STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	C.A. NO. 2010-CP-42-2350
COUNTY OF SPARTANBURG	
Jane Doe, as guardian for John Doe, Plaintiff,	ORDER GRANTING SUMMARY JUDGMENT
vs.	
Doni Rhinehart, Defendant.	

This matter came before the court on May 16, 2012, upon the motion of the Defendant, Doni Rhinehart, requesting summary judgment as to all claims against her by the Plaintiff. For the reasons stated herein, that motion is granted and this matter is dismissed with prejudice.

PROCEDURAL BACKGROUND

Plaintiff Jane Doe, on behalf of her grandson John Doe, has brought a claim for negligent supervision against the Defendant, Doni Rhinehart[1]. Plaintiff alleges her grandson, a friend of the Defendant's son, was sexually abused by Defendant's now ex-husband. Plaintiff alleges that Defendant knew or should have known that her ex-husband, James Rhinehart, was abusing John Doe. (Complaint Para. 6). Plaintiff further alleges that the Defendant condoned her ex-husband's sexual conduct and refused to either report it, warn parents about it, or otherwise protect children from abuse. (Complaint para. 6). Plaintiff has alleged that the Defendant negligently supervised plaintiff, negligently supervised her ex-husband, and failed to warn others of Mr.

[1] The Defendant has died from breast cancer since this action was commenced. Her trial testimony was preserved by deposition prior to her death.

Rhinehart's alleged propensity to have sexual interest in children. (Complaint paras. 6 and 9). Plaintiff further alleges that the Defendant should have known Mr. Rhinehart posed a severe danger and that Defendant had a duty to prevent Mr. Rhinehart from injuring John Doe. (Complaint para. 9). Plaintiff's only cause of action is for negligent supervision. The Defendant has denied any knowledge of Mr. Rhinehart's alleged actions.

FINDINGS OF FACT

The Defendant has submitted deposition testimony in support of her motion. The Plaintiff has filed the affidavit of her attorney Gregg Meyer in opposition to this motion. From a review of the record presented, the following facts are undisputed.

Defendant married Mr. Rhinehart in 1999. At that time Defendant was a widow with two children. She met Mr. Rhinehart at their church where he was active and held a leadership role. Defendant and Mr. Rhinehart had one daughter together. Defendant's oldest son[2] and a daughter, both from the Defendant's prior marriage, lived in the home with her and Mr. Rhinehart. Defendant's oldest son, now approximately 20, suffers from autism.

Plaintiff's grandson, John Doe, and Defendant's son were members of the same Boy Scout troop. John Doe was also a special needs child, as were all the members of the troop. At some point James Rhinehart became the Scoutmaster of their scout troop. John Doe was friends with the Defendant's son and as such, occasionally stayed as an overnight guest in Defendant's home.

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[2] To preserve confidentiality and protect their privacy, the Symbols ##### have been used to substitute for the name of the Defendant's son, and ***** for the name of the Plaintiff's grandson, where their names are mentioned in the deposition excerpts cited in this order.

In his deposition, John Doe testified that he was sexually molested by Mr. Rhinehart four times. He testified that two of those times were in the Rhinehart home. During one of those times the Defendant was not home, but was at the grocery store. (John Doe depo. p. 169) John Doe testified that the other incident of abuse that occurred at the defendant's home was when he was spending the night as a guest of the Defendant's son. John Doe testified that on that night, after bedtime, John Doe and the defendant's son were having trouble sleeping and Mr. Rhinehart came into his stepson's bedroom to get them to settle down. According to John Doe, Mr. Rhinehart then lay in the bed between the boys and molested them while the door was closed. John Doe admits he never told the Defendant about any of the abuse. (John Doe depo. p. 150) In fact, when informed during his deposition that he was suing the Defendant, John Doe stated as follows:

25 Q. John Doe, I'm about through with my questions and I
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1 appreciate your being patient with me over the two days
2 answering them. I'm going to turn it over to Mr. Phillips
3 who represents the Boy Scouts.
4 And before I do that, though, I just want to ask you
5 one other set of questions. I represent Doni Rhinehart;
6 okay?
7 A. Yes.
8 Q. You've sued Doni Rhinehart in this case.
9 A. Whoa, whoa. Look, listen. Doni Rhinehart has nothing to
10 do with this. She didn't do doing so they shouldn't have
11 sued her estate. That was wrong. It was the Boy Scouts
12 and Brian, not her. She had nothing do with this.
13 Q. That's all I have. Thank you.
14 A. I'm just saying Brian -- Doni had nothing to do with
15 that.
16 Q. I understand and I appreciate you saying that. Thank
17 you.
(Doe depo. p. 101)

