Parkins v. McMaster

United States Court of Appeals for the Fourth Circuit

February 14, 2025, Filed

No. 23-1341

Reporter
2025 U.S. App. LEXIS 3571 *

MATTHEW THOMAS PARKINS, by and through Andrew Turner, his next of friend and Guardian ad Litem; MATT PARKINS, individually, Plaintiffs - Appellants v. HENRY DARGAN MCMASTER; MICHAEL LEACH; ROBERT KERR; SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES, a/k/a SCDSS; TOMEKIA MEANS; CALVIN HILL; SOUTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES, a/k/a DHHS; JOSHUA BAKER; ALTHEA MYERS; SOUTH CAROLINA DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS, a/k/a DDSN; PATRICK J. MALEY; LAURENS COUNTY DISABILITIES AND SPECIAL NEEDS BOARD, a/k/a LCDSNB; UNION MEDICAL CENTER, a/k/a UMC; TONYA RENEE WASHINGTON, MD; JAN BRADLEY; JOHN ROE; JANE ROE; SOUTH CAROLINA; OFFICE OF THE GOVERNOR; MICHELLE GOUGH FRY; SPARTANBURG REGIONAL HEALTH CARE SYSTEM, Defendants - Appellees

Prior History: [*1] (7:21-cv-02641-HMH).

Parkins v. McMaster, 2024 U.S. App. LEXIS 25862, 2024 WL 4490632 (4th Cir. S.C., Oct. 15, 2024)

Counsel: For MATTHEW THOMAS PARKINS, by and through Andrew Turner, his next of friend and Guardian ad Litem, MATT PARKINS, individually, Plaintiff - Appellants: Patricia L. Harrison, PATRICIA LOGAN HARRISON ATTORNEY AT LAW, Cleveland, SC.

For HENRY DARGAN MCMASTER, OFFICE OF THE GOVERNOR, Defendant - Appellee: William Grayson Lambert, Esq., OFFICE OF THE GOVERNOR OF SOUTH CAROLINA, Columbia, SC; Thomas Ashley Limehouse Jr., Esq., OFFICE OF THE GOVERNOR OF SOUTH CAROLINA, Columbia, SC.

For MICHAEL LEACH, SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES, TOMEKIA MEANS, CALVIN HILL, Defendant - Appellees: Patrick John Frawley, DAVIS FRAWLEY, LLC, Lexington, SC.

For ROBERT KERR, SOUTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES, JOSHUA BAKER, ALTHEA MYERS, SOUTH CAROLINA DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS, PATRICK J. MALEY, LAURENS COUNTY DISABILITIES AND SPECIAL NEEDS BOARD, MICHELLE GOUGH FRY, Defendant - Appellees: William Henry Davidson II, DAVIDSON & WREN, PA, Columbia, SC; Kenneth Paul Woodington, DAVIDSON & WREN, PA, Columbia, SC.

For UNION MEDICAL CENTER, TONYA RENEE WASHINGTON, MD, JAN BRADLEY, SPARTANBURG REGIONAL HEALTH CARE SYSTEM, Defendant - Appellees: Perry [*2] D. Boulier, BOULIER THOMPSON & BARNES, LLC, Spartanburg, SC; Joshua T. Thompson, BOULIER THOMPSON & BARNES, LLC, Spartanburg, SC.

Judges: Entered at the direction of the panel: Judge Wilkinson, Judge King, and Judge Agee.

Opinion

ORDER

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under *Fed. R. App. P. 40* on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Wilkinson, Judge King, and Judge Agee.

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-1341

MATTHEW THOMAS PARKINS, by and through Andrew Turner, his next of friend and Guardian ad Litem; MATT PARKINS, individually,

Plaintiffs – Appellants,

v.

HENRY DARGAN MCMASTER; MICHAEL LEACH; ROBERT KERR; SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES, a/k/a SCDSS; TOMEKIA MEANS; CALVIN HILL; SOUTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES, a/k/a DHHS; JOSHUA BAKER; ALTHEA MYERS; SOUTH CAROLINA DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS, a/k/a DDSN; PATRICK J. MALEY; LAURENS COUNTY DISABILITIES AND SPECIAL NEEDS BOARD, a/k/a LCDSNB; UNION MEDICAL CENTER, a/k/a UMC; TONYA RENEE WASHINGTON, MD; JAN BRADLEY; JOHN ROE; JANE ROE; SOUTH CAROLINA; OFFICE OF THE GOVERNOR; MICHELLE GOUGH FRY; SPARTANBURG REGIONAL HEALTH CARE SYSTEM,

Defendants – Appellees.

Appeal from the United States District Court for the District of South Carolina at Spartanburg. Henry M. Herlong, Jr., Senior District Judge. (7:21-cv-02641-HMH)

Submitted: August 7, 2024 Decided: October 15, 2024

Before WILKINSON, KING and AGEE, Circuit Judges.

Affirmed by unpublished per curiam opinion.

ON BRIEF: Patricia Logan Harrison, Cleveland, South Carolina, for Appellants. Perry D. Boulier, Joshua T. Thompson, BOULIER THOMPSON & BARNES, LLC, Spartanburg, South Carolina, for Appellees Spartanburg Regional Health Care System; Union Medical Center; Tonya Reese Washington, M.D.; and Jan Bradley. Patrick J. Frawley, DAVIS FRAWLEY, LLC, Lexington, South Carolina, for Appellees Michael Leach, Calvin Hill, and Tomekia Means. William H. Davidson, Kenneth P. Woodington, DAVIDSON & WREN, P.A., Columbia, South Carolina, for Appellees Joshua Baker, Robert Kerr, SCDHHS, Patrick Maley, SCDDSN, and Laurens County DSN Board. Thomas A. Limehouse, Jr., Chief Legal Counsel, Wm. Grayson Lambert, Senior Litigation Counsel, OFFICE OF THE GOVERNOR OF SOUTH CAROLINA, Columbia, South Carolina, for Appellees Governor McMaster and the Office of the Governor.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Matthew Thomas Parkins ("Parkins") appeals the district court orders dismissing some claims and granting judgment against him as to all other claims. In what appears to be a recurring theme of Parkins' attorney, the original complaint cited vague and sprawling allegations giving rise to numerous state and federal claims against over two dozen defendants ranging from individual providers to the Governor of South Carolina and from local agencies to the South Carolina agency charged with overseeing the Medicaid waiver program. The district court methodically considered each claim, eventually granting Rule 12(b)(6) or 12(c) dismissals as to some claims and Defendants and Rule 56(a) summary judgment as to the remaining claims and Defendants. Parkins now appeals, and for the reasons set out below, we affirm.

I.

Parkins, who is in his twenties, is enrolled in South Carolina's Medicaid waiver program as a result of an adrenal disorder that has affected his cognitive and physical development. He has limited ability to ambulate without the assistance of a wheelchair and requires daily medication without which he may suffer domino-effect complications. As an enrollee in the Medicaid waiver program, Parkins is able to avoid institutionalized care

and receive services in his home.[1] Since enrolling in the waiver program, Parkins has lived with his father, who has provided some of those services.

In mid-April 2018, individuals at Parkins' school observed that he had unexplained bruises on his thighs. Consistent with state law, they reported their concerns to local law enforcement who followed up by calling in the South Carolina Department of Social Services ("DSS") to investigate suspected abuse. DSS employee Tomekia Means was assigned to investigate further, but in the interim local law enforcement placed Parkins in emergency protective services and transported him to Union Medical Center ("UMC") for care. At UMC, Dr. Tonya Renee Washington was charged with caring for Parkins.

Two days after Parkins was placed in emergency care and transferred to UMC, a state family court judge determined probable cause existed to retain custody of Parkins while DSS investigated. The state court ordered an expedited investigation and set a merits hearing for the following month. The court simultaneously authorized DSS to maintain custody of Parkins and to provide any requisite care during that time.

Five days before the scheduled merits hearing in state court, Parkins was returned to his father's custody because DSS had completed its investigation and concluded that there was insufficient evidence of abuse or neglect to remove him from the home for a longer period. Thereafter, the state court canceled the scheduled merits hearing and dismissed the matter.

[1] The Medicaid waiver program was established under 42 U.S.C. § 1396n(c) and is administered by the South Carolina Department of Health and Human Services ("DHHS").

In 2021, Parkins filed a seventy-two page complaint in state court alleging numerous claims against over two-dozen defendants that can be broadly sorted into four categories: (1) claims challenging how South Carolina agencies and officials run the Medicaid waiver program; (2) claims alleging that Parkins was improperly placed in emergency protective custody in the first instance; (3) claims alleging a failure to provide adequate notice to and coordination with Parkins' family members and regular treating physicians to ensure proper medical and non-medical care during the DSS investigation; and (4) claims alleging that during the DSS investigation, various defendants conspired to disenroll Parkins from the Medicaid waiver program and transfer him to institutionalized care.[2] After the Defendants removed the case to the U.S. District Court for the District of South Carolina, the district court ordered Parkins to file an amended complaint that complied with the "short and plain statement" standard and identified with specificity the allegations against each defendant as to each claim. *See* Fed. R. Civ. P. 8(a). The amended complaint pursued the above theories of relief, with some variations, by alleging (1) violations of Title II of the Americans with Disabilities Act ("ADA") and § 504 of the Rehabilitation Act; (2)

[2] Parkins is named as a plaintiff "by and through Andrew Turner, his next of friend and Guardian ad Litem." J.A. 120. Parkins' father (Matt Parkins) is also a named plaintiff who has raised a number of claims arising from the same underlying events alleging violations of his own rights. For simplicity, the opinion refers to all claims in this suit as being brought by Parkins.

violations of § 1983 (arising from violations of the ADA and due process clauses of the United States Constitution); (3) civil conspiracy; and (4) gross negligence.[3]

As noted, the district court issued multiple orders disposing of claims and Defendants, eventually dismissing or granting judgment to all Defendants as to all claims. *Parkins ex rel. Turner v. South Carolina*, No. CV 7:21-2641-HMH, 2022 WL 524895 (D.S.C. Feb. 22, 2022) (Rule 12(b)(6) motion to dismiss and Rule 12(c) motion for judgment on the pleadings); 2022 WL 610398 (D.S.C. Mar. 1, 2022) (Rule 54(b) motion to reconsider); 2022 WL 19333417 (D.S.C. Apr. 5, 2022) (Rule 54(b) motion to reconsider); and 2023 WL 2248325 (D.S.C. Feb. 27, 2023) (Rule 56(a) motion for summary judgment).

Parkins noted a timely appeal, and the Court has jurisdiction under 28 U.S.C. § 1291.

II.

In his opening brief, Parkins raises sweeping and conclusory arguments alleging a vast conspiracy between the defendants, casting aspersions on how the South Carolina Medicaid waiver program is run and attempting to connect this broader scheme to how Parkins was allegedly treated during his emergency placement into DSS custody. We have carefully reviewed the briefs' arguments and the district court's orders, and find almost no

[3] Parkins has not purported to challenge the dismissal of additional claims; because those claims are therefore not before us on appeal, we do not discuss them further.

nexus between the arguments on appeal and the bases for the district court's resolution of each claim. In short, with one debatable exception, the opening brief fails to grapple with the grounds the district court relied on to dismiss the claims. As such, Parkins fails to articulate a basis for reversing the unfavorable judgments. Under our clear precedent, this constitutes waiver and forecloses review on the merits of the arguments advanced on appeal. *See United States ex rel. Taylor v. Boyko*, 39 F.4th 177, 199 (4th Cir. 2022) (stating that a party waives appellate review of a claim when the opening brief "does not dispute the district court's [dispositive] finding[s]"); *Grayson O. Co. v. Agadir Int'l LLC*, 856 F.3d 307, 316 (4th Cir. 2017) ("A party waives an argument by failing to present it in its opening brief or by failing to develop its argument—even if its brief takes a passing shot at the issue." (cleaned up)); *see also Timpson ex rel. Timpson v. Anderson Cnty. Disabilities & Special Needs Bd.*, 31 F.4th 238, 256–57 (4th Cir. 2022) (concluding appellants' arguments were waived where the brief "presented no basis for reversing the judgment below").

To the limited extent the opening brief does not waive appellate review of the district court's decisions, we affirm the district court and find no reversible error. The opening brief asserts that the district court applied the wrong standard of care in considering the gross negligence claim. Specifically, it contends that the district court erred by holding defendants to "slight care" when they should have been held to "reasonable care." *See* Opening Br. 61. Even though this argument is likely preserved for merits review, it is squarely foreclosed by binding circuit precedent. *See Timpson*, 31 F.4th at 255 (holding that under the South Carolina Tort Claims Act—which provides the exclusive remedy for

torts against governmental actors—only gross negligence claims can proceed, and that claim requires "*the failure to exercise slight care*" (cleaned up) (emphasis in original)).

We highlight this particular issue as a preserved, but foreclosed, argument because it calls to the forefront a defalcation present in this case that we have seen before with Parkins' counsel. Not only is counsel responsible as a general matter for knowing binding precedent when briefing matters before this case, but named counsel, Patricia Logan Harrison, had a particular reason for knowing about our holding in *Timpson*: she was also named counsel in that case. Yet the opening brief in this case reiterates nearly the same argument she made in *Timpson*, relying on the same case, without acknowledging that we rejected this argument in *Timpson* and without caveating her argument as an attempt to preserve an issue that is nonetheless precluded by existing precedent. Instead, the brief presents it as an open question. Equally troubling, this is not the first case in which Harrison's conclusory arguments on brief have failed to challenge the grounds on which the district court ruled against her clients, and thus have resulted in waiver of most if not all of an appeal. *See Stogsdill v. S.C. Dep't of Health & Hum. Servs.*, No. 22-1069, 2023 WL 3845313, at *2 (4th Cir. June 6, 2023); *Timpson*, 31 F.4th at 256–57. Nor are we the only court to express concern about Harrison's scattershot approach to litigation and her persistence in pressing foreclosed and dubious arguments. *Estate of Valentine ex rel. Grate v. South Carolina*, C/A No. 3:18-00895-JFA, 2022 WL 943062, at *9–11 (D.S.C. Mar. 29, 2022) (sanctioning Harrison).

Though we have reservations about whether counsel's conduct complies with her ethical duties when practicing before the Court, we have elected not to *sua sponte* refer

counsel for potential disciplinary action at this time. *See* Fed. R. App. P. 46; Fourth Circuit Local Rule 46(g). But we hereby admonish Harrison that any future filings before the Court following this pattern may result in referral for disciplinary proceedings pursuant to Rule 46(b)–(c) and Local Rule 46(g). Her current method of representing her vulnerable clients does them a significant disservice.

For the reasons set out above and as articulated in the district court's various orders in this case, we affirm the decisions and judgment of the district court. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this Court and argument would not aid the decisional process.

AFFIRMED

AO 450 (SCD 04/2010) Judgment in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of South Carolina

Matthew Thomas Parkins, by and through Andrew Turner, his next of friend and Guardian ad Litem, and Matt Parkins, Individually

Plaintiff

v.

The State of South Carolina, Henry Dargan McMaster, The Office of the Governor, Michael Leach, The South Carolina Department of Social Services, Calvin Hill, Tomekia Means, Joshua Baker, Robert Kerr, The South Carolina Department of Health and Human Services, Althea Myers, Patrick Maley, Michelle Gough Fry, The South Carolina Department of Disabilities and Special Needs, The Laurens County Disabilities and Special Needs Board, The Spartanburg Regional Health Care System, The Union Medical Center, Tonya Renee Washington, M.D., Jan Bradley, John Roe and Jane Roe

Defendant

Civil Action No. 7:21-cv-2641-HMH

JUDGMENT IN A CIVIL ACTION

The court has ordered that *(check one):*

■ other: Summary Judgment is hereby granted on behalf of defendants Joshua Baker, Robert Kerr, the South Carolina Department of Health and Human Services, Althea Myers, Patrick Maley, the South Carolina Department of Disabilities and Special Needs, the Laurens County Disabilities and Special Needs Board, the South Carolina Department of Social Services, Michael Leach, Calvin Hill, and Tomekia Means.

This action was *(check one)*:

■ decided by the Honorable Henry M. Herlong, Jr.

Date: February 27, 2023

CLERK OF COURT

s/ Amy Ruttgers, Deputy Clerk

Signature of Clerk or Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

Matthew Thomas Parkins, by and through Andrew Turner, his next of friend and Guardian ad Litem, and Matt Parkins, Individually, Plaintiffs, vs. The State of South Carolina, Henry Dargan McMaster, The Office of the Governor, Michael Leach, The South Carolina Department of Social Services, Calvin Hill, Tomekia Means, Joshua Baker, Robert Kerr, The South Carolina Department of Health and Human Services, Althea Myers, Patrick Maley, Michelle Gough Fry, The South Carolina Department of Disabilities and Special Needs, The Laurens County Disabilities and Special Needs Board, The Spartanburg Regional Health Care System, The Union Medical Center, Tonya Renee Washington, M.D., Jan Bradley, John Roe, and Jane Roe, Defendants.	)	C.A. No. 7:21-2641-HMH **OPINION & ORDER**

Before the court are two motions for summary judgment, one filed by Defendants Joshua Baker ("Baker"), Robert Kerr ("Kerr"), the South Carolina Department of Health and Human Services ("DHHS"), Althea Myers ("Myers"), Patrick Maley ("Maley"), the South Carolina Department of Disabilities and Special Needs ("DDSN"), and the Laurens County Disabilities and Special Needs Board ("Laurens County DSN Board") (collectively "DSN Defendants") and the other filed by the South Carolina Department of Social Services ("DSS"), Michael Leach

("Leach"), Calvin Hill ("Hill"), and Tomekia Means ("Means") (collectively "DSS Defendants"). For the reasons below, the court grants both motions.

I. BACKGROUND

A. Factual History

This case arises from the events surrounding Matthew Thomas Parkins' ("Matthew") month-long stay in emergency protective custody ("EPC") in 2018. Matthew was born with congenital adrenal hypoplasia. (Pls.' Resp. Opp'n DSN Defs.' Mot. Summ. J. Ex. 10 (UMC Records 18), ECF No. 152-10.) As a young child, he suffered an acute adrenal crisis, which led to "profound and permanent developmental delay." (Am. Compl. ¶ 23, ECF No. 32.) Now 24-years-old, Matthew is non-verbal, largely wheelchair-bound, and requires close monitoring of his adrenal disorder. (Am. Compl. ¶¶ 25, 34, ECF No. 32); (DSS Defs.' Mot. Summ. J. Ex. B (Means Case Notes 2), ECF No. 142-2.) Matthew's father, Matt Parkins ("Matt"), serves as his primary caregiver and helps him with all daily-living activities. (Am. Compl. ¶ 24, ECF No. 32.)

Because of Matthew's condition, he is eligible for and receives home- and community-based care through South Carolina's Medicaid waiver program. (Id. ¶ 29, ECF No. 32.) That program, established under 42 U.S.C. § 1396n(c) and administered by DDSN under contract with DHHS, allows eligible persons with certain disabilities[1] to receive services at home rather than in an institutional setting. See generally Timpson v. Anderson Cnty. Disabilities & Special Needs Bd., 31 F.4th 238, 244-45 (4th Cir. 2022). Since obtaining a waiver program slot in

[1] To be eligible, a participant must require the level of care provided in an intermediate care facility for individuals with intellectual disabilities ("ICF/IID").

2014, Matthew has received case management services through the Union County Disabilities and Special Needs Board ("Union County DSN Board"). (DSN Defs.' Reply Ex. 1 (Priest Decl. ¶¶ 4-5), ECF No. 155-1.) His treatment has also been closely monitored throughout the years by Dr. James Amrhein ("Dr. Amrhein"), a pediatric endocrinologist; Lennie Mullis ("Mullis"), a licensed professional counselor; and Mary Katherine Bagnal ("Bagnal"), a masters-level social worker. (Am. Compl. ¶¶ 25, 31, 32, ECF No. 32.)

In spring 2018, 21-year-old Matthew was completing his senior year at Union High School. (Id. at ¶ 33, ECF No. 32.) On April 16, 2018, law enforcement responded to Union High School after staff noticed a handprint-shaped bruise on Matthew's left thigh and multiple bruises on his right thigh. (DSS Defs.' Mot. Summ. J. Ex. B (Means Case Notes 2), ECF No. 142-2.) Law enforcement promptly contacted DSS as required by South Carolina law, see S.C. Code Ann. § 43-35-55(D), and Means, a case worker with the Union County DSS, responded to investigate the potential abuse. Upon arriving at the school, Means met with the responding officer, a school resource officer, and two teachers. (DSS Defs.' Mot. Summ. J. Ex. B (Means Case Notes 5), ECF No. 142-2.) School staff explained that Matthew was "non-verbal, wheelchair bound, and suffers from unspecified cognitive disabilities." (Id. Ex. B (Means Case Notes 2), ECF No. 142-2.) Staff showed photos depicting bruises on Matthew's body in various stages of healing to the responding officer and Means and mentioned that Matthew had appeared at school the week before with a "busted lip and a bruise on his forehead." (Id. Ex. B (Means Case Notes 2, 5), ECF No. 142-2.) The responding officer then spoke with Matt and Andrew Turner ("Turner"), a part-time caregiver who often picked Matthew up from school. (Pls.' Resp. Opp'n DSN Defs.' Mot. Summ. J. Ex. 22 (GAL Report 2), ECF No. 153-1.) Apparently, neither

Matt nor Turner could adequately explain the cause of Matthew's bruises. (Id. Ex. 22 (GAL Report 2), ECF No. 153-1.) At this point, the responding officer placed Matthew in EPC based on his vulnerable condition and the extent of the bruising. (DSS Defs.' Mot. Summ. J. Ex. D (Incident Report 2), ECF No. 142-4); see S.C. Code Ann. § 43-35-55(A).[2]

Matthew was transported by EMS to the emergency room at Union Medical Center ("UMC") that afternoon. (DSS Defs.' Mot. Summ. J. Ex. D (Incident Report 2), ECF No. 142-4.) Matthew was described as "happy and smiling" on arrival, and an examining physician assistant, Janet Wilson ("Wilson"), noted that his bruising was "consistent with lifting." (Pl's. Resp. Opp'n DSN Defs.' Mot. Summ. J. Ex. 10 (UMC Records 18), ECF No. 152-10); (DSS Defs.' Mot. Summ. J. Ex. B (Means Case Notes 10), ECF No. 142-2.) After a treatment plan was approved stating that Matthew would be discharged only after "a decision from the judge," his care was turned over to Defendant Tonya Renee Washington, M.D. ("Dr. Washington"). (Pls.' Resp. Opp'n Mot. J. Pleadings Ex. 1 (SRHS Records 12), ECF No. 117-2); (Am. Compl. ¶ 45, ECF No. 32.)

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[2] That statute provides:

> (A) A law enforcement officer may take a vulnerable adult in a life-threatening situation into protective custody if:
>
> (1) there is probable cause to believe that by reason of abuse, neglect, or exploitation there exists an imminent danger to the vulnerable adult's life or physical safety;
>
> (2) the vulnerable adult or caregiver does not consent to protective custody; and
>
> (3) there is not time to apply for a court order.

S.C. Code Ann. § 43-35-55(A).

The next day, April 17, Bagnal visited Matthew at UMC to photograph his bruises. (Am. Compl. ¶ 47, ECF No. 32.) Bagnal also spoke with Means at some point over the phone, explaining that Matt most likely caused the bruising while changing Matthew's adult diaper. (Pls.' Resp. Opp'n DSN Defs.' Mot. Summ. J. Ex. 1 (Matt Parkins Aff. Ex. 10 at 115-16), ECF No. 152-1.) Bagnal added "that Matt was an exceptional caregiver who would never intentionally injure his son" and requested that Matthew be returned home immediately.[3] (Am. Compl. ¶ 48, ECF No. 32.) Means replied that an investigation was ongoing and that while "[Bagnal] and her staff [were] more than welcome to voice an opinion," DSS had an obligation "to ensure [that] abuse and/or neglect [did] not exist in the home where Matthew Parkins reside[d]." (DSS Defs.' Mot. Summ. J. Ex. B (Means Case Notes 12), ECF No. 142-2.) The two also discussed the feasibility of moving Matthew to a less restrictive setting than UMC: Bagnal "offered to contact possible placements for Matthew," and Means "asked [Bagnal] to provide [her] the names of those of facilities in writing." (DSS Defs.' Reply Ex. 1 (Means Aff. ¶ 10), ECF No. 156-1); (Pls.' Resp. Opp'n DSN Defs.' Mot. Summ. J. Ex. 1 (Matt Parkins Aff. Ex. 10 at 117), ECF No. 152-1.)

