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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Honorable Kristi F. Curtis, Circuit Court Judge

Case No. 2020-CP-26-06286
Appellate Case No. 2023-000289

Jack Kelly,

Appellant,

v.

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

Respondents.

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

RULES

STATEMENT OF ISSUES ON APPEAL

1. DID THE CIRCUIT COURT PROPERLY GRANT SUMMARY JUDGMENT AS TO RESPONDENT BUSINESSES WHERE APPELLANT FAILED TO ESTABLISH A PRIMA FACIE CASE AS TO EACH CAUSE OF ACTION?

2. DID THE CIRCUIT COURT PROPERLY GRANT SUMMARY JUDGMENT AS TO RESPONDENT COX WHERE APPELLANT FAILED TO ESTABLISH A PRIMA FACIE CASE AS TO EACH CAUSE OF ACTION?

STATEMENT OF THE CASE

On October 30, 2020, Appellant brought a complaint against Respondents alleging Intentional Infliction of Emotional Distress, Negligence Per Se, and violations of South Carolina law against Roger D. Cox ("Respondent Cox"); and Negligent Retention and Supervision and Negligence by Respondeat Superior against Respondents Cox Millwork & Supply, Inc., Waterside Drive Boat Ramp, LLC, and Cox Properties, LLC ("Respondent Businesses"). Respondents answered, denying the allegations brought against them. On August 17, 2022, two years later and after substantial discovery, Respondents moved for Summary Judgment. Respondents' motion was heard on November 29, 2022, by the Honorable Judge Curtis. On December 29, 2022, the Court of Common Pleas for the 15th Judicial Circuit ("circuit court") issued an Order granting Respondents' motion and entering final judgment on their behalf, ending the case with prejudice. In the Order, Judge Curtis noted she had considered the motion, reply, pleadings, discovery, depositions on file, and the oral arguments of counsel. Judge Curtis held substantial discovery had been completed and the facts did not support the causes of actions against the Respondents. Appellant filed his Motion to Reconsider on January 5, 2023. On February 3, 2023, the circuit court issued a Form 4 Order denying his motion. This appeal follows.

STANDARD OF REVIEW

In reviewing a motion for summary judgment, the Court of Appeals applies the same standard applied by the trial court under Rule 56(c), SCRCP. *Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002). Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.* While the Court must view all reasonable inferences in the light most favorable to the non-moving party, where "plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." *Ellis v. Davidson*, 358 S.C. 509, 517–18, 595 S.E.2d 817, 822 (Ct. App. 2004).

ARGUMENTS

I. THE CIRCUIT COURT PROPERLY GRANTED SUMMARY JUDGMENT AS TO APPELLANT'S RESPONDEAT SUPERIOR CLAIM AGAINST RESPONDENT BUSINESSES.

A. APPELLANT CANNOT SHOW ADDITIONAL DISCOVERY WOULD PRODUCE A GENUINE ISSUE OF ANY MATERIAL FACT AS TO RESPONDENT BUSINESSES.

The nonmoving party has the burden to show that additional discovery will not merely be a fishing expedition. *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003). "A party claiming summary judgment is premature because they have not been provided a full and fair opportunity to conduct discovery must advance a good reason why the time was insufficient under the facts of the case, and why further discovery would uncover additional relevant evidence and create a genuine issue of material fact." *Guinan v. Tenet Healthsystems of Hilton Head, Inc.*, 383 S.C. 48, 54–55, 677 S.E.2d 32, 36 (Ct. App. 2009).

When Respondents moved for summary judgment, substantial discovery had been conducted. A total of seven depositions had been taken—the depositions of Appellant, Appellant's biological father, Appellant's mother, Appellant's ex-girlfriend, and three individuals associated with Appellant's church.[1] *See* Deposition of App. Vol. I; Deposition of App. Vol. II; and Deposition of Dawn Sarte. Respondents and Appellant had undergone substantial discovery.[2] Appellant had not noticed the depositions of Respondent Cox or any 30(b)(6), SCRCP, depositions of any of the Respondent Businesses by the November 29, 2022, hearing, nor had Appellant

[1] Only the depositions of Appellant and Dawn Sarte are properly in the record before this Court.

[2] Respondents had answered Appellant's discovery and supplemented their discovery responses, Appellant had answered Respondents' discovery, Respondents had answered requests to admit, and seven depositions had been taken.

indicated any desire to actually do so.

