

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Diane S. Goodstein, Circuit Court Judge

Case No: 2022-CP-10-03009
Appellate Case No. 2025-001650

RECEIVED
Oct 22 2025
SC Court of Appeals

Philip Woschenko,

Appellant,

v.

**Sonya Kurien and Kyle Snouffer,.....
of whom Sonya Kurien is the respondent.**

Defendants,

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

1. Did the lower court err in granting summary judgment as to Appellant's Defamation action arising from the July 31, 2020, 911 call, finding statutory immunity and conditional privilege applied as a matter of law, where evidence of bad faith and abuse of privilege, confirmed by subsequent conflicting judicial findings in the same case, created genuine issues of material fact reserved for the jury?

2. Did the lower court err in granting summary judgment as to Appellant's Outrage and Civil Conspiracy actions based on Appellant's failure to submit evidence creating a factual basis or evidence of emotional damages, when the Defendant failed to state these grounds with particularity in her motion, thus denying Appellant notice as required by the South Carolina Rules of Civil Procedure?

STATEMENT OF THE CASE

On July 5, 2022, Plaintiff Philip Woschenko (hereinafter, "Appellant") initiated this action against Defendant Sonya Kurien (hereinafter, "Respondent") and Co-Defendant Kyle Snouffer, asserting claims for Defamation, Outrage / Intentional Infliction of Emotional Distress (IIED), and Civil Conspiracy.

The action centers on the Defendants' repeated, unfounded public accusations regarding Appellant's alleged sexual abuse of his daughter and physical abuse of his son. These specific allegations, which were fully investigated by law enforcement, South Carolina Department of Social Services (DSS), and a forensic interviewer, were officially determined to be "Unfounded" by March 21, 2019. Ex. 1 – July 6, 2021 Guardian Ad Litem Final Report; Ex. 2 - 2019.02.06 DSS Letter; Ex. 3 – 2019.03.21 DSS Letter. Nevertheless, Respondent and Co-Defendant Snouffer continued to assert these falsities to not only the police and medical providers, but to an unknown number of other members of the public.

Currently, this matter comes before the Court, in part, on Respondent's Partial Motion to Dismiss and Motion for Summary Judgment. Respondent's Motion sought judgment on the Defamation claim stemming from a July 31, 2020 police dispatch call, asserting that the

communication was “cloaked in statutory immunity” and was privileged. Respondent’s Motion for Summary Judgment (hereafter, “MSJ”), p. 1. For the Outrage and Civil Conspiracy claims, Respondent argued for dismissal because Appellant had “no proof at all to support those allegations.” *Id.*

On August 1, 2024, the Honorable Judge Dian Schafer Goodstein issued an Order granting in part Respondent’s Partial Motion to Dismiss and granting the Motion for Summary Judgment in full. August 1, 2024 Judge Goodstein Order on Multiple Motions, p. 7. As to Respondent’s summary judgment motion, Judge Goodstein found that Respondent’s statements to a consolidated call center on July 31, 2020 were protected by statutory immunity (S.C. Code Ann. § 63-7-390) and conditional privilege. *Id.* at p. 6. Regarding the Outrage and Civil Conspiracy claims, Judge Goodstein granted summary judgment to Respondent on the grounds that Plaintiff/Appellant failed to present sufficient evidence of emotional damages. *Id.* at p. 7.

After Judge Goodstein’s August 1, 2024, Order, two separate Circuit Court judges issued rulings in this same case that directly addressed and contradicted the substance of the dismissed claims. Co-Defendant Kyle Snouffer filed a Motion for Summary Judgment based on substantially the same facts and legal arguments as those adopted by Judge Goodstein (statutory immunity, privilege, and insufficient evidence for Outrage and Civil Conspiracy). Judge Van Slambrook denied Snouffer's motion in its entirety, finding a genuine issue of material fact existed as to whether Snouffer's subsequent defamatory statements were made in “good faith” or for the purpose of defaming the Appellant. December 17, 2024 Judge Van Slambrook Order, p. 5. Furthermore, Judge Van Slambrook explicitly held that the Appellant did address each element of Civil Conspiracy and Outrage, and “supported his arguments with evidence,” contradicting Judge Goodstein's finding of a lack of factual basis. *Id.* at p. 6.

Respondent filed a subsequent motion seeking summary judgment on the single remaining defamation claim based on a May 7, 2021 statement made to MUSC providers. Judge Rode denied this motion, finding there was a genuine issue of material fact as to “whether defendant’s statements... were made with malice and/or whether the statements fall within qualified privilege.” May 28, 2025 Judge Rode Order.

On August 7, 2024, Appellant filed a timely Motion to Alter or Amend the August 1, 2024, Order pursuant to Rule 59(e), SCRPC, arguing the Court improperly ruled on questions of fact reserved for the jury and granted summary judgment on Outrage and Civil Conspiracy on grounds not argued or noticed by Respondent, particularly the absence of evidence of damages.

On July 24, 2025, the Honorable Judge Diane Schafer Goodstein issued an Order denying the Appellant's Motion to Alter or Amend. 2025.07.25 Judge Goodstein Order. The final order confirmed the original ruling, stating that the Appellant failed to move to alter or amend the finding of statutory immunity (S.C. Code § 63-7-390), rendering reconsideration moot. The Order also added that the Civil Conspiracy claim was now moot due to the settlement with Co-Defendant Kyle Snouffer. This appeal followed.

STANDARD OF REVIEW

A trial court may only grant a motion for summary judgment when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRPC. An appellate court reviews the granting of summary judgment under the same standard applied by the trial court pursuant to Rule 56, SCRPC. *Wells v. City of Lynchburg*, 331 S.C. 296, 501 S.E.2d 746 (Ct.App.1998).

In determining whether any triable issues of fact exist, the Court must view the evidence

and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. *Manning v. Quinn*, 294 S.C. 383, 385, 365 S.E.2d 24, 25 (1988). On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below. *Osborne v. Adams*, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001).

Moreover, summary judgment is not appropriate when further inquiry into the facts of the case is desirable to clarify the application of the law. *Tupper v. Dorchester County*, 326 S.C. 318, 487 S.E.2d 187 (1997). Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is a dispute as to the conclusion to be drawn from those facts. *Id.*

FACTUAL BACKGROUND

Appellant and Respondent are the parents of two children who both have severe autism and limited communication skills. Ex. 4 – MUSC record (describing “minimally verbal autistic [Daughter” and “[Son] was noted to have no communication skills and therefore unable to relay any information”). Co-Defendant Snouffer was the children's in-home behavioral technician. The marital conflict began in December 2018 when Respondent asked Appellant to move out and immediately initiated a sexual relationship with Snouffer – the children's caretaker. Ex. 5 – Arbitration Award ¶57

Respondent alleged their non-verbal daughter disclosed sexual abuse the night Appellant moved out (December 9, 2018), but waited ten days to file a police report and permitted Appellant continued unsupervised time with the children. Ex. 6 – Deposition of Respondent, p. 27-29; Ex. 7 – December 19, 2018 Police Report. Appellant disputes that his daughter was “distracted” during this time.

Between January and March 2019, multiple independent investigations – including by the

Folly Beach Police Department, the South Carolina Department of Social Services (DSS), and a forensic interview – unanimously concluded the allegations were “Unfounded,” finding no forensic, direct, or circumstantial evidence of abuse. Ex. 2; Ex. 3; Ex. 7 at p. 4.

Despite these allegations being officially declared unfounded over a year and half earlier, Respondent and Snouffer allegedly continued to falsely accuse Appellant of abuse:

July 31, 2020 Respondent’s Police 911 Call: Respondent called police dispatch to state that her daughter was “sexually molested” by Appellant and claimed that Appellant was harassing her. Ex. 8 – 911 Call Recording at 0m to 1m 50s.

July 31, 2020 Incident: During a police-accompanied retrieval of Appellant’s belongings, Snouffer told officers that Appellant “molested [Respondent’s] 12-year-old autistic daughter.” Ex. 9 – Police Bodycam Video.

September 2020 Workplace Harassment: Snouffer appeared at Appellant’s place of work (Costco) to make derogatory comments about the affair and repeat the abuse allegations to Appellant’s co-workers.

May 7, 2021 Hospital Allegations: Appellant and Respondent’s son was hospitalized for rib fractures and constipation, shortly after a physical altercation between the son and Snouffer at Disney World that required EMS intervention. Ex. 4, p. 86-87; Ex. 5. While the son was hospitalized, Respondent told hospital staff that Appellant physically and sexually abused the son while simultaneously repeating the prior sexual abuse claims regarding the daughter. Ex. 5. The examining physician's note confirmed the Son’s behaviors were "not diagnostic for sexual abuse." *Id.* This new set of accusations resulted in another DSS referral, which, like the previous ones, concluded that no abuse was found, and no criminal charges were filed. Ex. 3.

Despite repeatedly making these accusations of heinous abuse, Respondent never sought sole custody of her children and often asked Appellant to watch their children on days she had custody.

ARGUMENT

- 1a. The lower court erred in granting summary judgment as to Appellant’s Defamation action regarding the July 31, 2020, 911 call, finding statutory immunity applied as a matter of law, where evidence of bad faith and abuse of privilege, confirmed by subsequent conflicting judicial findings in the same case, created genuine issues of material fact reserved for the jury.**

The lower court granted summary judgment for the statements made during the July 31, 2020, 911 call, finding Respondent was entitled to statutory immunity (S.C. Code Ann. § 63-7-390) and conditional privilege. This was based on the finding that the Appellant provided “no evidence... to show bad faith.” Ex. 10 – August 1, 2024 Judge Goodstein Order on Multiple Motions, p. 5. This constitutes error because the application of these defenses depends on a factual finding regarding Respondent’s good faith, which Appellant demonstrated was highly disputed.

S.C. Code Ann. § 63-7-390 provides in relevant part:

A person required or permitted to report pursuant to Section 63-7-310 or who participates in an investigation or judicial proceedings resulting from the report, acting in good faith, is immune from civil and criminal liability which might otherwise result by reason of these actions. In all such civil or criminal proceedings, good faith is rebuttably presumed. Immunity under this section extends to full disclosure by the person of facts which gave the person reason to believe that the child's physical or mental health or welfare had been or might be adversely affected by abuse or neglect.

Under the statute, immunity only applies if the reporter is “acting in good faith.” Good faith is rebuttably presumed. Appellant provided evidence sufficient to rebut this presumption and place the issue before a jury.

Respondent’s sworn deposition testimony revealed she did not seek sole custody of her daughter despite claiming to believe the Appellant sexually abused her. This lack of protective

action directly undermines the requirement that the communication be made “in good faith” to protect the child's interest, creating a genuine question of fact regarding the same. In her deposition, Respondent was directly questioned about her decisions regarding custody, given the nature of her accusations. When asked if she wanted sole custody of her children in the divorce, Respondent replied, “No.” She was then pressed: “You didn’t want sole custody, even though you believed that your ex-husband sexually abused your daughter?” Respondent again replied, “No.” When asked if she wanted sole custody of their son, even though she believed the Appellant was “capable of one of the worst crimes imaginable,” Respondent still replied, “no.” Ex. 6, p. 94-95. That Respondent did not seek sole custody of her children, even though she claimed to believe the Appellant was “capable of one of the worst crimes imaginable,” creates a clear contradiction and/or dispute of material fact.

Judge Goodstein’s conclusion that there was “no evidence” to show bad faith is further challenged by subsequent rulings in this action. Two other lower court judges found that similar allegations of bad faith in this same case created a genuine issue of material fact as to these defenses, requiring jury resolution. Judge Van Slambrook found a genuine issue of material fact as to whether co-Defendant Snouffer's subsequent statements were made in “good faith,” and Judge Rode found a genuine issue of material fact existed regarding whether Respondent’s subsequent May 7, 2021, statements were made with malice. The fact that multiple judges reached differing conclusions on similar evidence and identical defenses confirms that there is sufficient evidence to raise a genuine issue of material fact that cannot be decided as a matter of law.

A jury could reasonably infer that if Respondent genuinely believed her daughter was subjected to sexual abuse, a parent would seek sole custody to prevent further harm. Her admitted lack of desire for sole custody directly conflicts with a finding that she acted in good faith to protect

the children's welfare when repeating the allegations. A jury could also reasonably find that repeating allegations that had been investigated and deemed unfounded 19 months earlier demonstrates bad faith by Appellant. As South Carolina law makes clear, summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is a dispute as to the conclusion to be drawn from those facts.

Respondent's admitted refusal to pursue sole custody, despite claiming she believed Appellant physically and sexually abused their children, and her repetition of investigated and deemed unfounded allegations constitute a genuine issue of material fact regarding her good faith, thereby defeating the motion for summary judgment on the basis of statutory immunity.

1b. The lower court erred in granting summary judgment based on conditional privilege, as evidence demonstrated that Respondent abused the privilege by failing to make the statements "honestly" or limit their scope, thereby raising a question of fact reserved for the jury.

The principle articulated in *Bell v. Bank of Abbeville*, 208 S.C. 490, 493–94, 38 S.E.2d 641, 643 (S.C. 1946) holds that a communication is privileged by reason of the occasion when one party has an interest in the subject matter and the recipient has a corresponding interest. Crucially, the court established the following requirements for the privilege to provide a defense: the communication must be "honestly made," in order to protect such a common interest; the statement must be such as the occasion warrants; and the statement must be made in good faith to protect the interests of the one who makes it and the persons to whom it is addressed. *Id.*

The common law defense of conditional or qualified privilege protects publications only if the privilege is not abused. *Swinton Creek Nursery v. Edisto Farm Credit, ACA*, 334 S.C. 469, 484–85, 514 S.E.2d 126 (S.C. 1999). While whether a privilege may apply is a question of law for the court, the question of whether the privilege has been abused is one for the jury. *Id.* Abuse occurs if the statement is not "honestly made" or exceeds the scope warranted by the occasion. *Id.*

Again, the testimony showing Respondent's unwillingness to seek sole custody, despite claiming to believe the Appellant was a sexual abuser, directly challenges whether her communications were "honestly made" to protect a corresponding interest. Evidence of bad faith or malice negates the privilege. A reasonable jury could find that Respondent did not "honestly believe" the allegations she was repeating – which included claims of sexual abuse of one's own child, "one of the worst crimes imaginable" – if she was simultaneously unwilling to seek sole custody or otherwise protect her children from their supposed abuser. This strong disconnect creates a genuine question of fact for the jury regarding whether Respondent honestly believed the claims when she repeated the debunked allegations, such as during the July 31, 2020, 911 call.

The context of Respondent's call also demonstrates abuse of the privilege. Appellant had both kids for the evening; Respondent and Defendant Snouffer put Appellant's personal belongings on the front porch that evening and told him they were out there; Appellant went to collect his personal belongings and asked for the police to be present. Respondent called the law enforcement consolidated call center for a well-check and again repeated her 19-month-old unfounded allegation about Appellant. If the jury determines the statements were not made in good faith, the conditional privilege is stripped away, allowing the defamation claim to proceed.

In her briefing to the trial court, Respondent cited "*Swinton Creek Nursery v. Edisto Farm Credit, ACA*, 326 S.C. 426, 483 S.E.2d 789 (S.C. 1999)" as an opinion from the South Carolina Supreme Court affirming a directed verdict on the issue of conditional privilege. In fact, the opinion Respondent cited was reversed by the Supreme Court in *Swinton Creek Nursery v. Edisto Farm Credit, ACA*, 334 S.C. 469, 514 S.E.2d 126 (S.C. 1999). Instead of affirming the trial court's grant of a directed verdict as Respondent's memo suggested, the Supreme Court ruled that a question existed for the jury to decide whether the privilege was exceeded or abused. *Id.* at 486.

The Supreme Court's *Swinton Creek Nursery* decision provides:

In general, the question whether an occasion gives rise to a qualified or conditional privilege is one of law for the court. 50 Am.Jur.2d *Libel and Slander* § 276 (1995). However, **the question whether the privilege has been abused is one for the jury.** *Id.* Factual inquiries, such as whether the defendants acted in good faith in making the statement, whether the scope of the statement was properly limited in its scope, and whether the statement was sent only to the proper parties, are generally left in the hands of the jury to determine whether the privilege was abused.

