STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS

Appeal from Florence County
Court of Common Pleas
The Honorable H. Steven Deberry, IV, Circuit Court Judge for Common Pleas

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Appellate Case No.: 2022-001006

Wendy Lynch, ...Respondent,

v.

Elizabeth Langley and Rebecca White Lynch,.....Defendants,
Of whom Elizabeth Langley is the Appellant and
Rebecca White is a Respondent

FINAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

James Marion Lynch died testate on February 9th, 2013, leaving a Last Will and Testament dated May 11, 2012. (R. p. 1100-1103). The Last Will and Testament left Wendy Lynch and Elizabeth Lynch Langley as Personal Representatives of his Estate. Id. This action was commenced by Wendy Lynch filing a Summons and Complaint in the Florence County Court of Commons Pleas on February 7, 2016. (R. p. 1-13). The case was initially removed from the docket by order dated February 7, 2018, pursuant to Rule 40(j), SCRCP. (R. p. 14-15). The Plaintiff filed a motion to restore on February 6, 2019. The case was restored by order filed April 17, 2019. (R. p. 16-18). This matter was later held for Trial in front of the Honorable H. Steven Deberry IV April 25-29, 2022. (R. p. 19-1098).

This case comes about after the death of Jim Lynch who passed away in February of 2013 after a battle with Brain Cancer. Mr. Lynch was in and out of the hospital leading up to his passing and ultimately leading up to the claims and familial disputes that have come before the Circuit Court. The case in Circuit Court has been pending for about 9 years and the lawsuit that came before the court was brought about half way through this time. The suit was brought about by the Respondent Wendy Lynch to sue Elizabeth Langley and Rebecca White for Civil Conspiracy, Defamation, Abuse of Process, and intentional infliction of emotional distress. Wendy Lynch and her attorneys argued that through the statements by Elizabeth Langley and Rebecca White regarding blaming Wendy Lynch for "tried to send Daddy to Heaven early", filing complaints to DSS and the nursing board, having a coroner investigate the death, and then accusing Wendy of killing her father; that Wendy Lynch suffered emotional distress and was defamed by her sisters and their abuse of the system.

It is due to the brain tumors of Mr. Jim Lynch, that the attorney for Elizabeth Langley argued it was reasonable for Elizabeth Langley to believe that her father was not capable of making a will and that he was under undue influence due to the severity of his condition. Ms. Langley's attorney then further argued that it is because of her concern for her father and his estate that she filed several disputes in the court in order to preserve her father's intentions for his estate and also respect the advice of her family.

It is through Wendy Lynch's complaint that this matter was put forth in the Florence County Court of Common pleas, and then tried April 25-29, 2022. (R. p. 1-13; R. p. 19-1098). Following the conclusion of the trial, the court filed the Jury Verdict on May 6, 2022. (R. p. 1164-1166). The court ordered through this, the Statement of Judgement, ordering in favor of Wendy Lynch against Elizabeth Langley in the amount of $60,000.00 actual damages and $250,000.00 punitive damages; in favor of Wendy Lynch against Rebecca White in the amount of $40,000.00 actual damages and $250,000.00 punitive damages; Elizabeth Langley and Rebecca White were to no longer have any contact with Wendy Lynch and her son, Donald Jordan; and that Rebecca White was no longer to have any contact with Casea David pertaining this case. Id. Following the Judgement, Counsel for Elizabeth Langley, Mr. David Rigney, filed a Notice of Motion and Motion for New Trial on May 9, 2022 based on the fact that the evidence presented at trial was insufficient to support civil conspiracy, the Jury Verdict Form only provided one space for the Jury to state the amount of damages, and that there was insufficient evidence to support the amount of damages awarded to the plaintiff. (R. p. 1167-1169). The Circuit Court then ordered on July 5, 2022 that the Motion for New Trial filed on behalf of Elizabeth Langley was denied and that the court found there was sufficient evidence to support the Jury's Verdict. (R. p. 1174-1176).

Appellant timely filed her Notice of Appeal on July 18, 2022 by of her counsel, James R. Snell, Jr.

STATEMENT OF FACTS

This matter arises out of a dispute regarding the Last Will and Testament of James Marion Lynch. Wendy Lynch, Elizabeth Langley and Rebecca White are the three adult children of the decedent. (R. p. 1100-1103). Wendy Lynch filed suit against her sisters for civil conspiracy, defamation, abuse of process, and intentional infliction of emotional distress. (R. p. 1-13).