The Plaintiff has no evidence which contradicts the testimony that the Defendant was unaware of this alleged abuse until investigators from the Sheriff's Office contacted Mr. Rhinehart after the incidents in question were reported to law enforcement. Sheriff's investigators questioned both Mr. Rhinehart and the Defendant's son about the allegations. Ultimately, Mr. Rhinehart admitted to abusing another child. However, there is no evidence that the Defendant knew anything about the abuse until investigators informed her that Mr. Rhinehart signed a statement admitting to fondling the other victim.[3] The Defendant then immediately separated from Mr. Rhinehart, never reconciled with him, and divorced him. Until her death she appeared before the parole board to testify against Mr. Rhinehart's efforts at parole.

In her deposition, the Defendant, Doni Rhinehart, stated as follows:

Q. So, then, looking back from knowing what your son said and what your husband pled guilty to, did you -- do you think that you had any signs that your husband was capable of this?

A. No. I mean, there was never any indication. I mean, to me, he just appeared to be a normal step-parent. I mean, he was -- he appeared to be a good husband, and caring, and, you know, did what a normal parent would do; make sure that, you know, both of us check on the kids, make sure they're doing their homework and picking up their rooms and stuff.

I mean, it didn't -- it -- nothing ever came out as he was spending any more time with ##### than he was any of the other two.

Q. Okay. Now, let's assume that it happened. Which we -- I understand you don't know. Do you think that you should have known or could have known something was going on there?

A. No. I mean, there was no indication. I mean, I never

[3] Mr. Rhinehart was charged with molesting the other victim and plead guilty to the charges. Mr. Rhinehart was never charged with molesting Plaintiff's grandson or anyone else.

caught Brian sneaking around. ##### never acted intimidated by Brian. He never -- they never seemed to have this little secret or whatever going on.

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Q. When ***** would spend the night, were you there at the home?
A. Yeah, I was there at the home.
Q. Okay. And you were spending the night there as well?
A. Right.
Q. Okay. And doing the normal things that you would do as a mom?
A. Yeah; cooking, cleaning.
Q. Right. And so you -- so you never got a complaint from ***** or from your son that something was going on?
A. No, I never had anything like that. And Dena's room was just right across the hall from #####'s.

(Deposition Doni Rhinehart pp. 21 – 22)

Furthermore, it is undisputed that Defendant would have never tolerated Mr. Rhinehart's actions had she known of his alleged actions.

Q. And some allegations I want to ask you specifically about, paragraph 9 of the Complaint, it said that Mr. Rhinehart had a known propensity to have a sexual interest in children, and that you failed to warn either the Plaintiff or the Plaintiff's parents about that. Did you know at any time before his admission that he had a known propensity to have a sexual interest in children?
A. No, I most definitely did not. I'm very protective of my children, and if I'd have had a clue, he wouldn't have been near -- I mean, even now, to this day, when I'm dealing with like my 10-year-old, I mean, normal things that you wouldn't think about, like when -- her just walking up and giving somebody a hug, I mean, it just -- it just makes me cringe. I'm like, "Don't ever hug somebody like that." Things that normally wouldn't -- you're just like, "She's being friendly." Now, thanks to the sick thing that he has done, I mean, you can't help but second-guess everything that somebody does around your child.

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Q. If you had any inclination or thought that Mr. Rhinehart had some sort of predatory qualities, that he

had an interest in kids and wanted to do harm to them, what would you have done?

A. I wouldn't have been near him. I -- if I'd have had that kind of information, I probably wouldn't even -- have even attended the same church as the man.

Q. Okay. Now, paragraph 10 says that you allowed Mr. Rhinehart to be in the presence of these kids knowing basically that he -- there was this risk of sexual abuse. Did you allow that with any knowledge?

A. No. I mean, that's just ridiculous. I mean, I -- I think it's very sick and just makes my skin crawl to think of somebody who could do that.