Id. at 484-85 (emphasis added).

In the initial briefing and at the hearing on Respondent's motions for summary judgment and dismissal, Appellant showed ample evidence to support a jury finding that a conditional privilege was abused. Repeating the specific, debunked sexual abuse allegation – which had been investigated and dismissed 19 months earlier – to the consolidated call center operator exceeded the proper scope warranted by the occasion (a simple welfare check request). The repetition of the specific, debunked sexual abuse allegation to the 911 operator during a request for a simple welfare check was unnecessary and exceeded the scope warranted by the occasion. When presented with evidence of the same allegation in a very similar context (to their son's doctor at MUSC), Judge Rode determined there was at least a question of fact for the jury and denied Respondent's second summary judgment motion. Largely the same evidence and arguments were presented in Appellant's response to Co-Defendant Snouffer's summary judgment motion, which Judge Van Slambrook also agreed raised a question of fact for the jury. As the case law makes abundantly clear, determining whether this constituted an abuse of privilege is traditionally a question reserved

for the jury when facts are controversial.

2. The lower court erred in granting summary judgment as to the Outrage and Civil Conspiracy actions on grounds not argued by the moving party, thereby denying Appellant notice and constituting reversible error.

The lower court granted summary judgment on the Outrage (IIED) and Civil Conspiracy claims because Appellant “failed to submit evidence to create a genuine issue of material fact that there is a factual basis” for these claims, even though the Court noted it was “conceivable that Plaintiff could have suffered emotional damages.” Ex. 10 at p. 7. The Order does not address the arguments actually made by Respondent.

The lower court committed reversible error by relying on a failure of proof concerning factual basis and emotional damages because this ground was not argued or noticed by Respondent. Respondent’s Motion for Summary Judgment requested dismissal of Outrage and Conspiracy based solely on the argument that they were attempts to “re-package” defamation claims and that conspiracy was a “legal impossibility”. Ex. 11 – September 9, 2023 Respondent’s Motion to Dismiss and/or Strike; Ex. 12 May 24, 2024 Respondent’s Memorandum in Support of Motions to Dismiss and for Summary Judgment.

Respondent's arguments for summary judgment did not include a challenge to the factual sufficiency of emotional damages. During the May 29, 2024, hearing, Respondent's counsel, Mr. DeAntonio, characterized the Outrage and Civil Conspiracy claims as “two throwaway... causes of action.” Ex. 13 – Hearing Transcript, p. 11, lines 20-21. He argued that Outrage was precluded because it was based only on the defamation and was an impermissible "repackaging" of the defamation claim. *Id.* at p. 12, line 16. For Civil Conspiracy, he argued that the claim could not lie because the Defendants “didn't co-author anything” and there was “no joint communication.” *Id.* at p. 13, lines 4-6. The entirety of the Respondent's argument focused on the legal impossibility of

the claims, not a factual insufficiency regarding emotional damages or underlying elements.

At no point in Respondent's MSJ, supporting memorandum, or oral argument was it specifically argued that the Appellant failed to produce evidence of emotional damages or challenge the factual basis for the independent elements of Outrage or Conspiracy. In fact, Appellant's counsel, Mr. Slavin, explicitly noted in opposition that summary judgment could not be granted based on the "limited argument raised by [Respondent] in her motion."

Rule 7(b)(1), SCRCP, requires motions to state their grounds "with particularity" to provide notice. By granting summary judgment on the unargued evidentiary ground of failure to submit proof of a factual basis or damages, the lower court denied Appellant the opportunity to oppose this basis for the ruling, which is clearly prejudicial and constitutes reversible error. Appellant was not required under Rule 56(e) to submit evidence on grounds the movant did not even raise or support.

Judge Goodstein's finding of insufficient evidence for Outrage and Conspiracy is directly contradicted by Judge Van Slambrook, who found, when reviewing similar claims and evidence against Co-Defendant Snouffer, that the Appellant did address each element of Civil Conspiracy and Outrage, and "supported his arguments with evidence". Furthermore, the July 24, 2025, Order's finding that the Civil Conspiracy claim is moot due to the settlement with Co-Defendant Snouffer is erroneous. Judge Van Slambrook's denial of summary judgment confirmed that sufficient evidence existed to find a conspiracy. The settlement of one alleged co-conspirator cannot relieve the non-settling co-conspirator (Respondent) of liability.

CONCLUSION

For the foregoing reasons, the Circuit Court's Order of August 1, 2024, granting summary judgment, and the subsequent Order of July 24, 2025, denying the Motion to Alter or Amend, must

be reversed as to the Defamation, Outrage / Intentional Infliction of Emotional Distress (IIED), and Civil Conspiracy causes of action against Respondent Sonya Kurien.

Respectfully submitted,

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October 22, 2025

EXHIBIT 1

STATE OF SOUTH CAROLINA

)

IN THE FAMILY COURT

)

NINTH JUDICIAL CIRCUIT

COUNTY OF CHARLESTON

)

CASE NO. 2019-DR-10-146

)

SONYA K. WOSCHENKO,

)

)

Plaintiff,

)

)

GUARDIAN *AD LITEM*

v.

)

FINAL REPORT

)

PHILIP E. WOSCHENKO,

)

)

Defendant.

)

)

This document shall serve as the Final Report of the Guardian *ad Litem*. I specifically reserve the right to change any portion of the report based upon additional evidence which may be offered or in furtherance of my investigation.

Persons Interviewed

- Sonya Woschenko, Plaintiff/Mother
- Philip Woschenko, Defendant/Father
- John Woschenko, Father’s brother
- Madeline Poisker, Father’s Aunt by Marriage – resides in Florida
- Julie Long, Former Therapist for Minor Children
- Kyle Snouffer, Mother’s paramour
- Meredith Wallace, Principal at Murray LaSaine Montessori School
- Tracey Fournier, Therapist for H.W.
- Nataliya Alekseyenko
- Shelly Law, Former PCA for Minor Children
- Dr. Uteritz, Psychiatrist for H.W.
- Kamisha Pruitt, Supervision Coordinator for Family Ties of the Lowcountry
- Elizabeth Bennett, Clinical Counselor at the Charleston Center
- Sol Rappaport, Ph.D., ABPP
- Cora Perry, Occupational Therapist for Children
- Dr. Kara Huncik, Pediatrician for Minor Children
- Allison Kopanski Nelson, Present Caregiver for Minor Children
- Katie Claire, OW’s CCSD Special Education Teacher

Documents Reviewed

- Charleston Center - Father
- East Cooper Behavioral Health (Davis Henderson, PhD) – Child Custody Assessment
- Father’s dCDT Test Results (DeHaven) collected 2021/01/15

Father was reported to DSS for sexual abuse allegations against HW and was restrained from contact with the minor children. Father reported that both children were experiencing distress and were having increased behavioral and medical issues. Father believes that the children's lack of interaction with Father has contributed to this problem and that Mother was unwilling to allow communication and visitation due to the untrue allegations of sexual abuse.

Father's main concerns with Mother are that she has tried (and been successful in many ways) to push him out of the children's lives. Father reports that even though his relationship with OW is better he still feels that he and HW are strained. Father attributes this to Mother's actions at the onset of litigation and her desire to move Kyle into their home. Father reports that Mother's disparagement of him to the children's medical providers has been especially painful and that he is having to overcompensate for Mother's negative statements when he is interacting with the children's providers. Father reports that his biggest concerns post-divorce are Mother's ability to expose the children to Kyle Snouffer and Mother's ongoing campaign to diminish his ability to participate in decisions concerning the children.

Children

HW

HW is now 13 years old and just completed the 7th grade at CE Williams Middle School. HW is on the autism spectrum and has some verbal capabilities. HW is a talented artist and has an active imagination. HW's room at both parent's homes is full of her artwork and the people that she loves to draw.

HW receives homebound services with a teacher and therefore is home most days with the teacher and a PCA (personal care attendant). HW is presently prescribed Guanfacine which is used to regulate her behavioral outbursts. Guanfacine works well for HW.

In the Fall of 2018, HW drew a picture at school of two people without clothing (male was wearing underwear) standing in front of a bed. The picture was alarming to school personnel and a referral was made to DSS who assigned Windwood Farm Family Services to investigate. Mother did not agree that HW's picture was of concern and explained that HW sometimes draws clothing on her characters at a later time. Mother felt that the picture was a "work in progress". Father reports being concerned at the time of the drawing but that he wasn't sure what was going on. Father now reports that he believes the male in the picture to be Kyle Snouffer and the female to be his wife, Sonya. Windwood Farms did not refer the case back to DSS for staffing and the investigation was closed.

HW was 11 years old when the parties separated. Mother alleges that after she asked Father to leave the marital residence due to his alcohol abuse, HW disclosed to her that she was "happy" Father was gone and that Father had "hurt her". Mother reports that HW took Mother's hand and "put it on [HW's] crotch". Mother reports that HW also took off her skirt and HW put her finger in her vagina during this same conversation.

Mother reports that she was in shock and after a few days when Father wanted to see the kids and showed up unexpected HW was startled and would only give Father a “side-hug”. Mother also reports that in a second conversation Mother asked “how do you know Daddy hurt you?” and that HW responded “there was blood”.

Father left the marital home on December 9, 2018. Mother alleges that she didn’t know what to do when HW made the disclosure so she contacted law enforcement who reported the allegations to the Department of Social Services. DSS initially did not recommend a forensic interview as HW’s ability to report was limited. However, Mother believed that HW could participate in a meaningful interview and the caseworker made the referral to Dee Norton Children’s Advocacy Center.

The Dee Norton CAFTA states that the initial intake was conducted on December 19, 2018, and a follow up interview on January 8, 2019. Key points from these interviews:

- Mother was the main source of information
- Kyle Snouffer participated in the 2nd interview and was the only other source to provide information (besides DSS)
- Mother reported that HW has difficulty with speech
- Mother reports that HW was going through their old house and naming every room that she was “hurt in”
- Mother reported that HW indicated that she was hurt with “something else besides Father’s hands”
- Mr. Snouffer provide some information about HW’s limitations in being interviewed

Mother reported to me that the forensic interview did not go well – it was “botched” by Dee Norton. Mother reports that they had to wait over 2hours for HW’s portion of the interview to begin, that HW did not know the interviewer which was problematic, and that she wasn’t allowed to have Kyle there with her.

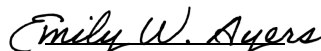
Overall, Dee Norton was not able to conduct a meaningful interview with HW and no information was provided. DSS was unable to substantiate the allegations against Father and therefore the case was unfounded category II on February 6, 2019. A second DSS investigation was initiated on February 6, 2019, for the same allegations and was unfounded on March 21, 2019, for the same unfounded category II.

HW participated in therapy with JSS Behavioral which unfortunately closed due to funding issues shortly after sessions commenced. HW then attended counseling with Tracey Fournier, LPC in her private practice with the purpose of strengthening their relationship. In November 2019, Ms. Fournier informed the parties that she no longer needed to see HW and Father together.

Both parties and the PCA are reporting that HW is doing well now under Mother’s primary care and with OW living primarily with Father. Alison Nelson, HW’s primary PCA, reports that HW has shown far less behavioral issues since HW and OW began living separately. Ms. Nelson

- a. The parties should continue to utilize a log book to document: name/time/amount of medication given; time/amount/type of food eaten; and behavior (and if known, the antecedent and consequence). The log book shall travel with the children for visitation exchanges.
 - b. Exchange times for visitation should take place in the mid-afternoon – not 6 p.m. – as to allow the children time to transition to the other parent’s home.
 - c. The parties should continue to send the “exchange e-mail” wherein they would have an affirmative duty to notify the other parent at the time of exchanges as to any concerns or changes to the child’s routine. Both parents are to be informed as soon as possible as to any emergencies or medical appointments made on the other parent’s time so as to allow both parents an opportunity to attend.
5. **Alcohol Restraint.** The mutual restraint against excessive consumption of alcohol while caring for the minor children should remain in place. Due to the concerns with previous alcohol abuse and the recommended schedule which has each parent caring for one of the children full time, mutual testing for alcohol should be in place long-term. Testing should be conducted by Dr. Ruth DeHaven at Saint Andrew’s Medical Center and either parent may request the other to submit to a dCDT% test. An elevated result would indicate that the parties exposed the children to the excessive consumption so long as the parties are continuing with shared custody. In the alternative, the parties could submit to an ETG urine screen which would measure consumption of alcohol over a 2-3 day period wherein they were caring for one or both of the children.
6. **Paramours.** A concern still remains with Mother’s paramour, Kyle Snouffer, and the allegations of sexual abuse concerning HW. Although Mr. Snouffer has not been charged with or arrested for sexual misconduct against HW, HW is an exceptional child who is more at risk for abuse than her peers. HW and OW are exceptional children and with that come exceptional circumstances. As the Guardian, I would be most comfortable with language restricting Mother from leaving either child in the care of Mr. Snouffer if she chooses to continue this relationship.
7. Standard restraints to include no exposure to overnight guests of the opposite sex not related by blood or marriage.

Respectively submitted,


Emily W. Ayers
GUARDIAN AD LITEM

July 6 _____, 2021
Charleston, South Carolina

EXHIBIT 2

South Carolina Department of Social Services
NOTICE OF UNFOUNDED INVESTIGATIONS/ASSESSMENTS

Date: February 6, 2019

To: Phillip Woschenko

Address: 406 West Cooper Ave

Folly Beach, SC 29439

Re: 0001259051

Dear: Mr. Woschenko

This is to inform you that the child protective services investigation/assessment involving you and the above referenced children initiated on 12/20/18, was determined unfounded on 02/01/19, and classified as a:

- Category I Unfounded Report** – Abuse and neglect was ruled out by the investigation/assessment.
- Category II Unfounded Report** – The investigation/assessment did not produce a preponderance of the evidence that the child is an abused or neglected child.
- Category III Unfounded Report** – An investigation/assessment could not be completed because the department was unable to locate the child or family or for some other compelling reason.

If classified as Category I or II, this means that the investigation/assessment has been concluded. Category III cases may be reopened if additional information is received which allows DSS to complete the investigation/assessment. The DSS investigative/assessment file will be destroyed not less than five years from the date of the case decision and information will be kept confidential pursuant to S.C. Code Section 63-7-930.

If you have any questions regarding this notice or the completed investigation/assessment, please contact the worker or supervisor listed below during normal working hours, Monday through Friday.

<u>Shawn Anthony</u> Investigator	<u>Beth Linares</u> Supervisor	<u>843-953-9614</u> Telephone
--------------------------------------	-----------------------------------	----------------------------------

CC: _____

**South Carolina Department of Social Services
DETERMINATION FACT SHEET**

Case Name: Phillip Woschenko Case Number: 0001259051

Address: 406 West Cooper Avenue

Folly Beach, SC 29439

As of February 1, 2019, it is the decision of the department that the investigation/assessment
Case Determination Date
 initiated on December 20, 2018 has been unfounded for the following forms
Intake Date Case Determination
 of maltreatment: Sexual Abuse as supported by the facts and observations
Maltreatment
 recorded below and in the county investigative/assessment file.