James Marion Lynch died on February 9, 2013, after suffering with brain cancer. Prior to his death, he issued a will naming Wendy Lynch and Elizabeth Langley as co-personal representatives of his estate. (R. p. 1100-1103). Proceedings in the probate court became contested.

Wendy Lynch filed a Summons and Complaint in the Florence County Court of Commons Pleas in 2016. (R. p. 1-13). This case was tried before a jury on April 25-29, 2022. (R. p. 1-13; R. p. 19-1098). A jury returned a verdict in favor of Wendy Lynch against Elizabeth Langley in the amount of $60,000 actual and $300,000 punitive, and against Rebecca White in the amount of $40,000 actual and $250,000 punitive. (R. p. 1167-1169). This appeal followed.

STANDARD OF REVIEW

"The circuit court, court of appeals, or Supreme Court shall hear and determine the appeal according to the rules of law." S.C. Code Ann. §62-1-308(i); *see* Golini v. Bolton, 326 S.C. 33, 482 S.E.2d 784 (Ct.App. 2007); *see also* Campbell v. Christian, 235 S.C. 102, 110 S.E.2d 1 (1959). "In an action at law, on appeal of a case tried by a jury, the jurisdiction of the appellate court extends merely to the correction of errors of law, and a factual finding by a jury will not be disturbed unless a review of the record discloses that there is no evidence that reasonably supports the jury's findings." Parrish v. Allison, 376 S.C. 308, 656 S.E.2d 382, 387 (Ct.App. 2007), *citing* Erickson v. Jones Street Publishers, LLC, 368 S.C. 444, 464, 629 S.E.2d 653, 663 (2006); *see* Townes Assoc., Ltd. v. City of Greenville, 266 S.C. 81, 221 S.E.2d 773 (1976).

The standard of review towards an appeal with regards to a motion for directed verdict and/or motion notwithstanding the verdict is that "[w]hen appealing a trial court's ruling on a motion for directed verdict and/or motion notwithstanding the verdict, '[T]his Court applies the same standard as the trial court and views the evidence and all reasonable inferences in the light most favorable to the nonmoving party.'" Allegro, Inc. v. Scully, 418 S.C. 24, 632, 791 S.E.2d 140, 144 (2016), *quoting* Elam v. S.C. Dep't of Transp., 361 S.C. 9, 28, 602 S.E.2d 772, 782 (2004).

"[I]n ruling on a motion for a directed verdict, the trial court considers the existence of evidence rather than its weight, and if there is any direct or substantial circumstantial evidence tending to prove the defendant's guilt or from which his guilt may be logically deduced, the cause should be submitted to the jury." State v. LaCoste, 347 S.C. 153, 162, 553 S.E.2d 464

(Ct.App. 2001), *citing* State v. Fennell, 340 S.C. 266, 270, 531 S.E.2d 512, 514 (2000). "In ruling on motions for directed verdict or judgment notwithstanding the verdict, the trial court is required to view the evidence and the inference that reasonably can be drawn therefrom in the light most favorable to the party opposing motions. The trial court must deny the motions when the evidence yields more than one inference or its inference is in doubt." Steinke v. S.C. Carolina Dep't of Labor, Licensing & Reg., 336 S.C. & Reg., 336 S.C. 373, 386, 520 S.E.2d 142, 148 (1999).; *see* Hurd v. Williamsburg Cnty., 363 S.C. 421, 611, S.E.2d 488 (2005); *see also* Hinkle v. Nat'l Cas. Ins. Co., 354 S.C. 92, 96, 579 S.E.2d 616, 618 (2003); *see also* Collins Entertainment, Inc. v. White, 363 S.C. 546, 611 S.E.2d 262 (Ct.App. 2005); *see also* Lingard v. Carolina By-Products, 361 S.C. 442, 446, 605 S.E.2d 545, 547 (Ct.App. 2004).

"Motions for directed verdict or JNOV should be denied if the evidence yields more than one reasonable inference or its inference is in double." Allegro at 32, 791 S.E.2d 140, 144, *citing* Strange v. S.C. Dep't of Highways & Pub. Transp., 314 S.C. 427, 429-30, 445 S.E.2d 439, 440 (1994). "[A] motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict." Gattison v. S.C. State College, 318 S.C. 148, 456 S.E.2d 414 (Ct.App. 1995). "If, when viewed in the light most favorable to the [non-moving party], there is any direct or substantial circumstantial evidence which reasonably tends to prove the guilt of the accused, refusal by the trial court to direct a verdict is not error." State v. Burroughs, 328 S.C. 489, 492 S.E.2d 408 (Ct.App. 1997), *citing* State v. Long, 352 S.C. 59, 480 S.E.2d 62 (1997); *see* State v. Williams, 321 S.C. 327, 468 S.E.2d 626, cert. denied, --- U.S. ---, 117 S.Ct. 230, 136 L.Ed.2d 161 (1996).

