does this person have a primary caretaker?

If yes, please give available information on name, address, and relationship to above person.

Yes ☐ No ☒ Unknown ☐

lives in a Babcock group home

SWORN to before me this 17th day of

February, 20 05

Thomas J. Michael
Notary Public for South Carolina

Date:

2/17/05
[Signature]
Examiner's Signature

TANG, PLAT
Examiner's Name

My Commission Expires: 11/09/08

Use this space for explanations or additional comments.

STATE OF SOUTH CAROLINA)
)
IN THE MATTER OF GUARDIANSHIP)
OF EDWARD MIMS)
)
CASE NUMBER 03 GC 4000172)
)

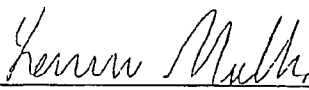
PROBATE COURT

Personally appears before me Lennie Mullis who swears and affirms:

1. I was appointed by the Richland County Probate Court to examine Edward Mims.
2. I have a masters of science degree in psychology.
3. I am certified by the South Carolina Department of Disabilities and Special Needs as a behavioral consultant and a psychological consultant.
4. When I approached the residence, I noticed a sign stating that the facility has been decertified.
5. I first attempted to visit Edward Mims on June 6, 2005 at his residence at 100 Kensington Road.
6. When I approached the residence, I noticed a sign stating that the facility has been decertified.
7. I provided the Court Order appointing me as examiner to the Babcock Center employee who answered the door at approximately 6:15 p.m. The manager on duty called her supervisor and I was not allowed to examine Edward Mims on June 6, 2005.
8. On the evening of June 6, 2005, a Babcock supervisor informed me that I needed to provide Dr. Johnson or Dorothy Goodwin with a copy of the examination form.
9. I faxed the examination form to Dr. Johnson on June 7, 2005.
10. At approximately 6:30 p.m. on June 7, 2005, I returned to 100 Kensington Road, but was again not allowed to examine Edward Mims.
11. On the morning of June 8, 2005, Dr. Johnson left a message to call her or Dorothy Goodwin about examining Edward Mims. I spoke with Dorothy Goodwin who agreed to allow me to examine Edward Mims. She informed me that I would be allowed to examine Edward Mims at 6:00 p.m. on June 8.

12. When I returned to Kensington at approximately 6:15 p.m. on June 8, 2005, I was not allowed to examine Edward Mims.

Further affiant sayeth not.



Lennie Mullis

SWORN TO BEFORE
ME THIS 8th DAY OF MAY,
2005.



Notary Public for South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF Richland

PROBATE COURT

THE MATTER OF Edward J. Mims

CASE # 03 GC40 00172

VISITOR'S REPORT

The undersigned court-appointed visitor in this guardianship proceeding submits the following report concerning the investigation which I conducted pursuant to Section 62-5-303 of the South Carolina Probate Code. In my visit to the place where the allegedly incapacitated person resides, I observed the following.

REPORT ON THE INCAPACITATED PERSON

- . Date and place of interview: , Sunday, June 5, 2005
- . Oriented as to the time and place? ☒ YES ☐ NO
- . Physical Appearance. Mr. Mims was clean, well dressed in umbro shorts and a t-shirt. Mr. Mims's hair was cut and cut short.
- . Who are his/her closest family members? Margaret Mims, mother and Margaret Diane Mims Therot, sister
- . Does he/she have a doctor? ☒ NO ☐ YES If yes, please list the doctor's name, address, and phone number.
Dr. Tan Platt, M Richland Family Practice, 3209 Colonial Drive, Columbia, SC 29203, (803) 434-6113,
- . Does he/she have an attorney? ☒ NO ☐ YES If yes, please list the attorney's name, address, and phone number.
Edgar S. Kneece, 455 St. Andrews Road, Building D, Suite 3-A, Columbia, SC 29210, (803) 750-3000.
- . Does he/she think he/she needs help caring for himself/herself? ☒ NO ☐ YES If yes, in what areas? Mr. Mims does not have the receptive language skills to understand the question.
- . Would he/she like help in caring for himself/herself? ☒ YES ☐ NO Mr. Mims does not have the receptive language skills to understand the question.
- . Does he/she know the proposed Guardian? ☐ YES ☒ NO Margaret Mims is the mother and proposed Guardian.
- 0. How does he/she feel about having that person appointed as his/her guardian? Mr. Mims does not have the receptive language skills to understand the question.
- 1. Does he/she feel any of the guardian powers or duties should be limited or restricted in any way? If so, how? Mr. Mims does not have the receptive language skills to understand the question.

How does he/she feel about the proposed guardianship? Mr. Mims does not have the receptive language skills to understand the question.

3. How does he/she feel about the proposed scope and duration of the proposed guardianship? Mr. Mims does not have the receptive language skills to understand the question.

REPORT ON THE PROPOSED GUARDIAN

Has an adult protective service case or family management case ever been opened on this person? NO XYES
If yes, please explain. DDSN proceeding in Richland County Probate Court

If yes, does the DSS record reveal anything you believe the court should know? NO XYES If yes, please explain.

Probate court may wish to review Lexington and Richland County Emergency Room records.

Does your investigation of the proposed guardian reveal anything that you believe the court should know? ☒ NO
XYes If yes, please explain. According to a statement by Margaret Mims, Edward J. Mims has been harmed living in a Babcock facility and wishes to bring her son home to stay.

Does your investigation reveal any other person who should be considered to be appointed the guardian in this matter? XNO ☒ YES If yes, please explain, including name, address, telephone, age, and relationship to allegedly incapacitated person.

REPORT ON CONDITION OF PRESENT PLACE OF RESIDENCE

Date and time visited: , Sunday, June 5, 2005 @ 3:30 pm

Address (include street, city, county, state, zip): 3301 Rosewood Drive, Columbia, SC 29205

Type of abode: Wood frame one-story home on the corner of Rosewood and Ravenel Street.

Condition:

- exterior: Wood framed home in good condition. The visitor did not go under the home for inspection
- interior: The interior was clean and walking areas free from obstacles. Hard wood floors are throughout the home except kitchen and bathroom. There are two entrances into the home one from the living room and the other in the kitchen.
- utilities working: central heating and air.
- cleanliness: good
- fire hazards: There are some boxes that Mrs. Mims will be moving before Mr. Mims comes home that do not impede entry and exit to the home.
- other (explain):

CONCLUSIONS AND ADDITIONAL COMMENTS: I observed Mr. Edward Mims in the home with Ms. Margaret Mims for an hour. Ms. Mims appeared very attentive to his needs and communicates well with Mr. Mims even though he is unable to verbally communicate. During the visit Mr. Mims walked to the kitchen retrieved a cup and brought the cup back to Ms. Mims for her to pour him some Ginger Ale. Ms. Mims presented a picture where she had traced Mr. Mims' hand and explained that he had colored the drawing. She went on to say that he enjoyed activities including, but not limited to, music, drawing and walking with her around the neighborhood. Ms. Mims indicated that both she and Mr. Mims had attended church that day and that Mr. Mims enjoyed going to church activities. Ms. Mims is very calm and is able to direct Mr. Mims in a gentle manner. Mr. Mims comes home on the weekends and appears to be familiar and comfortable with the setting.

Prior to your visit, did you know the person who is alleged to be incapacitated? XNO YES If yes, please explain.

Prior to your visit, did you know the person who is seeking appointment? YES NO If yes, please explain. I attended parent meeting with Ms. Mims in 2004.

Prior to your visit, did you or do you now have a personal interest in these proceedings? XNO YES If yes, please explain.

Executed this 6 day of June, 2005.

Signature:
Name:

MKB Miller
Mary Katherine B. Miller, MSW, CMC
Scribe Matters Consulting, Inc.

STATE OF SOUTH CAROLINA)

FILED

IN THE PROBATE COURT

COUNTY OF RICHLAND)

Case Number: 2003-ES-40-172

05 JUN 14 AM 11:16

IN THE MATTER OF GUARDIANSHIP OF)
EDWARD MIMS)

AMY R. GUNLOCH
PROBATE JUDGE
RICHLAND COUNTY
AMENDED ORDER APPOINTING
TEMPORARY GUARDIAN

(This Order is amended to correct the incorrect hearing date in this paragraph, now changed to June in bold.) This matter came before the Court on the Petition of Margaret Mims, who is the mother of Edward Mims. In attendance at the emergency hearing held on **June 9, 2005** were Margaret Mims and her attorney, Patricia L. Harrison; the Court-appointed Guardian Ad Litem for Edward Mims, Edgar Kneece; and M. Leigh Flynn, who was previously appointed by this Court as Guardian Ad Litem for Edward Mims in another proceeding.

The court-appointed Visitor, Mary Katherine Miller, found the residence of Margaret Mims to be clean and in good condition. She reported that Mrs. Mims was very attentive to the needs of Edward Mims and that he appeared to be familiar and comfortable at home. Examiner Tan Platt reported that Edward Mims is incompetent, and is unable to make daily living and health care decisions. A July 3, 2001 Order of this Court found Edward Mims to be "profoundly mentally retarded." In addition, evidence was presented of six emergency room physicians having reported that Edward Mims is incapacitated by reason of mental retardation.

Based on these findings, I find that Edward Mims is incapacitated and I find that no Guardian has been appointed previously. Evidence was presented that Edward Mims' current residence, Kensington ICF/MR, was decertified by the South Carolina Department of Health and Human Services in April of 2005. On May 27, 2005, Edward Mims was found in the facility to have a serious unexplained injury.

Based on the evidence presented to the Court, I find that the welfare of Edward Mims requires immediate action and that the emergency appointment of a temporary Guardian is appropriate pursuant to S. C. Code Ann. §62-5-310. The Guardian Ad Litem joins in the

P. 147

recommendation to the Court that a temporary Guardian be appointed. I find that Margaret Mims has priority under S. C. Code Ann. §62-5-311 and that it is in the best interest of Edward Mims to appoint Margaret Mims as his temporary Guardian.

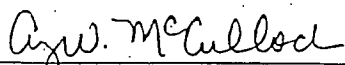
By order dated July 3, 2001, this Court found that Edward Mims was in need of services of the South Carolina Department of Disabilities and Special Needs. I find that services of the South Carolina Department of Disabilities and Special Needs are needed by Edward Mims and that Margaret Mims, as Guardian for Edward Mims, shall have the full authority to exercise all rights to these services which Edward Mims could exercise if he were competent to do so. These services shall be provided in the least restrictive environment as required by state and federal law.

Margaret Mims shall be entitled to the custody of the person of Edward Mims and shall have all statutory powers of a Guardian, including but not limited to the authority to establish his placement. The Guardian shall be authorized to give consents and approvals for Edward Mims to receive medical and other professional care, counsel, treatment and services. In view of the emergency regarding placement, all medical providers shall provide medical records and information as requested by the Guardian.

The South Carolina Department of Disabilities and Special Needs shall be provided with notice of the hearing which has been scheduled in this Court for June 24, 2005. At that time, the Department shall provide the Court with copies of all treatment records of Edward Mims since the date of this Court's July 3, 2001 Order and shall provide the Court with notice of the appointment of a service coordinator and a treatment plan. At that hearing, the Court shall also rule on the Petitioner's request for a permanent Guardian.

IT IS SO ORDERED!

June 14, 2005
Columbia, South Carolina


Honorable Amy W. McCulloch
Richland County Judge of Probate
P. 148

A TRUE COPY
ATTEST:

Amy W. McCulloch

PROBATE JUDGE
RICHLAND COUNTY, SC

Hill, Jim

From: Hill, Jim
Sent: Friday, June 10, 2005 6:30 PM
To: 'Patricia L. Harrison'; Charles Lang; Mary S. Leitner; Deirdra Singleton; Gloria Prevost; Ronald Reed
Cc: 'sbutkus@ddsn.sc.gov'; 'dgoodwin@babcockcenter.org'
Subject: RE: Edward Mims

Patricia, I called your office this afternoon, but missed you. I believe you were in a meeting and I left a message with your assistant.

I am in receipt of your email below concerning Edward. Please note that Edward was judicially admitted to the Department on July 3, 2001. Part of the Court Order for his admission indicated that he may visit his mother on weekends provided that she provide a safe environment and access for inspections of her home to ensure that it was safe for Edward. Your email indicates that Edward will not be returned to Kensington after visitation this coming weekend. This directly violates the Court Order. Because of your written intentions to violate the Court Order, we have asked Babcock to not allow Edward to visit his mother this weekend and we will attempt to review this matter next week or at the earliest convenient time for all involved.

In your email below, you mentioned that you sent Rivermont (Rich/Lex County DSN Board) a copy of the "Court's Order." This apparently is something new and pertains to Mrs. Mims efforts to seek guardianship of her son, Edward. Please fax me a copy of this Order. We are unaware of its contents. As mentioned, Edward was committed to DDSN, not Rivermont.

With regard to your request to have Edward discharged to his mother's care and admitted to a local daycare with access to other services provided from Rich/Lex, this must be presented and reviewed by Edward's team in accordance with normal procedures for individual habilitation plans and ICF/MR regulations. The items that you mentioned to me and in your email below constitute a significant transition for Edward. It is my understanding that these matters must be reviewed by the team and, therefore, we cannot comment on whether they are appropriate for Edward at this time.

The Babcock staff have appealed the de-certification and depopulation of Kensington and the matter has been deferred until the appeal has been heard. Any issue about alternate placement of individuals at this time based on de-certification is premature pending the appeal. As you know, alternative placements can be considered at anytime as long as it is planned and approved.

I trust this responds to your email below.

Jim Hill
General Counsel, SCDDSN

From: Patricia L. Harrison [mailto:plh.cola@worldnet.att.net]
Sent: Friday, June 10, 2005 4:55 PM
To: Charles Lang; Mary S. Leitner; Deirdra Singleton; Gloria Prevost; Ronald Reed; Hill, Jim
Subject: Edward Mims
Importance: High

We notified Babcock Center that Edward would not be returning to Kensington on Sunday. I have sent Rivermont a copy of the Court's Order. Babcock called Mrs. Mims today to tell her that they will only send enough medicine home with him for five days. On Wednesday, I asked Mary Leitner that Carol King serve as Edward's service coordinator, but I have heard nothing back from RichLex. Carol has experience with these transitions and does a good job. We need her assistance.

Babcock Center is supposed to be transitioning people from a decertified facility into a placement of their choice. Who is going to handle matters like getting Edward's pharmacy changed (and I expect that we will not be able to get meds from a new pharmacy until next month), getting him into a day program, arranging for necessary transportation, etc?

Trisha Harrison

STATE OF SOUTH CAROLINA)

PROBATE COURT

COUNTY OF RICHLAND)

CASE NO.: 2003-GC40-00172

In the Matter of)
Guardianship of:)

OBJECTIONS

EDWARD J. MIMS)

TO: The Honorable Jacqueline D. Belton, Associate Judge, Probate Court
Ms. Patricia L. Harrison, Esq., Attorney for Ms. Margaret Mims
Mr. Edgar S. Kneece, Esq., Guardian Ad Litem for Edward J. Mims

The Objections of the South Carolina Department of Disabilities and Special Needs (SCDDSN) herein are filed with this Court pursuant to a Notice of Hearing, dated September 8, 2005. This matter began many years ago. Edward has been receiving SCDDSN services since October 1993. On October 5, 1999, Ms. Mims (the Petitioner herein) placed Edward with the Babcock Center because she was unable to care for him (Tab A). Subsequently, on/about April 3, 2001, the Petitioner requested Edward's discharge (Tab B). A Petition for Judicial Admission was filed with this Court (Tab C) and the required psychological report (S.C. Code Ann. §44-20-450 (C)) was filed as ordered by this Court (Tab D). A hearing was held on June 26, 2001. At that hearing it was agreed upon by SCDDSN, Edward's attorney, his guardian ad litem, and by the Petitioner with assistance of counsel, W.D. Morris, that Edward would be judicially admitted to SCDDSN. The Court's Order set out parameters for the Petitioner if she wanted to continue Edward's home visits (Tab E). The guardian ad litem testified at the hearing that the Petitioner does not drive; that she has a very modest home and has limited income due to her house cleaning jobs (see guardian ad litem's report; copy should be with Court's case file).

Later, on November 13, 2001, the Petitioner wrote to the State Attorney General asking that her son, Edward, be returned to her. SCDDSN responded to her inquiry on December 27, 20001 (Tab F).

On Friday, June 10, 2005, at about 4:00 p.m. the Petitioner, with the assistance of her attorney, Ms. Patricia Harrison, attempted to discharge Edward from Babcock Center, Inc., a service provider of SCDDSN. At that time, Ms. Harrison was informed of the Judicial Admission Order; yet, in violation of the Order, Ms. Harrison called the police and The Honorable Judge Amy McCulloch creating a crisis, emphasis added, late that Friday afternoon at Edward's residence at Babcock Center, Inc. (Tab G). An informal meeting was held in Judge McCulloch's office the following Sunday afternoon, June 12th. It was learned at that time that the Petitioner had initiated a Petition for Guardianship of her son. Neither SCDDSN nor Edward's sister, Ms. Diane Theriot were notified of this action. Upon information, the appointed guardian ad litem, Edgar S. Kneece, made no attempt to get in touch with Ms. Theriot, nor did the Court's appointed Visitor, Ms. Mary Katherine B. Miller. It is unclear whether Edward has court appointed counsel; no one has appeared in this capacity at any hearing in this matter attended by the undersigned. After much discussion, it was decided that SCDDSN would not issue a pick-up order (S.C. Code Ann. §44-20-500) and that a Medicaid Waiver application would be expeditiously processed.

A hearing was held on June 24, 2005, before Judge McCulloch on the matter of continuation of temporary guardianship for Edward. Ms. Diane Theriot, Edward's sister, was present at this hearing and the undersigned presented her letter of June 15, 2005, to Judge McCulloch (Tab H). Dr. Kathi Lacy, Associate State Director-Policy, SCDDSN, was also present and presented a recording of events since the June 12, 2005 meeting (Tab I). It should be

noted that SCDDSN on June 21, 2005, obtained eligibility for Edward in the Medicaid Home and Community Based Waiver program, a funding for services for persons residing in the community. Testimony was taken from several individuals including Dr. Lacy and the Petitioner. As recalled by the undersigned, the Court ordered that both SCDDSN and Ms. Theriot would receive notice of any further hearings in this matter. A hearing has now been scheduled for September 29, 2005, before The Honorable Jacqueline D. Belton.

OBJECTIONS:

1. Edward Mims is not represented by an attorney as required by S.C. Code Ann. §62-5-303 (b). Mr. Edgar Kneece has been appointed as guardian ad litem and has limited his activities to this appointment.
2. Ms. Diane Theriot was not notified of this action as required by S.C. Code Ann. §62-5-309 (3). The undersigned was informed by Judge McCulloch that there was no legal duty to inform Ms. Theriot. Respectfully, Ms. Theriot falls into category 3 as Edward's sister. She was well known by the Petitioner, her mother. Since the Petitioner cannot notify herself, the statute requires that a close relative be notified. As a matter of fairness, the Court should make itself available to the information and requests from Ms. Theriot about the guardianship of her brother.
3. Ms. Diane Theriot has expressed serious problems in obtaining counsel so that she may be heard by the Court on these issues. She informed the undersigned that she has contacted four or five attorneys without success. This Court should inquire into whether Edward's trust account can be tapped to cover her attorney expenses. It is submitted that the Petitioner and Ms. Theriot may request that this Court authorize the

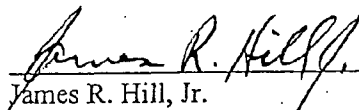
trust to pay for their attorney fees. Both Ms. Theriot and Ms. Mims have limited financial means.

4. This Court heard the matter concerning Judicial Admission and issued its Order on July 3, 2001. At that time, a key element for determining judicial admission was the Petitioner's inability to care for her son at her home. This issue goes not only to her financial capacity to have Edward living with her, but also to her capacity to manage his affairs and his estate. The Petitioner testified before Judge McCulloch that she knew Edward had a trust but she did not know how much was in the trust, and more importantly, where the trust was located. Soon after Edward's judicial admission, she wrote the Attorney General requesting his discharge. Additionally, after taking Edward home on June 10, 2005, she requested alternate residential placement with Mentor, Inc. These actions by the Petitioner raise a serious concern as to her capacity to care for or be a guardian for her son.
5. The Court is not limited to the Petitioner for appointment of guardian. S.C. Code Ann. §62-5-311 allows the Court to consider any **competent person**, emphasis added. The priority set out in this statute places the Petitioner before her daughter, Ms. Theriot, but this priority is clearly subject to the discretion of the Court. The Petitioner's actions regarding her apparent lack of understanding of the basis and significance of the prior Judicial Admission Order, her demand for discharge without appropriate and pre-arranged services, her age and poor health, her lack of knowledge of Edward's trust, it is submitted, make her a poor candidate for guardian, especially since Ms. Theriot having none of these problems stands ready, willing and able to assume this fiduciary duty.

6. There is ample evidence that Edward is an incapacitated person, but the question of his need, emphasis added, has not been addressed. There has been no showing that his mother or his sister are unavailable to provide consent for health care under the Adult Health Care Consent Act, S.C. Code Ann. §44-66-10. Guardianship is not needed. Guardianship in this case, it is submitted, was a way to move Edward out of Babcock Center, Inc., even in view of the Judicial Admission. But, as a Medicaid recipient, there are other ways to move Edward without resorting to guardianship. S.C. Code Ann. §62-5-304 allows the appointment of a guardian when the Court is satisfied that the appointment is necessary or desirable as a means of providing continuing care and supervision. There has been no showing that Edward has gone lacking for care and supervision by not having a guardian. Very few people with Edward's condition have a guardian. The Visitor's report failed to address any need of Edward requiring a guardian. It is not enough to want to be the guardian of an incapacitated person; there must also be a direct, realistic need for care and supervision that would otherwise be lacking without the appointment of a guardian.
7. Lastly, the Court should consider and address the possibility of conflict, in that, this Court has already ruled, in essence, on the Petitioner's capacity to care for Edward in the Court's Order of July 3, 2001. This Petition was initially heard by Judge McCulloch and no reason has been presented why the Petition has been switched to this Court. Respectfully, the Court may want to consider recusal due to actual or perceived conflict with the prior Court's Order of July 3, 2001.

WHEREFORE, SCDDSN has submitted its objections to this action, which are in essence, serious concerns that should be addressed by this Court. More specifically, SCDDSN questions the need for a guardian for Edward, the Petitioner's capacity to function as guardian, and suggests that if guardianship is needed, the Court consider the appointment of Edward's sister, Ms. Diane Theriot. SCDDSN suggests that this Court look beyond the desires of the Petitioner and examine what is in Edward's best interest.

Respectfully submitted,


James R. Hill, Jr.
General Counsel
South Carolina Department of Disabilities
and Special Needs
P.O. Box 4706
Columbia, SC 29240
Phone: (803) 898-9683

September 28, 2005
Columbia, South Carolina

Encls.

COPY

J. Dutkus, Ph.D.
Director
W. Barfield
State Director
J. G. Dozier
State Director
K. Lacy, Ph.D.
State Director



3440 Harden Street Ext (29203)
PO Box 4706, Columbia, South Carolina 29240
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Toll Free: 888/DSN-INFO
Home Page: www.state.sc.us/ddsn/

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June 22, 2005

Mr. Edgar S. Kneece, Esq.
455 St. Andrews Road
Bldg. D, Suite 3-A
Columbia, SC 29210

Re: Guardianship of Edward Mims

Dear Mr. Kneece:

As court appointed Guardian Ad Litem (GAL) for Mr. Mims in this matter, I wanted to bring to your attention a letter that was sent to me by Ms. Diane Theriot, Edward's older sister. She has expressed a desire to be involved in this case and she has information concerning the issues before the Court.

As GAL for Edward, I assume that you would want this information. It may be relevant to your position as GAL in protecting Edward's best interests.

By copy of this letter, I am informing Ms. Theriot that the Richland County Probate Court will be hearing this matter at 11:30 a.m. on June 24th in courtroom 2F and that she may contact you by phone at 750-3000.

Sincerely,

James R. Hill, Jr.
General Counsel

JRH/cch

Encl.

cc: The Honorable Amy McCulloch, Judge-Probate Court
Ms. Patricia Harrison, Esq., Attorney for the Petitioner
Mr. Chris Stegmaier, Attorney for Babcock Center, Inc.
Ms. Diane Theriot

DISTRICT I

3301 Farrow Road, Columbia, SC 29203

Midlands Center - Phone: 803/935-7500
Whitten Center - Phone: 864/833-2733

P. 157

3209, Florence, SC 29502-3209
843/664-2655

DISTRICT II

TAB H

0271

FILED

05 DEC 19 PM 5:37

AMY W. MCCULLOCH
PROBATE JUDGE
RICHLAND COUNTY, S.C.

STATE OF SOUTH CAROLINA
IN THE COUNTY OF RICHLAND

IN THE MATTER OF GUARDIANSHIP
OF EDWARD MIMS

MARGARET MIMS,
Petitioner

PROBATE COURT
CASE NUMBER 03 GC 40 00422

ORDER APPOINTING
PERMANENT GUARDIAN

This matter came before the Court on the Petition of Margaret Mims, who is the mother of Edward Mims. In attendance at the hearing held on September 29, 2005 were Margaret Mims and her attorney, Patricia L. Harrison, the Court-appointed Guardian Ad Litem for Edward Mims, Edgar Kneece and M. Leigh Flynn, who was previously appointed by this Court as Guardian Ad Litem for Edward Mims in another proceeding.

Lynn Lugo, who serves as Service Coordinator for Edward Mims at the Richland Lexington Disabilities and Special Needs Board attended the hearing. Also in attendance were James Hill, legal counsel for the South Carolina Department of Disabilities and Special Needs and Diane Theriot, who is the sister of Edward Mims.

The court-appointed Visitor previously found the residence of Margaret Mims to be clean and in good condition. She reported that Mrs. Mims was very attentive to the needs of Edward Mims and that he appeared to be familiar and comfortable at home. Examiner Tan Platt reported that Edward Mims is incompetent, and is unable to make daily living and health care decisions. A July 3, 2001 Order of this Court found Edward Mims to be "profoundly mentally retarded." The second court-appointed examiner, Lennie Mullis confirmed that Edward Mims is incapacitated. In addition, evidence was presented of a number of emergency room physicians having reported that Edward Mims is incapacitated by reason of mental retardation.

Prior to the hearing, the South Carolina Department of Disabilities and Special Needs filed written objections to the appointment of Margaret Mims as guardian for Edward Mims. At the hearing, counsel for the Department objected to the appointment of Margaret Mims, arguing that no guardian should be appointed for Mr. Mims. Alternatively, the Department recommended that the Court instead appoint Diane Theriot as permanent guardian for Edward Mims. The Department also requested that the funds of Edward Mims be used

to pay legal fees of Diane Theriot and requested that the Court consider recusal of Judge Belton.

The Court determined that the Department of Disabilities and Special Needs was not a party to the guardianship proceedings. It was noted that Diane Theriot had not filed a written petition for appointment as guardian of Edward Mims, which she had ample opportunity to do. As for the request that this Court recuse itself, the Court declined to recuse itself, as adequate grounds had not been presented to require such action.

As Guardian Ad Litem for Edward Mims, Mr. Kneece requested that the hearing be closed pursuant to S.C. Code of Laws §62-5-303. All persons except the Guardian Ad Litem, Margaret Mims and Patricia Harrison were removed from the courtroom and asked to wait in the hallway outside the courtroom until their testimony was required by the Court.

Mr. Kneece reported that he had visited the adult day care program which Edward has attended on weekdays since June, 2005. He reported that the director of that program, Tammy Quarles, R.N., reported to him that Edward appears to be well cared for at home and that he is doing well in the day program. Mr. Kneece recommended that the Court appoint Margaret Mims as permanent guardian for Edward Mims.

Diane Theriot testified that she has not seen Edward Mims since June 2005 and had not seen him before then since the spring of 2004. Until recently, Ms. Theriot was employed by the Babcock Center, where Edward Mims resided between 1999 and 2005. She reported that Edward Mims has not visited in her home and that she has not visited her brother on holidays for many years. Ms. Theriot testified that if she was appointed as guardian, she would place her brother in a facility operated by the South Carolina Department of Disabilities and Special Needs. She testified that she has not been close to her brother and has not participated in his care in any way, but that she objected to the appointment of Margaret Mims as guardian for Edward Mims. However, Ms. Theriot could not cite specific instances of problems that she felt would warrant Margaret Mims not being appointed as permanent guardian for Edward Mims.

Margaret Mims testified that she is capable of taking care of her son. She was able to describe the medications Edward Mims is taking and her understanding of his medical conditions. She testified that she

provided care for her son at home until he was twenty-eight years old and that he experienced episodes of abuse and neglect since he was placed in residential services at the Babcock Center in 1999. She testified that she would consider alternative residential placement if she felt that she was unable to provide continuing care in the home in the future.

Lynn Lugo provided testimony about the in-home services which are being provided to Edward Mims by the Richland Lexington Disabilities and Special Needs Board. She testified that she has visited in the home, that Mrs. Mims has done a very good job taking care of Edward, and that it would be in the best interest of Edward Mims for the Court to appoint his mother as permanent guardian. Ms. Lugo further testified that if Margaret Mims got sic, emergency respite would be provided, once Mrs. Mims called to request it.

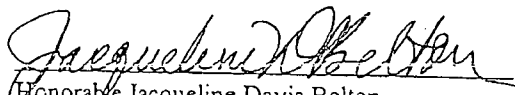
Based on the testimony and evidence presented, I find that this Court has jurisdiction, and venue is properly in Richland County. I also find that Edward Mims is incapacitated and in need of the appointment of a permanent guardian. I further find that Margaret Mims has priority for appointment as permanent guardian under South Carolina Code §62-5-311, and that she is the appropriate person to be appointed.

Margaret Mims shall have all statutory powers of a permanent guardian, including but not limited to the authority to make decisions about and establishing Edward's placement, including living at home with her. Further, given the termination of Edward Mims' judicial admission to the S.C. DDSN, Margaret Mims is to have custody of the person of Edward Mims. The guardian shall be authorized to give all consents and approvals for Edward Mims to receive medical and other professional care, counsel, treatment and services. All medical providers are ordered to provide medical records and information as requested by the guardian.

The court-appointed guardian ad litem and attorney for Edward Mims, Edward Kneece Esq., has provided services in this matter and is entitled to a reasonable fee. Mr. Kneece has not been paid since he began his representation of Mr. Mims, and his fee statement of \$3,065.00 is reasonable given the complexity of the case and time devoted to representing Mr. Mims in this matter. Mr. Kneece's fees are to be paid in their entirety or in increments, as soon as funds become available.

The guardian shall submit a report to this Court and the Guardian Ad Litem six (6) months from the date of this Order, then again twelve (12) months from that date.

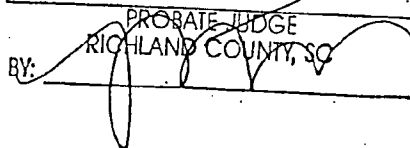
IT IS SO ORDERED.


Honorable Jacqueline Davis Belton
Richland County Probate Court

December 19, 2005.
Columbia, South Carolina

A TRUE COPY
ATTEST:

Amy W. McCulloch

BY: 
PROBATE JUDGE
RICHLAND COUNTY, SC



Greenwood Genetic Center
Columbia Office
8301 Farrow Road
Columbia, South Carolina 29203
(803) 935-5390 • FAX (803) 935-5410

GENETIC CONSULTATION

RE: Edward Mims

DOB: 12-9-71

DOE: 12-16-99

Edward is a 28 year old Caucasian male that we are seeing at Lexington Clusters today. Our information about Edward was obtained from review of his most recent DDSN chart.

Edward's mom was 32 years of age at the time of his birth. He was delivered at 36 weeks in breech presentation. He remained in the hospital for the first 2 months of his life and had feeding difficulties.

Edward did not walk alone until 5 years of age and has never spoken. He has profound mental retardation with a Bayley score of 20 months.

Edward's past medical history is significant in that he has only one kidney. He has had episodes of hyponatremia, polydipsia and hypertension. He also has had esophagitis associated with GE reflux.

Edward is described as having seizures that began at about 6 months of age. He also has mild myopia. He has probable hearing loss. His current medications include Phenobarbital, Propulsid, Claritin, and Prilosec.

Edward has been evaluated by the Greenwood Genetic Center in the past and has had normal chromosomes and FMR1 studies.

FAMILY HISTORY: There are no other first degree relatives with learning problems.

Clinical Staff

Kate B. Clarkson, M.D.
Clinical Geneticist

Ken Corning, M.S.
Genetic Counselor

Amy Tohuren, M.S.
Genetic Counselor

February 3, 2009

Commissioners told to attend hearing

Lawmakers upset that Disabilities and Special Needs board missed first one

By Ben Szobody
STAFF WRITER

State Sen. David Thomas said a new committee could meet next week on allegations of safety gaps, unspent or diverted funds and other problems at the state Department for Disabilities and Special Needs, and this time he expects the agency's six public commissioners to show up.