Appellant is correct in his assertion that the Amended Consent Scheduling Order held discovery open through April 30, 2023. (R. p. 3). However, the mere fact that there was additional time to complete discovery does not, on its own, provide *any* evidence that further discovery was anything more than a fishing expedition. *See Dawkins*, 354 S.C. at 69, 580 S.E.2d at 439 (holding the nonmoving party has the burden of showing additional discovery will not merely be a fishing expedition); *Guinan*, 383 S.C. at 54–55, 677 S.E.2d at 36 (holding the party claiming summary judgment was premature because they had not been provided a full and fair opportunity to conduct discovery must advance a *good reason* why the time was insufficient under the facts of the case, and why further discovery would uncover additional relevant evidence and create a genuine issue of material fact). Appellant contended that he needed to depose Respondents; however, Appellant had from October 30, 2020, when the case was originally filed, to November 28, 2022, to take the deposition(s) of *any* of the Respondents. *See Guinan*, 383 S.C. at 54–55, 677 S.E.2d at 36. However, Appellant chose not to. *See id.*

Appellant claimed he was unable to notice the deposition of any Respondents until he received Respondent Cox's tax information. However, Appellant could have taken the depositions of Respondents prior to the production of the tax information and re-noticed depositions as necessary following the production of the tax information. Furthermore, Appellant, by his own admission, had over thirty days to take the depositions of any of the Respondents following his receipt of Respondent Cox's tax information prior to the hearing. *See Guinan*, 383 S.C. at 54–55, 677 S.E.2d at 36. Instead, Appellant chose to not notice any depositions for two years and now wants this Court to use his failure to participate in discovery as a shield from summary judgment.

See id.

Should this Court overlook Appellant's failure to notice depositions, further discovery still would not be likely to produce any genuine issues of any material fact. *See Dawkins*, 354 S.C. at 69, 580 S.E.2d at 439. Appellant argued that he needed to take the depositions of Respondents; however, their depositions are not likely to produce any evidence that would create a genuine issue of material fact because the actions Respondent Cox is alleged to have taken are not, in any way, related to the furtherance of any of Respondent Businesses and, at best, served some independent purpose—even if true. *See James v. Kelly Trucking Co.*, 377 S.C. 628, 631, 661 S.E.2d 329, 330 (2008) (holding an employer can be liable for the tortious acts of his employees that occur within the course and scope of the employee's employment); *Dawkins*, 354 S.C. at 69, 580 S.E.2d at 439 (holding the nonmoving party has the burden to show that additional discovery will not merely be a fishing expedition); *Kase v. Ebert*, 392 S.C. 57, 61, 707 S.E.2d 456, 458 (Ct. App. 2011) (holding for an employee to be acting with the course and scope of his employment, he must be doing some act in furtherance of the master's business).

B. APPELLANT CANNOT PRODUCE ANY EVIDENCE THAT RESPONDENT COX'S ACTIONS WERE WITHIN THE COURSE AND SCOPE OF RESPONDENT COX'S EMPLOYMENT AT OR OWNERSHIP OF ANY BUSINESSES.

Under the doctrine of respondeat superior, an employer can be held liable for the tortious acts of his employee when those acts occur in the course and scope of the employee's employment. *James*, 377 S.C. at 631, 661 S.E.2d at 330. To be acting within the scope of employment, the employee must be doing some act in furtherance of the master's business. *Kase*, 392 S.C. at 61, 707 S.E.2d at 458. If the servant acts for some independent purpose, wholly disconnected with the

furtherance of his master's business, his conduct then falls outside of the scope of his employment. *Id.* at 61, 707 S.E.2d at 458. The master is not liable for the acts of his employee occurring when the employee steps aside from the master's business—no matter how short the time is. *Id.*

In Appellant's deposition, Appellant testified that Respondent Cox Millwork & Supply, Inc., is a "woodworking company." *See* (R. p. 132, lines 3–5). Appellant testified that he believed Respondent Waterside Drive Boat Ramp, LLC, conducted business related to the ownership of a boat ramp. *See* (R. p. 135, lines 3–13). Appellant also testified he had no specific evidence that Respondent Cox did anything to him as the owner or employee of Respondent Waterside Drive Boat Ramp, LLC. *See* (R. p. 135, lines 3–13). Likewise, Appellant was not aware of Respondent Cox Properties, LLC's involvement with the allegations. *See* (R. p. 135, lines 14–17).