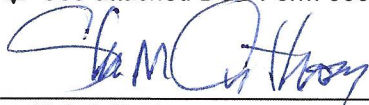

Facts/Observations	Supporting Documentation/Evidence
On December 20, 2018 DSS received a report alleging that Phillip Woschenko may have sexually abused his 11 year old daughter, Hope. It was reported that Hope had pointed ot her vaginal area and said, "daddy" and then inserted her own finger into her vagina and there was blood. Phillip and Sonya Woschenko are the parents to Hope and Owen, 8. They recently separated due to Mr. Woschenko's excessive alcohol abuse and Mrs. Woschenko's belief that he has sexually abused their daughter. Both of the children have significant developmental delays and are diagnosed with Autism Spectrum	DSS investigation, interviews with family collateral

For indicated investigations/assessments, check all that apply:

- You have been identified as the person responsible for harm to a child. (See attached DSS Form 3089.)
- A child with whom you are involved has been identified as being abused and/or neglected by state statute. You have **not** been identified as being responsible for the maltreatment. This information is being provided to you solely because of your legal relationship to the child.
- A child for whom you are the caretaker has been determined to be abused and/or neglected.
 - Day Care Facility:** The matter will be referred to your employer and the DSS Division of Child Day Care Licensing and Regulatory Services for action. (See attached DSS Ltr. 3061.)
 - Foster Homes, Group Homes and Residential Facilities:** See the attached letter for additional information regarding appeal of this decision. (See attached DSS Ltr. 3061.)
- A child has been determined to have been harmed while at your child care facility. The DSS Division of Child Day Care Licensing and Regulatory Services will contact you regarding a corrective action plan and/or any other actions needed to insure the safety of children.

For unfounded investigations/assessments:

- See attached DSS Form 3065.


2.6.19

020619

Worker's Signature
Date
Supervisor's Signature
Date

EXHIBIT 3

**South Carolina Department of Social Services
DETERMINATION FACT SHEET**

Case Name: Phil Woschenko Case Number: 0001259051

Address: PO Box 1686
Folly Beach SC 29439

As of 03/21/2019, it is the decision of the department that the investigation/assessment
Case Determination Date
initiated on 02/06/2019 has been Unfounded CAT 2 for the following forms
Intake Date Case Determination
of maltreatment: Sexual Abuse and Substantial Risk of Sexual Abuse as supported by the facts and observations
Maltreatment
recorded below and in the county investigative/assessment file.

Facts/Observations	Supporting Documentation/Evidence
Sonya Woschenko and Phil Woschenko are the biological parents of Hope Woschenko (11), and Owen Woschenko (8). Sonya and Phil Woschenko are in the middle of a divorce and share 2 children in common, with special needs.	DSS investigation Interview with family
Hope Woschenko was seen at Dee Norton and made no disclosures of Sexual Abuse. It was difficult to interview her due to her special needs. Hope had told DSS at one point that daddy had touched her, but was not able to give the context in which this occurred. It was also after she had been asked direct questions on paper (suggested by mother as a better means of communication).	Dee Norton Child Advocacy Center Case Manager Observations

For indicated investigations/assessments, check all that apply:

- You have been identified as the person responsible for harm to a child. (See attached DSS Form 3089.)
- A child with whom you are involved has been identified as being abused and/or neglected by state statute. You have **not** been identified as being responsible for the maltreatment. This information is being provided to you solely because of your legal relationship to the child.
- A child for whom you are the caretaker has been determined to be abused and/or neglected.
 - Day Care Facility:** The matter will be referred to your employer and the DSS Division of Child Day Care Licensing and Regulatory Services for action. (See attached DSS Ltr. 3061.)
 - Foster Homes, Group Homes and Residential Facilities:** See the attached letter for additional information regarding appeal of this decision. (See attached DSS Ltr. 3061.)
- A child has been determined to have been harmed while at your child care facility. The DSS Division of Child Day Care Licensing and Regulatory Services will contact you regarding a corrective action plan and/or any other actions needed to insure the safety of children.

For unfounded investigations/assessments:

- See attached DSS Form 3065.

Charmaine G
Worker's Signature

03-21-19
Date

Lawrence Jones
Supervisor's Signature

3-21-19
Date

South Carolina Department of Social Services
NOTICE OF UNFOUNDED INVESTIGATIONS/ASSESSMENTS

Date: 03/21/2019

To: Phil Woschenko

Address: PO Box 1686

Folly Beach, SC 29439

Re: Hope Woschenko and Owen Woschenko

Dear: Phil Woschenko

This is to inform you that the child protective services investigation/assessment involving you and the above referenced children initiated on 02/06/2019, was determined unfounded on 03/21/2019, and classified as a:

- Category I Unfounded Report** – Abuse and neglect was ruled out by the investigation/assessment.
- Category II Unfounded Report** – The investigation/assessment did not produce a preponderance of the evidence that the child is an abused or neglected child.
- Category III Unfounded Report** – An investigation/assessment could not be completed because the department was unable to locate the child or family or for some other compelling reason.

If classified as Category I or II, this means that the investigation/assessment has been concluded. Category III cases may be reopened if additional information is received which allows DSS to complete the investigation/assessment. The DSS investigative/assessment file will be destroyed not less than five years from the date of the case decision and information will be kept confidential pursuant to S.C. Code Section 63-7-930.

If you have any questions regarding this notice or the completed investigation/assessment, please contact the worker or supervisor listed below during normal working hours, Monday through Friday.

Charmaine Green
Investigator

Karen Sams
Supervisor

843-214-1917
Telephone

cc: _____

EXHIBIT 4

Name: [REDACTED] Woschenko | DOB: 6/9/2010 | MRN: 003691410 | PCP: KARA HUNCIK, MD

Note From Your Admission on 05/07/21 [REDACTED]

Consults by JOHN D MELVILLE, MD at 5/10/2021 3:54 PM

Referral Background

Referral Source: Emergency Department at SJCH Referral / Intake Date:5/8/2021

DSS Agency: Contact:

LE Agency: Contact:

Reason For Referral

From the ED HPI:

"10 yo male with history of Constipation, Autism, GERD who presents from radiology after **outpatient KUB revealed rib fractures and possible rectal FB**. Did miralax clean out 2 weekends ago (4/24)- father states so solid stool but mostly liquid came out- only stooled 4 times after. No fever, no vomiting, no cough/congestion.

No recent car accidents, no major injuries; however, pt often has to be restrained during behavioral outbursts and kicks and hits things. throws himself when having a tantrum. Recently had bruised left foot after (told to dad by school) kicking pipe. Had negative Xrays at Doctor's Care.

Minimally verbal but points to abdominal or head When asked about pain. Father states pt gets significantly more violent/aggitated when in pain.

attends in person school. **Lives with dad- spends 2 weekends a month with mother**. Has 13 yo sibling who is also autistic.

decreased appetite x 1 month. Father concerned for significant weight loss. Review of records shows approx 8 lb weight loss since 4/8/21.

Did not take daily meds today in anticipation of anaesthesia. "

I was originally called on this patient on Saturday, 5/8/2021. I suggested an outpatient workup. When I noted this morning that the patient was still an inpatient I opted to complete the evaluation today. **When I arrived at the patient's room mother and father were both present, but father needed to go to work immediately**. I got father's phone number, and **parents agreed that I would speak to mother alone and complete the evaluation and that subsequently I would call and speak to father**.

Clinical History

Child Brought By: Sonya Woschenko Relationship to Child: Mother

Living at Home With:

Primary Secondary

Biological Mother

Biological Father

The patient lives with father during the week and the patient's sister lives with mother. Each parent takes care of both children on alternate weekends.

Stepmother

Stepfather

Adoptive Mother

Adoptive Father

Paramour

- Adult Relative
 Adult Non-Relative

DSS Voluntary Safety Plan

- Relative / Kinship Placement
 Nonrelative Placement
 Informal / Private Arrangement

DSS Involuntary Placement

- Foster Care
 Kinship Foster Care
 Group Home
 Department of Juvenile Justice

Household Members: (In addition to patient)

Name: Sonya Woschenko, Relationship: Mother, Age or Birthdate: 10/29/1969

Name: Philip Woschenko, Relationship: Father, Age or Birthdate: 9/30/1968

Name: ██████ Woschenko, Relationship: Sister, Age or Birthdate: ██████

██████ has a [personal care assistant Mon-Fri after school and on Saturday. ██████ has a personal care assistant Monday - Saturday. ██████ does not attend school.

Caregiver Historian: Relationship to Child: Mother

Mother reports that the patient came for a CAT scan on 5/7/2021 because the patient had been smashing his head and mother was worried about a behavior change. The patient has autism and is a verbal.

Mother reports that the patient has had GI issues and head banging for years. It goes up and down through cycles. In the March 2021 timeframe the head banging got worse at the patient had bruises all over his forehead. These behaviors were documented at school. The patient also had bruises on the sides of his face and his body. At the end of March father took the patient off of cyproheptadine. **The patient, sister, mother, maternal grandmother, and two personal care assistants went to the Magic Kingdom on April 2. The second day of the visit (first day at the park) they went on one ride and then the patient began covering his face with his sweatshirt and hitting himself in the head. Mother got the patient to a quiet area. The patient got very aggressive and had to be restrained. Mother restrained the patient and mother asked Disney employees to call EMS to get the patient out of the park. EMS restrained the patient to a stretcher and the patient was taken to the emergency room. (The patient went to Horizon West emergency room.)** Mother had given the patient medication, so by the time they got to the ED the patient was calm. After the mother spoke to the ED the ED physician recommended restarting the cyproheptadine. However, father, who has medical custody, declined to restart the medication.

Mother told the ED that she had a prescription from the patient's psychiatrist for Guanfacine, which had not yet been filled. (Psychiatry had prescribed it in November, but it had not yet been filled.) Mother started the Guanfacine at that time.

Mother reached out to the pediatrician who added some additional medications to help the family make it home safely. The **patient has had a history of similar issues requiring medical support.** The patient has **previously been hospitalized for aggression.** The pediatrician recommended adding Cyproheptadine and Ativan. They came home the following Wednesday. On Thursday they were back in the MUSC emergency room for aggression after mother called to Foley beach police for aggression. The patient went back to father's house after that.

On Friday 5/7/2021 the patient was scheduled for a CT scan and abdominal x-ray to try and explain his behaviors. They x-rays revealed rib fractures and an item in the rectum but a second x-ray did not show the same issue.

Mother does not know how the patient broke his ribs. Mother reports that the PCAs have told mother that father restrained the patient "too hard." The PCAs told mother that father has sat on the patient. Mother checked with the school who did not report any injuries except that the patient kicked something on April first, which may have caused the tarsal fracture.

Mother reports that the patient is big and gets very aggressive and that sometimes you have to "use all your energy" to stop the patient from getting hurt and the parent from getting hurt. Mother is not aware of a specific mechanism for the rib injuries.

The patient used to only require restraint once a week or so, but his behavior has been escalating recently. Now the patient requires restraint on most days.

Mother reports that the patient lashes out when he is in pain, so maybe his recent behaviors are due to pain from one of his fractures.

I called the patient's father at 843-824-4970 at about 11:48 am on 5/10/2021.

Father reports that the patient has had issues ongoing where as doctors have not been able to figure out what has been going on. Father has been very worried about the patient's constipation issues. The patient had also been banging his head at school and had some bruising. The patient was scheduled to have a head CT based on doctor's recommendations. The patient also kicked something at school. An x-ray in early April did not show anything. When the CT was done, father asked for a abdominal x-ray [to check for constipation.] The chest x-ray showed fractured ribs.

The patient has had chronic problems with constipation and no medications worked. The patient has been more aggressive, but this may be due to his rib fractures and a fracture in his foot. The original injury was on April 1st at school. As far as the rib fractures, father does not know how it happened, but would have a hard time thinking anyone would hurt him. Father reports they have been unable to fix the constipations.

Father reports they are not allowed to go into the school and witness things, but there are multiple people there, so father doubts that anyone hurt the patient intentionally. Father does not think that mother would intentionally hurt the patient.

The patient had an ED visit in Florida for behaviors from Disney World to Horizon Health west on April 3.

Child's Statement

Forensic Interview

Medical Interview With Child:

People Present:

Child is a verbal and unable to complete the forensic interview.

Medical History

Yes No An adult is present to provide historical information.

Prenatal / Birth History:

Yes No Twin or multiple gestation?

PMH: Autism, Apraxia, GERD, IBS, migraines or head pain (depending on who you talk to.) He has been on anxiety meds, but he is not right now.

Primary Care Provider: Dr. Huncik at Coastal Pediatrics.

Immunizations: Up to Date Not Up to Date Unknown Family does not do flu shots.

Hosp: Aggression (multiple, 2x in 2019)

All of his hospitalizations are at MUSC.

Surg: Hernia exploration Age 9. Circumcision at birth. No bleeding problems.

Meds: Mother reports that father and mother have "a drastic difference of opinion about the description of how things have happened on his medications". Mother reports that the psychiatrist suggested guanfacine and that the parents could either stop the cyproheptadine and then start the guanfacine, or they could start the guanfacine and then stop the cyproheptadine. Mother wanted to do one order and father wanted the other so nothing happened. **In March 2021 the court gave father custody of the patient** and mother custody of the patient's sister. When father got legal custody father stopped the cyproheptadine without starting the guanfacine first which was not the plan mother preferred. **Mother also thinks father tapered the cyproheptadine too quickly.**

Guanfacine, dicyclomine (not used very often), famotidine, Ativan prn. "Pre and probiotic." melatonin

Allergies: NKDA

Prior Injuries

Yes No Burn, age:

Yes No Fracture, age:

Yes No Head Injury, age: 6 year(s)

Bangs his head frequently. Never required medical care.

Yes No Oral Injury, age: 10 year(s)

Not that long ago some ulcers in his mouth per the pediatrician

Yes No Laceration, age:

Yes No Animal Bite, age:

Yes No Ingestion, age: 1 month(s)

Yes No Other Significant Injuries:

Yes No Were of the above injuries discussed with a medical provider?

Yes No Anogenital Procedures, age: 0 month(s)

Neonatal circ without bleeding problems.

Family History

Yes No Unk Hearing Problems MGM and MGP had old age onset hearing difficulty.

Yes No Unk Multiple Fractures

Yes No Unk Brittle Bones MGM has old age onset osteoporosis.

Yes No Unk Easy Bruising MGP is on blood thinners.

Yes No Unk Bleeding Too Much

Yes No Unk Metabolic Disorders

Yes No Unk Seizures

Yes No Unk Birth Defects Maternal cousin with 2 holes in her heart at birth.

Yes No Unk Unexplained Deaths

Developmental History

Patient Age: 10 yr

Yes No Unknown Doing well in school in regular classes.

Yes No Unknown No behavioral concerns.

Yes No Unknown Physical activity similar to peers.

Yes No Unknown No prior developmental concerns or therapy.

School Name: Ashley River Creative Arts Location: West Ashley Grade: 4th

Autism only classroom. -- Is doing better than he was years ago but still not at grade level.

School Performance: Excellent Good Average Fair Poor

Review of Systems

Psychiatric

Yes No Difficulty Sleeping Takes melatonin

Yes No Hyperactive or impulsive

Yes No Fearful of being alone The patient wants someone there when he falls asleep. If he wakes up at night he will go get a parent to put him back to sleep.

Yes No Sad or crying easily.

Yes No Quiet or withdrawn.

Yes No Angry Outbursts See HPI

Yes No Hitting or biting See HPI

Yes No Difficulty making or keeping friends Autism

Yes No Ran away from home

Yes No Thought about hurting self.

Yes No Tried to hurt self. Bangs head.

Yes No Sexualized behavior Will yank on his penis and tuck it backward. The patient "adjusts himself a lot" per mother.

Yes No Other behaviors See HPI. Recently the patient has had some urinary accidents. In late 2018 the patient had some enuresis.

Constitutional

Yes No Change in Appetite Per mother, the patient eats better for mother than for father.

Yes No Takes Vitamins Not ad his dads. Patient takes gummy vitamins at father's house.

Yes No Weight Loss Recently lost about 10 lb.

Yes No Failure to Thrive Ever

HEENT

Yes No Vision Problems

Yes No Hearing Problems

Dental

Yes No Problems With Teeth Gets a lot of cavities and has been sedated for dental work twice,

Cardiovascular

Yes No Heart Murmur

Yes No Heart Problems

Pulmonary

Yes No Wheezing

Yes No Breathing Problems

Gastrointestinal

Yes No Constipation See HPI

Yes No Diarrhea When treating constipation.

Yes No Frequent Vomitting / GERD Dx of GERD

Age frequent vomitting first noted.

Yes No Frequent Stomachaches Frequently indicates stomache pains.