Two of the six gubernatorial appointees told The Greenville News they didn't attend a Senate hearing last month on what a new audit said was \$9 million in unspent or diverted autism funds at the agency because they didn't know about it or weren't invited.

Thomas and state Sen. Ronnie Cromer blasted agency administrators for telling their staff but not commissioners about the forum, which drew a packed crowd of parents.

"I'm going to hand-write personal invitations to them," Thomas said, describing his remarks as facetious. "Put a nice bow around it. So they'll know they're invited."

Agency spokeswoman Lois Park Mole said Thomas asked director Stan Butkus to speak at last month's hearing by letter, and Butkus informed commission Chairman Bobby Harrell about the meeting.

Thomas said none of the six showed up.

Attempts to reach Harrell and three other commissioners were unsuccessful. They include John Vaughn of Greenville, Otis Speight of Fort Mill and John Powell of Walhalla.

Commissioner Edythe Dove of Charleston told The News she didn't know about the hearing but has confidence in agency staff to answer questions.

Commissioner William Bishop of Leesville said he's not sure if he knew the hearing was taking place, but that regardless, he wasn't invited.

Thomas said, "Every member of their staff looked like they were present. Not to inform the commission ... is a further indictment of the administration."

Cromer said it would be "pretty odd" for agency administrators not to notify commissioners of the meeting, but they should have known about it anyway.

"You would think that they're keeping up with stuff like that within their agency," he said, adding that they "owe it to the citizens of South Carolina" to stay informed.

"By George, (commissioners) need to be at any future meeting that we have. It's part of their responsibility," Cromer said.

Exhibit P.12 P.1637

Thomas, chairman of the Senate Banking and Insurance Committee, said he expects to appoint a subcommittee this week, and the group could meet as early as next week. He said he expects to call agency staff, commissioners and auditors to speak.

In addition to the unused or diverted autism funds, a critical audit last month said the agency, which serves people with brain damage and mental retardation, may not have fired some staff members involved in cases of abuse and neglect, didn't follow up on numerous safety and welfare violations and doesn't conduct nationwide criminal background checks on caregivers, among other issues.

DDSN has said appropriate action was taken in cases of abuse and neglect 100 percent of the time, that it's the job of providers to correct quality problems and that it would take a change in state law to conduct national background checks.

Thomas said the audit's findings are "well-founded" but he's trying to find out where to place the blame.

"Is it a board not doing its job, or is it an administration out of control?" Thomas said.

February 4, 2009

Senator: Agency retaliating against 5

Disabilities and Special Needs official says jobs outsourced based on audit

By Ben Szobody
STAFF WRITER

Five state employees who told auditors about health and safety problems in the state Department of Disabilities and Special Needs are being terminated by June in "retaliation" by the agency for their honesty, state Sen. David Thomas said.

Agency spokeswoman Lois Park Mole said it's not yet clear if the employees will be terminated, but the department is following a recommendation in December's critical audit to make the licensing of its care facilities more independent by outsourcing the job to a contractor.

The audit didn't recommend a switch to a private contractor, and George Schroeder, director of the Legislative Audit Council, said it's not the best solution.

Thomas said all five members of the agency's licensing staff were told last week their jobs would be cut, and he provided a letter signed by all five people that describes an agency meeting in which a top administrator told them the change amounts to a "reduction in force."

"The fact that the department has deviated from the specifics of the (audit) demonstrates that they are retaliating, in my opinion, against these people," Thomas said. "This is outrageous behavior."

Mole said the employees were informed of the plan to hire a contractor in an effort to be transparent, and the agency doesn't yet know what response it will get to its request for contract proposals. She said DDSN is looking for the "greatest degree of independence" when it comes to licensing but doesn't believe anything is wrong with the current arrangement.

Thomas said he's concerned by the agency's choice to go private because of past instances when he said DDSN picked contractors close to the agency that would do its bidding.

Mole said she hasn't heard those concerns from Thomas and couldn't respond Tuesday.

The audit said a former DDSN director was simultaneously employed by the agency, its local boards and an agency contractor, an arrangement that had "the appearance of impropriety," though in one instance an Ethics Commission ruling found no violations of state ethics law.

The former director told The News the services he provided were "very different" and that there was no impropriety.

Licensing employees said in a letter to Thomas, which he provided to The News, that under the new approach, DDSN would continue to determine "key indicators" and provide policy and directives to the outside contractor, effectively creating an appearance of independence while "nothing would actually be changing."

The letter said an associate director told the employees that DDSN intends to hire the contractor by June 30, which would be their last day of employment.

December's audit of the department, which serves people with brain injuries and mental retardation, said DDSN reviews the quality of its adult residential facilities one-third as often as other states and didn't adequately follow up when it found expired food, missing smoke detectors and water heaters set too hot.

Contributing to the potential health and safety risks is a lack of independent licensing used by other states, the audit said, adding DDSN licenses some of its own facilities, creating potential conflicts of interest that can "impede objective reviews."

Mole has said the facilities themselves -- not the agency -- are required to follow up on quality problems. The agency said in a written response that it received "plans of correction" for 100 percent of the licensing reviews cited by the audit.

The audit said 26 residential licensing reports were reviewed and 25 should have required a follow-up.

The audit said two follow-ups were reports.

Another sample of nine reports occurring after January 2007 showed more than 100 quality deficiencies but "no documentation" that any follow-up visits took place, the audit said.

Thomas said the licensing officials would report health and safety problems, then come back three years later and find that they hadn't been fixed. He said they were "forthright" about the issues to state auditors and are now paying the price.

Auditors recommended more follow-ups as well as moving the licensing role to the state Department of Health and Environmental Control. If the job stays within DDSN, auditors said the agency should do reviews more often.

Schroeder said the problem was that the agency wasn't doing enough reviews, and that the "best thing" would be to move the licensing staff and its funding to another agency.

"We did not recommend that they fire the people that were currently" doing the reviews, Schroeder said, adding he doesn't understand how the agency will hire a contractor to do a job it wasn't doing effectively itself.

"How are they going to know what it should cost?" Schroeder said.

Mole said the decision to privatize the licensing function came out of a meeting between DDSN commissioners and Gov. Mark Sanford's staff.

"It's going as independent as you can possibly go with the highest degree of quality," Mole said.

Sanford spokesman Joel Sawyer said the licensing issue was discussed with commissioners, but not how the agency would do it. Commissioners later informed the governor's staff that they intended to privatize, Sawyer said, adding that if it isn't in line with the audit's recommendations, the governor will have the board "re-evaluate" the plan.



February 19, 2009

Ex-Greenville pastor among DDSN board members asked to resign

By Ben Szobody
STAFF WRITER

Gov. Mark Sanford asked for the resignations Thursday of four of the seven commissioners of the state Department of Disabilities and Special Needs after a critical audit alleged problems, including health and safety gaps, unused funds and a lack of transparency.

Retired Greenville pastor John Vaughn was among them.

State Sen. David Thomas applauded the move and said it "clears the deck" for officials to get at the agency's problems.

"If the new commission fails to clean house at very top level of the agency, they will have failed," he said.

Vaughn told *The Greenville News* on Thursday, "I'm a team player. He's the coach. If he wants to put somebody else in, that's not my call."

Attempts to reach the other commissioners removed Thursday were unsuccessful.

They include Edythe Dove of North Charleston, John Powell of Walhalla and William Bishop of Leesville, said Sanford spokesman Joel Sawyer, adding that the Governor's Office is in the process of identifying their replacements.

Sawyer said none have yet submitted their resignations, and that if anyone chooses not to resign, he'll be replaced when his term expires or removed by executive order.

Vaughn said he told the governor that he'd serve until his replacement is found.

Sawyer also reiterated the governor's call to restructure the agency, which serves people with mental retardation and brain injuries. As a cabinet agency, Sawyer said Sanford would also have the power to change the administration.

The *Greenville News* reported in 2007 allegations that the agency let a private contractor review claims of abuse at its own facility, that it was "almost impossible" to connect state payments for care with what was actually spent on patients and that the commission had barred individual members from inquiring about agency operations without the consent of the full board.

December's audit said the agency diverted or left unused \$9 million in autism funding, may not have fired some staff members involved in cases of abuse and neglect, didn't follow up on numerous safety and welfare violations and denied commissioners access to public information, among other issues.

The agency has said appropriate action was taken in cases of abuse and neglect 100 percent of the time, that it's the job of providers to correct quality problems and that the commission doesn't bar information from its members.

Former agency commissioner Mary Katherine Bagnal, an agency critic who said Sanford asked her to step down last year, has questioned why none of the remaining DDSN commissioners had been removed more than two months after the audit.

Sawyer has previously declined to comment on the issue, but said Thursday that the audit made clear that changes were needed at the agency and that removing board members is what falls under the governor's authority.

"This is all that's in our powers to do," Sawyer said.

Sawyer has said the Governor's Office acted on many of Bagnal's concerns, but asked for her removal because her conflicts with other agency officials had become a distraction.

Asked Thursday why Sanford picked the four commissioners for removal, Sawyer said three of them had expired or nearly expired terms, while Bishop is also chairman of board for the Babcock Center in Columbia, a DDSN-funded agency.

Because of the close relationship between the agency and its local boards highlighted in the audit, Sawyer said Bishop was removed.

He also said that with a new board, "There may very well be a change in chairmanship."

Bobby Harrell of Yemassee, who wasn't removed, is the current chairman.

Vaughn said Sanford's office asked him in September to reapply for his seat, which expires in June, but that because of family responsibilities he never submitted the application.

Asked if he thought the audit justified Sanford's move, Vaughn said, "I don't have his perspective. I respect him and the leadership he has to provide."

Thomas said legislators will continue to investigate agency problems revealed in the audit and by current and former employees and The News, including the purchase of a Superfund hazardous cleanup site in Inman with DDSN money.

The newspaper reported in December that livestock, residences, hospitals and day cares are banned on the property where a DDSN-funded center trains disabled adults for jobs.

The center's director has said there's "no danger," while the state Department of Health and Environmental Control has said it continues to investigate the extent of groundwater contamination on the site.

Thomas has said numerous public hearings will be held in coming weeks.

He also said it remains to be seen whether House legislation to restructure the agency, making it directly accountable to the Governor's Office, will pass in the Legislature.



February 24, 2009

Ex-Disabilities board member says Sanford 'posturing'

Spokesman says governor wants more accountable agency structure

By Ben Szobody
STAFF WRITER

One of the commissioners removed by Gov. Mark Sanford from the state Department of Disabilities and Special Needs board blasted the governor Monday for what he said is "political posturing" designed to "concentrate his power" at the expense of the Legislature, and that no one has done anything wrong.

"As with his dithering over the acceptance of federal stimulus dollars, the only people who will suffer are the most vulnerable elements of our communities," said commissioner John Powell, a real estate agent from Walhalla. "I am very disappointed in Gov. Sanford's office for not taking a stand for the people."

Sanford spokesman Joel Sawyer said it's no secret that the governor wants a more accountable agency structure that would allow him to hire and fire the director. Under the current structure, he said, a critical audit made clear that the agency's leadership needed to change.

Sanford asked for the resignations of four of the agency's seven commissioners last week, citing a December audit that alleged problems including health and safety gaps, unused funds and a lack of transparency.

Powell said the move is a "stepping stone" for Sanford to take over the agency, replacing the board with the equivalent of "Cabinet appointees." He also said he didn't join the commission until a year ago, after the audit was underway, and that it doesn't make sense to remove him.

Powell said the audit didn't accuse the agency of wrongdoing but offered "recommendations for improvement," which he said will always show up under scrutiny.

He said the governor bent to pressure from former agency officials, causing the ouster of one of the country's top executive directors, who he said made the agency a national model.

Sawyer said the audit offered more than recommendations, but identified "real issues that need to be addressed."

Agency spokeswoman Lois Park Mole said Monday that Stan Butkus remains the director of the agency. Sanford has told commissioners to look at removing top administrators, and Powell has said Butkus' ouster could happen soon.

He said he questioned why Sanford removed only Senate appointees and no governor appointees.

Sawyer said all commissioners are appointed by the governor and approved by the Senate.

and Powell's confusion calls into question his criticism overall.

Powell also defended the agency's use of \$9 million appropriated for a new autism program that the audit said was diverted or unused. He said budget cuts hit the agency before the program could be fully implemented, and by rolling back the program, "nobody was really hurt" because they hadn't yet begun to receive care.

Asked about complaints that the rollout was unnecessarily slow, Powell said that's probably true, but that he's glad it happened that way because of the eventual cutbacks.

Powell said he believes the issues raised in the audit will now "go away."

"Mission accomplished," he said. "Fire people -- which was the purpose of the audit to start with. All recommendations have been addressed. No one has done anything wrong."



February 26, 2009

Ex-auditor: Agency didn't heed warnings

Disabilities officials have no record of recommendation to track workers fired for abuse, spokeswoman says

By Ben Szobody
STAFF WRITER

The former internal auditor of the state Department of Disabilities and Special Needs said top administrators ignored his warnings beginning in 2003 that they needed a way to track employees fired for abuse so they couldn't be rehired elsewhere in the system.

Steve Jeffcoat, internal auditor from 1982 to 2007, told The Greenville News that in one case an agency-funded provider rehired someone it had earlier fired for physical or verbal abuse. After his report, the employee was fired again, Jeffcoat said, but it was still impossible to know if the person was rehired elsewhere.

Agency spokeswoman Lois Park Mole said Wednesday that no one in senior management knows of an audit, memo or other documentation from Jeffcoat recommending a central registry to track fired employees.

December's critical audit of the agency, which serves people with mental retardation and brain injuries, said DDSN doesn't have an adequate system to ensure that caregivers dismissed for safety infractions aren't rehired elsewhere in the system.

Mole said the agency was already strengthening its hiring and reference process before the audit, and that since January 2007, all allegations of abuse, neglect or exploitation are reported to the State Law Enforcement Division. She said any convictions show up when a care provider runs a SLED background check.

Jeffcoat said part of the problem is that the directors of the agency's local boards aren't held accountable in cases in which auditors repeatedly find the same problems. Instead, he said all they have to do is write a "corrective action plan."

Jeffcoat can't recall if he told commissioners but said he made clear to administrators in agency meetings that they needed a central registry of employees fired for abuse to prevent them from moving to a different county and continuing to receive a paycheck.

"There was never any response about it," Jeffcoat said, adding, "I couldn't force them to do it, obviously."

The audit said the agency should amend its contracts with the local boards to require that they formally record whether they would rehire a departing employee. The audit also said the agency should require the boards to use written references that include employee evaluations and why and how they were terminated.

In its response to the audit, the agency agreed to implement the changes. The audit did not



March 5, 2009

Disabilities agency must fix procedures

The director of the state agency serving the mentally and physically disabled resigned Feb. 27 after Gov. Mark Sanford and legislative leaders called for his ouster. The resignation of Stan Butkus, director of the state Department of Disabilities and Special Needs (DDSN), gives the agency an opportunity to reform a number of policies identified in a highly critical audit of the agency in December.

Whether it was necessary for Butkus to resign to bring change to the agency is debatable. Certainly Sanford and state Sen. David Thomas believed it was an important step. Thomas believes other top administrators need to resign as well. Sanford has called on four DDSN commissioners to resign.

Sanford's desire to bring greater accountability to this agency can be applauded. A hope is that, with a faltering state economy and record unemployment, Sanford will apply the same high level of accountability to other state agencies as well.

Sanford has argued rightfully that the governor has direct control over too few state agencies. The House Judiciary Committee recently approved legislation that would make the DDSN as well as the state Employment Security Commission directly accountable to the governor. Those are positive measures.

The most important task at DDSN, meanwhile, is to ensure that recommendations from the December audit are followed thoroughly. The audit found that DDSN reviews the quality of its adult residential facilities one-third as often as do other states. The agency also failed to conduct follow-up reviews of facilities with problems.

State auditors reviewed a sampling of 26 DDSN licensing reports for residential service providers and said one report found no quality deficiencies but 25 others should have required a follow-up.

Another sample of nine reports occurring after January 2007 showed more than 100 "Class II" quality deficiencies -- defined as quality problems that do not pose an immediate danger but that could put someone's "physical, emotional and financial well-being in jeopardy," the audit said. The deficiencies included a failure to document that medication was appropriately administered, the presence of expired foods, missing smoke detectors and water heaters set at temperatures too hot for consumers, but the agency conducted no follow-up visits to the facilities, the audit said.

DDSN serves more than 28,000 South Carolinians with mental retardation and related disabilities, autism, traumatic brain injury and spinal cord injury. Almost 5,000 of the agency's clients receive residential services in one of the agency's regional centers or in community residential homes. The remaining clients live at home and receive support there.

Whether or not more administrators or commissioners resign, DDSN needs to improve its procedures. A comprehensive follow-up audit is needed as well to ensure that DDSN is adequately and responsibly serving the needs of its vulnerable clients.



March 4, 2009

Committee moves to place state agencies under Sanford

By Tim Smith
CAPITAL BUREAU

COLUMBIA -- The House Judiciary Committee on Tuesday approved bills placing the Employment Security Commission and the Department of Disabilities and Special Needs under Gov. Mark Sanford's control.

Both agencies had been accused of mismanagement in recent months and both had supporters tell lawmakers the agencies did not need fixing.

The bills move next to the full House for approval. Similar legislation is up for consideration by Senate committees this week.

"I guess folks had their mind made up here," ESC Chairman McKinley Washington said afterward. "I sort of expected the bill to be passed by the committee. I think it may be a different story once it gets to the floor of the House."

Sanford issued a statement afterward praising the committee's passage of the bills.

"The need for more accountability at both of these agencies has been well-chronicled as of late, and to that end I'd give real credit to the House Judiciary Committee for moving forward on this front," Sanford said.

One bill would make the ESC a Cabinet agency, turning over its control to an executive director to be named by Sanford. The agency's three commissioners, who currently are its top administrators and appellate judges, would continue for three years as an appellate panel before turning that job over to the state Administrative Law Court.

Sanford has long criticized the agency, especially for its handling of the unemployment trust fund.

The disabilities agency was the target of a critical performance audit last year. Sanford asked four of the department's seven commissioners to resign two weeks ago, and the agency's executive director resigned last Friday.

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DDSN may become absorbed into governor's cabinet

Posted: March 4, 2009 05:58 PM EST

Updated: March 4, 2009 05:58 PM EST

COLUMBIA, SC (WIS) - The Department of Disabilities and Special Needs has already had a big shake-up at the top.

Thousands of disabled South Carolinians and their families are waiting to see what happens next.

On the south side of the State House, a wintertime rally was held for a summer camp in trouble.

The event was designed to call legislative attention to the funding crisis at Camp Burnt Gin -- the camp program in Wedgefield that serves Bill Green and hundreds of other children with disabilities and illnesses. Green's father, Dr. William Green is a USC psychiatrist.

"I just think it would be a real tragedy for South Carolina to close that. It's probably one of the few things that I truly think state government works wonderfully in, is Camp Burnt Gin," Green said.

The rally was aimed to reverse budget cuts that have put the camp's future in doubt.

Just one part of day-long effort by advocates for those with disabilities to save what they say are essential services.

This year, the annual Disability Advocacy Day comes at a sensitive time for those in charge of protecting the disabled.

The state's Department of Disabilities and Special Needs is in a state of

DDSN may be absorbed into governor's cabinet, Jack Kuenzie reports

SC Politics more>>

Sanford says he's pressing for 'fiscal responsibility'

SC bill allows access to unlicensed homes

DDSN may become absorbed into governor's cabinet

SC lawmakers advance dental care bill

Obama administration launches housing plan

Kerry: Syrian leader wants peace talks with Israel

SC gov expects stimulus decisions next week

Bill could stop people from smoking in cars with children

Britain's Brown sounds warning on Iran, nuke

transition.

plans

A highly critical legislative audit and four of seven commissioners on the way out along with long-time director Stan Butkus.

Leahy pushes for Truth Commission

He resigned last Friday as lawmakers and others continued to press for changes in leadership and control.

"Right now we're taking the steps we can take. We've made the changes with regard to board membership. That's so we can then make a change with the executive director. We've been working with house and senate to try to move this legislation forward," Gov. Mark Sanford said.

"We hopefully bring in somebody new that has no background with this agency, that has some international or national standing, and can come in and take over and make the agency what we know the agency is capable of being and doing," State Sen. David Thomas said.

Kelly Floyd is one of the three DDSN commissioners who will stay on.

"I think that the events that happened were necessary. And I think that the department will be better for it," Floyd said.

But some remain skeptical that putting DDSN in the governor's cabinet will guarantee better administration.

"According to theory, the Department of Corrections is very accountable because it's a cabinet agency. But the problems of the agency are demonstrated by the amount of legal settlements they're paying," State Sen. Phil Leventis said.

Thomas continues to call for a housecleaning of other administrative positions under the director. He still sees questions about money flow and how the agency is being operated on a functional level.

But while Thomas supports putting DDSN in the cabinet, he too says that won't guarantee performance. He believes constant legislative scrutiny will help.

Reported by Jack Kuenzie

Posted by Jeremy Turnage



2 votes

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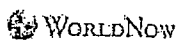


DDSN may become absorbed into governor's cabinet

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

EDWARD MIMS,

PLAINTIFF,

vs

BABCOCK CENTER, JUDY JOHNSON,

SCDDSN, KATHI LACY, STANLEY

BUTKUS,

DEFENDANTS.

) IN THE COURT OF COMMON PLEAS

) CASE NO. 07- CP- 40-03365

) CERTIFICATE OF SERVICE

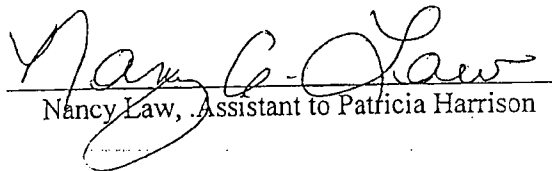
I certify that on this date March 6, 2009 I served a copy of Affidavit of M. Leigh Flynn and Affidavit of Margaret Mims in the above captioned action

(x) Delivering it to him/her personally

Ken Woodington, Esquire
Davidson and Lindemann
PO Box 8568
Columbia, SC 29202-8568

Date

March 6, 2009.


Nancy Law, Assistant to Patricia Harrison

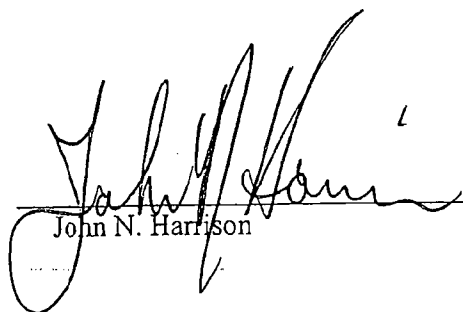
STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	CASE NO. 07- CP- 40-03365
EDWARD MIMS,	)	
PLAINTIFF,	)	
vs	)	CERTIFICATE OF SERVICE
BABCOCK CENTER, JUDY JOHNSON,	)	
SCDDSN, KATHI LACY, STANLEY	)	
BUTKUS,	)	
	)	
DEFENDANTS.	)	

I certify that on this date March 6, 2009 I served a copy of Affidavit of M. Leigh Flynn and Affidavit of Margaret Mims in the above captioned action

(x) Delivering it to him/her personally

Christian Stegmaier, Esquire
 Collins and Lacy
 Lady Street
 Columbia, SC 29201

March 6, 2009
 Date


 John N. Harrison

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	CASE NO. 07- CP- 40-03365
EDWARD MIMS,	)	
PLAINTIFF,	)	
vs	)	CERTIFICATE OF SERVICE
BABCOCK CENTER, JUDY JOHNSON,	)	
SCDDSN, KATHI LACY, STANLEY	)	
BUTKUS,	)	
	)	
DEFENDANTS.	)	
_____	)	

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Date March 6, 2009

Nancy G. Law
Nancy Law, Assistant to Patricia Harrison

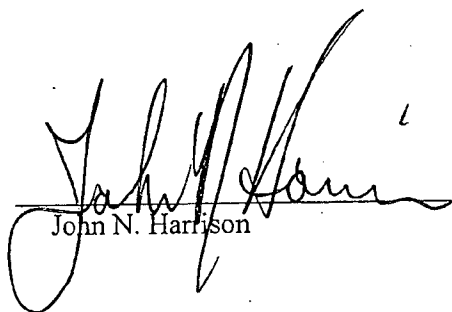
STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	CASE NO. 07- CP- 40-03365
EDWARD MIMS,	)	
PLAINTIFF,	)	
vs	)	CERTIFICATE OF SERVICE
BABCOCK CENTER, JUDY JOHNSON,	)	
SCDDSN, KATHI LACY, STANLEY	)	
BUTKUS,	)	
	)	
DEFENDANTS.	)	

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Christian Stegmaier, Esquire
 Collins and Lacy
 Lady Street
 Columbia, SC 29201

March 6, 2009
 Date


 John N. Harrison

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Civil Action No. 07-CP-40-3365
	)	
Edward Mims, by and through his legal	)	
guardian, Margaret Mims,	)	
Plaintiff	)	AFFIDAVIT OF M. LEIGH FLYNN
	)	
vs.	)	
	)	
Babcock Center, Inc., Judy Johnson, the	)	
South Carolina Department of Disabilities	)	
and Special Needs, Kathi Lacy and Stan	)	
Butkus,	)	
Defendants.	)	

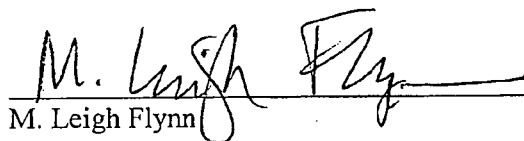
Now comes M. Leigh Flynn who states:

1. I am an attorney licensed to practice law in South Carolina.
2. I am the former President of the South Carolina Chapter of the National Academy of Elder Law Attorneys and Chairman of the Elderlaw Subcommittee of the South Carolina Bar Association.
3. I have been appointed in hundreds of cases by various Probate Courts in South Carolina to serve as guardian ad litem for persons who have disabilities.
4. I was appointed by the Richland County Probate Court on April 23, 2001 to represent Edward Mims after Dr. James Christian, an employee of the South Carolina Department of Disabilities and Special Needs, filed a petition for involuntary commitment to the care and custody of the Department. Exhibits 1, 2 and 3.
5. Edward's mother, Margaret Mims, voluntarily placed him at the Babcock Center in 1999 due to illness.
6. After Mrs. Mims' health improved, Edward spent weekends with her at home and he returned to Clusters on Sundays.
7. Mrs. Mims made allegations that Edward was being mistreated by employees at Clusters.
8. During my investigations, I met with Babcock Center employees at Clusters and with legal counsel for the Department of Disabilities and Special Needs to discuss Edward's situation and his medical needs.

9. Clusters employees intentionally withheld information from me about the conditions at Clusters in 2001 and about the many incidents in which Edward had been injured at the facility so that I would recommend that he be involuntarily committed to the facility.
10. Employees told me that Edward was anxious when he returned to Clusters after his weekend visits at home because he was being abused or neglected by Mrs. Mims and they tried to convince that Mrs. Mims was unable to care for Edward at home.
11. Babcock Center employees never told me that Edward had been beaten by a Babcock Center employee, Carl Anthony on or about August 13, 2000. Exhibit 5.
12. I made recommendation to the Probate Court to involuntarily commit Edward to the Babcock Center based on this false information which had been provided to me by employees of the Babcock Center and the Department of Disabilities and Special Needs.
13. I was not informed when a Babcock Center employee named Carl Anthony was arrested and convicted in October of 2001 for assaulting Edward at Clusters. Exhibit 6.
14. I was not informed when Edward was beaten with a belt at the Babcock Center in December of 2001. Exhibits 7 and 8.
15. I later represented another client who was beaten by Babcock Center employees at Clusters and another client who had been sexually assaulted in a Babcock Center facility.
16. I represented another Babcock Center resident who was burned when an employee threw hot liquid on him.
17. I later represented another Babcock Center resident who choked after being moved to another Babcock Center residence in 2002 despite objections of his mother.
18. Family members in some of these cases were not informed by the Babcock Center when they were injured while living in Babcock Center facilities.
19. After Edward was injured at another Babcock Center facility (Kensington) in 2005, I was provided with evidence showing that Babcock Center employees had intentionally provided false information to me in 2001 in order to prevent Edward from returning to the custody of his mother.
20. I testified at the Richland County Probate Court in 2005 that Edward should be released from the Babcock Center to the custody of his mother and recommended that she be appointed as his guardian.

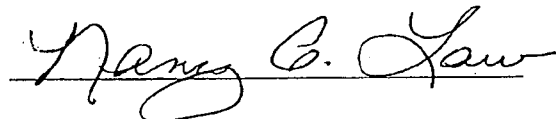
21. I testified that information was withheld from me by Babcock Center employees and that false information had been provided to me about the care provided by Edward's mother in 2001.
22. I informed the Richland County Probate Court that I had represented a number of residents of the Babcock Center who had been abused or neglected by Babcock Center employees and that it was my opinion that Edward was not safe there.
23. Edward has profound mental retardation and functions mentally at the level of an infant. Exhibit 9.
24. Edward's lack of intellectual skills prevents him from communicating verbally, but he communicates simple needs through squawking sounds, gestures and body movements.
25. In a report issued by the South Carolina Department of Disabilities and Special Needs in 1999, the agency confirmed that Edward's intellectual functioning and adaptive behavior "lie in the profound range of developmental delay." Exhibit 11.
26. Edward is not capable of understanding or protecting his legal rights because he is not of sound mind.

FURTHER AFFIANT SAYETH NOT.


M. Leigh Flynn

March 6, 2009
Columbia, South Carolina

SWORN TO BEFORE ME THIS
6th Day of March, 2009.


Nancy B. Law
Notary Public for South Carolina
My Commission Expires: 1-05-2014

LIST OF EXHIBITS

Exhibit 1	Appointment of Guardian ad Litem dated April 23, 2001	4
Exhibit 2	Notice of Petition of Judicial Admission dated April 23, 2001	6
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Exhibit 7	Photographs of Edward Mims after being beaten with belt	17
Exhibit 8	Injury reports	19
Exhibit 9	Psychoevaluation Evaluation Report	31
Exhibit 11	Psychological Report of the South Carolina Department of Disabilities and Special Needs	34

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE PROBATE COURT

01 APR 23 PM 12:01
AMY L. BULLOCK
PROBATE JUDGE
RICHLAND COUNTY, S.C.

FILED

James G. Christian, Ed.D.)
Director, Midlands Center,)
SC Dept. of Disabilities and)
Special Needs)
PETITIONER,)

APPOINTMENT OF GUARDIAN
AD LITEM

IN THE MATTER OF:)

EDWARD JAMES MIMS)
(An alleged mentally retarded)
person))

A Petition having been filed in this Court praying for the judicial admission of EDWARD JAMES MIMS, who is alleged to be mentally retarded and is appealing to the Court that a guardian ad litem should be appointed to protect the interest of the said EDWARD JAMES MIMS in this matter.

IT IS ORDERED that Marsha Leigh Flynn, Esquire who is capable of understanding the rights of the alleged mentally retarded person, and who has no interest in conflict with or adverse to the rights of this individual, be and he/she hereby is, appointed guardian ad litem of EDWARD JAMES MIMS for the purpose of appearing for and acting on behalf of the said

EDWARD JAMES MIMS in all the proceedings herein.

AND IT IS SO ORDERED.

Jacqueline D. Belton
Judge of Probate Court *awd*

Dated this 23 day of
April, 2001

CONSENT TO APPOINTMENT

I do hereby consent to act as guardian ad litem for
EDWARD JAMES MIMS for the purposes of the entitled action.

Signature

Columbia, South Carolina

April _____, 2001

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

2001MIS92
IN THE PROBATE COURT

James G. Christian, Ed.D.)
Director, Midlands Center,)
SC Dept. of Disabilities and)
Special Needs)
PETITIONER)

NOTICE OF PETITION FOR
JUDICIAL ADMISSION AND
NOTICE OF RIGHT TO COUNSEL

IN THE MATTER OF:)
EDWARD JAMES MIMS)
(An alleged mentally retarded)
person))

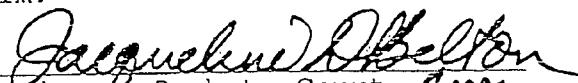
TO: Margaret Mims, 3301 Rosewood Drive, Columbia, SC 29205
Diane Theriot, 2231 Atascadero Drive, Columbia, SC 29206
Edward James Mims, Babcock Center, Inc., The Clusters,
201 Duffie Drive Columbia, SC 29072
Mr. Risley Linder, Sr., Babcock Center, P.O. Box 3817,
Columbia, SC 29230
Dr. James G. Christian, Midlands Center, 8301 Farrow Road,
Columbia, SC 29203

YOUR ARE HEREBY NOTICED that on the 16th day of April,
2001, a Petition was duly filed in the Probate Court for
Richland County, South Carolina, alleging that **EDWARD JAMES
MIMS** is mentally retarded and in need of services from the
South Carolina Department of Disabilities and Special Needs and
requiring admission to a facility or service program for the
mentally regarded, pursuant to the provisions of S.C. Code Ann.
§44-20-450 (Supp. 2000) as amended.