On April 18, a South Carolina family court held a probable cause hearing. See S.C. Code Ann. § 43-35-55(F). Noting testimony from the responding officer and Means that school officials had discovered "three different sets of bruis[es]" on Matthew within the last month, the

[3] Mullis similarly maintains that she tried calling Means "at least 20 times" in an effort to have Matthew returned home. (Pls.' Resp. Opp'n DSN Defs.' Mot. Summ. J. Ex. 31 (Mullis Aff. ¶ 5), ECF No. 153-10.) Mullis claims that she never spoke with Means and was unable to leave a message, apparently because no voicemail box was set up. (Id. Ex. 1 (Matt Parkins Aff. Ex. 12 at 167), ECF No. 152-1.)

family court agreed with DSS that probable cause existed for Matthew to be taken into protective custody. (Pls.' Resp. Opp'n DSS Defs.' Mot. Summ. J. Ex. Q (Hr'g Tr. 12), ECF No. 149-17.) The family court "admonish[ed]" DSS that an "expedited" investigation was warranted so that the matter would be ready for a merits hearing on May 23. (Id. Ex. Q (Hr'g Tr. 13), ECF No. 149-17.) The family court also issued a written order formally authorizing DSS to retain custody of Matthew and "to provide such routine and emergency medical care as may be required." (Pls.' Resp. Opp'n DSN Defs.' Mot. Summ. J. Ex. 19 (Family Ct. Order 4), ECF No. 152-19.)

The day after the probable cause hearing, April 19, Means again spoke with Bagnal about possible placements for Matthew during DSS's investigation. (DSS Defs.' Mot. Summ. J. Ex. B (Means Case Notes 16), ECF No. 142-2.) Bagnal had apparently proposed three options during their earlier April 17 conversation: (1) that Matthew be moved to an extended stay hotel where he would receive around-the-clock care from private sitters; (2) that Matthew be placed in the care of his grandparents; or (3) that Matthew be allowed to return home. (Pls.' Resp. Opp'n DSN Defs.' Mot. Summ. J. Ex. 1 (Matt Parkins Aff. Ex. 10 at 117-18), ECF No. 152-1.) Means informed Bagnal that none of these suggestions met Matthew's needs and thanked Bagnal for her assistance. (DSS Defs.' Mot. Summ. J. Ex. B (Means Case Notes 16), ECF No. 142-2.)

A few days later, on April 23, Means received a call from Defendant Jan Bradley ("Bradley"), Matthew's case manager at UMC, who "provided referral information for possible placements for Matthew." (Id. Ex. B (Means Case Notes 21), ECF No. 142-2.) Means mentioned that the Charles Lea Center had recently evaluated Matthew but did not have an available bed and that she was "calling other facilities to see if there are any openings." (Pls.'

Resp. Opp'n DSN Defs.' Mot. Summ. J. Ex. 38 (Bradley Case Notes 57), ECF No. 153-17.) Later that day, Means and her supervisor, Hill, visited Matt's home to assess the safety of Matthew's living environment. (DSS Defs.' Mot. Summ. J. Ex. B (Means Case Notes 22), ECF No. 142-2.) Means noted, among other things, that the home was not handicap accessible and that Matt had admitted to falling with Matthew several times in the past while caring for him in the bathroom. (Id. Ex. B (Means Case Notes 22-23), ECF No. 142-2.)

On April 30, Means received a phone call from Angela Barber ("Barber"), Matthew's new case manager with the Union County DSN Board. (Id. Ex. B (Means Case Notes 24), ECF No. 142-2.) Barber told Means that she had heard from Matthew's previous case manager that DSS was exploring placing Matthew at a facility in neighboring Laurens County. (DSN Defs.' Mot. Summ. J. Ex. 1 (Priest Decl. Attach. A at 31), ECF No. 141-2.) Means confirmed that this was correct, stating that she had recently contacted Jean Ramage ("Ramage") of the Laurens County DSN Board. (Id. Ex. 1 (Priest Decl. Attach. A at 31), ECF No. 141-2.) Barber then explained that "Matthew would need to be on a critical waiting list before any type of placement could take place" and requested that Means provide her a summary of the allegations so she could prepare a formal Request for Determination. (Id. Ex. 1 (Priest Decl. Attach. A at 30-31), ECF No. 141-2.) Means sent Barber the summary, and Barber submitted the request. (Id. Ex. 1 (Priest Decl. Attach. A at 29), ECF No. 141-2.)

DDSN received the paperwork submitted by Barber the following day (Id. Ex. 1 (Priest Decl. ¶ 6), ECF No. 141-2.) On the "County(ies) preferred" part of the request form, Barber had added the following handwritten note: "Any – Laurens County has a vacancy and packet of information has been sent to Residential Director [Ramage]." (Id. Ex. 1 (Priest Decl. Attach. A at 6), ECF No. 141-2.) At the bottom of the form, Barber and the Union County DSN Board

executive director both had certified "that all efforts at the local level to resolve the situation without resorting to out of home placement [had] been explored and implemented." (Id. Ex. 1 (Priest Decl. Attach. A at 6), ECF No. 141-2.)

On May 3, Means visited Matthew as part of her investigation to assess his "well-being, his safety, and risks possibl[y] present during his stay at Union Medical Center." (DSS Defs.' Mot. Summ. J. Ex. B (Means Case Notes 26), ECF No. 142-2.) Means also called Barber on May 3 and May 7 to follow up on the status of the Request for Determination. (Id. Ex. B (Means Case Notes 28, 29), ECF No. 142-2.)

On May 8, DDSN approved the request for DDSN residential services, agreeing with Barber "that ICF/IID services were appropriate." (DSN Defs.' Mot. Summ. J. Ex. 1 (Priest Decl. ¶ 10), ECF No. 141-2.) This approval meant that Matthew "could be admitted to a Community ICF/IID facility, to be chosen by his legal custodian," which, at the time, was DSS. (Id. Ex. 1 (Priest Decl. ¶ 10), ECF No. 141-2.) After being informed of the approval, Means met with Ramage and Bradley at UMC to evaluate Matthew and discuss the logistics of transporting him to Clinton Manor, an ICF/IID operated by the Laurens County DSN Board. (DSS Defs.' Mot. Summ. J. Ex. B (Means Case Notes 38), ECF No. 142-2.) The parties tentatively agreed that Matthew would be moved to Clinton Manor the next Monday, May 14. (Id. Ex. B (Means Case Notes 38), ECF No. 142-2.) Barber was informed of this plan and began the process of disenrolling Matthew from the waiver program. (DSN Defs.' Mot. Summ. J. Ex. 1 (Priest Decl. Attach. A at 26), ECF No. 141-2.)

That Friday, May 11, Matthew's family and his attorney in this case, Patricia L. Harrison ("Harrison"), met with Means and a DSS attorney at UMC in an effort to prevent Matthew's transfer. (Id. Ex. 1 (Priest Decl. Attach. A at 20-21), ECF No. 141-2.) Harrison reportedly

became "very hostile" during the meeting and "had to [be] escort[ed] . . . out of the building." (Id. Ex. 1 (Priest Decl. Attach. A at 21), ECF No. 141-2.) Harrison then went to the Union County DSN Board, where she advised the executive director that she represented Matthew's family and "was going to attempt to stop the placement on Monday and may go on over to the Family Court office today." (Id. Ex. 5 (Maley Decl. Attach. A at 7), ECF No. 141-6.) Harrison added that she "would be sending [the Union County DSN Board] a subpoena to obtain [its] records" and "was going to contact . . . . Maley, Interim Director [of DDSN]." (Id. Ex. 5 (Maley Decl. Attach. A at 7), ECF No. 141-6.) Right after Harrison's visit, Barber contacted a waiver coordinator with DDSN, informed her of the situation, and "requested that [Matthew] not be disenrolled [from the waiver program] at this time." (Id. Ex. 1 (Priest Decl. Attach. A at 23), ECF No. 141-2.) The waiver coordinator obliged, stating "that she would place this on hold until further notification." (Id. Ex. 5 (Maley Decl. Attach. A at 7), ECF No. 141-6.)

Later that evening, the Laurens County DSN Board executive director told a senior DDSN official that he "did not want to place Matthew at Clinton Manor as scheduled on the following Monday until any legal disputes were resolved." (Id. Ex. 2 (Tavenner Decl. ¶ 7), ECF No. 141-3.) The official responded that "that was fine with him," and Matthew was not transferred to Clinton Manor on Monday, May 14, as originally scheduled. (Id. Ex. 2 (Tavenner Decl. ¶¶ 7-8), ECF No. 141-3.)

On May 18, DSS staff met to discuss their findings. After considering Means' observations, drug screens and background checks of Matt and his wife, Wilson's opinion that Matthew's bruises were consistent with lifting, an affidavit of Mullis, and input from law enforcement, DSS concluded that there was insufficient evidence of abuse or neglect. (DSS Defs.' Mem. Supp. Mot. Summ. J. 9, ECF No. 142.) Matthew was returned home the same day.

Matt formally regained legal custody of Matthew on May 23 after the DSS case was dismissed by the family court.

B. Procedural History

On April 15, 2021, Plaintiffs filed a 61-page, 513-paragraph complaint against 28 defendants in the Union County Court of Common Pleas. (Not. Removal Ex. 1 (State Ct. Compl.), ECF No. 1-1.) After the case was removed based on federal-question jurisdiction, the court instructed Plaintiffs to file an amended complaint, limited to 35 pages, that complied with Federal Rule of Civil Procedure 8(a)'s "short and plain statement" standard and Local Civil Rule 1.05's format requirements. (Op. & Order 3, ECF No. 27.) Plaintiffs filed the operative complaint on October 26, 2021, asserting claims for (1) violations of Title II of the Americans with Disabilities Act ("ADA") and § 504 of the Rehabilitation Act; (2) violations of 42 U.S.C. § 1983; (3) civil conspiracy; (4) gross negligence; and (5) declaratory judgment and unjust enrichment. (Am. Compl., ECF No. 32.)

On February 14, 2022, the court ruled on several motions to dismiss. The court granted Defendant Henry Dargan McMaster's ("Governor McMaster") motion to dismiss; granted Defendants Bradley, Spartanburg Regional Health Care System, UMC, and Dr. Washington's (collectively "SRHS Defendants") motion to dismiss; and granted in part and denied in part Defendants Baker, Michelle Gough Fry, Kerr, Laurens County DSN Board, Maley, Myers, DDSN, and DHHS's motion to dismiss. (Op. & Order 46, ECF No. 58.) Then, on August 24, 2022, the court granted judgment on the pleadings for the SRHS Defendants on the sole remaining claim against them. (Op. & Order 14, ECF No. 123.) For clarity, the chart below outlines the claims remaining after the court's August 24 order:

Count	Cause of Action	Defendants
I	ADA/Rehabilitation Act violation	DHHS, DDSN, Laurens County DSN Board, DSS, and Leach
II	§ 1983 violation	Baker, Maley, Leach, Hill, and Means
III	Civil conspiracy	Baker, Maley, Kerr, Myers, Hill, and Means
IV	Gross negligence	DHHS, DDSN, DSS, Hill, and Means

The DSN Defendants and DSS Defendants filed the instant motions for summary judgment on December 28, 2022, and December 29, 2022, respectively. (DSN Defs.' Mot. Summ. J., ECF No. 141); (DSS Defs.' Mot. Summ. J., ECF No. 142.) Plaintiffs responded in opposition to both motions on January 23, 2023. (Pls.' Resp. Opp'n DSS Defs.' Mot. Summ. J., ECF No. 149); (Pls.' Resp. Opp'n DSN Defs.' Mot. Summ. J., ECF No. 152.) Both sets of Defendants replied on January 30, 2023. (DSN Defs.' Reply, ECF No. 155); (DSS Defs.' Reply, ECF No. 156.) On February 16, 2023, Plaintiffs supplemented their response in opposition to the DSS Defendants' motion for summary judgment. (Pls.' Suppl., ECF No. 170.) These motions are ripe for review.

II. LEGAL STANDARD

Summary judgment is appropriate only "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(a). A fact is "material" if it "might affect the outcome of the suit under the governing law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A dispute is "genuine" "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Id. The court views "all facts and reasonable inferences in the light most

favorable to the nonmoving party." Ballengee v. CBS Broad., Inc., 968 F.3d 344, 349 (4th Cir. 2020).

The moving party bears the initial burden of showing the absence of a genuine dispute of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). If the moving party does so, the burden shifts to the nonmoving party to "go beyond the pleadings" and come forward with "specific facts showing that there is a genuine issue for trial." Id. at 324. Under this standard, the nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts," Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986), and "cannot create a genuine issue of material fact through mere speculation or the building of one inference upon another," Beale v. Hardy, 769 F.2d 213, 214 (4th Cir. 1985).

III. DISCUSSION

The DSN and DSS Defendants have moved for summary judgment on Plaintiffs' four remaining claims. The court considers each claim in turn.

A. ADA/Section 504 (Count I)

Title II of the ADA prohibits public entities, including states and their instrumentalities, from denying the benefits of their services, programs, or activities to any "qualified individual with a disability . . . by reason of such disability." 42 U.S.C. §§ 12131(1), 12132. Section 504 of the Rehabilitation Act likewise prohibits recipients of federal funding from discriminating based on disability. 29 U.S.C. § 794(a). "Claims under the ADA's Title II and the Rehabilitation Act can be combined for analytical purposes because the analysis is 'substantially the same.'" Seremeth v. Bd. of Cnty. Comm'rs Frederick Cnty., 673 F.3d 333, 336 n.1 (4th Cir. 2012) (quoting Doe v. Univ. of Md. Med. Sys. Corp., 50 F.3d 1261, 1265 n.9 (4th Cir. 1995)).

To prevail under Title II or § 504, a plaintiff must show that (1) he "has a disability," (2) he is "otherwise qualified to receive the benefits of a public service, program, or activity," and (3) he was "denied the benefits of such service, program, or activity, or otherwise discriminated against," based on his disability. Constantine v. Rectors & Visitors of George Mason Univ., 411 F.3d 474, 498 (4th Cir. 2005). Defendants do not dispute that Matthew is disabled or that he is qualified to receive benefits under the waiver program, meaning only the third element is at issue.

One way Plaintiffs can prove discrimination under the third prong is by showing that Defendants failed to "administer [their] services, programs, and activities in the most integrated setting appropriate" to Matthew's needs. 28 C.F.R. § 35.130(d); see also 28 C.F.R. § 41.51(d) (imposing a similar requirement under the Rehabilitation Act). Known as the "integration mandate," this regulation was construed by the Supreme Court in Olmstead v. L.C. ex rel. Zimring, 527 U.S. 581 (1999), to preclude the "unjustified institutional isolation of persons with disabilities." Id. at 600. The Court reasoned that the unnecessary institutionalization of disabled persons amounts to discrimination because it both "perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life" and "severely diminishes [their] everyday life activities." Id. at 600-01. The Court held that states are therefore required to provide community-based treatment for disabled persons under Title II when "[1] the State's treatment professionals determine that such placement is appropriate, [2] the affected persons do not oppose such treatment, and [3] the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities." Id. at 607.

In their amended complaint, Plaintiffs, citing Olmstead, allege that DDSN, DHHS, the Laurens County DSN Board, Leach, and DSS, along with other Defendants, "refused to provide services [to Matthew] in the least restrictive setting," (Am. Compl. ¶ 143, ECF No. 32), and instead "participated in a conspiracy to place Matthew in an [ICF/IID]," (Id. ¶ 155, ECF No. 32.) Plaintiffs specifically argue that the DSN and DSS Defendants violated Matthew's right to be free from unnecessary institutionalization during his stay at UMC by failing to explore less restrictive placement options. Because of those inactions, Plaintiffs allege, Matthew was subjected to chemical and physical restraints at UMC leading to "mental and physical pain" and "both he and his father experienced anxiety and fear." (Id. ¶ 154, ECF No. 32.) As explained below, regardless of "whether there was an objective violation of [Matthew's] federally protected rights under the ADA," Koon v. North Carolina, 50 F.4th 398, 406 (4th Cir. 2022), summary judgment is appropriate because Plaintiffs cannot prove that the DSN and DSS Defendants were deliberately indifferent to those rights.

As an initial matter, the court underscores the context in which Plaintiffs' ADA claim arises. DSS was awarded emergency protective custody of Matthew – a non-verbal, nonambulatory man with severe intellectual disabilities – after a family court found probable cause of abuse in the home. DSS was then afforded 35 days, instead of the normal 40 days, to complete its investigation before a merits hearing and to prepare its recommendation as to the services that best fit Matthew's needs. (DSS Defs.' Mot. Summ. J. Ex. A (APS Manual 28), ECF No. 142-1); S.C. Code Ann. § 43-35-45(D). DSS completed its investigation early, found no evidence of abuse, and returned Matthew to his father before the merits hearing. Most importantly, Matthew never was admitted to Clinton Manor. Thus, because it is undisputed that

Matthew is currently living at home and was not disenrolled from the waiver program, there is no injunctive relief available, and "the only remedy left for [Plaintiffs] is monetary damages." Koon, 50 F.4th at 403. To recover money damages, though, Plaintiffs must show "at least" deliberate indifference. Id. at 400.

The Fourth Circuit recently addressed the framework for analyzing deliberate indifference in the ADA context in Koon v. North Carolina, 50 F.4th 398 (4th Cir. 2022). The Koon court explained that "the deliberate-indifference standard starts with determining whether there was – objectively speaking – an ongoing or likely violation of some federal right, and then moves on to determining whether a defendant had the appropriate mental state – subjectively speaking – toward that federal-rights violation." Id. at 404. In other words, a reviewing court must "look first to whether there was a likely or ongoing violation of federal rights. Only then may [it] move on to the mental state of deliberate indifference, which requires knowledge of a substantial risk of a deprivation of those rights and a failure to act to resolve that risk." Id. at 405.

With this framework in mind, the court considers first whether Plaintiffs have presented enough evidence from a which a reasonable jury could find that Matthew's ADA rights were violated. See id. at 405-06. Starting with DSS, there is at least some evidence that UMC was not the least restrictive environment in which Matthew could have been placed during DSS's month-long investigation. For example, Bagnal maintains that she approached Means the day before the probable cause hearing with a plan to move Matthew into an apartment with full-time caregivers, which would have allowed him to continue to attend school and receive his physical, occupational, and psychological therapies. (Pls.' Resp. Opp'n DSN Defs.' Mot. Summ J. Ex. 1

(Matt Parkins Aff. Ex. 10 at 117-20), ECF No. 152-1.) Similarly, Matthew's grandparents claim that they were able and willing to care for Matthew during the investigation but were not contacted by DSS until a few days before he was returned home. (Id. Ex. 4 (Brenda Parkins Aff. ¶¶ 4, 26-30), ECF No. 152-4); (Id. Ex. 5 (Roy Parkins Aff. ¶¶ 12, 16-18), ECF No. 152-5.) Means, for her part, maintains that none of the options Bagnal suggested were able "to provide a placement for Matthew due to his needs" and that DSS's efforts to place Matthew in a less restrictive setting "were complicated by the services [he] needed and the unavailability of beds in the facilities [DSS] inquired into." (DSS Defs.' Reply Ex. 1 (Means Aff. ¶ 10), ECF No. 156-1.) In any event, whether or not any of this evidence creates a question of fact for a jury, none of it rises to the "high bar" that is deliberate indifference. Koon, 50 F.4th at 407.

As explained by the Fourth Circuit:

> Simple failure to comply with the law is not deliberate indifference. It is not enough simply to point to what could or should have been done. That is the language of negligence. Deliberate indifference requires a "deliberate or conscious choice" to ignore something. That is more like criminal-law recklessness than mere negligence. An official must know of the dangers to federal rights and nonetheless disregard them. The official must know of the facts from which a federal-rights violation could be inferred and then actually draw the damning inference.

Id. at 406-07 (citations omitted). In this case, there is no evidence that Means, Hill, or anyone else at DSS "deliberate[ly] or concious[ly]" ignored Matthew's rights under the ADA. Id. at 406. Even a cursory review of Means' case notes reveals that she "did more than nothing" to place Matthew in the least restrictive setting appropriate to his needs during DSS's expedited investigation. Id. at 407-08 & n.6 ("[G]ood-faith efforts to remedy the plaintiff's problems will prevent finding deliberate indifference, absent extraordinary circumstances."); (DSS Defs.' Mot. Summ. J. Ex. B (Means Case Notes 1-54), ECF No. 142-2.) Means followed up on Bagnal's

suggestions for temporary placement but determined, in her professional judgment, that they were not suitable.[4] Cf. Olmstead, 527 U.S. at 602 ("[T]he State generally may rely on the reasonable assessments of its own professionals in determining whether an individual meets the essential eligibility requirements for habilitation in a community-based program." (internal quotations omitted)). Moreover, any argument that DSS *should have* contacted Matthew's grandparents sooner is merely an "argument[] about what a reasonably prudent person would have done." Koon, 50 F.4th at 409. Such argument "cannot be the basis of deliberate indifference." Id.

Turning next to the DSN Defendants, Plaintiffs cannot establish an ADA violation, let alone deliberate indifference. Plaintiffs appear to argue that DHHS, as the state agency charged with supervising South Carolina's Medicaid programs, 42 U.S.C. § 1396a(a)(5); S.C. Code Ann. § 44-6-30(1), and by extension, DDSN, violated the ADA by not providing Matthew with in-home case management services while he was at UMC. (Am. Compl. ¶ 155, ECF No. 32); (Pls.' Resp. Opp'n DSN Defs.' Mot. Summ J. 3, ECF No. 152.) That argument ignores two important realities. First, DSS had protective custody of Matthew after a family court found probable cause of abuse in the home; it would have been highly irresponsible for DSS to return Matthew to the setting of the alleged abuse before completing its investigation. Cf. Rainey v. S.C. Dep't of Soc. Servs., 863 S.E.2d 470, 472 (S.C. Ct. App. 2021) (finding evidence of gross negligence where DSS allowed child with two unexplained subdural hematomas to be released from the hospital to his parents). Second, the Union County DSN Board – and not DHHS or

[4] Plaintiffs' insinuation that Means was somehow unqualified to perform her duties as a case worker because she suffered a concussion five years earlier toes the line of frivolity under Federal Rule of Civil Procedure 11.

DDSN – provided Matthew's case management services under the waiver program. See 42 C.F.R. §§ 440.169, 441.18; see also (DSN Defs.' Reply Ex. 1 (Priest Decl. ¶¶ 6-9), ECF No. 155-1.) Further, even if Plaintiffs could make out an ADA violation against the DSN Defendants, there is no evidence that any official with authority to take corrective action on DHHS's or DDSN's behalf "actually knew a violation of [Matthew's] rights was substantially likely." Koon, 50 F.4th at 418 (Wynn, J., concurring in part and dissenting in part); Gebser v. Lago Vista Indep. Sch. Dist., 524 U.S. 274, 290 (1989). Plaintiffs do not refute DDSN's assertion that its "records contain no reference to a request by anyone for any setting other than an ICF/IID." (DSN Defs.' Mot. Summ. J. Ex. 1 (Priest Decl. ¶ 13), ECF No. 141-2.) In fact, Mullis acknowledged as much in her deposition:

> Q: As far as you know, DDSN didn't do anything to stop [Matthew from being placed in an apartment with 24-hour care], is that correct, from happening?
>
> . . . .
>
> A: It was not information for DDSN. It was not given to – it was not on the table for DDSN to make that decision.
>
> Q: So DDSN didn't make the decision. Right?
>
> A: To live in a [sic] apartment, 24-hour care?
>
> Q: They didn't permit it, and they didn't prohibit it.
>
> A: I don't think that information was even available to them.

(DSN Defs.' Reply Ex. 3 (Mullis Dep. 153:24-154:10), ECF No. 155-3.)

In short, because Plaintiffs have not raised a genuine issue of material fact as to whether any individual Defendant was deliberately indifferent to Matthew's rights under the ADA, the

DSN and DSS Defendants are entitled to summary judgment on Plaintiffs' ADA and Rehabilitation Act claims.

B. Section 1983 (Count II)

Section 1983 imposes liability on any "person who, under color of any statute, ordinance, regulation, custom, or usage, of any State" subjects another "to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws" of the United States. 42 U.S.C. § 1983. Thus, to recover under § 1983, a plaintiff must show that he was deprived of a right secured by the Constitution or laws of the United States by a person acting under color of state law. West v. Atkins, 487 U.S. 42, 48 (1988). As explained below, Plaintiffs have failed to raise a genuine issue of material fact precluding summary judgment on their § 1983 claims against the DSN and DSS Defendants.