Genitourinary

Yes No Dysuria

Yes No Urinary Retention

Yes No Hematuria

Yes No Urinary Frequency Has seen a urologist for incontinence and has normal urinary function.

Yes No UTI

Yes No Bed Wetting

Day Night Day & Night

Yes No Soiling underpants

Yes No Genital Itching

Yes No Genital Lesions

Yes No Genital Bleeding

Yes No Genital Pain

Yes No Penile Discharge

Yes No Anal Itching Pinwroms and hemorrhoids.

Yes No Anal Pain

Yes No Anal Lesions

Yes No Anal Bleeding

Neurologic

Yes No Frequent Headaches HPI

Yes No Problems Moving or Talking Does not talk.

Yes No Seizures The school thought he was having seizures, but the school thought differently. A neurologist said no seizures.

Skin

Yes No Bruises, cuts, or sores. None now -- but he has had them before. His cuts do not seem to heal as quick as his sisters. In the past the patient has a bruise over his whole back that father said was from rug burn. Mother says you cannot tell if it is self injury or someone else because the patient does punch himself in his head. Mother showed

me a photo of a bruise beneath the left eye, and another on the right forehead. Mother admits they might be self injury. The patient does a thing where he pinches himself and twists, which can cause injury. Mother also showed me an image of some bruising to the helix of the ear

Yes No Rashes

Hematologic

Yes No Bleeding Problems

Yes No Clotting Problems

Allergy

Yes No Allergies or Immune Problems

Other

Yes No Other Concerns

Social History

Parents' Relationship: Mother and father met In 1999. Mother and father started libing together in 2001 and married about 3 months later. Theys topped living together in 2018, but are "technically still married" Theyhave a trial date for their divorce proceeding.

Child Care: Mother, father, per2sonal care assistants, and school.

Discipline: Redirection. Applied behavior analysis. He would get spanked for running out in the road, but does not get spanked for non safety issues.

Yes No Unk Current Tobacco Use in Home

Father smokes.

Yes No Unk Current Substance Abuse in Home

Neither parent is supposed to drink when they have the children. Father moved out because of his drinking. Mother reports that father is supposed to get alcohol testing every week and had a 'significant fail" in January.

Yes No Unk Firearms Kept in Home

Yes No Unk Prior Mental Health Diagnosis in Caregivers

In Treatment Prior Treatment No Treatment Unknown

Mother has "autism" and sees her counselor for a "high stress divorce." **Mother reports that father has been prescribed medication for anxiety but mother does not think that father was taking it.**

Yes No Unk Current Domestic Violence in Home

Yes No Unk Prior History of Child Abuse in Caregivers

Mothe was raped at age 12.

Yes No Unk Prior report to DSS regarding any of of the caregiver's children?

Mother reports that the patient's sister was seen at Dee Norton in 2019. The sister "said that her dad had done something" leading to concerns about sexual abuse. Mother reports that "it was unfounded, but ..." This patient was also evaluated at Dee Norton at that time.

Yes No Unk Prior Report to DSS related to this child?

Yes No Unk Open DSS Case At Time of Referral

Yes No Unk History of out of home placement for any of the caregiver's children?

Yes No Unk Current CPBS Participation

Yes No Unk Prior CPBS Participation

Yes No Unk Termination of Parental Rights

Yes No Unk Prior Law Enforcement Involvement

Yes No Unk Deportation of Primary Caregiver

Prior history, involvement, or report of child abuse or neglect.

Child fatality due to abuse or negelct

Hazardous Conditions In Home

Exposure to Domestic Violence

Exposure to Caregiver's Substance Abuse

Exposure to Drug Manufacturing In Home

Failure to Thrive

Lack Of Supervision

- Medical Neglect
- Physical Abuse
- Physical Neglect
- Sexual Abuse
- Pregnancy
- Sexually Transmitted Infection
- Other

Physical Examination

People present: John Melville, MD, Kathy Kurowski, RN, Sonya Woschenko

Relationship: Physician, Nurse, Mother.

Vital Signs: T: 97.3 C P: 73 R: 16 SpO2: BP: 95 / 41

Wt: 36.288 kg (54.3%) Ht: 147.3 cm (72.4%) BMI: 16.7(41.7%)

General Appearance:

- Well Developed, Well Nourished Thin Overweight
- Cooperative Shy Crying Apprehensive Hostile
- Clean Poor Hygiene
- Active Withdrawn

Wnl Abnl Development: Patient has behaviors commonly associated with Autism including not talking, repetitive behaviors, and not responding when addressed.

Wnl Abnl Eyes: Pupils equal, round. No Scleral hemorrhages, Sclera white.

Wnl Abnl Ears, Mouth, Nose, Throat: No trauma to external ears. Nares are patent. Nose shows no evidence of trauma, Mouth is normal without evidence of trauma. Frenula are intact.

Wnl Abnl Lung: Clear to auscultation, bilaterally.

Wnl Abnl Heart: Regular in rate and rhythm without murmurs, clicks, or rubs. S1 and S2 are audible.

Wnl Abnl Abdomen: Soft, neither tender nor distended.

Wnl Abnl MSK: Moves all extremities well without apparent pain. No deformity noted.

Wnl Abnl Neuro: Extraocular movements normal. No focal deficits noted. Obvious behavioral deficits suggestive of autism as documented above.

Wnl Abnl Anus: No trauma noted on a limited examination.

Wnl Abnl Skin: Multiple bruises as noted on the traumagram.

Photos Taken

Genital: Patient refused genital exam.

Documentation: Photos Video Photos & Video No imaging

Positioning: Supine Prone KC

Tanner Stage: Pubic Hair 1 2 3 4 5 Shaved/Waxed

Genital 1 2 3 4 5

Penis: Normal penis without lesions, discharge, or evidence of trauma.

Circumcised Uncircumcised

Testes: Descended and symmetrical bilaterally without masses.

Additional Information Reviewed

Radiology: Abdominal Xray 5/7/2021

IMPRESSION:

1. Healing right posterolateral 8th and 9th ribs. Correlate with any known mechanism of injury.

2. 9.1 cm linear opacity projects over the pelvis. Reportedly, no bladder or rectal catheter was placed for sedation performed for the imaging studies today, and no external structure is present on the patient's stretcher. While this could represent a mask wire overlying the pelvis given current mask precautions, findings could also be seen with foreign body given patient's history of autism.

3. Mild to moderate amount of stool.

Findings were discussed with Dr. Ryan Southard by Meryle Eklund, MD on 5/7/2021 1:14 PM.

I, Meryle Eklund, MD, have reviewed the study and agree with the findings in this report. 5/7/2021 1:32 PM

Abdominal XRay 5/7/2021

1. Foreign body over the pelvis has been removed since earlier today and likely represented an external artifact (such as a mask).

2. Unchanged right posteriolateral eighth and ninth rib fractures.

3. No acute abdominal abnormality.

Dictated by: Megan Mercer, MD. 5/7/2021 3:08 PM

I, Meryle Eklund, MD, have reviewed the study and agree with the findings in this report. 5/7/2021 3:16 PM

Bilatera rib films 5/7/2021

Redemonstrated subacute healing fractures of the right posterolateral eighth and ninth ribs. No other acute or healing fracture. No pneumothorax.

I, Meryle Eklund, MD, have reviewed the study and agree with the findings in this report. 5/7/2021 3:13 PM

Subacute nondisplaced impaction type fracture of the fifth metatarsal head.

Findings were discussed with nurse practitioner Christie Corley by Meryle Eklund, MD on 5/7/2021 4:19 PM.

I, Meryle Eklund, MD, have reviewed the study and agree with the findings in this report. 5/7/2021 4:19 PM

Ct Head 5/10/2021

Unremarkable CT of the head.

Dictated by: Benson Langdon, MD. 5/7/2021 12:20 PM

I, Justin A. Chetta, MD, have reviewed the study and agree with the findings in this report. 5/7/2021 3:51 PM

Skeletal Survey 5/10/2021

Bones: No evidence of acute or remote fracture separate from the rib and metatarsal fractures demonstrated 5/7/2021. There is normal bony mineralization.

...

IMPRESSION:

No evidence of acute or remote fracture aside from the kwon rib and metatarsal fractures demonstrated 5/7/2021.

I, Meryle Eklund, MD, have reviewed the study and agree with the findings in this report. 5/10/2021 2:39 PM

I spoke with Dr. Eklund by telephone and confirmed her belief that the x-ray appearance of the bones is normal despite her knowledge of the vitamin D and PTH results noted below.

Labs: WBC: 6.69 Hgb 12.9 Hct 39.1 Plt 312

Ca 9.7 Mg PO4 5.4 Alk Phos 197.0

PTH 132.1 Vitamin D 14.4

AST 19 ALT 10

UA: Unremarkable

Medical Records: The patient was previously evaluated by MUSC CAP on 1/24/2019.

"1. Sexual Abuse-indeterminate

Discussion: [REDACTED] Woschenko is an 8 year old autistic male child who is being seen for allegations of sexual abuse by his NF. The concern is that NM believes that the NF has sexually touched his sister and [REDACTED] used to sleep with his NF.

Child had a normal anogenital exam. A normal anogenital exam does not indicate that child was not sexually abused as the majority of children who experience sexual abuse have normal or non-specific anogenital exams. The concern is that NM stated that this child's minimally verbal autistic sister indicated to NM that NF hurt her and NM asked the sister some questions and NM believes that the sister indicated that NF touched the sister's private area. This child is not able to complete a forensic interview due to his limitations related to his autism. During the medical assessment the child was noted to have no communication skills and therefore unable to relay any information. NM reports that child is aggressive and has hit, choked and scratched people. NM also reports that child has had urine and fecal accidents in the past 6 weeks. Per review of MUSC EPIC NF took child to Pediatric GI & Nutrition in North Charleston March 2018 where he was assessed for failure to potty train for stool. NM also reports that child has pulled his pants down 2 times in public. This medical provider cannot determine the cause of these behaviors but these behaviors are not diagnostic for sexual abuse. Sexual abuse is indeterminate based on child's normal exam and his inability to communicate if he was sexually touched. "

Photos: I briefly review photos from the prior visit and ascertained that they did not contribute to the current evaluation.

Discussed With:

Other:

Diagnosis and Conclusions

Physical Abuse

Physical Abuse Strongly Indicated

Physical Abuse Indicated

Physical Abuse Undetermined

The observed injury could be the result of accidental or inflicted injury.

Risk factors identified below suggest a significant risk of future abuse or neglect.

Case presentation suggests a low risk for future abuse or neglect.

Physical Abuse Not Indicated

Risk factors identified for: Sexual Abuse Physical Abuse Neglect Sex Trafficking

Sexually intrusive behavior in a prepubertal child.

This is a 10 year old male patient with autism and a significant history of autism and disruptive behavior. The patient was noted to have two lateral rib fractures. Neither father no mother provides a specific injury history to explain the rib fractures. The patient is frequently restrained for his disruptive physical behavior.

This case is indeterminate for physical abuse. Rib fractures are strongly concerning for abuse in infants and young toddlers, where they typically result from grasping an infant around the chest. This child is too large for that to be a plausible mechanism. Rib fractures in the absence of significant trauma are rare at this age. I am unable to differentiate between abuse and restraint as a cause of these rib fractures.

The history that the child kicked something at school is a plausible explanation for a metatarsal fracture.

The patient's vitamin D is low and PTH is high. This is consistent with vitamin D deficiency. The radiographic appearance of the bones is normal and specifically does not show radiographic stigmata of rickets. In the absence of radiographic findings, I do not believe that the patient's vitamin D deficiency contributed to his fractures.

Despite these fractures being indeterminate for physical abuse, the presence of two unexplained fractures is sufficiently concerning to meet the intentionally low standard to justify a mandated report to DSS. I concur with the mandated report made on 5/8/2021.

Recommendations

1. This case has been reported to DSS. Please coordinate discharge with MAP social worker.
2. Discuss with multidisciplinary SCAN team.

3. Follow up with MUSC CAP is not anticipated.

Enhanced Reimbursement

12 min Talk to team and prep for visit

21 min Talk to social worker

12 min Chart review and work on note

49 min Chart review and work on note

17 min Lab and radiology review.

32 min Literature review

Billed to SCCAMRS due to patient no having SC Medicaid

EXHIBIT 5

STATE OF SOUTH CAROLINA)	IN THE FAMILY COURT
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	CASE NO.: 19-DR-10-146
)	
SONYA K. WOSCHENKO,)	
)	
Plaintiff,)	
)	
-VS-)	ARBITRATION AWARD
)	
PHILIP WOSCHENKO,)	
)	
Defendant.)	
_____)	

DATES OF ARBITRATION:	DECEMBER 14 and 22, 2020, APRIL 16, 2021, MAY 4, 2021, MAY 5, 2021
ARBITRATOR:	J. TODD MANLEY
PLAINTIFF’S ATTORNEY:	GREGORY FORMAN, ESQUIRE
DEFENDANT’S ATTORNEY:	JESSICA PARTAIN, ESQUIRE

THIS MATTER came before me for binding arbitration pursuant to this Court’s Consent Order for Arbitration dated October 14, 2020 (herein “Consent Order”).

At the call of the case for arbitration, the Plaintiff argued that the Defendant should be barred from requesting alimony as he did not plead for alimony in his original Answer and Counterclaim and only requested alimony in his amended Answer and Counterclaim. The Plaintiff argued that the amended Answer and Counterclaim was filed out of time without consent of the Plaintiff. The Defendant argued that the Plaintiff has long since been aware of his amended claim for alimony and yet remained silent. The Defendant further argues that alimony is one of the issues I am to decide by consent of the parties.

I find that the Plaintiff’s motion regarding the issue of alimony is denied. The parties both agreed to submit the issue of alimony to me for binding arbitration. The

all interest in the parties' marriage and was excluding him from outings she was going on with Mr. Snouffer and the minor children.

54. The Defendant became concerned about the relationship between the Plaintiff and Mr. Snouffer starting in October 2018. He testified that the Plaintiff seemed very interested in socializing with Mr. Snouffer in a way that she never had with other nannies and therapists. He was suspicious that the Plaintiff was having an affair prior to the date of the parties' separation. He testified that the text messages and depositions prove that the Plaintiff and Mr. Snouffer began an adulterous relationship before the parties separated from one another.

55. The Defendant was concerned in approximately 2012 that the Plaintiff had had a sexual encounter with a third party due to finding bruising on the Plaintiff. In 2013, the Defendant was concerned when the Plaintiff attended a bachelorette party and ended up with a stick-on tattoo near her butt check.

56. The Plaintiff testified that there was no adultery by her prior to the date of the parties' separation.

57. Text messages between the Plaintiff and Mr. Snouffer clearly indicate a personal relationship between them on the date of the parties' separation. The Plaintiff looked to Mr. Snouffer for support on the night of the parties' separation. The text messages certainly show the Plaintiff and Mr. Snouffer interested in one another at or around the time of the parties' separation. However, the text messages, do not evidence a sexual relationship between the Plaintiff and Mr. Snouffer on the date of the parties' separation. The text messages appear to indicate their sexual relationship started on

December 14, 2018 or December 15, 2018. The Plaintiff admits to a sexual relationship that started on December 15, 2018.

58. The Defendant testified that the Plaintiff also drank alcohol to excess. The Plaintiff did have a slightly elevated PEth test result in November 2019.

59. The Plaintiff testified that she drank very little during the marriage. Historically, she stated that she drank alcohol about one (1) time every three months or so. She admits that she drank a little more than usual at and around the time of the parties' separation due to the stress she was feeling at that time.

60. Ultimately, I find that the Plaintiff's consumption of alcohol was not problematic during the parties' marriage and was not a reason for the breakdown of the parties' relationship.