At the hearing, Appellant argued Respondent Cox was both "master and servant" of Respondent Businesses. *See* (R. p. 310, lines 18–21). Appellant *could not state* how what Respondent Cox allegedly did was within the scope of his employment. *See* (R. p. 310, lines 22–25). Appellant argued the boat ramp is located next to Respondent Cox's residence and Appellant needed Respondent Cox's deposition to determine whether he walked from the property to the boat ramp when he threw the shoes into the water, or if he threw the shoes from Respondent's property. *See* (R. p. 311, lines 3–11). The circuit court correctly noted that, even if Respondent Cox did throw them from the boat ramp, this is not evidence that his actions were within the course and scope of his employment. *See* (R. p. 311, lines 12–17). Appellant again asserted that because Respondent Cox owned the business, if he threw the shoes from the ramp, Respondent Waterside Drive Boat Ramp, LLC, should be liable. *See* (R. pp. 311–312). The circuit court still rejected Appellant's argument, noting that "[it] sound[ed] like a complete fishing expedition." (R. p. 312,

lines 16–17). Appellant argued Respondent Cox is the "master and servant" of a business, and as such he is "constantly working." (R. p. 312, lines 22–24). The circuit court asked Appellant what evidence he had that would show Cox Millwork & Supply was open and doing business that was in any way connected with the alleged actions of Respondent Cox. *See* (R. p. 313, lines 11–14). Appellant stated he did not know and was "hoping he could prove [his] point" with the depositions of Respondents. (R. p. 313, lines 15–21).

Respondent Cox is the master of Respondent Businesses and cannot also be the servant of Respondent Businesses. Even if it can be construed that he is both master and servant, Appellant cannot produce any evidence that the alleged actions of Respondent Cox occurred within the course and scope of his employment. *See James*, 377 S.C. at 631, 661 S.E.2d at 330 (holding an employer can be liable for the tortious acts of his employees that occur within the course and scope of the employee's employment); *Kase*, 392 S.C. at 61, 707 S.E.2d at 458 (holding for an employee to be acting within the course and scope of his employment, he must be doing some act in furtherance of the master's business). Appellant cannot show that he will obtain any testimony from the Respondents that would create any genuine issue as to any material fact. *See James*, 377 S.C. at 631, 661 S.E.2d at 330; *Kase*, 392 S.C. at 61, 707 S.E.2d at 458. Assuming *arguendo* that *all* actions alleged to have occurred actually happened, there is absolutely no evidence that would suggest *any* action was undertaken within the course and scope of Respondent Cox's ownership of any of the Respondent Businesses. *See id.* Even if Respondent Cox threw Appellant's shoes from the boat ramp; this action is blatantly not within the course and scope of his employment or ownership of a company that owns and/or operates a boat ramp, presumably for profit; a business entity that holds property, presumably for profit; or a business that performs woodworking

services, presumably for profit. *See James*, 377 S.C. at 631, 661 S.E.2d at 330. Allegedly throwing shoes into a waterway is, without any doubt, acting for some independent purpose wholly disconnected with the furtherance of the business. *See Kase*, 392 S.C. at 61–62, 707 S.E.2d at 458. Likewise, any alleged actions related to the toothbrush or 2005 BMW are still blatantly an act for some independent purpose that was wholly disconnected with the furtherance of *any* of Respondent Businesses. *See James*, 377 S.C. at 631, 661 S.E.2d at 330; *Kase*, 392 S.C. at 61–62, 707 S.E.2d at 458. Therefore, the circuit court properly granted summary judgment as to Respondent Businesses, and this Court should affirm the ruling of the circuit court.

II. THE CIRCUIT COURT PROPERLY GRANTED SUMMARY JUDGMENT AS TO APPELLANT'S NEGLIGENT RETENTION AND SUPERVISION CLAIM AGAINST RESPONDENT BUSINESSES.

An employer may be liable for the intentional tort of an employee where the employee is on the premises of the employer or is using a chattel of the employee; the employer knows or has reason to know that the employer has the ability to control his employee; and the employer knows or should know of the necessity and opportunity for exercising such control. *Degenhart v. Knights of Columbus*, 309 S.C. 114, 116–117, 420 S.E.2d 495, 496 (1992).

Appellant's claim fails as a matter of law because Respondent Cox is the master of the businesses; he is the employer—he cannot negligently retain and supervise himself. *See Degenhart*, 309 S.C. at 117, 420 S.E.2d at 497. Thus, Appellant cannot meet his burden of showing additional discovery would be anything other than a fishing expedition—further discovery cannot reveal any evidence that would create any genuine issues as to any material facts. *See Dawkins*, 354 S.C. at 69, 580 S.E.2d at 439 (holding the nonmoving party has the burden of showing additional discovery will not merely be a fishing expedition); *Guinan*, 383 S.C. at 54–55, 677

S.E.2d at 36 (holding the party claiming summary judgment was premature because they had not been provided a full and fair opportunity to conduct discovery must advance a *good reason* why the time was insufficient under the facts of the case, and why further discovery would uncover additional relevant evidence and create a genuine issue of material fact). Therefore, this Court should affirm the ruling of the circuit court.