Q. It says here in paragraph 13 that you had "the capacity to prevent the Plaintiff's sexual abuse by her warning and disclosure about James Rhinehart." If you had known, would you have allowed your kids or any other kids in the presence of this man?

A. No. I mean, I'm very protective of my kids and other kids, like I said before. I mean, if I'd have had a clue, I wouldn't have even attended the church as him.

Q. Right.

A. Because, I mean, that proximity right there gives him access, and I would not do that.

Q. Prior to receiving that phone call from the detectives, had you had any reason to suspect or -- that *** *** had made any complaint of sexual abuse against your then-husband?

A. No. I mean, ***** -- everything appeared to be fine. I mean, ##### and ***** were good friends, and talking and getting along. I mean, I had no clue that anything was bothering *****.

Q. Before that phone call, you had no information to suggest to you that your husband was even capable of such a thing?

A. No, not as far as I know. I mean, we had been married

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almost six years, and as far as I was concerned, he was, you know, a normal husband and father.

Q. When your husband told you on October 20th, 2005 that he was going to confess to -- I'll just say sexual misconduct with your son, did you immediately begin the process of separating yourself from him?

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A. As soon as I got out of there, I was on the phone to a good friend of mine who's an attorney in Spartanburg,

and he had just recently gone through a divorce. And I'm like, "Richard, who did you use for your attorney? You know, I need a good lawyer who -- you know, I need to immediately separate from this man." There was never any doubt in my mind what was going to happen.

Q. If you had believed prior to your husband's confession to you that he had abused ######, would you have contacted the authorities?

A. I would have turned him in in a minute. I mean, he's lucky that he confessed, you know, in front of witnesses. As far as I'm concerned, Lake Bowen is plenty deep enough to have gotten rid of him.

Q. If you believed he had sexually abused any child, would you have reported that to the authorities?

A. Yes. I mean, I just -- that's just the sickest thing on earth, to prey on somebody who's innocent and doesn't understand or that you can intimidate enough to where they don't speak up.

(Doni Rhinehart Deposition pp. 23 -24, 30 -31)

The Plaintiff, Jane Doe, her husband, John Doe's father, and Mr. Rhinehart have all been deposed. John Doe's father testified that he did not believe the Defendant knew of or condoned the abuse. (Father of John Doe 1 Deposition p. 147.) The husband of Jane Doe testified that he did not now why the Defendant had been sued and does not know if the Defendant knew her ex-husband was abusing John Doe. (Husband of Jane Doe Deposition pp. 130-131) He testified that he did not have any evidence that the Defendant knew or should have known that the abuse took place in her home. (Id. at p. 132). Mr. Rhinehart specifically denies the abuse, and therefore testified that his wife would not have knowledge of his alleged actions since the events did not occur. (James Rhinehart Deposition p. 102).

Jane Doe testified that the Defendant "should have known" that abuse was taking place in the Defendant's household (Jane Doe Deposition p. 79); however, she offered no evidence that the Defendant knew of the abuse or any evidence of any facts that would

have put the Defendant on notice of the abuse. All Jane Doe could say was that the Defendant slept a lot and that she had seen her take prescription medication once, but she had no idea what the medication was or what it was for. (Jane Doe Deposition pp. 87-88) Ultimately, she opined that the Defendant should have been supervising her grandson "every single second" he was in her home. (Jane Doe Deposition p. 102) However, Jane Doe ultimately conceded that she had no evidence that the Defendant knew of the abuse. (Jane Doe Deposition p. 168)

The only evidence Plaintiff has submitted in opposition to summary judgment is an affidavit from Gregg E. Meyers, attorney for the Plaintiff. Most of this affidavit addresses arguments pertinent to Plaintiff's separate suit against another defendant. Plaintiff argues in his affidavit that the Defendant, Doni Rhinehart, has failed to follow the Boy Scouts "Two Deep" rule requiring two adults to supervise scouts on any scout outing. Even assuming the Plaintiff's attorney's affidavit constitutes relevant evidence, and assuming this affidavit establishes a valid policy of the Boy Scouts, the Plaintiff has not introduced any evidence that Doni Rhinehart ever served in any capacity as a volunteer leader with the Boy Scouts or was subject to the "Two Deep" rule. Moreover, the Plaintiff alleges that the abuse giving rise to this claim occurred when he was a guest of Doni Rhinehart's son in their home, and there are no allegations or evidence that Doni Rhinehart was affiliated with the Boy Scouts or that she is bound by any duties or rules of the Boy Scouts.