61. The parties argued and had communication issues. They also had stressors related to finances and raising two (2) children with special needs. They had been in counseling for quite a while trying to work out marital issues. Ultimately, however, I find that the Defendant's excessive alcohol consumption was a primary factor in the breakdown of the parties' marriage. The Plaintiff's mother would visit the parties every couple of months. She testified that the Defendant was a heavy drinker, with the heaviest drinking occurring during the last four (4) years of the parties' time together. She saw the Defendant passed out from alcohol consumption on two occasions. The parties' housecleaner, Lorinda Feist, testified that the Defendant would drink 6 to 8 beers at a sitting. The Defendant minimizes the impact of his drinking on the parties' marriage, which has been part of the problem. The Defendant regularly bought excessive amounts of Yuengling beer at Harris Teeter, as the receipts provided clearly show. The Defendant

mutually agreeable payment arrangement shall be agreed to in writing between the arbitrator and party. Payments shall be made to Manley Law Firm, LLC, P.O. Box 1105, Moncks Corner, South Carolina, 20461.

AND IT IS SO AWARDED!

J. Todd Manley
Arbitrator

Dated this 13th day of May, 2022

EXHIBIT 6

1 Q Can she have a conversation?

2 A She can speak, she can answer questions,
3 not a conversation like you and I are having.

4 Q So she can have a conversation -- do you
5 know any other children her age?

6 A Yes.

7 Q Can she have a conversation like
8 children -- other children that are her age?

9 A Not like them.

10 Q How many words will she say in a sentence?

11 A I would have to think about a sentence
12 that she says, but, I mean, it could be 12 or 15
13 or --

14 Q Are you able to -- have you ever had any
15 conversation with what age level she is at
16 comparatively, as far as like any milestones? Have
17 you ever been told that by any of her doctors?

18 A Not that I recall.

19 Q I just want to understand a little more.
20 You say she won't have a conversation like we're
21 having now, so what kind of conversation can she --
22 describe a conversation with her, I guess.

23 A Describe a -- like the words, or the back
24 and forth, or like what are you asking?

25 Q Sure, the words, the subject matter,

1 the -- she understands what you say to her and --

2 A I can ask her, "What did you do today,"
3 and she can tell me what she did.

4 Q Does she --

5 A You do understand that autism is a
6 communication disorder, right?

7 Q Yes, and that's what I'm trying to
8 understand.

9 A I wanted to make sure you were clear on
10 that. Okay.

11 Q And I understand what level of -- how
12 she's able to communicate.

13 Has that changed? Has she gotten better
14 over recent years as far as her ability to
15 communicate?

16 A I guess if you're asking verbally, yes.

17 Q Did she used to have a more limited
18 ability to verbally communicate?

19 A Yes.

20 Q And let's focus on around 2018/2019. Was
21 she more limited in her ability to verbally
22 communicate back then?

23 A I would say probably she didn't know
24 conjunctions, and so things would come out as
25 shorter phrases.

1 Q Can she write? Or let's keep it to
2 2018/2019. So that's about six years ago. She was
3 about ten years old. Could she write full sentences
4 back then?

5 A Yes.

6 Q Could she speak full sentences?

7 A Yes, short.

8 Q Short sentences. And you're saying that
9 you've never seen -- or you've never seen any
10 documentation describing [REDACTED] as nonverbal. Is that
11 your testimony?

12 A I'm not saying I've never seen it. I'm
13 saying I don't recall particularly having seen
14 anything to say she was nonverbal.

15 Q So maybe you have, maybe you haven't, but
16 you just don't remember?

17 A I mean, it's possible that -- you know,
18 school, educationally versus medically are two
19 different ways they diagnose for autism, and so they
20 call my son nonverbal too, but he speaks.

21 Q Let's talk about [REDACTED]. How old is he?

22 A He's 13, about to be -- well, 13.

23 Q And he's also your biological child with
24 Mr. Woschenko, right?

25 A Yes.

1 Q What is his diagnosis?


2 A All of them?

3 Q Sure.

4 A I might not get all of them. He has
5 autism. He has apraxia, reflux, also referred to as
6 GERD. I don't know how detailed -- you know, which
7 things classify as true diagnoses under the DSM, but
8 he gets constipation. He has IBS -- I can't say
9 that word -- irritable bowel syndrome.

10 Q Any other psychological or cognitive
11 diagnoses besides autism?

12 A Psychological or cognitive. I don't know
13 where apraxia falls in that, because that is an
14 issue between your brain and your ability to speak.
15 I think he -- we've talked about him having anxiety.
16 I'm not clear if it's in a record somewhere that
17 somebody has technically diagnosed him with anxiety.

18 Q Is  able to communicate verbally?

19 A Sometimes.

20 Q Can you explain a little bit more about
21 that?

22 A In which -- about -- what about it?

23 Q About his ability to communicate verbally.

24 A Like how he does it, or what level, or
25 what are you asking?

1 Q Sure, what level.

2 A I mean, he can say he wants to go
3 somewhere. He can say he wants you to come with
4 him. He can say if he's happy or sad. But when his
5 medical -- other medical issues are bothering him,
6 he doesn't speak, or he doesn't speak as much.

7 Q How did you first meet Kyle Snouffer?

8 A He applied to be a behavior therapist for
9 our children.

10 Q Had you posted a job listing somewhere?

11 A Yes, on I believe care.com.

12 Q Can you describe your initial meeting with
13 Mr. Snouffer.

14 A What would you like me to describe about
15 it?

16 Q Where did you first meet him?

17 A He came over to our house to interview.

18 Q Who was at that meeting?

19 A Who was at the house? I was there, I
20 interviewed him, and my mom was there. She was
21 helping out with the kids or visiting. I don't
22 recall.

23 Q Was Mr. Woschenko at that meeting?

24 A No. He didn't normally participate in
25 those things related to the kids.

1 Q -- after that point?

2 A No.

3 Q Did you continue to have a relationship
4 with Mr. Snouffer after March of 2019?

5 A Yes.

6 Q What kind of relationship?

7 A Again, definitionally, I don't know, but I
8 guess you would say a romantic relationship.

9 Q When did you first have a romantic
10 relationship with Mr. Snouffer?

11 A Again, who knows when those things are --
12 like I guess it would be everyone's definition of
13 that, but we talked about a romantic relationship
14 somewhere in January of 2019.

15 Q Does Mr. Snouffer drink alcohol?

16 A Yes.

17 Q Did you drink alcohol with him?

18 A Have I ever? Yes.

19 Q Now, Mr. Woschenko moved out of the home
20 on December 9th, 2018, right?

21 A I believe that's the date, yes.

22 Q And you say that that evening, [REDACTED] told
23 you something about her dad abusing her, right?

24 A I don't think I said those words, but --

25 Q What did she say to you exactly?

1 A I couldn't tell you exactly, because it's
2 been, as we've just discussed, over five years, but
3 the general gist of it was that he had hurt her, and
4 discussing it with her and the way she discusses
5 things, it became clear she was talking about
6 physical, and then she -- you know, versus
7 emotional, and she took my hand and put it on her
8 crotch.

9 Q So she wasn't able to -- she verbalized
10 what he -- I'm trying to understand the exact nature
11 of what -- exactly what she said, as best as you can
12 tell us.

13 A Yes. Best I can recollect of the words,
14 or do you want the whole -- what are you asking me?

15 Q The words, please.

16 A So I'll try and -- she -- in response to
17 me asking how she was, she said she was happy. I
18 tried to clarify, you know, why she was happy, and
19 she -- you know, and whether it was about -- I don't
20 know how to say that the right way without saying
21 the conversation back and forth, but I tried to
22 clarify to her that I was just trying to check on
23 her, given that Phil had left. And he had spoken to
24 her privately before he left, and she said -- she
25 indicated that, yeah, she was happy that he was

1 gone, not those words, but --

2 And then I asked her, you know, why, and
3 she said that he hurt her. And I assumed she meant
4 like she was upset that he left, and so I said again
5 words that were too big for her at the time. I
6 think I probably said something like emotionally or
7 physically, and she didn't know what that meant, and
8 so I asked her if she meant, you know, her body, her
9 physical self, or her feelings, and so she said her
10 body. And I asked -- I gave her my hand and said,
11 "Show me," assuming that she would put it on her
12 heart, because that's what she used to say about
13 feelings, and she didn't, she put it on her crotch.

14 Q Is there anything else that made you
15 suspect -- other than this conversation, has there
16 been anything else that made you suspect that
17 Mr. Woschenko ever abused [REDACTED]?

18 A Well, she proceeded to remove the bottom
19 half of her clothing and put her finger inside
20 herself and say, "Daddy."

21 Q Other than this incident, that
22 conversation on December 9th, 2018, any other
23 conversation that ever made you suspect that
24 Mr. Woschenko ever abused [REDACTED]?

25 A Conversation with [REDACTED]?

1 initiated anything. If DSS came to talk to me, and
2 that came up, then that came up. Obviously, DSS has
3 access to their own files, so --

4 Q Let's talk about July 31st, 2020.

5 A Sure.

6 Q Do you recall that evening?

7 A I do.

8 Q What do you recall about it?

9 A Sorry. It was fairly good weather. I had
10 gone to have dinner, walked down to the center on
11 Folly, and as I was returning, it was getting dark,
12 and I saw that there were police vehicles ahead in
13 the distance, and as I approached, I understood that
14 they were at my house.

15 Q Who were you with that evening?

16 A Kyle Snouffer.

17 Q You went to dinner with him?

18 A I did.

19 Q Was he living with you at the time?

20 A No.

21 Q Mr. Woschenko had both children that
22 night?

23 A He did.

24 Q Did you drink alcohol that evening?

25 A I did.

1 BY MR. SLAVIN:

2 Q I'm not quoting. I'm saying express a
3 concern, express this idea that Mr. Woschenko was
4 abusive towards his son, did you say that during the
5 visit?

6 A I don't believe I did.

7 Q So [REDACTED] had broken ribs, it was found out,
8 during this visit, right?

9 A Correct.

10 Q And they were -- and this was the month
11 after you got back from Disney World, right?

12 A Correct.

13 Q And he had to be taken out of the park by
14 EMS, or you called EMS while you were in the park,
15 right?

16 A Correct. I didn't call. I asked Disney
17 to get somebody, yeah.

18 Q And he was taken to the hospital?

19 A I'm sorry. There's not a need for you to
20 roll your eyes at me when I talk about how something
21 occurred, because I'm not having my words twisted.

22 Q I apologize if my facial expression was
23 disagreeable for you.

24 And he was taken to the hospital in
25 Florida too?

1 A I'm sorry. Taken to the hospital?

2 Q In Florida.

3 A Yes. Sorry.

4 Q And he had to be restrained at Disney
5 also, correct?

6 A Yes.

7 Q Have you ever expressed to anybody that
8 you were concerned Mr. Woschenko was physically
9 abusive towards [REDACTED]?

10 A I don't -- again, definition of that, but
11 I don't believe so. They may have interpreted it
12 that way.

13 Q Who is "they"?

14 A I mean, again, like this, I've said
15 restraint, right. We all have to restrain, and
16 that's why there are reviews when children are
17 restrained at schools or facilities or whatever
18 else, because they can get hurt during it, so I have
19 talked about methods of restraint.

20 Q Have you ever heard Mr. Snouffer repeat
21 the allegation that Mr. Woschenko sexually abused
22 his daughter?

23 A Again, I don't know that I heard it, but
24 during the divorce proceedings, I had to watch a
25 bunch of videos and things, so other than in talking

1 Q What was the subject of the arbitration?

2 A Distribution of assets and such.

3 Q So custody was not a primary goal for you
4 in the divorce?

5 A I mean, you have to figure out custody, so
6 when you say custody, a primary goal, that is one of
7 the things that has to occur.

8 Q You didn't want sole custody of your
9 children in the divorce?

10 A No.

11 Q You believe that your ex-husband sexually
12 abused your daughter, but you didn't want sole
13 custody. You were okay with him having custody of
14 your daughter?

15 A I was of the belief at the time that in
16 this state, I would not get sole custody.

17 Q You didn't want sole custody, even though
18 you believed that your ex-husband sexually abused
19 your daughter?

20 A No. If you go back and look at all the
21 records, it shows that I wanted her to be able to
22 make the decision of when to see him when she was
23 ready.

24 Q And you didn't want sole custody of your
25 son, even though you believed that your ex-husband

1 was capable of one of the worst crimes imaginable?

2 A Well, when you say it that way, it makes
3 it sound like why didn't I, but at the time, no.

4 Q Did you ever think that your allegations
5 against Mr. Woschenko about him abusing [REDACTED] or [REDACTED]
6 would give you an advantage in your divorce?

7 A No.

8 MR. DeANTONIO: Object to the form of the
9 question.

10 THE WITNESS: I'm sorry. Did you get the
11 objection? No.

12 BY MR. SLAVIN:

13 Q So your testimony is that over the course
14 of the entire divorce, it never occurred to you that
15 accusing Mr. Woschenko of sexually abusing his
16 daughter might help you or give you an advantage in
17 the proceeding?

18 MR. DeANTONIO: Objection.

19 THE WITNESS: Was the question it never
20 occurred to me? I mean, their side tried to
21 say that was the reason, but that's when it
22 came to like -- to my -- not knowledge. I
23 don't know what you would call that. But no,
24 that was never the intention.

25 BY MR. SLAVIN:

EXHIBIT 7

Incident Supplement (Investigative)	Folly Beach Department of Public Safety <small>ORI/NCIC: SC0100400</small>	Incident No. 18-1109
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Incident Information

Incident Start Date/Time 12/19/2018 14:00:00	Incident End Date/Time 12/19/2018 17:30:00	Reported Date/Time 12/19/2018 14:00:00
---	---	---

<input type="checkbox"/> Stranger	Weapon Type(s)
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Incident Type	Count	Code	Attempt
CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE (Felony)	1	16-3-652	<input type="checkbox"/>

Incident Location

Address 406 W COOPER AV			Apt / Suite
City FOLLY BEACH	State SC	Zip 29439	County Charleston
Zone FOLLY BEACH	Premise Type RESIDENCE/ HOME	Area of Crime OTHER	

Complainant(s)

Name: (Last, First Middle) GUNN, ANNALISE				
Date of Birth [REDACTED]	Age [REDACTED]	Gender Female	Height 0	Weight 0
Race WHITE	Hair Color BLOND OR STRAWBERRY		Eye Color HAZEL	
Address [REDACTED]				Apt / Suite
City [REDACTED]	State [REDACTED]	Zip [REDACTED]	County	
DLN	DL State SC	ID Number	SSN	

Contact Method(s)

Type	Contact	Details
PHONE NUMBER	[REDACTED]	
EMAIL ADDRESS	[REDACTED]	

Complainant(s)

Name: (Last, First Middle) WOSCHENKO, SONYA KURIEN				
Date of Birth [REDACTED]	Age [REDACTED]	Gender Female	Height 505	Weight 145
Race WHITE	Hair Color BROWN		Eye Color BROWN	
Address [REDACTED]				Apt / Suite
City [REDACTED]	State [REDACTED]	Zip [REDACTED]	County Charleston	
DLN	DL State [REDACTED]	ID Number	SSN	

Contact Method(s)

Type	Contact	Details
PHONE NUMBER	[REDACTED]	
PHONE NUMBER	[REDACTED]	
EMAIL ADDRESS	[REDACTED]	



Victim(s)					
Name: (Last, First Middle)					
Date of Birth	Age	Gender	Height	Weight	
		Female	500	96	
Race	Hair Color	Eye Color			
WHITE	BROWN	BROWN			
Address					Apt / Suite
City	State	Zip	County		
DLN	DL State	ID Number	SSN		
Contact Method(s)					
Type	Contact	Details			
PHONE NUMBER					
Witness(es)					
Suspect(s)					
Name: (Last, First Middle)					
WOSCHENKO, PHILIP EDWARD					
Date of Birth	Age	Gender	Height	Weight	
	50	Male	602	175	
Race	Hair Color	Eye Color			
WHITE	BROWN	BLUE			
Address					Apt / Suite
City	State	Zip	County		
			Charleston		
DLN	DL State	ID Number	SSN		
	SC				
Court Name	<input checked="" type="checkbox"/> Juvenile <input checked="" type="checkbox"/> Arrest <input checked="" type="checkbox"/> Primary Aggressor			Arrest Date/Time	
Contact Method(s)					
Type	Contact	Details			
Vehicle(s)					
<input checked="" type="checkbox"/> Property					
Related Incidents					
Clearance:	Clearance Date:	Disposition:			
<input checked="" type="checkbox"/> Narrative(s)					

On 12/19/2018 at 1405 I was dispatched to 106 West Cooper to take a report of a sexual assault. I responded in patrol vehicle 184 wearing body camera 0034.

