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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
S. Jackson Kimball, Special Circuit Court Judge

Appellate Case No. 2021-001359

Elizabeth Hope Rainey, as the
Guardian ad Litem to Owen C., a minor,

Respondent,

v.

South Carolina Department of
Social Services,

Petitioner.

REPLY

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ARGUMENT

The Court of Appeals' decision to overturn the Trial Court's grant of Summary Judgment must be reviewed and reversed because it is in conflict with prior decisions of this Court and guided by misinterpretations of controlling law. *See* Rule 242(b)(3), SCACR. Petitioner further believes that this case may present a novel question of law relating to the scope of review when determining whether a defendant exercised "slight care". *See* Rule 242(b)(1), SCACR.

If the errors contained within the Court of Appeals' opinion are allowed to be established as precedent, that would create an environment where the grant of Summary Judgment would be nearly unattainable. "[S]peculative, theoretical, and hypothetical views" do not amount to a mere scintilla of evidence sufficient to warrant the denial of a Motion for Summary Judgment. *See Crawford v. Town of Winnsboro*, 205 S.C. 72, 30 S.E.2d 841, 849 (1944). Nevertheless, the Court of Appeals relied on "speculative, theoretical, and hypothetical views" of the evidence contained in the record and determined that alone established a genuine issue of material fact. Additionally, the Court of Appeals dismissed evidence favorable to Petitioner by claiming that a jury might not believe the evidence. This is improper when there is no conflicting evidence. If this precedent is allowed, every trial judge will be required to deny any Motion for Summary Judgment when opposing counsel creates some unreasonable extrapolation of the evidence.

The overarching issue here is whether the evidence in the record creates a genuine issue for material fact on whether Petitioner exercised slight care in its supervision of Owen C. As stated in the Petition for Writ of Certiorari and the Trial Court's Order granting Summary Judgment, the evidence established that Petitioner exercised at least slight care. The Court of Appeals, believing that Petitioner "could have done more", ruled that there was a genuine issue of material fact, despite the uncontested evidence establishing slight care.

This Court's decisions in *Clyburn v. Sumter County School Dist. #17*, 317 S.C. 50, 451 S.E.2d 885 (1994), and *Etheredge v. Richland School Dist. One*, 341 S.C. 307, 534 S.E.2d 275 (2000), are directly on point. Both cases involve the application of the gross negligence standard established by S.C. Code § 15-78-60(25) and hold that when a defendant takes some action to supervise a child, that establishes "slight care" and the fact that the defendant may have done more to supervise or protect a child is immaterial. *See Clyburn*, 317 S.C. at 53-54, 451 S.E.2d at 888; *Etheredge*, 341 S.C. at 312, 534 S.E.2d at 278. Here, it is uncontested that Petitioner took many actions to investigate the report of suspected child abuse and supervise and protect Owen C. The Court of Appeals ignored that evidence, misinterpreted a statute, relied on unreasonable inferences that are completely unsupported by the evidence, and determined that there is a genuine issue of material fact because Petitioner "could have done more".

Respondent, fully aware that the Court of Appeals' decision is governed by an erroneous interpretation and application of the law, now claims that Petitioner failed to preserve this issue for review, or that Petitioner waived the argument. Respondent's arguments lack merit. Petitioner has consistently argued that the timeframe in which law enforcement was notified does not establish a genuine issue of material fact. A party need not use the exact name of a legal doctrine in order to preserve the issue for appellate review. *State v. Brannon*, 388 S.C. 498, 502, 697 S.E.2d 593, 595-96 (2010). A litigant is required only to fairly raise the issue to the trial court, thereby giving it an opportunity to rule on the issue. *Id.* Even if an issue is raised without specificity, when it is clear from the record that both the parties and the trial court immediately understood the issue being raised, the issue is preserved. *State v. Hendricks*, 408 S.C. 525, 531, 759 S.E.2d 434 (2014).

Here, the issue of whether SCDSS's notice to law enforcement created a genuine issue of material fact was argued before the Trial Court and the Court of Appeals. The specific issues relating to § 63-7-980(B)(1), wherein the Court of Appeals erroneously held that Petitioner must notify law enforcement within twenty-four hours of a report, not twenty-four hours from Petitioner's finding, did not arise until the Court of Appeals issued its opinion. Thereafter, Petitioner timely filed a Motion for Rehearing, wherein Petitioner pointed out the Court of Appeals' error. Consequently, Petitioner has properly preserved the issue. Respondent's claim that Petitioner waived any argument relating to § 63-7-980(B)(1) also lacks merit. At most, Petitioner's employees stated their erroneous belief of when law enforcement must be notified. That does not amount to a waiver and Respondent's failure to cite any legal authority supporting her argument is telling.

CONCLUSION

This Court must grant the Petition for Writ of Certiorari because there are special and important reasons, as stated in the Petition and this Reply, compelling review and reversal of the Court of Appeals' decision.

Respectfully submitted,

s/ Patrick J. Frawley

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