EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Jack Kelly,

Plaintiff,

v.

Roger D. Cox, Cox Millwork & Supply Inc., Waterside Drive Boat Ramp, LLC and Cox Properties, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No. 2020-CP-26-06286

ORDER GRANTING SUMMARY JUDGEMENT TO ALL DEFENDANTS (ENDS CASE)

This matter came for hearing on November 29, 2022, for a motion for summary judgement as to all Defendants, filed on August 17, 2022. The court having considered the Motion, reply, pleadings, discovery, and depositions on file, together with the arguments of counsel, grants Defendants Roger D. Cox, Cox Millwork & Supply Inc., Waterside Drive Boat Ramp, LLC, and Cox Properties, LLC (hereinafter also "Defendants")'s Motion for Summary Judgement. Thus, final judgement is entered on their behalf, ending this case with prejudice.

In or around October 2016, the Plaintiff was the stepson of Defendant Roger D. Cox. During that time and continuing through the present, Mr. Cox was an owner of the various business entities Cox Millwork & Supply Inc., Waterside Drive Boat Ramp, LLC, and Cox Properties, LLC. Plaintiff filed this action on October 30, 2020, alleging that Mr. Cox committed various acts that were designed to harass, defame, and torture Plaintiff including scratching his car, harming his toothbrush, and throwing his shoes into the waterway. The Defendants filed answers on January 15, 2021, denying the causes of action. At this time substantial discovery has been completed and the facts do not support the causes of action asserted against these Defendants.

STANDARD OF REVIEW

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *Hancock v. Mid-South Mgmt., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). "However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." *Moore v. Barony House Restaurant, LLC*, 382 S.C. 35, 40, 674S.E.2d 500, 503 (Ct. App. 2009). The plain language of Rule 56(c), SCRCP, mandates the entry of summary judgment against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case and on which that party will bear the burden of proof at trial. *Bray v. Marathon Corp.*, 347 S.C. 189, 553 S.E.2d 477 (Ct. App. 2001).

I. Plaintiff has failed to show that the allegations in this suit relate to Defendants Cox Millwork & Supply Inc., Waterside Drive Boat Ramp, LLC, and Cox Properties, LLC.

Plaintiff has brought claims against Defendants Cox Millwork & Supply Inc., Waterside Drive Boat Ramp, LLC, and Cox Properties, LLC (hereinafter also collectively referred to as the "Businesses") for negligence by respondeat superior and negligent retention and supervision. These claims both fail as a matter of law.

A. Allegations against the Businesses for Respondeat Superior fail.

Under the doctrine of respondeat superior, the employer is "...called to answer for the tortious acts of his servant, the employee, when those acts occur in the course and scope of the employee's employment." *James v. Kelly Trucking Co.*, 661 S.E.2d 329, 377 S.C. 628 (S.C. 2008), citing *Sams v. Arthur*, 135 S.C. 123, 128-131, 133 S.E. 205, 207-08 (1926). "Such liability is not

predicated on the negligence of the employer, but upon the acts of the employee, whether those acts occurred while the employee was going about the employer's business, and the agency principles that characterize the employer-employee relationship." *James v. Kelly Trucking Co.*, 661 S.E.2d 329, 377 S.C. 628 (S.C. 2008).

Defendant Cox is an owner of the Defendant Businesses and is therefore himself the master. Plaintiff has not presented sufficient evidence that Defendant Cox was acting in the scope of his employment when he is alleged to be committing tortious conduct against the Plaintiff.