"When the evidence yields only one inference, a directed verdict in favor of the moving party is proper." Parrish at 338, *citing* Swinton Creek Nursery v. Edisto Farm Credit, ACA, 334

S.C. 469, 477-78, 514 S.E.2d 126, 130 (1999); *see* Sims v. Giles, 343 S.C. 708, 714, 541 S.E.2d 857, 860 (Ct.App. 2001). "However, if the evidence as a whole is susceptible for more than one reasonable inference, a jury issue is created and the motion should be denied." Id., *citing* Jinks v. Richland Cnty., 355 S.C. 341, 345, 585 S.E.2d 281, 283 (2003); *see* Adams v. G.J. Steel & Sons, Inc., 320 S.C. 274, 277, 465 S.E.2d 84, 85 (1995); *see also* The Huffines Co., LLC v. Lockhart, 365 S.C. 178, 187, 617 S.E.2d 125, 129 (Ct.App. 2005).

"When ruling on a motion for summary judgment or directed verdict in a defamation action, the court must review the evidence using the same substantive evidentiary standard of proof the jury is required to use in a particular case." Id. at 387, *citing* Erickson at 464, 629 S.E.2d at 663; *see* George v. Fabri, 345 S.C. 400, 451-52, 548 S.E.2d 868, 874-75 (2001). "The issue must be submitted to the jury whenever there is material evidence tending to establish the issue in the mind of a reasonable juror." Id. at 388, *citing* Hanahan v. Simpson, 326 S.C. 140, 149, 485 S.E.2d 903, 908 (1997). "Yet this rule does not authorize submission of speculative, theoretical, and hypothetical views to the jury." Id., *citing* Small v. Pioneer Mach., Inc., 329 S.C. 448, 461, 494 S.E.2d 835, 842 (Ct.App. 1997).

The standard of review towards an appeal with regards to a trial court's ruling on an objection, the issue is only preserved for the purposes of appeal if it is raised at trial and ruled on by the trial judge. State v. Garner, 389 S.C. 61, 697 S.E.2d 615, 617 (Ct.App. 2010), *citing* S.C. Dep't Transp. v. First Carolina Corp. of S.C., 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007). "An appellate court will reverse trial court's ruling only if no evidence supports the ruling below." Allegro at 32, 791 S.E.2d at 144, *citing* Welch v. Epstein, 342 S.C. 279, 300, 536 S.E.2d 408, 418 (Ct.App. 2000). "The trial court abuses its discretion when the ruling based on

an error of law or factual conclusion that is without evidentiary support." Garner at 617, *citing* State v. Rice, 375 S.C. 302, 314, 352 S.E.2d 409, 415 (Ct.App. 2007).

With appellate issues pertaining to ruling on the permissibility of whether or not specific words of phrases may be used by either party to a claim, "[r]ulings...are within the trial court's sound discretion and will not be disturbed on appeal absent an abuse of that discretion resulting in prejudice to the complaining party." LaCoste at 160, *citing* State v. Hugher, 339 S.C. 439, 453, 529 S.E.2d 721, 728-29 (2000); *see* State v. Varvil, 338 S.C. 335, 340, 526 S.E.2d 248, 251 (Ct.App. 2000). "[I]mproper admission...constitutes reversible error only when the admission causes prejudice." State v. Vick, 384 S.C. 189, 199, 682 S.E.2d 275, 280 (Ct.App. 2009). "Such error is deemed harmless when it could not have reasonably affected the result of the trial, and an appellate court will not set aside a conviction for such insubstantial errors." Id. "An insubstantial error is harmless when guilt is proven by competent evidence such that no other rational decision could be reached or when the evidence is merely cumulative of other evidence." Garner at 618, *citing* State v. Vick, 384 S.C. 189, 199-200, 682 S.E.2d 275, 280 (Ct.App. 2009).

