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**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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CERTIFIED QUESTION

Richard M. Gergel, United States District Court, District of South Carolina

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Appellate Case No. 2023-000922

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Candise Gore,..... Plaintiff,

v.

Dorchester County Sheriff's Office;  
Dorchester County; Carol Brown;  
Keisha Baldwin; Sheriff L.C. Knight;  
Richard Darling; Sharon Branch;  
Wanda Taylor; and Willis Beatty ..... Defendants.

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BRIEF OF DEFENDANTS

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**CERTIFIED QUESTION**

Does the bar under the South Carolina Tort Claims Act of claims of “intentional infliction of emotional harm,” S.C. Code § 15-78-30 (f), apply to claims of reckless infliction of emotional distress?

## STATEMENT OF THE CASE

The original Summons and Complaint was filed in the Dorchester County Court of Common Pleas on May 5, 2022. Defendants removed the matter to the Federal District Court based on federal question on July 20, 2022. Thereafter, the defendants filed a partial motion to dismiss on behalf of the Sheriff's Office and Knight on July 26, 2022. The plaintiff then amended her Complaint in August 2022 and a partial motion to dismiss the amended Complaint was filed. The federal district court granted the partial motion to dismiss and dismissed Sheriff Knight from the Amended Complaint. In January 2023, plaintiff filed a motion to amend the Amended Complaint which was granted. Defendants filed motions to dismiss the Second Amended Complaint in February and March 2023. The Magistrate recommended partially granting and partially denying the defendants' motions to dismiss. Specifically, Magistrate Cherry recommended that the cause of action for Reckless Infliction of Emotional Distress be dismissed based on the reasoning in *Munday v. Beaufort Cnty.*, No. 9:20-cv-02144-DCN, 2023 WL 2643792, at \*8-9 (D.S.C. Mar. 27, 2023).

Plaintiff filed objections to the Report and Recommendation and Defendants filed a response. In his Order, Judge Richard Gergel acknowledged that several South Carolina District Court decisions have interpreted the Tort Claims Act to bar claims of reckless infliction of emotional distress, but denied the motion without prejudice and with leave to restore the motion once this honorable court responds to his certified question about S.C. Code § 15-78-30 (f).

## STATEMENT OF THE FACTS

Plaintiff filed a Second Amended Complaint alleging that the acts of a detention officer in performing a strip search of the plaintiff prior to placing her into their facility, was conduct “so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community.” It should be noted that the officer is not alleged to have improperly conducted the strip search or to have exceeded the bounds of what is required to occur during a strip search based on proper police procedure.<sup>1</sup> It is the intentional act of performing a strip search itself that is alleged to be the basis for the “reckless infliction of emotional distress”.

## STANDARD OF REVIEW

The standard of review when answering a certified question depends on the context of the case. Typically, when a novel issue of law is raised, this Court is “free to decide the question based on [our] assessment of which answer and reasoning would best comport with the law and public policies of the state as well as the Court's sense of law, justice, and right.” *Thomerson v. DeVito*, 430 S.C. 246, 249, 844 S.E.2d 378, 380 (2020); *Drury Development Corp. v. Foundation Ins. Co.*, 380 SC 97, 101, 668 S.E. 2d 798; 800 (2008).

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<sup>1</sup> There is an allegation that the officer touched the plaintiff's head hair, but the officer denies that occurred.

## ARGUMENT

### I. RECKLESS INFLICTION OF EMOTIONAL DISTRESS IS NOT A SEPARATE CAUSE OF ACTION FROM INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS.

South Carolina has no recognized cause of action for “reckless infliction of emotional distress.” South Carolina recognizes claims for intentional infliction of emotional distress and negligent infliction of emotional distress. The difference between the two is a direct claim versus a bystander claim. Here, plaintiff has not made a bystander claim; she has alleged that the employees’ “recklessness” toward her directly caused her injury. The elements of a claim for intentional infliction of emotional distress specifically include that “the defendant intentionally *or recklessly* inflicted severe emotional distress...” *Bergstrom v. Palmetto Health All.*, 358 S.C. 388, 401 S.E. 2d 42, 48 (2004) (emphasis added) *citing Ford v. Hutson*, 276 S.C. 157, 276 S.E. 2d 776 (1981); *Hansson v. Scalise Builders of SC*, 374 S.C. 352, 358, 650 S.E. 2d 68, 72 (2007).