YOU ARE FURTHER NOTIFIED, that pursuant to the provisions
of S.C. Code Ann. § 44-20-450 (Supp. 2000), as amended, that
the above-named person alleged to be mentally retarded has the
right to be represented by an attorney at law in this case and
proceedings, and that an opportunity is hereby given and
afforded for you, or any one of you, to select, provide and
employ an attorney at law to represent said person in this
matter and proceedings for his judicial admission to a facility
for the mentally retarded.

YOU ARE FURTHER NOTIFIED, that in the event an attorney at law to represent said person is not selected, employed and provided by either him, or any of you, within three (3) days after the Petition is filed, exclusive of Saturdays, Sundays and legal holidays, or if this Probate Court is not notified thereof with such time, then this Court shall appoint an attorney at law to represent him.

Dated this 23 day
April, 2001


Judge of Probate Court, Assoc.

COPY

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE PROBATE COURT

James G. Christian, Ed.D.)
Director, Midlands Center,)
SC Dept. of Disabilities and)
Special Needs)
PETITIONER)

PETITION OF JUDICIAL ADMISSION

IN THE MATTER OF:

EDWARD JAMES MIMS)
(An alleged mentally retarded)
person))

The undersigned respectfully shows to the Court:

1. That this Petition is filed pursuant to S.C. Code § 44-20-450 (Supp. 2000) and that this Court has jurisdiction in this matter in accordance with this statute.

2. That Edward James Mims who is presently found at Babcock Center, Inc., The Clusters, Lexington, South Carolina, is according to the information and belief of the undersigned, mentally retarded and in need of the South Carolina Department of Disabilities and Special Needs services; and because of this condition, should be so adjudged and treated in a facility or program of the South Carolina Department of Disabilities and Special Needs. The reasons for this belief are as follows:

Mr. Mims is 29 years old and profoundly retarded. His health is fragile and carries diagnosis of cerebral palsy, seizures, hypertension, esophagitis/erosion disease. He is self-abusive, non-verbal and has pica-like behavior (eats non-food items). His mother is in poor health and is unable to care for him since she has limited means and resources.

3. That the Petitioner herein has the following relationship with the allegedly mentally retarded person:
custodial/treatment.

4. That attached and incorporated in this Petition is a copy of a certificate of licensed physician or a diagnostic or forensic report from the South Carolina Department Disabilities and

01 APR 16 PM 3:44-
ATTY. L. J. BOULDER
PROBATE JUSTICE
RICHLAND COUNTY, S.C.

FILED

Special Needs that the allegedly mentally retarded person is mentally retarded and who may be in need of treatment or care in a facility or program of the South Carolina Department of Disabilities and Special Needs.

5. That below are set out the names and address of those most interested in or closely related to the allegedly mentally retarded person besides the Petitioner:

Name: Margaret Mims Relationship: Mother

Address: 3301 Rosewood Drive, Columbia, SC 29205

Phone: (803) 252-9962

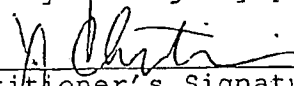
Name: Diane Theriot Relationship: Sister

Address: 2231 Atascadero Drive, Columbia, SC 29206

Phone: (803) 782-1790

WHEREFORE, the undersigned Petitioner prays that the Court inquire into the condition of said person and declare him to be mentally retarded and in need of the South Carolina Department of Disabilities and Special Needs services; and order admission for him to the South Carolina Department of Disabilities and Special Needs for care and treatment when appropriate space is available or take such action as may be legally proper.

Dated this 16th day of
April, 2001 at Columbia,
South Carolina



Petitioner's Signature

Midlands Center, SC Dept. of
Disabilities and Special Needs

Address:

8301 Farrow Road

Columbia, SC 29203

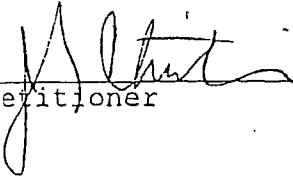
Phone: (803) 935-7414

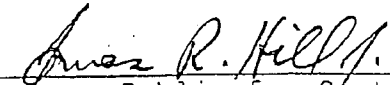
STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

VERIFICATION

Personally appeared before me James G. Christian, Ed.D., who being duly sworn says that he is the Petitioner above named; that he has read the foregoing Petition, the allegations of which are true of his own knowledge, except those stated on information and belief, as to which deponent (Petitioner) believes them to be true.

Sworn to before me this 16th
day of April, 2001


Petitioner


Notary Public for South Carolina
My Commission Expires: Sept. 18, 2010

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE PROBATE COURT
CASE NO. 01J00061394:24

ANN. H. BOLLOCH
PROBATE JUDGE
RICHLAND COUNTY, S.C.

James G. Christian, Ed.D.)
Director, Midlands Region,)
SC Dept. of Disabilities and)
Special Needs)
PETITIONER)

ORDER

IN THE MATTER OF:)
EDWARD JAMES MIMS)
(An alleged mentally retarded)
person)

This matter comes before the Court upon Petition of James C. Christian, Ed.D., Director, Midlands Region, South Carolina Department of Disabilities and Special Needs (SCDDSN) pursuant to S.C. Code Ann. §44-20-450 and 460(B) (Supp. 2000). The Court recognizes that it has jurisdiction in this matter. It appears that all parties were duly notified of this Petition.

A hearing in this matter was held at Midlands Center, Columbia, South Carolina, on June 26, 2001. All parties were duly notified of this hearing and the following persons were present:

Hon. Jacqueline D. Belton	Associate Judge of Probate
Edward J. Mims	Respondent
David E. Belding, Esq.	Attorney for Respondent
James C. Christian, Ed.D.	Petitioner
James R. Hill, Jr., Esq.	Attorney for Petitioner
M. Leigh Flynn, Esq.	Guardian ad Litem
Ms. Margaret Mims	Respondent's Mother
W.D. Morris, Esq.	Attorney for Ms. Mims
Jane McCausland, MS	Psychologist, SCDDSN

Other persons and staff from Babcock Center, Inc., were also present. A diagnostic report by Jane McCausland, MS, from SCDDSN was received into evidence without objection from any party.

With consent of the Court, the parties all agreed to forego actual testimony and to present brief verbal statements for the Court's consideration. It appears from statements by the parties, the diagnostic report and records in this matter that Mr. Mims' mother admitted him to SCDDSN in October, 1999. Mr. Mims suffers from profound mental retardation, has cerebral palsy and several other severe and complex medical conditions. Mr. Mims is medically fragile, takes a number of medications and requires close monitoring and assistance.

Ms. Mims had requested her son be discharged back to her care, which precipitated this Petition. Upon agreement of all the parties, it appears that Ms. Mims will be unable to care for her son in her home. She still wants him to visit in her home. However, concern was expressed that her home needs to be in a safe condition for these visitations. In this regard, Ms. Mims has agreed to allow staff from SCDDSN and/or Babcock Center to enter her home and to advise and assist Ms. Mims in making her home a safer place for her son to visit.

The Guardian ad Litem reported to the Court that she had reviewed Mr. Mims's records, visited with him at Babcock Center and visited with Ms. Mims in her home. She agreed that Mr. Mims was mentally retarded and in need of SCDDSN services. She felt that he could not be safely discharged to his mother's home. She agreed that visitations should occur as long as the home was maintained in a safe condition. She observed that there was a great amount of love in the family and that this should be fostered.

FINDINGS OF FACT and CONCLUSIONS OF LAW

The Court wants to thank all the parties in coming together. It is apparent that all parties have Mr. Mims's best interest in mind with proposing this Consent Order. After reviewing the record in this matter, observing Mr. Mims, and hearing from the parties, I find that Mr. Mims is profoundly mentally retarded and has complex medical needs. Thus, he needs the monitorship and services offered by SCDDSN through the Babcock Center. I also find that all the parties have agreed to these findings and the report of the Guardian ad Litem, and that they wish to enter into this Consent Order.

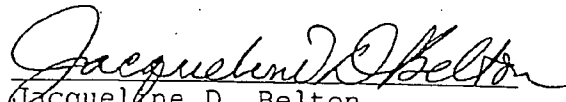
Q48 JPH/mk

NOW THEREFORE, IT IS ORDERED that:

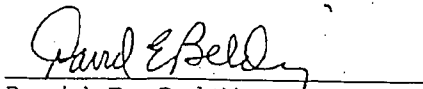
1. Because of his mental retardation and special medical needs, Edward James Mims is judicially admitted to the South Carolina Department of Disabilities and Special Needs.
2. To the extent feasible and in keeping with his treatment needs, Edward James Mims shall be allowed to have weekend visits with his mother, provided, that she maintains her home in a safe condition for her son's visitation.
3. Babcock Center and/or SCDDSN staff may visit in Ms. Margaret Mims home prior to her son's visit to advise and/or assist Ms. Mims in making her home safe for her son's visit. Ms. Mims will cooperate with such visits.
4. The parties to this matter have voluntarily agreed to this Order and placed their signatures below indicating their agreement.

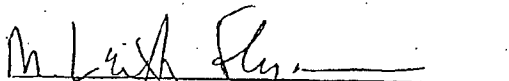
AND IT IS SO ORDERED.

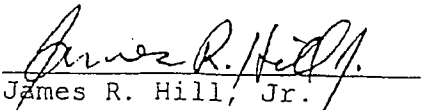
Signed this 3 day
of July, 2001
Columbia, South Carolina


Jacqueline D. Belton
Associate Judge of Probate
Richland County

We Consent:


David E. Belding


M. Leigh Flynn


James R. Hill, Jr.


W.D. Morris

ARREST WARRANT

G-414539

STATE OF SOUTH CAROLINA

☐ County/ ☐ Municipality of
Lexington

 THE STATE
against

CARL ANTHONY

Address: 117 BIG HICKORY LANE

GASTON, SC 29053

Phone: 803-939-0222 SSN: 251-13-4655

Sex: M Race: B Height: 5-10 Weight: 150

DL State: SCDL #:

DOB: 03/03/1959 Agency ORI #: 0001

Prosecuting Agency: DEPT. OF CORRECTIONS

Prosecuting Officer: DEPT. OF CORRECTIONS

Offense: SIMPLE ASSAULT AND BATTERY

Offense Code:

Code/Ordinance Sec. COMMON LAW 1

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

 The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge

(L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant CARL ANTHONY

on 10/13/2000

 Signature of Constable/Law Enforcement Officer
 William G. Shockley

RETURN WARRANT TO:

 William G. Shockley
500 Charlie Rast Rd.
8030568-3616 SC 29150

STATE OF SOUTH CAROLINA

☐ County/ ☐ Municipality of
Lexington

 Personally appeared before me the affiant INV. DAVID M. ADDISON
being duly sworn deposes and says that defendant CARL ANTHONY
did within this county and state on 08/13/2000

 State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of) violate the criminal laws of
in the following particulars:

DESCRIPTION OF OFFENSE: SIMPLE ASSAULT AND BATTERY

 I further state that there is probable cause to believe that the defendant named above did do
the crime set forth and that probable cause is based on the following facts:

 THAT ON OR ABOUT AUGUST 13, 2000, CARL ANTHONY DID IN LEXINGTON
COUNTY, COMMIT THE ACT OF ASSAULT AND BATTERY. MORE SPECIFICALLY
CARL ANTHONY DID KNOWINGLY AND WILLFULLY STRIKE OR HIT EDWARD
MIMS ABOUT THE HEAD. AT THE TIME MR. EDWARD MIMS WAS A RESIDE
AT THE BABCOCK CENTER CLUSTERS, IN LEXINGTON, SOUTH CAROLINA.
THE ABOVE FACTS ARE TRUE AND BELIEVABLE BASED UPON STATEMENTS
GIVEN BY THE DEFENDANT, AND WITNESSES THAT PERSONALLY OBSERVED
THE DEF. STRIKE OR HIT MR. MIMS.

Sworn to and subscribed before me

on 10/03/2000

 Signature of Issuing Judge (L.S.)
 William G. Shockley

STATE OF SOUTH CAROLINA

☐ County/ ☐ Municipality of
Lexington

ARREST WARRANT

 TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
 If appearing from the above affidavit that there are reasonable grounds to believe

 on 08/13/2000 defendant CARL ANTHONY
did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☐ Municipality of) as set forth below:

 DESCRIPTION OF OFFENSE: COMMON LAW 1
SIMPLE ASSAULT AND BATTERY

 Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge

(L.S.)

Judge Code:

Judge's Address 500 Charlie Rast Rd.

Swansea, SC 29150

Judge's Telephone 803-568-3616

Issuing Court:

☐ Magistrate

☐ Municipal

☐ Circuit

666

ORIGINAL

X

0309



SLED CATCH
Carolina Access to Criminal Histories

Results

11/11/02
Person who
injured Edward
Harris

Name Carl Anthony

Date of Birth 1959 02 03

Maiden Name

Gender Male

Transaction 000647295

Date of Check October 30, 2002 at 21:07

ARREST RECORD
S.C. Law Enforcement Division
WWW

This record is based on a search using last first initial, and date of birth. 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-SC01390255 PUR-E
ATN-WEB, CC

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-10/30/2002 TIME-21:07:44
REQ ORI-SCLED0000 S C LAW ENF DIV
SID-SC01390255 FBI-988849TB9
NAME-ANTHONY, CARL SEX-M RACE-B
HEIGHT-510 WEIGHT-153 EYES-BRO HAIR-BLK SKIN- BORN-SC
FPC- HENRY-
1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAFIS

DATE RECORD ENTERED--10/29/2001 DATE OF LAST UPDATE--07/05/2002

ADDITIONAL IDENTIFIERS	BIRTH			
NAME	DATES	MARKS	SOC SEC	MISC NUM
	02031959			

CONTRIBUTOR/SUBJECT	DOA/RCVD CHARGE/DISPOSITION/ETC
ANTHONY, CARL	10/04/2001
SC0320000 LEXINGTON CNTY SO	
ATN-980000226926	
WARR-G414539	
CIT-N/A-MISDEMEANOR	

ANTHONY, CARL
SC0320000 LEXINGTON CNTY SO
ATN-980000226926
WARR-G414539
CIT-N/A-MISDEMEANOR

CIT-N/A-MISDEMEANOR
DOC-R84 WARR-G414539

ARREST CHARGE 01-SIMPLE AS
LT AND BATTERY
OFFENSE DATE-10/04/2001

COURT CHARGE 01-SIMPLE ASS
T AND BATTERY
COURT DISP-CONVICTED; 30D O
\$225 FINE
COURT DATE-10/18/2001
ATN-980000226926

BASED ON SEARCH OF SCLED CJICS CCH FILE USING SID/SC01390255
THIS IS PROVIDED FOR THE EXPRESS PURPOSE FOR MAKING LICENSING OR
EMPLOYMENT DECISION.

** S C CJICS END OF RECORD **

Credit Card Transaction Number 3213482578ICE890021030210650



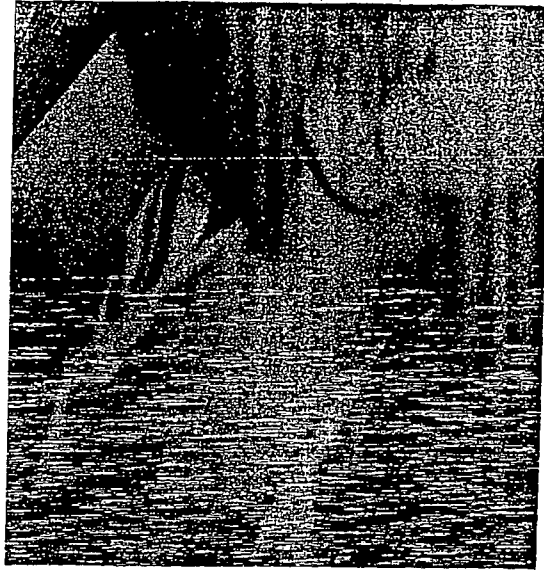
© 2001 e-@ction Internet Commerce Enabler



Edward Mims

12-3-01 Mims001637

P | P.198



Edward Mims
12-3-01 Mims001636

BARCOCK CENTER, INC.
Record of Physician's Visits
Subsequent to Admission

NAME: Edward Mims
D. O. B.: 12-9-71
FILE # : 575
ALLERGIES: NO DRUG ALLERGIES

Date	Progress & Procedures	Physician's Orders & Signature
5/99 (Cont)		13) may wear diapers due to incontinence 14) needs 1:1 staffing at day program 15) may use w/c for long distance 16) needs admission P.E. (V.O) Dr. Platt/D Cockrell lpr P105

Necessary remarks to be entered on this form by the Physician on each visit subsequent to the Resident's admission.

Exhibit 0 PP.200

Mims000425

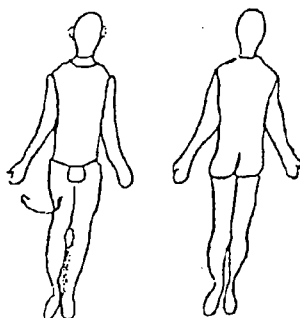
NAME: Last

DATE:	TIME	LOCATION		
4/16/01	am	() Bathroom	() Dining Room	() Parking Lot
	<u>pm</u>	(X) Shower	() Lounge	() Walk
	3:25	() Hall	() Bed	() Workshop
		() Trip	() Pool	() Other

Describe incident in full. While giving Edward a shower I notice a Bruise on the inside of Edward's Right thigh.

Treatment required

Sm. red area
(bruise) noted
inner RT. thigh



① required

Others Involved (Staff and/or client(s)): S. Knightner, J. Allen,
L. Thomas

Nurse Notified: J. Herrick RN Time: 3:30

Person Completing Report: S. Knightner Time: 3.30 p.m.

Physician Notified? Yes _____ No

Treatment By Physician Required? Yes No

Was Hospitalization Necessary? Yes No

Signature of Nurse: *J. Securick RN*

Signature of Physician If Treated:

Mims000885

**BABCOCK CENTER CLIENT/VISITOR
ACCIDENT/INJURY REPORT**

NAME: Last Mims First Edward MI FILE D.O.B SEX (M) F FACILITY Lexington Cluster

DATE:	TIME	LOCATION		
11/16/99	<u>am</u> 12:00 pm	☐ Bathroom	☐ Dining Room	☐ Parking Lot
		☐ Shower	☒ Lounge	☐ Walk
		☐ Hall	☐ Bed	☐ Workshop
		☐ Trip	☐ Pool	☐ Other _____

Describe incident in full. Edwards has a few bruises and scratch marks on his neck. Second shift did not make us aware of this, but it is in the log when and how it happened.

Nature of injury	Treatment required
<u>11/8/99 @ 9 AM - Noted one superficial scratch mark. to (L) side of neck approx. 1 1/2" long -</u>	<u>11/8/99 @ 9 AM - TAO applied to area -</u>

Others Involved (Staff and/or client(s)): Second Shift Care

Anthony saw the marks also.

Nurse Notified: Jynn Time: 7:40

Person Completing Report: Jamie Munro Time: 12:00

Physician Notified? Yes _____ No ✓

Treatment By Physician Required? Yes _____ No ✓

Was Hospitalization Necessary? Yes _____ No ✓

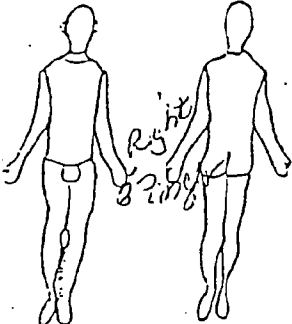
Signature of Nurse: [Signature] 11/8/99 @ 9 AM

Signature of Physician If Treated: _____

BABCOCK CENTER CLIENT/VISITOR
ACCIDENT/INJURY REPORT

Last <i>Mims</i>	First <i>Edward</i>	MI	FILE	D.O.B	SEX M F	FACILITY <i>Cheshire House D</i>
DATE: <i>3/10/00</i>	TIME am <i>3:28pm</i>	LOCATION				
		() Bathroom	() Dining Room	() Parking Lot		
		() Shower	() Lounge	() Walk		
		() Hall	() Bed	() Workshop		
		() Trip	() Pool	() Other		

Describe incident in full. *Edward was laying on the Bean Bag with with his right hand and Morgan didn't mean to run over his fingers and his 3 finger on his right hand were Bruised.*

Nature of injury <i>Small skin tear to 4th @ digit - R</i>		Treatment required <i>Area cleaned w soap + water & left open to air - R</i>

Others Involved (Staff and/or client(s)):

Nurse Notified: *Cliff Courts, RN* Time: *3:45 pm*

Person Completing Report: *S Knight* Time: *3:45*

Physician Notified? Yes _____ No ☒

Treatment By Physician Required? Yes _____ No ☒

Was Hospitalization Necessary? Yes _____ No ☒

Signature of Nurse: *Cliff Courts, RN*

Signature of Physician If Treated:

Mims000900

PP.203

Edward Mims

DATE: 3/25/01

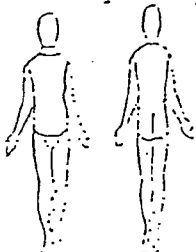
TIME OF AUDIT:

6:30pm

ITY:

PERSON COMPLETEING AUDIT: Lynn Huston, Jerome Dunning, Wayne Wooten

Please mark an "X" on the area of the body where problems are noted.



Briefly describe the concern/problem: Dry flaky skin patch on

② forehead → center. Two small red, flat bumps on
scalp above ② ear + another flaky skin patch.

2 pimples ② jaw line. few scattered pimples on back

+ old red mark on ② flank, white blistered area

on ② forearm. Dark area from old scratch on ②

● side of penis. 3" light scratch on ② thigh

Black line in nail bed of ② gt toe. Questionable

whitish area just to ② of center of nape of neck.

S SIGNATURE

DATE

3/25/01

ISED
/99

Mims000923

IP.204

0318

BABCOCK CENTER CLIENT/VISITOR
ACCIDENT/INJURY REPORT

NAME: Last <u>Mims</u>	First <u>Edward</u>	MI <u>J</u>	FILE	D.O.B	SEX <u>M</u> F	FACILITY <u>Clusters</u>
DATE: <u>8-14-00</u>	TIME <u>am</u> pm	LOCATION				
		☐ Bathroom	☐ Dining Room	☐ Parking Lot		
		☐ Shower	☐ Lounge	☐ Walk		
		☐ Hall	☐ Bed	☐ Workshop		
		☐ Trip	☐ Pool	☐ Other		

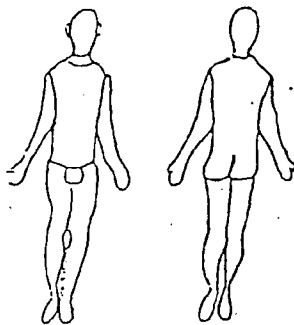
Describe incident in full.

Observed scratches and bruises in am when client got up ~~for~~ get his bath and get dressed for the day.

Nature of injury

Treatment required

Bruise to right eye
Scratches under his neck
Bruise on right and left side
Scratches on his back



Areas washed w
warm H₂O.

Others Involved (Staff and/or client(s): Nora B. West

Carl Anthony

Nurse Notified: Jackie Derrick

Time: 7:00 AM

Person Completing Report: Nora B. West

Time: 7:00 AM

Physician Notified? Yes _____ No ☒

Treatment By Physician Required? Yes _____ No ☒

Was Hospitalization Necessary? Yes _____ No ☒

Signature of Nurse: Jackie Derrick LPN

Signature of Physician If Treated: _____

Mims000943

P.205

BABCOCK CENTER CLIENT/VISITOR
ACCIDENT/INJURY REPORT

NAME: Last	First	MI	FILE	D.O.B	SEX	FACILITY
MIMS	EDWARD			12/9/71	(M) F	Clusters "D"
DATE:	TIME	LOCATION				
8-14-00	4:15 pm	☐ Bathroom ☐ Dining Room ☐ Parking Lot ☐ Shower ☐ Lounge ☐ Walk ☐ Hall ☐ Bed ☐ Workshop ☐ Trip ☐ Pool ☐ Other <u>DR'S OFFICE</u>				

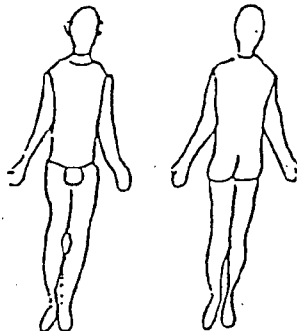
Describe incident in full.

While in DR's office cutting Client's toenails found splinter in bottom @ foot.

Nature of injury

Treatment required

@ bottom of foot removed splinter



Others Involved (Staff and/or client(s)):

Nurse Notified: Dale Cockrell, LPN Time: 5:15 PM

Person Completing Report: Dawn McGrady Time: 5:15 PM

Physician Notified? Yes _____ No ☒

Treatment By Physician Required? Yes _____ No ☒

Was Hospitalization Necessary? Yes _____ No ☒

Signature of Nurse: Dale Cockrell LPN

Signature of Physician If Treated: FP.206

Mims000944

BABCOCK CENTER CLIENT/VISITOR
ACCIDENT/INJURY REPORT

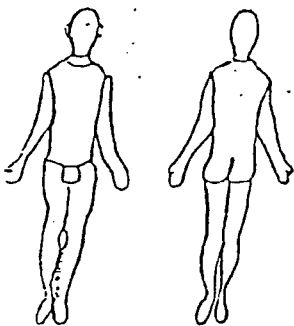
NAME: Last <u>Mims</u>	First <u>Edward</u>	MI <u>J</u>	FILE	D.O.B	SEX <u>M</u> F	FACILITY <u>Clusters</u>
DATE: <u>8-14-00</u>	TIME <u>am</u> pm	LOCATION ☐ Bathroom ☐ Dining Room ☐ Parking Lot ☐ Shower ☐ Lounge ☐ Walk ☐ Hall ☐ Bed ☐ Workshop ☐ Trip ☐ Pool ☐ Other				

Describe incident in full.

Observed scratches and bruises in arm when client got up ~~to~~ get his bath and get dressed for the day

Nature of injury

Bruise to right eye
Scratches under his neck
ruise on right and left
ide
cratches on his back



Treatment required

Areas washed c.
warm H₂O.

Others Involved (Staff and/or client(s): Nora B. West

Carl Anthony

Nurse Notified: Jackie Derrick

Time: 7:00 AM

Person Completing Report: Nora B. West

Time: 7:00 AM

Physician Notified? Yes ☐ No ☒

Treatment By Physician Required? Yes ☐ No ☒

Was Hospitalization Necessary? Yes ☐ No ☒

Signature of Nurse: Jackie Derrick LPN

Signature of Physician If Treated: [Signature]

BODY AUDIT FORM

Edward Mims

DATE:

8/11/00

INDIVIDUAL:

575

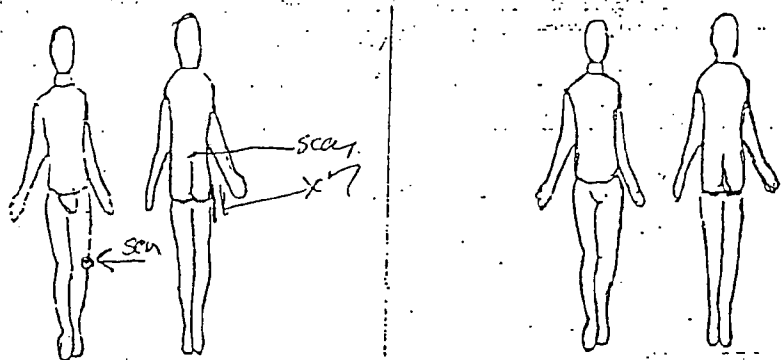
TIME OF AUDIT:

4:10 p.m.

PERSON COMPLETING AUDIT:

Dustin E. Beatty / G. Shuler

Please mark an "X" on the area of the body where problems are noted.

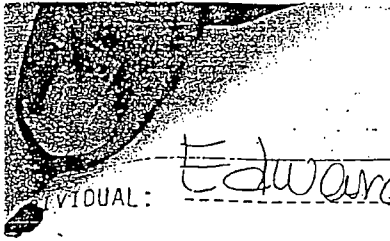


fully describe the concern/problem:

11/00 - 4pm done - size scar to @ knee, pink, no drainage. 8m scar noted @ crotch area pink drainage. 2 8m reddish area @ side (flank) of brownish area to lower back area. Other scars noted @ present ——— go home.

Mims000956

PP.208



BODY AUDIT FORM

INDIVIDUAL:

Edward Mims

DATE:

10-13-00

FILE #:

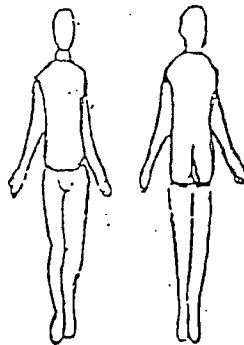
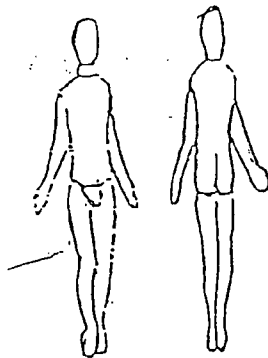
TIME OF AUDIT:

330 p.m.

PERSON COMPLETING AUDIT:

S. Knightner

Please mark an "X" on the area of the body where problems are noted.



Briefly describe the concern/problem:

Old Bruise on Back, Right ^{upper} thigh Old Bruise
Old Bruise on Knees.

DHCS

SIGNATURE

DATE

IP.209

Mims000965

BABCOCK CENTER, INC.
ACCIDENT/INJURY RECORD

Date of Occurrence: 8-8-03 Place: Pine Lake Time: 3:45 am/pm

Name: Edward Mims Reported by: P. Causa

Restraint required: ☐ Yes ☒ No (*if yes, must be accompanied by restraint form and BIR)

Was PRN Medication Administered Before Incident? ☐ Yes ☒ No

Name of Drug Administered & Time Administered: _____

Indicate on Figures Part of Body Affected
Describe Extent and Possible Origin of Injury

Consumer # 1520
pushed Edward
into Break wall
which resulted in
a Scrap on his
left hand.

Facility Nursing/On-Call Nursing: _____ Date: _____ Time: _____ am/pm

Family/Surrogate Notified: _____ Date: _____ Time: _____ am/pm

QMRP/Coordinator Notified: P. Rivers Date: 8/8/03 Time: 4:00 am/pm

*If applicable

Physician Notified: _____ Date: _____ Time: _____ am/pm

Physicians Orders, Treatment or Statement: _____

Hospitalized: ☐ Yes ☐ No Name of Hospital: _____

Nurse's Signature _____

Date _____

ADMINISTRATIVE REVIEW

☒ Explained Injury* ☐ Unexplained Injury (Refer for investigation)

*If injury is explained comments required: Edward was pushed into wall
by HQT causing him to scratch his hand

Facility Administrator's Signature _____

Date 8/9/03

Effective 9/13/01

P.210

Mims001099

INVESTIGATION OF INJURY

1. Safety Plan of Victim: Edward will be monitored at all times to ensure his safety when he is around H-107
2. Photographs Taken: ☐ Yes ☒ No
3. Documentation and Evidence Obtained: Documentation on file
4. Findings: Edward was pushed into the brick wall of H-107 causing him to scratch his left hand.
5. Impression: Scratches on top of left hand caused by H-107
6. Conclusion: Edward will be checked out by Nurse and monitored at all times to ensure his safety when he is around H-107

Guthrie Samuel
Person Completing Report

8/8/13
Date

RICHLAND COUNTY SCHOOL DISTRICT ONE
Columbia, South Carolina

Psychoeducational Evaluation Report

CONFIDENTIAL

Full Name: Edward J. Mims

Date Evaluated: 4-16-93

Date of Birth: 12-9-71

Referred by: Reevaluation

Chronological Age: 21-4

Parent: Ms. Margaret Mims

Race: White

Address: 3301 Rosewood Dr./29205

Sex: Male

Phone: 252-9962

School: Fairwold

Examiner: Michael Cox

Reason for Referral

Re-evaluation.

Placement at Time of Evaluation

Self Contained Class Profoundly Mentally Handicapped

Background Information

Edward is reported born one month prematurely followed by a two month hospital stay. His health has been stormy. He is reported to have kidney, heart and urinary tract problems along with orthopaedic problems.

Edward has attended classes for Profoundly Mentally handicapped (PMH) students since enrolling in Richland School District One in 1979. He graduates from Fairwold School at the end of the present school year.

Previous Test Results (4-25-90)

Bayley Scales: Age equivalent = 20 months

Test Behavior

Edward vocalized sounds but no words. He avoided looking at tasks. Most manipulative tasks required a physical as well as verbal prompt. Edward frequently attempted to grab, pinch or spit, but his affect remained flat.

PP.212

Exhibit 9

MIMS, Edward
Fairwold
Page 2

Evaluation Procedures

Bayley Scales of Infant Development (BSID)
Vineland Adaptive Behavior Scale (VABS)

Evaluation Results

The Bayley Scales of Infant Development Mental Scale (BSIDMS) is designed to assess sensory-perceptual acuities and discriminations, the early stages of memory, learning, and problem solving ability, the beginnings of verbal communication, and the ability to form generalizations and classifications. Norms are available for children aged 2 months to 30 months. An approximate mental age score for older children can be estimated, but this score must be interpreted cautiously.