"If the servant is doing some act in furtherance of the master's business, he will be regarded as acting within the scope of his employment, although he may exceed his authority." *Kase v. Ebert*, 392 S.C. 57, 707 S.E.2d 456, 458 (S.C. App. 2011), quoting *Jones v. Elbert*, 211 S.C. 553, 558, 34 S.E.2d 796, 798–99 (1945). "On the other hand, if the servant acts for some independent purpose of his own, wholly disconnected with the furtherance of his master's business, his conduct falls outside the scope of his employment." *Kase* at 458, quoting *Crittenden v. Thompson–Walker Co.*, 288 S.C. 112, 116, 341 S.E.2d 385, 387 (Ct. App.1986). "If a servant steps aside from the master's business for some purpose wholly disconnected with his employment, the relation of master and servant is temporarily suspended; and this is so no matter how short the time, and the master is not liable for his acts during such time." *Kase* at 458, quoting *Lane v. Modern Music, Inc.*, 244 S.C. 299, 305, 136 S.E.2d 713, 716 (1964) (emphasis added).

Plaintiff has offered no evidence that Defendant Cox's alleged actions occurred within the scope of his employment with the Businesses and none of the allegations in Plaintiff's complaint could be reasonably construed to be "in furtherance of the master's business." Plaintiff has described Defendant's alleged acts as "a campaign to harass, defame and torture Plaintiff." *See*

Complaint at ¶ 7. These allegations couldn't be reasonably related to any business much less these Businesses which engage in woodwork, boating, and real estate.

In his deposition, Mr. Kelly testified that Cox Millwork & Supply, Inc. is a "woodworking company". (See Dep. J. Kelly at Pg. 64:3-5). Mr. Kelly alleges in his complaint that Defendant Cox began a campaign to harass, defame, and torture Plaintiff. (See Complaint ¶ 4). Specifically, the Complaint alleges that Defendant Cox scratched Plaintiff's BMW, that Defendant Cox threw Plaintiff's tennis shoes in the waterway behind their residence, that Defendant Cox put soap on Plaintiff's toothbrush, and that Defendant Cox used the Plaintiff's toothbrush to wipe his butt. (See Complaint ¶¶ 8-16). While Defendant Cox denies these events occurred as Plaintiff describes them, even if they are true, none of them have anything to do with running, operating, or working at a woodworking company.

As to Waterside Drive Boat Ramp, LLC, Plaintiff testified that the business relations to ownership of a boat ramp, he does not know if the LLC does any business, and he has no specific evidence that Mr. Cox did anything to him as the owner of this business:

> Q. What's your understanding of what Waterside Drive Boat Ramp, LLC does?
> A. I know it's an Owner –it's an LLC for the boat ramp.
> Q. Does it do business?
> A. I'm unaware if it does or does not do business.
> Q. What evidence do you have that Mr. Cox did anything as an owner, officer, agent of the boat ramp?
> A. I have no specific evidence.
> (See Dep. J. Kelly at Pg. 67:3-13)

Not one of the allegations in the Complaint relate in any way to the ownership of a boat ramp and the Plaintiff has no testimony to show that the allegations of the Complaint occurred during the operation of this LLC.

Likewise, Plaintiff was asked about Cox Properties, LLC's involvement in the allegations. He testified as follows:

Q. What evidence do you have that Mr. Cox did anything you're alleging in his capacity as an owner, officer, agent of Cox Properties?
A. I'm not sure.
(See Dep. J. Kelly at Pg. 67:14-17)

Owning your own business does not automatically trigger respondeat superior liability for everything you do. Just as working from home does not mean everything one does from home is within the scope of employment. The law as it stands requires that lines be drawn. As previously cited, "If a servant steps aside from the master's business for some purpose wholly disconnected with his employment, the relation of master and servant is temporarily suspended; and this is so no matter how short the time, and the master is not liable for his acts during such time." *Kase* at 458, quoting *Lane v. Modern Music, Inc.*, 244 S.C. 299, 305, 136 S.E.2d 713, 716 (1964). Sleeping, doing the dishes, eating dinner, or brushing your teeth in the morning are all things people do at home. Working at home does not automatically bring actions wholly unrelated to a master's business within the scope of employment.

Plaintiff has no evidence that any of the allegations in the complaint are or could have been reasonably related to Defendant Cox's role as owner or servant of the Businesses. Therefore, Cox Millwork & Supply Inc., Waterside Drive Boat Ramp, LLC, and Cox Properties, LLC's Motion for Summary Judgement against the Plaintiff's claims of respondeat superior is granted.