With appellate issues pertaining to rulings on allowing hearsay evidence to be entered into evidence at trial, "Rulings on the admissibility of evidence are within the trial court's sound discretion and will not be disturbed on appeal absent an abuse of that discretion resulting in prejudice to the complaining party." LaCoste at 160, *citing* State v. Hugher, 339 S.C. 439, 453, 529 S.E.2d 721, 728-29 (2000); *see* State v. Varvil, 338 S.C. 335, 340, 526 S.E.2d 248, 251 (Ct.App. 2000). "[I]mproper admission of hearsay testimony constitutes reversible error only when the admission causes prejudice." Vick, at 199, 682 S.E.2d at 280. "Such error is deemed harmless when it could not have reasonably affected the result of the trial, and an appellate court will not set aside a conviction for such insubstantial errors." Garner at 168, *citing* State v. Vick,

384 S.C. 189, 199, 682 S.E.2d 275, 280 (Ct.App. 2009). "An insubstantial error is harmless when guilt is proven by competent evidence such that no other rational decision could be reached or when the evidence is merely cumulative of other evidence." Id. at 168, *citing* State v. Vick, 384 S.C. 189, 199-200, 682 S.E.2d 275, 280 (Ct.App. 2009).

ARGUMENTS

I. The Trial Court erred in overruling Appellant's Motion for Directed Verdict and/or Motion for Judgment Notwithstanding the Verdict as to the cause of action of Civil Conspiracy.

Civil conspiracy has a long history of uncertainty, both in its elements and in its proper application. Paradis v. Charleston Cnty. Sch. Dist., 433 S.C. 562, 861 S.E.2d 774, 775 (2021). "The elements of civil conspiracy are not always defined in exactly the same way." 4 James Lockhart, *Cause of Action for Civil Conspiracy,* Cause of Action §4, at 530 (2d ed. 1994). The widely accepted definition of civil conspiracy is "[a] combination between two or more persons to accomplish a criminal or unlawful purpose, or some purpose not in itself criminal or unlawful by criminal or unlawful means, subjects the confederates to criminal prosecution; and, if injury ensues to an individual therefrom, it subjects them to a civil action by their victim." Francis M. Burdick, *Conspiracy as a Crime and as a Tort*, 7 Colum.L.Rev. 229 (1907).

In the State of South Carolina, civil conspiracy is held as "a combination of two or more persons joining for the purpose of injuring and causing [omitted] damage to the plaintiff." McMillian v. Oconee Mem'l Hosp., Inc., 367 S.C. 559, 564, 626 S.E.2d 884, 886 (2006) (word "special" omitted due to the recent ruling in Paradis v. Charleston Cnty. Sch. Dist., 433 S.C. 562, 861 S.E.2d 774 (2021)). Notably, "[a] plaintiff need not allege an unlawful act to state a cause of action; lawful acts may become actionable as a civil conspiracy if the objective is to ruin or damage the business of another." Allegro, at 32, 791 S.E.2d at 144, *citing* LaMotte v. Punch Line of Columbia, Inc., 296 S.C. 66, 70, 370 S.E.2d 711, 713 (1988). "Conspiracy may be

inferred from the very nature of the acts done, the relationship of the parties, the interests of the alleged conspirators, and other circumstances." Peoples Fed. Sav. & Loan Ass'n of S.C. v. Res. Planning Corp., 358 S.C. 460, 470, 596 S.E.2d 51, 57 (2004). "The difference between civil conspiracy and criminal conspiracy is that in criminal conspiracy the agreement or conspiracy is the gravamen of the offense, but in civil actions the conspiracy is not the gravamen of the charge, but may be both pleaded and proved as aggravating the wrong of which plaintiff complains, the gravamen of the tort being the damage resulting to plaintiff from an overt act done pursuant to the common design." 15A C.J.S. Conspiracy §1(1) (2012). The primary factor in regards to a cause of action of civil conspiracy is that the purpose of a civil conspiracy is to injure the plaintiff. Allegro at 32, 418 S.E.2d at 144, *citing* Pye v. Estate of Fox, 369 S.C. 555, 567, 663 S.E.2d 505, 511 (2006).

At no point in the trial does Respondent show that Appellant and co-Defendant acted in conjunction with each other with the intent to injure Respondent. At no point are the allegedly defamatory statements shown to come from both Appellant and co-Defendant as part of a plan to injure Respondent, as opposed to a joint interest in looking out for the best interest of their father's Estate and his memory. At no point is Respondent able to show that Appellant and co-Defendant acted together with "the objective...to ruin or damage the business of [Respondent]." Id., *citing* LaMotte at 70, 370 S.E.2d at 713.