In *Hutson*, this court recognized the tort of Outrage, and in doing so specifically relied on the Restatement (Second) of Torts, Section 46. The definition therein states clearly “intentionally or recklessly cause[d] severe emotional distress...” covering both of the terms at issue in this matter; therefore, intentional and recklessly inflicted emotional distress are one in the same. Further, the essence of the harm –emotional distress – is the same whether caused intentionally or recklessly.

Furthermore, in *Hansson*, this Court specifically set out that intentional infliction of emotional distress and outrage are two names for the same claim. 650 S.E. 2d at 71. This Court goes on to quote itself from *Hutson* --setting out the elements for “intentional infliction of emotional distress,” which includes “recklessly inflicted severe emotional distress”. *Id.* The language contained in the plaintiff’s Second Amended Complaint sets out a cause of action for

intentional infliction of emotional distress. *Argoe v. Three Rivers Behavioral Health, L.L.C.*, 392 S.C. 462, 475, 710 S.E.2d 67, 74 (2011) (quoting *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 356, 650 S.E.2d 68, 70 (2007)).

Paragraph 78 contains the information fulfilling the first element of a claim for intentional infliction of emotional distress. Plaintiff specifically alleges that the conduct “of the defendant is so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized society.” 2<sup>nd</sup> Am. Compl. ¶76, This is the second element of a cause of action for intentional infliction of emotional distress. *Bergstrom*, 358 SC at 401. Paragraph 79 includes the third element: causation. Plaintiff goes on to allege “emotional distress so severe that no reasonable person could be expected to endure it.” 2<sup>nd</sup> Am. Compl. ¶79. This language is the fourth element for intentional infliction of emotional distress. *Id.*

Even when a party is alleging reckless conduct on the part of a defendant, such as the plaintiff in the case at bar, the proper manner to assert such a claim is through a cause of action for intentional infliction of emotional distress. There is no need for a separate cause of action for reckless infliction of emotional distress under South Carolina law, because the very definition of intentional infliction of emotional distress fully covers allegations of reckless conduct as a basis for the claim in its first element. *Hansson*, 650 S.E. 2d at 71.

South Carolina law already includes claims based on both intentional and reckless conduct under the umbrella of intentional infliction of emotional distress. The clear precedent and statutory definitions provide no distinction between the two, emphasizing the comprehensive nature of the claim. The plaintiff has articulated a claim for intentional infliction of emotional distress. Thus, any efforts to distinguish or separate a cause of action for reckless infliction of emotional distress are not only redundant but also misaligned with the established jurisprudence of South Carolina.

**II. OUTRAGE AND INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS ARE SPECIFICALLY NOT PERMITTED BY THE SOUTH CAROLINA TORT CLAIMS ACT.**

The South Carolina Tort Claims Act, S.C. Code Ann. §§ 15-78-10, *et. seq.* (Supp. 1997), which provides the exclusive remedy in tort against the Dorchester County Sheriff's Office, is a limited waiver of governmental immunity, *Moore v. Florence Sch. Dist. No.1*, 314 S.C. 335, 444 S.E.2d 498 (1994); *Steinke v. S.C. Dep't of Labor, Licensing & Regulation*, 336 S.C. 373, 393, 520 S.E.2d 142, 152 (1999). *See also* S.C. Code Ann. § 15-78-20(b) (Supp. 1997) (while acting within the scope of official duty, the State, its political subdivisions and employees are immune from liability and suit for any tort except as waived by the Tort Claims Act); S.C. Code Ann. § 15-78-40 (Supp. 1997) ("The 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, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained herein."). Importantly, the Act also spells out that the exceptions to the waiver of immunity "must be **liberally construed in favor of limiting the liability of the state.**" S.C. Code Ann. § 15-78-20(f) (Emphasis added). *City of Hartsville v. S.C. Mun. Ins. & Risk Fin. Fund*, 382 S.C. 535, 677 S.E.2d 574 (2009); *Plyler v. Burns*, 373 SC 637, 647 S.E. 2d 188 (SC 2007); *Steinke*, 336 S.C. 373, 520 S.E. 2d 142 (1999).