B. Allegations against the Businesses for negligent retention and supervision fail.

This cause of action is also premised on the master-servant relationship. A business owner (the master) cannot be sued for negligently retaining and supervising themselves. Plaintiff's claim for negligent retention and supervision fails because Defendant Roger D. Cox is an owner of Defendant entities Cox Millwork & Supply Inc., Waterside Drive Boat Ramp, LLC, and Cox Properties, LLC.

South Carolina courts have used the Restatement to describe negligent retention and supervision as:

> A master is under a duty to exercise reasonable care so to control his servant while acting outside the scope of his employment as to prevent him from intentionally harming others or from so conducting himself as to create an unreasonable risk of bodily harm to them, if
>
> (a) the servant
>
> (i) is upon the premises in possession of the master or upon which the servant is privileged to enter only as his servant, or
>
> (ii) is using a chattel of the master, and
>
> (b) the master
>
> (i) knows or has reason to know that he has the ability to control his servant, and
>
> (ii) knows or should know of the necessity and opportunity for exercising such control.

(emphasis added) *Kase v. Ebert*, 392 S.C. 57, 707 S.E.2d 456, 459-460 (S.C. App. 2011), citing *Degenhart v. Knights of Columbus*, 309 S.C. 114, 116–17, 420 S.E.2d 495, 496 (1992).

Therefore, Plaintiff's claim fails as a matter of law because Defendant Cox is the master of the Businesses, and he cannot negligently retain and supervise himself and therefore the Businesses' Motion for Summary Judgement on this claim of negligent retention and supervision is granted.

II. Plaintiff has no evidence that any of the alleged "outrage" caused by Defendant Cox led to damages incurred by Plaintiff.

Plaintiff's complaint contains a series of acts allegedly committed by Defendant Cox. Defendant Cox strongly disputes these allegations. However, solely for the purposes of this Motion and the arguments contained herein, Defendant Cox will take the following acts at face value to outline how they fail to meet the requirements of intentional infliction of emotional distress. Plaintiff has alleged that:

a. Defendant Cox "intentionally snuck out in the night and scratched Plaintiff's new BMW and further used some liquid paint remover to damage the vehicle's paint.

Defendant Cox further damaged the headlights to obstruct the headlights intended purpose."

b. Defendant Cox "continued to sneak around and scratch Plaintiff's vehicle in order to get him in trouble with his mother and biological father."
c. Defendant Cox "took Plaintiff's new shoes and tossed them into the waterway behind their residence to make it look like Plaintiff does not take care of his belongings.
d. Defendant Cox "also took additional of Plaintiff's clothing to further traumatize the Plaintiff.
e. "Defendant Cox admitted that he took Plaintiff's toothbrush and put soap on it."
f. "Defendant Cox admitted that he used the Plaintiff's toothbrush to wipe his butt."

See Complaint at ¶¶ 8-16.

The Supreme Court of South Carolina has explained "that in order to recover for intentional infliction of emotional distress, the complaining party must establish that:

(1) the defendant intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from his conduct;

(2) the conduct was so "extreme and outrageous" so as to exceed "all possible bounds of decency" and must be regarded as "atrocious, and utterly intolerable in a civilized community;"

(3) the actions of the defendant caused plaintiff's emotional distress; and

(4) the emotional distress suffered by the plaintiff was "severe" such that "no reasonable man could be expected to endure it."

Hansson v. Scalise Builders of S.C., 650 S.E.2d 68 (S.C. 2007), citing *Ford v. Hutson*, 276 S.C. 157, 162, 276 S.E.2d 776, 778 (1981).

In addition to the elements the Court in *Ford* stated, the Plaintiff must show both extreme and outrageous conduct and show that the conduct caused distress of an "extreme or severe nature". *Hansson v. Scalise Builders of S.C.*, 650 S.E.2d 71 (S.C. 2007), citing *Ford v. Hutson*, 276 S.C. 157, 162, 276 S.E.2d 776, 778 (1981).