1. DSN Defendants – Baker and Maley

The only DSN Defendants remaining for purposes of Plaintiffs' § 1983 claims are Baker and Maley. Baker, the DHHS Director from 2017 to 2021, and Maley, the interim DDSN Director in 2018, have both submitted declarations stating that they knew nothing about Matthew's situation and were not involved in approving his transfer to Clinton Manor. (DSN Defs.' Mot. Summ. J. Ex. 4 (Maley Decl. ¶ 4, ECF No. 141-5); (Id. Ex. 5 (Maley Decl. ¶¶ 6, 9, 10, 11, 15), ECF No. 141-6.) Plaintiffs have put forth no evidence to the contrary[5] and instead rely heavily on the allegations in their complaint. (Pls.' Resp. DSN Defs.' Mot. Summ. J. 11, ECF No. 152) ("Plaintiffs alleged that Defendants Baker and Maley. . . ."); (Id. 11, ECF No. 152) ("They allege that these Defendants . . . ."); (Id. 11-12, ECF No. 152) ("Plaintiffs alleged

[5] Plaintiffs did not depose Baker or Maley.

that . . . ."); (Id. 14, ECF No. 152) ("Here, Plaintiffs have alleged . . . ."). Thus, Baker and Maley are entitled to summary judgment on the claim that they conspired with others to "seiz[e] and hold[] Matthew in unconstitutional conditions." (Am. Compl. ¶ 167, ECF No. 32); Liberty Lobby, 477 U.S. at 248 ("[A] party opposing a properly supported motion for summary judgment may not rest upon the mere allegations or denials of his pleading . . . ." (internal quotation marks omitted)).

Plaintiffs' next argument – that Baker and Maley schemed to improperly divert funds intended to benefit waiver program participants – also fails. Quite simply, Plaintiffs have marshaled no evidence showing how they were injured by the alleged mishandling of funds.[6] For this same reason, the court denies Plaintiffs' requests to enjoin DHHS and DDSN "from diverting funds allocated by the General Assembly for in-home services for other purposes" and to order "the State to establish and [sic] Olmstead Plan, as requested by advocacy organizations in [one of their exhibits]."[7] (Pls.' Resp. Opp'n DSN Defs.' Mot. Summ. J. 14-15, ECF No. 152.)

Finally, Plaintiffs raise several undeveloped arguments related to the decision to approve Matthew's placement at Clinton Manor. They contend that Baker and Maley (along with others) violated their "rights enforceable under Section 1983" by failing to (1) comply with Pre-

[6] This is not the first time Plaintiffs' counsel has offered only "vague allegations of nefarious dealings" by the DSN Defendants and failed to "substantiat[e] the[] claims or connect[] them in any way to" her client's treatment and care. Est. of Valentine by and through Grate v. South Carolina, No. 3:18-00895-JFA, 2021 WL 3423353, at *5 (D.S.C. Aug. 5, 2021) (unpublished); Timpson by and through Timpson v. Anderson Cnty. Disabilities and Special Needs Bd., 31 F.4th 238, 257 (4th Cir. 2022).

[7] Plaintiffs' requests for prospective relief also fail because Baker and Maley were sued in their individual capacities and are no longer in charge of the respective agencies.

Admission Screening and Resident Review ("PASRR") provisions of the Nursing Home Reform Act, 42 U.S.C. § 1396r; (2) comply with the fair hearing requirements of the Medicaid Act, 42 U.S.C. § 1396a(a)(3); 42 C.F.R. § 431.206; and (3) initiate involuntary commitment proceedings under S.C. Code Ann. § 44-20-450. (Am. Compl. ¶¶ 180-81, 187, 191, ECF No. 32.) These claims fail because Plaintiffs have adduced no evidence showing how they were harmed by these alleged inactions; again, Matthew was never transferred to Clinton Manor or disenrolled from the waiver program. See Bart v. Telford, 677 F.2d 622, 625 (7th Cir. 1982) ("Section 1983 is a tort statute. A tort to be actionable requires injury.")

2. DSS Defendants – Leach, Hill, and Means[8]

Though somewhat unclear, Plaintiffs appear to argue that Hill and Means violated the Fourth and Fourteenth Amendments by placing Matthew in emergency protective custody, failing to notify Matt of the probable cause hearing, and then falsely testifying at the hearing.[9] (Am. Compl. ¶¶ 164-66, ECF No. 32); (Pls.' Resp. Opp'n DSS Defs.' Mot. Summ. J. 9-12, ECF No. 149.) In response, Hill and Means claim that they are entitled to absolute immunity or, at the very least, qualified immunity. (DSS Defs.' Mem. Supp. Mot. Summ. J. 12-16, ECF No. 142.)

[8] Leach is entitled to summary judgment on Plaintiffs' § 1983 claim against him in his official capacity; state officials acting in their official capacities are not "persons" within the meaning of § 1983. Will v. Mich. Dep't of State Police, 491 U.S. 58, 71 (1989).

[9] To the extent that Plaintiffs argue that their substantive due process rights to family integrity were violated, see Troxel v. Granville, 530 U.S. 57, 65 (2000), that contention is unavailing because Matthew's placement in protective custody was "based upon *some evidence* of . . . abuse." Weller v. Dep't of Soc. Servs., 901 F.2d 387, 391 (4th Cir. 1990) (emphasis added); see also Cnty. of Sacramento v. Lewis, 523 U.S. 833, 846 (1998) (stating that the shocks-the-conscience standard is reserved for "only the most egregious official conduct").

Qualified immunity shields government officials performing discretionary functions "from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). To determine whether qualified immunity applies, the court asks whether "the facts alleged show the [official's] conduct violated a constitutional right" and "whether the right was clearly established." Saucier v. Katz, 533 U.S. 194, 201 (2001). The court, in its "sound discretion," may decide the order in which to address the two prongs. Pearson v. Callahan, 555 U.S. 223, 236 (2009).

Absolute immunity, on the other hand, attaches when government officials, including social workers, engage in "activities . . . that could be deemed prosecutorial." Vosburg. Dep't of Soc. Servs., 884 F.2d 133, 138 (4th Cir. 1989); see also Butz v. Economou, 438 U.S. 478, 512 (1978) (explaining that absolute immunity is "necessary to assure that judges, advocates, and witnesses can perform their respective functions without harassment or intimidation"). In deciding which form of immunity applies, the court takes a "functional approach," focusing not on the official's "status" or "title," but on "the nature of [his or her] responsibilities." Cleavinger v. Saxner, 474 U.S. 193, 201 (1985). At bottom, the key is whether the challenged conduct is "closely associated with the judicial process." Burns v. Reed, 500 U.S. 478, 495 (1991).

To begin, the court finds that Means is entitled to absolute immunity from liability for any claims arising from her testimony at the probable cause hearing. That remains true even if she "intentionally misrepresent[ed] [Matthew's] case to the [family court]." (Am. Compl. ¶ 165, ECF No. 32); see Booker v. S.C. Dep't of Soc. Servs., 583 F. App'x 147, 148 (4th Cir. Sept. 9,

2014) (unpublished); Rogers v. Cumberland Cnty. Dep't of Soc. Servs., No. 5:20-CV-477-BO, 2022 WL 1132153, at *10 (E.D.N.C. Feb. 1, 2022) (unpublished); Sahoo v. Gleaton, No. 5:16-cv-153-F, 2017 WL 1102623, at * 9 (E.D.N.C. Mar. 23, 2017) (unpublished); cf. Fleming v. Asbill, 42 F.3d 886, 889 (4th Cir. 1994) ("Even if [the guardian ad litem] lied to the judge in open court, she was still acting as the guardian, and is immune from § 1983 liability.")

Next, Means and Hill are entitled to qualified immunity on Plaintiffs' claim that Matthew's placement in protective custody violated the Fourth Amendment. The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures . . . ." U.S. Const. amend. XIV, § 1, cl. 3. The Fourth Amendment's protections, however, are "personal" and "may not be vicariously asserted." Alderman v. United States, 394 U.S. 165, 174 (1969). Matt therefore cannot assert a Fourth Amendment claim on Matthew's behalf. See, e.g., Parker v. Austin, 105 F. Supp. 3d 592, 598 (W.D. Va. 2015); Frederick v. W. Va. Dep't of Health and Human Servs., No. 2:18-cv-01077, 2019 WL 1198027, at *17 (S.D. W. Va. Feb. 15, 2019) (unpublished). At the same time, Matthew's Fourth Amendment claim fails on the merits because law enforcement – and not Means or Hill – placed Matthew in emergency protective custody. (Pls.' Resp. Opp'n DSS Defs. Mot. Summ. J. 11, ECF No. 149) (conceding this point).

Finally, Means and Hill are entitled to qualified immunity on Matt's claim that they violated his procedural due process rights by failing to serve him with the family court pleadings before the probable cause hearing. Due process requires that notice be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Mullane v. Cent. Hanover Bank & Tr. Co.,

339 U.S. 306, 314 (1950). Matt admits that Means told him at Union High School "that there would be a hearing on April 18, 2018." (Pls.' Resp. Opp'n DSN Defs.' Mot. Summ. J. Ex. 1 (Matt Parkins Aff. 4), ECF No. 152-1.) Matt then attended the hearing and even cross-examined Means. (Pls.' Resp. Opp'n DSS Defs.' Mot. Summ. J. Ex. Q (Hr'g Tr. 9-10), ECF No. 149-17.) As a result, any argument that Matt was not given "fair notice of impending state action" lacks merit. Snider Int'l Corp. v. Town of Forest Heights, Md., 739 F.3d 140, 146 (4th Cir. 2014).

C. Civil Conspiracy (Count III)

To recover on a civil conspiracy claim, a plaintiff must prove four elements: "(1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff." Paradis v. Charleston Cty. Sch. Dist., 861 S.E.2d 774, 780 (S.C. 2021). Because "civil conspiracy is an intentional tort, an intent to harm . . . [is] an inherent part of th[is] analysis." Id. at 780 n.9.

The thrust of Plaintiffs' civil conspiracy claim is that Baker, Kerr, Myers, Maley, Hill, Means and now-dismissed Defendants Governor McMaster, Bradley, and Washington conspired to funnel Matthew and other waiver program participants into the most restrictive – and profitable – facilities in the DDSN system. (Am. Compl. ¶ 196, ECF No. 32.) Plaintiffs' claim fails, however, for two reasons. First, Plaintiffs have pointed to no facts showing that the six remaining Defendants reached any sort of agreement, much less one to act unlawfully and harm Plaintiffs. In fact, Kerr was not even employed by the State of South Carolina from 2007 to

2021;[10] Myers was misidentified by Plaintiffs;[11] and Baker's and Maley's unrefuted declarations reveal that they were not involved in Matthew's placement at UMC or the decision to transfer him to Clinton Manor. This would leave Hill and Means as the only conspiracy participants, but employees of the same agency cannot conspire with one another, absent some showing that they had a personal stake in the conspiracy. Cricket Cove Ventures, LLC v. Gilland, 701 S.E.2d 39, 46-47 (S.C. Ct. App. 2010); Pridgen v. Ward, 705 S.E.2d 58, 62 (S.C. Ct. App. 2010).

Second, Plaintiffs have submitted no evidence showing that the DSN and DSS Defendants "acted in furtherance of the conspiracy in a manner separate and independent from [their] other causes of action." Jinks v. Sea Pines Resort, LLC, No. 9:21-cv-00138-DCN, 2021 WL 4711408, at *3 (D.S.C. Oct. 8, 2021) (unpublished); Todd v. S.C. Farm Bureau Mut. Ins. Co., 278 S.E.2d 607, 611 (S.C. 1981), overruled on other grounds by Paradis, 861 S.E.2d at 780. Instead, Plaintiffs' civil conspiracy claim is based on the same allegations underlying their ADA, § 1983, and gross negligence claims. Compare (Am. Compl. ¶¶ 196-99, ECF No. 32) with (Id. ¶¶ 143, 148, 165, 166, 170, 191, 205, ECF No. 32.) For these reasons, the DSN and DSS Defendants are entitled to summary judgment on Count III.

D. Gross Negligence (Count IV)

The South Carolina Tort Claims Act ("SCTCA") is the exclusive remedy for torts committed by employees of state agencies. S.C. Code Ann. § 15-78-70(a). Under the SCTCA, state agencies are liable for their torts "in the same manner and to the same extent" as private

[10] (DSN Defs. Mot. Summ. J. Ex. 6 (Kerr Decl. ¶¶ 3-4), ECF No. 141-7.)

[11] Plaintiffs have not refuted Myers' assertion that she is not the "Althea at Community Long Term Care" referenced in Matthew's hospital records. (DSN Defs.' Mot. Summ. J. Ex. 3 (Myers Decl. ¶ 7), ECF No. 141-4.)

individuals. Id. § 15-78-40. The SCTCA, however, carves out several exceptions to this general waiver of immunity. Relevant here is S.C. Code Ann. § 15-78-60(25), which provides that a "governmental entity is not liable for a loss resulting from . . . responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any . . . patient . . . or client of any governmental entity, *except when the responsibility or duty is exercised in a grossly negligent manner*." S.C. Code Ann. § 15-78-60(25) (emphasis added). "Gross negligence is the intentional conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do." Etheredge v. Richland Sch. Dist. One, 534 S.E.2d 275, 277 (2000). In other words, "[i]t is the failure to exercise slight care." Id. Although whether conduct constitutes gross negligence is normally a mixed question of law and fact, "when the evidence supports but one reasonable inference, the question becomes a matter of law for the court." Id.

1. DSN Defendants – DHHS and DDSN

Matthew maintains that DHHS and DDSN owed him a duty of care as a waiver program participant and that they breached that duty by not completing a PASRR, contacting his treatment team, and obtaining a court order before his scheduled transfer to Clinton Manor. (Am. Compl. ¶¶ 203, 205, ECF No. 32.) Matthew's gross negligence claim fails, however, for the same reason that his § 1983 claim fails: Matthew has pointed to no evidence showing how he was injured by DHHS's and DDSN's inactions since he remained a waiver program participant and never went to Clinton Manor or any other ICF/IID. The DSN Defendants are therefore entitled to summary judgment on Count IV. See Madison v. Babcock Ctr., Inc., 638 S.E.2d 650, 660 (S.C. 2006) (explaining that the SCTCA's exceptions to the waiver of

governmental immunity are considered only "[w]hen a governmental entity owes a duty of care to a plaintiff under the common law *and other elements of negligence are shown*" (emphasis added)).

2. DSS Defendants – DSS, Means, and Hill

To begin, the court finds that Means and Hill are entitled to immunity under the SCTCA on Plaintiffs' gross negligence claims. The SCTCA "is the exclusive and sole remedy for any tort committed by an employee of a governmental entity while acting within the scope of the employee's official duty." S.C. Code Ann. § 15-78-200. Means and Hill were at all times acting within the scope of their official duties as DSS employees in investigating the potential abuse of Matthew. See id. § 15-78-30(i) ("'Scope of official duty' . . . means (1) acting in and about the official business of a governmental entity and (2) performing official duties.") Under the SCTCA, government employees are immune from liability for torts committed within the scope of their official duties as long as their conduct does not amount to "actual fraud, actual malice, intent to harm, or a crime involving moral turpitude." S.C. Code Ann. § 15-78-70(a)-(b); Shelley v. S.C. Highway Patrol, 852 S.E.2d 220, 225 (S.C. Ct. App. 2020). To this end, there is no evidence to suggest that Means and Hill intended to harm Plaintiffs or acted with malice during their investigation. Means and Hill thus remain immune from tort liability under the SCTCA and are entitled to summary judgment on Plaintiffs' gross negligence claims. See, e.g., Smith v. Ozmint, 394 F. Supp. 2d 787, 792 (D.S.C. 2005); Beaufort v. Thompson, No. 2:20-cv-01197-DCN-MGB, 2021 WL 1085313, at *6 (D.S.C. Mar. 22, 2021) (unpublished).

Next, the court finds that Matt's gross negligence claim against DSS is time-barred by the SCTCA's two-year statute of limitations. S.C. Code Ann. § 15-78-110 ("[A]ny action

brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered.") The events giving rise to this lawsuit took place between April 16, 2018, and May 23, 2018. Because Plaintiffs did not file a verified claim, see S.C. Code Ann. § 15-78-80, and waited until April 15, 2021, to file suit, Matt's gross negligence claim against DSS is untimely under the SCTCA.

This leaves Matthew's gross negligence claim against DSS. In opposing DSS's motion for summary judgment on this count, Plaintiffs offer only a single sentence:

> Based upon the evidence presented by the Plaintiffs, it is a jury question as to whether SCDSS demonstrated slight care in the investigation, seizure, and continued seizure of Matthew Parkins.

(Pls.' Resp. Opp'n DSS Defs. Mot. Summ. J. 14, ECF No. 149.) Plaintiffs' deficient briefing has the made the court's task in ruling on DSS's motion needlessly difficult. It is not the court's responsibility to sift through the record in search of material facts, United States v. Dunkel, 927 F.2d 955, 956 (7th Cir. 1991) ("Judges are not like pigs, hunting for truffles buried in [the record]."), nor is it the court's job to "put flesh on [the] bones" of the parties' "skeletal" arguments. United States v. Zannino, 895 F.2d 1, 17 (1st Cir. 1990). Rather, litigants must

"spell out [their] arguments squarely and distinctly, or else forever hold [their] peace."[12] Id. (internal quotations and citations omitted).

With that said, the court has reviewed the record and found no issue of material fact as to whether DSS was grossly negligent during its investigation. First, as discussed above, DSS exercised at least slight care in trying to place Matthew in the least restrictive environment appropriate to his needs. Means contacted several facilities, followed up on Bagnal's suggestions, and eventually arranged for a home study of Matthew's grandparents. (DSS Defs.' Mot. Summ. J. Ex. B (Means Case Notes 12, 13, 16, 21, 24, ECF No. 142-2); (Pls.' Resp. Opp'n DSN Defs.' Mot. Summ. J. Ex. 38 (Bradley Case Notes 57), ECF No. 153-17); (Id. Ex. 4 (Brenda Parkins Aff. ¶ 27), ECF No. 152-4.) "The fact that more might have been done does not negate a finding that [DSS's] employees exercised at least slight care" in attempting to place Matthew outside of UMC. Pack v. Associated Marine Insts., Inc., 608 S.E.2d 134, 138 (S.C. Ct. App. 2004).

Likewise, the only inference that can be drawn from the record is that DSS exercised at least slight care in conducting the investigation itself. DSS responded to Union High School within an hour after being contacted by law enforcement, visited Matthew several times at UMC, conducted a home visit, interviewed Matthew's parents and his siblings, and considered the input of Mullis,

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[12] The court takes this opportunity to remind Plaintiffs' counsel of their obligations under Local Civil Rule 7.06. That rules provides:

> Any response supported by discovery material shall specify with particularity the portion of the discovery material relied upon in support of counsel's position, summarize the material in support of counsel's position, and attach relevant portions of the discovery material or deposition.

Local Civ. Rule 7.06 (D.S.C.).

Wilson, and law enforcement before returning Matthew to his father. (DSS Defs.' Mot. Summ. J. Ex. D (Incident Report 2), ECF No. 142-4); (Id. Ex. B (Means Case Notes 5-8, 10, 22-23, 26, 38), ECF No. 142-2); (DSS Defs.' Mem. Supp. Mot. Summ. J. 9, ECF No. 142); (Pls.' Resp. Opp'n DSS Defs.' Mot. Summ. J. Ex. M (Matt Parkins Aff. Ex. 3 at 73-79), ECF No. 149-13.) Plaintiffs emphasize that Dr. Amhrein, Matthew's treating endocrinologist, was not consulted during DSS's investigation. To be sure, the failure to contact a vulnerable adult's medical treatment providers in the post-EPC setting may, in some cases, be evidence of gross negligence – especially when medical neglect is implicated. For example, in Bass v. S.C. Department of Social Services, 780 S.E.2d 252 (S.C. 2015), the South Carolina Supreme Court reinstated a jury verdict finding DSS grossly negligent where DSS removed two autistic children suspected of being poisoned by their parents, yet failed to test the medication in question or contact the children's doctors after placing the children in EPC. Id. at 254-55. The children remained out of the home for a month, returning only after the compounding pharmacy's insurer informed the mother that the medication had been "inadvertently mixed at one thousand times the recommended concentration." Id. at 254.

Bass, however, is readily distinguishable. The undisputed facts here show that DSS encountered a situation where: (1) multiple bruises – including one in the shape of a handprint – were discovered on a non-verbal, wheelchair-bound student with "unspecified cognitive disabilities"; (2) the student had recently arrived at school with "a busted lip and a bruise on his forehead"; and (3) the possible perpetrators were identified as the student's primary caregivers – neither of whom could initially explain the cause of the bruises. (DSS Mot. Summ. J. Ex. B (Means Case Notes 2), ECF No. 142-2.) Thus, unlike in Bass, where DSS would have conclusively determined the cause of the poisoning had it simply tested the medication, there was no clear-cut

answer to whether Matthew's injuries were accidental or caused by intentional abuse. More to the point, even if DSS had sought Dr. Amhrein's opinion, it remained obligated to conduct a thorough investigation into Matthew's living environment, his financial situation, his familial relationships, the background of his caregivers, and so forth. (DSS Mot. Summ. J. Ex. A (APS Manual 8-20), ECF No. 142-1) (listing over 20 client, environmental, and caregiver factors that caseworkers must consider during an investigation). The court's review of the record reveals that DSS did just that and returned Matthew home five days before the scheduled merits hearing. As a result, because "the only reasonable inference that can be drawn from these facts is that [DSS], at the very least, exercised slight care" in carrying out its investigation, Clyburn v. Sumter Cnty. Sch. Dist. No. 17, 451 S.E.2d 885, 888 (S.C. 1994), the court grants summary judgment to DSS on Count IV.

It is therefore

ORDERED that the DSN Defendants' and the DSS Defendants' motions for summary judgment, docket numbers 141 and 142, are granted.

IT IS SO ORDERED.

s/ Henry M. Herlong, Jr.
Senior United States District Judge

Greenville, South Carolina
February 27, 2023

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

Matthew Thomas Parkins, by and through Andrew Turner, his next of friend and Guardian ad Litem, and Matt Parkins, Individually,	)	
Plaintiffs,	)	C.A. No. 7:21-2641-HMH
vs.	)	**OPINION & ORDER**
The State of South Carolina, Henry Dargan McMaster, The Office of the Governor, Michael Leach, The South Carolina Department of Social Services, Calvin Hill, Tomekia Means, Joshua Baker, Robert Kerr, The South Carolina Department of Health and Human Services, Althea Myers, Patrick Maley, Michelle Gough Fry, The South Carolina Department of Disabilities and Special Needs, The Laurens County Disabilities and Special Needs Board, The Spartanburg Regional Health Care System, The Union Medical Center, Tonya Renee Washington, M.D., Jan Bradley, John Roe, and Jane Roe,	)	
Defendants.	)	

This matter is before the court on Defendants' The Spartanburg Regional Healthcare System ("SRHS"), Union Medical Center ("UMC"),[1] Tonya Renee Washington, M.D. ("Dr. Washington"), and Jan Bradley ("Bradley") (collectively "SRHS Defendants") motion for judgment on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure. For the reasons set forth below, the court grants the motion.

[1] The SRHS Defendants assert that SRHS and UMC are "properly and legally identified as 'Spartanburg Regional Heath Services District, Inc.'" (Mot. J. Pleadings 1, ECF No. 114.)

I. FACTUAL AND PROCEDURAL BACKGROUND[2]

On February 14, 2022, the court entered an order ruling on the various motions to dismiss filed by the Defendants. (Opinion & Order, ECF No. 58.) On February 22, 2022, the court entered an Amended Opinion and Order correcting a clerical error. (Am. Opinion & Order, ECF No. 62.) The court granted the SRHS Defendants' motion to dismiss, dismissing all claims against the SRHS Defendants with the exception of the second cause of action for violation of 42 U.S.C § 1983. (Id. 46, ECF No. 62.) On February 23, 2022, the SRHS Defendants filed a motion requesting "an [o]rder clarifying or correcting an apparent oversight" in the court's February 14, 2022 Opinion and Order relating to the court's findings on Plaintiffs' § 1983 claim. (Mot. Recons. 1, ECF No. 63.)

Specifically, the SRHS Defendants argued that the court "overlooked or misapprehended the SRHS Defendants' first argument contained within its Motion to Dismiss Plaintiffs' First Amended Complaint seeking dismissal of all of Plaintiffs' causes of action" for failure to comply with the court's October 6, 2021 Order.[3] (Id. 2, ECF No. 63); (Oct. 6, 2021 Opinion & Order 3, ECF No. 27.) On March 1, 2022, the court denied the SRHS Defendants' motion to alter or amend because the motion raised additional substantive grounds that were not asserted in the motion to dismiss. (Opinion & Order 6, ECF No. 73.) However, the court noted that

[2] The factual background in this action is more fully set forth in the court's Amended Opinion and Order dated February 22, 2022. (Am. Opinion & Order, ECF No. 62.)