III. THE CIRCUIT COURT PROPERLY GRANTED SUMMARY JUDGEMENT AS TO APPELLANT'S NEGLIGENCE PER SE CLAIM AGAINST RESPONDENT COX.

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.*, 313 S.C. 508, 511, 443 S.E.2d 406, 408 (Ct. App. 1994). A plaintiff must show the essential purpose of the statute was to protect from the kind of harm plaintiff suffered and that plaintiff is a member of the class of persons the statute was intended to protect. *Id.* S.C. Code Ann. § 44-29-145 makes it a felony to knowingly expose others to HIV in certain circumstances. Under the statue, a person cannot: knowingly engage in sexual intercourse without first informing that person of his infection; knowingly commit an act of prostitution with another person; knowingly sell or donate blood, blood products, semen, tissue, organs, or other bodily fluids; forcibly engage in sexual intercourse without the consent of the other person; or knowingly share a hypodermic needle or syringe with another person without informing that person of their infection. S.C. Code Ann. § 44-29-145.

Appellant alleged Respondent Cox violated S.C. Code Ann. § 44-29-145 by knowingly exposing Appellant to HIV. (R. pp. 29–30). Appellant testified he had no evidence Respondent Cox had HIV or any other sexually transmitted disease. *See* (R. p. 135, lines 18–22; R. p. 136, lines 6–10). Appellant also testified he has *never* had any sexually transmitted disease ("STD")

test even though he is sexually active. *See* (R. p. 135, line 23–p. 136, line 5). Ms. Sarte testified she was sexually active with Respondent Cox and was not aware of Respondent Cox having HIV or any other STD. *See* (R. p. 282, lines 10–p. 283, line 4). Dawn testified she has not had any STD testing following her marriage with Respondent Cox, has no idea whether Appellant, her son, ever had any STD testing done, and had no knowledge of Respondent Cox having any STD. *See* (R. p. 283, lines 5–24).

At the motion hearing, the circuit court asked Appellant what evidence he had to support the allegation that Respondent Cox exposed him to HIV. *See* (R. p. 313, lines 22–23). The only evidence Appellant offered was the fact that Respondent Cox allegedly put a toothbrush into an orifice. *See* (R. p. 313, line 24–p. 314, line 7). The court clarified, stating "[s]o you have no information, no knowledge, nothing" to which Appellant stated "[n]o, Your Honor." (R. p. 314, lines 8–16).

Appellant does not have HIV—thus Appellant failed to prove a prima facie case for negligence per se. *See Norton,* 313 S.C. at 511, 443 S.E.2d at 408 (setting forth the requirements to prove negligence per se). A plaintiff must show the essential purpose of the statute was to protect from the kind of harm plaintiff suffered and that plaintiff is a member of the class of persons the statute was intended to protect. *Id.* Appellant cannot show that further discovery would be anything other than a fishing expedition, and, as detailed above, Appellant could have noticed Respondent Cox's deposition in the two years that the case was pending prior to Respondents' motion for summary judgment. *See Dawkins*, 354 S.C. at 69, 580 S.E.2d at 439 (holding the nonmoving party has the burden to show that further discovery will not be a fishing expedition); *Guinan*, 383 S.C. at 54–55, 677 S.E.2d at 36 (holding a party claiming summary judgment is premature because they

have not been provided a full and fair opportunity to conduct discovery must advance a good reason the time was not sufficient). Furthermore, regardless of the above, Appellant's claim fails as a matter of law. Appellant and his mother both testified they have no evidence to even suggest that Respondent Cox has *any* STD, let alone HIV. *See*. S.C. Code Ann. § 44-29-145. Neither Appellant, following the actions alleged to have occurred to his toothbrush, nor his mother, following her sexually intimate relationship with Respondent Cox, felt the need to *even be tested for HIV or any other STD*. Appellant had no basis to believe that Respondent Cox had or currently has HIV and, as such, his allegations were completely baseless and defamatory. *See Dawkins*, 354 S.C. at 69, 580 S.E.2d at 439; *Guinan*, 383 S.C. at 54–55, 677 S.E.2d at 36.