Once I arrived on scene I spoke with Annalise Gunn, Therapist/Forensic Interviewer with Dee Norton Child Advocacy Center, on line 01 of the Folly Beach DPS phone system. She informed me [REDACTED] mother (Sonya Woschenko) came to Dee Norton this morning for a parent consult with her. Sonya Woschenko informed Mr. Gunn that on 12/9/18, [REDACTED] Father (Phillip Woschenko) left the home after they decided to separate. That night, the mother asked [REDACTED] (diagnosed with Autism), how she was feeling about her dad leaving the home and [REDACTED] said happy. Mom then asked why the daughter was feeling happy and [REDACTED] reportedly said that dad hurt her. When mom asked if Dad hurt her body or her feelings, [REDACTED] said her body. Mom gave [REDACTED] her hand and told [REDACTED] to tell her where on her body dad hurt her and [REDACTED] put mom's hand on her vagina. [REDACTED] then reportedly took her skirt off and inserted her own finger into her vagina and said, "daddy." Mom stated that [REDACTED] reported that it bled. [REDACTED] has seen her father in passing since then and has had strong reactions about seeing him. I asked Mrs. Gunn if the children and mother were safe in which she stated yes, the father was not at the house and that the mother and father had been separated since Dec 09, 2018. Mrs. Gunn then stated [REDACTED] had a forensic interview on Jan 08, 2019 at 1300 and a full body medical exam on Jan 11, 2019. (Her email to me is uploaded into this report)

I then called Mrs. Sonya Woschenko to request a meeting to speak with her and take a statement on the alleged sexual assault with her daughter [REDACTED]. She informed me that she would be able to meet with me at her home as soon as possible. I then departed 106 West Cooper Ave. enroute 406 West Cooper Ave. Once I arrived on scene I spoke with Mrs. Sonya Woschenko and received her written statement. (Her statement is uploaded into the report)

Mrs. Woschenko informed me that on Nov 20, 2018 [REDACTED] school, Murray Lasaine Elementary School (843-762-2765), and herself had a meeting about a picture that [REDACTED] had drawn of a man and women in a sexual position. Mrs. Woschenko made a copy of the picture and brought it home to ask [REDACTED] if she was finished drawing in which [REDACTED] said no and completed the drawing by drawing clothes on both the man and women. After this mother did not think much about the drawing or the thought that something was wrong.

Mrs. Woschenko then received a phone call from Julia Toumey, employee of Windwood Farm Home for Children, Inc (843-884-5342), stating that she received a phone call from DSS and needed to meet with the mother of [REDACTED]. On Nov 28, 2018 Julia Toumey meet with [REDACTED] Father, Mother [REDACTED] brother's therapist (Kyle) at their home to talk about [REDACTED] picture and violent outburst she has been going through.

Mrs. Woschenko stated then on Dec 8, 2018 her husband and herself got into a verbal fight about his heavy drinking. She informed him that she wanted him to move out of the house and she wanted to be separated for a while until she could figure out what was going on. The next evening Dec 9, 2018 her husband, Phillip Woschenko, departed the home with two suitcases and is currently staying at the Comfort Suites West of the Ashley (843-769-9850).

Dec 9, 2018 after Mr. Woschenko departed the home, the mother checked on her daughter to see how she was feeling about her dad leaving the home and [REDACTED] said happy. She then asked why the daughter was feeling happy and [REDACTED] reportedly said that dad was hurting her. When she asked if Dad hurt her body or her feelings, [REDACTED] said her body. Mrs. Woschenko stated that she gave [REDACTED] her hand and told [REDACTED] to tell her where on her body dad hurt her and [REDACTED] put mom's hand on her vagina. [REDACTED] then took her skirt off and inserted her own finger into her vagina and said, "daddy."

On Dec 13, 2018 Mr. Woschenko visited the home and tried to take [REDACTED] to the local park, Wave Watch Playground, directly down from the house in which [REDACTED] started screaming "No, I'm not going, No" and through violent fits. Mr. Woschenko departed the home with no confrontation. Mrs. Woschenko stated [REDACTED] continued to have extreme behavioral issues for the remainder of the day until she was physical exhausted. Mrs. Woschenko said after seeing all this she made an appointment with Dee North Child Advocacy Center.

On Dec 18, 2018 Julia Toumey, employee of Windwood Farm, returned to the house to discuss with Mrs. Woschenko therapist options with an understanding of the issues occurring with [REDACTED] and that she would contact Dee Norton and DSS as appropriate. Mrs. Woschenko stated to Mrs. Toumey she was considering pursuing with criminal charges against her husband, Phillip Woschenko, for the sexual assault against her daughter [REDACTED].

Today Mrs. Woschenko meet with Annalise Gunn, Therapist/Forensic Interviewer with Dee Norton, and told her all the above information. Mrs. Gunn informed Mrs. Woschenko she was mandated to report this to local police and DSS, in which she did. Mrs. Gunn also stated to Mrs. Woschenko she would help with filing a protective order and would be getting back in touch with her soon.

I then took a copy of her written statement and gave her a copy of her written statement.

I also requested through Folly Beach DPS Dispatch a property check on her residence 406 West Cooper Ave throughout the evening on her behalf.

This case has been forwarded to CID via email.

Case is to remain open for further investigation.

On 12/20/2018 Deputy Chief Burke and myself conducted a follow on this case by contacting Department of Social Service and Charleston Family Court.

I spoke to Department of Social Service - Child Protective Services Department, the Point of Contact was Mrs. McCray. Deputy Chief Burke and myself informed Mrs. McCray of the current alleged Criminal Sexual Assault case over Folly Beach DPS phone line. Mrs. McCray took the report over the phone then instructed me to FAX the: Incident Report, email and statement to her at 843-719-1107, in which I did.

I then spoke to Charleston Family Court, the Point of Contact was Mrs. Scott. Mrs. Scott instructed me to give Mrs. Woschenko a copy of the Incident Report and have her bring it to them at 100 Broad Street Suite 143, Charleston, SC. 29402 if she is wish to file for a Protective Order.

I then called Mrs. Woschenko and informed her that, for her to get a Protective Order for her children and herself she would have to go to Charleston Family Court. I also informed her of the instruction Mrs. Scott gave me for her. I also told her that I had called DSS and faxed all her paperwork to them.

Mrs. Woschenko came to Folly Beach DPS Head Quarters a retrieved: Incident Report, email from Dee Norton Child Advocacy Center and her statement all which pertain to this case.

Nothing further at this time.

12/20/2018 12:16:38 | Wheat, Robert

Supplemental report of Deputy Chief Rocky Burke:

On December 19, 2018, Sonya Woschenko, through the Dee Norton Children's Center reported to Folly Beach Department of Public Safety, an alleged sexual assault committed on her 11 year old daughter, [REDACTED]. A report was documented by PSO R. Wheat and an investigation initiated into this case.

On January 8, 2019, I, Deputy Chief Rocky Burke and PSO Wheat attended ,the forensic interview of [REDACTED] at the Dee Norton Children's center.

Between the dates of January 8, 2019 and February 8, 2019, I, Deputy Chief Rocky Burke, obtained several audio and video recorded statements from several people whom are currently working for or previously worked with the Woschenko family due to the special needs of the [REDACTED], [REDACTED], [REDACTED].

On January 18, 2019, I, Deputy Chief Rocky Burke, interviewed Phillip Woschenko obtaining both a audio and video recording. Phillip Woschenko's attorney, Jessica Patrian, was present at the interview with him.

Further between the dates of January 8, 2019 and February 8, 2019, I, Deputy Chief Rocky Burke, obtained several reports from the Department of Social Services and the Dee Norton Center related to this case. Further I obtained several supplemental videos taken by Sonya Woschenko of [REDACTED] in the home environment.

Upon review of the statements, reports and videos, it is determined there is no forensic evidence nor any direct or circumstantial evidence to substantiate the allegation reported on December 19, 2018, by Sonya Woschenko.

This case is to be closed as unfounded as of this date February 11, 2019.

02/11/2019 09:01:39 | Burke, Rocky

Reporting Officer Wheat, Robert	Badge 1006	Suffix	Signature
Approving Officer Gilreath, Andrew	Badge 839	Suffix	Signature

EXHIBIT 8

VIDEO TO BE SUBMITTED

EXHIBIT 9

VIDEO TO BE SUBMITTED

EXHIBIT 10

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS FOR
THE NINTH JUDICIAL CIRCUIT

PHILIP WOSCHENKO,

CASE NO: 2022-CP-10-03009

Plaintiff,

**ORDER DENYING DEFENDANT
KURIEN'S MOTIONS TO STRIKE AND
GRANTING IN PART DEFENDANT
KURIEN'S MOTION FOR PARTIAL
DISMISSAL AND GRANTING MOTION
FOR SUMMARY JUDGMENT**

vs.

**SONYA KURIEN and KYLE
SNOUFFER**

Defendants.

This matter came before the court on May 29, 2024, on Defendant Sonya Kurien's motion to strike, partial motion to dismiss, and motion for summary judgment. Having considered all arguments and submissions, the Court rules that Defendant Kurien's motion to strike is denied, partial motion to dismiss is granted as to all defamatory statements made prior to July 5, 2020, and motion for summary judgment is granted.

BACKGROUND

According to the amended complaint, Plaintiff Philip Woschenko and Defendant Sonya Kurien are the parents of two special needs children, Daughter and Son. Defendant Kyle Snouffer was hired as a "behavioral technician" to care for the children in the Woschenko's home. According to the complaint Defendants Kurien and Snouffer had an extra-marital affair prior to Ms. Kurien initiating divorce proceedings against her husband, Mr. Woschenko.

The complaint alleges that on or about December 19, 2018, Defendant Kurien made allegations to Folly Beach Department of Public Safety officers that Plaintiff had physically abused his son and sexually abused his daughter. The officers investigations revealed no evidence to substantiate the allegations reported.

The complaint alleges that similar allegations were made to the Department of Social Services, doctors, JSS Behavioral Services, the court appointed guardian *ad litem* and others, but the complaint does not provide dates that these allegations were made.

According to the amended complaint, on July 31, 2020, Defendant Kurien called 911 based on Plaintiff appearing at their former home to retrieve his belongings. At this time, Defendant reported the allegations on the phone call that Plaintiff was sexually abusing Daughter and Defendant Snouffer repeated similar allegations to responding police officers.

The complaint alleges that in September 2020 Defendant Snouffer appeared at Plaintiffs place of work and made defamatory statements to Plaintiffs coworkers.

The complaint alleges that on May 7, 2021, Son was admitted to MUSC and Defendant Kurien repeated the defamatory statements to Son's doctor, specifically that Plaintiff had sexually abused the children.

Mr. Woschenko filed this action on July 5, 2022. In denying Defendant Kurien's partial motion to dismiss, the Court previously ordered Mr. Woschenko to provide a more definite statement of his defamation claims and granted leave to amend his complaint to do so. That amended complaint was timely filed in accordance with the Court's order.

FINDINGS

1. Defendant's motion to strike is denied.

A motion to strike under Rule 12(f) SCRPC must be made before responding to a pleading and requires a showing that the material sought to be struck is redundant, immaterial, impertinent, or scandalous. Rule 12(f), SCRPC.

Defendant Kurien moved to strike paragraphs 11, 12, 14-18, and 23-25 of Plaintiff's amended complaint. However, Ms. Kurien's motion was made *after* she filed her pleading

responding to Plaintiff's amended complaint, making the motion untimely. Accordingly, Defendant's motion to strike is denied.

2. Defendant's partial motion to dismiss is granted in part and denied in part.

In deciding a motion to dismiss, the Court "must base its ruling solely on the allegations set forth in the complaint" and "presume all well pled facts to be true." *HHHunt Corp. v. Town of Lexington*, 389 S.C. 623, 699 S.E.2d 699 (Ct. App. 2010). In deciding a motion to dismiss for failure to state facts sufficient to constitute a cause of action under Rule 12(b)(6), SCRC, "the court must resolve every doubt in a light most favorable to the nonmovant to determine whether the facts alleged on the face of the complaint state 'any valid claim for relief.'" *S.C. Coastal Conservation League, Inc. v. Charleston Cnty.*, 442 S.C. 409, 899 S.E.2d 609 (Ct. App. 2024).

Defamation claims in South Carolina are subject to a two-year statute of limitations. S.C. Code Ann. § 15-3-550. The statute of limitations for defamation claims in South Carolina begins when the statements were made, not when the statements were discovered. *Jones v. City of Folly Beach*, 326 S.C. 360, 483 S.E.2d 770 (Ct. App. 1997). However, the statute of limitations applicable to Plaintiff's other two causes of action, outrage and civil conspiracy, is three years. S.C. Code Ann. § 15-3-530(5). The statute of limitations for civil conspiracy and outrage begins to run upon the plaintiff's "discovery" that a cause of action exists. S.C. Code Ann. § 15-5-535.

Defendant Kurien argues that the statute of limitations bars a cause of action for any defamatory statements made prior to July 5, 2020 because Plaintiff filed this action on July 5, 2022. Plaintiff's counsel conceded this point and the Court agrees. However, the Court does not agree that paragraphs 11, 12, 14-18, 25, 29, 30, and 31 of the amended complaint contain allegations of defamation that require the court to grant dismissal. Rather, these paragraphs appear

to provide factual background to support the allegations of defamation detailed elsewhere in the complaint, and to support the causes of action for outrage and civil conspiracy.

Defendant Kurien moves to dismiss the allegation in paragraph 23 of the amended complaint describing in detail the statements made to an MUSC children's doctor on May 7, 2021. She argues that although this statement was made after July 5, 2020, it should be time barred because it was not included in the original complaint.

The Court disagrees. "Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings, the amendment relates back to the date of the original pleading." Rule 15(c), SCRPC. The original complaint alleges in paragraph 18 that Defendant Kurien made defamatory statements to doctors and others. As ordered by the Court in its July 10, 2023 order, Plaintiff "provided a more definite statement of his defamation claims" by specifically identifying the defamatory statement to the children's doctor at MUSC in paragraph 24 of the Amended Complaint.

Accordingly, Defendant's motion to dismiss is granted as to any statements made by Ms. Kurien prior to July 5, 2020 and denied as to any statements made after July 5, 2020.

3. Defendant's motion for summary judgment on the basis of a conditional privilege is granted.

"Summary judgment is appropriate when 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463 (S.C. 2023); (citing *Town of Hollywood v. Floyd*, 403 S.C. 466, 477 (S.C. 2013) ("it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.")).

Defendant Kurien has moved for summary judgment on the basis that she has statutory immunity under S.C. Code Ann. § 63-7-390 which grants permissive reporters statutory immunity.

Specifically, S.C. Code Ann. § 63-7-390 provides:

A person required or permitted to report pursuant to Section 63-7-310 or who participates in an investigation or judicial proceedings resulting from the report, acting in good faith, is immune from civil and criminal liability which might otherwise result by reason of these actions. In all such civil or criminal proceedings, good faith is rebuttably presumed. Immunity under this section extends to full disclosure by the person of facts which gave the person reason to believe that the child's physical or mental health or welfare had been or might be adversely affected by abuse or neglect. S.C. Code Ann. § 63-7-390.

Defendant Kurien made a call to the consolidated call center to request a welfare check on Daughter. Based on the audio file submitted as Exhibit 5 to the Court, Kurien states she saw her special needs Daughter appearing upset. She articulates seeing her largely non-communicative child forced back into Plaintiff's vehicle, and had no further indication as to the wellbeing of Daughter. Kurien was unable to go to Plaintiff's residence to check on Daughter personally.