The most tangible thing Respondent is able to point to as part of a civil conspiracy between the two, is co-Defendant White's use of the word "we". (R. p. 271, lines 10-19; R. p. 272, lines 10-19; R. p. 289, lines 21-25; R. p. 290, line 1). Co-Defendant uses the word "we" when cross-examining the Personal Representative of their father's Estate regarding distribution of funds and that his dealing with the two women gave him the impression that they were

"singing from the same sheet of music" in regards to what should happen with regards to the Estate. (R. p. 55, lines 10-19; R. p. 272, lines 10-19). In Respondent's questioning of Appellant regarding her co-Defendant's use of the word "we" in reference to court filings, Appellant denied any collusion between herself and co-Defendant. (R. p. 289, lines 21-25; R. p. 290, line 1). It is important to also point out the fact that Appellant had legal representation through the trial and preceding case, whereas co-Defendant was pro se, thus would have had no say in what Appellant's attorney filed with the court and would likely have only seen the documents after they had already been filed with the court.

At no time during the trial does Respondent offer any proof that Appellant and her co-Defendant conspired together or colluded to injure Respondent, nor does either party admit to doing so. No evidence was offered or testimony given to show that Appellant and her co-Defendant made any of the defamatory statements in question together as part of a plan to injure Respondent. Respondent, at best, is only able to show that Appellant and co-Defendant independently held the same ideas and opinions about Respondent's actions and character.

While Respondent alleges that Appellant and her co-Defendant reported Respondent to DSS in efforts to ruin her reputation, Respondent is unable to establish who actually made the report to DSS for elder abuse, much less that it was Appellant and co-Defendant did so as part of a conspiracy. (R. p. 345, lines 11-20; R. p. 346, lines 13-25 and R. p. 347, line 1; R. p. 348, lines 14-25 and p. 349, lines 1-12; R. p. 352, lines 11-14). Additionally, Respondent alleges that Appellant and co-Defendant reported Respondent to the nursing board in attempts to have Respondent lose her nursing license, they are only able to establish at trial that someone else, who was not named as a party to this suit or alleged to have been part of Appellant or co-Defendant's civil conspiracy, was the person to make that complaint. (R. p. 371, lines 2-20).

"[I]n ruling on a motion for a directed verdict, the trial court considers the existence of evidence rather than its weight, and if there is any direct or substantial circumstantial evidence tending to prove the defendant's guilt or from which his guilt may be logically deduced, the cause should be submitted to the jury." LaCoste at 162, *citing* State v. Fennell, 340 S.C. 266, 270, 531 S.E.2d 512, 514 (2000). When no evidence, whether direct or substantially circumstance evidence is presented to show a civil conspiracy occurred, the trial court must rule favorably as to Appellant's motion for directed verdict and/or motion for judgment notwithstanding the verdict as to the issue of civil conspiracy. Id., *citing* State v. Fennell, 340 S.C. 266, 270, 531 S.E.2d 512, 514 (2000).

II. The Trial Court erred in overruling Appellant's Motion for Directed Verdict and/or Motion for Judgment Notwithstanding the Verdict as to the cause of action of Intentional Infliction of Emotional Distress.

The cause of action of intentional infliction of emotional distress were first adopted in South Carolina in the case of Ford v. Hutson, which adopted the language of the Restatement of Torts' definition of intentional infliction of emotional distress. Ford v. Hutson, 276 S.C. 157, 162, 276 S.E.2d 776, 778 (1981); §46 Restatement (Second) of Torts. "One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability of such emotional distress." §46 Restatement (Second) of Torts.

The elements required to recover for a claim of intentional infliction of emotional distress are as follows:

> a plaintiff must establish
>
> (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 defendant's conduct was so extreme and outrageous that it exceeded all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community;
>
> (3) the actions of the defendant cause the plaintiff's emotional distress; and
>
> (4) the emotional distress suffered by the plaintiff was so severe that no reasonable person could be expected to endure it.

Fleming v. Rose, 350 S.C. 488, 537, 567 S.E.2d 857 (2002), *citing* Ford at 778. "The majority of cases finding outrageous conduct generally require hostile or abusive encounters or coercive and oppressive conduct." Id.