[3] The court's October 6, 2021 Order instructed Plaintiffs to file an amended complaint no more than 35 pages in length, omitting evidentiary matters and plainly stating in the first paragraph the specific defendants against whom that cause of action is asserted. (Oct. 6, 2021 Opinion & Order, ECF No. 27.)

"[n]othing in this order precludes the SRHS Defendants from filing a motion pursuant to Rule 12(c) to raise these new arguments." (Id., ECF No. 73.)

The SRHS Defendants filed the instant motion for judgment on the pleadings pursuant to Rule 12(c) on July 11, 2022. (Mot. J. Pleadings, ECF No. 114.) On August 1, 2022, Plaintiffs submitted their response in opposition. (Resp. Opp'n, ECF No. 117.) On August 8, 2022, the SRHS Defendants filed their reply. (Reply, ECF No. 118.) This matter is now ripe for consideration.

II. DISCUSSION OF THE LAW

A. Legal Standard[4]

"After the pleadings are closed – but early enough not to delay trial – a party may move for judgment on the pleadings." Fed. R. Civ. P. 12(c). "A motion for judgment on the pleadings under Rule 12(c) is assessed under the same standards as a motion to dismiss under Rule 12(b)(6)." Occupy Columbia v. Haley, 738 F.3d 107, 115 (4th Cir. 2013).

To withstand a Rule 12(b)(6) motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570

[4] The court notes that both parties have presented matters outside the pleadings in their Rule 12(c) briefing and that Plaintiffs have requested that the court convert the SRHS Defendants' Rule 12(c) motion into a motion for summary judgment pursuant to Rule 12(d). (Resp. Opp'n 4 n.1, ECF No. 117.) Upon review, the court declines to convert this motion, finding that it can decide the instant motion without looking beyond the four corners of the amended complaint. See 5C Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1366 (3d ed. 2022) ("As the language of the rule suggests, federal courts have complete discretion to determine whether or not to accept the submission of any material beyond the pleadings that is offered in conjunction with a Rule 12(b)(6) motion and rely on it, thereby converting the motion, or to reject it or simply not consider it.").

(2007)). "The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully." Id. (internal quotation marks omitted). While a complaint "does not need detailed factual allegations," pleadings that contain mere "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." Twombly, 550 U.S. at 555.

B. Violation of Constitutional Rights

1. Section 1983 Generally

Section 1983 imposes liability on any "person who, under color of any statute, ordinance, regulation, custom, or usage, of any State" subjects any person "to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws" of the United States. 42 U.S.C. § 1983. "To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law." Mills v. Greenville Cnty., 586 F. Supp. 2d 480, 485 (D.S.C. 2008) (citing West v. Atkins, 487 U.S. 42, 48 (1988)).

"Like the state-action requirement of the Fourteenth Amendment, the under-color-of-state-law element of § 1983 excludes from its reach 'merely private conduct, no matter how discriminatory or wrongful.'" Am. Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 50 (1999) (quoting Blum v. Yaretsky, 457 U.S. 991, 1002 (1982). However, the Fourth Circuit has identified three scenarios in which a private party may be considered a state actor for § 1983 purposes:

> (1) when there is either a sufficiently close nexus, or joint action between the state and the private party; (2) when the state has, through extensive regulation, exercised coercive power over, or provided significant encouragement to, the private actor; or (3) when the function performed by the private party has traditionally been an exclusive public function.

S.P. v. City of Tacoma Park, Md., 134 F.3d 260, 269 (4th Cir. 1998).

2. Monell Liability

"[A] municipality cannot be held liable *solely* because it employs a tortfeasor – or, in other words, a municipality cannot be held liable under § 1983 on a *respondeat superior* theory." Monell v. Dep't of Soc. Servs., 436 U.S. 658, 691 (1978) (emphasis in original). Rather, municipality liability will attach only where the plaintiff can show that "the municipality cause[d] the deprivation 'through an official policy or custom.'" Lytle v. Doyle, 326 F.3d 463, 471 (4th Cir. 2003) (quoting Carter v. Morris, 164 F.3d 215, 218 (4th Cir. 1999)). There are four ways in which a municipality may be held liable based on a policy or custom:

> (1) through an express policy, such as a written ordinance or regulation; (2) through the decisions of a person with final policymaking authority; (3) through an omission, such as a failure to properly train officers, that "manifest[s] deliberate indifference to the rights of citizens"; or (4) through a practice that is so "persistent and widespread" as to constitute a "custom or usage with the force of law."

Id. (quoting Carter, 164 F.3d at 217). To establish municipal liability under the fourth category of Monell, a plaintiff must identify a "'persistent and widespread practice[] of municipal officials,' the 'duration and frequency' of which indicate that policymakers (1) had actual or constructive knowledge of the conduct, and (2) failed to correct it due to their 'deliberate indifference.'" Owens v. Baltimore City State's Attys. Off., 767 F.3d 379, 402 (4th Cir. 2014) (quoting Spell v. McDaniel, 824 F.2d 1380, 1386-91 (4th Cir. 1987)).

III. ANALYSIS

Plaintiffs' sole remaining claim alleged against the SRHS Defendants is a § 1983 claim. Although inartfully alleged, the court interprets Plaintiffs' amended complaint as alleging a substantive due process violation under the Fourteenth Amendment stemming from Matthew's treatment at UMC. See Youngberg v. Romeo, 457 U.S. 307, 324 (1982) (holding that civilly committed individuals "enjoy[] constitutionally protected interests in conditions of reasonable care and safety, reasonably nonrestrictive confinement conditions, and such training as may be required by these interests"). The adequacy of the allegations against each SRHS Defendant will be addressed in turn.

A. Bradley

The SRHS Defendants argue that Plaintiffs' § 1983 claim against Bradley should be dismissed "because Plaintiffs have failed to allege that Ms. Bradley was acting under color of state law." (Mem. Supp. J. Pleadings 3, ECF No. 114-1.) Specifically, the SRHS Defendants argue that "Bradley is not a governmental employee" and that Plaintiffs have failed to adequately allege that Bradley "willfully participated in joint unconstitutional action with state actors" as a private party. (Reply 4, 6, ECF No. 118.) In response, Plaintiffs contend that Bradley is a "governmental employee" and that, even if she is not, "there was still a 'sufficiently close nexus' between her relations with the state for purposes of Plaintiffs' Section 1983 claim that 'the challenged action' may be fairly treated as that of the State itself." (Resp. Opp'n 3, 13, ECF No. 117) (quoting Mentavlos v. Anderson, 249 F.3d 301, 314 (4th Cir. 2000)).

Plaintiffs' amended complaint contains a single reference to Bradley's employment status. (Am. Compl. ¶ 21, ECF No. 32) ("Jan Bradley was the social worker . . . responsible for

Matthew Parkin's [sic] case management at UMC . . . ."). Nowhere in their amended complaint have Plaintiffs alleged that Bradley was employed by SRHS or UMC. As the SRHS Defendants correctly note, the mere fact that Bradley worked on Matthew's case at UMC does not necessarily mean that is she employed by UMC or SRHS. (Reply 5, ECF No. 118.) In its February 22, 2022 Amended Opinion and Order, the court held that "there is no dispute that [Bradley] is not a government employee." (Am. Opinion & Order 36, ECF No. 62.) There is no basis in the record for the court to conclude otherwise. This leaves the issue of whether Bradley qualifies as a state actor under a "close nexus" or "joint action" theory. City of Tacoma Park, 134 F.3d at 269. However, it is unnecessary for the court to determine whether Plaintiffs have adequately alleged joint action because Plaintiffs have failed to sufficiently plead that Bradley engaged in conduct that deprived them of a constitutional right, an essential element of their § 1983 claim.

Again, although inartfully pled, Plaintiffs' allegations against Bradley concern two main contentions: (1) that she, in concert with other Defendants, "seiz[ed] and h[eld] Matthew in unconstitutional conditions" at UMC and (2) that she conspired with other defendants to illegally place Matthew at a DDSN group home called Clinton Manor without a court order.[5]

[5] Plaintiffs' repeated ambiguous references to "these defendants" throughout the amended complaint have made it, at best, exceedingly difficult to discern what allegations pertain to which defendants. Plaintiffs' counsel has been admonished in this case and others for failing to comply with the pleading requirements of Rule 8 of the Federal Rules of Civil Procedure. (Oct. 6, 2021 Opinion & Order 3, ECF No. 27) (requiring Plaintiffs to replead their claims in accordance with the Federal Rules and characterizing the initial complaint as "overly complex" and "the opposite of short and plain"); see also Timpson ex rel. Timpson v. McMaster, 437 F. Supp. 3d 469, 474 (D.S.C. 2020) ("The Amended Complaint is barely cognizable. . . . The pleadings in this case fall short of [Rule 8's] standard, as Plaintiffs were still trying to articulate *who* they were suing and *what* they were suing about more than a year into this litigation." (emphasis in original and footnote omitted)); Estate of Valentine ex rel. Grate v. South Carolina, No. 3:18-895-JFA, 2018 WL 11383502, at *1 (D.S.C. Nov. 28, 2018) ("This

(Am. Compl. ¶¶ 79, 167, 189, ECF No. 32.) With respect to the first contention, Plaintiffs have failed to set forth specific, plausible allegations that Bradley had any involvement in the placement of Matthew in protective custody or that she had any control over Matthew's care at UMC. Rather, Plaintiffs allege elsewhere in their amended complaint that law enforcement was responsible for placing Matthew in protective custody and transporting him to UMC and that a DSS case manager was the one who "directed that Matthew be secluded in his room" and "prohibited any family member from visiting Matthew . . . ." (Id. ¶¶ 36, 46, 59, ECF No. 32.) Further, there are no plausible allegations that Bradley, a licensed baccalaureate social worker, had any authority to order the administration of psychotropic drugs to "chemically restrain[]" Matthew. (Id. ¶ 190, ECF No. 32.) As to the second contention, Plaintiffs have failed to set forth any facts that Bradley had the authority to make placement decisions for individuals in DSS custody. To the contrary, Plaintiffs acknowledge in their amended complaint that the director of DDSN is statutorily "responsible for determining placement of all DDSN clients . . . ."[6] (Id. ¶ 81, ECF No. 32); see also S.C. Code Ann. § 44-20-430 ("The director . . . has the final authority over applicant eligibility, determination, or services and admission order, subject to policies adopted by the commission."). Finally, and perhaps most importantly, Plaintiffs

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Court has spent a considerable amount of time reviewing the arguments contained in the memoranda in support of the motions to dismiss, plaintiff's counsels' response thereto, along with the prolix complaints involved in this action. The Court's task has been made extremely difficult by reason of the fact that the Amended Complaint contains enormous amounts of information that is inappropriate in a traditional federal court complaint.").

[6] The court also notes that "provider[s] of health care services" such as Bradley are prohibited from making placement decisions under the South Carolina Adult Health Care Consent Act. S.C. Code Ann. § 44-66-30(A)(10).

conceded in their complaint that Matthew was never transferred to Clinton Manor. (Am. Compl. ¶ 108, ECF No. 32) ("[A] state senator . . . halted the illegal transfer . . . .")

Taking Plaintiffs' allegations as true, the court finds that Plaintiffs have failed to adequately plead that Bradley deprived them of a right secured by the Constitution or federal law. 42 U.S.C. § 1983. Accordingly, Plaintiffs' section 1983 claim against Bradley is dismissed.

B. Dr. Washington

Plaintiffs' allegations against Dr. Washington can be summarized as follows: (1) Dr. Washington "seiz[ed] and h[eld] Matthew in unconstitutional conditions" at UMC; (2) she conspired with other Defendants to place Matthew at Clinton Manor without a court order; and (3) she provided constitutionally deficient medical care. (Am. Compl. ¶¶ 62, 67, 79, 85, 86, 167, 170, ECF No. 32.) As an initial matter, any claims Plaintiffs have asserted against Dr. Washington arising from the first two allegations fail for the same reasons that the allegations fail against Bradley. First, it is not plausible that Dr. Washington was responsible for "seizing and holding" Matthew at UMC because Plaintiffs have alleged that law enforcement placed Matthew in protective custody and transported him to UMC and that DSS was authorized to exercise custody over Matthew pursuant to a family court order. (Id. ¶¶ 35-36, 53, ECF No. 32.) Further, Plaintiffs have alleged that a DSS case manager, and not Dr. Washington, was responsible for secluding Matthew and preventing his family from visiting him. (Id. ¶¶ 36, 46, 59, ECF No. 32.) Second, as to the allegations that Dr. Washington conspired with other Defendants to "illegally institutionalize" Matthew at Clinton Manor, Dr. Washington did not have the power to make placement decisions, and in any event, Matthew was never transported

to Clinton Manor. (Id. ¶¶ 79, 108, 113, ECF No. 32); see also S.C. Code Ann. § 44-66-30(A)(10) (prohibiting "a provider of health care services to the patient" from making placement decisions).

Plaintiffs' claim that Dr. Washington provided constitutionally inadequate medical care also fails. Involuntarily committed individuals, such as Matthew, enjoy "constitutionally protected interests in conditions of reasonable care and safety, reasonably nonrestrictive confinement conditions, and such training as may be required by these interests." Youngberg, 457 U.S. at 324. Under the Youngberg standard, "liability may be imposed only when the decision by the professional is such a substantial departure from accepted professional judgment, practice, or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment." Id. at 323; see also Patten v. Nichols, 274 F.3d 829, 843 (4th Cir. 2001) ("[L]iability under the due process clause cannot be imposed for mere negligence. . . ."). Courts do not determine "whether the treatment decision was the medically correct or most appropriate one." United States v. Charters, 863 F.2d 302, 313 (4th Cir. 1988). Rather, "[c]ourts must simply ensure that the 'choice in question was not a sham or otherwise illegitimate.'" Farabee v. Yaratha, 801 F. App'x 97, 103 (4th Cir. Feb. 6, 2020) (unpublished) (quoting Patten, 274 F.3d at 845). To this end, decisions by medical professionals are accorded a "presumption of validity." Charters, 863 F.2d at 313.

Construed liberally, Plaintiffs' complaint alleges that Dr. Washington violated Plaintiffs' constitutional rights by failing to monitor Matthew's adrenal condition, (Am. Compl. ¶¶ 60-62, 77-78, ECF No. 32); prescribing certain medications, such as a blood thinner, which caused Matthew pain and bruising, (Id. ¶¶ 63-65, ECF No. 32); using chemical restraints, (Id. ¶¶ 93, 96,

ECF No. 32); failing to timely notify Matthew's treating endocrinologist of his hospitalization, (Id. ¶¶ 105, 112, ECF No. 32); and leaving Matthew "nearly naked . . . in a short-sleeved t-shirt and a diaper for the convenience of staff, with his pubic hairs visible to persons passing by his door." (Id. ¶ 86, ECF No. 32). To begin, any claims relating to Dr. Washington's prescribing decisions, including the decision to "chemically restrain" Matthew, are not actionable because Plaintiffs have failed to sufficiently plead that Dr. Washington "so substantially departed from professional standards that [her] decisions can only be described as arbitrary and unprofessional." Patten, 274 F.3d at 845-46. There is nothing in the pleadings to suggest that these decisions were "*a sham or otherwise illegitimate*." Id. at 845 (emphasis in original) (quoting Romeo v. Youngberg, 644 F.2d 147, 178 (3d Cir. 1980) (en banc) (Seitz, C.J., concurring)).

Moreover, Plaintiffs' remaining allegations – that Dr. Washington failed to monitor Matthew's adrenal condition, failed to notify his treating endocrinologist, and is somehow responsible for leaving Matthew in a "nearly naked" state during the duration of his hospitalization – are not actionable because they do not rise above the level of ordinary negligence. See Shaw by Strain v. Strackhouse, 920 F.2d 1135, 1143 (3d Cir. 1990) ("[C]onduct amounting to no more than simple negligence cannot constitute a violation of the constitutional right to due process, regardless of whether the conduct is better characterized as nonfeasance, or misfeasance." (internal citations omitted)); cf. Estelle v. Gamble 429 U.S. 97, 107 (1976) ("[W]hether an X-ray—or additional diagnostic techniques or forms of treatment—is indicated is a classic example of a matter for medical judgment. A medical decision not to order

an X-ray, or like measures, does not represent cruel and unusual punishment. *At most it is medical malpractice* . . . ." (emphasis added)).

Accordingly, because Plaintiffs have failed to sufficiently allege a § 1983 claim against Dr. Washington, this claim is dismissed.

C. SRHS/UMC

As to SRHS and UMC, Plaintiffs have alleged that:

> Matthew was subjected to unconstitutional conditions of confinement at UMC that posed "a pervasive and unreasonable risk" of constitutional injury to citizens like Matthew and Matt; his [sic] response to that knowledge was so inadequate as to show "deliberate indifference to or tacit authorization of the alleged offensive practices;" and there exists an "affirmative causal link" between this inaction and the constitutional injuries suffered by the Plaintiffs.

(Am. Compl. ¶ 162, ECF No. 32.) These allegations, without more, are insufficient to survive a Rule 12(c) motion. See Iqbal, 556 U.S. at 678 (stating that a complaint must include "more than an unadorned, the-defendant-unlawfully-harmed-me accusation" to survive a motion to dismiss); Green v. Obsu, No. ELH-19-2068, 2020 WL 758141, at *11 (D. Md. Feb. 13, 2020) (unpublished) ("[A] plaintiff cannot plead a plausible Monell claim simply by 'parrot[ing] the language of various legal theories without stating any facts to demonstrate that type of conduct.'" (quoting Cook v. Howard, 484 F. App'x 805, 811 (4th Cir. Aug. 24, 2012) (unpublished)).

Although Monell does not impose a heightened pleading standard, Leatherman v. Tarrant Cty. Narcotics Intelligence & Coordination Unit, 507 U.S. 163, 164 (1993), Plaintiffs must still satisfy Rule 8(a)'s "short and plain statement" requirement by "adequately plead[ing] . . . the existence of an official policy or custom that is fairly attributable to the municipality and that

proximately caused the deprivation of their rights," Jordan by Jordan v. Jackson, 15 F.3d 333, 338 (4th Cir. 1994). Here, Plaintiffs have failed to identify a specific custom or policy of SRHS or UMC and describe how it operated to deprive them of a constitutional right. In addition, Plaintiffs have failed to adequately allege a "persistent and widespread practice" of denying patients in DSS protective custody adequate medical care such that SRHS or UMC could be held liable. Owens, 767 F.3d at 402.

In their response to the SRHS Defendant's motion to dismiss, Plaintiffs argue that because "Dr. Washington and Jan Bradley were sued in both their individual and official capacities," they have properly "alleg[ed] liability of UMC and SRHCS." (Resp. Opp'n 28, ECF No. 117.) However, the Supreme Court explicitly rejected respondeat superior as a basis for § 1983 liability in Monell. Monell, 436 U.S. at 691. Accordingly, Plaintiffs' § 1983 claim against SRHS and UMC is dismissed.

For the foregoing reasons, it is

ORDERED that the SRHS Defendants' motion for judgment on the pleadings, docket number 114, is granted.[7]

IT IS SO ORDERED.

s/ Henry M. Herlong, Jr.
Senior United States District Judge

Greenville, South Carolina
August 24, 2022

[7] In moving for judgment on the pleadings, the SRHS Defendants argue that Plaintiffs have failed to "make any allegations against John Roe and Jane Roe employees of SRHS or UMC in their § 1983 claim." (Mem. Supp. J. Pleadings 8, ECF No. 114-1.) Plaintiffs did not address this argument in their response. As a result, Plaintiffs have conceded this point, and their § 1983 claim as to Defendants John Roe and Jane Roe is also dismissed. See J.R. v. Walgreens Boots All., Inc., 470 F. Supp. 3d 534, 550 (D.S.C. 2020) ("[F]ailure to address a claim in an opposition memorandum constitutes waiver of that claim." (citing Jones v. Family Health Ctrs., Inc., 323 F. Supp. 2d 681, 690 (D.S.C. 2003))); Campbell v. Rite Aid Corp., No. 7:13–cv–02638–BHH, 2014 WL 3868008, at *2 (D.S.C. Aug. 5, 2014) ("Plaintiff failed to respond to Rite Aid's argument regarding causes of action 1 and 2, and the Court can only assume that Plaintiff concedes the argument.").

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

Matthew Thomas Parkins, by and through Andrew Turner, his next of friend and Guardian ad Litem, and Matt Parkins, Individually,	)	
Plaintiffs,	)	C.A. No. 7:21-2641-HMH
vs.	)	**OPINION & ORDER**
The State of South Carolina, Henry Dargan McMaster, The Office of the Governor, Michael Leach, The South Carolina Department of Social Services, Calvin Hill, Tomekia Means, Joshua Baker, Robert Kerr, The South Carolina Department of Health and Human Services, Althea Myers, Patrick Maley, Michelle Gough Fry, The South Carolina Department of Disabilities and Special Needs, The Laurens County Disabilities and Special Needs Board, The Spartanburg Regional Health Care System, The Union Medical Center, Tonya Renee Washington, M.D., Jan Bradley, John Roe, and Jane Roe,	)	
Defendants.	)	

This matter is before the court on Plaintiffs' motion to reconsider pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.[1] For the reasons set forth below, the court grants in part and denies in part the motion.

[1] Plaintiffs erroneously state that this motion is brought pursuant to "Rules 60 and/or 52(b), as applicable." (Mot. Recons.1, ECF No. 77.) Rule 60 applies only to final judgments. See, e.g., Fayetteville Investors v. Commercial Builders, Inc., 936 F.2d 1462, 1472 (4th Cir. 1991). Rule 52 applies to "an action tried on the facts without a jury or without an advisory jury." Fed. R. Civ. P. 52(a)(1). Accordingly, Plaintiffs failed to cite the appropriate standard for any relief sought or specifically identify the proper grounds which would justify an order altering or amending an interlocutory decision.

I. FACTUAL AND PROCEDURAL BACKGROUND[2]

On February 14, 2022, the court entered an order ruling on the various motions to dismiss filed by the Defendants. On February 22, 2022, the court entered an Amended Opinion and Order correcting a clerical error. (Am. Opinion & Order, ECF No. 62); (Mots. Dismiss, ECF Nos. 41, 42, 43.) On March 14, 2022, the Plaintiffs filed the instant motion requesting "an [o]rder altering or amending, and clarifying the court's order dated February 22, 2022." (Pls. Mot. Recons. 1, ECF No. 77) (cleaned up). Defendants filed their responses in opposition on March 23, 2022, and March 28, 2022. (Resp. Opp'n, ECF Nos. 94, 95.) Plaintiff replied on March 30, 2022, and April 4, 2022. (Reply, ECF Nos. 96, 98.) This matter is now ripe for review.

II. DISCUSSION OF THE LAW

A. Legal Standard

Pursuant to Rule 54(b), "any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties . . . may be revised at any time before the entry of a judgment . . . ." Fed. R. Civ. P. 54(b). "Compared to motions to reconsider *final* judgments pursuant to Rule 59(e) of the Federal Rules of Civil Procedure, Rule 54(b)'s approach involves broader flexibility to revise *interlocutory* orders before final judgment as the litigation develops and new facts or arguments come to light." Carlson v. Boston Sci. Corp., 856 F.3d 320, 325 (4th Cir. 2017). However, a motion to reconsider should not be used "simply to ask the [c]ourt to rethink what the [c]ourt had already

[2] The factual background in this action is more fully set forth in the court's Amended Opinion and Order dated February 22, 2022. (Am. Opinion & Order, ECF No. 62.)

thought through . . . ." Wiseman v. First Citizen Bank & Trust Co., 215 F.R.D. 507, 509 (W.D.N.C. 2003) (internal quotation marks and citation omitted).

Further, the discretion afforded by Rule 54(b) "is not limitless," and the Fourth Circuit "ha[s] cabined revision pursuant to Rule 54(b) by treating interlocutory rulings as law of the case." Carlson, 856 F.3d at 325. "This is because, while Rule 54(b) gives a district court discretion to revisit earlier rulings in the same case, such discretion is subject to the caveat that where litigants have once battled for the court's decision, they should neither be required, nor without good reason permitted, to battle for it again." U.S. Tobacco Coop. Inc. v. Big S. Wholesale of Va., LLC, 899 F.3d 236, 257 (4th Cir. 2018) (quoting Official Comm. of the Unsecured Creditors of Color Tile, Inc. v. Coopers & Lybrand, LLP, 322 F.3d 147, 167 (2d Cir. 2003) (internal quotation marks omitted)).

Accordingly, "a court may revise an interlocutory order under the same circumstances in which it may depart from the law of the case: (1) a subsequent trial producing substantially different evidence; (2) a change in applicable law; or (3) clear error causing manifest injustice." Carlson, 856 F.3d at 325 (internal quotation marks and alteration omitted). "This standard closely resembles the standard applicable to motions to reconsider final orders pursuant to Rule 59(e), but it departs from such standard by accounting for potentially different evidence discovered during litigation as opposed to the discovery of new evidence not available at trial." Id. (internal quotation marks omitted).