In *Hansson* the court found that the Plaintiff did not meet the burden of proof as his damages were limited to loss of sleep, a dentist, and a couple hundred dollars. *Id.* In addition, Plaintiff's relationships with others, nor his employment suffered. *Id.*

Here, even if the Plaintiff's allegations are true and even if those allegations are in fact "outrageous," there are no real damages.

The Plaintiff has testified that he performs well in school:

Q: I believe the last time you were being deposed you testified you were premed at Wofford; is that right?
A: Yes Ma'am.
Q: Are you still premed at Wofford?
A: According to administration, yes.
Q: Why do you qualify it that way?
A: I'm registered under the premed track of Wofford.
Q: Are you taking premed courses?
A: Yes.
Q: Are you currently a junior?
A: Yes, ma'am.
Q: When your first semester grades came out, what did they look like? What was your GPA?
A: I don't recall my first semester GPA.
Q: Did you have any grades on that transcript below a C?
A: No, ma'am. I've never had a grade below a C.
(See Dep. J. Kelly, Part 2 at Pg. 83:7-25 and Pg. 84:1).

The Plaintiff has testified that he has been able to seek and hold employment that he wanted to hold:

Q: Have any of the experiences that you allege in this lawsuit kept you from pursuing or taking a job opportunity?
A: As of now, no.
(See Dep. J. Kelly, Part 2 at Pg. 106:23-25 and Pg. 107:1).

The Plaintiff has not been treated by a medical professional; he has only sought periodic counseling when he is in school at Wofford:

Q: I'm going to go backwards for just a second, and I apologize. I can't remember if I've asked you this or somebody else has asked you. Other than your guidance counselor in high school and the counselors at Wofford, are there any other counselors that you've seen?
A: What do you consider a counselor?
Q: A licensed therapist or a psychologist or a psychiatrist.
A: I don't believe I've seen anyone else.
(See Dep. J. Kelly, Part 2 at Pg. 102:12-21).

In addition, his car was repaired, and his toothbrush and shoes were replaced, so there is no monetary damage:

> Q: I want to be clear about the property damage. The property damage, my understanding is that that includes the 2005 BMW, which was repaired, correct?
> A: Incompletely repaired, yes.
> Q: And has since been sold; is that correct?
> A: I'm not sure how the movement of the BMW was, but it is no longer my primary vehicle that I use.
> Q: You were never the owner of the 2005 BMW, correct?
> A: No, ma'am.
> Q: And then the only other property damage that I'm aware of are some tennis shoes.
> A: Yes. Expensive tennis shoes.
> Q: Those tennis shoes were replaced or additional tennis shoes were purchased, correct?
> A: Yes.
> Q: Is there any other property damage that you allege as a result of the allegations in this suit?
> A: Not that I'm aware of at this time, but there could be. I'm drawing a blank.
> (See Dep. J. Kelly, Part 2 at Pg. 113:12-25 and Pg. 114:1-10).

Based on the lack of damages demonstrated by the Plaintiff, there is no damage evidence to submit to the jury and therefore Defendant Cox's Motion for Summary Judgement as to intentional infliction of emotional distress and violation of S.C. Code § 20-7-490 is granted.

III. There is no evidence to support that Defendant Cox violated S.C. Code § 44-29-145.

To prove negligence per se, the plaintiff must show that the defendant owed them a duty of care arising from a statute. *Norton v. Opening Break of Aiken, Inc.*, 443 S.E.2d 406, 408 313 S.C. 508 (S.C. App. 1994), citing W*hitlaw v. Kroger Co.*, 306 S.C. 51, 53, 410 S.E.2d 251, 252 (1991). To do this, a plaintiff must show:

> (1) that the essential purpose of the statute is to protect from the kind of harm the plaintiff has suffered; and (2) that he is a member of the class of persons the statute is intended to protect. If the plaintiff makes this showing, he has proven the first element of a claim for negligence: viz., that the defendant owes him a duty of care. If he then shows that the defendant violated the statute, he has proven the second element of a negligence cause of action: viz., that the defendant, by act or omission, failed to exercise due care. This constitutes proof of negligence per se.