Edward's approximate mental age on the Bayley is twenty months, which suggests he is currently functioning in the Profoundly Mentally Handicapped range of intelligence.

Edward worked manipulative items through the thirty month level but did not work items requiring him to imitate actions or identify pictures or objects.

The Vineland Adaptive Behavior Scales (VABS) is a developmental instrument which assesses the individual's ability to independently look after social and personal needs and to assume responsibility. The Vineland samples abilities in the areas of personal self sufficiency and self care, vocational and occupational activities, communication, self direction, and social participation and social skills. It may be used with individuals from birth to adulthood. The Interview Edition was administered. The informant was Mrs. Cannizzaro, Edward's teacher.

Score Summary

	<u>Standard Score</u>	<u>Age Equivalent</u>
COMMUNICATION DOMAIN	<20	0-4
DAILY LIVING SKILLS DOMAIN	<20	1-7
SOCIALIZATION DOMAIN	<20	0-3
ADAPTIVE BEHAVIOR COMPOSITE	<20	

Standard Scores between 85 and 115 are in the Average range. Scores should be interpreted carefully as some observations may be based on estimated performance.

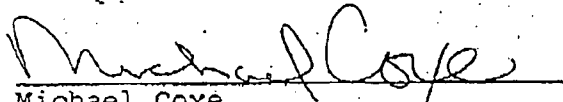
Edward's ratings on the Vineland indicate consistent and significant weaknesses across all areas of adaptive functioning.

MIMS, Edward
Fairwold
Page 3

Summary and Recommendations

Edward Mims is a twenty one year old student attending Fairwold School. This evaluation indicates that Edward is in the Profoundly Mentally Handicapped range of abilities with corresponding weaknesses in adaptive behavior skills.

It is the recommendation of this psychologist to the District's Placement Committee that Edward Mims be considered for continued eligibility in a self-contained program as a Profoundly Mentally Handicapped student. This recommendation may or may not reflect the final decision of the Placement Committee of which the psychologist is only one team member. No student is to be placed in a Special Education class on the basis of this report alone.


Michael Coxe
School Psychologist, II

JUN 14 '22 06:23AM SCDMR REGIONAL OFF

P.2

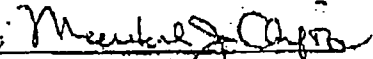
SOUTH CAROLINA DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS
MIDLANDS REGIONAL OFFICE
PSYCHOLOGICAL SUMMARY
CONFIDENTIAL

NAME: Edward Mims
COUNTY: Richland
EXAMINER: Meredith J. Clifton, M.S.
Psychologist III

DATE OF EVALUATION: August 2, 1999
DATE OF BIRTH: December 9, 1971
CHRONOLOGICAL AGE: 27
DATE OF REPORT: August 2, 1999

Mr. Mims was referred for an addendum in order to be considered for ICF/MR placement in the community. He was previously evaluated by Michael Cox on 4/16/93, at age 21. Both Mr. Mims' levels of intellectual functioning and adaptive behavior were found to lie in the profound range of developmental delay.

According to Ratisha Brisson, his Service Coordinator, there have been no indications of changes in either area. Therefore, the results may be considered as current and valid for ICF/MR placement.


Meredith J. Clifton, M.S.
Psychologist III

/MJC

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Edward Mims, through his guardian, Margaret Mims
☐ Plaintiff

v.

Babcock Center, Inc., Judy Johnson, The South
Carolina Department Of Disabilities And Special
Needs, Kathi Lacy And Stanley Butkus
☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
07-CP-40-3365

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

BARBARA
C.C.C.

2008 OCT -3

FILED

Plaintiff's Attorney:
Patricia L. Harrison, Bar No. 11309
Address:
611 Holly Street
Columbia, South Carolina 29205
phone: 256 3017 fax: 256 2213
e-mail: plh.cola@att.net other:

Defendant's Attorney:
Kenneth Woodington, Bar No.
Address:
1611 Devonshire Drive, Second Floor -
Post Office Box 8568
Columbia, South Carolina
phone: 806 8222 fax: 806 8855
e-mail: kwoodington@dml-law.com other:

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Recuse

Estimated Time Needed: 30 min. Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

October 3, 2008

Date submitted

SECTION III: Motion Fee

- ☒ PAID - AMOUNT: 25.00
☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by:

SCCA/233 (11-03)

P.216

0330

☐ MOTION FEE COLLECTED: _____	
☐ CONTESTED - AMOUNT DUE: _____	

FILED

2008 OCT -3 PM 4:41

BARBARA A. SCOTT
C.C.C. & G.S.

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Edward Mims, through his guardian,
Margaret Mims,
Plaintiff)

vs.)

Babcock Center, Inc., Judy Johnson,
Tonya Bradford, Craig Stoxen, Sue Slater
Stanley Butkus, Susan Bowling, the
South Carolina Department of Heath and
and Human Services,
Defendants)

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

MOTION TO REQUEST RECUSAL

2008 OCT -3 PM 4:41
FILED
BARBARA SCOTT
C.C.C. & G.S.

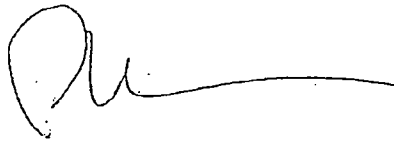
TO: Ken Woodington, Esquire, and Christian Stegmaier, Esquire, Counsel to Defendants:

PLEASE TAKE NOTICE Plaintiff Edward Mims, through his guardian, Margaret Mims, will move ten days after service hereof or as soon thereafter as may be heard for an Order respectfully requesting that Honorable Casey Manning recuse himself from this case due to conflicts of interest and the appearance of partiality toward the Babcock Center. This request is being made pursuant to Cannons 2 and 3 of the South Carolina Code of Judicial Conduct. Judge Manning is a former employee of the Babcock Center and has described his fondness for the agency in many courtroom appearances. He dismissed *Madison v. Babcock Center and the South Carolina Department of Disabilities and Special Needs* and that order was subsequently reversed. In another lawsuit against an agent of the Department of Disabilities and Special Needs, brought by a disabled individual who had been injured through the negligence of an employee, Judge Manning again expressed fondness for the Babcock Center in the courtroom and he indicated that he does not agree with the decision of the South Carolina Supreme Court in

the *Madison* case which imposes a duty of care on the Babcock Center and the South Carolina Department of Disabilities and Special Needs to protect persons in their care from harm.

Plaintiff respectfully requests that this case be transferred to another judge with no prior extrajudicial relationship with the Babcock Center or the South Carolina Department of Disabilities and Special Needs.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Plh', followed by a long horizontal line.

Patricia L. Harrison
611 Holly Street
Columbia, South Carolina 29205
Phone (803) 256 2017
Fax (803) 256 2213
E Mail plh.cola@att.net

Columbia, South Carolina

3 October, 2008

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

EDWARD MIMS,)

PLAINTIFF,)

vs)

BABCOCK CENTER, JUDY JOHNSON,)

SCDDSN, KATHI LACY, STANLEY)

BUTKUS,)

DEFENDANTS.)

IN THE COURT OF COMMON PLEAS

CASE NO. 07- CP- 40-03365

CERTIFICATE OF SERVICE

BARBARA A. SCOTT
C.C.C. & G.S.

2008 OCT -3 PM 4:41

FILED

I certify that on this date October 3, 2008 I served a copy of the Motion for Recusal in the above captioned action

() Delivering it to him/her personally; or,

(x) mailing it to him/her at his her last known address by depositing it in the US Mail, in an envelope with sufficient postage affixed, or,

() other:

Ken Woodington, Esquire
Davidson and Lindemann
PO Box 8568
Columbia, SC 29202-8568

Christian Stegmaier, Esquire
Collins and Lacy
PO Box 12487
Columbia, SC 29211

Oct 3, 2008

Date

Nancy E. Law
Nancy Law, Assistant to Patricia Harrison

PATRICIA L. HARRISON
ATTORNEY AT LAW
611 HOLLY STREET
COLUMBIA, SC 29205

4223

DATE 10-03-08

67-220/632
02

Richland Co. Clerk of Court

Twenty Five (\$25.00)

DOLLARS

First Community Bank
Forest Acres, S.C.
www.firstcommunitysc.com

Time & Motion fee

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0335

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE CIRCUIT COURT

In re: the position of Judge Casey Manning
on actions against the Babcock Center, Inc.

AFFIDAVIT

The undersigned, first being duly sworn, says:

The undersigned was the attorney of record in the Supreme Court case *Madison v. Babcock Center, Inc. et al.*, 638 S.E.2d 650 (SC 2006). On remand, this case has not been retried because of dilatory actions by the DDSN attorney. Judge Manning was the trial judge who granted of a summary judgment to both defendants, which was reversed by the State Supreme Court.

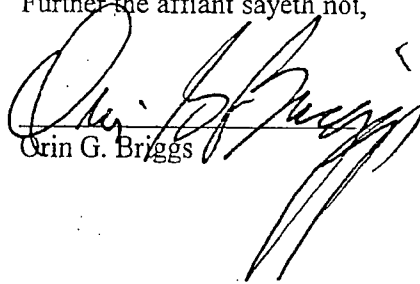
While counsel has gained a firm respect for Judge Manning in most areas of the law, including his role in accepting guilty pleas, Judge Manning seems to have a blind spot about civil actions against the Babcock Center, Inc., and the State Department of Disabilities and Special Needs.

In one status conference on the pending retrial of *Madison v. DDSN*, Judge Manning stated that he still "believed he was right in the granting of the summary judgment and that the Supreme Court was wrong." This comment was made with encouragement to the defense attorney for DDSN.

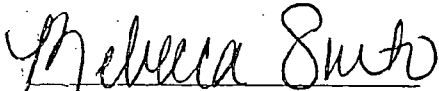
One only needs to read the Supreme Court decision to realize that even that court could not resolve all of the factual issues which need to be tried by a jury. The case was

clearly not appropriate for summary judgment against either the Babcock Center, Inc. or the State Department of Disabilities and Special Needs.

Further the affiant sayeth not,


Orin G. Briggs

Sworn to me this 10th day
of March, 2009.



Notary Public of South Carolina

My comm. expires: My Commission Expires March 21, 2017

State of South Carolina

County of Richland

)

)

)

Affidavit of Amy Davenport

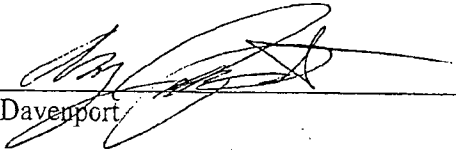
1. My daughter, Stephanie Cupps, has mental retardation and she receives services through the MR/RD Medicaid waiver which are funded by the South Carolina Department of Disabilities and Special Needs.
2. Stephanie was seriously and permanently injured when a respite caregiver, who had been provided through the Richland Lexington Disabilities and Special Needs Board, was drunk and wrecked her car.
3. We sued the Richland Lexington Disabilities and Special Needs Board and the South Carolina Department of Disabilities and Special Needs for negligently supervising the caregiver.
4. Attorney Will Davidson represented the defendant in a case captioned Stephanie N. Cupps, an Incompetent Person, by *Amy Davenport v. S.C. Department of Disabilities and Special Needs et. al.*, 2006 CP 40 0852.
5. Judge Casey Manning presided over the trial of my daughter's case.
6. During the jury selection, Judge Manning came down from the bench and stood before the jury, leaning on a table to talk with them about his experiences with the Babcock Center.
7. Judge Manning told the jury that he had worked for the Babcock Center as a bus driver and he talked about this job as if it was the best place he had ever worked.
8. I felt that these remarks made by Judge Manning and his obvious fondness for the Babcock Center set a prejudicial tone for the entire trial.
9. At the hospital after the accident, when it appeared that my daughter might die, the director of the Richland Lexington Disabilities Board, Mary Leitner, assured me that her agency would support us and that they were "behind us."
10. When I called Mary Leitner after the accident, Ms. Leitner denied that her agency had any

responsibility for the caregiver and she put Will Davidson on the phone.

11. I did not know who Will Davidson was and I told him what had happened to my daughter and about how the caregiver was drunk and caused the injury to my daughter.
12. After allowing me to tell him my whole story, Mr. Davidson told me to get a good lawyer.
13. After Stephanie was injured, Richland Lexington Disabilities and Special Needs Board quit providing respite services and these respite services were provided by the Babcock Center.
14. I did not know it at the time of the trial, but I later learned that during the time my daughter was receiving MR/RD Medicaid services, Medicaid funds for my daughter's services were paid by the South Carolina Department of Disabilities and Special Needs to the Babcock Center.
15. Upon information and belief, the Babcock Center contracted with the Richland Lexington County Disabilities and Special Needs Board to provide respite services for my daughter, which was the only provider of respite services available to me.
16. After Stephanie's accident, the Richland Lexington Disabilities Board quit providing respite services and by the time of Stephanie's trial, the Babcock Center was the provider of these Medicaid funded respite services.
17. At the trial before Judge Manning, when I was on the witness stand, my attorney was asking me questions about the director of the Richland Lexington Disabilities and Special Needs Board coming to the hospital and about how she was at first supportive when it appeared that my daughter might die from the injuries she sustained.
18. When my attorney asked me on the witness stand about my conversation with Will Davidson, Judge Manning lost control of himself and had a fit.
19. Judge Manning sent the jury out of the courtroom and he yelled at both my attorney and me.
20. In a very loud voice, Judge Manning told my attorney to tell his client to "shut up."
21. Judge Manning was throwing papers around his desk and the tantrum he threw made me feel very intimidated.
22. I had never seen a judge act this way and I began crying on the witness stand because Judge Manning was yelling at me and at my attorney.

23. Judge Manning stormed out of the court room, but he came back later.
24. He told my attorney that he did not know how they did things in Greenville, but that was not how things would be handled in his court room.
25. Judge Manning was still very angry when he came back into the court room.
26. My lawyer saw how upset Judge Manning had made me and it was around 1:00 in the afternoon by then.
27. Seeing how upset I was and that I needed a break, my lawyer asked Judge Manning when we might break for lunch and Judge Manning responded curtly that he would decide when we broke for lunch.
28. After lunch, Judge Manning came down to the table where I was sitting and told me that his remarks before lunch were "nothing personal."
29. After lunch, Will Davidson asked for summary judgment and my attorney brought up the *Madison v. Babcock Center and DDSN* case which held that the Babcock Center and the South Carolina Department of Disabilities and Special Needs has a duty of care to protect residents from abuse.
30. Judge Manning was the trial judge in the *Madison* case and he dismissed the case on summary judgment.
31. Although the jury was not in the court room at the time, Judge Manning let everyone else in the courtroom know that he did not agree with the Supreme Court's decision in the *Madison* case.
32. As a plaintiff and the mother of a child who had been seriously injured due to neglect by a DDSN funded caregiver provided to me by Richland Lexington Disabilities and Special Needs Board, I felt it was very inappropriate for Judge Manning to say that he did not agree with the decision of the Supreme Court decision finding that the provider and the Department have a duty of care to consumers of services provided through the South Carolina Department of Disabilities and Special Needs.
33. Judge Manning dismissed Stephanie's case soon after making this statement about disagreeing with the Supreme Court.
34. After the trial, I found out that MR/RD Medicaid funds for people, like my daughter, who live in Richland and Lexington Counties are paid by the South Carolina Department of Disabilities and Special Needs to the Babcock Center.

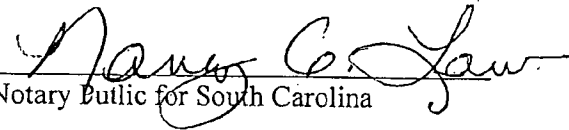
35. Prior to this trial and until recently, I was never informed that my daughter's funds were being paid to the Babcock Center.
36. I have recently been informed that the Babcock Center is allowed to keep all of my daughter's MR/RD funds not spent providing services to her.
37. I tried to get the Attorney General to investigate what happened to my daughter, but they told me that they did not investigate this type of case.



Amy Davenport

March 10, 2009

SWORN TO BEFORE ME
THIS 10th DAY OF 2009.



Notary Public for South Carolina



NEWS RELEASE

OFFICE OF ATTORNEY GENERAL HENRY MCMASTER
STATE OF SOUTH CAROLINA

For Immediate Release
December 17, 2004

Contact: Mark Plowden
803-734-3670
mplowden@ag.state.sc.us

Columbia Man Pleads Guilty to Exploitation of a Vulnerable Adult

Columbia, S.C. – Attorney General Henry McMaster announced today Tyrone Suber, 46, of 1912 Spotswood Road in Columbia, pleaded guilty on December 16, 2004 to five (5) counts of Exploitation of a Vulnerable Adult, a felony violation of § 43-35-85(D) of the Code of Laws, and punishable to five (5) years imprisonment on each count. Suber also pleaded guilty to seven (7) counts of Obtaining Property Under False Pretenses, a misdemeanor violation of § 16-13-240(3) of the Code of Laws, and punishable to thirty (30) days imprisonment and a \$500 fine for each count.

During the period April 2003 to October 2003, and while employed by Babcock Center, Suber took money from residents of the Babcock Center, leading them to believe that the money was for a trip to Savannah or Myrtle Beach; however, Suber used the money for his personal purposes. The money has since been repaid to the residents by Babcock Center.

Judge L. Casey Manning, presiding over the General Sessions Court of Richland County, sentenced Suber to five (5) years imprisonment and a \$5,000 fine on the Exploitation charge. Provided the successful completion of six (6) months house arrest, the remainder of the sentence will be suspended upon five (5) years probation. Suber was also ordered to pay restitution of \$4,545 and serve two hundred fifty (250) hours of community service. On the Obtaining Property Under False Pretenses charge, Suber was sentenced to thirty (30) days imprisonment, suspended, on each count. Suber was further ordered to have no contact with any Babcock Center residents or employees.

This case was investigated by the State Medicaid Fraud Control Unit, and prosecuted by the Attorney General's Office.

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METRO

SATURDAY, DECEMBER 18, 2004 • SECTION B

Babcock Center ex-employee sentenced

Judge orders house
arrest on
exploitation charge

By J.R. GONZALES
Staff Writer

A former Babcock Center employee pleaded guilty Thursday to defrauding several residents there last year.

Tyrone Suber, 46, of 1912 Spotswood Road, was convicted of five counts of exploitation of a vul-

nerable adult and seven counts of obtaining property under false pretenses, according to the state attorney general's office.

During a seven-month period, Suber took money from clients and led them to believe the money was for a trip to Savannah or Myrtle Beach, according to prosecutors. Instead, Suber used the money for himself.

Suber was sentenced to six months' house arrest and five years' probation on the exploita-

SEE SENTENCE PAGE B5

SENTENCE

FROM PAGE B1

tion charge. If he fails to complete that, he will be sentenced to five years' imprisonment, prosecutors said.

On the obtaining property counts, the judge sentenced Suber to 30 days imprisonment on each count, but suspended the sentence.

State Circuit Judge Casey Manning ordered Suber to pay restitution of \$4,545 to the Babcock Center. He will also have to serve 250 hours of community service.

The center reimbursed the residents for the money they lost.

Efforts to reach an official with the Babcock Center were unsuccessful.

The plea comes months after a

Babcock Center employee was charged with sexually assaulting a mentally disabled woman at a Lexington County waste-collection station where the two worked.

William Daniel Stephens, 26, of Pelion, was charged with two counts of second-degree criminal sexual conduct in incidents that allegedly occurred between Sept. 17 and 30 in a station break room, according to the Lexington County Sheriff's Department.

There are more than 1,000 patients at Babcock, which treats people with autism, mental retardation and head and spinal-cord injuries at more than 100 locations across the region.

Reach Gonzales at
(803) 771-8405 or
jgonzales@thestate.com.

EX 12

229

1 STATE OF SOUTH CAROLINA) IN COMMON PLEAS
2 COUNTY OF RICHLAND) COURT
3)
4 CAROL ANN HENDERSON,)
5)
6 -V-) TRANSCRIPT OF
7) RECORD
8 BABCOCK CENTER INC.) 2004-CP-40-2750
9)
10 DEFENDANT.)

11
12 FEBRUARY 6TH, 2006
13 RICHLAND, SOUTH CAROLINA
14

15 B-E-F-O-R-E:

16 HONORABLE L. CASEY MANNING, JUDGE;
17

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

19 FOR THE PLAINTIFF:

20 PATRICIA L. HARRISON, ESQ.
21

22 FOR THE DEFENDANT:

23 CHRISTIAN STEGMAIER, ESQ.
24
25

Ex 13

230-247

1	I-N-D-E-X	
2		PG.
3	<u>MOTION:</u>	4
4		
5	<u>ORDER OF THE COURT:</u>	16
6		
7	<u>CERTIFICATE OF REPORTER:</u>	18
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19	REPORTER'S NOTE: THERE WERE NO EXHIBITS ENTERED.	
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23		
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25		

1 (The following proceedings were
2 held on February 6th, 2006.)

3 THE COURT: Why does the first case sound so
4 familiar?

5 MR. STEGMAIER: There's another --

6 THE COURT: Henderson, Babcock.

7 MR. STEGMAIER: Yes, sir. You'd heard another
8 Babcock Center matter not to long ago.

9 THE COURT: This is not the one involving WIS or
10 anything?

11 MR. STEGMAIER: No, sir.

12 THE COURT: All right.

13 MS.HARRISON: She was a resident there at the same
14 apartment complex.

15 THE COURT: All right.

16 MS.HARRISON: Where Tyrone Subber was.

17 THE COURT: That's fine.

18 Y'all, ready?

19 MR. STEGMAIER: Yes, yes, sir.

20 THE COURT: You may proceed.

21 MS.HARRISON: Your Honor, may it please the Court,
22 we are here on appeal the dismissible by the judge, Carol
23 Ann Henderson landlord tenant case.

24 Carol Henderson was a tenant at Winway Apartments.
25 And I have, Your Honor, the release from the Babcock Center.

1 THE COURT: Thank you.

2 MS.HARRISON: Your Honor, Winway is a hud
3 apartment it is owned by Ridgewood which is currently owned
4 by the Babcock Center. Babcock Center operates the
5 apartments. Under the terms of the release because it's a
6 hud apartment the Babcock Center is required to follow all
7 hud rules and regulations. On Page 3 of 8, Paragraph 9B the
8 landlord's right to terminate this agreement, is governed by
9 the regulation section of 24-CFR Part 247 of the hud
10 regulation.

11 And on the next page of the first paragraph it
12 talks about the termination in no case be made less than 30
13 days after the tenant receives notice of eviction.

14 Your Honor, I also have the hud regulations that
15 are referred to in the lease that deal with eviction. The
16 hud regulations require that the Babcock Center follow the,
17 these, regulations before terminating anyone's tenancy in a
18 hud apartment.

19 On page -- I'm sorry 247.4 termination of notice
20 the landlord --

21 THE COURT: Stop. I assume with this lady was
22 kicked out, and you said it was not in accord the
23 regulation, is this correct?

24 MS.HARRISON: We, we, filed a complaint under the
25 Landlord Tenants Act, yes, sir.

1 THE COURT: Okay. All right.

2 MS.HARRISON: Yes, sir. We filed a complaint
3 under landlord tenant --

4 THE COURT: All right. I'm sorry, I stopped you I
5 apologize, you may continue.

6 MS.HARRISON: Judge Mayers issued an order
7 dismissing the case saying that the Landlord Tenant Act did
8 not apply and that she did not have the rights of a tenant.

9 THE COURT: All right.

10 MS.HARRISON: Under 247.4 termination notice --

11 THE COURT: Let me help you, what did Judge Mayers
12 do wrong down stairs? Tell me that, focus in on the issue.
13 I'll hear from him and I'll make a decision. But you're
14 giving me too much of a story here more than I need.

15 MS.HARRISON: Okay.

16 THE COURT: It's an appeal from Judge Mayers --

17 THE DEFENDANT: This is an appeal from Judge
18 Mayers --

19 THE COURT: Who incorrectly assume that hud
20 regulation didn't apply?

21 MS.HARRISON: Yes, sir.

22 THE COURT: What was his error?

23 MS.HARRISON: The Babcock Center took the position
24 that because Carol, that Carol Ann Henderson, was in an
25 institution that is an error because she is covered under

1 the Home and Community Program.

2 THE COURT: All right.

3 MS.HARRISON: Which is not an institution, people
4 in ICF and -- which I think you're familiar with --

5 THE COURT: I use to work at Babcock Center.

6 MS.HARRISON: Yes, sir, are institutionalized,
7 people who receives services under the MIRRD waiver program
8 are not institutionalized and, in fact, Your Honor, I would
9 like to enter the MIRRD waiver of contract that the state
10 has which discusses the fact that this is, a, an option in
11 lieu of institution so people who are receiving services
12 under the MIRRD waiver program are not in institutions, they
13 live in apartment where they rent or homes where they rent
14 in the community.

15 I also, Your Honor, have a letter from CMS
16 discussing that people who are on waiver program are not
17 institutionalized. So Judge Mayers erred in that he issued
18 an order saying that the Landlord Tennit Act does not apply
19 because she was in an institution.

20 THE COURT: All right.

21 MS.HARRISON: She has a lease, she's in a program
22 that is not an institutional program. And she has the right
23 to have all of the protections covered by the hud
24 regulations.

25 THE COURT: Okay.

1 MS.HARRISON: As well as the statement of no
2 tenant act.

3 Your Honor, I would also like to submit the
4 residential billiton standards of the department of
5 disability and special needs which also, which applies to
6 all supervised living programs Carol Henderson was in a
7 supervised living program which states on page 2 that all
8 persons in this program that the homes must be in compliance
9 with all the hud regulations.

10 In regards, Your Honor, to the issues -- our
11 position is she was not in an institution.

12 THE COURT: Where is she now physically located?

13 MS.HARRISON: Now, she is in an institution.

14 THE COURT: She's no longer in the place that she
15 was evicted from?

16 MS.HARRISON: No.

17 THE COURT: All right.

18 MS.HARRISON: In December of '04 she was taken to
19 the hospital and while she was in the hospital --

20 THE COURT: Just where she is, fine.

21 MS.HARRISON: Okay.

22 THE COURT: So she's no longer where she was she's
23 in a new place that's in compliance with all regulations?

24 MS.HARRISON: Oh, no, sir.

25 THE COURT: Okay.

1 MS.HARRISON: She's in a different place.

2 THE COURT: All right.

3 MS.HARRISON: We're certainly not that they're in
4 compliance but she's no longer there.

5 THE COURT: All right.

6 MS.HARRISON: In regards to the order
7 determination that she failed to exult its' administrative
8 remedies of 44-26-80 that provision allows a person to take
9 a complaint to the human rights committee. Under the
10 statute, Your Honor, the human rights committee has to be
11 operated by a county board which is a public body which is
12 appointed by the county legislation delegation. The Babcock
13 Center is not a public body. The human rights committee
14 that the Babcock Center operates is not in compliance with
15 the statute and, in fact, at the hearing I presented it on
16 the tape there's a reference to my presenting to Judge
17 Mayers a letter for Mary Lightener who's the director of the
18 Rich Lex Board stating that there is no human rights
19 committee in the Richland County area.

20 The Babcock Center operates its' own human right's
21 committee but it does not report which the statute which
22 requires an independent human rights committee. Even it
23 there had been a human rights committee that doesn't
24 eliminate an individual's right to persue other legal
25 remedies. Under the MRRD waiver room and board cannot be

1 provided as a service that is separate from the services
2 that she receives as a medicaid client. And just like any
3 civil rights action any kind of discrimination based on her
4 handicap she does not have to go through a administrative
5 proceeding before bringing her action in court. As we
6 mentioned it would be -- in any event because there was no
7 human rights committee that preported by the statute. And I
8 would again mention the return did not include the letter
9 from Mary Lightener which was handed up at the trial.

10 THE COURT: All right.

11 MS.HARRISON: And the return was submitted about a
12 year after the appeal was done.

13 THE COURT: All right, thank you, ma'am.

14 Yes, sir.

15 MR. STEGMAIER: Good morning, sir.

16 THE COURT: Morning.

17 MR. STEGMAIER: I'm Christian Stegmaier and I
18 represent the respondent in this case. Carol Ann Henderson
19 was indeed a client of the Babcock Center, she was a
20 resident of Winway which is a supervised living program.
21 During her residence and service by Babcock Center she had a
22 history of violence and disruptive behavior. The final
23 straw was an attack on her boyfriend --

24 MS.HARRISON: Your Honor.

25 THE COURT: Yes, ma'am.

1 MS.HARRISON: I object, all of this is hearsay --

2 THE COURT: The objection is noted. This is
3 non-jury, I've let you say what you wanted to say, I'm going
4 to let him say what he wants to say and I'm going to figure
5 it out and make a decision.

6 Go ahead, Mr. Stegmaier.

7 MR. STEGMAIER: The final straw was an attack on
8 her boyfriend, December 2003 she was subsequently
9 hospitalized in Palmetto Baptist Psychiatric Unit as a
10 result the Babcock Center decided to relocate not object Ms.
11 Henderson from, from, Babcock Center, she was simply
12 relocated to another comparable facility.

13 First and foremost we take exceptions to some of
14 the documents presented today, this October 2004 regulation
15 from the MRRD waiver document, that's not applicable to this
16 case because this document is dated subsequent to the time
17 when this incident arose. And this December 22, 2005 letter
18 was basis of hearsay as well as the fact that this was not a
19 component of the magistrate consideration, while we
20 understand that the court of appeals permitted the circuit
21 court to exercise a fair amount of flexibility under
22 Hallfield versus Gilcrest I don't think that the appellants
23 here in this case have the opportunity to take a second bit
24 at the apple.

25 The five reasons why this court should affirm with

1 the magistrate, number one, there was a failure to follow
2 the or to exhaust administrative remedies and as noted in
3 our memorandum this court our appellant entities require
4 people to persue their administrative remedies before they
5 go to courts, Number 44-26-80 there is mandate that apes or
6 provides a decision first go to the human rights committee
7 Babcock Center has a human rights committee.

8 Babcock Center is in a unique situation unlike
9 many other of the counties Babcock is the provided of the
10 services to those with disabilities and special needs in
11 Lexington and Richland County. Unlike most situations where
12 that responsible is delegated to DDSN.

13 The RLTA, Residential Landlord Tenant Act, does
14 not apply, this is the second point. This was not a
15 landlord tenant relationship, where the client -- but a
16 relationship between a service provider and a client the
17 Landlord Tenant Act does not supersede our state's laws
18 governing the provision of services to those with mental
19 retardation.

20 In that circumstance these providers are given
21 broad powers to have close control over managing the
22 welfare, health and safety of its' clients.

23 Further, this dispute is outside the rim of a
24 Landlord Tenant Act and we note 27-41-20 is the basis of
25 that.

1 The following arrangements are not governed by
2 this chapter, of residence at an institution public or
3 private if incidental to detention or the prevision of
4 medical, geriatric, educational, counseling, religious or
5 simular service, I think counsel touches the language
6 relating to institution this is a, this is a, statute that
7 was written before, I guess, the modern day of healthcare
8 provider, but certainly for purposes of this statute in
9 determining the applicability of the Landlord Tennit Act we
10 think Babcock Center does fit into the agencies of
11 institution and was providing the service contemplating by
12 this section.

13 As a third point, Your Honor, the appellant
14 consented the relocation in her behavioral support plan as
15 the court notice clients of DDSN and their service provider
16 was a provider of a yearly behavioral support plan that
17 September of 2003 this BSP was amended to include as a
18 reinforcer for displays for inappropriate behaviors
19 relocation of Ms. Henderson and in such circumstance. And
20 certainly in the fall and in the early winter of 2003 there
21 were a series of incidents which were detailed in our
22 memorandum which lead Babcock Center to the decision and
23 that relocation was that thing that was most necessary to
24 preserve her health and safety as well as the health and
25 safety of others.

1 As well -- as a fourth point, the appellant seek
2 injunction form of relief from the magistrate court. It's
3 our understanding the magistrate court sits as if a law --
4 as a court of law, not a court a equity, and what they seek
5 is a restoration of her residence at Winway and we did not
6 think that the magistrate court had this power to do so.
7 The magistrate court did not concur but never the less we
8 still take exceptions to that and believe that is another
9 basis for dismissing appealing action.

10 And finally, Your Honor, and I think this was
11 identify by counsel, maybe, inadvertently in her
12 presentation, there is the fifth component which is
13 mootness. We're two years down the road, Ms. Henderson is
14 else where now. She is situated from what we understand,
15 the circumstance where she is being cared for and treated.
16 It's not our understanding at this point in time that she
17 wants to come back to Winway Apartments and so certainly I
18 think mootness is something this Court should weight.

19 THE COURT: All right.

20 MR. STEGMAIER: When it determines the right way
21 to go this.

22 THE COURT: All right.

23 MR. STEGMAIER: Thank you, sir.

24 THE COURT: Ms. Harrison.

... 25 MS.HARRISON: Your Honor, Mr. Stegmaier and I

1 would argue that we can throw somebody out and ignore all
2 the documents that gives them the rights of a tenant under a
3 tenant agreement. And if we wait two years later she hasn't
4 been harmed, Your Honor, she has been harmed and he --

5 THE COURT: Let me ask this, specifically what are
6 you asking me to do, put her back where she was?

7 MS.HARRISON: We're asking that she be offered the
8 apartment back and she be paid the maximum amount that's
9 allowed by the statute and her attorney's fee, yes, sir.

