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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

Case No. 2014-CP-16-0792
Appellate Case No. 2016-000840

RECEIVED
DEC 23 2019
SC Court of Appeals

State Farm Mutual Automobile
Insurance Company, Respondent,

v.

Beverly Goyeneche, David R. Gray, III, and
Amanda Goyeneche (a/k/a Amanda Goyeneche-Gray),
individually and as Parent and Natural Guardian of S.G., Defendants,

Of whom
Beverly Goyeneche and Amanda Goyeneche are Appellants.

PETITION FOR REHEARING

This petition is filed pursuant to Rules 221 and 240 of the South Carolina Appellate Court Rules. Rule 221 governs rehearing petitions. Rule 240 governs motions and petitions.

The Court issued its decision December 18, 2019. See Op. No. 5697 (Shearouse Adv. Sh. No. 49 at 53). This petition is timely under Rule 221(a).

Beverly and Amanda Goyeneche respectfully resubmit the arguments from their briefs. They understand and respect that the Court has considered and rejected those arguments. They nevertheless file this petition for the purpose of preserving their ability to seek further review.

Additionally, and in light of Rule 221's requirement that the Goyeneches state with specificity grounds overlooked in the decision, they respectfully submit the Court may have overlooked the fact that negligently leaving a child strapped in a car seat inside a vehicle is not independent of the vehicle's use for transportation. That negligence has a direct relationship with the vehicle's active use as an automobile.

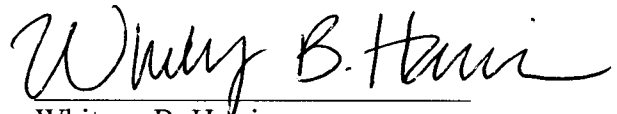
Also, though the opinion discusses certain cases from other jurisdictions, the opinion does not discuss the Minnesota cases the Goyeneches cited in support of their argument. The Court may have overlooked these cases, and the Court may have further overlooked the fact that the Minnesota statute has similar language to the statute at issue here. Both South Carolina and Minnesota require automobile policies to insure against damages "arising out of the ownership, maintenance, or use of motor vehicles." See S.C. Code Ann. § 38-77-140 and *Norwest Bank Minnesota, N.A. v. State Farm Mut. Auto. Ins. Co.*, 588 N.W.2d 743, 747 (Minn. 1999) (citing the Minnesota statute).

Furthermore, and on the subject of residency, the only evidence is that the parties acted as though they had joint custody and that this father was fully involved in the child's life. He said he had "liberal visitation." (R.p.33). He also said he was either at the mother's house or that the mother was at his house, but either way, he and the mother were always together and they were always with the child. (R.p.175). The child had clothes, bathroom and food items at both mother's residence at father's residence. (R.p.208). Given these circumstances, it seems difficult to dispute that there was an expectation the child would be with the father and at his residence both frequently and regularly.

For the foregoing reasons, as well as the reasons set forth in the previous briefs, this Court should grant this petition and reverse the judgment below.

December 23, 2019

Respectfully submitted,

A handwritten signature in black ink that reads "Whitney B. Harrison". The signature is written in a cursive style with a horizontal line underneath the name.

Whitney B. Harrison
McGowan, Hood & Felder, LLC
1517 Hampton Street
Columbia, SC 29201

ATTORNEY FOR APPELLANTS

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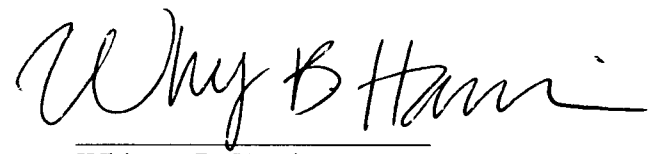
PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel with a copy of the *Petition for Rehearing* and *Notice of Appearance* by mailing copies of the same by United States Mail with first class postage prepaid to the following address:

Jonathan M. Robinson
Smith Robinson Holler DuBose Morgan, LLC
PO Drawer 39
Camden, SC 29021-0039

Signature Page to Follow

December 23, 2019

A handwritten signature in black ink that reads "Whitney B. Harrison". The signature is written in a cursive style with a horizontal line underneath the name.

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December 23, 2019

Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: *State Farm v. Goyeneche*
Case No. 2016-000840

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Dear Ms. Kitchings,

Enclosed please find for filing my Notice of Appearance for Appellants. along with the Petition for Rehearing. Also included is the filing fee and an additional copy to be stamped and returned to my office. Please let me know if you have any questions or concerns.

Sincerely,

A handwritten signature in black ink that reads "Whitney B. Harrison". The signature is written in a cursive, flowing style.

Whitney B. Harrison

cc: Jonathan M. Robinson
Karl H. Smith

Enclosures