Taking the evidence in the light most favorable to the nonmoving party, Defendant's statement to the CCC operator falls within the scope of S.C. Code Ann. § 63-7-310. The Defendant presents no evidence other than the mere fact that the parties are involved in contentious litigation in the family court that the statements of Kurien were made in bad faith.

A person who has reason to believe that a child's welfare has been or may have been adversely affected by abuse or neglect may report and is encouraged to do so in accordance with the statute and allows for the reports to be made to the county Department of Social Services or a law enforcement agency in a county where the child resides. (S.C. Code Ann. § 63-7-310(d)(e))(emphasis added). The Code continues:

A person required or permitted to report pursuant to Section 63-7-310 or who participates in an investigation or judicial proceedings resulting from the report, acting in good faith, is immune from civil and criminal liability which might otherwise result by reason of these actions. In all such civil or criminal proceedings, good faith is rebuttably presumed.

Immunity under this section extends to full disclosure by the person of facts which gave the person reason to believe that the child's physical or mental health or welfare had been or might be adversely affected by abuse or neglect. (S.C. Code Ann. §63-7-390).

Additionally, a parent's duty to care for and protect their child is held in our system to be of the highest societal importance. The paradigm of the parent-child relationship creates a legal duty for a parent to take reasonable care to act in the best interest of their child from harm. *See State v. Claypoole*, 371 S.C.473, 479 (Ct. App. 2006) (“...the nature of the parent-child relationship places a legal duty upon the parent to take all reasonable steps to protect a child from harm...”) (*citing State v. Walden*, 306 N.C. 446, 472, 475-76 (S.C. 1982)). *See also Stasi v. Sweigert*, 434 S.C. 239,248(S.C. 2021) (“a parent has a legal duty to care for and act in the best interest of his or her children.”).

Although there are pending matters in the family court regarding these issues, in this proceeding before the Circuit Court, there must be some form of evidentiary proof offered which has not been provided to show bad faith in accordance with the requirements of S.C. Code §63-7-390 to survive a Motion for Summary Judgment. Upon careful review and consideration, this Court finds that Defendant Kurien is a permissive reporter under S.C. Code §63-7-390, giving her statutory immunity for the statements made to the consolidated call center on July 31, 2020.

Accordingly, Defendant's motion for summary judgment on the basis of a conditional privilege is granted.

4. Defendant's motion for summary judgment as to Outrage and Civil Conspiracy is granted.

Viewing the evidence in the light most favorable to the non-moving party, the Defendant's motion for summary judgment as to outrage and civil conspiracy is granted. The Supreme Court of South Carolina has made clear that the nonmoving party on a motion for summary judgment must show facts that create a reasonable inference to be drawn by a jury at trial; “it is not

sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.” *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 892 S.E.2d 297 (2023). While it is conceivable that Plaintiff could have suffered emotional damages for an outrage cause of action, the standard on a motion for summary judgment is more than conceivability or a “mere scintilla.” Because Plaintiff has failed to submit evidence to create a genuine issue of material fact that there is a factual basis for the outrage cause of action as well as the conspiracy cause of action, the motion for summary judgment as to these causes of action is granted.

CONCLUSION

For the foregoing reasons, it is hereby ordered that Defendant Kurien’s motion to strike is denied in full, partial motion to dismiss is granted in part and denied in part as detailed more fully above, and motion for summary judgment is granted in full.

IT IS SO ORDERED.

This the ___ day of _____, 2024.

The Honorable Diane Schafer Goodstein
Circuit Court Judge



Charleston Common Pleas

Case Caption: Philip Woschenko VS Sonya Kurien , defendant, et al

Case Number: 2022CP1003009

Type: Order/Other

It is so Ordered!

s/Diane S. Goodstein

EXHIBIT 11

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2022-CP-10-03009

PHILIP WOSCHENKO,

Plaintiff,

v.

SONYA KURIEN and KYLE SNOUFFER,

Defendants.

PARTIAL MOTION TO DISMISS
AND/OR TO STRIKE

TO: JOSHUA E. SLAVIN, ESQUIRE, ATTORNEY FOR THE PLAINTIFF

Please be advised that Defendant Sonya Kurien, pursuant to Rules 12 (b)(6) of the South Carolina Rules of Civil Procedure, 12(f), SCRCP, S.C. Code Ann. § 15-5-350, and the common law body of jurisprudence supporting this Motion, moves for a partial dismissal of the First Amended Complaint, and/or striking of certain paragraphs, of the Defamation cause of action *excepting* those allegations contained in Paragraphs 19 and 20, of the current Complaint. The specific paragraphs under the “FACTS” heading, but which are reincorporated in the pled cause of action, sought to be dismissed/stricken are:

- 1) Paragraph 11. This paragraph, in the original complaint, pleads alleged defamation that is time-barred, an occurrence on December 19, 2018, when the original complaint was not commenced until July 5, 2022;
- 2) Paragraph 12. This paragraph, also in the original complaint, pleads presumably in sequence, alleged defamation soon following the December 19, 2018, when the original complaint was not commenced until July 5, 2022, the said former date being time-barred, and/or is so vague and silent as to the particulars of the allegation that it should be stricken. Plaintiff was even ordered to plead with more particularity and failed to do so;
- 3) Paragraphs 14. These allegations, also in the original complaint, plead alleged defamation that is time-barred, an occurrence on December 19, 2018, when the original complaint was not commenced until July 5, 2022;
- 4) Paragraph 15. These allegations, also in the original complaint, plead alleged defamation that is time-barred, an occurrence on December 19, 2018, when the original complaint was not commenced until July 5, 2022;

- 5) Paragraph 16. This paragraph, also in the original complaint, pleads alleged defamation that is time-barred, an occurrence on or soon after December 19, 2018, when the original complaint was not commenced until July 5, 2022;
- 6) Paragraph 17. This paragraph, also in the original complaint, pleads alleged defamation that is time-barred, an occurrence on or soon after December 19, 2018, when the original complaint was not commenced until July 5, 2022;
- 7) Paragraph 18. This paragraph, also in the original complaint, pleads alleged defamation following time-barred dates, or is so vague and silent as to the particulars of the allegation that it should be stricken. Plaintiff was even ordered to plead with more particularity and failed to do;
- 8) Paragraph 23. Not in the original Complaint, these allegations, made for the first time, are time-barred as they concern an alleged occurrence on May 7, 2021, when the First Amended Complaint was not filed until August 2, 2023.
- 9) Paragraph 24. Not in the original Complaint, these allegations, plead for the first time, are time-barred as they repeat or concern an occurrence on or soon after July 31, 2020 or earlier, when the First Amended Complaint was not filed until August 2, 2023. Further, the allegations in this complaint are so manifestly vague and silent as to the particulars of the allegation that it should be stricken. Plaintiff was even ordered to plead with more particularity and failed to do so;
- 10) Paragraph 25. This paragraph, also in the original complaint, pleads presumably in sequence, alleged defamation soon following the December 19, 2018, when the original complaint was not commenced until July 5, 2022, the said former date being time-barred, and/or is so manifestly vague and silent as to the particulars of the allegation that it should be stricken. Plaintiff was even ordered to plead with more particularity and failed to do so;

The specific paragraphs following the “FIRST CAUSE OF ACTION: DEFAMATION” heading sought to be dismissed/stricken are:

- 11) Paragraph 29. These allegations, repeated and also in the original complaint, plead alleged defamation following time-barred dates, and/or are so manifestly vague and silent as to the particulars of the allegation that they should be stricken. Plaintiff was even ordered to plead with more particularity and failed to do;
- 12) Paragraph 30. See paragraphs 1-11 of this Motion (excepting Paragraphs 19 and 20 of the First Amended Complaint);
- 13) Paragraph 31. See paragraphs 1-12 of this Motion; and
- 14) Paragraph 37. See paragraphs 1-13 of this Motion.

The grounds for the said Motion, in addition to what is articulated above, are that insofar as defamation, the allegations in Plaintiff’s First Amended Complaint plead matters outside the

Statute of Limitations, and/or fail to plead facts sufficient to constitute a cause of action, and/or both, and/or should be stricken as immaterial content.

DEANTONIO LAW FIRM, LLC

s/Stephen F. DeAntonio

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ATTORNEYS FOR SONYA KURIEN

September 5, 2023
Charleston, South Carolina

EXHIBIT 12

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2022-CP-10-03009

PHILIP WOSCHENKO,

Plaintiff,

v.

SONYA KURIEN and KYLE SNOUFFER,

Defendants.

MEMEORANDUM IN SUPPORT OF
DEFENDANT KURIEN'S PARTIAL
MOTION TO DISMISS and MOTION FOR
SUMMARY JUDGMENT

Defendant Kurien respectfully submits this memorandum in support of the granting of her Motions for both Dismissal and Summary Judgment.

A. Factual and Procedural Background

1. Marriage and Family Context

Plaintiff ("Father") and Defendant Kurien ("Mother") entered into marriage on December 31, 2001. They had two children. A girl was born in 2007 ("Daughter"), and a boy was born in 2010 ("Son") (collectively "Children"). The Children have special needs, mainly autism, and their disabilities affect their ability to properly verbalize and affect their social development. Throughout the marriage, Plaintiff and Defendant Kurien hired and worked with several agencies to help provide care and treatment services for their children. Ex. 1 (Kurien Dep. 112:2-25, 113:1); see also Ex. (Petrowski Aff. ¶ 1&3 EF Mar. 20, 2024). Defendant Kurien works from home and was the primary coordinator of the children's care and services. Ex. (Petrowski Aff. ¶ 2 EF Mar. 20, 2024). On or about December 9, 2018, Plaintiff Woschenko and Defendant Kurien agreed that Plaintiff would leave the marital home due to his drinking habits, and Kurien would remain in the home and care for the Children. That evening, a concerned Kurien approached Daughter about her

processing that Father had left the home. At that time, Daughter revealed to Kurien that Plaintiff had touched her inappropriately. Ex. 1 (Kurien Dep. 28:16-25, 29:1-20). Defendant Kurien (formerly Sonya Woschenko) filed for divorce on January 14, 2019, on the grounds of Plaintiff's habitual drunkenness. ¶10, Complaint, *Woschenko v. Woschenko*, 2019-DR-10-146. The agreed upon arbiter ruled on this issue: "Ultimately, however, I find that Defendant's (Philip E. Woschenko) excessive alcohol consumption was a primary factor in the breakdown of the parties' marriage." ¶61, Amended Arbitration Award. *Id.*

2. The DSS Investigation and Welfare Investigation Reports

In November of 2018, prior to Plaintiff leaving the marital home, the Daughter's school initiated a report regarding Daughter's behavior and drawings she had produced. Ex. 1 (Kurien Dep. 39:21-23). DSS investigated the allegations against Mr. Woschenko. In fact, Daughter made the claim of her father's inappropriate touching to several persons, including Kasey Petrowski. Ex. 1 (Kurien Dep. 39:21-25, 40:1-18, 42:11-14); Ex. (Petrowski Aff. ¶ 5 EF Mar. 20, 2024); Ex. 2 (DSS Reports of Feb. 1, 2019, and Mar. 21, 2019). The February report stated that "Due to the children's developmental abilities they were unable to complete an interview, even after special accommodations were made. There were no significant medical findings, though this does not rule out sexual abuse." *Supra.*

3. The events of July 31, 2020 (the "Call")

On July 31, 2020, Mr. Woschenko arrived at Kurien's home unannounced to pick up his property. At the time, Kurien had sole use of the marital home and Plaintiff was not allowed on the property. Ex. 1 (Kurien Dep. 119:9-24). The visit by Mr. Woschenko was not coordinated by counsel nor was Defendant Kurien aware that Mr. Woschenko was coming to the property that evening. Ex. 1 (Kurien Dep. 119: 21-25, 120:1-6). Mr. Woschenko had contacted the police to be

present when he went to retrieve his property on July 31, 2020. Ex. 3 (Woschenko Dep. 79:18-24). Mr. Woschenko had the children with him when he went to retrieve the property. Ex. 1 (Kurien Dep. 120:7-9). While Mr. Woschenko was retrieving the property, Daughter was attempting to exit Mr. Woschenko's vehicle and run to her mother. Daughter was distraught, upset, and was trying to reach her mom. Seeing Daughter in this manner distressed Mother. Ex. 1 (Kurien Dep. 121:3-10). Kurien later contacted the Plaintiff to speak to and check on Daughter, which the plaintiff refused Kurien. Ex. 1 (Kurien Dep. 122:19-25; 123:1-3). Unable to speak with Daughter and feeling unnerved by Daughter's attempt to flee her father, Kurien contacted the consolidated call center to have a welfare check performed on Daughter. During the call, Defendant gave notice to the operator that Daughter had autism, that she (Daughter) had made prior allegations of abuse by her father (Plaintiff), and gave other pertinent information related to the request. Ex. 1 (Kurien Dep. 122:8-18); Ex. 4 (Tr. Of CCC Call 3:21-24); Redacted Audio File, Ex. 5.

4. Current Action

Plaintiff commenced this action on July 05, 2022, extending the marital dispute and prolonging his grievances into the Court of Common Pleas. In doing so, Woschenko has, front and center, put in issue credible allegations that he sexually molested his daughter. However, his action is flawed. The original complaint failed to plead with sufficiency to properly show relief could be sought. So, Defenant Kurien filed a Partial Motion to Dismiss on November 28, 2022. Def. Kurien Partial Mot. To Dismiss EF Nov. 28,2022.

This is what happened. A hearing was held before the Honorable Judge McCaslin on July 19, 2023. At the hearing Plaintiff's counsel conceded the 2-year statute of limitations, and that "[T]here's no dispute that any defamatory statements made in 2018 is barred by the statute of limitations for the defamation cause of action." Ex. 6 (Hr'g Tr., 8:13-18). Colloquy followed: MR.

SLAVIN: “I think the simple enough course of action here is say that defamatory statements that were made prior to two years before this case being filed so that we’re barred by the statute of limitations are not part of the defamation cause of action.” THE COURT: “Yeah, but I don’t know that your complaint is clear on that.”. Ex. 6 (Hr’g Tr. 10:21-25., 11:1-5, 12:1-3).

While denying the relief requested without prejudice, and allowing the Plaintiff to amend his complaint, the Court stated in its Order that Plaintiff’s defamation claims “are vague and do not include sufficient facts for this Court to determine the relief that can be granted”. Form 4 Order, EF Jul. 30, 2023. However, the following amendment did not cure the deficiencies, and virtually mimics the original pleading.

B. Legal Analysis/Argument
(Motion to Dismiss/Strike)

Plaintiff’s Defamation cause of action, excepting paragraphs 19 and 20, still is time-barred, and fails to plead with sufficiency statements of facts in which the plaintiff would be entitled to relief. Paragraphs 19 and 20 of the Defamation, and the Conspiracy and Outrage causes of action are dealt with in the Summary Judgment Motion. Kurien moves pursuant to Rules 12(b)(6) of the South Carolina Rules of Civil Procedure, 12(f), SCRPC, S.C. Code Ann. § 15-5-350, Rule 56 of the South Carolina Rules of Civil Procedure, other statutes, and the common law body of jurisprudence. Combined, the motions request that the entire case be dismissed.

1. The Specified Pleadings are Barred by the Statute of Limitation

In South Carolina, defamation claims are held to a two-year statute of limitations. *Harris v. Tietex Int’l Ltd.*, 417 S.C. 533, 542 (Ct. App. 2016); S.C. Code Ann. § 15-3-550 (West Group Supp. 1998). South Carolina’s bright and hard line is borne out in its jurisprudence. In *Jones v. City of Folly Beach*, the court declined to adopt a “discovery” rule for defamation claims, holding

such causes of action accrue when the plaintiff has a right to sue. *Accord Blackstock v. Rucker*, 2017 U.S. Dis. LEXIS 151978, 2017 WL 4174755 at *2 (D.S.C. Sept. 1, 2017) ("The limitations period begins when the alleged defamatory statement is made, not when the plaintiff learns of the statement.").