Here, there is no claim of an "intervening change in the law" warranting reconsideration of the court's order, or a "subsequent trial producing substantially different evidence."

Ostensibly, Plaintiffs are pursuing this motion pursuant to the third exception, alleging that the court's Amended Opinion and Order contains clear errors causing manifest injustice.

Further, in considering whether to revise interlocutory decisions, the court considers whether a movant presented new evidence, or whether the court has "obviously misapprehended a party's position or the facts or applicable law." United States v. Duke Energy Corp., 218 F.R.D. 468, 474 (M.D.N.C. 2003). However, "[a]n improper use of the motion to reconsider 'can waste judicial resources and obstruct the efficient administration of justice.' Thus, a party who fails to present his strongest case in the first instance generally has no right to raise new theories or arguments in a motion to reconsider." Id. (internal citations omitted); see also South Carolina v. United States, 232 F. Supp. 3d 785, 793 (D.S.C. 2017) ("[A] motion to reconsider an interlocutory order should not be used to rehash arguments the court has already considered merely because the movant is displeased with the outcome.") (citations omitted).

B. Plaintiffs' Contentions

As to Governor McMaster, Plaintiffs argue that the court "erred" in its Amended Opinion and Order in the following ways: (1) "in its ruling that the Office of the Governor has not been served with process;" (2) in finding that any claims against the Governor are duplicative of those asserted against the Office of the Governor; and (3) that "Governor McMaster, in his official capacity, did not join in the motion to dismiss." (Mot. Recons. 2-3, 6-8, ECF No. 77.)

As to the SRHS Defendants, Plaintiffs argue that the court "erred" by: (1) finding that SRHCS and UMC "cannot be held liable for violations of the ADA and Section 504 on the

grounds that they had no authority under the South Carolina Adult Health Care Consent Act to determine placement;" (2) "misapplying the two-year statute of limitations for Matthew's father's claims;" (3) finding that the complaint did not plausibly allege that Dr. Washington was acting outside the scope of her employment; (4) finding that the Plaintiffs' claims against the SRHS Defendants sound in medical negligence necessitating compliance with South Carolina's presuit requirements contained in S.C. Code Ann. §§ 15-79-125 and 15-36-100; (5) finding that the complaint failed to plausibly allege a gross negligence claim or civil conspiracy claim against Jan Bradley; and (6) that any "dismissal for failure to comply with S.C. Code Ann. § 15-36-100 must be without prejudice." (Id. 8-19, ECF No. 77) (cleaned up).[3]

Upon a thorough review of Plaintiffs' motion, along with the various exhibits, the court finds that many of these arguments are unrelated to the dispositive portions of the court's Amended Opinion and Order, attempt to assert new arguments not raised in the original response to the motions to dismiss, merely restate the same arguments previously addressed, or otherwise fail to meet any of the grounds for relief permitted by Rule 54(b). Accordingly, the court finds that Plaintiffs' motion largely amounts to mere disagreement with the court's Amended Opinion and Order. However, the court will briefly address Plaintiffs' arguments that (1) the Office of the Governor was properly served with process, (2) claims against Jan Bradley were improperly dismissed, and (3) whether a dismissal pursuant to S.C. Code Ann. § 15-36-100 must, or may, be without prejudice.

[3] The court declines Plaintiffs' second "suggestion" to certify various "novel issues of local law" to the South Carolina Supreme Court. (Mot. Recons. 13, ECF No. 77.)

Governor McMaster

In the Amended Opinion and Order, the court noted, in a footnote in the fact section, that "Governor McMaster alleges that the Office of the Governor has not been served with process." (Am. Opinion & Order 9 n. 6, ECF No. 62.) The Amended Complaint, which unnecessarily added the Office of the Governor as a defendant, alleges an ADA/§ 504 claim against both Governor McMaster, in his official capacity, and the Office of the Governor. See Brissett v. Paul, No. 97-6898, 1998 WL 195945, at *1 (4th Cir. Apr. 6, 1998) (unpublished) ("[Naming] the local governments that employed [the officials] and naming the local officials in their official capacities was, therefore, redundant and unnecessary."); see Will v. Mich. Dep't of State Police, 491 U.S. 58, 71 (1989) ("[A] suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office. As such, it is no different from a suit against the State itself."). The court properly dismissed the claims against Governor McMaster, in his official capacity, because they were duplicative of those asserted against the Office of the Governor. (Id. 18-19, ECF No. 62.)

The Office of the Governor is a named defendant in this action that Governor McMaster continues to argue has not been properly served. However, irrespective of whether the Office of the Governor has been properly served,[4] the duplicative ADA/§ 504 claim against Governor McMaster, in his official capacity, and the Office of the Governor fails because the Amended Complaint is devoid of any plausible allegations that Governor McMaster, in his official capacity, made any decisions concerning the placement or treatment of Matthew Parkins.

[4] "As long as the government entity receives notice and an opportunity to respond, an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity." Kentucky v. Graham, 473 U.S. 159, 163 (1985) (citations omitted).

Therefore, Plaintiffs have failed to allege that Matthew Parkins was "denied the benefits of [any] service, program, or activity, or otherwise discriminated against, on the basis of [a] disability," as a result of any action taken by Governor McMaster in his official capacity. Nat'l Fed. of the Blind v. Lamone, 813 F.3d 494, 502-03 (4th Cir. 2016); see Kobe v. Haley, 666 Fed. Appx. 281, 299 (4th Cir. 2016) (unpublished) (citing S.C. Code Ann. § 44-6-30 and 42 C.F.R. § 431.10) ("What Appellants fail to appreciate, however, is that the Governor is not an official with responsibility for these decisions, nor does she have the authority to change them.") (cleaned up). Because this claim fails against Governor McMaster, in his official capacity, this claim also fails against the Office of the Governor.

SRHS Defendants

As to Jan Bradley, Plaintiffs' assert that social workers "are not protected under the South Carolina Frivolous Civil Proceedings Sanctions Act and no affidavit is required in a social worker negligence case." (Mot. Recons. 18, ECF No. 77) (cleaned up). However, the court also found that "[t]he allegations asserted against [Bradley] [were] conclusory and merely recite[d] the threadbare elements of the cause[s] of action. See, e.g., (Am. Compl. ¶ 206, ECF No. 32) ('Bradley. . . [was] grossly negligent and violated applicable standards of care of [her] profession[] in the treatment provided at UMC.') Further, there are no specific allegations about how she participated in any conspiracy." (Am. Opinion & Order 36, ECF No. 62.) Accordingly, Plaintiffs' motion fails to address this independent basis for dismissing the gross negligence and civil conspiracy claims. Plaintiffs failed to state a claim for relief against Jan Bradley. Therefore, Plaintiffs' contentions are without merit.

In regard to whether the dismissal pursuant to S.C. Code Ann. § 15-36-100 must, or may, be without prejudice, "[a] court has the discretion to allow a motion to dismiss under Rule

12(b)(6) with or without prejudice. Generally, where a defect in the complaint is curable, the court should grant the dismissal without prejudice." Misel v. Green Tree Serv., LLC, 782 F. Supp. 2d 171, 177-78 (E.D.N.C. 2011) (citations omitted). While inartfully argued, Plaintiffs appear to assert that the failure to comply with S.C. Code Ann. § 15-36-100 can be cured because the statute of limitations has not expired for Matthew Parkins' medical malpractice claims asserted against the SRHS Defendants. The court dismisses Matthew Parkins' medical malpractice claims without prejudice.[5] However, as the applicable statute of limitations has expired as to Matt Parkins' claims, that dismissal remains with prejudice.

III. CONCLUSION

For the foregoing reasons, it is

ORDERED that Plaintiffs' motion for reconsideration, docket number 77, is granted in part and denied in part. It is further

ORDERED that the ADA/§ 504 asserted against the Office of the Governor is dismissed.

IT IS SO ORDERED.

s/ Henry M. Herlong, Jr.
Senior United States District Judge

Greenville, South Carolina
April 5, 2022

[5] Plaintiffs' request to file a second amended complaint is denied. (Reply 15, ECF No. 98.) The scheduling order provides for filing motions to amend the pleadings. (Scheduling Order 1, ECF No. 87.)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

Matthew Thomas Parkins, by and through Andrew Turner, his next of friend and Guardian ad Litem, and Matt Parkins, Individually,	)	
Plaintiffs,	)	C.A. No. 7:21-2641-HMH
vs.	)	**AMENDED OPINION & ORDER**
The State of South Carolina, Henry Dargan McMaster, The Office of the Governor, Michael Leach, The South Carolina Department of Social Services, Calvin Hill, Tomekia Means, Joshua Baker, Robert Kerr, The South Carolina Department of Health and Human Services, Althea Myers, Patrick Maley, Michelle Gough Fry, The South Carolina Department of Disabilities and Special Needs, The Laurens County Disabilities and Special Needs Board, The Spartanburg Regional Health Care System, The Union Medical Center, Tonya Renee Washington, M.D., Jan Bradley, John Roe, and Jane Roe,	)	
Defendants.	)	

This matter is before the court on the following motions:

(1) motion to dismiss for failure to state a claim by Defendants Jan Bradley ("Bradley"), Spartanburg Regional Health Care System ("SRHCS"), Union Medical Center ("UMC"),[1] and Tonya Renee Washington, M.D. ("Dr. Washington") (collectively "SRHS Defendants");

(2) motion to dismiss for failure to state a claim by Defendant Henry Dargan McMaster ("Governor McMaster"); and

[1] SRHCS and UMC assert that they are both "properly and legally identified as 'Spartanburg Regional Health Services District, Inc.'" (Mot. Dismiss 1, ECF No. 41.)

(3) motion to dismiss for failure to state a claim by Defendants Joshua Baker ("Baker"), Michelle Gough Fry ("Fry"), Robert Kerr ("Kerr"), The Laurens County Disabilities and Special Needs Board ("LCDSNB"), Patrick Maley ("Maley"), Althea Myers ("Myers"), The South Carolina Department of Disabilities and Special Needs ("DDSN"), and The South Carolina Department of Health and Human Services ("DHHS").

For the reasons set forth below, the court grants Governor McMaster's motion, ECF No. 42, grants the SRHS Defendants' motion, ECF No. 41, and grants in part and denies in part Defendants Baker, Kerr, DHHS, Myers, Maley, Fry, DDSN, and LCDSNB's motion to dismiss, ECF No. 43.

I. FACTUAL AND PROCEDURAL BACKGROUND

For purposes of these motions, all ***plausible*** facts alleged in Plaintiffs' amended complaint, ECF No. 32, are accepted as true. This action was removed to this court on August 18, 2021. (Not. Removal, ECF No. 1.) The initial 62-page complaint consisted of 513 single spaced paragraphs, many quite lengthy, and alleged claims against the named Defendants for the following causes of action: (1) violation of Title II of the Americans with Disabilities Act and § 504 of the Rehabilitation Act; (2) violations of 42 U.S.C. § 1983; (3) common law civil conspiracy; (4) federal conspiracy in violation of 42 U.S.C. § 1985; (5) gross negligence; (6) violations of the South Carolina constitution; (7) declaratory judgment; and (8) unjust enrichment. (Id. Ex.1 (State Court Documents), ECF No. 1-1.)

The vast majority of the Defendants filed motions to dismiss the complaint or motions for a more definite statement. (Mots. Dismiss, ECF Nos. 9-11, 15, 17, and 23.) On October 6, 2021, the court denied the motions to dismiss without prejudice and ordered Plaintiffs to file and serve an amended complaint, limited to no more than 35 pages in length in compliance with

Local Civil Rule 1.05. (Order Denying Mots. Dismiss, ECF No. 27.) Further, the court ordered that with respect to each cause of action asserted, "Plaintiffs shall plainly state in the first paragraph the specific defendants against whom that cause of action is asserted." (Id. 3, ECF No. 27.)

On October 26, 2021, Plaintiffs filed an amended complaint. (Am. Compl., ECF No. 32.) The amended complaint alleges the following causes of action: (1) violations of Title II of the Americans with Disabilities Act ("ADA") and § 504 of the Rehabilitation Act ("Section 504"); (2) violations of 42 U.S.C. § 1983; (3) South Carolina common law civil conspiracy; (4) South Carolina common law gross negligence; and (5) declaratory judgment and unjust enrichment. (Id. generally, ECF No. 32.)

A. General Allegations

The amended complaint alleges that Matthew Thomas Parkins ("Matthew") "is a 24-year-old man who has a severe, life-threatening disorder called 'congenital adrenal insufficiency + hypogonadotrophic (sic) hypogonadism' caused by an acute adrenal crisis in infancy[,] which resulted in profound and permanent developmental delay." (Am. Compl. ¶ 23, ECF No. 32.) As a result of this condition, Matthew utilizes a wheelchair at school, but at home he is able to move about freely by "crawling or 'scooting' on the floor independently and walking with hands-on assistance." (Id. ¶ 34, ECF No. 32.) In order to treat Matthew's condition, his primary care physician, Dr. James Amrhein ("Dr. Amrhein"), a pediatric endocrinologist, prescribed two cortisone drugs and monthly testosterone injections to manage this adrenal disorder. (Id. ¶ 25, ECF No. 32.) Side effects of these drugs include impaired healing, fragile skin, and bruising. (Id. ¶ 26, ECF No. 32.) Matthew also receives home support

services through the Intellectual Disability/Related Disability ("ID/RD") Medicaid waiver which is operated by DDSN under contract with DHHS.[2] (Id. ¶ 29, ECF No. 32.) Additionally, Matthew has received professional counseling services from Lennie Mullis ("Mullis"). (Am. Compl. ¶ 31, ECF No. 32.) Further, Matthew's treatment at home has been closely monitored by Mary Katherine Bagnal ("Bagnal"), a "masters level social worker," and Michelle Nunn ("Nunn"). (Id. ¶ 32, ECF No. 32.) Matthew's father, Matt Parkins ("Parkins"), serves as his primary caregiver and provides Matthew with assistance for all activities of daily living. (Id. ¶ 24, ECF No. 32.)

In spring 2018, Matthew was completing his senior year of school at Union High School. (Id. ¶ 33, ECF No.32.) On April 16, 2018, Matthew was removed from Parkins' custody and placed by law enforcement in adult emergency protective custody ("EPC") "when unexplained bruises were discovered on his thighs." (Id. ¶¶ 35-36, ECF No. 32.) Andrew Turner ("Turner"), another caregiver and Matthew's "next of friend" in this action, informed law enforcement that "he had not seen Matthew since April 12, that [Parkins] provided excellent care to Matthew, and that he never witnessed any signs of abuse . . . ." (Am. Compl. ¶ 42, ECF No. 32.)

As required under South Carolina law, law enforcement notified Adult Protective Services and DSS. See S.C. Code Ann. § 43-35-55(D) ("When a law enforcement officer takes protective custody of a vulnerable adult . . ., the law enforcement officer must immediately

[2] "The ID/RD waiver provides services as an alternative to institutional care for persons who meet 'level of care' for ICF/ID placement, but choose to live in their own homes." (Am. Compl. ¶ 30, ECF No. 32.)

notify the Adult Protective Services and the Department of Social Services . . . ."). DSS supervisor Calvin Hill ("Hill") assigned Tomekia Means[3] ("Means") to investigate any potential abuse pursuant to the South Carolina Omnibus Protection Act. (Id. ¶ 36, ECF No. 32.)

Matthew was taken to UMC, where physicians described him as a "'well appearing 21-year-old male,' with bruising noted on his backside." (Id. ¶ 43, ECF No. 32.) His initial plan of care stated that he "will be admitted and will be discharged . . . when [he] has a decision from the judge." (Id. ¶ 44, ECF No. 32.) Matthew's care was "turned over to the UMC attending physician, Dr. Washington." (Id. ¶ 45, ECF No. 32.) Means "directed . . . Matthew be secluded in his room, with sitters bedside who were instructed not to allow Matthew to get out of bed for any purpose," and only permitted family members to visit him for one hour, once a week. (Am. Compl. ¶¶ 46, 59, ECF No. 32.)

Bagnal and Nunn visited Matthew to photograph the bruising on April 17, 2018. (Id. ¶ 47, ECF No. 32.) While there, Bagnal informed Means that Matthew's bruises were consistent with Parkins' explanation that the bruises occurred while Matthew was being lifted. (Id. ¶ 47, ECF No. 32.) Further, Bagnal told Means that Parkins was "an exceptional caregiver who would never intentionally injure his son and that Matthew should immediately be returned home." (Id. ¶ 48, ECF No. 32.)

[3] Plaintiffs refer to Tomekia Means as "Tomeka Grooms" in paragraph 36 of the amended complaint. However, elsewhere throughout the amended complaint, and in the caption, she is referred to as "Tomekia Means." (Am. Compl. ¶ 10, ECF No. 32.) ("Tomekia Means ('Means') was the DSS case manager assigned to investigate Matthew's case . . . .")

The same day, DSS filed a complaint in South Carolina state Family Court alleging that Parkins and Turner had physically abused Matthew.[4] (Id. ¶ 50, ECF No. 32.) A hearing was scheduled for April 18, 2018 and a summons was filed which required Parkins and Turner to attend. Plaintiffs allege that DSS did not provide at least forty-eight hours' written notice of the hearing, pursuant to S.C. Code Ann. § 63-3-570. (Am. Compl. ¶ 51, ECF No. 32.) Plaintiffs also submit that Matthew was not present at that hearing, and no guardian ad litem or attorney had been appointed to represent his interests. (Id. ¶ 55, ECF No. 32.) Further, Plaintiffs contend that Parkins and Turner were not served with notice of the hearing and had no counsel representation at the hearing. (Id. ¶ 55, ECF No. 32.)

At the hearing on April 18, DSS informed the family court that "[b]y reason of abuse, neglect or exploitation, there is a substantial risk to this vulnerable adult's life or physical safety, and the vulnerable adult is unable to be protected." (Id. ¶ 52, ECF No. 32.) The Family Court issued an order stating that Matthew would remain in DSS custody, directing DSS to conduct a further investigation into the alleged abuse, and authorizing DSS to provide "such routine and/or emergency care as may be required . . . ." (Id. ¶¶ 53, 56, ECF No. 32.) Further, the order states that: "(1) An [sic] guardian ad litem and guardian attorney shall be appointed to Matthew Parkins; (2) Matthew [P]arkins will remain in dss custod [sic]; and (3) DSS shall expedite an investigation." (Id. ¶ 56, ECF No. 32.)

Plaintiffs allege that DSS, along with the other named Defendants, then pursued placement of Matthew in a DDSN group home and failed to consider Matthews's right to a less

[4] DSS is "responsible for filing a petition for protective custody within one business day of receiving the notification" that law enforcement has taken protective custody of a vulnerable adult. S.C. Code Ann. § 43-35-55(E)

restrictive placement. (Am. Compl., e.g., ¶ 58, ECF No. 32.) Specifically, Plaintiffs allege that Defendants "Washington, Means, Hill, Bradley and Myers, along with other employees at UMC, DSS, DHHS, DDSN and LCDSNB concocted a clandestine plan to illegally institutionalize Matthew in an ICF/ID facility[5] called 'Clinton Manor' in another county." (Id. ¶ 79, ECF No. 32.) Further, Plaintiffs allege that Matthew received inadequate care while hospitalized and was denied physical, occupational, and psychological therapies. (Id. ¶¶ 60-67, 77-78, ECF No. 32.)

Plaintiffs allege that Matthew was released without a court order to Parkins' custody on May 18, 2018, after a state senator intervened to halt the transfer to Clinton Manor. (Id. ¶¶ 108, 113, ECF No. 32.) A trial was scheduled for May 22, 2018. (Id. ¶ 113, ECF No. 32.) Plaintiffs contend that throughout the time period in question, the Defendants ignored evidence provided by Matthew's mother, Union County Sheriff's Deputy Roxy Belue, Bagnal, Matthew's social worker, and Matthew's counselor, Mullis, that Parkins provided excellent care to Matthew at home and that he would not intentionally harm Matthew. (Am. Compl. ¶¶ 48, 57-58, 78, ECF No. 32.) Ultimately, on May 23, 2018, the Family Court dismissed the charges and found that "Cecil[,] Matt Parkins[,] and Andrew Turner have at all times provided exceptional care to Matthew Parkins." (Id. ¶ 120, ECF No. 32.)

B. DSS Defendants

Plaintiffs have asserted claims against DSS, as the agency responsible for investigating the allegations of abuse; Michael Leach ("Leach"), in his official capacity as director of DSS;

[5] The Plaintiffs allege that "[a]n ICF/ID is the most restrictive residential placement in the DDSN system . . . ." (Am. Compl. ¶ 80, ECF No. 32.)

Means, the case manager assigned to Matthew's case; and Calvin Hill ("Hill"), Means' supervisor (collectively "DSS Defendants"). (Id. ¶¶ 7-10.) These DSS Defendants filed an answer to the amended complaint on November 23, 2021. (Ans., ECF No. 40.) To date, no motions have been filed on behalf of the DSS Defendants.

C. SRHS Defendants - SRHCS, UMC, Dr. Washington, Bradley

SRHCS "owns the Union Medical Center (UMC), which provided medical treatment to Matthew." (Am. Compl. ¶ 19, ECF No. 32.) Dr. Washington "was Matthew's attending physician at UMC." (Id. ¶ 20, ECF No. 32.) Jan Bradley "was the social worker . . . responsible for Matthew['s] [] case management at UMC." (Id. ¶ 21, ECF No. 32.)

Plaintiffs allege that Dr. Washington failed to properly monitor Matthew's adrenal disorder, administered his testosterone injections at incorrect intervals, prescribed him unnecessary medications without consulting his primary care physician, and "failed to provide needed physical, occupational[,] or psychological therapies" during his time at UMC. (Id. ¶¶ 62-65, 67, ECF No. 32.) As a result, Plaintiffs allege that "Matthew went into a life-threatening adrenal crisis . . ." while under UMC's care. (Id. ¶ 77, ECF No. 32.)

Further, Plaintiffs have alleged that UMC and Dr. Washington, along with other Defendants in this case, "concocted a clandestine plan to illegally institutionalize Matthew in an ICF/ID facility called 'Clinton Manor' in another county." (Id. ¶ 79, ECF No. 32.) In furtherance of this conspiracy, Plaintiffs submit that "[t]hese Defendants schemed to sedate and chemically restrain Matthew in preparation for the transfer to Clinton Manor, using a psychotropic drug used to treat schizophrenia, Xyprexa, despite Matthew never having been diagnosed with or [having] shown signs of schizophrenia." (Am. Compl. ¶ 93, ECF No. 32.)

Plaintiffs further allege that a different drug, Seroquel, also primarily used to schizophrenia, was substituted in order to sedate Matthew "for the convenience of the staff at Clinton Manor." (Id. ¶ 96, ECF No. 32.) Plaintiffs allege that UMC, Dr. Washington, and Bradley participated in making Matthew's transfer arrangements to Clinton Manor "without initiating involuntary commitment proceedings . . . ." (Id. ¶ 99, ECF No. 32.)

D. Governor McMaster and the Office of the Governor[6]

Governor McMaster is the governor of South Carolina. Plaintiffs allege that Governor McMaster has "consciously disregarded [his] obligations to enact a 'comprehensive, effectively working plan' for the State, as described by the Supreme Court in Olmstead v. L.C. ex rel Zimring, 527 U.S. 581, 607 (1999) . . . and U.S. Department of Justice Regulations and directives." (Am. Compl. ¶144, ECF No. 32.)

E. DDSN, DHHS, LCDNSB, Patrick Maley, Michelle Gough Fry, Joshua Baker, Robert Kerr, Althea Myers

DDSN "is responsible for providing services to South Carolinians with intellectual disabilities and for the administration of the ID/RD Medicaid waiver program, under contract with DHHS." (Id. ¶ 15, ECF No. 32.) Patrick Maley "was the interim director of DDSN from November 2017 through July 2018[,] and he is now Chief Financial Officer of DDSN." (Id. ¶ 16, ECF No. 32.) Michelle Gough Fry "is the current Director of DDSN." (Id. ¶ 17, ECF No. 32.)

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[6] Governor McMaster alleges that the Office of the Governor has not been served with process. (Mot. Dismiss 4 n.3, ECF No. 42.) Accordingly, the Office of the Governor is not subject to the court's jurisdiction. Choice Hotels Int'l., Inc. v. Bonham, No. 96-2717, 1997 WL 600061 at * 1 (4th Cir. Sept. 30, 1997) (per curiam) (unpublished) ("Valid service of process is a prerequisite to a district court's assertion of personal jurisdiction.") (quoting Swaim v. Moltan Co., 73 F.3d 711, 719 (7th Cir. 1996)).