10 THE COURT: All right.

11 MS.HARRISON: We, we, the counsel has raised a
12 number of allegations which are not true. And I bring to
13 your attention, Your Honor, the affidavit by Jimmy Robbers,
14 guardian ad litem, saying that Carol Henderson did not cause
15 injury. Here's what we have, we have an agency for what we
16 do know and, you know, because you sentenced him is that the
17 --

18 THE COURT: I sentenced who, ma'am?

19 MS.HARRISON: Tyrone Subber.

20 THE COURT: Oh, I'm sorry I don't recall that but
21 go ahead.

22 MS.HARRISON: He was stealing from 20 some odd
23 Babcock residences who lived in this apartment.

24 THE COURT: Oh, I remember that. You showed up
25 with one of the victims in that case?

1 MS.HARRISON: Yes, sir.

2 THE COURT: Okay.

3 MS.HARRISON: Yes, sir.

4 THE COURT: I don't recall, I'm sorry you reminded
5 me, that was another case.

6 MS.HARRISON: That is, that is, the situation we
7 have. We know that he was stealing and we know that she was
8 being abused. We have an agency which trumps up all of
9 these allegations about does a -- tries to do away with what
10 rights you and I and everyone else has under a document that
11 is a least under an apartment where they are receiving hud
12 funding to try to be the judge, jury and the final decision
13 maker about whether they can pull her from her apartment and
14 move her to another apartment. They went into her apartment
15 they removed her things while she was in the hospital --

16 THE COURT: That's fine. Just tell me what Judge
17 Mayers did wrong, I'm this is an appeal.

18 MS.HARRISON: Okay.

19 THE COURT: I can't try the case over again.

20 MS.HARRISON: Okay.

21 THE COURT: Now, what's your response to his
22 argument?

23 MR. STEGMAIER: Your Honor, Carol Ann Henderson
24 should not have to go through more hoops than any other
25 citizen of this state who has --

1 THE COURT: I understand that. So --

2 MS.HARRISON: Landlord --

3 THE COURT: So Judge Mayers should be reversed and
4 you want me to put the lady back where she was, is that
5 correct?

6 MS.HARRISON: And we want, we want --

7 THE COURT: And attorney's fees and everything
8 else?

9 MS.HARRISON: We want attorney's fees and we want
10 the maximum amount that is allowed under damages.

11 THE COURT: All right.

12 MS.HARRISON: Which were presented at the damages
13 hearing.

14 THE COURT: Thank you, ma'am.

15 Anything further?

16 MR. STEGMAIER: Other than we take exceptions to
17 the characterization to this relationship being landlord
18 tenant who is provider client, sir.

19 THE COURT: Thank you, y'all for your lively
20 presentations. I will think about it let you know my
21 decision in due course, it's a pleasure to see everyone.
22 Anything further?

23 MR. STEGMAIER: May we, may we, submit proposed
24 orders, sir?

25 THE COURT: Yes, sir. What you want, ten days?

1 Your wife is going to give you a chance to work
2 ten days?

3 MR. STEGMAIER: She said to tell you hello, Your
4 Honor, but yes she'll give me the ten days to do it.

5 THE COURT: Is ten days longer enough for
6 everybody?

7 MR. STEGMAIER: Yes, sir.

8 THE COURT: Thank you all so very much.

9 MR. STEGMAIER: Thank you, Judge.

10

11

12 END OF PROCEEDINGS

13

14

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1

2

3 COUNTY OF LEXINGTON)

4 CERTIFICATE OF REPORTER

5 I, Crystal Roach, hereby certify that I reported
6 the preceding case entitled Carol Ann Henderson V. Babcock
7 Center Inc., Indictment No. 2004-CP-40-2750, at the Richland
8 County Courthouse, February 6th, 2006.

9 I FURTHER CERTIFY that the foregoing pages 1
10 through 18 constitute a true, accurate and full transcript
11 of said hearing.

12 I FURTHER CERTIFY that I am not employed by any of
13 the parties hereto and I have no financial interest in the
14 outcome of said case.

15 IN WITNESS WHEREOF, I have heretofore set my hand
16 and seal at Lexington County on this 10th day of April,
17 2006.

18

19

20

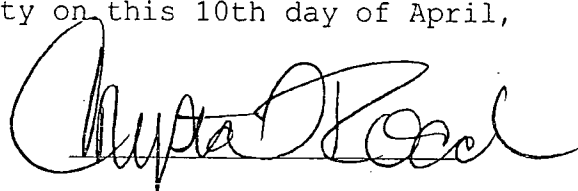
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22

23

24

25



Crystal Roach, Court Reporter
and Notary Public for the
State of South Carolina my
Commission Expires:
April 21, 2014

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 04-CP-40-2750

Carol Ann Henderson

PLAINTIFF(S)

Judy Johnson et al

DEFENDANT(S)

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

Motion to Alter or Amend Judgement is Denied. Formal Order to follow

Dated at Columbia, South Carolina, this 18 day of April, 2006.

[Signature]
PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 20____, and a copy mailed first class this 2 day of May, 2006 to attorneys of record or to parties (when appearing pro se) as follows:

Patricia Harrison

T. Harrison

ATTORNEY(S) FOR THE PLAINTIFF(S)

J. Collins

Christina Stegmier

ATTORNEY(S) FOR THE DEFENDANT(S)

S/BARBARA A. SCOTT

CLERK OF COURT

SCRPC APP. 21

RECEIVED JAN 9 5 2009



PLEADINGS

Christian Stegmaier | Direct Dial: 803.255.0454 | E-Mail: cstegmaier@collinsandlacy.com

December 31, 2008

VIA UNITED STATES MAIL

The Honorable L. Casey Manning
1701 Main Street, Room 214
Post Office Box 192
Columbia, SC 29202

RE: *Edward Mims, by and through his legal guardian, Margaret Mims v. Babcock Center, Inc., Judy Johnson, the South Carolina Department of Disabilities and Special Needs, Kathi Lacy and Stanley Butkus*
C/A No.: 07-CP-40-3365
C&L File No.: 969-109

Dear Judge Manning:

We are informed the above-referenced matter has been placed on the trial roster for January 26, 2009. Please be advised that Defendants Babcock Center, Inc. and Dr. Judy Johnson's Motion to Dismiss and Plaintiff's Motion to Recuse are still pending. Plaintiff initially filed her Complaint on May 29, 2007, but never served Defendants. Plaintiff then filed an Amended Complaint on May 7, 2008, which was served on Defendants on or about May 12, 2008. Accordingly, we respectfully request that these Motions are heard prior to January 26, 2009. Additionally, Defendants are requesting a status conference.

We have enclosed a proposed Scheduling Order for your review and consideration.

By copy of this letter, I am serving a copy of same upon counsel.

Thank you for your time and attention. Should you have any questions, please do not hesitate to contact me.

Respectfully,

A handwritten signature in black ink, appearing to read "C. Stegmaier", with a large checkmark at the end.

Christian Stegmaier

CBS:ams
Enclosures

cc: Patricia L. Harrison, Esquire
Judy Johnson
Bill Reese

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Edward Mims, by and through his legal guardian,
Margaret Mims

☐ Plaintiff

v.

Babcock Center, Inc., Et Al.

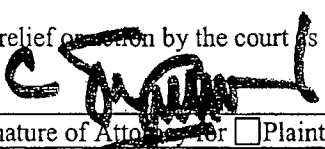
☒ Defendant.

IN THE COURT OF COMMON PLEAS

RECEIVED JAN 05 2009
CASE NO.

07-CP-40-3365

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Patricia L. Harrison, Bar No. Address: 611 Holly Street Columbia, SC 29205 phone: (803) 256-2017 fax: (803) 256-2213 e-mail: other:	Defendant's Attorney: Christian Stegmaier, Bar No. 68648 Address: PO Box 12487 Columbia, SC 29211 phone: (803) 256-2660 fax: (803) 771-4484 e-mail: cstegmaier@collinsandlacy.com other:
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO	
SECTION II: Motion/Order Type ☐ Written motion attached ☒ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☐ Plaintiff / ☒ Defendant December 31, 2008 Date submitted	
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE: _____ CODE: _____ Date: _____
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: _____	

SCCA/233 (11-03)

☐ CONTESTED – AMOUNT DUE: _____

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NUMBER: 07-CP-40-3365

SCHEDULING ORDER

Defendants.

AND IT IS SO ORDERED.

0366

DAVIDSON & LINDEMANN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

William H. Davidson, II
Andrew F. Lindemann*
James M. Davis, Jr.†
Robert D. Garfield

1611 Devonshire Drive, Second Floor
Post Office Box 8568
Columbia, South Carolina 29202-8568
Telephone: (803) 806-8222
Facsimile: (803) 806-8855
www.dml-law.com

Matthew B. Rosbrugh
Michael B. Wren
Lawrence S. Kerr, M.D.†
Kale A. Rice
Daniel C. Plyler
Joel S. Hughes
Kristy M. Grafton

Of Counsel
Kenneth P. Woodington

January 8, 2009

* Also admitted in North Carolina
† Certified Mediator

VIA HAND DELIVERY

The Honorable Amy W. McCulloch
Acting Clerk of Court, Richland County
Post Office Box 2766
Columbia, South Carolina 29202

RE: Edward Mims, by and through his legal guardian, Margaret Mims v. Babcock Center, Inc.,
Judy Johnson, the South Carolina Department of Disabilities and Special Needs, Kathi Lacy
and Stanley Bulkus
Civil Action Number: 07-CP-40-3365
Claim Number: 44654
Date of Incident: 1/04/99?
Our File Number: 104.7785

Dear Ms. McCulloch:

Please find enclosed the original and one copy each of a **Motion Cover Sheet, Consent Motion for Continuance, and a Certificate of Service** regarding the above-referenced matter, as well as my firm's check in the amount of \$25.00 for the filing fee. Please file the originals, returning the clocked-in copies to my courier.

Please also find enclosed the original and one copy each of a **Motion Cover Sheet, Motion for Protective Order, and a Certificate of Service** regarding the above-referenced matter, as well as my firm's check in the amount of \$25.00 for the filing fee. Please file the originals, returning the clocked-in copies to my courier.

By copy of this letter, I hereby serve copies of all of the above-referenced documents upon all counsel of record.

Additionally, by copy of this letter to The Honorable James. R. Barber, III I hereby forward copies of both of the above-referenced motions and would ask that Judge Barber set this matter for a status conference and/or hearing at his earliest convenience.

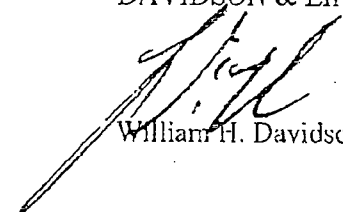
250

The Honorable Amy W. McCulloch
January 7, 2009
Page Two

Thank you for your assistance with this matter. Please contact me if you have any questions or concerns.

Very truly yours,

DAVIDSON & LINDEMANN, P.A.



William H. Davidson, II

WHD/ses
Enclosures

cc: (w/Enclosures)

The Honorable James R. Barber, III
Chief Administrative Judge
Fifth Judicial Circuit
223 Judicial Center
Post Office Box 192
Columbia, South Carolina 29202-0192

Patricia L. Harrison, Esquire
611 Holly Street
Columbia, South Carolina 29205

Christian Stegmaier, Esquire
Collins & Lacy, P.C.
1330 Lady Street, Sixth Floor
Post Office Box 12487
Columbia, South Carolina 29211

DAVIDSON & LINDEMANN, P.A.

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Kate A. Rice
Daniel C. Plyler
Joel S. Hughes
Kristy M. Grafton

Of Counsel
Kenneth P. Woodington

FACSIMILE COVER SHEET

* Also admitted in North Carolina
† Certified Mediator

DATE: January 8, 2009

TO:
Patricia Harrison, Esquire
Christian Stegmaier, Esquire
The Honorable James R. Barber, III

FAX NUMBER:
256-2213
771-4484
576-1782

FROM:

RE: Edward Mims, by and through his legal guardian, Margaret Mims v. Babcock Center, Inc.,
Judy Johnson, the South Carolina Department of Disabilities and Special Needs, Kathi Lacy
and Stanley Butkus
Civil Action Number: 07-CP-40-3365
Claim Number: 44654
Date of Incident: 1/04/99?
Our File Number: 104.7785

NUMBER OF PAGES INCLUDING COVER SHEET: 11

COMMENTS:

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or firm named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copy of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone at (803)806-8222 and return the original message at the above address via the United States Postal Service. Thank you!

If you have any problems receiving this fax, please contact Shelley at (803)806-8222.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

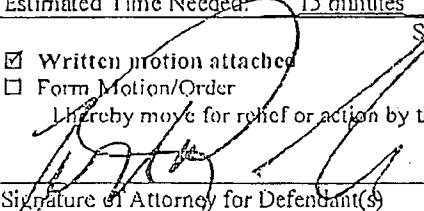
Edward Mims, by and through his legal
guardian, Margaret Mims,

Civil Action No. 07-CP-40-3365

☐ Plaintiff,MOTION & ORDER INFORMATION
FORM COVER SHEET

v.

Babcock Center, Inc., Judy Johnson, the South
Carolina Department of Disabilities and Special
Needs, Kathi Lacy and Stanley Burkus,☒ Defendants.

Plaintiff's Attorney: Patricia L. Harrison, Esquire 611 Holly Street Columbia, South Carolina 29205 Phone: 803-256-2017 Fax: 803-256-2213 E-Mail: Other:	Defendant's Attorney: William H. Davidson, II; Kenneth P. Woodington Address: 1611 Devonshire Drive, Second Floor Post Office Box 8568 Columbia, South Carolina 29202-8568 Phone: 803-806-8222 Fax: 803-806-8855 E-Mail: wdavidson@dml-law.com; kwoodington@dml-law.com; Other:																
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)																	
SECTION I: Hearing Information Nature of Motion: <u>Consent Motion for Protective Order</u> Estimated Time Needed: <u>15 minutes</u> Court Reporter Needed: ☒ Yes / ☐ No																	
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for Defendant(s) <u>January 7, 2009</u> Date Submitted																	
SECTION III: Motion Fee ☒ PAID - AMOUNT: <u>\$25.00</u> ☐ EXEMPT: (check reason) <table border="0" style="width: 100%;"> <tr> <td>☐ Rule to Show Cause in Child or Spousal Support</td> <td>☐ Domestic Abuse or Abuse and Neglect</td> </tr> <tr> <td>☐ Indigent Status</td> <td>☐ State Agency v. Indigent Party</td> </tr> <tr> <td>☐ Sexually Violent Predator Act</td> <td>☐ Post Conviction Relief</td> </tr> <tr> <td>☐ Motion for Stay in Bankruptcy</td> <td>☐ Motion for Publication</td> </tr> <tr> <td>☐ Motion for Publication</td> <td>☐ Motion for Execution (Rule 69, SCRPC)</td> </tr> <tr> <td colspan="2">☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions</td> </tr> <tr> <td colspan="2">Name of Court Reporter:</td> </tr> <tr> <td colspan="2">☐ Other:</td> </tr> </table>		☐ Rule to Show Cause in Child or Spousal Support	☐ Domestic Abuse or Abuse and Neglect	☐ Indigent Status	☐ State Agency v. Indigent Party	☐ Sexually Violent Predator Act	☐ Post Conviction Relief	☐ Motion for Stay in Bankruptcy	☐ Motion for Publication	☐ Motion for Publication	☐ Motion for Execution (Rule 69, SCRPC)	☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions		Name of Court Reporter:		☐ Other:	
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JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE _____ CODE: _____ DATE: _____																
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____																	

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

Edward Mims, by and through his legal)
 guardian, Margaret Mims,)
)
 Plaintiff,)

Civil Action No. 07-CP-40-3365

MOTION FOR PROTECTIVE ORDER

v.)

Babcock Center, Inc., Judy Johnson, the)
 South Carolina Department of)
 Disabilities and Special Needs,)
 Kathi Lacy and Stanley Butkus,)
)
 Defendants.)

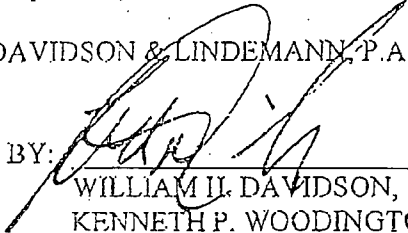
All Defendants, by and through their undersigned attorneys, hereby move for a protective order to the effect that eight depositions recently noticed by Plaintiff for January 15 and 16, 2009, not be held until such time as the Defendants' Motions to Dismiss are heard and decided.

The basis for this motion is that Defendants' Motions to Dismiss raise several potentially-dispositive issues, including the ground that the Summons and Complaint, and the Amended Complaint as well, were not served within 120 days of the filing of this action in May 2007. Instead, Plaintiff waited almost an entire year after filing the Summons and Complaint before serving Defendants with a Summons and accompanying Amended Complaint in May 2008. Defendants' Motions to Dismiss therefore could be dispositive of this action, and should be heard before any additional events in the case take place, including the depositions which Plaintiff seeks to take.

Counsel for Defendants have conferred via e-mail with Plaintiff's counsel with regard to this motion, but Plaintiff's counsel advised that she was unwilling to withdraw the her deposition notices pending the outcome of the Motions to Dismiss.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY: 

WILLIAM H. DAVIDSON, II #425

KENNETH P. WOODINGTON #4741

1611 Devonshire Drive, Second Floor

Post Office Box 8568

Columbia, South Carolina 29202

T: 803-806-8222

F: 803-806-8855

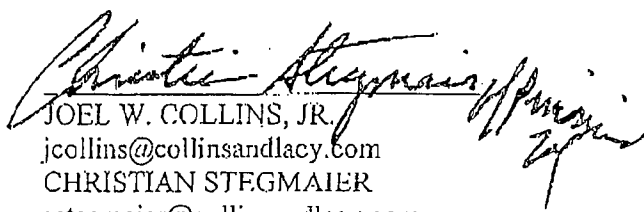
E-Mail: wdaavidson@dml-law.com

kwoodington@dml-law.com

ATTORNEYS FOR DEFENDANTS THE SOUTH
CAROLINA DEPARTMENT OF DISABILITIES
AND SPECIAL NEEDS,
KATHI LACY AND STANLEY BUTKUS

and

COLLINS & LACY, P.C.

By: 

JOEL W. COLLINS, JR.

jcollins@collinsandlacy.com

CHRISTIAN STEGMAIER

cstegmaier@collinsandlacy.com

AMY L. NEUSCHAFER

aneuschafer@collinsandlacy.com

1330 Lady Street, Suite 601 (29201)

Post Office Box 12487

Columbia, South Carolina 29211

(803) 256-2660 (voice)

(803) 771-4484 (facsimile)

ATTORNEYS FOR DEFENDANTS
BABCOCK CENTER, INC. AND JUDY
JOHNSON

Columbia, South Carolina

January 7, 2009

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

Edward Mims, by and through his legal)
 guardian, Margaret Mims,)
)
 Plaintiff,)

Civil Action No. 07-CP-40-3365

v.)

CERTIFICATE OF SERVICE

Babcock Center, Inc., Judy Johnson, the)
 South Carolina Department of)
 Disabilities and Special Needs,)
 Kathi Lacy and Stanley Butkus,)
)
 Defendants.)

The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Defendants South Carolina Department of Disabilities and Special Needs, Kathi Lacy and Stanley Butkus, does hereby certify that service of the Motion Cover Sheet and Motion for Protective Order in the above-captioned action was made upon all counsel of record by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 8th day of January, 2009, addressed as follows:

Patricia L. Harrison, Esquire
 611 Holly Street
 Columbia, South Carolina 29205

Christian Stogmaier, Esquire
 Collins & Lacy, P.C.
 1330 Lady Street, Sixth Floor
 Post Office Box 12487
 Columbia, South Carolina 29211

Shelley E. Stafford

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

Edward Mims, by and through his legal
guardian, Margaret Mims,

Civil Action No. 07-CP-40-3365

☐ Plaintiff,MOTION & ORDER INFORMATION
FORM COVER SHEET

v.

Babcock Center, Inc., Judy Johnson, the South
Carolina Department of Disabilities and Special
Needs, Kathi Lacy and Stanley Butkus,☒ Defendants.

Plaintiff's Attorney: Patricia L. Harrison, Esquire 611 Holly Street Columbia, South Carolina 29205 Phone: 803-256-2017 Fax: 803-256-2213 E-Mail: _____ Other: _____	Defendant's Attorney: William H. Davidson, II; Kenneth P. Woodington Address: 1611 Devonshire Drive, Second Floor Post Office Box 8568 Columbia, South Carolina 29202-8568 Phone: 803-806-8222 Fax: 803-806-8855 E-Mail: wdauidson@dml-law.com ; kwoodington@dml-law.com ; Other: _____
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: <u>Consent Motion for Continuance</u> Estimated Time Needed: <u>15 minutes</u> Court Reporter Needed: ☒ Yes / ☐ No	
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of Attorney for Defendant(s) _____	Date Submitted <u>January 7, 2009</u>
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE _____ CODE: _____ DATE: _____
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____	

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	
Edward Mims, by and through his legal	)	
guardian, Margaret Mims,	)	Civil Action No. 07-CP-40-3365
	)	
Plaintiff,	)	
	)	CONSENT MOTION FOR CONTINUANCE
v.	)	
	)	
Babcock Center, Inc., Judy Johnson, the	)	
South Carolina Department of	)	
Disabilities and Special Needs,	)	
Kathi Lacy and Stanley Butkus,	)	
	)	
Defendants.	)	
_____	)	

All Defendants, by and through their undersigned attorneys, hereby move that this case be continued beyond the January 26, 2009, term of court, and until such time as the Defendants' Motions to Dismiss are heard and decided.

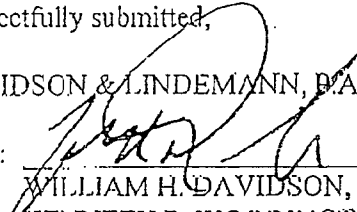
The basis for this motion is that Defendants' Motions to Dismiss raise several potentially-dispositive issues, including the ground that the Summons and Complaint, and the Amended Complaint as well, were not served within 120 days of the filing of this action in May 2007. Instead, Plaintiff waited almost an entire year after filing the Summons and Complaint before serving Defendants with a Summons and accompanying Amended Complaint in May 2008. Defendants' Motions to Dismiss therefore could be dispositive of this action, and should be heard before any additional events in the case take place.

In addition, while this case was filed in May 2007, and bears a 2007 case number, it was not served until May 2008, and therefore has not been pending, as a practical matter, for as long as its case number would indicate.

Plaintiff's counsel has authorized the undersigned counsel for Defendants to advise the Court that she consents to this motion for continuance, although only on the separate ground that discovery has not been completed.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY: 

WILLIAM H. DAVIDSON, II #425

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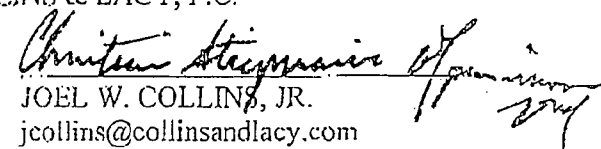
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CAROLINA DEPARTMENT OF DISABILITIES AND
SPECIAL NEEDS,
KATHI LACY AND STANLEY BUTKUS

and

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ATTORNEYS FOR DEFENDANTS
BABCOCK CENTER, INC. AND JUDY
JOHNSON

Columbia, South Carolina

January 7, 2009

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

Edward Mims, by and through his legal
 guardian, Margaret Mims,
 Plaintiff,

Civil Action No. 07-CP-40-3365

v.

Babcock Center, Inc., Judy Johnson, the
 South Carolina Department of
 Disabilities and Special Needs,
 Kathi Lacy and Stanley Butkus,
 Defendants.

CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Defendant South Carolina Department of Disabilities and Special Needs, Kathi Lacy and Stanley Butkus, does hereby certify that service of the Motion Cover Sheet and Consent Motion for Continuance in the above-captioned action was made upon all counsel of record by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 8th day of January, 2009, addressed as follows:

Patricia L. Harrison, Esquire
 611 Holly Street
 Columbia, South Carolina 29205

Christian Stegmaier, Esquire
 Collins & Lacy, P.C.
 1330 Lady Street, Sixth Floor
 Post Office Box 12487
 Columbia, South Carolina 29211

Shelley E. Stafford

Richland County Clerk Of Court
1701 Main Street
PO Box 2766
Columbia, SC 29202

Received
JAN 12, '09

January 8, 2009

Patricia Logan Harrison
611 Holly St.
Columbia, SC 29205

Case Number: 2007CP4003365

Margaret Mims vs. Babcock Center Inc

MOTION(S) FILED: Motion to Dismiss

The above referenced case is scheduled for a Motion Hearing on January 22, 2009 at 2:00 PM before Judge Joseph M. Strickland in Courtroom 2-D.

The Plaintiff's Attorney is to notify the Defendant in writing of the time and date of all Default and Damages Hearings.

All requests for continuances must be in writing with a \$25.00 filing fee and received by the Chief Administrative Judge prior to the hearing. Please notify the Court in writing if the Motions are resolved prior to the hearing. Please file any briefs or memorandum the Wednesday before the week of the hearing.

Questions concerning this Notice should be directed to the Chief Administrative Judge.

Judge James R. Barber, III
Chief Administrative Judge

Fax: (803) 576-1782

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<u>Sponsor</u>	<u>Course Code</u>	<u>Course Name</u>	<u>SDATE</u>	<u>EDATE</u>
UMLC	290005	43rd Annual Heckerling Institute on Estate Planning	1/12/2009	1/16/2009
University of Miami School of Law			<u>CREDITS</u>	<u>ETHICS</u>
<u>City:</u> Orlando	<u>State:</u> FL		28.00	3.83
TAX: 28.00	EPP: 28.00	ELL :0.00	BKY: 0.00	JCLE: 0.00
ADR:			In-House:	
SCB	290105	Asset Protection: Protection Planning Overview and Update 2009	1/23/2009	1/23/2009
SC Bar - CLE Division			<u>CREDITS</u>	<u>ETHICS</u>
<u>City:</u> Myrtle Beach	<u>State:</u> SC	Probate, Estate & Trust/Tax Section	3.00	0.00
TAX: 3.00	EPP: 3.00	ELL :0.00	BKY: 0.00	JCLE: 0.00
ADR:			In-House:	
SCB	290211	Probate, Estate Planning & Trust Section/Tax Law Section	1/24/2009	1/24/2009
SC Bar - CLE Division			<u>CREDITS</u>	<u>ETHICS</u>
<u>City:</u> Myrtle Beach	<u>State:</u> SC		3.00	0.00
TAX: 3.00	EPP: 3.00	ELL :0.00	BKY: 0.00	JCLE: 0.00
ADR:			In-House:	
NBI	290151	Advanced Section 1031 Exchanges	2/11/2009	2/11/2009
National Business Institute, Inc			<u>CREDITS</u>	<u>ETHICS</u>
<u>City:</u> Charleston	<u>State:</u> SC		6.67	1.00
TAX: 6.67	EPP: 6.67	ELL :0.00	BKY: 0.00	JCLE: 0.00
ADR:			In-House:	

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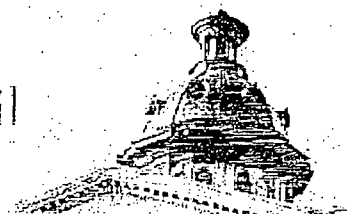
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Review of the Department of Disabilities and Special Needs

December 2008

[REPORT \(PDF\)](#) [SUMMARY \(PDF\)](#)

Members of the General Assembly asked the Legislative Audit Council to conduct an audit of the South Carolina Department of Disabilities and Special Needs (DDSN). Our audit focused on issues specified by the audit requesters, including the health, safety, and welfare of DDSN's consumers, funding of consumers' services, availability of provider choice, use of state appropriations, and public information.

While DDSN operates competently in many respects, we found many areas where improvement is needed to ensure that DDSN is open, consistent, and accountable in its management practices. Our findings are summarized below.

Health, Safety, and Welfare

While numerous entities provide oversight for various aspects of consumer health, safety, and well-being, we identified gaps in oversight that may pose risks to DDSN's consumers.

- While DDSN routinely conducts licensing reviews of its residential facilities, it has not conducted follow-up reviews to ensure that providers correct the deficiencies identified. In our sample of 26 licensing reviews, there were only two follow-up reports for the 25 reviews for which they were needed.
- DDSN conducts licensing reviews of its adult facilities once every three years, less frequently than in the four other states we reviewed. Also, a report from the USC School of Public Health found that in other states, the licensing of community residential facilities was completed by a different entity, while DDSN licenses some of its own facilities. A lack of independent licensing creates the potential for

<http://www.lac.sc.gov/Reports/2008/DDSN.htm>

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3/9/2009

conflicts of interest to impede objective reviews.

- Although DDSN has issued sanctions to facilities for non-compliance with licensing standards, it does not have criteria for what level or quantity of deficiencies warrants a particular sanction.
- The state law which requires a criminal history check for direct caregivers does not provide adequate controls over the hiring process. S.C. Code §44-7-2910 requires a SLED state criminal records check; however, it does not always require a check of records in other states. Other states require a national check for all.
- We reviewed DDSN's procedures to handle threats to consumer safety and found that DDSN may not have ensured enforcement of its personnel policies related to abuse, neglect, or exploitation incidents.
- DDSN does not have an adequate system to ensure that caregivers dismissed for consumer safety infractions are not rehired elsewhere in the system. DDSN should mandate that specific information about employees be shared with other DDSN-contracted service providers.
- By examining DDSN's internal audits, we found that consumers' funds are often mishandled by disabilities and special needs (DSN) board staff. DDSN should strengthen its controls to ensure that consumers' funds are handled appropriately.
- DDSN has allowed providers' room and board policies to be inconsistent and has not ensured that they are communicated to consumers and the public. Because Medicaid does not pay for consumers' room and board, DDSN provides each provider with guidelines for determining room and board amounts. However, we found errors in DSN boards' application of these guidelines. DDSN should implement a public directive on room and board determination and require that room and board rates be annually approved by DDSN.

Barriers to Competition and Consumer Choice

Although federal regulations require recipients of services funded by Medicaid to have free choice of providers, we found that in South Carolina, DDSN's consumers often have little choice of providers. Most services are provided by DSN boards. As of December 2007, just 147 (3%) of 776 consumers of residential services were being served by providers other than the boards. We found that consumers in Georgia, Florida, and North Carolina have a greater choice of providers than those in South Carolina. We identified several barriers to competition and consumer choice.

- In South Carolina, service coordination and service provision are generally performed by the same entity, the local DSN board. This creates a conflict of interest and is a barrier to choice. We found that in Georgia, Florida, and North Carolina, service coordination is separate from service provision and cannot be done by the same entity.
- DDSN provides financial benefits to DSN boards that discourage participation by other service providers. DSN boards are paid upfront for serving consumers, while other providers are paid only after they have provided services. DSN boards continue to be paid for providing services for 60 days or more following a vacancy, while other providers are not paid for empty beds.
- DDSN has provided the DSN boards with capital grant funds to purchase and maintain their residential facilities and for administrative facilities. Only recently has DDSN furnished capital funds to other providers.
- DDSN has not adequately implemented its contractual controls over DSN board performance. In many instances, DDSN has waived financial obligations of the DSN boards and has helped them out of financial difficulties by awarding them special one-time grants. Not requiring the boards to be financially accountable may limit and discourage competition. Also, if DSN boards know they can mismanage their funds with impunity, they have less incentive to manage prudently and with adequate oversight.
- DDSN's process for filling vacancies and developing new beds focuses on providers. Instead of allocating new residential placements to consumers who are determined to be the most in need, DDSN allocates new slots to providers. Funding providers instead of people may result in consumers who would otherwise receive residential placement not being placed or not being placed with their choice of provider.
- Evidence indicates there are not enough providers of services such as respite care, behavior support, and adult companion services. We identified problems with the provider qualification process and provider management. Also, DDSN has not made adequate efforts to recruit and support new providers.

Use of Funds

We reviewed the funding system DDSN uses as a budgeting tool to fund the DSN boards and other issues relating to DDSN's use of appropriations. DDSN should be more transparent in its use of funds and more effectively prioritize funding for services.

- We did not find material problems with the payment system, called the band payment system, and found it does not violate federal regulations. However, DDSN has not formalized a band funding policy and has no formal procedure and policy for systematically updating band funding amounts to account for cost-of-living increases.
- When the services needed by a DDSN consumer are significantly more expensive than the funding band allocated to the consumer, DDSN may authorize additional (outlier) funding. DDSN should formalize its outlier funding policy and make it accessible to the public.
- Prior audits of DDSN by the federal Centers for Medicare and Medicaid Services (2004) and the S.C. Department of Health and Human Services (2006) have recommended that DDSN's cost reports be independently audited. However, DDSN has not implemented these recommendations.
- We reviewed DDSN's use of new state appropriations to expand services and found that DDSN has not yet provided many of the new

services for which it received funding over the past three years. We estimated that DDSN has developed approximately 380 (60%) of 630 new residential beds for which it received state appropriations beginning in FY 05-06.

