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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

In The Supreme Court

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APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

The Honorable H. Steven Deberry IV, Circuit Court Judge

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Appellate Case No.: 2022-001006
Civil Action Case No.:

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Opinion No.: 2025-UP-034

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Wendy Lynch, Respondent,

V.

Elizabeth Langley and Rebecca White Lynch, Defendant, of whom Elizabeth Langley is the Appellant and Rebecca White Lynch is a Respondent, Petitioner.

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# PETITION FOR WRIT OF CERTIORARI

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## CERTIFICATE OF COUNSEL

Counselor for Petitioner certifies the Amended Petition for Rehearing was made and ruled upon by the Court of Appeals on April 17, 2025.

## QUESTIONS PRESENTED FOR REVIEW

1. Did the Court of Appeals Err in failing to find that the Petitioner preserved her right to Directed Verdict as to the cause of action of civil conspiracy and then not granting relief from the trial court in overruling Appellants Motion for Directed Verdict and/or judgment notwithstanding the verdict as to the cause of action of civil conspiracy?

2. Did the Court of Appeals Err in failing to find that the Petitioner preserved her right to Directed Verdict as to the cause of action of intentional infliction of emotional distress and then not granting relief from the trial court in overruling Appellants Motion for Directed Verdict and/or judgement notwithstanding the verdict as to the cause of action of intentional inflection of emotional distress?

3. Did the Court of Appeals Err in failing to find that the Petitioner preserved her right to not object to the verdict form, the form in itself was sent to the Jury without separating the actual and punitive damages for each separate cause of action so that it then could not be distinguished from other causes of action, and therefore not granting relief from the trial court in allowing the verdict form to go the Jury?

4. Did the Court of Appeals Err in finding that the trial court did not abuse its discretion when allowing the voicemail from the Petitioner's former attorney, Eric Poston, when it was both hearsay and more prejudicial than probative, and then not granting relief from the trial court when this voicemail was both hearsay and prejudicial?

5. Did the Court of Appeals Err in finding that the Petitioner did not preserve this issue when she did not use the word "kill", which is supported by the record and this word is used several times and was therefore both more prejudicial than probative, and then not granting

relief from the trial court when this overstepped the Jurys fact-finding role of determining the meaning of the ambiguous statement to determine if the work "kill" was or not defamatory in nature?

## 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. (R. p. 142). 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. (R. p. 144, lines 3-4). 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. (R. p. 144-146, 148).

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. (R. p. 154, 156). a

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. After briefing and hearing the matter without oral argument, the Court of Appeals entered a decision on January 1, 2025 which was filed on January 29, 2025. The decision of the Court of Appeals was affirming the Circuit Court pursuant to Rule 220(b), SCACR. Petitioner then filed a Petition for Rehearing on February 13, 2025, then an Amended Petition for Rehearing on February 13, 2025, a second Amended Petition for Rehearing and Motion to Amend the Petition for Rehearing on March 19, 2025. The Court of Appeals then issued an order granting the motion to ament the Petition for Rehearing but that after considering the second amended petition for rehearing, the court denied the request for rehearing.

This review 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 doubt." 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). "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). "However 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 is 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 Court of Appeals erred in failing to find that the Petitioner preserved her right to a directed verdict on the civil conspiracy cause of action and in subsequently declining to grant relief from the trial court's denial of the Petitioner's motion for directed verdict and/or judgment notwithstanding the verdict on that claim.**

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). 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).

At no point in the trial does Respondent show that the Petitioner and co-Defendant acted in conjunction with each other with the intent to injure the Respondent, when in fact they acted in a joint interest in looking out for the best interest of their father's Estate and his memory. The Respondent was unable to show that the Petitioner 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 only 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). 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, nor does either party admit to doing so. Respondent, at best, is only able to show that the Petitioner and co-Defendant independently held the same ideas and opinions about Respondent's actions and character.

"[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 the then 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).

The Court of Appeals ruled, "We hold Langley's directed verdict motion on the civil conspiracy cause of action is not preserved for appellate review because she failed to renew her motion at the close of all evidence. See Wright v. Craft, 372 S.C. 1, 19, 640 S.E.2d 486, 496 (Ct.