DHHS "is the state agency responsible for the administration of all Medicaid programs in the [s]tate." (Id. ¶ 11, ECF No. 32.) Joshua Baker "was the director of DHHS from 2017 until 2021, having previously served as director of DHHS operations." (Am. Compl. ¶ 12, ECF No. 32.) Robert Kerr "provided 'consulting' services on Medicaid reimbursement issues [for] DDSN and its agents[,] and he was appointed by [Governor] McMaster as Director of DHHS in 2021." (Id. ¶ 13, ECF No. 32.) Althea Myers "is an employee of DHHS' Community Long Term Care Division. . . ." (Id. ¶ 14, ECF No. 32.) LCDSNB is the local agency responsible for operating Clinton Manor. (Id. ¶ 18, ECF No. 32.)

F. Motions Before the Court[7]

On November 23, 2021, the following motions were filed: (1) motion to dismiss for failure to state a claim by the SRHS Defendants (Bradley, SRHCS, UMC, and Dr. Washington); (2) motion to dismiss for failure to state a claim by Governor McMaster; and (3) motion to dismiss for failure to state a claim by Defendants Baker, Fry, Kerr, LCDSNB, Maley, Myers, DDSN, and DHHS. (Mots. Dismiss, ECF Nos. 41, 42, 43.) Plaintiffs filed responses in opposition on December 21, 2021. (Resp. Opp'n, ECF Nos. 46, 47, 48.) Defendants filed their replies on January 4, 2022 and January 7, 2022. (Replies, ECF Nos. 51, 52, 54.) This matter is now ripe for review.

[7] Plaintiffs' request for a hearing on these motions is denied. See Local Civil Rule 7.08 of the District of South Carolina. ("Hearings on motions may be ordered by the court in its discretion. Unless so ordered, motions may be determined without a hearing.").

II. DISCUSSION OF THE LAW

A. Legal Standard

To withstand a Rule 12(b)(6) motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). "The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully." Id. (internal quotation marks omitted). While a complaint "does not need [to allege] detailed factual allegations," pleadings that contain mere "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." Twombly, 550 U.S. at 555.

Further, while the court accepts plausible factual allegations made in the complaint as true and considers those facts in the light most favorable to a plaintiff in ruling on a motion to dismiss, a court "need not accept as true unwarranted inferences, unreasonable conclusions, or arguments." Eastern Shore Mkt's Inc. v. J.D. Assoc's, LP, 213 F. 3d 175, 180 (4th Cir. 2000). "Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." Iqbal, 556 U.S. at 678 (internal quotation marks omitted). Stated differently, "where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged–but it has not 'show[n]'–'that the pleader is entitled to relief.'" Id. at 679 (quoting Fed. R. Civ. P. 8(a)(2)).

B. Applicable Law

1. Title II of the Americans with Disabilities Act and § 504 of the Rehabilitation Act

The Plaintiffs allege violations of Title II of the ADA and Section 504 of the Rehabilitation Act. "Claims under the ADA's Title II and [Section 504] can be combined for analytical purposes because the analysis is 'substantially the same.'" Seremeth v. Bd. of Cnty. Comm'rs Frederick Cnty., 673 F.3d 333, 336 n.1 (4th Cir. 2012) (quoting Doe v. Univ. of Md. Med. Sys. Corp., 50 F.3d 1261, 1265 n.9 (4th Cir. 1995)); Halpern v. Wake Forest Univ. Health Sciences, 669 F.3d 454, 461 (4th Cir. 2012) ("To the extent possible, [the court will] construe [Title II] and [Section 504] to impose similar requirements."). Title II creates a remedy for "any person alleging discrimination on the basis of disability" and provides that the "remedies, procedures, and rights" available under Title II are the "remedies, procedures, and rights set forth in section 794a of [the Rehabilitation Act]." 42 U.S.C. § 12133. Section 794a of the Rehabilitation Act, in turn, provides that the available "remedies, procedures, and rights" are those set forth in Title VII of the Civil Rights Act. 29 U.S.C. § 794a(a)(1). To be eligible for any protection under the ADA, an individual must be disabled within the meaning of the Act. The ADA defines "disability" as "(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment." 42 U.S.C. § 12102(1). With regard to discrimination, 42 U.S.C. § 12132 states:

> Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

Additionally, under 42 U.S.C. § 12131(1), the definition of "public entity" means:

> (A) any State or local government;
> (B) any department, agency, special purpose district, or other instrumentality of State or States or local government; and
> (C) the National Railroad Passenger Corporation, and any commuter authority (as defined in section 24102(4) of Title 49).

With regard to nondiscrimination under Federal grants and programs under the Rehabilitation Act, 29 U.S.C. § 794 states:

> No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
> . . .

29 U.S.C. § 794(a). "[T]he term "program or activity" means all of the operations of--"

> (1) (A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or
> (B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;
> (2) (A) a college, university, or other postsecondary institution, or a public system of higher education; or
> (B) a local educational agency (as defined in section 7801 of Title 20), system of career and technical education, or other school system;
> (3) (A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—
> (i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or
> (ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or
> (B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

> (4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3); any part of which is extended Federal financial assistance.

29 U.S.C. § 794(b). The ADA does not require that public entities provide "services of a personal nature[,] including assistance in eating, toileting, or dressing." 28 C.F.R. § 35.135. However, those states that do elect to offer such services must provide them "in the most integrated setting appropriate to the needs of qualified individuals with disabilities." 28 C.F.R. § 35.130(d). This implementing regulation of the ADA is commonly referred to as the "integration mandate." See, e.g., Pashby v. Delia, 709 F.3d 307 (4th Cir. 2013).

An analogous provision exists for the Rehabilitation Act and requires recipients of federal funds to "administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons." 28 C.F.R. § 41.51(d). Because both the ADA and Section 504 impose the same integration requirements, the court will consider both of these claims together. Pashby v. Delia, 709 F.3d 307, 321(4th Cir. 2013) ("We consider their Title II and Section 504 claims together because these provisions impose the same integration requirements.").

To establish an ADA/Section 504 claim, a plaintiff must show that: (1) he has a disability; (2) he is "otherwise qualified to receive the benefits of a public service, program, or activity;" and (3) he was "denied the benefits of such service, program, or activity, or otherwise discriminated against, on the basis of [the] disability." Nat'l Fed. of the Blind v. Lamone, 813 F.3d 494, 502-03 (4th Cir. 2016). Further, a "plaintiff[] must propose a reasonable modification to the challenged public program that will allow [] the meaningful access they seek." Id. at 507;

see also 28 C.F.R. § 35.130(b)(7) ("A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability. . . .") "A modification is reasonable if it is 'reasonable on its face' or used 'ordinarily or in the run of cases' and will not cause 'undue hardship.'" Id. (citing Halpern, 669 F.3d at 464.

"To establish a prima facie retaliation claim under the ADA, plaintiffs must [show] (1) that they engaged in protected conduct, (2) that they suffered an adverse action, and (3) that a causal link exists between the protected conduct and the adverse action." A Soc'y Without a Name v. Virginia, 655 F.3d 342, 350 (4th Cir. 2011).

2. Violation of Constitutional Rights

Title 42, United States Code, Section 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

"To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law." Mills v. Greenville Cnty., 586 F. Supp. 2d 480, 485 (D.S.C. 2008) (citing West v. Atkins, 487 U.S. 42, 48 (1988)). To establish supervisory liability under § 1983, a plaintiff must show:

> (1) that the supervisor had actual or constructive knowledge that his subordinate was engaged in conduct that posed a pervasive and unreasonable risk of constitutional injury to citizens like the plaintiff; (2) that the supervisor's response to that knowledge was so inadequate as to show deliberate indifference to or tacit

> authorization of the alleged offensive practices; and (3) that there was an affirmative causal link between the supervisor's inaction and the particular constitutional injury suffered by the plaintiff.

Shaw v. Stroud, 13 F.3d 791, 799 (4th Cir. 1994) (citations omitted).

3. State Law Civil Conspiracy

Under South Carolina law, "a plaintiff asserting a civil conspiracy claim must establish (1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff." Paradis v. Charleston Cty. Sch. Dist., 861 S.E.2d 774, 780 (S.C. 2021). "The gravamen of the tort of civil conspiracy is the damage resulting to the plaintiff from an overt act done pursuant to a common design." Cricket Cove Ventures, LLC v. Gilland, 701 S.E.2d 39, 46 (S.C. Ct. App. 2010) (citing Vaught v. Waites, 387 S.E.2d 91, 95 (S.C. Ct. App. 1989) (overruled on other grounds by Paradis, 861 S.E.2d at 779)).

4. State Law Gross Negligence

"Gross negligence is defined as 'the failure to exercise slight care.'" Doe v. Greenville Cnty. School Dist., 651 S.E.2d 305, 309 (S.C. 2007) (quoting Steinke v. South Carolina Dep't of Labor, Licensing and Regulation, 520 S.E.2d 142, 153 (S.C. 1999)). "It has also been defined as the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do." Id. (internal quotation marks omitted). Gross negligence "is the absence of care that is necessary under the circumstances." Id.

5. Unjust Enrichment

"Unjust enrichment is an equitable doctrine which permits the recovery of that amount the defendant has been unjustly enriched at the expense of the plaintiff. " Dema v. Tenet Physician Servs.-Hilton Head, Inc., 678 S.E.2d 430, 434 (S.C. 2010). One seeking recovery for unjust enrichment must show "(1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value." Columbia Wholesale Co. v. Scudder May N.V., 440 S.E.2d 129, 130 (S.C. 1994). "The remedy for unjust enrichment is restitution." Inglese v. Beal, 403 S.E.2d 687 (S.C. Ct. App. 2013) (citing Sauner v. Pub. Serv. Auth. of S.C., 581 S.E.2d 161, 167 (S.C. 2003).

C. Motions to Dismiss

1. Defendant Governor McMaster's Motion to Dismiss, ECF No. 42

Governor McMaster has moved to dismiss all claims against him, both in his individual and official capacities.[8] (Mem. Supp. Mot. Dismiss 1-2, 4, ECF No. 42.)

[8] In paragraph 6 of the amended complaint, Plaintiffs state that Governor McMaster "is sued in his official capacity and his individual capacity." (Am. Compl. ¶ 6, ECF No. 32.) However, in the portion of the amended complaint setting forth Plaintiffs' specific allegation in support of the ADA and Section 504 causes of action, Plaintiffs state that Governor McMaster is sued "in his official capacity as Governor of the State of South Carolina." (Id. ¶140, ECF No. 32.). Further, since Plaintiffs have voluntarily dismissed the remaining claims against Governor McMaster as set forth more fully below, the court construes the amended complaint as only asserting ADA and Section 504 claims against Governor McMaster in his official capacity. See (Resp. Opp'n 11, ECF No. 47.) Further, Plaintiffs failed to respond to Governor McMaster's argument that these claims are redundant, or duplicative, to those asserted against the other agencies in this action. Thus, Plaintiffs have effectively conceded this point. Ferdinand-Davenport v. Children's Guild, 742 F. Supp. 2d 772, 777 (D. Md. 2010) (by failing to respond to defendant's argument with respect to discriminatory discharge claim, plaintiff abandoned her claim); Stenlund v. Marriott Int'l, Inc., 172 F. Supp. 3d 874, 887 (D. Md. 2016) ("In failing to respond to [defendant's] argument, Plaintiff concedes the point."); Brand v. N.C.

a. ADA/Section 504 Claim

Plaintiffs allege in the amended complaint that "governmental officials and entities may be sued for monetary damages in their official capacities for violations of the ADA and the Rehabilitation Act." (Am. Compl. ¶ 141, ECF No. 32.) Governor McMaster asserts that Plaintiffs have failed to state a claim upon which relief can be granted because: (1) he is not a program or activity under the Rehabilitation Act; (2) these claims against him are redundant because Plaintiffs have also sued the individual agencies; and (3) Plaintiffs' theory of this case has been rejected in previous cases. (Mem. Supp. Mot. Dismiss 8-9, ECF No. 42; Reply 3, ECF No. 51.)

The court finds that any claims brought against Governor McMaster in his official capacity as South Carolina Governor are duplicative of those alleged against the Office of the Governor. See Love-Lane v. Martin, 355 F.3d 766, 783 (4th Cir. 2004) (holding that the district court correctly dismissed plaintiff's claims against public officials in their official capacities as duplicative); see also Est. of Valentine by & through Grate v. South Carolina, C/A No. 3:18-00895-JFA, 2019 WL 8324709, at *8 (D.S.C. Aug. 6, 2019) ("[T]he ADA and § 504 Rehabilitation Act claims [against Joshua Baker, the agency head of SCDHHS] are duplicative of the claims against SCDHHS. Any judgment rendered against Baker in his official capacity as director of SCDHHS would be tantamount to a judgment against SCDHHS itself.

Dep't of Crime Control & Pub. Safety, 352 F. Supp. 2d 606, 618 (M.D.N.C. 2004); Campbell v. Rite Aid Corp., No. 7:13-CV-02638-BHH, 2014 WL 3868008, at *2 (D.S.C. Aug. 5, 2014) (unpublished) ("Plaintiff failed to respond to [defendant's] argument regarding causes of action 1 and 2, and the Court can only assume that Plaintiff concedes the argument.").

Thus, the Court dismisses the ADA and Section 504 claims against Defendant Baker in his official capacity."). Accordingly, these claims are dismissed.

b. Section 1983 and Civil Conspiracy Claims

In their response to Governor McMaster's motion to dismiss, Plaintiffs have requested "to file a third amended complaint to omit Defendant McMaster as a Defendant in the Second (Section 1983) and Third (Civil Conspiracy) Causes of Action." (Resp. Opp'n 11, ECF No 47.) The court construes this statement as voluntarily dismissing these claims pursuant to Rule 41 of the Federal Rules of Civil Procedure. Accordingly, these claims are dismissed.

2. Defendants SRHCS, UMC, Dr. Washington, and Bradley (collectively, the "SRHS Defendants") Motion to Dismiss, ECF No. 41[9]

The SRHS Defendants assert that the amended complaint should be dismissed because: (a) Plaintiffs failed to comply with the court's opinion and order, ECF No. 27, by failing to clarify the claims against each Defendant and the basis for each, (b) the SRHS Defendants had no lawful authority to make placement decisions for Matthew, (c) the civil conspiracy and gross negligence claims are barred by the statute of limitations, (d) Plaintiffs failed to comply with the South Carolina Medical Malpractice presuit requirements, and (e) the civil conspiracy and gross negligence claims are barred by the South Carolina Tort Claims Act because they are asserted against South Carolina employees. (Mem. Supp. Mot. Dismiss 2, ECF No. 41.)

[9] The amended complaint appears to be asserting a § 1983 claim against the SRHS Defendants. See (Am. Compl. ¶ 162, 167, ECF No. 32.) However, the SRHS Defendants have not moved to dismiss this claim, and the court will not address it herein.

a. Failure to Comply with Court Order

In the court's October 6, 2021, Opinion and Order, Plaintiffs were directed to file an amended complaint and to "plainly state in the first paragraph the specific defendants against whom that cause of action is asserted." (Opinion & Order, ECF No. 27.) Plaintiffs failed to fully comply with this directive. As a result, Plaintiffs have made the task of evaluating and responding to their claims unnecessarily difficult. Further, Plaintiffs' failures have saddled the court with attempting to divine against whom Plaintiffs are alleging claims. Plaintiffs' counsel is admonished that the continued failure to follow the court's orders may result in the involuntary dismissal of this action. See Fed. R. Civ P. 41(b) ("If the plaintiff fails . . . to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it."). However, the court is constrained to deny the SRHS Defendants' motion to dismiss on this basis at this time.

b. ADA/Section 504 Cause of Action - SRHCS and UMC

SRHCS and UMC argue the ADA/Section 504 cause of action should be dismissed because they "had no lawful authority to make placement decisions for Matthew . . . ," therefore, they were not in a position to deny benefits or otherwise discriminate against him. (Mem. Supp Mot. Dismiss 9, ECF No. 41.) SRHCS and UMC assert that the South Carolina Adult Health Care Consent Act lists ten categories[10] of persons who are authorized to make placement

[10] This list includes: (1) a guardian appointed by the court; (2) an attorney-in-fact appointed by the patient in a durable power of attorney; (3) a spouse of the patient; (4) an adult child of the patient; (5) a parent of the patient; (6) an adult sibling of the patient; (7) a grandparent of the patient; (8) any other adult relative by blood or marriage with a close personal relationship to the patient; (9) a person given authority to make healthcare decisions for the patient by another statutory provision; and (10) a person who has an established relationship with the patient. S.C. Code Ann. § 44-66-30(A).

decisions, and SRHCS and UMC, as acute health care hospitals, are not included in these categories. See S.C. Code Ann § 44-66-30(A). Further, the South Carolina Adult Health Care Consent Act forbids "a provider of health care services to the patient" from being a decision-maker. Id. § 44-66-30(A)(10). Therefore, the authority to determine and provide services in the least restrictive environment did not lie with the SRHS Defendants. Further, to the contrary, Plaintiffs affirmatively allege that DSS and DDSN had authority to determine and provide services to Matthew. (Am. Compl. ¶ 81, ECF No. 32); (Resp. Opp'n 4, ECF No. 48); S.C. Code Ann § 44-20-390(B) (requiring DDSN to develop a service plan for individuals under their care with an intellectual disability and "to review service plans . . . to ensure that appropriate services are being provided in the least restrictive environment available.").

In their response, Plaintiffs argue that, despite this statutory scheme and SRHCS' lack of decision-making authority, SRHS Defendants "ignore[] the fact that they unreasonably failed to provide him the liberties that even prisoners are granted . . . ." (Resp. Opp'n 3, ECF 46.) Plaintiffs also argue that SRHCS and UMC "arranged for Matthew to be transported to Laurens to visit Clinton Manor, but refused to [allow Matthew to] leave the hospital to attend school." (Resp. Opp'n 4, ECF No. 46.)[11] Further, Plaintiffs emphasize that they alleged that "[t]hese Defendants intentionally and with conscious indifference violated Title II of the Americans

[11] Plaintiffs also appear to argue, for the first time, in their response in opposition to the SRHS Defendants' motion to dismiss, that Matthew actually was transported to Clinton Manor. (Resp. Opp'n 4, ECF No. 46) ("After secretly transporting Matthew to Clinton Manor, without notice to his parents, as alleged in Paragraph 93 [of the amended complaint] . . . .") Paragraph 93 states as follows: "[t]hese Defendants schemed to sedate and chemically restrain Matthew **in preparation** for the transfer to Clinton . . . ." (Am. Compl. ¶ 93, ECF No. 32) (emphasis added). Nowhere in the amended complaint do Plaintiffs allege that Matthew was ever actually transported to Clinton Manor. To the contrary, Plaintiffs explicitly state that the transfer never occurred. (Id. ¶ 108, ECF No. 32) ("[A] state senator . . . halted the illegal transfer . . . .")

[w]ith Disabilities Act . . . and Section 504 of the Rehabilitation Act . . .[,] and Plaintiffs' rights protected by the Fourteenth Amendment. They 'intentionally and with conscious indifference to Matthew's and [Parkins'] rights,' refused to provide less restrictive services." (Resp. Opp'n 4, ECF No. 46.)

Pleadings that contain mere "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." Twombly, 550 U.S. at 555. Plaintiffs have failed to meet this "plausibility standard," as it requires "more than a sheer possibility that a defendant has acted unlawfully." Iqbal, 556 U.S. at 678. Further, Plaintiffs' repeated ambiguous allegations against "these defendants," in this cause of action against at least eleven defendants, fail to articulate a plausible claim against SRHCS and UMC.

The court finds that Plaintiffs have failed to set forth specific, plausible allegations that SRHCS and UMC had any involvement in making placement decisions or that any medical services provided to Matthew were more restrictive than an acute care hospital provides in the same or similar circumstances. Plaintiffs' vague allegations against the SRHS Defendants stand in direct contrast to Plaintiffs' detailed allegations describing the placement decisions made by DSS. See e.g. (Am. Compl. ¶ 38 ECF No. 32) ("Means [of DSS] refused to allow Matt to see Matthew."); (Id. ¶ 46, ECF No. 32) ("Means directed that Matthew be secluded in his room, with sitters bedside who were instructed not to allow Matthew to get out of the bed for any purpose.") Further, Plaintiffs have alleged that DDSN "was responsible for determining placement of all DDSN clients . . . ." (Id. ¶ 81, ECF No. 32) The amended complaint wholly fails to set forth any specific allegations that the SRHS Defendants "denied the benefits of [any] public service, program, or activity, or otherwise discriminated against [Matthew], on the basis

of [his] disability." Lamone, 813 F.3d at 502-03. Based on the foregoing, this claim is dismissed.

c. Statute of Limitations for the State Civil Conspiracy and Gross Negligence Causes of Action - Dr. Washington, UMC, and any "Roe" UMC Employees

The SRHS Defendants argue that Plaintiffs' state civil conspiracy and gross negligence claims are time barred by the two-year statute of limitations contained in the South Carolina Tort Claims Act ("SCTCA"). See S.C. Code Ann. § 15-78-110 ("[A]ny action brought pursuant to this chapter is forever barred unless an action is commenced within two years . . . ."); (Mem. Supp. Mot. Dismiss 11, ECF No. 41.) The SCTCA provides "the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents . . . ." S.C. Code Ann. § 15-78-20(b). "[A]n action for damages under the [SCTCA] may be instituted at any time within two years after the loss was or should have been discovered" unless a verified claim for damages was filed with the State. Id. § 15-78-100. If a verified "claim for damages was filed and disallowed or rejected an action for damages filed under this chapter, based upon the same occurrence as the claim, may be instituted within three years after the loss was or should have been discovered." Id. § 15-78-100. However, there is a longer statute of limitations for "persons under [a] disability." Id. § 15-3-40.

> If a person entitled to bring an action [under the SCTCA] . . . , is at the time the cause of action accrued either:
>
> (1) within the age of eighteen years; or
> (2) insane;
>
> the time of the disability is not a part of the time limited for the commencement of the action, except that the period within which the action must be brought cannot be extended:
>
> (a) more than five years by any such disability, except infancy; nor
> (b) in any case longer than one year after the disability ceases.

S.C. Code Ann. § 15-3-40. Plaintiffs filed the initial complaint on April 15, 2021, and alleged that the course of conduct giving rise to this action occurred between April 16, 2018 and May 23, 2018. (Not. Removal Ex. 1 (State Court Documents), ECF No. 1-1); (Am. Compl. ¶¶ 35-120, ECF No. 32.)

As to Matthew, the court finds that the provision contained in S.C. Code Ann. § 15-3-40, which extends the statute of limitations to seven years, is applicable because it is undisputed that he is mentally incompetent. Wiggins v. Edwards, 442 S.E.2d 169, 170 (S.C. 1994) ("Insanity or mental incompetency that tolls the statute of limitations consists of a mental condition which precludes understanding the nature or effects or one's acts, an incapacity to manage one's affairs, an inability to understand or protect one's rights, because of an over-all inability to function in society, or the mental condition is such as to require care in a hospital.") Accordingly, the court denies this portion of the motion to dismiss.

As to Parkins, the court finds that the two-year statute of limitations contained in S.C. Code Ann. § 15-78-110 is applicable because he does not qualify as "insane" under S.C. Code Ann. § 15-3-40. Further, there is no dispute that Plaintiffs did not file a "verified claim for damages" which would extend the statute of limitations to three-years. See S.C. Code Ann. §§15-78-100(a), 15-78-80. Accordingly, Parkins' claims for civil conspiracy and gross negligence are time barred. Thus, the court grants this portion of the motion and dismisses Parkins' third and fourth causes of action against the SRHS defendants.

In addition, the SRHS Defendants argue that Plaintiffs' civil conspiracy and gross negligence claims asserted against Dr. Washington and any John Roe and Jane Roe defendants

are barred by the SCTCA because they are state employees.[12] (Mem. Supp. Mot. Dismiss 13-14, ECF No. 41.) Under the SCTCA, a "governmental entity is not liable for a loss resulting from: . . . responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any student, patient, prisoner, inmate, or client of any governmental entity, except when the responsibility or duty is exercised in a grossly negligent manner." S.C. Code Ann. § 15-78-60(25) "Employee" means "any officer, employee, agent, or court appointed representative of the State or its political subdivisions, including elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of a governmental entity in the scope of official duty . . . ." S.C. Code Ann. § 15-78-30(c). An employee of a governmental entity is not liable for his actions individually or independently from his governmental employer when acting within the scope of his official duty. Id. § 15-78-70(a).