The Tort Claims Act does not allow a plaintiff to recover for intentional infliction of emotional distress. S.C. Code Ann. § 15-78-30(f) ("Loss' ... does not include the intentional infliction of emotional harm."); *see, e.g., Ward v. City of N. Myrtle Beach*, 457 F. Supp. 2d 625, 647 (D.S.C. 2006). Defendants agree that this Court should look to the plain meaning of the statute before any other considerations. *Wade v. Berkeley County*, 348 S.C. 224, 229, 559 S.E. 2d 586, 588 (2002). Here, the legislature has gone to great pains to spell out its definitions and establish

the immunities from suit. It has excluded losses stemming from a claim for the intentional infliction of emotional harm.

The South Carolina Legislature used the term of art “intentional infliction of emotional harm” when excluding such conduct. S.C. Code Ann. § 15-78-30(f). In using the specific language for a cause of action with elements that must be proven, it is clear that the legislature was referencing the tort of intention infliction of emotional distress. The types of loss listed as “loss” are elements of damages – “bodily injury, disease, death”, “damage to tangible property”, “lost wages”, “pain and suffering, mental anguish”. Intentional infliction of emotional distress is the manner in which one becomes damaged, not an element of damages itself. One might claim injury such as a broken leg or even mental anguish from being falsely accused of a crime, but they would not claim intentional infliction of emotional distress as an element of damage. It is not an element of damage, it is a cause of action with its own elements that must be proven. Importantly, those elements include reckless behavior claims, and therefore, they are expressly not permitted pursuant to S.C. Code Ann. § 15-78-30(f).

Courts’ interpretation of this section follows the language of the statute and is in line with the defendants’ position in this matter. The South Carolina Court of Appeals<sup>2</sup>, state trial courts<sup>3</sup>,

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<sup>2</sup> *Trask v. Beaufort Cty.*, 392 S.C. 560, 573, 709 S.E.2d 536, 543 (Ct. App. 2011) (“Under the Tort Claims Act, a coroner is immune from suit for ‘the intentional infliction of emotional harm.’ ”); *Densmore v. City of Greenville*, 2011 WL 11733107 (Ct. App. 2011)(unpublished).

<sup>3</sup> *Wall v. South Carolina Dept. of Corrections*, No. 2020-CP-31-00114, 2023 WL 4491381, at \*6 (S.C.Com.Pl. Apr. 14, 2023) (Hon. George McFaddin Jr.); *Clay v. City of North Charleston Police*, No. 2011CP1009621, 2012 WL 12134879, at \*1 (S.C.Com.Pl. Sep. 05, 2012) (Hon. George James); *Jane Doe v. Palmetto Richland Memorial Hospital, et al.*, No. 00-CP-40-0371, 2001 WL 35816430 (S.C.Com.Pl. July 20, 2001); *Culler v. Lott*, No. 04-CP-40-2974, 2007 WL 3052332 (S.C.Com.Pl. Apr. 27, 2007)(Hon. James Barber); *Bennett, Jr. v. The City of Folly Beach*, No. 2009CP1004285, 2010 WL 11043967, at \*5 (S.C.Com.Pl. Mar. 30, 2010) (Hon. J.C. Nicholson); *Doe v. Smith*, No. 2010CP1007699, 2012 WL 10739785, at \*3 (S.C.Com.Pl. Sep. 10, 2012) (Hon. Roger Young); *Couram v. Davis*, No. 2011-CP-40-07134, 2012 WL 12844547, at \*1 (S.C.Com.Pl. Nov. 15, 2012) (Hon. L. Casey Manning); *Powell v. Medical University of South Carolina*, No. 2013CP1005351, 2014 WL 10520546, at \*5 (S.C.Com.Pl. Sep. 25, 2014) (Hon. R. Markley Dennis); *Doe 2 v. The Citadel*, No. 2012-CP-10-1858, 2015 WL

federal district courts<sup>4</sup>, and even the Fourth Circuit Court of Appeals<sup>5</sup>, have ruled that that the cause of action for Intentional Infliction of Emotional Distress is prohibited by S.C. Code §15-78-30(f). State and federal trial courts have taken this position as recently as March, April and May of this year. See *McDowell*, 4:23-CV-00220-JD-KDW (D.S.C. May 12, 2023); *Munday*, 9:20-CV-02144-DCN-MHC (D.S.C. March 27, 2023); *Wall*, 2020-CP-31-00114 (S.C.Com.Pl. Apr. 14, 2023). While this is far from all of the judicial rulings on this issue, it is demonstrative of the manner in which South Carolina state and federal judges have been interpreting and applying the Tort Claims Act, §15-78-30(f) as a bar on intentional infliction of emotional distress.