Explicitly through the statements in paragraphs 11,12,14,15,16,17, 18, 25, 29, 30, 31, and 37, listed under the "FACTS" section of the complaint and reincorporated in the Cause of Action were statements made on or soon after December 19, 2018. These alleged statements were pleaded in the original complaint filed July 5, 2022, and reincorporated in the Amended Complaint filed August 2, 2023. These statements are still time-barred in connection with this action, and the statements are also so vague and manifestly silent as to the particulars of the action to that they should be stricken.

The statements made explicitly through Paragraphs 23 and 24 were not included in the original complaint, but they are also time-barred. They allege a publication on May 7, 2021. However, the Amended Complaint was not filed until more than two (2) years afterwards, on August 2, 2023. The statements are also so vague and manifestly silent as to the particulars of the alleged statements that they should be stricken for that reason as well.¹

2. Failure to Plead with Sufficiency

Despite the Court's admonition, Plaintiff re-pleaded a nearly identical document, excepting Paragraphs 23 and 24, discussed above, regurgitating time-barred allegations with no better specificity. Specificity is particularly crucial in defamation cases because of their peculiar rules.

¹ Even if the allegations in paragraphs 23 and 24 of the Plaintiff's Amended Complaint were not time-barred, there was no publication made by Kurien to constitute a defamatory communication. Plaintiff relies on an MUSC medical record, not a published communication by Defendant Kurien. See Ex. 3 (Woschenko Dep. 85:3-25, 86:1-7)

“Each act of defamation is a separate tort that, in most instances, a plaintiff must specifically allege.” *English Boiler & Tube, Inc. v. W.C. Rouse & Son, Inc.*, No. 97-2397, 1999 WL 89125, 172 F. 3d 862 (4th Cir. 1999) (citing *Caudle v. Thomason*, 942 F. Supp. 635, 638 (D.D.C. 1996) (“in order to plead defamation, a plaintiff should allege specific defamatory comments [including] ‘the time, place, content, speaker and listener of the alleged defamatory matter’”). “A defendant ‘cannot be expected to defend against an allegation that defamed plaintiff by making a statement heard by an unknown person at an unknown place at an unknown time.’.” *Doe v. McGowan*, 2017 U.S. Dist. LEXIS 19897, 2017 WL 573619, at *6 (D.S.C. Jan. 5, 2017) (citing *Colleton v. Charleston Water Systems, et al*, No. 2:15-cv-23321-RMG at *8 (D.S.C. Mar. 25, 2016).

Plaintiff's general allegations of defamation fail to properly plead statements of facts that are sufficient enough to show that he is entitled to relief. Thus, they must be dismissed. Rule 8 (a)(2) of the South Carolina Rules of Civil Procedure. This is what bothered Judge McCaslin in her Order, that the pleadings need to be pled in such a manner for Woschenko to show he is entitled to relief. “The trial judge may dismiss the claim if the defendant demonstrates the plaintiff has failed “to state facts sufficient to constitute a cause of action” in the pleadings filed with the court. *Nelson v. QHG of S.C., Inc.*, 354 S.C 290, 300 (Ct. App. 2003). A “complaint must be dismissed if it does not allege ‘enough facts to state a claim to relief that is plausible on its face.’.” *Giarratano v. Johnson*, 521 F. 3d. 302 (4th Cir. 2008).

The referenced allegations are manifestly vague and are constructed by oblique references of defamation throughout the of the Complaint. These statements do not allege with specificity the time, place, medium, or listener of any alleged defamatory statements. If they somehow do properly allege with specificity the time, place, medium, or listener of a possible defamatory statements, they are time-barred and should not be used as the basis of the claims in this action.

(Kurien is entitled to Summary Judgment)

1. S.C. Code Ann. §63-7-390 grants permissive reporters statutory immunity

The South Carolina Supreme Court has made clear that the proper standard under Rule 56(c) is the “the genuine issue of material fact”. *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463 (S.C. 2023); (citing *Town of Hollywood v. Floyd*, 403 S.C. 466, 477 (S.C. 2013) (“it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.”)).

Defendant Kurien is a permissive reporter under S.C. Code §63-7-390, giving her statutory immunity for the statements made to the consolidated call center on July 31, 2020. A person who has reason to believe that a child's welfare has been or may have been adversely affected by abuse or neglect may report and *is encouraged to do so* in accordance with the statute and allows for the reports to be made to the county Department of Social Services or a law enforcement agency in a county where the child resides. (S.C. Code Ann. § 63-7-310(d)(e))(emphasis added)². The Code continues:

A person required or permitted to report pursuant to Section 63-7-310 or who participates in an investigation or judicial proceedings resulting from the report, acting in good faith, is immune from civil and criminal liability which might otherwise result by reason of these actions. In all such civil or criminal proceedings, good faith is rebuttably presumed. Immunity under this section extends to full disclosure by the person of facts which gave the person reason to believe that the child's physical or mental health or welfare had been or might be adversely affected by abuse or neglect. (S.C. Code Ann. §63-7-390).

² This is not limited to mandated reporters, and an internal investigation within an institution, school, facility, or agency does not supersede the duty to report. S.C. Code Ann. § 63-7-310(d).

Defendant Kurien made the call to the consolidated call center (hereafter CCC) to request a welfare check on Daughter. Ex. 1 (Kurien Dep. 122:12-18); See Ex. 4 & 5 (CCC and CCC Tr., July 31, 2020). Kurien had seen Daughter upset, being forced back into Plaintiff's vehicle, and had no further indication as to the wellbeing of Daughter. Ex.1. (Kurien Dep. 120:14-25, 121:1-10). Kurien called Plaintiff after the Incident to speak to Daughter and check that on her wellbeing which the Plaintiff refused. Ex. 1 (Kurien Dep. 122:23-25, 123:1-3). Further, she was not allowed to go to Plaintiff's residence to check on Daughter personally. Unable to verify the safety of Daughter, Kurien called the CCC to gain assistance in confirming the safety of Daughter through a welfare check. Defendant's statement to the CCC operator falls within the scope of S.C. Code Ann. § 63-7-310. Defendant Kurien had reason to believe that Daughter was unwell, and the Plaintiff had provided no reasonable purpose to disallow Kurien to speak and confirm that Daughter was okay. Kurien, given the seriousness of the statements made by her child (Daughter), Mother had a moral and legal obligation to provide this information to the CCC operator to further protect the welfare of her child. Defendant Kurien only states to the operator that Daughter has made these allegations as to provide context for her concern. Ex. 4 & 5 (CCC and CCC Tr.).

2. The communication made to the Consolidated Call Center was also privileged.

There are certain communications that give rise to privileges, which can be used as a defense in a defamation action. One such privilege is the conditional or qualified privilege. This privilege applies when the defamatory matter is published upon an occasion that makes it conditionally privileged, and the privilege is not abused. *Kunst v. Loree*, 424 S.C. 24, 42-43 (S.C. Ct. App. 2018). The essential elements of conditionally privileged communication include good faith, an interest to be upheld, a statement limited in its scope to this purpose, a proper occasion, and publication in a proper manner and to proper parties only.

Under this defense, A person is not liable for the publication if the matter is published upon an occasion that makes it conditionally privileged and the privilege is not abused, and the defendant must prove good faith, an interest to be upheld, a statement limited in its scope, a proper occasion, publication in a proper manner, and to the proper parties only (if it gives rise to privilege is the question of law for the court.). 50 Am. Jur.2d Libel and Slander §276 (1995); See also *Harris v. Tietex Int'l Ltd.*, 417 S.C. 533 (Ct. App. 2016). In determining whether the communication was qualifiedly privileged, regard must be had to the occasion and to the relationship of the parties. When one has an interest in the subject matter of a communication, and the person (or persons) to whom it is made has a corresponding interest, every communication honestly made, to protect such common interest, is privileged by reason of the occasion. The statement must be such as the occasion warrants and must be made in good faith to protect the interests of the one who makes it and the persons to whom it is addressed. *Bell v. Bank of Abbeville*, 208 S.C. 490, 493-94 (S.C. 1946); See also *Kunst v. Loree*, 424 S.C. 24, 42-43 (S.C. Ct. App. 2018).

It has been well established that “if the plaintiff fails to present evidence of a genuine issue of material fact as to actual malice and the qualified privilege is otherwise applicable, summary judgment may be granted.” *Harris v. Tietex Int'l Ltd.*, 417 S.C. 533, 541 (Ct. App. 2016); see also *Wright v. Sparrow*, 298 S.C. 469, 474 (Ct. App. 1989) (granting summary judgment based upon qualified privilege where the defendant “established a qualified privilege and [the plaintiff] failed to establish a genuine issue of material fact as to actual malice”).

The information given through the call to the CCC operator was made to address the issue of safety concern for Daughter. Reporting of the Incident, Daughter’s disabilities and the previous allegations made by Daughter were necessary to identify the purpose for seeking a welfare check of Daughter by Kurien and provide the operator with information as to concern of Defendant and

potential welfare of Daughter. Defendant Kurien made these statements in good faith, in reference to protecting the welfare of Daughter and made these statements to CCC operator in to dispatch the proper authorities following the Incident.

Defendant Kurien offered the statements in good faith, in reference to a proper interest and duty, and made the statements to the proper parties and upon the proper occasion the statements made are privileged. The Plaintiff evidence to which to show bad faith, by the statements alleged in paragraph 19 and 20 of the complaint in which the call was made to 911 and that defendant was claiming harassment is shown as false as the call speaks for itself. Plaintiff has failed to present evidence that the statement made by Defendant's Kurien under was in bad faith, or with malice, thus holding Defendant's statements as privileged and barring him from relief.

3. Plaintiff's Causes of Action for Outrage and Civil Conspiracy Lack Merit

Both of these causes of action are attempts to “re-package” defamation claims under the headings of two other causes of action. There is nothing else independently pled or demonstrated—merely naked assertions of defamation under different cause of action headings. Such repacking is not permitted. Media Libel Law, 2023-2024, 50-State Survey (South Carolina) 1612, “In *McBride v. WSPA/Media General, Inc.*, 2007 U.S. Dist. LEXIS 45301 9D.S.C. June 21, 2007), the court held that a plaintiff who has missed South Carolina's two-year statute of limitations for defamation cannot avoid dismissal by characterizing her claim as one for negligence.” *Supra*.

In the Second Cause of Action, for **Outrage**, it is alleged in part that (Kurien's) “...conduct in falsely and baseless alleging that Plaintiff sexually abused his daughter...” was extreme conduct. The case is either a defamation action or outrage—it cannot be both. Either the defamation is formed by statements, or conduct—not both.

The Third Cause of Action for **Conspiracy** alleges that Defendant Kurien and Defendant Snouffer acted together in making the defamatory statements. (¶ 48 Pl.’s First Am. Compl.) However, there has been no joint publication made by the Defendants, nor have they co-authored any statements. Plaintiff’s only showing that the Defendant’s acted in conspiracy is that both Defendants have made statements. Ex. 3 (Woschenko Dep. 91:24- 103:25). But those statements have been separate. Thus, a “conspiracy” to make the statements is a legal impossibility. In that the only viable allegation of defamation that is not time-barred and sufficiently pled, “the call” is defeated by immunity and privilege, this sole act of alleged defamation cannot prop up these latter, throw-away causes of action.

4. Conclusion

Whereas, Defendant Kurien prays that the Motions be granted.

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ATTORNEYS FOR SONYA KURIEN

May 24, 2024

Charleston, South Carolina

EXHIBIT 13

1 STATE OF SOUTH CAROLINA) IN THE SOUTH CAROLINA CIRCUIT COURT 9
2 COUNTY OF CHARLESTON) COURT C.A NO. 2022-CP-10-03009

3

4 Phillip Waschenko,)

5 Plaintiff,)

6 Versus)

7 Sonya Kurien and Kyle Snouffer,)

8 Defendant.)

9

10 H E A R I N G

11

12 DATE: May 29, 2024

13

14 LOCATION: South Carolina Circuit Court 9

15

16 JUDGE: Diane Schafer Goodstein

17

18 TRANSCRIBED BY: ERIN REILLY

19

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1 But at any rate, she's crying, I just want my daughter to be
2 okay. She's calling for a welfare check. That's all she's
3 doing. And so, she is a permissive reporter under 63710. She
4 is permitted to report, she is encouraged to report under the
5 statute.

6 As a consequence, under 637390, she has reporter immunity.
7 But that's not all. It is also privileged. It is a privileged
8 communication it is a conditional privilege. But I challenge
9 that there's no way that a listener can listen to that audio
10 file of that well-check call to the consolidated call center,
11 where all she wanted to do was to have her daughter checked up
12 on, she has a legal and moral and familial obligation to that
13 child who has autism. And all she wanted to do was to have a
14 welfare check. So, I challenged that there can be any
15 interpretation that was unreasonable, or that somehow creates a
16 genuine issue of fact. I would submit that it's that you --
17 that it cannot be done. So, I -- so that's the summary
18 judgment on the remaining allegations.

19 So, if the Court were to accept my position there goes the
20 defamation claim. There are two throwaway -- I call them
21 throwaway causes of action. I call them causes of action of
22 last resort conspiracy and outrage, or at least outrage is the
23 one I have to admit. I've done one conspiracy case and we
24 settled it for a substantial amount of money. But in terms of
25 the amended complaint in the outrage cause of action, and this

1 is what I argue in my brief, that all that is that the tort
2 alleged, the acts that are alleged that form the outrage, and
3 I'll quote from paragraph 42, were -- and 43 rather, that
4 Curian's conduct is falsely and basely alleging that Plaintiff
5 sexually abused his daughter even after the allegations were
6 dismissed.

7 And they really weren't dismissed. There was an unfounded
8 because she couldn't articulate her claim. And the prosecutor
9 didn't think that she could withstand being on the stand.
10 That's all reasonable, was so extreme and outrageous to exceed
11 all possible bounds of decency. Therefore, the outrage cause
12 of action is basically based on the defamation. It's just
13 repeated therein. And I would submit that there is some law
14 that says that there's nothing independently pled or
15 demonstrated merely negative assertions of defamation under a
16 different cause of action. Repackaging is not permitted. I do
17 quite the media liable law, and I'll close on that in a moment.
18 But in the McBride versus WSPA case, the Court held, the
19 Plaintiff who had admits the two-year statute of limitations
20 for defamation cannot avoid dismissal by characterizing her
21 claim as one for negligence.

22 Of course, that was negligence, but the point is the same.
23 You just can't repackage the defamation and sort of morph it
24 into a new cause of action based on the same factual
25 underpinning. The conspiracy is a little bit more stark

1 | because it claims that both parties conspired to make these
2 | statements. Again, it's a repackaging of the defamation that
3 | they conspired to make these statements. But here's the real
4 | important distinction, and that real important distinction is
5 | they didn't co-author anything. They didn't do a double
6 | byline. This is not a joint -- there's no joint communication.
7 | A conspiracy cannot lie.

8 | Now, one thing that Plaintiff's counsel did have correct
9 | in the memo was the failure to secure and send the magistrate's
10 | report that supported the District Court's case in that WSPA.
11 | He is correct, but I did cite Wallace Lightsey 50 State Survey,
12 | his South Carolina book. He's the editor for the South
13 | Carolina survey. I've got a few cases in there too. But --
14 | and so I wrote Wallace and I said I asked him for it. I said,
15 | I assume you have it. It's cited in the survey. Do you mind
16 | citing it? And he wrote me back and he said, Steve, I don't
17 | have a copy of the magistrates (indiscernible). I'm not sure
18 | why it doesn't appear on Pacer.

19 | So, he -- and we are often on the other side. He said,
20 | good luck. Glad to see you're on the side of freedom of speech
21 | this time. But I'm not sure about that but -- and I've
22 | articulated the motions as best as I can. I've given the
23 | Court, I believe some -- the legal propositions to support it.
24 | One thing I'm really concerned about in this case is that the
25 | election of bringing this case by Mr. Waschenko is basically

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CERTIFICATE OF TRANSCRIBER

I, ERIN REILLY, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 9, Charleston County, South Carolina, on the 29th day of May, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

June 8th, 2024
ERIN REILLY
TRANSCRIBER