App. 2006) ("When a defendant moves for a directed verdict under Rule 50, [of the South Carolina Rules of Civil Procedure,] at the close of the plaintiff's case, he must renew that motion at the close of all evidence.")" (Opinion: 2025-UP-034). lj

However, contrary to Respondent's claim and the ruling by the Court of Appeals, the issue was properly preserved for appellate review. At the close of Respondent's case, the Petitioner made a proper Motion for Direct Verdict and was prevented for making another Motion for Directed Verdict at the close of all evidence. (R. p. 869, line 16 to p. 878, line 19).

As stated by Respondent, "an objection to the sufficiency of the evidence cannot be raised for the first time in a motion for a new trial; a motion for a directed verdict is a prerequisite to a motion for a new trial on the ground that the evidence does not support the verdict." Peay v. Ross, 292 S.C. 535, 536, 357 S.E.2d 482, 483 (Ct. App. 1987). Petitioner's objection to the sufficiency of evidence was first raised in their Motion for a Directed Verdict at the close of Respondent's Case. (R. p. 869, line 16 to p. 878, line 19). This therefore, made Respondent's argument moot because the Petitioner did raise this during the trial. However, Courts have also recognized that when a party is not given the opportunity to make a motion by the court, the issue is still considered preserved for appellate review.

At the close of all evidence upon the Petitioner's withdrawal of the request to have their last witness testify, which concluded all evidence in the trial, the continued interruptions of this trial by the Petitioner's *pro se* co-Defendant continued to occur, resulting in a lengthy back and forth between co-Defendant, Respondent, and the Court. (R. p. 948, line 19 to p. 962, line 25). This was quickly followed by the Court concluding for that it was time to send the Jury to lunch. (R. p. 964, lines 21-25). At no time were Petitioner or her co-Defendant given any opportunities to renew their Motions for Directed Verdict.

This reinforced that the Petitioner was not able to renew the objection since the colloquy with the pro se Defendant and the Court was lengthy and then concluded the matter. The Court of Appeals errors here because they state, "("When a defendant moves for a directed verdict under Rule 50, [of the South Carolina Rules of Civil Procedure,] at the close of the plaintiff's case, he must renew that motion at the close of all evidence.")" (Opinion: 2025-UP-034), however the evidence was closed by the court and the jury was released for lunch before the directed verdict could be renewed. Therefore, the Court of Appeals should have ordered that the Petitioner should have and would have been able to renew the directed verdict request had the trial court not taken away the opportunity from the Petitioner. Therefore, the Court of Appeals should have reversed this issue.

## II. The Court of Appeals erred in failing to find that the Petitioner preserved her right to a directed verdict on the cause of action for intentional infliction of emotional distress and in failing to grant relief from the trial court's denial of the Petitioner's motion for directed verdict and/or judgment notwithstanding the verdict on that claim.

In regards to this cause of action, contrary to the Respondents and the Court of Appeals ruling, this issue was properly preserved for appellate review. As previously stated, at the close of Respondent's case, Petitioner made a proper Motion for Direct Verdict. (R. p. 869, line 16 to p. 878, line 19). As stated by Respondent on the same argument as to the Cause of Action of Civil Conspiracy, "an objection to the sufficiency of the evidence cannot be raised for the first time in a motion for a new trial; a motion for a directed verdict is a prerequisite to a motion for a new trial on the ground that the evidence does not support the verdict." Peay, 292 S.C. at 536, 357 S.E.2d at 483 (Ct. App. 1987). However, the support for this is same as the first cause of action.

The cause of action of intentional infliction of emotional distress was 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.

For example, the South Carolina Supreme Court has previously 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). Therefore, the trial court erred here and by the Court of Appeals not reversing this, the Court of Appeals has errored.

The Court of Appeals ruled, "We hold Langley's directed verdict motion on the IIED cause of action is not preserved for appellate review because she failed to renew her motion at the close of evidence. See id. ("When a defendant moves for directed verdict under Rule 50, SCRCP [,] at the close of the plaintiff's case, he must renew that motion at the close of all evidence.")" (Opinion: 2025-UP-034). As previously argued as to the Motion for Directed Verdict as to the Civil

Conspiracy Cause of Action, Courts have recognized that when a party is not given the opportunity to make a motion by the court, the issue is still considered preserved for appellate review. 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 Petitioner'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.