- DDSN has been slow to implement a new program for children who have been diagnosed with a pervasive developmental disorder, resulting in more than \$9 million in state appropriations remaining unused or being used for different purposes. DDSN has not received millions in federal Medicaid dollars it could have collected if services were provided.
- During FY 05-06 and FY 06-07, DDSN spent approximately \$1.5 million for grants to private, non-profit organizations. In some cases, DDSN has funded the general operations of advocacy groups, which is a conflict of interest. Also, DDSN's funding process appears subjective; the agency does not have a grant application form or policy it follows when determining which organizations will be funded. If the General Assembly intends to fund private non-profit groups, it could fund them directly through the appropriations process.

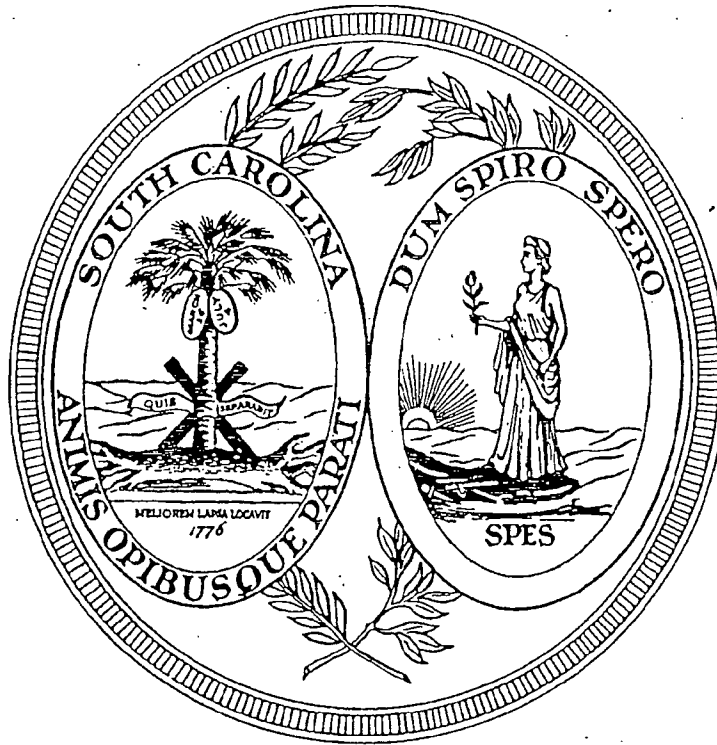
Access to Information and Other Issues

We found that DDSN has not adequately disclosed its operations to the public. DDSN policies are contained in regulations, commission policies, and directives. We did not review the issue of whether DDSN should have more regulations because this issue is the topic of an ongoing legal action. Our findings in this area are summarized below.

- DDSN has not provided adequate public access to its directives. While some of DDSN's directives are available on the agency's website, others are only available on the DDSN extranet, to which consumers and the public have no access. We found that DDSN has not made public many directives that are applicable to consumers and the public.
- DDSN maintains obsolete information in its directives. Although DDSN policy requires an annual review of its directives, we found that more than half of the directives in our sample had not been reviewed in more than two years.
- DDSN's website needs improvement. It does not contain information that citizens could expect to find there, it contains outdated and/or incomplete information, it has no search function, and is not easy to navigate. The site was designed in 1999 and has not been updated to conform to basic common content principles.
- The South Carolina Commission on Disabilities and Special Needs has narrowly interpreted its governance structure in a way that denies commission members access to public information and potentially hinders performance of their fiduciary duties.
- We found that DDSN has an appropriate reporting structure for its internal audit division. However, DDSN has not fully complied with recommendations made by the Institute of Internal Auditors to improve the internal audit function. The commission has had minimal involvement in the work of the internal audit division. Also, DDSN has not appropriately included the central and district offices in its audits and risk assessments, and internal audit has not reviewed DDSN's information systems.
- Several local DSN boards have hired the same certified public accountant (CPA) firms that conduct their financial audits to also provide consulting services. Providing consulting services may impair a firm's independence to conduct a board's financial audit. DDSN should strengthen its oversight of the audit process.
- We identified one former DDSN employee who worked simultaneously for DDSN and a DSN board while performing similar duties, which appears to be a conflict of interest. The same employee also worked for DDSN at the same time that he worked for a firm contracting with DDSN.

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**South Carolina Department of Health and Human Services
Director's Internal Audit Report**

**A REVIEW OF THE MR/RD WAIVER AS OPERATED BY
THE DEPARTMENT OF DISABILITIES AND
SPECIAL NEEDS**

Performed by the Division of Audits

February 28, 2006

EXECUTIVE SUMMARY

The Division of Audits in the SC Department of Health and Human Services (DHHS) has conducted a limited scope audit of the Medicaid Mental Retardation/Related Disabilities (MR/RD) Waiver program. Through this waiver program, individuals with mental retardation and related disabilities receive a broad range of services to assist them to live in the community instead of an institution. This program is a joint effort of DHHS and the SC Department of Disabilities and Special Needs (DDSN). DHHS provides administrative oversight and monitoring to ensure compliance with Medicaid requirements and the health, welfare and safety of the waiver beneficiaries. DDSN has the primary responsibility for the daily operation of the program.

DHHS has both a contract and a memorandum of agreement with DDSN for the management of the MR/RD waiver program. Waiver services are provided by a network of Disabilities and Special Needs (DSN) Boards and private providers. In federal fiscal year 2003, total MR/RD waiver expenditures were \$157,878,607 before cost settlement, with 69.7% federal Medicaid funds and 30.3% state and other funds provided by DDSN.

We reviewed the management and cost of the MR/RD waiver program in order to determine whether Medicaid funds are spent effectively, efficiently and in compliance with contractual, state, and federal Medicaid requirements, and also to determine whether there is an effective system of oversight to ensure clients are properly served. Concerns about DDSN allocation and expenditures of Medicaid funds, as well as issues that surfaced in FY 2003 during a review of a major DDSN provider, The Babcock Center, Inc., were the impetus for this review. While this audit focused on DDSN and DHHS management of the MR/RD waiver program, we tested certain program and financial aspects in-depth at two major providers: The Disabilities Board of Charleston County (Charleston) and The Babcock Center, Inc. (Babcock).

Overall, we identified several areas where both DDSN and DHHS need to improve the oversight of the MR/RD waiver program. Findings are listed below.

Quality Assurance, Sanctions, and Inspections

Three major programs review home and community-based waivers and other services provided to DDSN clients to ensure that quality of care and program standards are met: (1) First Health Services of South Carolina, Inc., reviews all DDSN home and community based programs, using national benchmarks and quality indicators, in order to determine client outcomes, consumer satisfaction, and adherence to policies and procedures; (2) the DDSN State Licensing Division inspects DSN Board programs and residential facilities; and (3) the University of South Carolina, under contract with DHHS, has conducted on-site quality reviews of DSN Boards for compliance to waiver program standards. We noted several issues and impediments to the effectiveness of these programs.

- According to DDSN management staff, the goal of the First Health reviews has been quality improvement, not necessarily compliance with Medicaid requirements. Because many of the standards used to determine service quality (quality indicators) are unique to DDSN, and were developed without input by DHHS, the First Health quality assurance system does not fully meet the needs of DHHS for waiver oversight.
- Some of the key quality indicators reviewed by First Health are also required Medicaid components. For example, all waiver clients are required to have a current single plan (plan of care) and level of care determination in place before waiver services can be billed to Medicaid. Failure to meet these standards results in an unallowable Medicaid payment, which must be refunded to DHHS.
- We found, however, the amount of sanctions applied to the DSN boards, and the money DDSN has refunded to DHHS for non-compliance with its standards, does not accurately reflect actual Medicaid costs and is not a full repayment.
- For example, for fiscal years 2003 and 2004, we determined that Medicaid payments to DDSN totaled \$796,530 for MR/RD waiver services provided to clients during the time their single plans or level of care determinations were either missing or invalid. Of this amount, we could verify only \$191,576 in refunds that DDSN made to DHHS as the result of sanctions identified by First Health reviews. DDSN should pay back the federal share for these unallowable Medicaid payments or \$422,077.
- Statistics reported by First Health show a steady improvement in DSN boards' adherence to quality indicators from FY 2003 to FY 2005. However, there are 265 quality indicators, and non-compliance with key indicators such as having a valid plan of care can be diluted by 100% compliance with less important indicators
- DDSN has the responsibility for licensure and certification of the residential and day program facilities for waiver consumers. DDSN has closed or de-certified a small number of community residential facilities in response to serious licensing and certification violations found during annual licensing reviews. DDSN recently added more staff to this process in order to conduct a follow-up review when there is a significant deficiency related to health, safety, or management of funds.
- DHHS does not receive DDSN state licensing inspection reports of waiver facilities and programs, even if serious deficiencies reflecting abuse or neglect of waiver consumers are discovered.
- DDSN licensing inspections found a number of deficiencies at Babcock, including homes that were unsanitary and in need of repair and maintenance; a lack of background checks on caregivers; and multiple medication errors. In response to this and other problems, DDSN has required Babcock Center to downsize by 50%.

Waiver Funding System

DDSN uses a band payment system to provide the DSN Boards with funds in advance in order to operate the waiver and other programs. For clients with special needs, DDSN also provides outlier funding. We concluded that the current method for funding the waiver program is similar to average, per diem payments made for other types of Medicaid services, although it is difficult to compare band payments with actual Medicaid reimbursements for services.

- We found that while some types of residential facilities were less expensive for the boards to operate, and thus the boards had revenues in excess of costs for these homes, this did not seem to be influencing where clients were placed.
- Average costs for a small number of individuals in the MR/RD waiver program exceeded the average cost of care for an ICF/MR. However, we found no indications that the waiver program does not meet required financial conditions.
- DDSN has improved its process to ensure that all residential outliers are re-justified in writing, and that the consumers' medical and/or behavioral conditions show the continued need for outlier funding.
- We reviewed a sample of MR/RD clients who were or had been receiving outlier funding. Although we found minor discrepancies in the clinical records, we concluded that the continued need for outlier funding was sufficiently documented.

Cost Reports And Administrative Expenditures

We reviewed regional cost reports, audited financial statements, and other documentation for FY 2003 to determine whether MR/RD waiver costs are properly settled in compliance with Medicaid reimbursement methodologies and whether appropriate fiscal oversight of the waiver is provided. These cost reports also are critical since they are the basis for cost settlements made by DHHS to DDSN, and for setting future rates for Medicaid reimbursement for waiver services. We concluded that there is a lack of fiscal oversight of the MR/RD waiver program by both DHHS and DDSN.

- DDSN's administrative costs are not separated from the direct service costs but rather are included in total waiver costs that become the Medicaid rate paid for waiver services. For the two boards reviewed, waiver allocated costs and central office administration amounted to approximately 14%-17% of direct service costs.
- In 2003 the DSN boards, including Charleston and Babcock, had costs higher than the band payments received from DDSN plus other revenues, but their accumulated fund balances provided a cushion. During the same year, total cost for waiver services was lower than the Medicaid funds reimbursed to DDSN, and therefore DDSN has made an interim settlement to DHHS of \$2,150,000. There is a wide variance in actual DSN Board costs for waiver services.

A Review of the MR/RD Waiver as Operated by the Department of Disabilities and Special Needs

- We identified some unallowable room and board-related expenditures in the waiver cost reports: \$182,450 for Babcock CTH II homes and \$54,446 for Charleston CTH II homes.
- There have been no reimbursement audits performed on the regional cost reports compiled by DDSN, and DHHS staff in the Division of Ancillary Reimbursements are not reviewing audited financial statements or DDSN reconciliation schedules that support costs reported in the waiver reports. There are no written audit procedures to guide the waiver report desk review process.

As described in the following pages, DDSN licensing inspections found that Babcock Center facilities had serious deficiencies that remained uncorrected for several years. We reviewed licensing and certification reports for only Babcock and Charleston DSN Boards, so we cannot conclude as to how widespread MR/RD waiver facility problems are. However, Babcock is the largest provider of MR/RD waiver services in the DDSN network.

The DHHS contract with DDSN for waiver services states that, "SCDDSN represents and warrants that all home and community-based mental retardation/related disability waiver services...meet applicable standards specified by Title XIX of the Social Security Act, federal regulations promulgated pursuant thereto, the laws of the State of South Carolina, any regulations promulgated thereto, and the South Carolina State Plan for Medical Assistance and the terms of the waiver". Therefore, it is incumbent upon DDSN to ensure that residential and day facilities with serious problems are closely monitored and closed if they fail to improve within reasonable time frames.

CONCERNS ABOUT BABCOCK IDENTIFIED BY DDSN STATE LICENSING

We reviewed DDSN's 2004 annual licensing survey reports for the day and residential programs at the Babcock Center, Inc., and also reviewed license reports for the previous two years (2002 and 2003), as well as a recently finished 2005 report, to note any trends and improvements. We have serious concerns with the following:

- The number of deficiencies cited by the DDSN State Licensing Division.
- Deficiencies found in multiple residential facilities, many of which were repeat issues from prior licensing surveys.
- Babcock did not adequately address or correct all the findings in its first corrective action plan.

It should be noted that Babcock is not the only DSN provider with licensing deficiencies. However, according to an internal DDSN report, Babcock has "significantly higher rates of abuse, neglect, and exploitation among people served in residences (like group homes) than similar programs across the state. There has been a substantial increase in both reports and substantiated incidents of abuse, neglect, and exploitation. In FY 2003 the rate of substantiated incidents of abuse was almost double the statewide average per 100 residential consumers and in FY 2004 it was four times the statewide average."

Findings from 2004 Residential Licensing/Certification Survey

DDSN's State Licensing Division reviewed a sample of 73 of Babcock's residential habilitation programs on September 1, 2004, through October 6, 2004 (8 CTH I, 25 CTH II, 8 SLP I and 32 SLP II). The results of the DDSN review of Babcock's residential surveys were provided to Babcock's Executive Director on December 13, 2004. Most of

the deficiencies were repeat findings from the 2003 review, and many were found in multiple facilities. A total of 409 residential deficiencies were cited by DDSN licensing and are categorized as follows:

Table 5: Licensing Deficiencies by Deficiency and Facility Type

Deficiency Type	Admin/Personnel	CTH IIs	CTH IIs	SLP IIs	SLP IIs	Totals
Admin/Personnel	4	0	0	0	0	4 (1%)
Behavior Supports	0	4	41	1	13	59 (15%)
Consumer Care	1	5	49	0	34	89 (22%)
Consumer Funds	0	10	45	1	19	75 (18%)
Consumer Programming	0	14	96	11	23	144 (35%)
Home & Safety	0	1	32	1	4	38 (9%)
Totals /% of Total	5/(1%)	34/(8%)	263/(64%)	14/(4%)	93/(23%)	409/(100%)

Source: Babcock's Annual Residential Licensing Survey Report dated December 13, 2004.

Some significant deficiencies noted by the surveyors included:

- Consents for psychotropic medication were falsified for one consumer, and training data was falsified for another client.
- Babcock did not report one critical incident, as required by DDSN Policy 533-02-PD, "Sexual Assault, and Incident Procedure Follow-up".
- Some homes were unsanitary "...to the point of being uninhabitable..." and in need of repairs and maintenance. Kitchens and bathrooms were "very dirty" with broken appliances, water damage, and rotten cabinets.
- Caregivers in all CTH IIs and SLPs failed to have DSS Child Abuse and Neglect Central Registry checks performed. Medication technician training had not occurred for 29 of 33 employees sampled.
- For many consumers, training goals and objectives assigned were not functional, based on a true need, and based on assessments. Some consumers continued to work on specific objectives after criteria for the objective had been met. (Repeat findings)
- Physical and dental exams were not completed annually or as ordered. (Repeat findings) Several consumers were classified as morbidly obese and had significant weight gains during the past year.
- Medications were not being kept under proper conditions. Medications at one SLP II were found to be unsecured without staff present. Consumers were not receiving medications as prescribed. The surveyors noted approximately five pages of medication errors.

Babcock's first corrective action plan in January 2005 did not address some deficiencies found by DDSN surveyors, including the falsification of multiple documents and the medication errors. Some deficiencies, such as issues involving consumers' personal funds, were not addressed at all. DDSN licensing coordinators refused to approve the first corrective action and required Babcock to submit a second corrective action plan, which addressed all the deficiencies but one (which Babcock disagreed with). This was finally addressed by the third corrective action plan.

Also, many of the deficiencies were corrected during the DDSN surveyors' visit or shortly thereafter, and the residential facility with the dirty living conditions cited above was closed January 2005. Babcock Center and DDSN also agreed to reduce Babcock's licensed bed capacity, for both institutional and community-based facilities, by 25% beginning March 2004. Babcock began closing one 48-bed ICF/MR facility in December 2003 after licensing inspections by the federal Centers for Medicare and Medicaid found immediate jeopardy; the remaining beds in this ICF/MR were closed by October 2004.

In December 2004, because of complaints from consumer advocates and families as well as findings of continuing problems by various audits and licensing/certification inspections, DDSN required Babcock through its contract to downsize by another 25%. According to DDSN, the reduction should be completed by June 30, 2006. As of December 2005, Babcock residential capacity had been reduced overall by 30%, based on information provided by DDSN. To date, most of this reduction has been in ICFs/MR. For community residential facilities for MR/RD waiver clients, reduction in capacity was only 15.6%. The reduction was accomplished by closing some facilities altogether, transferring "slots" to other DSN Boards, or moving consumers to other facilities.

In addition, the recently completed 2005 survey of Babcock's residential facilities found an overall reduction of discrepancies from 409 to 226, with improvements in the physical condition of many houses and apartments and fewer medication errors. However, the 2005 review still found many problems in how caregivers managed and accounted for consumer funds. This has been a recurring violation in all four years of inspection reports we reviewed.

Results of Day Program Survey

DDSN licensing conducted a separate review of nine Babcock work activity centers (day programs) on September 1, 2004, through September 30, 2004. The licensing review of Babcock's day programs also noted deficiencies, including:

- Background checks of the DSS Child and Abuse Neglect Central Registry had not been done for any of the personnel whose records were reviewed (a total of 21 records were reviewed). Required abuse checks for three records (14% reviewed) cited from a previous 2003 survey were also still not completed.
- An employee at one of the day programs (hired in 1988) was convicted in 1993 of Criminal Domestic Violence and an Unlawful Weapons charge. At the time of

the conviction it appears that she was employed at one of the residential programs as a caregiver.

- Multiple findings related to the development and documentation of the consumers' single plans. For example, one consumer's single plan did not identify day program services as a need, and therefore these were not authorized. (As noted on page 9, all waiver clients must have a valid single plan that authorizes services before DHHS can claim federal Medicaid funds for the waiver services.)

In a February 2005 letter, DDSN notified Babcock that their corrective action plan for the day programs had been reviewed and accepted, even though the issue relating to the employee had not been fully addressed. Babcock subsequently submitted a *Request for Waiver* from the licensing standard to DDSN for this employee, which DDSN approved on April 27, 2005. Babcock justified the continued employment of this individual on the basis that the convictions were misdemeanors that had occurred 11 years ago; the employee only had four disciplinary actions since 1988, and she has met or exceeded her annual performance expectations. Babcock also stated in its corrective action that it subsequently obtained the required background checks and also obtained an addendum to the consumer's single plan reflecting a need for the day program. Therefore, DDSN took no other action.

Recommendations

6. The Department of Health and Human Services should amend its contract with the Department of Disabilities and Special Needs to address issues involving licensure and certification of MR/RD waiver residential and day program facilities, to include the following provisions:
 - The two agencies should jointly establish the severity levels at which a deficiency would jeopardize the continuing licensure of the provider's facility. This could be patterned after the system used by DHEC in finding "immediate jeopardy" in ICFs/MR and the "class violation" system used for community residential care facilities (CRCF).
 - DDSN should notify DHHS whenever serious deficiencies in residential and day facilities are found by their state licensing division.
 - Once a serious deficiency has been identified, the two agencies should jointly establish a process by which DDSN could invoke a series of actions if the provider fails to immediately correct the serious deficiency, up to and including withholding band payments from the DSN board, revoking the licensure or certification of the facility in question, and terminating all waiver services contingent upon a valid license or certificate.

7. The Department of Disabilities and Special Needs should add to its draft protocol a timeline by which a DSN board would be required to correct serious deficiencies involving the health and safety of clients.
8. The Department of Disabilities and Special Needs should establish a database showing whether serious licensing and certification violations have been corrected and whether any sanctions were applied to DSN Boards as a result of failure to correct them, and report this information to DHHS.
9. The Department of Disabilities and Special Needs should provide copies of annual DDSN licensing reports to each Disabilities and Special Needs Board member so they will be informed of deficiencies noted by the DDSN surveyors.
10. The Department of Disabilities and Special Needs should continue tracking the reduction in program capacity of Babcock Center, Inc., and report these results to DHHS.
11. The Department of Health and Human Services should require the Department of Disabilities and Special Needs to refund the Medicaid share of MR/RD waiver services provided when the licensing and certification inspections find that these services were not identified as a need or appropriately delivered as authorized in the consumers' single plans.

Richardson's attorney
force against a couldn't be reached to

Hooper pleaded guilty.
A shake-up at the High-

trial diversion program,
McDonald said.

e concerns flare up again



Staff file

ials say drought conditions continue to pose a fire threat, as
ear when lightning sparked a blaze by Lake Jocassee.

conditions kindle tensions on burning

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news.com

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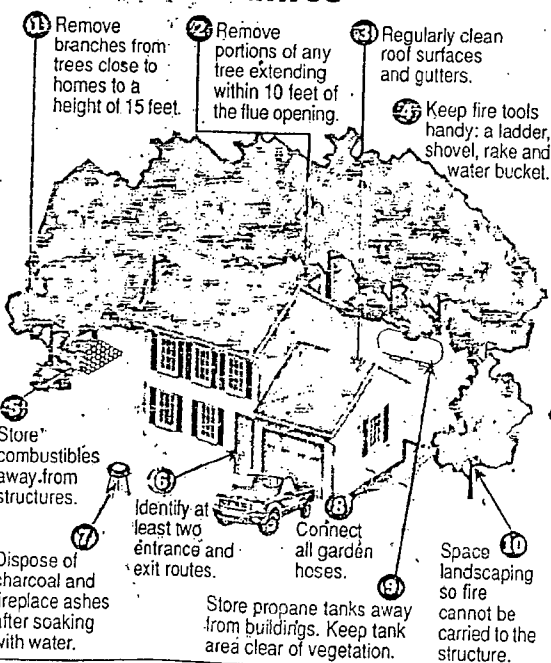
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on page 9A

Don't let your home become a victim of wildfires



SOURCE: Sierra Club

SUZIE RIDDLE / Staff

Disabilities leadership could be next to go

Sanford asks
commissioners to
consider a change
in top posts

By Ben Szobody
STAFF WRITER
bszobody@greenvillenews.com

Gov. Mark Sanford's office has told commissioners of the state Department of Disabilities and Special Needs to look at removing top agency administrators, and one commissioner said Friday he wouldn't be surprised if it happens soon.

Attempts to reach commission Chairman Bobby Harrell were unsuccessful Friday. Through a spokeswoman, agency director Stan Butkus declined to comment.

The move comes after Sanford asked for the resignations of four of the agency's seven commissioners this week, citing a critical audit that alleged problems including health and safety gaps, unused funds and a lack of transparency.

Sanford spokesman Joel Sawyer said Friday the Governor's Office has also told commissioners that a change in agency leadership "may be appropriate."

Sanford has previously

MORE ONLINE

Read December's audit, the agency's response and proposed DDSN legislation at

greenvilleonline.com

called for legislators to restructure DDSN as a Cabinet agency, which would give the governor the power to hire and fire the director.

When asked if Butkus is resigning, Sawyer said he would defer to the commission.

Spokeswoman Lois Park Mole said the commission discussed a personnel matter behind closed doors Thursday, but that as far as she knows, no one has been asked to resign.

John Powell, one of the four commissioners asked to resign, told *The Greenville News* he doesn't yet know if top administrators are leaving but that the commission could make such a move soon.

"I wouldn't be surprised if that's not coming down," Powell said. "It may be even a little deeper than that, probably."

Retired Greenville pastor John Vaughn, who was also asked to leave, declined to comment when asked this week if administrators are leaving.

See DDSN on page 9A

a month after tragedy

Judge rules Lexington District 3 election method discriminates

ACLU says similar case would be more difficult in Upstate

By Jenny Munro
BUSINESS WRITER
jmunro@greenvillenews.com

A federal judge has ruled that Lexington County School District 3's method of election was racially discriminatory and has ordered new proposals to change the election method within 60 days.

Laughlin McDonald, director of the ACLU Voting Rights Project, said the Lexington County case was the only one currently pending in South Carolina although the ACLU has filed dozens of similar cases over the years. The

first was in Dorchester County in the 1970s.

The decision deals solely with the Lexington County district's at-large election method, but "any decision can be used as precedent in subsequent lawsuits," he said.

Although the ACLU would investigate any complaints about discriminatory voting methods anywhere in the state, McDonald said such cases could be more difficult to bring in the Upstate because of the smaller minority population here.

No similar cases are

pending in South Carolina, he said.

The decision "is a victory for political equality," he said. "The judge's decision made it very clear that racially polarized voting in the school district is a major problem. We have made a lot of progress when it comes to voting rights, but this decision shows the continuing importance of the Voting Rights Act to ensure effective minority participation in the political process."

Lexington County School District 3 has a significant minority popula-

tion. When school board elections were held annually in February, three blacks were elected to the board. In 1994, the elections were changed from the February date to a date every two years in conjunction with the general election.

Following the change, no minority was elected to the board until after the ACLU lawsuit was filed in 2003.

The problem, McDonald said, is that the February elections attracted "miniscule participation and minority voters had a chance to be heard. In the larger turnout of the general elections, the minority voice was overwhelmed, he said.

FILE
FROM

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So far this state has far the Lowcoun

There's rain to keep up and keep in the leaves, materials on the Burnette said season continue April for the

"Given the think we can er forest fir this increase uted to the d ing from the ryl Jones of estry Comm state's Drou Committee r

The state mission typ least 10-15 of the year than 100 fire each day.

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DDSN
FROM PAGE 1A

December's audit said the agency diverted or left unused \$9 million in autism funding, may not have fired some staff members involved in cases of abuse and neglect didn't follow up on numerous safety and welfare violations, and denied commissioners access to public information, among other issues.

The agency has said appropriate action was taken in cases of abuse and neglect 100 percent of the time, that it's the job of providers to correct quality problems and that the commission doesn't bar information from its members.

The News reported in 2007 allegations that the agency let a private contractor review claims of abuse at its own facility, that it was "almost impossible" to connect state payments for care with what was actually spent on patients and that the commission had barred individual members from inquiring about agency operations without the consent of the full board.

Burglary suspect held in pool at gunpoint

THE ASSOCIATED PRESS

BATESBURG-LEESVILLE — Authorities say a homeowner threw a man he caught stealing from his home into a pool and held him at gunpoint until sheriff's deputies arrived.

Lexington County Sheriff James Metts says the

homeowner found Ruben Silva-Aguilar, 19, taking things out the back door.

Authorities say when Robert Hartley, 52, confronted the burglar, he was stabbed in the arm. Hartley grabbed him and tossed him into his pool, ordered him to stand in the water and held a rifle on him.

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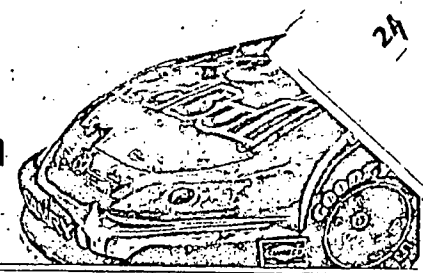
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24



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 Weather, 6B

The Greenville News

GreenvilleOnline.com



Greenville,
 South Carolina

SATURDAY, FEBRUARY 21, 2009 ■ FINAL EDITION

eds offer state trooper alternative to trial

l rights charge will be dropped if
 er completes program, lawyer says

vid Dykes
 WRITER
 @greenvillenews.com

ederal prosecutors
 recommended that a
 emeanor charge
 st a South Carolina
 er videotaped pursu-
 suspect through a Co-
 a apartment complex
 it on hold while the

trooper participates in a
 pretrial diversion program.

First Assistant U.S. At-
 torney Kevin McDonald
 said Friday the govern-
 ment is recommending Al-
 exander Richardson spend
 18 months in the program,
 which includes community
 service, as an alternative
 to the court process.

"If he successfully com-

pletes the program, the
 charges are dismissed. If
 he fails to complete the
 program, the charges are
 reinstated," McDonald
 said.

"Our analysis of the case
 was that it was properly
 classified as a misdemeanor
 or due to the absence of se-
 rious bodily injury."

Richardson was accused
 of violating an individual's
 civil rights by using unrea-
 sonable force against a

man the trooper was chas-
 ing in his car through a Co-
 lumbia apartment complex
 in 2007.

According to court re-
 cords, Richardson struck
 the suspect with his vehi-
 cle.

The trooper said in a
 statement to internal in-
 vestigators that he didn't
 try intentionally to "bump"
 the suspect with his car.

Richardson's attorney
 couldn't be reached to

comment.

McDonald said Richard-
 son faces a maximum sen-
 tence of one year in prison
 if convicted.

The federal civil rights
 charge against Richardson
 marked the third time
 since last summer that a
 trooper has faced civil
 rights charges.

A federal jury acquitted
 one trooper, while another
 trooper pleaded guilty.

A shake-up at the High-

way Patrol began last Feb-
 ruary following the release
 of a videotape obtained by
The Greenville News un-
 der the state Freedom of
 Information Act.

According to the gov-
 ernment's recommenda-
 tion, Richardson, with fed-
 eral prosecutors' authori-
 zation, would apply to fed-
 eral probation officials for
 acceptance into the pre-
 trial diversion program,
 McDonald said.

ION / WORLD



ead backs Phelps

Fire concerns flare up again



Disabilities leadership could be



The State.com
SOUTH CAROLINA'S HOME PAGE

[Back to web version](#)

Monday, Mar 2, 2009

Posted on Mon, Mar: 02, 2009

Embattled disability agency head resigns

Roddie Burris

The state director of the Department of Disabilities and Special Needs has resigned, abruptly ending a 13-year stint at the helm of the agency charged with caring for the state's disabled.

Stan Butkus, hired by the department's commission to lead the agency in 1996, joined the ranks of four commissioners who were fired less than two weeks ago by Gov. Mark Sanford.

The agency has been the subject of longstanding criticism by advocates and caregivers who have complained of secrecy, mistreatment of patients a mismanagement of agency funds.

Of late, the agency has been reeling from a December audit that leveled dozens of findings against the agency, which cares for 28,000 disabled people each year.

"Given what was found in the audit, we believe this was an appropriate step to take," said Sanford spokesman Joel Sawyer, speaking of Butkus' resignation.

Disabilities commissioner Bobby Harrell announced Butkus' resignation in a letter dated Friday, Feb. 27, which said Butkus' departure would be immediate.

"Dr. Butkus has done an outstanding job for our state and department in many ways," Harrell said in the two-page letter, sent to department employees, service providers, and consumer family members. "He is innovative and also willing to make the really tough decisions."

John Vaughn of Greenville, Edythe Dove of North Charleston, John Powell of Walhalla, and William F. Bishop of Leesville will be replaced on the commission by Sanford, who cited the need for administrative changes at the non-Cabinet level agency.

Harrell said the agency would begin a search for Butkus' replacement.

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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Edward Mims, by and through his legal)
guardian, Margaret Mims,)
Plaintiff,)

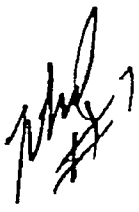
Civil Action No. 07-CP-40-3365

v.)

Babcock Center, Inc., Judy Johnson,)
South Carolina Department of)
Disabilities and Special Needs,)
Kathi Lacy, and Stanley Butkus,)
Defendants.)

MOTION FOR SUMMARY JUDGMENT ON
BEHALF OF DEFENDANTS SOUTH
CAROLINA DEPARTMENT OF
DISABILITIES AND SPECIAL NEEDS,
KATHI LACY AND STANLEY BUTKUS

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for the Defendants South Carolina Department of Disabilities and Special Needs, Kathi Lacy and Stanley Butkus will move before Presiding Judge of the Court of Common Pleas for the Fifth Judicial Circuit, County of Richland, at the Richland County Courthouse for an order, pursuant to Rule 56, SRCP, granting summary judgment to the Defendants and dismissing the Plaintiff's Complaint with prejudice against these Defendants on the following grounds:

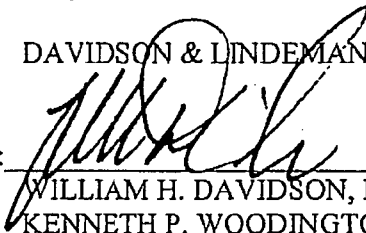
- 
1. This action is barred by the applicable Statute of Limitations.
 2. As to any claims under 42 USC § 1983, the Plaintiff has failed to establish personal involvement of the individual Defendants so as to give rise to liability.
 3. As to the Department and those individuals sued in their official capacity, the claims under 42 USC § 1983 fail as these entities are not "persons" subject to suit.
 4. The individual Defendants are immune from suit pursuant to the terms, conditions and limitations of the South Carolina Tort Claims Act.
 5. Any claim for injunctive relief is moot.