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7841170, at \*6 (S.C.Com.Pl. July 06, 2015) (Hon. R. Markley Dennis); *Hooper v. Loftis*, No. 2015-CP-23-03926, 2017 WL 1735676, at \*1 (S.C.Com.Pl. Jan. 19, 2017) (Hon. Robin Stilwell).

<sup>4</sup> *Munday v. Beaufort County*, 9:20-CV-02144-DCN-MHC, 2023 WL 2643792 (D.S.C. March 27, 2023); *McDowell v. S.C. Dep't of Pub. Safety*, No. 4:23-CV-00220-JD-KDW, 2023 WL 3440336, at \*1 (D.S.C. Feb. 28, 2023), *report and recommendation adopted*, No. 4:23-CV-00220-JD-KDW, 2023 WL 3434776 (D.S.C. May 12, 2023); *Faulkner v. York County School District*, 0:21-CV-02090-JMC, 2022 WL 673684, at \*9 (D.S.C. March 7, 2022); *Goss v. Jackson*, No. CV 2:21-0084-RMG, 2021 WL 4993605, at \*1 (D.S.C. Oct. 27, 2021); *Anderson v. Dorchester County*, 2:20-cv-2084-DCN-MGB (March 30, 2021); *Poloschan v. Simon*, No. CIV.A. 9:13-1937-SB, 2014 WL 1713562, at \*3 (D.S.C. Apr. 29, 2014); *Harkness v. City of Anderson*, 8:05-cv-1019-HMH, 2005 WL 2777574 (D.S.C. 2005) *accord Lindquist v. Tanner*, 2012 WL 3839237, at \*4 (D.S.C. April 12, 2012) *report and rec. adopted in part*, 2012 WL 3839235 (D.S.C. Sept. 4, 2012); *Doctor v. City of Rock Hill*, 2016 U.S. Dist. LEXIS 104968, \*9 (D.S.C. July 19, 2016); See also, *Newman v. S.C. Dep't of Empl. & Workforce*, 3:10-cv-942-CMC-PJG, 2010 WL 4791932 (D.S.C. 2010) (holding that “the Department, as a state agency, has sovereign immunity with regard to this tort claim”); *Ward v. City of N. Myrtle Beach*, 457 F. Supp. 2d 625, 646-47 (D.S.C. 2006).

<sup>5</sup> *Wilkes v. Young*, 28 F.3d 1362, 1366 n.4 (4th Cir. 1994) (providing, “We note as well that the South Carolina Tort Claims Act would appear to preclude recovery for any loss resulting from intentional infliction of emotional harm.”).

### III. PLAINTIFF'S RELIANCE ON *BASS V. S.C. DEPT. OF SOCIAL SERVICES* IS MISPLACED.

Trial judges in both state and federal courts have taken on the question of whether recklessness is contained within the cause of action for intentional infliction of emotional distress. The overwhelming determination based on a plain reading of S.C. Code Ann. § 15-78-30(f) is that it is not permitted.<sup>6</sup> Plaintiff's attorneys, at times, do not specify their claims with precision when alleging intentional infliction of emotion distress, instead attempting to include every possible element or facet of the claim to ensure the claim's validity and strength, in essence casting a wide net. This broad and encompassing approach by plaintiff's attorneys means the court is challenged with evaluating the merit of both reckless and intentional conduct allegations, making the process more complex. The only case cited by plaintiff in support of her position that reckless conduct is permitted to go forward separately from intentional conduct is *Bass v. SC Dept. of Social Services*, 780 S.E. 2d 252 (SC 2015) and the Court of Appeals in its decision on the same case. 742 S.E. 2d 667, 403 S.C. 184, (Ct. App. 2013). Defendants assert that *Bass* does not support the plaintiff's position.

