

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

RECEIVED

NOV 03 2025

SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas

Lawton McIntosh, Circuit Court Judge

Case No. 2022-CP-07-01079

Jerilyn Jean Vogelsang, an Individual..... Appellant,

v.

Chatham Chiropractic & Integrated Health Services, LLC, a South Carolina Limited Liability Company; d/b/a Kalensky Chiropractic, Robert Kalensky, As individual and officer of Chatham Chiropractic & Health Integrated Services, LLC; Nicole Todd, an individual; and Does 1-50, inclusive, whose True names are unknown Respondents.

BRIEF OF APPELLANT

Allen W. Johnson

Post Office Box 1162

Augusta, Georgia 30903

(706) 722-3496

Email: awjohnsonlaw@outlook.com

Attorney for Appellant

TABLE OF CONTENTS

Table of Contents and cases	2
Statement of Issues on Appeal	2
Statement of the Case	2
Standard of Review	2
Argument	5
Conclusion	11

TABLE OF AUTHORITIES

CASES

<u>Fleming v. Rose</u> , 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002)	4
<u>Hancock v. Mid South Mgmt. Co, Inc</u> 382 S.C. 326, 673 S.E. 2d801 (2009)..	5
<u>Hansson v. Scalise Builders of South Carolina</u> 374 S.C. 352, 659 S.E.2d 68 (2007).....	5
<u>State V. Barnes</u> , 119 S.C. 213, 112 S.E. 62 (1922).....	8
<u>Todd v. SC Farm Bureau Mut. Ins.</u> , 276 S.C.284, 278 S.E.2d 607(1981) ...	5
<u>Williams v. Capital Life & Health Ins. Co.</u> 119 S.C.213, 112 S.E. 62 (1922) ..	8

OTHER AUTHORITY

South Carolina Rules of Civil Procedure 8(c).....3
South Carolina Rules of Civil Procedure 30(b) (5)10
South Carolina Rules of Civil Procedure 56(c)4
South Carolina Code of Laws §40-9-20 and §40-9- 1109
South Carolina Code of Laws § 15-32-510, et seq.7

STATEMENT OF THE ISSUES ON APPEAL

1. *DID THE TRIAL COURT ERR IN GRANTING DEFENDANTS’ MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO PLAINTIFF’S SIXTH CAUSE OF ACTION FOR NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS?*

2. *DID THE TRIAL COURT ERR IN RULING THAT THE DEFENDANT TODD IS ENTITLED TO A SUMMARY JUDGMENT ON THE CLAIM THAT SHE WAS ENGAGED IN THE UNAUTHORIZED PRACTICE OF MEDICINE?*

3. *DID THE COURT ERR IN FINDING THAT THE PLAINTIFF FAILED TO BRING ANY DOCUMENTS TO HER DEPOSITION IN RESPONSE TO A SUBPOENA FOR THE PRODUCTION OF DOCUMENTS?*

4. *DID THE COURT ERR IN STATING IN ITS ORDER THAT PLAINTIFF AND HER COUNSEL IMPROPERLY DISRUPTED THE EXAMINATION OF PLAINTIFF.*

STATEMENT OF THE CASE

On June 16, 2022, Jerilyn Jean Vogelsang, an Individual, Appellant, brought this action alleging Breach of Contract; Fraud; Breach of Contract Accompanied by Fraudulent Act; Conversion; Equitable Accounting; Negligence; Defamation; Unauthorized Practice of Medicine/ tort per se; Unpaid Wages; Breach of Covenant of Good Faith and Fair Dealing; and

Intentional Infliction of Emotional Distress against Chatham Chiropractic & Integrated Health Services, LLC a South Carolina Limited Liability Company; d/b/a Kalensky Chiropractic, Robert Kalensky, as individual and officer of Chatham Chiropractic & Health Integrated Services, LLC; Nicole Todd, an individual; and Does 1-50, inclusive, whose true names are unknown, Respondents.

On October 14, 2022 the Respondents filed their Answer and Counterclaims. The Counterclaims consisted of Breach of contract; Breach of Covenant of Good Faith and Fair Dealing; Tortious Interference with Contractual/Business Relations; and Fraudulent Impersonation to Obtain Privileged and Confidential Medical Records, none of which appear to have been pursued with any diligence. The Respondents filed what could be described as a listing by reference of the affirmative defenses as set forth in South Carolina Rules of Civil Procedure 8(c).