While the conduct alleged to have occurred may reasonably be deemed hurtful, it was believed to be truthful by Appellant and Appellant's conduct certainly does not rise to the level of the "hostile or abusive encounter or coercive and oppressive conduct" required to show intentional infliction of emotional distress. Id. Past case law has upheld only the most extreme and outrageous cases, actions that shock the conscience, as rising to the level of intentional infliction of emotional distress. *See* Ford v. Hutson, 276 S.C. 157, 276 S.E.2d 778 (1981); *see also* Wright v. Sparrow, 298 469, 381 503 (Ct.App. 1989). The South Carolina Supreme Court has previous upheld that forcing an employee to perform physical exercises in front of their co-workers for the sole purpose of pointing out their incontinence issues for embarrassment and humiliation rises to the level of intentional infliction of emotional distress. McSwain v. Shei, 34 S.C. 25, 402 S.E.2d 890 (1991). The South Carolina Supreme Court has also upheld that a client threatening and verbally assaulting their real estate agent for over two years, including entering their home without permission to verbally berate her in front of guests, rises to the level of intentional infliction of emotional distress. Ford v. Hutson, 276 S.C. 157, 276 S.E.2d 778 (1981). While these are only a few examples, this certainly highlights the fact that one defamatory statement that was never spoken directly to Respondent does not rise to the level of intentional infliction of emotional distress. Corder v. Champion Road Mach. Int'l Corp., 283 S.C. 520, 324 S.E.2d 79 (Ct.App. 1984).

The fourth and final element that must be shown to prove a cause of action for intentional infliction of emotional distress is that "the emotional distress suffered by the plaintiff was so

severe that no reasonable person could be expected to endure it." Fleming at 537, *citing* Ford at 162, 276 S.E.2d at 778. Respondent, when speaking about damages in regards to the issue of intentional infliction of emotional distress during closing arguments, stated "There's no medical bills, no counseling. They don't get a discount because Wendy Lynch is tough. They don't get a discount because Wendy Lynch is Jimmy Lynch's daughter. And she don't run and get medical bills all the time. She don't run to get put on anti-depressant. She suffered through it for nine years." (R p. 1044, lines 19-24). Respondent is making the argument that she is tough enough to have endured the conduct so severe that it rises to the level of intentional infliction of emotional distress for nine years without a single doctor's visit or any psychiatric treatment because she is simply "tough". Id. However, the law requires that the conduct be so extreme that no reasonable person can endure it. Fleming at 537, *citing* Ford at 162, 276 S.E.2d at 778. If Respondent, a reasonable person, can endure it without being able to point to a single harm they suffered as a result of Appellant's actions, then Appellant's actions do not rise to the level of intentional infliction of emotional distress. (R. p. 1044, lines 19-24; Fleming at 537, *citing* Ford at 162, 276 S.E.2d at 778).

When Respondent, in their own closing arguments, highlights that their case does not meet the final element required to prove intentional infliction of emotional distress, then Appellant's Motion for Judgment Notwithstanding the Verdict must be granted. (R. p. 1044, lines 19-24). Even in the light most favorable to the non-moving party, the Motion Notwithstanding the Verdict must be granted when the non-moving party makes statements in their own closing arguments highlighting a failure to meet an element of the issue of intentional infliction of distress. Allegro at 32, 791 S.E.2d at 144; *see* Elam at 28, 602 S.E.2d at 782. For the Trial Court to have done otherwise is an err in the law.

III. The Trial Court erred in allowing the Verdict Form to be sent to the Jury without separating actual and punitive damages for each separate cause of action, in so that the damages awarded for each individual cause of action could not be distinguished from the other causes of action.

The verdict forms submitted to the jury in this particular case only distinguished between actual and punitive damages for each of the defendants. The verdict forms did not distinguish damages in any way between the individual causes of actions. Should this court find that the trial court erred in failing to grant the motion for directed verdict and/or motion for judgment notwithstanding the verdict as to the issues of either civil conspiracy or intentional infliction of emotional distress, this court must grant a new trial for all issues at trial.

Without making this ruling, the court faces an inability to distinguish which actual and punitive damages were awarded to each of the causes of actions. Without making this ruling, the court would be forced to attempt to read into the minds of the jurors to determine which value the jury placed on each of the causes of actions for both actual and punitive damages against Appellant.

As it is well established within the role of the Court of Appeals not to do so oversteps the Jury's role of fact-finder, the Court is faced with no choice but to grant a new trial for all causes of action in this case. Day v. Kilgore, 314 S.C. 365, 444 S.E.2d 515 (1994).

IV. The Trial Court erred in allowing the voicemail message left for Respondent by Attorney Eric Poston (A.K.A. Ducati James) be admitted into evidence, when the voicemail message was both hearsay and more prejudicial than probative.