Furthermore, under the plain language of the statute, Respondent Cox could not have violated S.C. Code Ann. § 44-29-145. The statute *requires* the person accused *to know that he is infected* with HIV. *See* S.C. Code Ann. § 44-29-145. Respondent Cox does not have HIV and therefore *could not meet the requirement that he knew he was infected*. *See* S.C. Code Ann. § 44-29-145; *Norton,* 313 S.C. at 511, 443 S.E.2d at 408. Respondent Cox also did not engage in any act prohibited by the statute—he did not have sexual intercourse with Appellant; did not commit an act of prostitution with Appellant; did not sell or donate blood or any other fluid; did not forcibly engage in sexual intercourse with Appellant; and did not share a hypodermic needle or syringe with Appellant. *See* S.C. Code Ann. § 44-29-145; *Norton,* 313 S.C. at 511, 443 S.E.2d at 408. Therefore, Respondent Cox could not have violated the statute. *See* S.C. Code Ann. § 44-29-145; *Norton,* 313 S.C. at 511, 443 S.E.2d at 408. Appellant is requesting that this Court allow him to go on a fishing expedition to get access to Respondent Cox's medical records, even though Appellant has *absolutely no reason to believe he has HIV or any other STD resulting from any*

alleged conduct. *See Dawkins*, 354 S.C. at 69, 580 S.E.2d at 439 (holding the nonmoving party has the burden of showing additional discovery will not merely be a fishing expedition); *Guinan*, 383 S.C. at 54–55, 677 S.E.2d at 36 (holding the party claiming summary judgment was premature because they had not been provided a full and fair opportunity to conduct discovery must advance a *good reason* why the time was insufficient under the facts of the case, and why further discovery would uncover additional relevant evidence and create a genuine issue of material fact). Thus, Appellant cannot meet his burden of showing additional discovery would be anything other than a fishing expedition undertaken only to harass, defame, or otherwise embarrass Respondent Cox—further discovery *will not and cannot* reveal any evidence that would create any genuine issues as to any material facts. *See Dawkins*, 354 S.C. at 69, 580 S.E.2d at 439; *Guinan*, 383 S.C. at 54–55, 677 S.E.2d at 36. Therefore, this Court should affirm the ruling of the circuit court.

IV. THE CIRCUIT COURT PROPERLY GRANTED SUMMARY JUDGMENT AS TO APPELLANT'S CLAIM UNDER S.C. CODE ANN. § 20-7-490 AGAINST RESPONDENT COX.[3]

Section 20-7-490, now Section 63-7-20, defines "child abuse or neglect" or "harm" when a parent, guardian, or other person responsible for the welfare of a child inflicts mental injury to the child, or engages in acts or omission which present a substantial risk of mental injury to the child. S.C. Code Ann. § 63-7-20(6). However, corporal punishment or physical discipline which is administered by a parent or person *in loco parentis*; perpetrated for the sole purpose of restraining or correcting the child; is reasonable in manner and moderate in degree; has not brought about permanent or lasting damage to the child; and is not reckless or grossly negligent behavior

[3] Appellant's Complaint alleges a violation of S.C. Code Ann. § 20-7-490; however, Section 20-7-490 was repealed and replaced by S.C. Code Ann. § 63-7-20.

by the parents is excluded from the definition. S.C. Code Ann. § 63-7-20(6). Mental injury is defined as the "injury to the intellectual, emotional, or psychological capacity or function of a child as evidenced by a discernable and substantial impairment of the child's ability to function when the existence of that impairment is supported by the opinion of a mental health professional or medical professional." S.C. Code Ann. § 63-7-20(17).

This section does not create a private cause of action for Appellant. *See* S.C. Code Ann. § 63-7-20. Chapter 7 of the South Carolina Code, the South Carolina Children's Code, details intervention by the State into family life on behalf of children. *See* S.C. Code Ann. § 63-7-10(A). The stated purposes of the chapter are to acknowledge the different intervention needs of families; establish an effective system of services throughout the State to safeguard the well-being and development of endangered children and to preserve and stabilize their family lives; ensure permanency on a timely basis for children who have been removed from their homes; establish fair and equitable procedures following due process of law for intervention in family life with proper regard for the safety and well-being of all family members; and to establish an effective system of protection of children. *See* S.C. Code Ann. § 63-7-10(B). Section 63-7-20 sets forth definitions of various terms to be used in the chapter. *See* S.C. Code Ann. § 63-7-20. Neither the applicable section, nor chapter as a whole, set forth a private cause of action actionable by Appellant. *See* S.C. Code Ann. §§ 63-7-10 to 2790. Thus, Appellant *cannot* meet his burden of showing additional discovery would create any genuine issues as to any material facts as to this cause of action. *See Dawkins*, 354 S.C. at 69, 580 S.E.2d at 439; *Guinan*, 383 S.C. at 54–55, 677 S.E.2d at 36. Therefore, this Court should affirm the ruling of the circuit court.