The SCTCA contains an exception to this limitation on liability if the "employee conduct [occurred] outside the scope of his official duties or [the conduct] constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude." Id. § 15-78-60(17). "Scope of official duty" or "scope of state employment" is defined as "(1) acting in and about the official business of a governmental entity and (2) performing official duties." Id. § 15-78-30(I). "The provisions . . . establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the State." Id. § 15–78–20(f); see also

[12] It is undisputed that SRHCS and UMC are government entities and that Dr. Washington is an employee of a public entity.

Wade v. Berkeley Cnty., 498 S.E.2d 684 (S.C. Ct. App. 1998) (noting that section 15-78-20(f) limits coverage to employees acting within the scope of official duty).

With respect to their civil conspiracy and gross negligence claims against Dr. Washington and the "Roe" Defendants, Plaintiffs have alleged that "[t]he actions of Washington . . . were willful, hostile[,] and outrageous and were outside the scope of their duties and [] in complete disregard for Plaintiffs' rights." (Am. Compl. ¶ 208, ECF No. 32); (Id. ¶ 200, ECF No. 32) ("[T]hey were able to inflict their evil agenda upon Plaintiffs and did so outside the scope of their own employment in an intentional and malicious manner . . . ."). Further, Plaintiffs allege that Defendants Baker, Kerr, Myers, Maley, Hill, Means, Dr. Washington, and Bradley conspired to "illegally force Matthew into Clinton Manor without a court order," and "schemed to chemically restrain Matthew for the convenience of staff and restricted visitation with his family in order to isolate and seclude him until their mission of incarcerating him at Clinton Manor was accomplished." (Id. ¶¶ 196-198, ECF No. 32.) Plaintiffs allege that any "Roe" Defendants also participated in the conspiracy to institutionalize Matthew. (Id. ¶ 22, ECF No. 32.) However, as Plaintiffs admit, Matthew was released from UMC to his family and was not transferred to Clinton Manor. (Id. ¶ 113, ECF No. 32.)

The amended complaint alleges torts committed by Dr. Washington while acting within the scope of her official duty as a physician. See (Id. ¶¶ 62-65, 67, 77, 93, ECF No. 32.) However, the court finds that any conclusory allegation that Dr. Washington, as a physician, was acting outside the scope of her official duties to further some "evil agenda" while providing medical treatment to Matthew to be implausible. (Am. Compl. ¶ 200, ECF No. 32.) There are

no allegations asserted against Dr. Washington that could plausibly be read as asserting conduct outside the scope of her official duties. Accordingly, the court finds S.C. Code Ann. § 15-78-70(a) applicable and dismisses Plaintiffs' civil conspiracy and gross negligence causes of action as to Dr. Washington.

Further, Plaintiffs failed to respond to SRHS Defendants' argument that any UMC "Roe" employees were acting within the scope of their employment. Therefore, Plaintiffs have conceded these arguments. Accordingly, the civil conspiracy and gross negligence claims are also dismissed as to any "Roe" Defendants.

d. Civil Conspiracy, Gross Negligence, and Unjust Enrichment - SRHCS, UMC, Jan Bradley

The SRHS Defendants also argue that Plaintiffs' civil conspiracy, gross negligence, and unjust enrichment causes of action sound in medical malpractice and should therefore be dismissed because Plaintiffs failed to comply with the medical malpractice presuit requirements contained in S.C. Code Ann. §§ 15-79-125 and 15-36-100. (Mot. Dismiss 15, ECF No. 41.) In addition, as an alternative basis for dismissal, the SRHS Defendants also argue that Plaintiffs' civil conspiracy cause of action should be dismissed "[b]ecause [n]o [d]amages were [c]aused to Plaintiffs as a [r]esult of the [a]lleged [u]nlawful [a]cts." (Id. 14, ECF No. 41.)

i. Medical Negligence Claim

Plaintiffs allege that UMC, DDSN, and DHHS, were grossly negligent by

> failing to contact Matthew's treating physicians during the investigation and in the process of admitting Matthew to Clinton Manor, failing to comply with applicable state and federal standards of care[,] and failing to obtain a PASARR[13] and to determine whether institutionalization could be avoided by providing specialized services; diverting funds allocated to provide in-home services for other, unauthorized purposes and filing inflated cost reports with the federal government; and failing to comply with S.C. Code of Laws Ann. 44-20-450, which required due process and a court order to involuntarily admit Matthew to Clinton Manor.

(Am. Compl. ¶ 205, ECF No. 32.) Further, Plaintiffs allege that Jan Bradley and Dr. Washington, "were grossly negligent and violated applicable standards of care of their **professions** in the treatment provided at UMC."[14] (Id. ¶ 206, ECF No. 32.) (emphasis added). With respect to civil conspiracy, Plaintiffs allege that Defendants Baker, Kerr, Myers, Maley, Hill, Means, Dr. Washington, and Bradley conspired to "illegally force Matthew into Clinton Manor without a court order," and "schemed to chemically restrain Matthew for the convenience of staff[,] and restricted visitation with his family in order to isolate and seclude him until their mission of incarcerating him at Clinton Manor was accomplished." (Id. ¶¶ 197-198, ECF No. 32.)

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[13] A PASARR is a Preadmission Screening and Resident Review that is "conducted by DHHS." (Am. Compl. ¶ 56, ECF No. 32.) It is a program operated pursuant to federal law "which requires preadmission screening of all individuals with mental illness or 'mental retardation' (intellectual disabilities)." (Id. n.2, ECF No. 32.) Plaintiffs allege that "[t]he purpose of this screening is to prevent institutionalization and to determine whether specialized services could prevent institutionalization." (Id., ECF No. 32.)

[14] The SRHS Defendants assert, and the Plaintiffs have not alleged or argued otherwise, that Jan Bradley is not an employee of SRHCS or UMC. (Reply 6, ECF No. 54.)

As an initial matter, Plaintiffs have asserted factual allegations that are misleading because Matthew was never admitted or even transported to Clinton Manor. Further, Plaintiffs' allegations of misappropriation of funds with respect to in-home services, obtaining a PASSAR, filing inflated cost reports, and decisions regarding institutionalization of Matthew at Clinton Manor do not plausibly involve any of the SRHS Defendants.

Plaintiffs argue in opposition that the claims against the SRHS Defendants are not subject to the presuit requirements because the SCTCA is the sole remedy for actions against governmental entities, hence the presuit requirements applicable to medical negligence claims are inapplicable. (Resp. Opp'n 7-15, ECF No. 46.) Additionally, Plaintiffs argue that the following allegations in the amended complaint raise ordinary negligence claims, as opposed to medical negligence; thus, no expert testimony is needed:

> 85. In preparation for this illegal transfer, Defendants sedated Matthew, secluded him in the hospital room, restrained him from getting out of bed and prevented him from freely communicating and visiting with his family, friends and his treatment team.
>
> 86. Matthew was left nearly naked in a hospital bed during this thirty-three day confinement, dressed only in a short-sleeved t-shirt and a diaper for the convenience of staff, with his pubic hairs visible to persons passing by his door.
>
> 99. Means, Washington, Bradley, Maley and employees of the DHHS, DDSN, UMC and the LCDSNB Board made final arrangements to transfer Matthew to Clinton Manor on Friday, May 11, "or at the latest, Monday, May 14 "- without initiating involuntary commitment proceedings in the probate or family court, prior to a Guardian Ad Litem being appointed in the pending DSS proceedings.

(Resp. Opp'n 15, ECF No. 46); (Am. Compl. ¶¶ 85-86, 99, ECF No. 32.) As an initial matter, it is unclear to which Defendants paragraph 85 refers. Clearly, the decision whether to administer medication to sedate a patient is alleging negligent medical care and would require expert testimony. Dawkins v. Union Hosp. Dist., 758 S.E.2d 501, 505 (S.C. 2014)

("While providing medical services to a patient, the medical professional acts in his professional capacity and must meet the professional standard of care, as established by expert testimony.").

Additionally, Plaintiffs have alleged that Matthew, a severely disabled man, requires a wheelchair for locomotion, and otherwise can only move about by "crawling or 'scooting' on the floor . . . ." (Id. ¶ 34, ECF No. 32.) Accordingly, the decision to restrain Matthew was part of his medical treatment, which required clinical judgment. See S.C. Code Ann. § 15-79-110(6) ("Medical malpractice" is defined as "doing that which the reasonably prudent health care provider or health care institution would not do or not doing that which the reasonably prudent health care provider or health care institution would do in the same or similar circumstances."). Further, Plaintiffs alleged earlier in the complaint that Means "directed that Matthew be secluded in his room, with sitters bedside who were instructed not to allow Matthew to get out of the bed for any purpose," and "prohibited any family member from visiting Matthew . . . ." (Am. Compl. ¶¶ 46, 59, ECF No. 32.) Accordingly, this allegation is not attributable to the SRHS Defendants.

With respect to paragraph 86, this alleged conduct asserts, at most, negligence, and does not rise to the level of gross negligence. To the extent that paragraph 99 can even be construed as applying to actions taken by the SRHS Defendants, this conduct relates to medical care. Further, as previously discussed, the South Carolina Adult Health Care Consent Act forbids "a provider of health care services to the patient" from being a decision-maker with respect to placement decisions. Id. § 44-66-30(A)(10).

Plaintiffs fail to assert any specific allegations with respect to their gross negligence, civil conspiracy, and unjust enrichment claims that any SRHS Defendants' agent or employee

undertook any actions which were not related to or directly involving the care and medical treatment of Matthew. In fact, with respect to Plaintiffs' unjust enrichment claim, Plaintiffs argue in their response in opposition that this claim is based on the premise that "these defendants should not be allowed to retain payment for the grossly negligent services provided." (Resp. Opp'n 15, ECF No. 46) (emphasis added).

Upon review of the amended complaint, at best, Plaintiffs are attempting to assert a claim alleging grossly negligent medical care against the SRHS Defendants. See Dawkins, 758 S.E.2d at 504 (explaining that if the patient is "[alleging] negligent professional medical care, then expert testimony as to the standard of that type of care is necessary," but if the patient receives "nonmedical, administrative, ministerial, or routine care," expert testimony is not required because the action sounds in ordinary negligence).

ii. Government Health Care Facilities

Plaintiffs also argue that the South Carolina Noneconomic Damages Awards Act ("SCNDAA"), limiting recovery for noneconomic damages in medical malpractice actions, does not include "Government Health Care Facilities" in its definitions; therefore, the presuit requirements do not apply to them. (Resp. Opp'n 9-10, ECF No. 46.) As discussed more fully below, this contention is without merit because the presuit provisions supplement those contained in the SCTCA. Further, although the SCNDAA does not include a specific definition for "Government Health Care Facilities," it does include broad definitions for "Health care institution," "Health care provider," and "Hospital." S.C. Code Ann. § 15-32-210(4)-(6). These terms are intentionally broad because the SCNDAA, unlike the SCTCA, applies to both public and private entities.

iii. Presuit Requirements to Filing a Medical Malpractice Claim

Before filing a medical malpractice lawsuit in South Carolina, a plaintiff must comply with several mandatory pleading and presuit requirements. A plaintiff must "file a Notice of Intent to File Suit and an affidavit of an expert witness," and must participate in presuit mediation. S.C. Code Ann. § 15-79-125. These requirements were enacted in order to "provide an informal and expedient method of culling prospective medical malpractice cases by fostering the settlement of potentially meritorious claims and discouraging the filing of frivolous claims." Ross v.Waccamaw Cmty. Hosp., 744 S.E.2d 547, 550 (S.C. 2013). If these requirements are met and the lawsuit is filed, a plaintiff must then file "an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim . . . ." S.C. Code Ann. § 15-36-100(B). "Medical doctors" are listed as one of the professions to which the section applies. Id. § 15-36-100(G)(7). "Medical malpractice" is defined as "doing that which the reasonably prudent health care provider or health care institution would not do or not doing that which the reasonably prudent health care provider or health care institution would do in the same or similar circumstances." Id. § 15-79-110(6). "If a claim fails to satisfy these requirements and does not fall into an applicable exception, it must be dismissed for failure to state a claim." Duckett v. SCP 2006-C23-202, LLC, 225 F. Supp. 3d 432, 437 (D.S.C. 2015).

Plaintiffs concede that these provisions were not satisfied, but contend that these presuit requirements do not apply to claims against governmental entities covered under the SCTCA. (Resp. Opp'n 7-8, ECF No. 46.) The parties have not cited any precedential case law considering the exact issue raised in this action: whether a plaintiff is required to comply with

the statutory presuit requirements of Sections 15-36-100 and/or 15-79-125 when asserting a gross medical negligence cause of action against a government medical institution and physician employee covered under the SCTCA.[15]

In Ranucci v. Crain, the South Carolina Supreme Court analyzed the notice of intent to file suit requirements in section 15-79-125(A) and the expert affidavit requirements in section 15-36-100 to determine whether the notice of intent to file suit requirement extended the time to file the expert witness affidavit. 763 S.E.2d 189 (S.C. 2014). The court held that it did and concluded that "the General Assembly sought to promote tort reform by creating a more efficient process in resolving **all professional negligence** cases by enacting 15-36-100." Ranucci, 763 S.E.2d at 193 (emphasis added)

In addition, the SCTCA contains the following provision: "[t]he State, an agency, a political subdivision, and a governmental entity are liable for their torts **in the same manner** and to the same extent as a private individual under like circumstances . . . ." S.C. Code Ann. § 15-78-40 (emphasis added). Section 15–78–50(b) provides, "[i]n no case is a governmental entity liable for a tort of an employee where that employee, if a private person, would not be liable under the laws of this State." Further, section 15-78-220 of the SCTCA provides that "[t]he provision of Act 32 of 2005 [which includes the presuit requirements] do not affect any right, privilege, or provision of the [SCTCA] . . . ." S.C. Code Ann. §15-78-220. "Accordingly, the Legislature clearly intended to limit government liability through the Tort Claims Act, and at

[15] The court denies Plaintiffs' request to certify this issue to the South Carolina Supreme Court. (Resp. Opp'n 15, ECF No. 46.) In addition, the court finds that a hearing would not assist the court in considering this issue.

no time did the Legislature intend government liability to exceed that of a private entity." Kerr v. Richland Mem'l Hosp., 678 S.E.2d 809, 810 (S.C. 2009). In Kerr, although not specifically dealing with the presuit requirements, the South Carolina Supreme Court concluded that the medical malpractice statute of repose, set forth in S.C. Code Ann. § 15-3-545(A), applies to actions against government entities under the SCTCA. 678 S.E.2d at 810. The court reasoned that to find otherwise would result in government entity liability exceeding that of a private entity. Id. at 811. Likewise, to exempt medical malpractice cases under the SCTCA from the presuit requirements would in effect expand government liability through the SCTCA, which is contrary to the legislative intent of the SCTCA.

Further, the South Carolina Court of Appeals noted, in Bennett v. Lexington Cnty. Health Servs. Dist., Inc., No. 2015-UP-305, 2015 WL 3884262, at * 3 (S.C. Ct. App. Jun. 24, 2015) (unpublished), that compliance with the medical malpractice presuit requirements was required in a case covered by the SCTCA, finding that the plaintiff had sufficient time "to obtain the requisite physician affidavit before filing suit" in order to comply with the SCTCA's statute of limitations.[16]

In addition, other federal district courts within the District of South Carolina have considered the South Carolina presuit requirements in the context of professional medical negligence claims under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. § 2671, et seq.

[16] Plaintiffs cite Grubb v. Clarendon Mem'l Hosp., C/A 2009-CP-14-439 (S.C. Court of Common Pleas Aug. 31, 2011), an unpublished state trial court decision, to support their position. The court finds that case distinguishable and declines to follow its reasoning. Further, that case was decided prior to several of the cases cited above.

See Delaney v. United States, 260 F. Supp. 3d 505, 510 (D.S.C. 2017) (finding that "a medical malpractice claim masquerading as an ordinary negligence claim" was subject to the presuit requirements in an action brought under the Federal Tort Claims Act); Chappie v. United States, No. 8:13-CV-1790-RMG, 2014 WL 3615384, at *1 (D.S.C. July 21, 2014), aff'd, 585 F. App'x 113 (4th Cir. 2014) ("Defendant is entitled to summary judgment on Plaintiff's claim under the Federal Tort Claims Act for medical negligence because Plaintiff has not complied with South Carolina's expert affidavit requirement, S.C. Code §§ 15-36-100 and 15-79-125.")

The court finds the FTCA cases requiring compliance with the medical negligence presuit requirements persuasive. Like the SCTCA, the FTCA contains a limited waiver of the government's sovereign immunity, and provides that "[t]he remedy against the United States [under the FTCA] for injury or loss of property, or personal injury or death arising or resulting from the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment is exclusive of any other civil action . . . ." 28 U.S.C. § 2679(b)(1), accord S.C. Code Ann. § 15-78-200 ("[The SCTCA] is the exclusive and **sole remedy** for any tort committed by an employee of a government entity while acting within the scope of the employee's official duty." (emphasis added)). In addition, like the SCTCA, the FTCA requires a plaintiff to establish the government's liability "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); S.C. Code Ann. § 15-78-40.

Based on the foregoing, the court finds that compliance with the presuit requirements is necessary in a medical negligence action against a government entity under the SCTCA.

Accordingly, having found that the gross negligence, civil conspiracy, and unjust enrichment claims sound in medical negligence, the court grants the SRHS Defendants' motion to dismiss the gross negligence, civil conspiracy, and unjust enrichment claims for failure to comply with the presuit requirements set forth in S.C. Code Ann. §§ 15-79-125;15-36-100(B).[17]

iv. Jan Bradley

As to Jan Bradley, the court finds that the Plaintiffs have failed to satisfy the pleading requirements. The allegations asserted against her are conclusory and merely recite the threadbare elements of the cause of action. See, e.g., (Am. Compl. ¶ 206, ECF No. 32) ("Bradley. . . [was] grossly negligent and violated applicable standards of care of [her] profession[] in the treatment provided at UMC.") Further, there are no specific allegations about how she participated in any conspiracy. Additionally, as there is no dispute that she is not a government employee, the presuit requirements clearly apply, as Plaintiffs are alleging professional negligence relating to the care that Matthew received at UMC, and the requirements were not met. Accordingly, the civil conspiracy and gross negligence claims are dismissed.

[17] The claims asserted against Dr. Washington have been dismissed pursuant to S.C. Code Ann. § 15-78-70(a) because she is a state employee and Plaintiffs failed to plausibly allege that she was acting outside the scope of her official duties. However, Plaintiffs' claims against Dr. Washington for gross negligence and civil conspiracy are also subject to dismissal for failure to comply with the medical malpractice presuit requirements.

3. Defendants Baker (DHHS Director from 2017-2021), Kerr (Current DHHS Director), Myers (DHHS Employee), Maley (Former Interim DDSN Director from November 2017-July 2018), Fry (Current Director of DDSN), DDSN, DHHS, and LCDSNB's Motion to Dismiss, ECF No. 43

a. ADA/Section 504 Claim

Defendants DHHS, DDSN, LCDSNB, Kerr, in his official capacity, and Fry, in her official capacity, argue that Plaintiffs' ADA/Section 504 cause of action fails to state a claim because Matthew never resided at Clinton Manor; therefore, he suffered no harm as a result of any alleged conspiracy. Specifically, DHHS, DDSN, LCDSNB, Kerr, and Fry argue that DHHS, DDSN, and LCDSNB lacked decision-making authority over Matthew and undertook no actions adversely affecting him. (Mem. Supp. Mot. Dismiss 6-8, ECF No. 43-1.)

Plaintiffs allege in the amended complaint that DDSN, DHHS, and LCDSNB conspired with UMC and DSS "to place Matthew in the most restrictive setting in the DDSN system . . . ." (Am. Compl. ¶ 149, ECF No. 32); see also (Id. ¶ 155, ECF No. 32) ("These Defendants participated in a conspiracy to place Matthew in an ICF/ID, rather than complying with the ADA and Section 504 by providing services in his own home . . . .") As a result, Plaintiffs allege that "Matthew was chemically restrained with psychotropic drugs, he suffered physical restraints, mental and physical pain, and both he and his father experienced anxiety and fear in violation of their rights . . . ." (Id. ¶ 154, ECF No. 32.) It is further alleged that Matthew is a DDSN client, and Maley, as interim director of DDSN, is "responsible for determining the placement of DDSN clients . . . ." (Id. ¶¶ 29,178, ECF No. 32.) Finally, Plaintiffs allege that "'[t]hese Defendants' intentionally, and/or with conscious indifference to Plaintiffs' rights, retaliated against Matt and Matthew in violation of Section 503 (42 U.S.C. § 12203) of the ADA, which

prohibits retaliation against an individual who has opposed any act or practice made unlawful by the Act's anti-discrimination provisions." (Id. ¶ 156, ECF No. 32.)

In Plaintiffs' response to the motion to dismiss, ECF No. 43-1, Plaintiffs' state that "[t]he retaliation referred to in Paragraph 156 refers to the DSS Defendants[,] and Plaintiffs, with the consent of Defendants, agree to file an amended complaint so stating." (Resp. Opp'n 7, ECF No. 48.) This issue is precisely why the court ordered Plaintiffs to "plainly state in the first paragraph the specific defendants against whom that cause of action is asserted." (Opinion & Order, ECF No. 27.) Nevertheless, this retaliation claim is dismissed. Plaintiffs fail to assert either what protected conduct Plaintiffs engaged in or a causal link between any protected conduct and any adverse action taken by any of the Defendants. See A Soc'y Without A Name, 655 F.3d at 350. Therefore, Plaintiffs have plainly failed to state a claim for retaliation under the ADA, and the retaliation claim is dismissed.

Defendants DHHS, DDSN, and LCDSNB assert that the ADA/Section 504 claim fails because they were not in any way involved in "physically and chemically" restraining Matthew, nor were they involved in any placement decisions, as they had no authority to make decisions regarding Matthew's placement or treatment during the period covered by the amended complaint. (Mem. Supp. Mot. Dismiss 6-7, ECF No. 43-1.) To establish an ADA/Section 504 claim, a plaintiff must show that: (1) he has a disability; (2) he is "otherwise qualified to receive the benefits of a public service, program, or activity;" and (3) he was "denied the benefits of such service, program, or activity, or otherwise discriminated against, on the basis of [the] disability." Nat'l Fed. of the Blind v. Lamone, 813 F.3d 494, 502-03 (4th Cir. 2016).

It is undisputed that Matthew has a disability. In the amended complaint, Plaintiffs alleged that Matthew was receiving care at home under the ID/RD Medicaid waiver program operated by DDSN, under contract with DHHS, prior to being admitted to the hospital. (Am. Compl. ¶ 29, ECF No. 32.) Plaintiffs allege that while in the hospital, Matthew received care in an unnecessarily restrictive setting, and that DDSN and DHHS planned to send him to another facility that was also unnecessarily restrictive. See e.g., (Id. ¶¶ 93, 180, ECF No. 32); (Mem. Supp. Mot. Dismiss 3, ECF 43-1.) Plaintiffs have alleged that Matthew was eligible and qualified to receive care at home. (Id. ¶ 155, ECF No. 32.) Further, Plaintiffs have alleged that Matthew was denied the benefit of receiving care at home in order to divert funds to other programs. (Id. ¶¶ 82, 157, ECF No. 32.)

As to DDSN, the Plaintiffs have sufficiently alleged that the agency, acting through its interim director, Maley, had statutory authority to make placement decisions for DDSN clients. Further, Plaintiffs allege that DDSN violated its own policies by "failing to provide notice to Matthew's family of the intent to admit Matthew. . . ." (Id. ¶ 100, ECF No. 32.) As to DHHS, it is alleged that they were responsible for completing the PASSAR for DDSN to use in making placement decisions, and that it failed to complete the PASSAR in a timely manner. (Id. ¶ 56, 187, ECF No. 32.) As to LCDSNB, Plaintiffs have alleged that it participated in the conspiracy to send Matthew to Clinton Manor. (Am. Compl. ¶ 79, ECF No. 32.) Based on the foregoing, the motion to dismiss is denied in regards to the ADA/Section 504 claim asserted against DDSN, DHHS, and LCDSNB.

b. Duplicative

Defendants argue that Plaintiffs' ADA and Section 504 Rehabilitation claims against agency heads Kerr and Fry must be dismissed as duplicative because the agencies have also been named as Defendants. (Mem. Supp. Mot. Dismiss 10, ECF No. 43-1.) At the outset, Plaintiffs have not clearly identified the defendants against whom they are asserting this claim. In the amended complaint, Plaintiffs appear to list Kerr and Fry, in their official capacities, as defendants against whom they are asserting ADA and Section 504 Rehabilitation claims. (Am. Compl. ¶ 140, ECF No. 32.) However, in responding to the SRHS Defendants' argument that the complaint should be dismissed for failure to comply with the court's October 6, 2021 order, requiring the amended complaint to clearly state in the first paragraph the name(s) of the defendant(s) in each cause of action, Plaintiffs state that:

> Plaintiffs respectfully request permission to file an amended complaint to include this information below the heading of each cause of action, as such:
>
> **FIRST CAUSE OF ACTION**
>
> **Violation of the Americans with Disabilities Act and the Rehabilitation Act**
>
> **(Henry McMaster, Michael Leach, DSS, DHHS, DDSN, LCDSNB, SRHCS and UMC)**
>
> This amendment would not require the paragraph numbers to be changed.