Hearsay is well known as "a statement, other than one made by the declarant while testifying at trial of hearing, offered into evidence to prove the truth of the matter assert." Rule 801(C), SCRE. One of the many exceptions to the hearsay rule, or more specifically that an out-of-court statement offered for the truth of the matter asserted that is considered not hearsay falls under the admission of a party-opponent. Rule 801(D), SCRE. Hearsay statements may be categorized as non-hearsay if:

> The statement is offered against a party and is
>
> (A) the party's own statement in either an individual or representative capacity, or
>
> (B) a statement of which the party has manifested an adoption or belief in its truth, or
>
> (C) a statement by a person authorized by the party to make a statement concerning the subject, or
>
> (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or
>
> (E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

Rule 801(D)(2), SCRE. "Hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court of this State or by statute." Rule 802, SCRE.

During the testimony of Respondent, a voicemail message from Appellant's former attorney Eric Poston (A.K.A. Ducati James) was played for the jury, after objections from Respondent on the grounds of hearsay were overruled. (R. p. 715, line 21; R. p. 702, lines 6-19; R. p. 705, lines 16-22). While the voicemail message was not transcribed by the court reporter (it was only recorded as "A voicemail message was played in open court."), the testimony offered by Respondent made it clear that the voicemail was of a "life threatening" nature to the Respondent. (R. p. 715, line 21; R. p. 715 lines 9-14). The Trial Court overruled the Respondent's hearsay objection on the grounds of a party-opponent being bound by the statements of their attorney. (R. p. 713, lines 5-12). Attorney Poston was not a testifying witness and was not made available to corroborate that the voicemail was left by him. (R. p. 706, lines 20-22).

During discussion of Appellant's hearsay objection, the Trial Court noted, "And I find that this testimony is hearsay. It's an out-of-court statement made by an individual that's not here." Id. Furthermore, the Trial Court stated "I don't know of any exception to it being admissible unless – Ms. McLaughlin, I've just never considered a statement by an attorney as the same as a statement by an individual or their client." (R. p. 706, lines 22-25).

Appellant testified that she was no longer represented by Attorney Poston at the time that the voicemail message was left, a point that was also raised by Appellant in regards to the hearsay objection. (R. p. 287, lines 16-18; R. p. 713, lines 14-18). In fact, Appellant testified that prior to the time of the voicemail being left on Respondent's phone, she had stopped by Attorney Poston's office to pick up her legal file, presumably to give to her new attorney, thus terminating

any attorney-client relationship between Appellant and Attorney Poston prior to Attorney Poston making that phone call to Respondent. (R. p. 287, lines 16-18).

For a hearsay statement that was not spoken directly by a party opponent to be admitted into evidence as a non-hearsay statement, the statement must be made by a representative of the party-opponent in their representative capacity, by a person authorized by the party to make a statement concerning the subject, by the party's agent concerning a matter within the scope of the agency or employment during the existence of that relationship, or by a co-conspirator. Rule 801(D)(2)(A), SCRE; Rule 801(D)(2)(C)-(E), SCRE. At the time that the voicemail was left on Respondent's phone, Attorney Poston had been fired by Appellant. (R. p. 287, lines 16-18). Attorney Poston was no longer within a representative capacity regarding Appellant's legal matters in any manner. Rule 801(D)(2)(A), SCRE; (R. p. 287, lines 16-18). At no time during the trial, was Respondent able to show that Appellant authorized Attorney Poston to leave the voicemail message on Respondent's phone.

At the time that the voicemail message was left on Respondent's phone, Attorney Poston has been fired, and was thus no longer the Appellant's agent. Id.; Rule 801(D)(2)(D), SCRE. Furthermore, an attorney leaving a threatening voicemail message on the opposing party's phone is clearly not within the scope of the attorney-client relationship or agency between Appellant and Attorney Poston. Rule 801(D)(2)(D), SCRE. Furthermore, Attorney Poston was not named a co-conspirator to the civil conspiracy cause of action in this case. Rule 801(D)(2)(E), SCRE. At no point were exceptions to the hearsay rule raised by Respondent in reference to Appellant's hearsay objection to admission of this piece of evidence, nor do any hearsay exceptions apply. Rule 803, SCRE.

"The trial court abuses its discretion when the ruling based on an error of law." Garner, at 67; Rice at 314, 352 S.E.2d at 415. With no exception to hearsay applicable to this particular voicemail message, the Trial Court's ruling was that of an error of law. The question becomes whether or not the admission of the voicemail message into evidence is harmless error. Reversible error is only present when the admission of evidence causes prejudice that would have reasonably affected the result of the trial. Vick at 199, 682 S.E.2d at 280.