CONCLUSIONS OF LAW

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that

there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986) (quoting Fed.R.Civ.P. 56(c)). In considering a motion for summary judgment, the inferences to be drawn from the underlying facts must be viewed in the light most favorable to the non-moving party. Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). However, when the record taken as a whole cannot lead a rational trier of fact to find for the non-moving party, summary judgment is appropriate. Id.

Plaintiff's sole cause of action is for negligent supervision. Our courts have not recognized this cause of action under facts of the instant case. (See, Doe ex rel. Doe v. Batson, 345 S.C. 316, 322-323, 548 S.E.2d 854, 857 - 858 (2001) vacating based upon the paucity of the record before the court the portions of the lower court's order suggesting as two possible sources of liability for the parent of an adult child residing in the home: (1) a duty to warn arising from a special relationship or circumstance; and (2) a duty to warn based on premises liability).

To the extent Plaintiff seeks to pursue a claim in negligence she must allege facts which demonstrate the concurrence of three elements: (1) a duty of care owed by the defendant; (2) a breach of that duty by negligent act or omission; and (3) damage proximately caused by the breach. Kleckley v. Northwestern Nat. Cas. Co., 338 S.C. 131, 526 S.E.2d 218 (2000). An essential element in a cause of action for negligence is the existence of a legal duty of care owed by the defendant to the plaintiff. Bishop v. South Carolina Dept. of Mental Health, 331 S.C. 79, 86, 502 S.E.2d 78, 81 (1998). Without a duty, there is no actionable negligence. Id. "Proof of negligence in the air, so to speak,

will not do." Palsgraf v. Long Island Railroad Co., 248 N.Y. 339, 162 N.E. 99, 99 (1928) (quoting Sir Frederick Pollock). The existence of a duty owed is a question of law for the courts. Washington v. Lexington County Jail, 337 S.C. 400, 405, 523 S.E.2d 204, 206 (Ct.App.1999).

Generally, there is no common law duty to act. Thus, a person usually incurs no liability when he fails to take steps to protect others from harm not created by his own wrongful conduct. Dennis by Evans v. Timmons, 313 S.C. 338, 342, 437 S.E.2d 138, 141 (Ct.App.1993). Wogan v. Kunze, 366 S.C. 583, 610, 623 S.E.2d 107, 121 (Ct. App. 2005) An affirmative legal duty, however, may be created by statute, contract relationship, status, property interest, or some other special circumstance. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation, 336 S.C. 373, 388, 520 S.E.2d 142, 149 (1999).

Contrary to Plaintiff's assertion that Defendant should have watched her grandson "every single second" he was at her home, our courts have held that a parent has no legal duty to continuously supervise the children who were playing at the home.[4] See, Saenz v. Andrus, 195 Ga. App 431, 393 S.E. 2d 724 (1990) (the Court stated that the parent was not negligent in failing to keep a constant and unremitting watch and restraint over child). Although, where an act is voluntarily undertaken, the actor assumes a duty to use

[4] Plaintiff's argument presented in the affidavit from attorney Gregg Meyers regarding the alleged violation of the "Two Deep" rule has no bearing on whether or not a duty exists in this case. Such policies are only relevant as to breach of duty where the duty has been established. Tidwell v. Columbia Rv., Gas & Elec. Co., 109 S.C. 34, 95 S.E. 109 (1918) (relevant rules of a defendant are admissible in evidence in a personal injury action regardless of whether rules were intended primarily for employee guidance, public safety, or both, because violation of such rules may constitute evidence of a breach of the duty of care and the proximate cause of injury) Madison ex rel. Bryant v. Babcock Center, Inc., 371 S.C. 123, 141, 638 S.E.2d 650, 659 (2006)

due care, our courts are clear that parents are not negligent in failing to keep a constant and unremitting watch and restraint over their children, or over other children with whom their children were playing. Dennis by Evans v. Timmons, 313 S.C. 338, 342-343, 437 S.E.2d 138, 141 (Ct. App. 1993).