V. THE CIRCUIT COURT PROPERLY GRANTED SUMMARY JUDGMENT AS TO APPELLANT'S INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS CLAIM AGAINST RESPONDENT COX.

To prove outrage, otherwise known as the intentional infliction of emotional distress, the plaintiff must prove that the defendant intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from his conduct; the conduct was so "extreme and outrageous" it exceeded "all possible bounds of decency" and must be regarded as "atrocious and utterly intolerable in a civilized community;" the actions of the defendant caused the plaintiff's emotional distress; and the emotional distress suffered by Plaintiff was so severe that "no reasonable man could be expected to endure it." *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 356, 650 S.E.2d 68, 70 (2007). Indeed, the plaintiff must show that the defendant's conduct was both "extreme and outrageous" and that the conduct caused distress of an "extreme or severe nature." *Id.* at 356, 650 S.E.2d at 70. A party cannot establish a prima facie claim for damages with "mere bald assertions," and the plaintiff must establish a prima facie case for each element of the tort. *Id.* at 358, 650 S.E.2d at 72. The court plays a significant role in preventing claims for intentional infliction of emotional distress from turning into a remedy for hurt feelings by acting as a gatekeeper. *Id.*

Appellant claimed that Respondent Cox instituted a campaign of actions designed to intentionally inflict emotional distress on Appellant. *See* Compl. Appellant ultimately relied on four different actions allegedly done by Respondent Cox: throwing Appellant's shoes into the waterway, scratching Appellant's 2005 BMW, wiping his buttocks with Appellant's toothbrush, and putting soap on Appellant's toothbrush. *See* (R. p. 24–25; App. Br. at p. 5). Specifically, the alleged damage to the 2005 BMW was to the headlights and body of the BMW. *See* (R. p. 254,

lines 15–22). These actions were alleged to have occurred while Appellant was in high school, in or around 2016.[4] *See* (R. p. 92, lines 2–4; p. 197, line 24–p. 198, line 5).

In high school, Appellant worked as a busboy. *See* (R. p. 79, lines 19–20). Appellant did not miss any time from work as a result of any of the actions alleged to have occurred. *See* (R. p. 79, lines 21–24). Appellant testified that he spoke to a guidance counselor while in high school due to the alleged actions of Respondents but did not seek any treatment of any medical professional. *See* (R. p. 179, line 22–p. 180, line 3). Appellant did not testify as to any interpersonal relationships that were affected by the alleged conduct of Respondent Cox. (R. pp. 72–205). Furthermore, the only reason Appellant believed Respondent Cox damaged the 2005 BMW was because his parents told him; however, neither he, nor his parents, actually witnessed the alleged conduct. (R. p. 93, lines 14–22).

After high school, Appellant attended Wofford College, studying biology on the pre-med track. *See* (R. p. 76, lines 8–13). Appellant obtained scholarships from Wofford College with grade-point average ("GPA") requirements and has maintained these scholarships through the date of his depositions.[5] *See* (R. p. 172, lines 18–19; p. 174, line 8–p. 175, line 3). Appellant was also active in Greek life, as a member of the Sigma Nu fraternity.[6] *See* (R. p. 175, lines 10–11). Appellant never failed to meet Sigma Nu's GPA requirements. *See* (R. p. 175, lines 15–17).

[4] Appellant did not bring this lawsuit until he was in college, approximately 5 years after the alleged conduct occurred.

[5] Appellant was a junior at Wofford at the time of his first deposition on November 22, 2021, and still maintained the scholarships through the second day of his deposition on April 4, 2022. *See* (R. p. 173, line 20–p. 186, line 3).

[6] Appellant left the Sigma Nu fraternity because of issues unrelated to any of Respondents' alleged actions or any alleged emotional or mental injuries resulting from the alleged actions. *See* (R. p. 177, line 16–p. 179, line 14).

Appellant was involved with his church and remained involved throughout high school and college. *See* (R. p. 189, line 14–p. 191, line 9). Appellant testified that none of the alleged actions by Respondent affected his pursuit or acceptance of any job opportunities. *See* (R. p. 195, line 23–p. 196, line 1). Appellant was unable to articulate how the alleged actions affected his social activities with any specificity. *See* (R. p. 196, lines 2–8). Appellant testified that he attends counseling approximately every two weeks at Wofford but did not attend any therapy while on summer break. *See* (R. p. 191, lines 10–11; R. p. 192, lines 4–8). Appellant was not prescribed any medication and has sought no other treatment for his alleged emotional and mental damages. *See* (R. p. 85, lines 11–24; R. p. 180, lines 4–14; R. p. 191, lines 10–21; R. p. 192, lines 13–17). Appellant claims he suffers from trouble sleeping due to the alleged actions of Respondents, but offered no testimony on how the lack of sleep impacts his life. *See* (R. p. 193, lines 18–19).