6. Plaintiff's claims dealing with certain benefits alleged to have been denied or limited by the Defendants are barred by the doctrine of issue preclusion as evidenced by a prior appeal before the South Carolina Court of Appeals.
7. The individual Defendants are immune from suit from any claims under 42 USC § 1983 as a result of the Harlow doctrine.
8. Plaintiff's claims are barred by the doctrine of laches.

Said Motion is based upon the pleadings filed in this case, Deposition of Margaret Mims, Deposition of Andy Laurent, Deposition of Bill Barfield, Deposition of John Vaughn, Deposition of Kathi Lacy, Deposition of Otis Speight, Deposition of Robert Harrell, Deposition of Sam Davis, Deposition of Stan Butkus, Deposition of Sue Slater, Deposition of Tonya Bradford, rules of Court, and such other matters as may be properly presented to the Court at this time of the hearing.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY: 

WILLIAM H. DAVIDSON, II #425
KENNETH P. WOODINGTON #4741
1611 Devonshire Drive, Second Floor
Post Office Box 8568
Columbia, South Carolina 29202
T: 803-806-8222
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E-Mail: wdavidson@dml-law.com
kwoodington@dml-law.com

ATTORNEYS FOR DEFENDANTS THE SOUTH
CAROLINA DEPARTMENT OF DISABILITIES
AND SPECIAL NEEDS, KATHI LACY AND
STANLEY BUTKUS

Columbia, South Carolina

April 12, 2013

STATE OF SOUTH CAROLINA

)

IN THE COURT OF COMMON PLEAS

)

COUNTY OF RICHLAND

)

Civil Action No. 07-CP-40-3365

Edward Mims, by and through his legal
guardian, Margaret Mims,

)

)

Plaintiff,

)

)

v.

)

CERTIFICATE OF SERVICE

)

Babcock Center, Inc., Judy Johnson, the
South Carolina Department of
Disabilities and Special Needs,
Kathi Lacy and Stanley Butkus,

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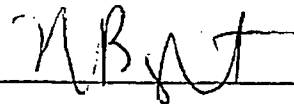
Defendants.

)

)

The undersigned employee of Davidson & Lindemann, P.A., attorneys for Defendants South Carolina Department of Disabilities and Special Needs, Kathi Lacy and Stanley Butkus, does hereby certify that service of the **MOTION FOR SUMMARY JUDGMENT ON BEHALF OF DEFENDANTS SOUTH CAROLINA DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS, KATHI LACY AND STANLEY BUTKUS** in the above-captioned action was made upon all counsel of record by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 12th day of April, 2013, addressed as follows:

Patricia L. Harrison, Esquire
Attorney at Law
611 Holly Street
Columbia, South Carolina 29205



STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

Edward Mims, by and through his legal
guardian, Margaret Mims,

Civil Action No. 07-CP-40-3365

☐ Plaintiff,

**MOTION & ORDER INFORMATION
FORM COVER SHEET**

v.)

Babcock Center, Inc., Judy Johnson, the South
Carolina Department of Disabilities and Special
Needs, Kathi Lacy and Stanley Butkus,

☒ Defendants.)

Plaintiff's Attorney: Patricia L. Harrison, Esquire 611 Holly Street Columbia, South Carolina 29205 Phone: 803-256-2017 Fax: 803-256-2213 E-Mail: Plh.col@att.net Other:		Defendant's Attorney: William H. Davidson, II; Kenneth P. Woodington Address: 1611 Devonshire Drive, Second Floor Post Office Box 8568 Columbia, South Carolina 29202-8568 Phone: 803-806-8222 Fax: 803-806-8855 E-Mail: wdavidson@dml-law.com ; kwoodington@dml-law.com ; Other:	
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Motion for Summary Judgment Estimated Time Needed: 20 minutes Court Reporter Needed: Yes			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of Attorney for Defendant(s)		April 12, 2013 Date Submitted	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE CODE: DATE:	
CLERK'S VERIFICATION			
Collected by: Date Filed: ☐ MOTION FEE COLLECTED: ☐ CONTESTED - AMOUNT DUE:			

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Edward Mims, by and through his legal guardian, Margaret Mims,	)	
	)	Civil Action No. 07-CP-40-3365
Plaintiff,	)	
	)	MOTION FOR SUMMARY JUDGMENT ON
v.	)	BEHALF OF DEFENDANTS BABCOCK
	)	CENTER, INC. AND JUDY JOHNSON
Babcock Center, Inc., Judy Johnson,	)	
South Carolina Department of	)	
Disabilities and Special Needs,	)	
Kathi Lacy, and Stanley Butkus,	)	
	)	
Defendants.	)	
_____	)	

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for the Defendants Babcock Center, Inc. and Judy Johnson will move before Presiding Judge of the Court of Common Pleas for the Fifth Judicial Circuit, County of Richland, at the Richland County Courthouse for an order, pursuant to Rule 56, SRCP, granting summary judgment to the Defendants and dismissing the Plaintiff's Complaint with prejudice against these Defendants on the following grounds:

1. This action is barred by the applicable Statute of Limitations.
2. As to any claims under 42 USC § 1983, the Plaintiff has failed to establish personal involvement of the individual Defendants so as to give rise to liability.
3. As to Babcock Center and Judy Johnson, the claims under 42 USC § 1983 fail as these entities are not "persons" subject to suit.
4. The individual Defendants are immune from suit pursuant to the terms, conditions and limitations of the South Carolina Tort Claims Act.
5. Any claim for injunctive relief is moot.

6. Plaintiff's claims dealing with certain benefits alleged to have been denied or limited by the Defendants are barred by the doctrine of issue preclusion as evidenced by a prior appeal before the South Carolina Court of Appeals.
7. The individual Defendants are immune from suit from any claims under 42 USC § 1983 as a result of the Harlow doctrine.
8. Plaintiff's claims are barred by the doctrine of laches.

Said Motion is based upon the pleadings filed in this case, Deposition of Margaret Mims, Deposition of Andy Laurent, Deposition of Bill Barfield, Deposition of John Vaughn, Deposition of Kathi Lacy, Deposition of Otis Speight, Deposition of Robert Harrell, Deposition of Sam Davis, Deposition of Stan Butkus, Deposition of Sue Slater, Deposition of Tonya Bradford, rules of Court, and such other matters as may be properly presented to the Court at this time of the hearing.


COLLINS & LACY, P.C.

By: _____

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(803) 771-4484 (facsimile)

ATTORNEYS FOR DEFENDANTS
BABCOCK CENTER, INC. & DR.
JUDY JOHNSON

Columbia, South Carolina
April 23, 2013

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Edward Mims, by and through his legal
guardian, Margaret Mims,
Plaintiff)

v.)

Babcock Center, Inc., Judy Johnson,
South Carolina Department of
Disabilities and Special Needs,
Kathi Lacy and Stanley Butkus,
Defendants)

IN THE COURT OF COMMON PLEAS

Civil Action No. 07-CP-40-3365

MOTION FOR PARTIAL SUMMARY
JUDGMENT ON BEHALF OF PLAINTIFF

RICHLAND COUNTY
FILED
2013 MAY 24 PM 2:27
JEANETTE W. McBRIDE
C.C.P. & G.S.

YOU WILL PLEASE TAKE NOTICE that Edward Mims will move before the
Honorable Judge Thomas Cooper in the Court of Common Pleas for the Fifth Judicial Circuit,
County of Richland, at the Richland County Courthouse for an order, pursuant to Rule 56,
SCRCP, granting partial summary judgment. Plaintiff's Motion for Summary Judgment is made
on the following grounds:

1. Plaintiff is entitled to summary judgment for claims brought pursuant to 42 U.S.C. 1983
and 1985 and Plaintiff will show at the hearing on June 4, 2013, through affidavits,
depositions, audits and exhibits, that Kathi Lacy, Stanley Butkus and Judy Johnson have
violated Plaintiff's civil rights acting under color of law by subjecting Plaintiff to
unconstitutional conditions, by denying his right to receive services with reasonable
promptness in a safe and in the least restrictive environment, by failing to provide
services in the amount, duration and scope necessary to prevent institutionalization and
by violating his right to liberty and the pursuit of happiness, his right to equal protection

of the laws and his right to be secure in one's person and property (including the right to services) against unreasonable seizure. Plaintiff will demonstrate that Defendants have acted with evil motives and conscious indifference to these rights as will be set forth in more detail in the memorandum to be filed on or before May 29, 2013.

2. Plaintiff will show he is entitled to summary judgment for violation of 42 U.S.C. § 1985 because the Defendants entered into a conspiracy with the purpose of harming Plaintiff and depriving Plaintiff of services, legal representation and his rights which are protected under the Constitution and laws of the United States. Defendants Lacy, Butkus and Johnson acted in concert to deprive Plaintiff of his liberty interest and equal protection rights, while billing the federal and state government for services that were not being provided, and they took affirmative action to prevent his release from captivity. These Defendants worked in concert to deprive Mims of adult day health care services and to reduce personal care and respite services in retaliation for his exercise of his Constitutional rights. Plaintiff will show that Defendants acted in concert to intentionally provided false and misleading information to the Probate Court and Edward's GAL in order to prevent his discharge from the Babcock Center and to prevent the filing of a lawsuit against the Defendants, in violation of Plaintiff's civil rights. Plaintiff's claim for summary judgment will be set forth in more detail in the memorandum to be filed on or before May 29, 2013.
3. Plaintiff is entitled to summary judgment on his claim for negligent supervision resulting from Defendants' violation of their duties to protect his health and welfare and he will show that Defendants breached their duties and that they were negligent, negligent *per se*,

grossly negligent, careless, reckless, wilful and wanton. These Defendants failed to provide care and supervision to Plaintiff in a safe and humane way. Defendants had a special relationship to Plaintiff and they voluntarily undertook a duty to provide care while knowingly, negligently and intentionally creating risk which caused harm to Plaintiff; and they had a duty under federal law and common law to act with due care, which they failed to do by:

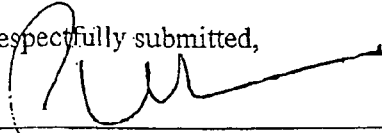
- a. Failing to provide proper supervision to protect Plaintiff from assault, battery and sexual assault;
- b. Failing to provide supervision to protect Plaintiff from injury;
- c. Failing to properly monitor Plaintiff's condition and treatment needs after initiating involuntary commitment proceedings;
- d. Failing to provide adequate staffing needed to assure the health and welfare of Plaintiff and other residents;
- e. Failing to thoroughly investigate reports of abuse, neglect and exploitation of Plaintiff and other residents at his facility;
- f. Failing to discharge Plaintiff to the care of his mother;
- g. Failing to provide services in the least restrictive setting;
- h. Illegally obstructing Plaintiff's discharge from the Babcock Center;
- i. Failing to report incidents of abuse and neglect which a reasonable person would know should be reported.
- j. Illegally obstructing Plaintiff's guardian in the establishment of a guardianship.

Plaintiff will show that Defendants acted with negligence, gross negligence, carelessness and recklessness, that their conduct was wilful and wanton and that it proximately caused injury to and the deprivation of civil rights of the Plaintiff.

This motion is based upon the pleadings filed in this case, Depositions, including those of Kathi Lacy, Stanley Butkus, Judy Johnson, Andy Laurent, Margaret Mims, Leigh Flynn, Bill Barfield, Sam Davis, Sue Slater and Tonya Bradford, the affidavits attached hereto, depositions, reports and exhibits filed along with this Motion, as well as additional affidavits and other evidence to be presented with the memorandum to be filed on or before May 29, 2013 and such other evidence as may be properly presented to the Court at the time of the hearing.

Plaintiff prays for partial summary judgment and does not move at this time for judgment on those claims brought by Plaintiff for violation of the Americans with Disabilities Act and the Rehabilitation Act or Plaintiff's claims for Unjust Enrichment, as it appears at this time that those issues should be tried by a jury. Plaintiff will request at the hearing on motions for summary judgment that Defendants pay interim attorney fees and costs. Plaintiff will request at the hearing on June 4, 2013 an order of protection of the parties, their counsel and Plaintiff's witnesses from retaliation and will present evidence of past retaliatory conduct which has been carried out by these Defendants and their agents for the purpose of intimidation and obstruction of justice.

Respectfully submitted,



Patricia L. Harrison

S.C. Bar No. 11309

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Columbia, South Carolina 29205

(803) 256 2017

Attorney for the Plaintiff

May 24, 2013

PLEADINGS

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May 29, 2013

The Honorable Thomas G. Cooper
Richland County Court of Common Pleas
PO Box 192
Columbia, SC 29202

memo with
exhibits in
separate
notebook

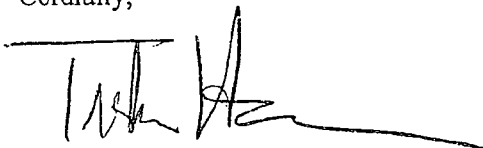
Re: Edward Mims, v Babcock Center, Judy Johnson,
SCDDSN, Kathi Lacy, Stanley Butkus,
Case Number 07 CP 40 03365

Dear Judge Cooper:

Enclosed is our Memorandum in Support of Plaintiff's Motion for Summary Judgment. There seems to be some confusion about what motions will be heard next week. We filed a Motion to Recuse years ago which has not been ruled upon and we filed a Motion for Summary Judgment more than ten days before next week's scheduled hearing, which we were expecting to be heard along with Defendants' Motion.

We are requesting additional time to respond to the more than 90 pages Defendants filed today and respectfully request that all motions be heard on the same day. It seems unfair to give the well represented Defendants additional time to prepare for our Motion, given the short time we have to review this filing. I am a solo attorney with only one legal assistant and I have a brief and joint appendix due in the Fourth Circuit on Friday and a hearing on the afternoon of June 4 in the federal court in a case that has been pending for ten years. Also, it is extremely difficult for Mrs. Mims to find someone to keep Edward for a week during trial of this case and those arrangements must be made in advance. We are respectfully renewing our request for a day certain for Edward's trial.

Cordially,



Patricia L. Harrison

cc: Kenneth Woodington, Esquire
Christian Stegmaier, Esquire

CERTIFIED SPECIALIST IN ESTATE PLANNING AND PROBATE LAW

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Edward Mims, by and through his legal
guardian, Margaret Mims,
Plaintiff)

v.)

Babcock Center, Inc., Judy Johnson,
South Carolina Department of
Disabilities and Special Needs,
Kathi Lacy and Stanley Butkus,
Defendants)

IN THE COURT OF COMMON PLEAS

Civil Action No. 07-CP-40-3365

Plaintiff's Memorandum
in Support of Motion
for Partial Summary Judgment

Patricia L. Harrison
S.C. Bar No. 11309
611 Holly Street
Columbia, South Carolina 29205
(803) 256 2017
Attorney for the Plaintiff

May 29, 2013

Summary of the nature of the case

This is a lawsuit brought by Margaret Mims (Mims), as guardian ad litem for her son, Edward Mims (Edward). The complaint was filed against the Babcock Center, the South Carolina Department of Disabilities and Special Needs and officials of those agencies in 2007 alleging that Edward sustained physical injuries and was mistreated while under their care. The circuit court dismissed the complaint based on issues related to timeliness of service and the application of S.C.Code Ann. § 15-3-20(B) (2005) and the South Carolina Supreme Court reversed and remanded the case for trial in 2012. 732 S.E.2d 395, 299 S.C. 341 (S.C. 2012). Edward files this motion for partial summary judgment on his claim for negligence and gross negligence, with the amount of damages to be determined by the jury at the trial on other issues contained in his amended complaint.

Statement of Facts

Facts related to the DDSN System

The Center for Medicare and Medicaid, commonly referred to as "CMS," is the federal Medicaid agency responsible for the administration and oversight of the Medicaid program. *Pashby v. Delia*, 709 F.3d 307, 314 (4th Cir. 2013). In South Carolina, the Department of Health and Human Services receives all Medicaid funds and it contracts with the South Carolina Department of Disabilities and Special Needs (DDSN) to operate residential programs for persons who have mental retardation. *Doe v. Kidd*, 501 F.3d 348 (4th Cir. 2007). DDSN is the state agency that "has specific authority over the state's treatment and training programs for people with mental retardation and related disabilities." *Doe v. Kidd*, 501 F.3d 348 (4th Cir. 2007). The State Director of DDSN between 1996 and the time of plaintiff's release from

confinement was Stan Butkus. M. 0868. Defendant Kathi Lacy, the Associate State Director of DDSN, also arrived at the agency in 1996. M. 0741. Lacy is responsible for writing policies and assuring that they are followed, including compliance with federal laws. M. 0740 and 0746. She is also responsible for tracking data on abuse and neglect and quality assurance. M. 1424.

Strict federal standards for the operation of ICF/MR facilities are found at 42 C.F.R. 483.800 et. seq. These regulations require the State and its providers to "ensure that clients are not subjected to physical, verbal, sexual or psychological abuse or punishment." 42 C.F.R. 483.420(a)(5). Federal law also requires the State to provide a choice of Medicaid providers. 42 U.S.C. 1396(a)(23) DDSN must determine which home-based setting will meet the recipient's needs and it must "determine the services required because it must insure that it meets the needs of the recipient and that it places the recipient in the least restrictive environment, as required by state and federal law." *Doe v. Kidd*, supra. See, e.g., *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 119 S.Ct. 2176, 144 L.Ed.2d 540 (1999); S.C.Code Ann. § 44-20-20 (2006).

In South Carolina Code of Laws Sections 44-20-20 and-375 a statewide network of local boards of disabilities and special needs is established. *Young v. South Carolina Dept. of Disabilities and Special Needs*, 374 S.C. 360, 491, 649 S.E.2d 488 (S.C. 2007). Section 44-20-385 describes the powers and duties of local boards. As the Supreme Court recognized in *Young*, local DSN Boards are:

[T]he administrative, planning, coordinating, and service delivery body for county disabilities and special needs services funded in whole or in part by state appropriations to the department or funded from other sources under the department's control. It is a body corporate in deed and in law with all the powers incident to corporation....

Id. at 491. DDSN "grandfathered" the Babcock Center as a local DSN Board and it receives financial incentives not granted to other private providers. M. 0936. The SC Legislative Audit

Council Audit of DDSN states at page 3 that Babcock Center was not created by local ordinance, but is recognized as a local DSN Board by DDSN because it existed prior to the statutory establishment of local DSN Boards. M. 0493. In 2003, Babcock Center was the largest provider of these services under contract with DDSN, with an operating budget of more than \$41 million. M. 0102. Defendant Judy Johnson is the Executive Director of the Babcock Center. The most restrictive facilities operated by Babcock Center are similar to nursing homes and they are called "ICF/MR" (Intermediate Care Facility/Mental Retardation). *Doe v. Kidd II*, 351. Federal Medicaid law requires that the State give persons who reside in institutions, including ICF/MR's, be provided the option of living in the community. *Olmstead v. L.C.*, 527 U.S. 581 (1999). When DDSN determines that out of home placement is necessary "the client must be evaluated by the department, and the least restrictive level of care possible for the client" must be provided. *Doe v. Kidd II*, Case No. 10-1191 (4th Cir. 2011).

Facts related to Edward Mims.

After providing care for Edward for 27 years at home, his mother voluntarily admitted Edward to the Babcock Center on October 5, 1999 when she became ill. Affidavit of Margaret Mims. M. 2075. Prior to being admitted at Clusters, the Babcock Center assessed Edward and determined that he needs one-on-one supervision:

To ensure that Edward does not rampage objects in his mouth, he also wonder at night and sleeps very little **this will warrant one-one accountability for Edward.**" BC 4502 to 4511 and 424 to 425.
("BC" refers to Babcock Center records which are attached and are referenced in the Affidavit of Margaret Mims contained at M. 1530. Records with the prefix "M" refer to records contained in the six volumes provided to the Court on May 24, 2013.)

blistered area on his forearm and a scratch on his right thigh. The nurse reported "Dark area from old scratch on l side of penis. 3" light scratch on r thigh. Black line in nail bed of r gt toe. Questionable whitish area just to r of center of nape of neck." BC 923. Two days later, it was reported, on March 27, 2001, that Edward was scratched under his right eye and beside his nose by another client. BC 3190 and 3333. This happened again on April 1, 2001. BC 3190.

On April 3, 2001, Mrs. Mims wrote to DDSN requesting that Edward be discharged from the Babcock Center. M. 2075 and 2104. In response, the Babcock Center and DDSN terminated Edward's weekend visits to his mother's home. M. 2076 and BC 3238. Then, on April 16, 2001, DDSN filed a Petition for Judicial Admission to DDSN with the Richland County Probate Court, informing the Court that:

Edward is fragile and carries diagnosis of cerebral palsy, seizures, hypertension, esophagitis/erosion disease. His mother is in poor health and is unable to care for him since she has limited means and resources.

M. 2105. The abuse of Edward Mims continued unabated at Clusters. Just two days after DDSN filed its Petition for involuntary commitment, on April 18, 2001, Babcock Center records show that Edward had a "laceration to top of head ..dried blood noted to ___ also l side several dark red areas noted." BC 1656. Records from April 19, 2001 document "wound to top of head ...some bruising noted." BC 1656.

Edward was examined and assessed for the Probate Court proceedings by Jane McCausland, a masters level DDSN psychologist. M. 2107. Ms. McCausland reported that she reviewed "his working chart as well as interviewed his QMRP, Mr. Kevin Wise." She determined that Edward was:

a 29 year old Caucasian gentleman who carries diagnoses of Profound Mental Retardation, cerebral palsy, hypertension, a seizure disorder, esophagitis/erosion disease,

pica, and, additionally, he is self-abusive. Because he has only one kidney, his water intake must be monitored to prevent toxicity. He is currently on a number of medications which require close monitoring as well...*He is nonverbal and assumed a fetal position during my interview with him.* All attempts to obtain any response from him were unsuccessful. (Emphasis added.)

M. 2107. Her report states that: "Mr. Mims has made some progress since he was admitted in 1999" and that "he appeared to be well cared for." Id. Ms. McCausland determined that Edward "continues to need physical care and habilitation for services such as those provided by SCDDSN." M. 2108. She advised the Court that Edward should "remain in a facility where such service needs can be assured" and that he was receiving one-on-one supervision:

Because of Mr. Mims' significant medical problems, self-injurious behavior, and his very limited ability to care for himself, it would not be in the best interest of Mr. Mims for him to be left unattended. Indeed, he is on one-on-one care at Clusters.

Id.

Mrs. Mims informed the court-appointed GAL that Edward was mistreated at Clusters.

M. 2039. But Babcock Center employees at Clusters and legal counsel for DDSN told Edward's GAL that he was "anxious when he returned to Clusters after his weekend visits at home because he was being abused or neglected by Mrs. Mims..." M. 2040.

Even while DDSN's involuntary commitment Petition was pending in the Probate Court, on May 26, 2001, Babcock Center staff "reported client had scratched self under r eye. Small amount of bruising noted." BC 1657. Exactly one month later, on June 26, 2001, the same date that Edward was committed to the custody of DDSN by the Probate Court, he was found to have "purpleness on elbows." BC 3829.

Mrs. Mims' affidavit corroborates the testimony and affidavit of the GAL: "Employees of the Department of Disabilities and Special Needs told lies about me to the Probate Judge at the 2001 hearing." M. 2076. Mrs. Mims was told by DDSN that if she did not agree to the

involuntary commitment: "they would terminate my weekend visitation with Edward." M. 2076. Mrs. Mims testified in her deposition that: "I was afraid that if I didn't sign this, I wouldn't see Edward again." M. 1538.

In return for Mrs. Mims signing the order of commitment, Edward's visits homes were restored. But he continued to come home "with bruises and other injuries from Clusters." M. 2076. On July 3, 2001, the same date that the Probate Judge signed the order of involuntary commitment, Babcock Center records documented that "Edward has old bruise on his upper arm." BC 3864. On July 8, 2001, "redness on his neck" was documented. BC 3828. The records state "Edward has the same marks redness on his neck. Only redness on neck, no other marks." BC 3828. Then on July 12, 2001, Babcock Center records document: "mark on left upper arm and old marks on back." BC 3863. July 15, 2001 records note that there were still "Red marks on neck." BC 3864. The following day, Edward was "... scratched by another client." The right side of his nose had a 1/4 inch scratch with "blood oozing" BC 1660. By the next day, July 17, 2001, he had a "red bruise on back." BC 3837. Two days later, there was a "Mark on side of nose mark on his back." BC 3831. On August 19, 2001, there was a "yellowish color on left side of breast and right." BC 3571. These "yellow spots" around both breasts were again reported on August 21, 2001, with old bruises. BC 1661.

On September 3, 2001: "Edward slipped while being given a shower." BC 3799 and 1661. The accident report stated that Edward fell on floor of the shower and "hit his behind." BC 3796 and 1662. Two weeks later, a leg injury was "investigated" by Babcock Center staff, who "explained" the injury as being "Caused by socks and/or shoes." BC 3798.

On October 3, 2001, the SC Attorney General obtained an arrest warrant for the arrest of

Carl Anthony. The Attorney General's Office affidavit stated that "Carl Anthony did knowingly and willfully strike or hit Edward Mims about the head." But, Anthony was allowed to plead guilty to the misdemeanor of simple assault and he was fined \$225. No action had been taken by Babcock Center or SCDDSN to attempt to prosecute Anthony. Mrs. Mims herself persisted in prosecuting case through SC Attorney General's Office and the arrest warrant was not issued for more than a year after beating. M. 2076. On November 13, 2001, Mrs. Mims wrote to Attorney General Condon pleading with him to return Edward to her home:

What happen to Edward Mims now, Edward & my right have been taken away from Edward and I. Please Mr. Condon, let my son come back home. I'm afraid what going to happen to my son at Babcock Center. Edward can't talk but I know my son...Went (sic) he comes home Edward doesn't want to go back with them to Babcock Center. Edward know that I love him and that I will take care of him.

M. 2113.

On December 3, 2001, Edward was taken to Lexington Medical Center where his hand was x rayed because it was swollen. M. 2126. A photograph taken on December 3, 2001 show a red lash mark across his face and on his shoulder. M. 2056 and 2057. Babcock Records noted an "old bruise light yellow in color." BC 3184. Nurses notes indicated that his neck had been scratched. scratch on right side of neck. There was also "bruising r middle finger." BC 3188. Statements from staff on December 2, 3 and 4 deny there being any marks on Edward. BC 1638 to 1643.

Babcock Center records document that Edward was assaulted by another client at the workshop on December 16, 2001. He had a "possible corneal abrasion" which was treated at Lexington Medical Center. BC 3308. The body audit reported "No new mark & bruise on Edward. Red bumps on his top back & right eye is bruise." BC 3778. On December 19, 2001,

there were red marks on his back and above his right eye lid. BC 3234. Two days later, on December 21, 2001, Edward had a scrape on his left hand. BC 3280. In addition, Babcock Center records document "Old blood on his sheet and shirt. Sm dk red scrape noted on l hand." BC 1664 and 4584.

On December 27, 2001, DDSN responded to the letter Mrs. Mims had written to Attorney General Condon, refusing to allow Edward be discharged from the Babcock Center. No alternatives were provided, except to remain at Clusters. Lois Park Mole, DDSN's Director of Government and Community Relations, wrote to Mrs. Mims:

I understand that Edward has profound mental retardation, cerebral palsy and several other severe and complex medical conditions. **He is medically fragile, takes a number of medications and requires close monitoring and assistance...All parties agreed that Edward's significant special needs and complex medical conditions required more staffing and supervision than any one person could possibly provide.** No one person can do it all to care for Edward.

M. 2117. This letter states: "We understand that you wish it were possible for him to live at home again." Id. DDSN determined that "several different people have to be awake and around him all the time." Id. But the end result was that DDSN determined that "Edward needs to stay at Babcock...We want what's best for him too, and to work with you." M. 2118.

On January 6, 2002, Edward was found to have "a red mark on left side of neck" and he has "red bumps on back." Also, there were red mark on his left arm. BC 3784. The next day, a "3" long old red scratch noted r side of neck" appeared. BC 1664. (Again noted on January 12.) On January 16, 2002, Edward was treated in the emergency room for abrasions and contusions after being beaten with a belt at the Babcock Center. He had "abrasions over entire body on January 24, 2002 and was taken to Lexington Medical Center for evaluation. M. 2128 and 2130.

According to Babcock Center records, Edward had 27 marks noted over his body. Some of the wounds were "red in color," but the wound on his right upper shoulder was "purple in color.." BC 1644 and 1665. Edward was beaten with a belt by another client on January 24, 2002. BC 1644. He had whelps on his back and arms, with marks on his left and right thighs. BC 1644. There is no evidence that this assault was reported to law enforcement.

Two weeks later, records reported that Edward "slipped on some water that was left on floor from where another resident was mopping." BC 1665 and 4562. On February 4, 2002, Babcock Center records report that Edward "fell" but that the injury was "healing well." BC 3185. Four days later, staff reported that Edward injured the back of his head when he hit the floor falling off a chair. BC 4564. Later in February, Edward he was treated at Urgent Care for a contusion of his right hand with "discoloration and bruising on his first and second fingers of his right hand...They are not sure whether he injured it or hit his hand." BC 3275. M. 2131. Nurses notes indicate that "results are from Edward swinging his hands and hit his hand on the door resulting in the bruise." BC 3185. On March 3, 2002, Edward suffered "two long scratches on middle of right side of neck." BC 3792. These scratches were still visible a week later. BC 3186.

On March 20, 2002, Edward was transferred to Kensington ICF/MR and that same month, Dr. Butkus requested that his internal audit department "review several areas of Babcock." M. 0103.

D.T., a resident of Babcock Center's Wire Road ICF/MR, was not taken to the hospital for nearly 12 hours after an employee threw scalding water on him. M. 1920. The injury was not reported to law enforcement until the next day. Id and M. 2040. In May of 2002, another

Babcock Center client at Wire Road ICF/MR was beaten with a belt by a 16 year old, the same perpetrator who beat Edward with a belt. M. 0078. This abuse was reported in an article published in the Wall Street Journal. "Disabled People Find Group Homes Can Be Broke, Too: That Dam Boy Got Me." M. 1982. According to federal surveyors, a 79 year old victim at Wire Road ICF/MR (M. 0075) was raped at the facility by the same teenager on or about June 13, 2002. M. 0079. On July 21, 2002, his finger was broken and Babcock Center records document that he was beating on the walls and saying "I want out of this hell home" and "I pray to Jesus to send me to heaven or hell." M. 0081. The elderly gentleman was admitted to the hospital with an unexplained broken arm on November 18, 2003. M. 0075 to 0077. (Immediate Jeopardy was declared at Wire Road ICF/MR during a federal investigation conducted on December 2, 2003. M. 0088.)

At first, fewer injuries were reported after Edward was moved to Kensington, but problems were again reported in August and November of 2002. BC 1106 and 1107. In December 2002, CMS required the South Carolina Department of Health and Human Services to "investigate allegations that had surfaced concerning neglect, abuse and misuse of funds at the Babcock Center, Incorporated." M. 0100 and 0103. On January 8, 2003, Edward's head was pushed into a coffee table. BC 1104. A week later, Edward was taken to the emergency room where it was reported that he was unable to sleep and was "holding his hands to his eyes" and his blood pressure was high. Exhibit 4 and M. 2132.

Mrs. Mims continued to insist on body audits being conducted when Edward came home on the weekends and when he returned, so as to protect herself and Edward from claims that he was being injured at home. M.2077. The Babcock Center complained that body audits that had

been requested by Mrs. Mims were a violation of Edward's rights. Id.

On February 28, 2003, a CMS report documented that Kensington failed to meet federal requirements for ensuring that allegations of mistreatment, neglect and abuse, as well as injuries from an unknown source, were reported appropriately. M. 0048 to 0062, see pages 0055 to 0056. During this investigation at Kensington, a client was found to have unexplained bruises to both knees, a scraped elbow and hands and a swollen and tender right arm. Id. at 0055. Another client had suffered a patella fracture which resulted from a fight with another client. Although federal regulations required an investigation to be completed within five days, no report was issued for twenty-six days. Id. at 0056. In this report, CMS documented that Kensington failed to provide appropriate behavior supports for one of Edward's house mates who had a history of sexually deviant behavior. Id. at 0058 and 61.

On May 20, 2003, Edward was found to have a "long red scratch mark" which extended from the left side of his mouth to the side of his cheek, BC 1110. He was taken to the emergency room on July 26, 2003. A week later, Edward was hit by another client on the left side of his head at Kensington, the same client who had pushed him into the coffee table. BC 1109. On August 8, 2003, this same client pushed Edward into the wall at the Babcock Center workshop, resulting in a "scrap on his left hand." M. 2068.