(Resp. Opp'n 2, ECF No. 46.) Thus, Plaintiffs appear to concede any ADA and Section 504 claims against Kerr, Fry, Baker, and Maley.[18] However, Plaintiffs dedicated several pages in

[18] It is unclear whether Plaintiffs have attempted to assert an ADA/Section 504 claim against Baker or Maley. While Plaintiffs did not include them in their amendment above, or in paragraph 140 in the amended complaint, Plaintiff references Baker and Maley in other paragraphs under this cause of action. (Am. Compl. ¶ 152-153, ECF No. 32.)

response to the motion to dismiss filed by Kerr and Fry to the argumant that these claims against Kerr and Fry are not duplicative. (Resp. Opp'n 7-10, ECF No. 48.)

Notwithstanding these inconsistencies, the court finds that any claims brought against Kerr, Fry, Baker, or Maley in their official capacities as directors are duplicative of those alleged against the agencies themselves. See Love-Lane v. Martin, 355 F.3d 766, 783 (4th Cir. 2004) (holding that the district court correctly dismissed plaintiff's claims against public officials in their official capacities as duplicative); see also Est. of Valentine by & through Grate v. South Carolina, C/A 3:18-00895-JFA, 2019 WL 8324709, at *8 (D.S.C. Aug. 6, 2019) ("[T]he ADA and § 504 Rehabilitation Act claims [against Joshua Baker, the agency head of SCDHHS] are duplicative of the claims against SCDHHS. Any judgment rendered against Baker in his official capacity as director of SCDHHS would be tantamount to a judgment against SCDHHS itself. Thus, the Court dismisses the ADA and § 504 claims against Defendant Baker in his official capacity."). Accordingly, these claims are dismissed.

c. § 1983 Claims - Baker (former DHHS Director), Myers (DHHS Employee), and Maley (Interim DDSN Director)

Once again, it is exceedingly difficult to discern against whom, and in what capacity, this § 1983 claim is asserted. See (Am. Compl. ¶164, ECF No. 32) ("Defendants Hill, Means, Baker, Myers, and Maley . . . are sued in their individual capacities. . . ."); (Id. ¶ 12, ECF No. 32) ("Joshua Baker was the director of DHHS . . . . He is sued in his individual capacity."); (Id. ¶ 16, ECF No. 32) ("Patrick Maley was the interim director of DDSN . . . . He is sued in his individual capacity."); but see (Id. ¶ 177, ECF No. 32) ("Washington, Bradley, Hill, Means, Maley, and Baker are sued in their official and individual capacities . . . .").

The court construes Plaintiffs' amended complaint as asserting a § 1983 claim against Baker, Myers, and Maley in their individual capacities.

Baker, Myers, and Maley argue that Plaintiffs failed to state a claim under § 1983 "because [the amended complaint] does not plausibly allege that any of these Defendants harmed, or were in a position to harm, Plaintiffs in the past, nor does it allege a likelihood of future harm requiring prospective relief." (Mot. Dismiss 12, ECF No. 43-1.) However, Plaintiffs have alleged that Maley and Baker conspired "to institutionalize DDSN clients so as to divert funds that had been allocated by the General Assembly and the federal government for in-home services . . . ." (Am. Compl. ¶ 82, ECF No. 32.) Plaintiffs allege that Maley, Baker, and Myers "violated Plaintiffs' right to be free from seizure by participating, either directly or indirectly, in seizing and holding Matthew in unconstitutional conditions, after the examination by P.A. [Janet Leahy] Wilson failed to reveal any evidence of intentional abuse or neglect." (Id. ¶ 167, ECF No. 32.)

In addition, it is alleged that Maley and Baker "had actual or constructive knowledge of unconstitutional conditions of confinement that posed a 'pervasive and unreasonable risk' of constitutional injury . . . ." (Id. ¶ 177, ECF No. 32.) Further, Plaintiffs allege that Maley and Baker, as agency directors, violated Plaintiffs' procedural and due process rights by failing to (1) provide Parkins with "notice of the termination of IR/RD waiver eligibility;" (2) obtain a PASSAR; (3) "comply with the notice and fair hearing requirements of the Medicaid Act;" and (4) initiate involuntary commitment proceedings before approving Matthew's transfer to Clinton Manor. (Id. ¶¶ 83, 99, 164, 191, ECF No. 32.) At a minimum, Plaintiffs have sufficiently pled "(1) that a right secured by the Constitution or laws of the United States was violated, and

(2) that the alleged violation was committed by a person acting under the color of state law." Mills v. Greenville Cnty., 586 F. Supp. 2d 480, 485 (D.S.C. 2008) (citing West v. Atkins, 487 U.S. 42, 48 (1988)). Accordingly, the motion is denied as to Maley and Baker.

Althea Myers is mentioned by name just three times throughout the thirty-six paragraphs setting forth grounds for relief in this cause of action. See (Am. Compl. ¶¶ 159-194, ECF No. 32.) It is not enough, especially here with over twenty defendants, to simply refer to "these defendants" when setting forth plausible allegations. Simply put, the facts pleaded against Myers "do not permit the court to infer more than the mere possibility of misconduct. . . ." Iqbal, 556 U.S. at 679. Accordingly, the §1983 claim against Myers is dismissed.

d. Civil Conspiracy - Defendants Baker, Kerr, Myers

Plaintiffs have alleged that Baker, Kerr, and Myers, and at least five other defendants conspired "to illegally force Matthew and other DDSN clients into the most restrictive and expensive placements in the DDSN system. . . ." (Am. Compl. ¶ 196, ECF No. 32.) Plaintiffs have further alleged that "McMaster, Baker, Kerr and Maley conspired to divert funds allocated by the General Assembly for in-home supports for illegal purposes, forcing Matthew and others like him into profitable ICF/ID and other congregate DDSN facilities. . . ." (Id. ¶ 199, ECF No. 32.) However, Matthew was never admitted to Clinton Manor as a resident. (Id. ¶¶ 108, 198, ECF No. 32.) As a result, Baker, Kerr, and Myers assert that this cause of action should be dismissed because Plaintiffs have failed to plausibly allege an essential element of the claim, "damages proximately resulting to the plaintiff." (Mem. Supp. Mot. Dismiss. 17, ECF No. 43-1.)

The elements of a civil conspiracy claim are: "(1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff." Paradis, 861 S.E.2d at 780. Plaintiffs have alleged that Baker, Kerr, and Myers participated in a scheme "to illegally force Matthew . . . into the most restrictive" setting "in the DDSN system, while failing to inform families of feasible alternatives and to provide necessary in-home support[]." (Am. Compl. ¶ 196, ECF No. 32.) Further, it is alleged that "'these Defendants schemed to chemically restrain Matthew for the convenience of staff . . . in order to isolate and seclude him until their mission of incarcerating him at Clinton Manor was accomplished." (Id. ¶ 198, ECF No. 32.)

In addition, it is alleged that Myers conspired with others "to violate the rights of Matthew and [Parkins] to due process, privacy and family unity and parental control by making false allegations . . . in the DSS investigation . . . ." (Id. ¶ 197, ECF No. 32.) Although inartfully articulated, Plaintiffs appear to allege that Kerr, Baker, and Myers conspired with others to cause Matthew to suffer damages due to his continued and unnecessary confinement in the hospital as a result of their improper attempt to have Matthew admitted to Clinton Manor. (Id. ¶¶ 196-99, 201, ECF No. 32.) Accordingly, the motion is denied as to the civil conspiracy claim asserted against Kerr, Baker, and Myers.[19]

[19] Maley did not move to dismiss the civil conspiracy claim. (Mem. Supp. Mot. Dismiss 15, ECF No. 43-1) ("Moving Defendants Baker, Kerr[,] and Meyers."). Accordingly, the court does not address the civil conspiracy claim against Maley.

e. Gross Negligence - DHHS and DDSN

Plaintiffs' gross negligence cause of action contains 18 subparagraphs alleging specific acts or omissions on the part of DSS. (Am. Compl. ¶ 204(1)-(18). In regard to DHHS and DDSN, Plaintiff asserts that those two agencies had a special relationship with Matthew and that

> DDSN, DHHS and UMC were grossly negligent in failing to contact Matthew's treating physicians during the investigation and in the process of admitting Matthew to Clinton Manor, failing to comply with applicable state and federal standards of care and failing to obtain a PASARR and to determine whether institutionalization could be avoided by providing specialized services; diverting funds allocated to provide in-home services for other, unauthorized purposes and filing inflated cost reports with the federal government; and failing to comply with S.C. Code of Laws Ann. 44-20-450, which required due process and a court order to involuntarily admit Matthew to Clinton Manor.

(Id. ¶ 205, ECF No. 32.) However, at the pleading stage, Plaintiffs have alleged enough plausible facts to state a prima facie case of gross negligence against DHHS and DDSN. Accordingly, the court denies the motion to dismiss the gross negligence cause of action against DHHS and DDSN.

f. Unjust Enrichment - DHHS and DDSN

Defendants DHHS and DDSN argue that the amended complaint fails to allege an essential element of an unjust enrichment claim, that a benefit was conferred on DHHS and DDSN by the Plaintiffs. (Mem. Supp. Mot. Dismiss 17, ECF No. 43-1.) Defendants assert that the amended complaint contains no allegation that the Plaintiffs made any payment to DHHS or DDSN. (Id. 17, ECF No. 43-1.) Plaintiffs made no response to this argument. Accordingly, this claim is dismissed.

III. CONCLUSION

For the foregoing reasons, it is

ORDERED that Governor McMaster's motion to dismiss, docket number 42, is granted. The ADA/Section 504 claims against Governor McMaster in his official capacity are dismissed as duplicative. Additionally, the § 1983 and civil conspiracy claims conceded by Plaintiffs in their response are dismissed. It is further

ORDERED that the SRHS Defendants' motion to dismiss, docket number 41, is granted. The ADA/Section 504 claims against Defendants SRHCS and UMC are dismissed. The remaining civil conspiracy and gross negligence causes of action against Dr. Washington and any "Roe" Defendants are dismissed pursuant to S.C. Code Ann. § 15-78-70(a). The gross negligence and civil conspiracy claims asserted against Bradley are dismissed. Further, the court grants the SRHS Defendants' motion to dismiss Plaintiffs' gross negligence, civil conspiracy, and unjust enrichment causes of action for failure to comply with the medical negligence presuit requirements. Plaintiffs' § 1983 claim asserted against the SRHS defendants is the sole claim remaining. It is further

ORDERED that Defendants Baker, Kerr, DHHS, Myers, Maley, Fry, DDSN, and LCDSNB's motion to dismiss, docket number 43, is granted in part and denied in part. The motion is denied as to the ADA/Section 504 claims asserted against DDSN, DHHS, and LCDSNB. The ADA/Section 504 claims against Defendants Kerr and Fry in their official capacities are dismissed as duplicative. The motion is denied in regards to the § 1983 claim asserted against Baker and Maley. Further, the § 1983 cause of action asserted against Defendant Myers is dismissed. The motion is denied as to the state law civil conspiracy cause of action asserted against Baker, Kerr, and Myers. The court denies the motion in regards to the gross negligence claim asserted against DHHS and DDSN. The unjust enrichment cause of action asserted against DHHS and DDSN is dismissed.

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
Senior United States District Judge

Greenville, South Carolina
February 22, 2022

STATE OF SOUTH CAROLINA COUNTY OF UNION	)	IN THE FAMILY COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
South Carolina Department of Social Services (SCDSS), Plaintiff, v. Cecil Parkins, Andrew Turner, Defendants, In the interest of: Matthew Thomas Parkins DOB: 03/17/1997, A Vulnerable Adult.	)	**FINAL ORDER OF DISMISSAL** CASE NO.: 2018-DR-44-129

Date of Hearing: May 23, 2018
Presiding Judge: Tony M. Jones
Attorney for Plaintiff: David Simpson
Attorney for Def. Parkins: Patricia Harrison
Attorney for Def. Turner: Janet T. Butcher
Guardian ad litem: JoAnn Metcalf
Attorney for GAL: Beth Bullock
Court Reporter: Cheryl M. St. Germain

THIS MATTER came before me for a merits hearing pursuant to the filing of a Family Court Coversheet, Summons, and Complaint filed by the plaintiff on April 17, 2018.

Defendant Cecil Parkins (a.k.a. Matt Parkins) was served on April 23, 2018. The summons and complaint were not served on Andrew Turner but were left at the residence of Cecil Matt Parkins and subsequently mailed to Cecil Matt Parkins' address where Andrew Turner does not reside.

At the call of the case, all parties advised the Court that this case should be dismissed because no evidence of abuse or neglect was found. That determination was supported by the Guardian Ad Litem's report, which was admitted into the record at the hearing. In support of the dismissal of all allegations, the two defendants jointly submitted four affidavits to the Court, which were also admitted into the record. These affidavits included a letter from the treating physician of Matthew Parkins. At the hearing, the Court reviewed those affidavits which document that Cecil Matt Parkins and Andrew Turner have at all times provided exceptional care

to Matthew Parkins. After a review of the affidavits, the Court concurred that this matter should be dismissed.

NOW, THEREFORE, I HEREBY ORDER, ADJUDGE, AND DECREE that the Complaint against both Defendants is dismissed with prejudice.

AND, IT IS SO ORDERED!

Tony M. Jones

This 13 day of _____, 2018
_____, SC

STATE OF SOUTH CAROLINA)
) IN THE FAMILY COURT OF THE
COUNTY OF UNION) SIXTEENTH JUDICIAL CIRCUIT
) 2018-DR-44-129

FILE FOR RECORD
2018 MAY 17 A 11:30
UNION COUNTY
CLERK OF COURT

South Carolina Department of Social Services,

Plaintiff,

vs.

Cecil Parkins,
Andrew Turner

Defendant(s),

IN THE INTEREST OF:
Matthew Thomas Parkins (03/18/1997)
A vulnerable adult.

72 HOUR HEARING ORDER
[Adult Protective Services]

PRESIDING JUDGE:	Thomas H. White
DATE OF HEARING:	April 18, 2018
ATTORNEY FOR PLAINTIFF:	LeTay Hannon
UNION COUNTY DSS:	Tomekia Means
ATTORNEY FOR CECIL PARKINS:	Present, Pro Se
ATTORNEY FOR ANDREW TURNER:	Not Present, Pro Se
GUARDIAN AD LITEM:	Not yet appointed
ATTORNEY FOR MATTHEW PARKINS:	Not yet appointed
COURT REPORTER:	Shannon McGilberry

This matter came before me for a hearing pursuant to a complaint submitted under S.C. Code Ann. § 43-35-55 by which the adult was placed into emergency protective custody by law enforcement.

The plaintiff was present and represented by its attorney. Matthew Parkins is currently in the hospital and was not present. Corporal Jamison Taylor was present and presented testimony.

At this stage of the proceedings, an attorney has not been appointed to represent

72-hour Order - APS
Case Number:

Matthew Parkins and a Guardian ad litem has not been appointed

This court has jurisdiction over the parties and the subject matter.

Based on the evidence presented, a review of the file, and the recommendations of the guardian ad litem, I make the following findings of fact and conclusions of law:

FINDING OF FACT AND CONCLUSION OF LAW

1. This proceeding is proper, and this court has jurisdiction over the parties and over the subject matter.

2. The adult was in a life threatening situation because on: On April 16, 2018, Corporal Jamison Taylor met with officials at the Union County High School concerning bruises found on Matthew Thomas Parkins. Matthew Thomas Parkins is non-verbal and immobile and unable to do anything which would result in injury to himself. Additionally, Matthew Thomas Parkins has come to school with a busted lip before. Corporal Jamison Taylor spoke with Mr. Parkins' sole caregivers, Mr. Cecil Parkins and Mr. Andrew Turner, and neither could provide Cpl. Jamison Taylor with an explanation as to the cause of Matthew Thomas Parkins' injuries. Corporal Jamison Taylor placed Matthew Thomas Parkins into emergency protective custody due to his injuries and also for his welfare.

There was probable cause for law enforcement to believe that by reason of abuse, neglect, or exploitation, there existed imminent danger to the vulnerable adult's life or physical safety. Law enforcement acted properly in taking protective custody of this adult.

THEREFORE, IT IS ORDERED that:

1. Custody of Matthew Parkins is hereby granted to SCDSS.

2. Plaintiff may request assistance from any and all law enforcement officers and agencies, which assistance shall then be provided to aid plaintiff in providing such services.

72-hour Order - APS
Case Number:

3. SCDSS shall have the right to provide such routine and emergency medical care as may be required, right of access to all necessary records, including financial records.

4. A Guardian ad litem and an attorney shall be appointed for the adult.

5. Plaintiff shall conduct an expedited investigation in this matter.

6. A merits hearing shall be held on May 23, 2018 at 9:30 a.m.

IT IS SO ORDERED.

THOMAS H. WHITE, IV
FAMILY COURT JUDGE
SIXTEENTH JUDICIAL CIRCUIT

5-16, 2018
Union, South Carolina.

TRUE COPY
JUL 29 2022
UNION COUNTY
CLERK OF COURT

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT OF THE
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF UNION	)	2018-DR-44-129
	)	
South Carolina Department of Social Services,	)	**ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM AND ATTORNEY FOR A VULNERABLE ADULT**
Plaintiff,	)	
vs.	)	
Cecil Parkins,	)	
Andrew Turner,	)	
Defendant(s),	)	
	)	
IN THE INTEREST OF:	)	
Matthew Parkins (3/17/1997)	)	
A vulnerable adult.	)	
	)	

This matter comes before the court pursuant to a petition for Appointment of a Guardian ad Litem for a Vulnerable Adult by South Carolina Department of Social Services. Based upon the information before the court, I find that best interests of the above referenced vulnerable adult require the appointment of a guardian ad litem.

I find that JOANNE METCALF has volunteered to serve as a guardian ad litem with the South Carolina Vulnerable Adult Guardian ad Litem Program and is a proper person to serve as the guardian ad litem in this case. Therefore, pursuant to S.C. Code Ann. §43-35-45(c), the said individual is appointed as guardian ad litem for the vulnerable adult. I further find the said guardian ad litem's responsibilities and duties shall include but are not limited to:

(1) representing the best interest of the vulnerable adult:

(2) conducting an independent, balanced, and impartial assessment to determine the facts relevant to the situation of the vulnerable adult. An assessment must include, but is not limited to:

(a) obtaining and reviewing relevant documents. The guardian ad litem shall have access to all records, including medical records of the vulnerable adult in order to evaluate the adult's condition and make a recommendation to the court concerning future care. Further, pursuant to 45 CFR 164.512 (e)(1), this order permits a covered entity to disclose to the guardian ad litem of the vulnerable adult's protected health information in response to a discovery request for the purpose of a judicial proceeding;

(b) meeting with and observing the vulnerable adult on at least one occasion;

(c) visiting the home settings or the facility of residence if deemed appropriate;

(d) interviewing family members, caregivers, law enforcement and others with knowledge relevant to the case;

(e) considering the wishes of the vulnerable adult;

(3) advocating for the vulnerable adult's best interest by making specific and clear suggestions when necessary for evaluation, services, and treatment for the vulnerable adult. Evaluations or other services suggested by the guardian ad litem must not be ordered by the court, except upon proper approval by the court or by consent of the parties;

(4) attending all court hearings related to protective services issues, except when attendance is excused by the court or the absence is stipulated by both parties. The guardian must provide accurate, current information directly to the court, and that information must be relevant to matters pending before the court;

(5) maintaining a complete file, including notes. A guardian's notes are his work product and are not subject to subpoena; and

(6) presenting to the court and all parties clear and comprehensive written reports including, but not limited to, a final written report regarding the vulnerable adult's best interest. The final written report may contain conclusions based upon the facts contained in the report. The final written report must include the names, addresses, and telephone numbers of those interviewed during the investigation.

Additionally, a guardian ad litem may submit briefs, memoranda, affidavits, or other documents on behalf of the vulnerable adult. A guardian ad litem may also submit affidavits at the temporary hearing. Any report or recommendation of a guardian ad litem must be submitted in a manner consistent with the South Carolina Rules of Evidence and other state law.

I find that pursuant to S. C. Code Anno. §43-35-75, any guardian ad litem appointed for a vulnerable adult pursuant to Section 43-35-45 (C), acting in good faith and who participates in a judicial proceeding resulting from a report under the Omnibus Adult Protection act is immune from civil and criminal liability.

I further find that the appointed guardian ad litem is a lay guardian. Moreover, it is necessary to appoint counsel for the said guardian ad litem. Accordingly, this court appoints BETH BULLOCK, Esquire, as Attorney for the guardian ad litem.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that JOANNE METCALF is appointed as guardian ad litem for, the above-referenced vulnerable adult having the duties and responsibilities as outlined above.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that BETH BULLOCK, Esquire is appointed to serve as counsel for the vulnerable adult.

MOREOVER, IT IS ORDERED, ADJUDGED AND DECREED that this/these appointment(s) shall continue to be in effect until formal discharge by the Court.

IT IS SO ORDERED.

Charlotte Dawkins
Clerk of Court Deputy Clerk

April 26, 2018
Union, South Carolina.

STATE OF SOUTH CAROLINA)
COUNTY OF UNION)

IN THE COURT OF (*Select one.*)
☐ COMMON PLEAS ☒ FAMILY COURT
16TH JUDICIAL CIRCUIT

FILE FOR RECORD
2018 APR 18 P 4:41
UNION COUNTY
CLERK OF COURT

DSS-COUNTY,
Plaintiff(s).
-vs-
MATTHEW PARKINS,
Defendant(s).

CASE NO.: 2018-DR-44-129

APPOINTMENT OF COUNSEL OR GAL
(*Select one.*)
☒ ORDER
☐ AMENDED ORDER

TYPE OF CASE/PROCEEDING: (*Check one.*)

☐ Post-Conviction Relief (PCR)/habeas case	☐ Adoption	☐ Juvenile
☐ SVP case	☐ Custody and/or Visitation	☒ Abuse and Neglect
☐ Minor Name Change	☐ Other:	

It appears that MATTHEW PARKINS, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (*Select only one.*)

☐ counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.

☐ counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on: ____

☐ counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.

☐ court appointed counsel has obtained , Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.

☐ Other:

Therefore, it is ordered that MELINDA BUTLER, hereby is appointed as (*Select one.*)

☒ counsel ☐ lead counsel (*if capital PCR case*) ☐ guardian ad litem

for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

☐ (*If Death Penalty PCR Case*) It is further ordered that , Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED THIS 18TH DAY OF **APRIL**, 2018.

Charlotte Rankins

☐ Circuit Judge ☒ Clerk of Court
Deputy Clerk

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov, and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

STATE OF SOUTH CAROLINA)
) IN THE FAMILY COURT OF THE
COUNTY OF UNION) SIXTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2018-DR-44-129
South Carolina Department)
of Social Services,)
)
Plaintiff,)
)
vs.) Temporary Order
)
Cecil Parkins)
Andrew Turner)
)
Defendant(s),)
)
IN THE INTERESTS OF:)
Matthew Parkins)
)
~~Minors Under the Age of 18.~~)
A vulnerable adult.)

FILE FOR RECORD
2018 APR 18 P 4:10
UNION COUNTY
CLERK OF COURT

HEARING DATE: April 18, 2018
PRESIDING JUDGE: Thomas H. White, IV
ATTORNEY FOR PLAINTIFF: Letay Harmon
ATTORNEY FOR Defendant: Pro se (Cecil Parins)
ATTORNEY for Defendant Pro se (Andrew Turner)
GUARDIAN AD LITEM: Not appointed
ATTORNEY FOR GAL: Not appointed
COURT REPORTER: Shannon McGilberry

This matter came before the Court for a hearing as set by South Carolina Department of Social Services. The parties were properly served with the notice of hearing. The parties were present and were represented by attorneys as stated herein above, with the following exceptions:

Based upon the pleadings in this matter, ,the evidence presented, and the recommendations of the guardian ad litem, I make the following:

DSS-0079

FINDINGS of FACTS and CONCLUSIONS of LAW

1) An guardian ad litem and guardian attorney shall be appointed to Matthew Parking.

2) Matthew parkins will remain in dss custody

3) Dss shall expedite an investigation.

[ ] **Other matters were decided in this hearing and those matters will be addressed by separate order.**

ALL OF WHICH IS DULY ORDERED.

Thomas H. White, IV
Presiding Judge, Family Court
Sixteenth Judicial Circuit

4-18-18

Union, South Carolina