Id.

Plaintiff claims that Defendant Cox committed a felony by violating S.C. Code § 44-29-145 for knowingly exposing him to HIV. This reckless and defamatory accusation must be dismissed. Section 44-29-145 is a criminal statute that says in pertinent part:

> It is unlawful for a person who knows that he is infected with Human Immunodeficiency Virus (HIV) to:
>
> (1) knowingly engage in sexual intercourse, vaginal, anal, or oral, with another person without first informing that person of his HIV infection;
>
> (2) knowingly commit an act of prostitution with another person;
>
> (3) knowingly sell or donate blood, blood products, semen, tissue, organs, or other body fluids;
>
> (4) forcibly engage in sexual intercourse, vaginal, anal, or oral, without the consent of the other person, including one's legal spouse; or
>
> (5) knowingly share with another person a hypodermic needle, syringe, or both, for the introduction of drugs or any other substance into, or for the withdrawal of blood or body fluids from the other person's body without first informing that person that the needle, syringe, or both, has been used by someone infected with HIV.
>
> A person who violates this section is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than ten years.

Plaintiff has no evidence that Defendant Cox violated this statute.

First, and arguably most important, Defendant Cox does not have HIV. Therefore, he can't have violated Section 44-29-145. One must both have HIV and know about their infection. Defendant Cox has no knowledge of an HIV infection because he does not have HIV. Plaintiff has not produced any evidence to the contrary.

Plaintiff's mom was married to Defendant Cox for years and they were sexually active:

> Q: Since you are married to him, I assume you were sexually active with him. Is that fair to assume?
> A: Yes.
> (See Dep. D. Sarte at Pg. 52:1-4).

She was asked if she was aware of Defendant Cox having HIV. She responded, "I'm not."

Q: I'm asking if you're aware of my client having HIV.
A: I'm not.
(See Dep. D. Sarte at Pg. 51:20-22).

Plaintiff's mom was also asked if she was aware of Defendant Cox having any other STDs:

Q: And you don't have any knowledge as to Mr. Cox having any sort of SDT; is that correct?
A: I have no knowledge.
(See Dep. D. Sarte at Pg. 52:22-24).

Again she responded, "I am not." *Id.* She had "no knowledge" of Defendant Cox having any sort of STD. *Id.* at 52.

In his deposition, Plaintiff testified he had no evidence that Mr. Cox has HIV:

Q: You've also alleged that Mr. Cox violated South Carolina Code 44-29-145. What evidence do you have that my client has HIV or any other sexually transmitted disease?
A: I do not have evidence.
(See Dep. J. Kelly at Pg. 67:18-22).

Plaintiff also testified that he has not received an STD test and has no knowledge that Mr. Cox transmitted HIV to him:

Q: But you haven't had an STD test?
A: Correct.
Q: So it's my understanding that you have no evidence that Mr. Cox has transmitted HIV or any other sexually transmitted disease to you; is that correct?
A: Correct.
(See Dep. J. Kelly at Pg. 68:4-10).

There is no evidence that Defendant committed negligence per se and therefore Defendant Cox's Motion for Summary Judgement on this claim is granted.

CONCLUSION

Defendants Roger D. Cox, Cox Millwork & Supply Inc., Waterside Drive Boat Ramp, LLC, and Cox Properties, LLC's Motion for Summary Judgement ending this case on all claims filed in this lawsuit is GRANTED.

AND IT IS SO ORDERED.

The Honorable Kristi F. Curtis
Presiding Judge

Myrtle Beach, South Carolina
December 15, 2022

Horry Common Pleas

Case Caption: Jack Kelly VS Roger D Cox , defendant, et al

Case Number: 2020CP2606286

Type: Order/Summary Judgment

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762