The case before the court is factually similar to Doe ex rel. Doe v. Batson, 345 S.C. 316, 322-323, 548 S.E.2d 854, 857 - 858 (2001).[5] In Doe, the Supreme Court vacated a Court of Appeals decision establishing duties under similar circumstances as premature. However, even if the Supreme Court had recognized the duties established by the Court of Appeals, this court finds based upon the record before it that Plaintiff's claim would fail. In Doe, the Court of Appeals held that while it is not necessary for the injuring party (in the instant case Brian Rhinehart) to have made a threat while under the defendant's control or custody, it is required that that the defendant (in this case Doni Rhinehart) knew or should have known of a specific threat made to harm a specific person. Citing, Bishop v. South Carolina Dep't of Mental Health, 331 S.C. 79, 502 S.E.2d 78 (1998). Both John Doe and the Defendant have testified that the defendant had no knowledge that Mr. Rhinehart was a child molester or was a threat to anyone, including John Doe.

[5] In Doe v. Batson, the trial court granted summary judgment on the Plaintiff's suit against the mother of a youth pastor who allegedly molested the Plaintiff in the mother's home. The Court of Appeals reversed the trial court on the basis that summary judgment should not have been granted when discovery was incomplete. The Supreme Court reversed the portion of the Court of Appeals decisions discussing applicable duties under the facts since the record was not sufficiently developed for the court to rule thereupon. Although the Court of Appeals in the later reversed Batson decision concluded that the victim of sexual abuse on another's premises may bring suit under a premises liability theory, the court opined that the landowner's duty was only to warn of dangers known to the possessor. Unlike Batson, the record in this case is fully developed with this regard and there is no evidence the defendant knew of her husband's alleged actions.

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The party moving for summary judgment bears the initial burden of establishing that there is "no genuine issue as to any material fact and that he is entitled to judgment as a matter of law." Catawba Indian Tribe of South Carolina v. State of South Carolina, 978 F.2d 1334, 1339 (4th Cir. 1992). Once the moving party meets the initial burden of showing an absence of evidentiary support for the opponent's case, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial and cannot simply rest on mere allegations or denials contained in the pleadings. Miller v. Blumenthal Mills, Inc., 365 S.C. 204, 220, 616 S.E.2d 722, 730 (Ct.App.2005). The non-moving party "must do more than simply show that there is some metaphysical doubt as to the material facts." Catawba, 978 F.2d at 1339 (quoting Matsushita, 475 U.S. at 586).

Any potential theory of liability as to Doni Rhinehart relies upon her knowledge of the potential harm. At the conclusion of discovery and depositions of all relevant parties, there is no evidence of such knowledge in this case.

In summary, "[A] motion for summary judgment on the basis of the absence of a duty is a question of law for the court to determine." Oblachinski v. Reynolds, 391 S.C. 557, 560, 706 S.E.2d 844, 845 (2011). Cole v. Boy Scouts of America, 397 S.C. 247, 251, 725 S.E.2d 476, 478 (S.C.,2011) Our courts have not recognized duty to supervise under the facts presented. Our Supreme Court has vacated the one opinion recognizing theory of recovery under premises liability. However, even if such theory of liability were recognized, the Plaintiff would still be required to prove that the Defendant had notice of the danger her ex-husband presented, and no such evidence exists in this case. Plaintiff has introduced nothing in opposition to Defendant's motion except for an affidavit of her attorney which sets forth legal arguments in opposition to Summary

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Judgment and attaches a supervision policy allegedly enacted by the Boy Scouts of America. Plaintiff has not introduced any evidence that this policy is applicable to the Defendant. However, even if it were, a violation of the policy could, at best, be evidence of breach of duty, but cannot serve to establish a duty where none exists. Madison ex rel. Bryant v. Babcock Center, Inc., 371 S.C. 123, 141, 638 S.E.2d 650, 659 (2006)

IT IS THEREFORE ORDERED AND ADJUDGED that the motion for summary judgment of Defendant, Doni Rhinehart, be granted and the case dismissed in full.

Honorable J. Derham Cole

March 13, 2012

A CERTIFIED COPY
M. Hope Blackley
CLERK OF COURT
SPARTANBURG COUNTY
BY: D.C.
DATED 3/14/13

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SPARTANBURG COUNTY
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