Appellant's mother, Dawn Sarte Cox, moved in with Respondent Cox in 2012, before marrying him in 2016. *See* (R. p. 239, lines 12–14; R. p. 249, lines 13–18). Dawn testified that either she or Appellant's biological father owned the BMW that was allegedly damaged. *See* (R. p. 255, lines 3–11). Dawn testified that she did not see Respondent Cox damage the BMW. *See* (R. p. 252, lines 5–24; R. p. 254, lines 1–10). Furthermore, Dawn testified that the repairs to Appellant's BMW were paid for by Respondent Cox, and while she did not like the repairs once completed, she agreed with the scope of repairs as described to her by the body shop who performed the work. *See* (R. p. 255, lines 14–18; R. p. 256, lines 11–14). Dawn also testified that she did not ask Respondent to make any additional repairs to the BMW and could not recall if she even alerted Respondent that she was unsatisfied with the repairs. *See* (R. p. 258, lines 15–24). Dawn further testified that Appellant no longer drove the BMW; rather, his biological father had

purchased a Toyota 4Runner for him, which Appellant now drove. *See* (R. p. 258, lines 1–10).

Dawn testified that neither she, nor Appellant, witnessed Respondent throwing Appellant's shoes into the waterway. *See* (R. p. 259, lines 12–18). Dawn also testified that Appellant received new shoes and that Appellant was unaware of any of Respondent's alleged actions related to his toothbrush until after the lawsuit was filed because Dawn purposefully kept this information from him. *See* (R. p. 259, line 25–p. 260, line 2; R. p. 264, lines 12–23).

Dawn testified she never took Appellant to a psychologist, never took Appellant to seek any counseling, and never took him to any other medical professional to seek help for any issues resulting from Respondent's alleged actions. *See* (R. p. 261, lines 20–21; R. p. 262, lines 1–4; R. p. 284, lines 10–16; R. p. 286, lines 16–18). In fact, Dawn testified she did not think she had a reason to take him to counseling. *See* (R. p. 262, lines 5–7; R. p. 263, lines 18–20). Dawn also never took Appellant to the doctor when he complained of feeling bad from his toothbrush. *See* (R. p. 268, lines 1–24).

Appellant failed to establish a prima facie case that any emotional distress he allegedly suffered was so severe that no reasonable man could be expected to endure it. *See Hansson*, 374 S.C. at 356, 650 S.E.2d at 70 (examining the damages suffered by the plaintiff to determine whether the emotional distress suffered reached the required threshold). In *Hansson*, the South Carolina Supreme Court held that the plaintiff failed to establish a prima facie claim of intentional infliction of emotional distress. *Hansson*, 374 S.C. at 360, 650 S.E.2d at 72. Hansson was a construction worker who worked for Scalise Builders. *Id.* at 345, 650 S.E.2d at 69. Hansson alleged that his coworkers and supervisor derided him with callous and vulgar remarks and gestures related to homosexuality. *Id.* Hansson filed suit, alleging intentional infliction of emotional distress and

other causes of action. *Id.* The circuit court granted defendant's motion for summary judgment as to intentional infliction of emotional distress, and this was reversed by the court of appeals. *Id.* The Supreme Court of South Carolina held that the plaintiff failed to meet the damages element required, noting that plaintiff's alleged emotional damages were that he "lost sleep at night," "visited a dentist who told him he appeared to be grinding his teeth in his sleep," spent a "couple hundred dollars" for fillings and a tooth cap related to the condition, but admitted he had not received treatment or medication from any other physician or counselor. *Id.* Furthermore, Hansson admitted that the conduct did not cause him to lose any time from work, did not alter his relationship with his wife, and did not affect his ability to perform his job. *Id.* In fact, Hansson noted that he was generally satisfied with his job and reciprocated with sexually oriented jokes of his own. *Id.* The Court concluded even in the light most favorable to Hansson, Hansson failed to provide legally sufficient evidence that his emotional distress was "severe" and Hansson's passing references to "fairly ordinary symptoms" were insufficient to create a jury question as to damages for the intentional infliction of emotional distress. *Id.* at 360, 650 S.E.2d at 72.