The prejudicial effect on a jury hearing a threatening voicemail left by a former attorney of Appellant is certainly enough to affect the outcome of the jury's verdict given the deplorable nature of the voicemail itself, especially when left by an attorney, whom juries expect to live up to the highest of standards. To present such material to a jury showing the deplorable actions of Appellant's former attorney can only be construed as a direct reflection of the Appellant. To rule that a voicemail message of this nature, which had no material value to the claims regarding the actions Appellant or co-Defendant and met no non-hearsay rules or hearsay exceptions of the South Carolina Rules, is far more prejudicial than probative and is a clear error in law by the Trial Court. Rule 801, SCRE; Rule 803, SCRE.

V. The Trial Court erred in allowing the use of the word "kill" in reference to the allegedly defamatory statement by Appellant that Respondent "tried to send Daddy to Heaven early," when the word "kill" was both more prejudicial than probative and overstepped the jury's fact-finding role of determining the meaning of the ambiguous statement to determine if it was or was not defamatory in nature.

As this is a defamation per se action, the words of the defamatory statement must be "taken in their natural sense as they would be understood by the hearer". Wardlaw v. Peck, 282 199, 203, 318 270, 273 (Ct.App. 1984); *see* Harrison v. Thornborough, (1714) 10 Mod. 196, 88 Eng.Rep. 691; *see also* Jones v. Rivers, 5 S.C.L. (3 Brev.) 95 (1812). Meaning, the words that alleged to be defamatory must be presented to the jury with the necessarily contextual information surrounding the defamatory statement, but nothing more. Goodwin v. Kennedy, 347 S.C. 30, 41, 552 S.E.2d 319 (Ct.App. 2001). Defamation per se differs from ordinary defamation in that the defamatory statement is that "of an imputation of the criminal act, of unfitness for one's office or trade, or of a loathsome disease." Wardlaw at 209, 318 S.E.2d at 277, *citing* J. Kaye, *Libel and Slander – Two Torts or One?* 91 L.Q.R. 524, 527 (1975). Defamatory statements that are determined to be defamation per se creates a presumption of damages, rather than requiring the plaintiff prove the damages element of defamation. Id.

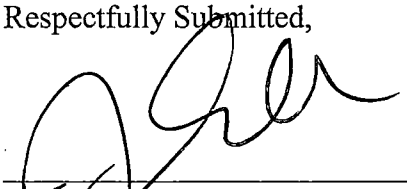
Under the law, the defamatory statement of "tried to send Daddy to heaven early" should have been the only statement presented to the jury, leaving it in their fact-finding authority to determine whether or not the statement was defamatory in nature. Goodwin at 41. Additionally, the word "kill" being allowed by the Trial Court to be used multiple times throughout the trial by Respondent negates the existing law and takes the fact-finding role away from the jury. Day v. Kilgore, 314 S.C. 365, 444 S.E.2d 515 (1994).

Furthermore, the use of the word "kill" through the trial in reference to the allegedly defamatory statement, is far more prejudicial than probative. The question becomes whether or not the admission of the voicemail message into evidence is harmless error. Reversible error is only present when the admission of evidence (or in this case, permission by the Trial Court for Respondent to use a particular word) causes prejudice that would have reasonably affected the result of the trial. Vick at 199, 682 S.E.2d at 280. The prejudicial effect on a jury hearing the word "kill" used over and over throughout the course of the trial in reference to the allegedly defamatory statement is certainly enough to affect the outcome of the jury's verdict given that the black-and-white conclusion as to the meaning of the statement presented to the jury negates the jury's fact-finding ability to determine for themselves the meaning of the statement and to then determine whether or not the statement was defamatory in nature. Id.

CONCLUSION

For the foregoing reasons, Appellant respectfully submits that this Court should reverse the Trial Court verdict and resubmit the case back to the Florence County Court of Common Pleas for a new trial.

Respectfully Submitted,



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May 31, 2023

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS

Appeal from Florence County
Court of Common Pleas
The Honorable H. Steven Deberry, IV, Circuit Court Judge for Common Pleas

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Appellate Case No.: 2022-001006

Wendy Lynch, ...Respondent,

v.

Elizabeth Langley and Rebecca White Lynch,
Of whom Elizabeth Langley is the Appellant and
Rebecca White is a Respondent.....Appellant

RULE 211 CERTIFICATION

The undersigned hereby acknowledges that the Final Brief of the Appellant complies with Rule 211 SCACR in that it only contains the material from the Appellants Initial Brief with the corrections and citations from the Record on Appeal.

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Rebecca White is a Respondent.....Appellant

RULE 267 CERTIFICATION

The undersigned hereby acknowledges that the Final Brief of the Appellant complies with Rule 267 SCACR.

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