Therefore, the Court of Appeals errored in stating this was not preserved and not reversing this claim, when in fact, the trial court erred in a matter of law and reversal is prudent and warranted.

## III. The Court of Appeals erred in failing to find that the Petitioner preserved her right to challenge the verdict form, which was submitted to the jury without separating actual and punitive damages for each distinct cause of action, thereby rendering the damages indistinguishable among the claims, and in failing to grant relief from the trial court's decision to allow the defective verdict form to be presented to the jury.

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. The Court of Appeals should have found 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, and the Court of Appeals must grant a new trial for all issues at the trial court.

Without making the ruling regarding the verdict form for the trial court, 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 trial 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 Petitioner. 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 of Appeals was 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).

The Court of Appeals ruled, "We hold Langley's verdict form argument is not preserved for appellate review because she did not raise her argument to the trial court and indicated she had no issues with the verdict form. See Wilder Corp v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("[A]n issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.")" (Opinion: 2025-UP-034).

However, the Court of Appeals should have found the Trial Court erred in the previous two issues on appeal, the Court must find that the Verdict Forms were improper as a matter of law. Should the Causes of Action for Civil Conspiracy and/or Intentional Infliction of Emotional Distress be remanded for a new trial, the Actual and Punitive Damages as to each individual Cause of Action cannot be separated using the Verdict Forms submitted to the Jury in this case. Therefore, the Court of Appeals erred in not finding that the Verdict Forms were an error by the Trial Court and remand the entire case, including the causes of actions not appealed, back to the Trial Court for a new trial.

## IV. The Court of Appeals erred in finding that the trial court did not abuse its discretion in admitting a voicemail from the Petitioner's former attorney, Eric Poston, despite the voicemail constituting inadmissible hearsay and being more prejudicial than probative, and in failing to grant relief from the trial court's erroneous admission of that evidence.

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.

The Court of Appeals ordered, "We hold the trial court did not abuse its discretion when it admitted a voicemail Eric Poston, Langley's former attorney, left for Lynch because the statements he made in the voicemail were admissible under Rule 801 (d)(2)(D) of the South Carolina Rules of Evidence. See Creed v. City of Columbia, 310 S.C. 342, 344, 426 S.E.2d 785, 786 (1993) ("The admission of evidence is a matter addressed to the sound discretion of the trial judge."); id. ("Absent clear abuse of discretion amounting to an error of law, the trial court's ruling will not be disturbed on appeal.") (Opinion: 2025-UP-034). However, this message was prejudicial to the Petitioner and harmful from her formal legal counsel and should not have been allowed by the trial court.

During the testimony of Respondent, a voicemail message from Petitioner'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 Petitioner'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 Petitioner'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). Therefore, the mere fact the trial court still proceeded when it was hearsay and prejudicial is an error that the Court of Appeals should have reversed.

The Court of Appeals then further ordered, "Langley testified Poston was representing her in a civil case at the time he left voicemail; therefore, Poston was acting as Langley's servant and an employment relationship between the two existed at that time. Further, Poston made the statements within the scope of his employment relationship because Langley testified, she hired Poston to represent her in a civil matter, Langley previously brought an action contesting their father's will in which she alleged Lynch had exerted undue influence over their father, and Lynch testified Poston indicated she was living on her father's farm when Langley "had every right" to go on the property. See Rule 802, 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 801 (d)(2)(D), SCRE ("A statement is not hearsay if … [t]he statement is offered against a party and is …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…")." (Opinion: 2025-UP-034).

Although the former legal counsel of the Petitioner was legal counsel at one point, that voicemail was post representation and therefore former counsel was no longer an agent of the Petitioner, further supporting this was hearsay and prejudicial and inadmissible.

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 Petitioner authorized Attorney Poston to leave the voicemail message on Respondent's phone.