On July 6, 2003, a Clusters resident (the campus of six houses where Edward had lived and was beaten with a belt) was found to have "large abrasions/bruises on his chest" that were "caused by a belt or wire looped object" like a fly swatter. Mr. 0158. The client was assigned 1 on 1 supervision at the time the injury occurred, but no one could explain how the injury occurred. Id. An "Investigation of Injury" dated August 8, 2003 reported "scratches on top of left

hand caused by H. 107" from being pushed into a brick wall. M. 2069. This report states that he will be monitored at all times while around this client. Id.

DHHS released its audit of the Babcock Center in October 2003. M. 0100. The audit reported a "lack of policy to define and require the reporting of serious resident-on-resident abuse to external authorities." Id. Allegations of abuse, neglect and exploitation were not reported in compliance with state law and DHHS found that Babcock Center failed to ensure adequate staffing to supervise residents. Id. Corrective action plans were not followed and financial misappropriations were reported. Id. DHHS reported that "The statistical analysis revealed the number of deficiencies and violations from 2000 to the present." M. 0104. DHHS reported that it had paid Babcock Center more than \$1 million for empty beds. M. 0111. The audit found that one-on-one supervision for persons assigned consistently being provided. M. 0113. The audit required to have a physician or other qualified individual annually review the need for one-on-one services. M. 0114. Two out of five cases involving abuse and neglect involving insufficient staffing levels and supervision of staff were substantiated. M. 0124.

CMS inspectors arrived at Clusters the following month. On November 4, 2003, while the federal surveyors were in the building, a staff member assigned to provide one-on-one supervision left the client unattended to take four telephone calls in one hour. M. 0158. He told the surveyor "Well, there are a lot of fights." Id. Another client was reported to be assaulted at Clusters because he frequently was "in the wrong place at the wrong time" and "This often times resulted in him being assaulted." M. 0160. The employee reported that "The home had been running on bare minimum staff, and the one on one requirement for two clients residing in that home could not always be maintained." M. 0160. When asked about a client who was being

targeted, the employee reported that "we all fall into the mind trap of saying, oh, that's just [Client #5's name]." At Clusters House B, the facility was understaffed on 20 out of 31 shifts. M. 0162. The allegation that the Babcock Center failed to report and protect clients from repeated beatings was substantiated. M. 0164 to 0167.

Finally, in November of 2003, one of the six buildings in the Clusters campus of horrors was closed when Babcock Center failed to correct deficiencies found by CMS. Immediate Jeopardy was declared by CMS due to Babcock Center failing to protect clients from harm. M. 0064 to 00. These deficiencies cited by CMS included, in particular, Babcock Center's failure to provide one-on-one supervision to clients determined to need that level of supervision. M. 0068. CMS also found that staff at Clusters was not properly trained and that staff had failed to report suspicions of "abuse, neglect, or injury to clients and trends that may be indicative of victimization." M. 0069. That same month, deficiencies were discovered and reported by CMS at another Babcock Center facility, Bruton Smith Group Home. M. 0072.

In December, 2003, CMS determined that Babcock Center's Ida Lane Community Residence was not in compliance with federal standards for participation in the Medicaid program. M. 0084. Immediate Jeopardy was again declared at Wire Road ICF/MR that same month. M. 0088 and 0093 CMS determined that Babcock Center failed to "provide services necessary to prevent physical harm for all clients." M. 0093. On December 9, 2003, CMS reported that Wire Road was "The second Babcock facility to receive a notice of termination." M. 0096.

A 2004 memorandum issued by CMS reported horrific abuse and neglect of Babcock Center clients living at Clusters ICF/MR. M. 0150 to 0163. One client was stabbed in the neck

with a pen and many clients were bitten, one requiring seven stitches. M. 0155. The memo reported a lack of documentation of injuries from an unknown source, including a swollen jaw and ankle and a "big blue bruise" found on a client's foot. M. 0152 and 0152. The memo reported clients being kicked in the mouth by another client, being kicked causing abrasions, and clients hitting and scratching other clients. Many other incidents of other "client-to-client aggression" occurring between November 1, 2002 and November 4, 2003, while the federal surveyors were there. M. 0154. All 29 incidents documented while federal surveyors were at Clusters "resulted in injuries to the victim." One client exhibited 249 physically aggressive incidents, including biting, kicking and pushing other clients. M. 0157. One of these incidents required 8 stitches to close the forehead of the victim. Id. A staff member admitted not reporting an altercation for ten days "because he was scared due to the staff member's position within the residence." Id. Another staff member disclosed on her exit interview a staff member hitting a client with a wooden paper towel holder. M. 0158.

In March of 2004, Defendant Butkus "got a commitment from the Babcock agency, spoke with Ms. Johnson and the Board, to reduce the capacity by 25 percent over three years, because I felt that they had too much on their plate to manage." M. 1421. This reduction was based on trending data "that Kathi Lacy" oversaw, how they were doing in different program areas." M. 1422. On July 27, 2004, Edward was taken to the hospital with "ant bites all over." Exhibit 4. The ants were found in his bed. According to Defendant Butkus, this was the "type of thing" that Defendant Kathi Lacy was responsible for being aware of and tracking. M. 1376. Butkus said this event was "problematical." M. 1377. Then, just three days later, Edward suffered a cut on his lower back and he arrived home for his weekend visit with his hair matted. M. 2093. BC 4888.

Babcock Center records state that Edward fell out of his chair and hit his back on an air conditioner. Id.

Less than one month later, Edward's roommate, Billy Cothran, choked at Kensington. M. 2093. Although he was on a mechanically altered diet, chunks of cheese toast were found in his trachea. Id. After his death, CMS declared Immediate Jeopardy again at Kensington on October 13, 2004. M. 2146. CMS found Kensington to be understaffed, staff to be poorly trained and that the Babcock Center failed to thoroughly investigate the death. 0199 and 1983. See also report of survey conducted October 12, 2004 at M. 0211 to 0217. Page M. 0195 contains a review of behavioral data of Mr. Cothran. See page Wall Street Journal article re Billy Cothran. M. 1983. This report documents that he was assaulted by other clients at Kensington "at a rate of 3 to 4 reported attacks per year." M. 0196. The records reviewed included 18 incidents of "mostly unknown cause," including carpet burns, scratches, bruises and a cut above the eye. M. 0196 and 0197. As Mrs. Mims and the mother of "Madison" had done, Mr. Cothran's family attempted to move him out of Babcock Center, but he died at the facility just four days before he was supposed to be moved. *Madison* at 655. M. 1983 and 1987.

On October 28, 2004, Edward was taken to the doctor with "redness around left eye since yesterday morning." Exhibit 4. On November 2, 2004, Edward's doctor noted "Mild bruising" around his left eyelid. Exhibit 4. According to sworn deposition testimony of Defendant Butkus:

And in the fall of '04, the trend line still was not good for the agency as a whole on quality. So what I did was I met with the Board and said we have to reduce by 50 percent. We have to go from 634 beds to 317 beds in 18 months, and that's what we did. When inspectors returned to Kensington in November 23, 2004, they found that the

facility still did not comply with the Life Safety Code. M. 0215 and 2151. CMS found

Kensington to be in a state of disrepair, with holes in the walls and 22 work orders that had been submitted in September not being completed. M. 0206 and 0207. Defendant Butkus testified that he made a decision to require Babcock Center to downsize by 50% on or about December 15th, 2004. When asked about the Babcock Center ICF/MR facilities being out of compliance, Butkus said "We knew that we were not satisfied with the level of quality at Babcock Center as Babcock Center. Any of the residential programs, we were not satisfied in." M. 1446. Butkus admitted having responsibility for the problems at the Babcock Center and described his decision to downsize Babcock's residential program as "taking action to correct a situation that he didn't think is acceptable." M. 1448. He found the situation at the Babcock Center ICF/MR facilities was "unacceptable." M. 1449.

On January 18, 2005, Carolina Medical Review (CMR) issued its report of investigations of Babcock Center ICF/MR facilities. M. 0209. CMR concluded that:

In consideration of review findings, CMS cannot provide assurance to DHHS that Babcock Center, Inc. Is meeting the minimal conditions of participation in the Medicaid program as required by federal regulations.

M. 0214. This survey was conducted to follow up on the surveys conducted by CMS during the fourth quarter of 2004. Id. CMR reported "There is no comprehensive set of policies and procedures for the administration of programs and other aspects of business." M. 0210. There was no evidence of follow up on abuse and neglect files. Id. Staff had not been trained as frequently as indicated by administrative staff. Id. Harmful chemicals were found in the ICF/MR facilities "unlocked and accessible to residents throughout the program crating potential hazards within the homes." M. 0212. Approximately half of the facilities were "in need of major repairs..." M. 0212. Home had holes in walls and flooring. Id. Of significance is the finding that

"Residents who had what appeared to be widely disparate care needs were observed, particularly at ...Kensington I and Kensington II..." M. 0213. Homes were being "reclassified without documentation of client needs assessment for appropriate placement and in consideration of fire and safety standards." M. 0213. Sanitation was "compromised throughout the locations..." Id.

The Director of DHHS sent Defendant Johnson a letter stating: "Based on the findings of this limited scope review, I am concerned that the deficiencies noted may be indicative of more pervasive problems at Babcock. Specifically, I am most concerned about the lack of evidence of ongoing active treatment for clients." M. 2153. The Director sent a letter to the Regional Administrator of CMS informing that federal agency that "As a result of the finding in the report, CMR was unable to provide us assurance that Babcock was meeting the conditions of participation as required under the federal regulations." M. 2156.

On March 8, 2005, DHEC cited Kensington for failing to correct deficiencies. M. 2094 and M. 2161. According to CMS, Kensington was decertified on April 29, 2005. M. 2094. The Director of DHHS sent Defendant Johnson a letter informing her that a second follow-up visit to Kensington on April 27, 2005 found that "the facility remained out of substantial compliance with requirements for participation in the Medicaid program and recommended termination effective April 30, 2005. M. 2159. The Director instructed Johnson to provide DHHS plans for resident relocation no later than May 2, 2005. Id. He directed Defendant Johnson to notify all responsible parties via telephone and letter that their Medicaid agreement for Kensington "has been terminated due to your facility's failure to meet the federally mandated Medicaid participation requirements." Id. Johnson was directed to post public notices "in visible areas" throughout Kensington notifying the public that Babcock's Medicaid agreement had been

terminated and "that assistance will be made available for resident transfers to other participating facilities." M. 2160. But that certainly was not true for Edward and his mother's attempts to discharge him continued to be unsuccessful. DHEC also sent a letter to Defendant Johnson informing her that Kensington was found to be out of compliance with federal regulations and that participation in Medicaid was being terminated. M. 2162.

On May 3, 2005, Defendant Johnson sent a letter to families of Kensington residents after calling them on the phone on May 2. She informed families that "We have been directed to begin planning for relocating the residents." M. 2163. Contrary to the repeated findings of CMS, DHEC and DHHS, Johnson informed families that "There are no health, safety or accountability issues involved." Id. That was simply not true.

On May 27, 2005 Edward was found in his room with a 4 cm "gaping laceration" on his penis. M. 2124. He was treated at Lexington Medical Center ER where seven stitches were required to repair the wound. M. 2122. When Edward was examined by the physician in the ER, there was "oozing of blood from the wound." Id. The ER report states "They are uncertain how the wound occurred." Id. According to Defendant Butkus, the responsibility for preserving evidence and reporting the unexplained injury was that of Defendant Johnson. M. 1399. The Babcock Center "critical incident" report states that "Mrs. Mims decided to make a report to the police department." M. 2165. The unnamed officer called Kensington and said that he would follow up "in a few days." M. 2165. As of June 2, 2005, there had been no follow up by the police. Id. But, Defendant Butkus sent a memo to Defendant Johnson on June 1, 2005, five days later, informing her that the Ombudsman and DDSN's medical consultant, Dr. Graeme Johnson would be investigating Edward's injury. M. 2167. Dr. Graeme Johnson arrived on June 2, 2005

and found "a few scalp scratches." He reported that the nurse who examined Edward on the night of the injury did not find blood or tissue under his fingernails," but he did not contact the physician who treated Edward at the ER or the social worker who filed a report with the Ombudsman. M. 2169. Edward was not wearing pants with a zipper and there were no sharp or protruding objects in the area. Id. Dr. Graeme Johnson determined that "it is unlikely that Edward Mim's laceration was due to abusive or negligent management." M. 2170. He determined that "It is an unexpected problem that had no antecedents." Johnson reported "He appeared to be in a caring, supportive situation when the laceration occurred and appropriate care and follow-up had been provided...The evidence I have seen, the notes I have reviewed, and interviews I have conducted, lead me to a conclusion that it is unlikely that Edward Mims's laceration was due to abusive or negligent management." His report does not mention the declarations of Immediate Jeopardy, the public notice that DHHS required Babcock Center to put on the door warning of the termination of the facility's participation in the Medicaid program, or the prior findings that there was a resident with sexually deviant behavior living in the facility.

Defendant Lacy discussed this event with Defendant Butkus. Affidavit of Kathi Lacy at page 29. M. 00737. Despite the decision to decertify Kensington, the fact that Butkus had ordered Babcock to downsize by 50% and this injury, Defendant Butkus made the decision to oppose Edward's discharge from Kensington because "the circumstances were still operating that led to the original involuntary admission. We hadn't seen a change in her capacity." M. 1409. He could not remember whether a home study was done before DDSN filed objections to Edward's discharge with the Probate Court. M. 1409. See also 1411. Butkus felt that Edward's mother "couldn't provide the level of care that he needed in the home." M. 1411. This was because "she

was working, she didn't have a lot of resources, income was limited, things of that nature." Id. His assessment was that Edward "couldn't get the care that he needed" at home. M. 1412. He determined that staying at Kensington "was best for him," despite having personal knowledge of the conditions at the facility. M. 1413. Butkus determined "based on our professional assessment" that Mrs. Mims did not have "psychological resources, certainly financial resources" to take care of Edward. "We just didn't think that she would be able to do that." He testified that "it wasn't in his best interest" to be discharged from Kensington. M. 1416. Butkus' decision was that it was in Edward's best interest "To stay in the -remain in the involuntary status and stay where he was." M. 1419 and 1420.

Defendant Lacy actually attended an emergency Probate Court hearing held in Probate Judge Amy McCulloch's chambers on a Sunday afternoon for the purpose of opposing his discharge. Id. at page 31. M. 0759. After the hearing, DDSN's nurse was sent to the home of Edward's mother and found the "home environment being in good shape" and that "Mrs. Mims appeared to be a very caring and loving mother, that Edward seemed to be getting the kind of care that he needed, and he did not appear to be in any sort of immediate jeopardy." M. 0764 to 0765.

On June, 6, 7 and 8, the court-appointed examiner, Lennie Mullis, attempted to meet with Edward at Kensington to prepare her report for the Probate Court. Upon arriving at Kensington she "noticed a sign stating that the facility has been decertified." Rule 59(e) Motion filed on December 3, 2009 at 115. Affidavit of Lennie Mullis. On June 6, 2005, Mullis was instructed by Babcock Center staff that she must provide her court order to Defendant Johnson. Id. She faxed the order to Johnson on June 7, 2005. But Mullis was again denied entry when she attempted to

examine Edward that evening. Id. On the morning of June 8, 2005, Dr. Johnson left a message with Mullis to call her or Dorothy Goodwin about examining Edward Mims. Goodwin informed Mullis that she would be allowed to examine Edward at 6:00 p.m. on June 8, but when Mullis arrived at 6:15, she again was denied access to Edward. Id.

The court-appointed Visitor, Mary Katherine Bagnal, MSW, CMC, met with Edward and Mrs. Mims and reported to the Probate Court that Mrs. Mims was very attentive to Edward's needs and that he appeared to be familiar and comfortable in his home. Rule 59(e) Motion at 117. On June 9, 2005, an emergency hearing was held in the Probate Court and Mrs. Mims was appointed in a temporary guardianship, with a hearing for the appointment of a permanent guardian scheduled for June 24, 2005. Id. at 107-108. The Order authorized Mrs. Mims to have custody of Edward have the authority to establish his placement. Id. Judge McCulloch ordered DDSN to provide the Court with a service coordinator and a treatment plan. Id.

On June 10, 2005, counsel for DDSN, Jim Hill, wrote to Edward's counsel informing her that DDSN would not allow Edward to visit his mother's home that weekend and that DDSN would "attempt to review this matter next week..." Id. at 122. This letter stated that Babcock Center had appealed the decertification of Kensington and that "Any issue about alternate placement of individuals at this time based on de-certification is premature pending the appeal." Id. Defendant Butkus was copied on this email.

When Mrs. Mims arrived at Kensington to remove Edward from the facility, after providing Defendant Johnson with a copy of the court order, she was not allowed into the facility or to see Edward. M. 2079. She had to call the Columbia Police Department to enforce the Court's order and remove Edward from the facility DHHS had instructed them to depopulate. M.

2079. DDSN counsel, Jim Hill wrote to Edward's court-appointed GAL on June 22, 2005, attempting to obstruct Mrs. Mims' appointment as guardian. M. 2194.

A hearing was held in the Probate Court on June 24, 2005. M. 2189. Defendant Lacy attended and testified at that hearing. M. 2190. On September 28, 2005, DDSN filed a document identified as "Objections" with the Probate Court opposing Mrs. Mims being appointed as Edward's permanent guardian. In this document, DDSN attempted to convince the Court that no guardian should be appointed. M. 2188. If Edward did not have a guardian, there would be no one with authority to sue the Defendants. The Objections state: "More specifically, SCDDSN questions the need for a guardian for Edward, the Petitioner's capacity to function as guardian and suggests that if guardianship is needed, the Court consider the appointment of Edward's sister, Diane Theriot." (Who then worked for Babcock Center.) M. 2193. At that hearing, Defendant Lacy informed the Court that Edward did not qualify for Adult Day Health Care services, in an attempt to force him into a Babcock Center day program. M. 2079.

Attorney Leigh Flynn testified that Babcock Center employees had "intentionally withheld information from me about the conditions at Clusters in 2001 and about the many incidents in which Edward had been injured at the facility so that I would recommend that he be involuntarily committed to the facility." M. 2040. She testified that Babcock Center employees told her that Edward was being abused or neglected at home by Mrs. Mims. Id. She made recommendations for Edward's involuntary commitment "based on this false information which had been provided to me by employees of the Babcock Center and the Department of Disabilities and Special Needs." Id. Attorney Flynn testified that Edward should be released from Babcock Center back into the custody of his mother and that Mrs. Mims' petition to be appointed as

guardian be granted. *Id.* Ms. Flynn testified that she had represented a number of Babcock Center clients who had been abused and neglected there and that it was not safe to return Edward to the Babcock Center. *Id.*

Edward's mother was appointed as his guardian at a hearing held in the Richland County Probate Court on September 29, 2005. Rule 59(e) Motion at 130. Judge Belton presided at the hearing. Counsel for DDSN again requested that no guardian be appointed, or, in the alternative, Edward's sister, who worked for Babcock Center until just prior to the hearing, be appointed. *Id.* Mr. Hill asked the Court to use Edward's funds to pay his sister's attorney fees and that the judge recuse herself. *Id.* at 131. Edward's sister testified that she had seen Edward once since the spring of 2004, that he had never visited in her home and that she had not visited Edward on holidays for many years. She testified that if appointed as Edward's guardian, she would return him in a facility operated by DDSN. Judge Belton determined that DDSN was not a party to the proceedings and denied DDSN's request to recuse herself. The GAL recommended that Mrs. Mims be appointed as her son's permanent guardian. *Id.* Mrs. Mims reported that at the hearing, DDSN counsel Hill "sat at counsel table with my daughter, who was an employee of the Babcock Center and who opposed my appointment as guardian for Edward." M. 2079. Mrs. Mims' affidavit states that Edward's Guardian Ad Litem, Ed Kneece asked that Mr. Hill be removed from the court room and he was required to wait in the hallway. M. 2079.

Because Defendants Lacy and Butkus had denied Edward's request to receive Adult Health Care Services from a provider other than Babcock Center, Edward had to file an administrative appeal. The hearing officer reversed the decision of DDSN, finding that Edward was entitled to receive those services. *Mims v. DHHS*, Case No. 05-MISC-034 (MR/RD Waiver -

Adult Day Health Services).

It took Edward's mother four years after his involuntary commitment to secure his release from the Babcock Center. Babcock Center Annual Accountability Report that Stan Butkus presented to the General Assembly for FY 2004-2005 provided a different perspective than that witnessed by Mrs. Mims:

Dr. Stan Butkus, State Director, was appointed to serve on S.C.'s full Olmstead Committee The Olmstead U.S. Supreme Court decision established that individuals living in institutions should be able to move to community options if they desire, that individuals should not be unnecessarily institutionalized, or put at risk of unnecessary institutionalization and that placements move at a reasonable pace:

M. 0266. This Report informs the legislature that "Under his leadership, beginning in 1998 the Department has been on the cutting edge of developing and implementing a state wide service model that relies on consumer choice and consumer satisfaction based on a person-centered organized statewide service delivery system..." M. 0274. According to this Report: "Leadership actively promotes the health, safety and well being of the consumers DDSN serves, as well as the dignity and respect for these individuals and their families." M. 0275.

Media reports told a different story. M. 1911 to 2014. Also, a very different picture from that painted by Defendant Butkus was exposed by the investigation conducted by Protection and Advocacy for Persons with Disabilities, Inc. Their report titled "Unequal Justice for South Carolinians with Disabilities: Abuse and Neglect Investigations" was released on October 27, 2005, one month after Edward was released from captivity. P&A reported "one homicide, two deaths from choking, physical injuries with excruciating pain, and other shocking examples of abuse and neglect." M. 0284. P&A found that DDSN facilities were allowed to investigate

themselves "with little external oversight" and that law enforcement was rarely contacted. This investigation found that "Some of South Carolina's most vulnerable citizens are needlessly suffering, even dying. They will continue to do so..." M. 0285. The Executive Summary begins:

Physical Abuse. Sexual Abuse. Neglect. Misuse of medications. Few incidents are reported. Fewer are properly investigated. Rarely are offenders held accountable. Those who should protect people with disabilities often fail to do so. The State's response is a fragmented collection of agencies lacking the expertise to properly investigate allegations of abuse, neglect, and exploitation of vulnerable adults. It is a collective failure that needs to become a system.

M. 0287. According to P&A: "The major agency involved with these issues, DDSN, has created policies and procedures that are inadequate in some places and not followed in others...Reporting often is delayed, or in some cases non-existent. Delays in reporting present serious problems with evidence preservation and victim protection." M. 0288 and 0289. Sexual abuse was not investigated and P&A reported that victims were not protected from further harm. Id.

A 2006 audit of DDSN by DHHS reported deficiencies at many Babcock residential facilities "many of which were repeat issues from prior licensing surveys. M. 1302. According to DHHS, in 2003, Babcock Center had double the statewide average of substantiated cases of abuse, neglect and exploitation. M. 1302. By 2004, the rate of substantiated cases of abuse, neglect and exploitation at the Babcock Center had increase to "four times the statewide average." Id. According to this audit:

The results of the DDSN review of Babcock's residential surveys were provided to Babcock's Executive Director on December 13, 2004. Most of the deficiencies were repeat findings from the 2003 review, and many were found in multiple facilities. A total of 409 residential deficiencies were cited by DDSN licensing..." M. 1303.

These included falsification of medical consents and training date, failure to report a sexual

assault, homes being unsanitary "to the point of being uninhabitable, kitchens and bathrooms being "very dirty" with broken appliances, water damage and rotten cabinets." M. 1303. In 29 out of 33 employees sampled, medical technician training had not occurred. Id.

As a result of these problems, DDSN agreed to reduce Babcock Center's licensed bed capacity by 25%. The closing of Clusters was discussed. M. 1304. Despite these closures, DHHS reported continued "complaints from consumer advocates and families as well as findings of continued problems by various audits and licensing/certification inspections. As a result, DDSN ordered Babcock Center to reduce its capacity by another 25%. Id.

Edward filed a second administrative appeal with DHHS on September 6, 2006, objecting to DDSN's denial of needed services at home. 42 C.F.R. 431.244(a) provides that hearing decisions must be based "exclusively on evidence introduced at a hearing," but the DHHS hearing officer dismissed Edward's appeal without providing a fair hearing, which is required by 42 U.S.C. 1396a(a)(3). The hearing officer held that DHHS had no jurisdiction to hear Edward's complaints for violation of Sections 1396(a)(8) (reasonable promptness), 1396a(a)(23) (free choice), payment of Edward's "band" funding to the Babcock Center, and the failure to enlist sufficient providers. DHHS Order of Dismissal, 06-MISC-044, January 16, 2007. Defendants did not appeal this order. Edward first filed an appeal with the Administrative Law Court, which upheld the dismissal and then with the South Carolina Court of Appeals. Rather than making further futile attempts to obtain an administrative remedy, in consideration of the DHHS hearing officer determined DHHS had no jurisdiction over his claims for violation of the Medicaid Act, Edward opted to file this lawsuit in the Court of Common Pleas in 2007 for violation of these provisions of the Medicaid Act under Section 1983, along with other claims outside of the

jurisdiction of DHHS.

Responding to legislators' concerns, the South Carolina Legislative Audit Council conducted an extensive audit of DDSN programs. M. 0490. This audit that was released in December of 2008 found that the problems identified in prior audits had not been corrected and that the health and safety of clients in DDSN programs was still in jeopardy. After the audit was released, then Senator David Thomas held hearings on the audit findings which were attended by Defendant Kathi Lacy. M. 2017. His office was "flooded with phone calls" from former employees, employees and families who were fearful of retaliation by DDSN, in particular, retaliation by Defendant Lacy. M. 2017. Senator Thomas reported a "pervasive fear of retaliation" against persons who advocate for DDSN consumers. Id.

Since his release from the Babcock Center, Edward has lived safely at home. M. 2079. However, his mother is "always afraid of what Judy Johnson and the officials at Babcock Center will do to me and to Edward to get back at me for getting Edward out of an abusive situation and reporting them to law enforcement and other regulatory agencies." M. 2080.

No questions of material fact exist in Edward's claim for negligence and gross negligence and he is entitled to judgment as a matter of law.

As Madison alleged in *Madison v. Babcock Center*, DDSN and Babcock Center, and the individual defendants have failed to properly supervise facility staff, failed to heed previous warnings and both ignored the requests of his mother that he be released from Babcock Center. *Supra*. Madison's mother testified that she repeatedly complained to DDSN attorney Jim Hill and the director of the Babcock Center about her daughter having inappropriate sexual contacts at the Babcock Center. Id. at 655. Mr. Hill was the attorney representing DDSN in Edward's

involuntary commitment proceedings. M. 2109. He also filed the agency's motion attempting to obstruct his mother from being appointed as Edward's guardian and actively participated in the hearing, although DDSN was found not to be a party. M. 2188 and page 2 of Order appointing permanent guardian. (This Order is contained at M. 2195, but page two is missing in Volume 6, but a complete copy is attached to Plaintiff's Rule 59(e) Motion at page 118.) In *Madison*, the plaintiff, like Edward, was voluntarily placed at the Babcock Center, but DDSN refused to allow her parents to take her out of the facility. Id. at 655.

The complaint alleged that Madison "secretly slipped out of the house sometime after 1 a.m. and left with male Babcock Center consumers. Id. at 654. In her complaint, it was alleged that she had sex and contracted a disease while staying at the Babcock Center home. Id. Reversing the order of summary judgment granted by the circuit court judge, the South Carolina Supreme Court held that "Babcock Center has a duty to exercise reasonable care in supervising and providing care and treatment to clients in its custody." Id. at 656. The Court held that Babcock Center also has a statutory duty to exercise "reasonable care" in supervising clients. Id. at 657. S.C. Code Ann. § 44-20-30(2), (11) and (16) (2002), S.C. Code Ann. 44-20-710 to 1000 (2002), S.C. Code Ann. 44-26-10 to 220 (2002). Having undertaken to render services to Edward for consideration, the Babcock Center had an obligation to protect him so as to prevent him from harming himself or to prevent others from harming him "while staying at the center." Id.

The Court held that, under the common law, that "a private person or business which accepts the responsibility of providing care, treatment or services to a mentally retarded or disabled client has a duty to exercise reasonable care in supervising the client and providing appropriate care and treatment to the client. Id. at 658. The Supreme Court also held in *Madison*

that DDSN has a "common law duty to exercise reasonable care in supervising the client and providing appropriate care and treatment to the client." Id. DDSN has a common law duty to Edward, whether or not these services are being provided by an independent contractor or the fact that a third party may have committed a criminal act in harming him. Id. at 660. Edward has provided clear and convincing evidence and no question of material fact exists that DDSN, Butkus and Lacy have been negligent in their duty to Edward to adequately supervise the provision of services by the Babcock Center. Id. They have also been negligent by their own conduct, as they had prior notice of inappropriate care being provided to DDSN's clients by the Babcock Center. Id. He has shown through audits, medical records and results of investigations that the risk of harm to Edward was foreseeable and that their neglect was the proximate cause of his injury.

Although gross negligence is normally a "mixed question of law and fact, Edward has proven in this case that the individual and agency defendants were grossly negligent and the evidence he has presented "supports but one reasonable inference." Id. at 661. Proximate cause can be proven by direct or circumstantial evidence. Edward has shown that "but for" the gross neglect of Defendants and their refusal to release him from confinement he would not have been repeatedly injured by dangerous employees and uncontrolled and improperly supervised individuals. M. At 662. Direct evidence in this case includes extensive records documenting his serious injuries. He has also provided extensive circumstantial evidence in the form of investigations, audits and reports by federal, state and advocacy organizations describing truly hellacious conditions he was forced to endure.

Edward has presented extensive evidence that Johnson, Butkus, Lacy, Babcock Center

and DDSN breached their duty of care; that their actions were the proximate cause of his injuries and that the injuries were quite foreseeable. Lacy is responsible for monitoring trends and assuring that federal standards are met in DDSN facilities. She reported Edward's injuries to Butkus, who had sole authority under the involuntary commitment order to move him prior to his mother's appointment as guardian. Not only did audit after audit of Babcock Center's programs document that its residents were at tremendous risk of harm, but Edward's own records show that he was victimized frequently by staff, as well as other clients. Immediate Jeopardy was declared at Kensington on February 28, 2003, less than one year after Edward was moved there from Clusters and the facility was finally sent a notice of termination after Johnson's repeated failures to bring Kensington into compliance. (M. 0046).

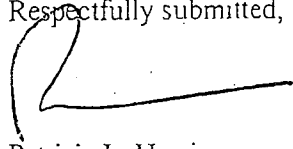
Johnson had a long history of failing to protect persons in her care from abuse. A Recommendation to Investigate by the United States Department of Justice reported that when she was in charge of Whitten Center in the mid-1990's it appeared that "residents of Whitten are being harmed and exposed to unreasonable risks of harm in violation of their constitutional and statutory rights. M. 1065. This document cites federal surveys conducted in 1993 and 1994 that documented the failure to report abuse and neglect. M. 1067. One parent told DOJ investigators that Johnson "talks out of both sides of her mouth" and "tells parents what they want to hear regardless of the truth." M. 1067. In her deposition, Johnson claimed to have seen the DOJ report. M. 913. She was at Whitten Center from 1991 or 1992 until she left South Carolina in 1996. M. 918. The DOJ allegations, which were supported by HCFA (predecessor of CMS) surveys, are strikingly similar to the findings of CMS, DHEC, LAC and P&A under Johnson's reign at Babcock Center.

Johnson, along with other DDSN officials, was sued for failing to protect Scottie Jennings from repeated abuse while at Midlands Center. M. 1131, 1134. Like Edward, he suffered "mysterious injuries" from "cruel and barbaric treatment" and there was no accountability. M. 1136, 1141, 1135, 1180. Jennings claimed that Johnson was grossly negligent by exposing him to "obvious and extreme dangers" and failing to provide reasonable protection due to a conscious lack of concern for his safety. M. 1143. At her deposition, Johnson did not remember much about this lawsuit and she could not remember whether it contained allegations of sexual abuse. M. 925. She came to Babcock Center in 2002 and admitted a number of lawsuits having been settled during her reign. M. 949, 953, 958, 986, 987.

Edward has provided evidence showing that he is entitled to judgement as a matter of law on his claims that the Defendants failed to provide proper supervision to protect him from assault, battery and sexual assault; failed to provide supervision to protect him from injury; failed to properly monitor his condition and treatment needs after initiating involuntary commitment proceedings; failed to provide adequate staffing needed to assure his health and welfare; failed to thoroughly investigate reports of abuse, neglect and exploitation; failed to provide services in the least restrictive setting; and failed to report incidents which a reasonable person would suspect to have resulted from abuse or neglect. Such negligence, gross negligence, carelessness, recklessness, and wilful and wanton conduct on the part of the Defendants proximately caused Edward's injuries for which he is entitled to recover actual and punitive damages, attorney fees, expert witness fees, costs and expenses, the amount to be determined by a jury.

For the reasons set forth above, Edward prays for an order granting his Motion for Partial Summary Judgment on his Third Cause of Action for negligence.

Respectfully submitted,



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May 29, 2013