Appellant's bald assertions fail to provide any damages that would, even in the light most favorable to Appellant, create a question for a jury. *See Hansson*, 374 S.C. at 359–60, 650 S.E.2d at 72 (holding a party must establish a prima facie case for *every* element of intentional infliction of emotional distress and bald assertions are not sufficient evidence). At best, the alleged "damages" in the present case are almost the exact same as the damages the Court held were insufficient in *Hansson*. *See id.* at 359–60, 650 S.E.2d at 72. Even if Appellant's argument is read as to argue that his damages are lost shoes, a scratched car, a new toothbrush, and counseling sessions at his college, these do not meet the standard set forth by the Court in *Hansson*. *See id.* at

359–60, 650 S.E.2d at 72. Here, Appellant has failed to provide any evidence that he suffered any expense or cost as a result of any alleged conduct. *See id.* at 359–60, 650 S.E.2d at 72. Appellant did not pay to have his vehicle repaired, did not pay for a new toothbrush, did not pay for new shoes, and did not pay for any counseling—all of these items were paid for by someone other than Appellant.[7] *See Hansson*, at 359, 650 S.E.2d at 72. Appellant also spoke with a high school guidance counselor, church members, and the counselors employed by Wofford College for students; however, these too fail to show the required "severity." *See id.* Appellant paid no money for his counseling sessions. *See id.* Appellant's counseling at Wofford consists of sessions every two weeks, but Appellant testified he did not continue the sessions when home for the summer. *See id.* Appellant has not sought treatment from psychiatrists or other medical professionals related to the severe emotional distress he has allegedly incurred. *See id.*

Appellant has also failed to articulate, with any level of specificity, how the alleged severe emotional distress has impacted his life. *See Hansson*, at 359–60, 650 S.E.2d at 72. Appellant is only able to articulate that he had trouble sleeping and it has, in some inarticulable way, affected his social life. *See id.* Appellant testified the alleged conduct of Respondent Cox had no impact on Appellant's seeking or maintaining employment. *See id.* Appellant went to Wofford College and has maintained his scholarships while studying biology on the pre-med track. *See id.* Appellant has not been prescribed any medication and has not sought treatment from other physicians. *See id.* Finally, even Appellant's mother testified that she had no reason to believe he needed treatment from a counselor or other medical professional. *See id.*

[7] Appellant's counseling sessions are provided by the school and there are no costs associated with them. *See* (R. p. 81, lines 11– 21).

Appellant's own testimony shows almost exactly what the Supreme Court of South Carolina ruled was insufficient in *Hansson*—Appellant presented passing references to "fairly ordinary symptoms." *See id.* at 360, 650 S.E.2d at 72 ("Hansson's passing references to fairly ordinary symptoms are nonetheless insufficient to create a jury question on the damages element of his claim for intentional infliction of emotional distress."). Appellant, exactly like Hansson, has a vague "trouble sleeping." *See id.* at 359, 650 S.E.2d at 72. Appellant, exactly like Hansson, has visited a professional a handful of times and has incurred no or, at best, *de minimis* cost. *See id.* Even in the light most favorable to Appellant, examining all facts in his favor, he failed to establish a prima facie case for each of the required elements of intentional infliction of emotional distress. *See id.* at 360, 650 S.E.2d at 72.

Appellant argues "Respondent Cox confessed to the outrageous conduct" in a letter. App. Br. at p. 5. This was not established in the circuit court and is a mischaracterization of the status of that document. *See* (R. p. 298, lines 10–14; R. p. 315, lines 8–19). Respondents *specifically contested the authenticity of the document* at oral arguments on their motion for summary judgment. *See* (R. p. 315, lines 8–19). However, the discussion within this brief has shown that *even if* the allegations against Respondent Cox were true, Appellant's claims against both Respondent Cox and Respondent Businesses fail as a matter of law, and the circuit court did not err in granting Respondents' motion for summary judgment.

There are no genuine issues as to any material fact, and Respondents were entitled to judgment as a matter of law. *See Fleming*, 350 S.C. at 493, 567 S.E.2d at 860 (holding summary judgment is appropriate where there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law); *id.* at 360, 650 S.E.2d at 73; *Ellis*, 358 S.C. at 518, 595

S.E.2d at 822 (where "plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted."). Therefore, this Court should affirm the ruling of the circuit court. *Fleming*, 350 S.C. at 493, 567 S.E.2d at 860; *Hansson*, at 360, 650 S.E.2d at 72; *Ellis*, 358 S.C. at 518, 595 S.E.2d at 822.

CONCLUSION

For the reasons stated, this Court should affirm the judgment of the circuit court.

Respectfully submitted,

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