The Petitioner was no longer bound by the statements made by Eric Poston as there existed no attorney-client relationship at the time the voicemail message was left. Therefore, the voicemail message statements do not fall within the non-hearsay rule of admission of a party-opponent. Rule 801(D), SCRE. Eric Poston's claims in the voicemail message that he still represented Petitioner are not relevant, given the facts testified to under oath by Petitioner that he was not her attorney at the time. (Respondent's Brief p. 32; R. p. 287, lines 16-18). Mr. Poston was therefore no longer a party and now more of an adverse party, especially to proceed with the voicemail after representation had been terminated.

"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. This is the case here and further supports the Court of Appeals errored in finding that the trial court did not abuse its discretion.

As reiterated in the Petitioners Petition for Rehearing, this voicemail was personal in nature and did not pertain to the Attorney Poston's legal representation of the Petitioner. Courts have consistently held that an attorney may be the agent of his client for the purposes of Rule 801(d)(2)(D), but that the trial court must exercise caution when admitting statements that are a product of this relationship. United States v. Harris, 914, F.2d 927, 931. This voicemail does not meet this criterion and therefore should not have been admitted. Again, reiterating the trial court did in fact abuse its discretion in allowing the admission of the voicemail and the Court of Appeals errored in finding the discretion was not abused.

## V. The Court of Appeals erred in finding that the Petitioner did not preserve the issue concerning the use of the word "kill," despite the record showing that the term was used multiple times and was objected to on the grounds of being more prejudicial than probative. The Court further erred in failing to grant relief from the trial court's ruling, which improperly invaded the jury's fact-finding role by resolving the ambiguity of the statement and determining whether the use of the word "kill" was 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). Citing Respondent's own Brief, Petitioner objected during Motions *in Limine* that only the actual words used in the allegedly defamatory statement of Appellant, that Respondent "tried to send Daddy to Heaven early," should be used during the court of the Trial. Respondent's Brief, p. 34. Having objected to the use of any terms other than the actual defamatory statement alleged to have been said by Petitioner adequately preserves the issue for appellate review.

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).

The Court of Appeals ordered, "We hold Langley's issue concerning the use of the word "kill" is not preserved for appellate review because prior to trial, Langley confirmed she did not object to the use of the word "killing" at trial, did not object when it was used at trial, and in her motion for a new trial, she did not raise the issue that she objected to the use of any term other than "tried to send Daddy to heaven early." See Burke v. AnMed Health, 393 S.C. 48, 55, 710 S.E.2d 84, 88 (Ct. App. 2011) ("When a party states to the trial court that it has no objection to the introduction of evidence, the issue raised in the previous motion is not preserved for appellate review."); State v. Wiles, 385 S.C. 151, 156, 679 S.E.2d 172, 175 (2009) ("Generally, a motion in limine is not a

final determination; a contemporaneous objection must be made when the evidence is introduced."); Elam v. S.C. Dep't of Transp., 361 S.C. 9,24, 602 S.E.2d 772, 780 (2004) ("A party must file [a Rule 59(e) of the South Carolina Rules of Civil Procedure] motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.")" (Opinion: 2025-UP-034).

Contrary to what the Respondent and the Court of appeals state in regards to this issue not being preserved for appellate review, this language was defamatory and not probative. When using, "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), the word "kill" should never been used when it was in fact never said. As previously argued in Appellant's Brief, to state that the Jury hearing the word "kill" used over and over throughout the trial in reference to the alleged defamatory statement had no effect on the Jury's fact-finding responsibility would, once again, ask the Court to disregard all common sense to determine this to be a harmless error by the Trial Court. Appellant's Brief, p. 23.

Petitioner further argued this in the Petition for Rehearing in that the reported use of the word "kill" mischaracterized her statement, which then created unfair prejudice. Although the Appellant did not contemporaneously object, the impact of this mischaracterizing compromised the fairness of the trial. Compromising the fairness of the trial with defamatory statements reinforces the need for the reversal and the new trial and the Court of Appeals errored in not reversing this claim.

## CONCLUSION

The Petitioner respectfully submits the Court of Appeals overlooked or misapprehended the application of South Carolina statutory and common law in the above discussed matter. Accordingly, Petitioner respectfully requests this Court reverse the Court of Appeals decision as well as the Trial Court's verdict and resubmit this case back to the Florence County Court of Common Pleas for a new trial.

Respectfully Submitted,

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