Plaintiff acknowledges that S.C. Code §15-78-30(f) was raised in the Answer to the *Bass* Complaint, but asserts that the Supreme Court "chose" not to apply it as a prohibition to recover. There is no language in the Supreme Court's opinion that indicates that the court made any determination about the applicability of S.C. Code §15-78-30(f) or that it was asked to do so. Instead, the question before the court was whether or not the evidence presented at trial was sufficient to prove a claim of outrage, also known as intentional infliction of emotional distress.

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<sup>6</sup> Counsel does not have access to every single trial court decision in every single court in the state or federal district, but has communicated with multiple attorneys who defend such claims regularly about their experiences and has performed research through online databases to make this determination.

The mere fact that a trial court judge misinterpreted the statute and the elements of the cause of action, and such was not appealed, is not relevant to the appellate court decisions issues later.

The Court of Appeals in its *Bass* decision included that the Basses asserted an “intentional infliction of emotional distress claim” based on “reckless rather than intentional conduct.” 742 S.E. 2d 667, 672, 403 S.C. 184, 193 (Ct. App. 2013). This is clear evidence that even when the claim is based on reckless conduct, the cause of action is still one for intentional infliction of emotional distress. Loss from the intentional infliction of emotional distress is explicitly excluded pursuant to S.C. Code §15-78-30(f)

Plaintiff has argued that this Court “implicitly” recognized the viability of a reckless infliction of emotional distress claim in its *Bass* decision. However, the decision does not include any such recognition or acknowledgement. To the contrary, this court disagreed with the original Plaintiff “that the evidence supported a verdict in their favor for the outrage claim.” *Id.* at 260. The court went on to define outrage as being known as intentional infliction of emotional distress, and set forth the factors. Those facts specifically include “intentionally or recklessly inflicted severe emotional distress”. *Id.* at 260. Neither the Court of Appeals nor this Court have issued any decisions that allow a plaintiff to avoid the prohibition set forth in the South Carolina Tort Claims Act, §15-78-30(f) by claiming a defendant’s conduct was reckless instead of intentional.

### CONCLUSION

South Carolina law does not differentiate between intentional and reckless infliction of emotional distress. Both are encapsulated within the claim for intentional infliction of emotional distress, the elements of which are explicitly laid out in judicial precedents, including cases such as *Bergstrom*, *Hutson*, and *Hansson*. There is an explicit bar on claims arising from “intentional

infliction of emotional harm" under S.C. Code §15-78-30(f). State and federal jurisprudence, through numerous rulings, reinforces the interpretation that claims based on intentional infliction of emotional distress, which subsumes recklessness, are categorically precluded. Both the Court of Appeals and this Court have consistently emphasized that claims of reckless infliction of emotional distress are subsumed within the purview of intentional inflictions. Therefore, there is no substantive basis for distinguishing between reckless and intentional inflictions of emotional distress under South Carolina law. The Tort Claims Act, buttressed by consistent judicial interpretation, offers no room for such a distinction. Plaintiffs attempting to navigate these waters by making nuanced distinctions find themselves faced with a legal structure that treats reckless conduct as part and parcel of intentional infliction of emotional distress claims. For all of the reasons stated herein, the Court should answer the Certified Question "Yes".

Respectfully submitted,

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<sup>7</sup> Willis Beatty and Dorchester County were dismissed from this matter by Judge Gergel's Order, ECF #57.

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CERTIFICATE OF COUNSEL

The undersigned certifies this Final brief complies with Rule 211(b), SCACR.

August 18, 2023

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**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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Appellate Case No. 2023-000922

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Candise Gore,..... Plaintiff,

v.

Dorchester County Sheriff's Office;  
Dorchester County; Carol Brown;  
Keisha Baldwin; Sheriff L.C. Knight;  
Richard Darling; Sharon Branch;  
Wanda Taylor; and Willis Beatty ..... Defendants.

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CERTIFICATE OF SERVICE

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I certify that I have served Defendants' Final Brief on all parties by and through the electronic filing system on August 17, 2023, by depositing bound copies of the same in the United States Mail to the court on August 18, 2023, and by depositing a copy of the same in the United States Mail, postage paid, on August 18, 2023, addressed to plaintiff's attorney of record as follows:

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*S/ Robin Lilley Jackson*  
Robin Lilley Jackson  
Senn Legal, LLC