This appeal concerns the Order filed on August 4, 2025 wherein the Court ruled: #1. "Defendants' motion for partial summary Judgment should be, and is

hereby granted as to Plaintiff's Sixth Cause of Action for Negligent Infliction of Emotional Distress."

#4 "Defendants' Motion for Partial Summary Judgment should be, and is hereby granted as to Plaintiff's Eighth Cause of Action for Unauthorized Practice of Medicine."

#5 Is a duplicate of #1.

The said Order was drafted by Defense counsel who threw in some self-serving remarks that were not appropriate nor an accurate reflection of actual events.

STANDARD OF REVIEW

"When reviewing a grant of summary judgment, appellate courts apply the same standard applied by the trial court pursuant to Rule 56(c), SCR. Fleming v. Rose, 350 S.C. 488,493, 567 S.E. 2d 857,860 (2002). "Summary Judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show that there is no genuine issue of material fact such that the moving party must prevail as a matter of law When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party."

"In order to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only

required to submit a mere scintilla of evidence.”, *Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326, 330, 673 S.E. 2d 801,803 (2009).

ARGUMENTS

- I. *The Order states in paragraph #11 that “Under well settled case law in South Carolina, some proof of medical or psychological treatment as well as damages are required to support a claim for Negligent or Intentional Infliction of emotional Distress or Outrage.”*

The only case that Respondents mention is in the transcript (p16) and is *Hansson v. Scalise Builders of South Carolina*, 374 S.C.352, 650 S.E. 2d 68 (2007) but the court in that lawsuit concluded that the plaintiff failed to establish a genuine issue of material fact. On the other hand, in the case of *Todd v. South Carolina Farm Bureau Mut. Ins. Co.* 276 S.C. 284, 278 S.E. 2d 607 (1981) the court allowed emotional distress claims without medical testimony where the plaintiff’s suffering was clear and credible.

In the Appellant’s complaint the Eleventh Cause of Action states as follows:

Paragraph 126- “Plaintiff further alleges that defendant intentionally failed and refused to return plaintiff’s property to plaintiff and

wrongfully converted said personal property belonging to plaintiff to defendants' own use."

Paragraph 127- "Defendants had no legitimate purpose for the conduct as heretofore described.

Paragraph 128- "Plaintiff alleges that Defendants' intentional conduct as heretofore described was extreme and outrageous.

Paragraph 129- "Plaintiff is informed and believes and, on that basis, alleges defendants' conduct as heretofore described was intentional, exceeding all bounds tolerated by a decent society and calculated to cause, intending to cause, and in fact caused plaintiff to suffer severe emotional distress.

Paragraph 130- "Plaintiff alleges that defendant's conduct in fact caused plaintiff severe emotional distress in that she has struggled with bouts of severe depression, anxiety, sleeplessness, humiliation, and embarrassment. Plaintiff further alleges that the aforesaid conduct was a substantial factor in causing plaintiff's harm whereas she suffered harm as a result.

Paragraph 131- “Finally, Plaintiff further alleges that the aforesaid conduct was willful, wanton and reckless, entitling plaintiff to punitive damages under S.C. Code Ann. §§ 15-32-510, et seq.

In Defendants’ answer the response to Paragraphs 125 – 131, inclusive, was “denied” as to each paragraph. They set out no real or substantial defense on the merits. The court essentially ruled that without medical treatment a claim for emotional distress fails as a matter of law which is error.

II. *The Court ruled in # 4 that “Defendant’s motion for Partial Summary Judgment should be and is hereby granted as to Plaintiff’s Eighth Cause of Action for Unauthorized Practice of Medicine.”*

But looking at the Complaint in Paragraph 108 it states, “Title 40 of the South Carolina Code of Laws governs Chiropractors and Chiropractic Practices in South Carolina. Section 40-9-20 in particular requires a chiropractors (sic) to be licensed by the South Carolina Board of Chiropractic Examiners. That section states, in relevant part: (A) No person may practice chiropractic in this State without a license issued by the South Carolina Board of Chiropractic Examiners as

provided in this chapter...”. Then in Paragraph 109 it reads, “Pursuant to Williams v. Capital Life & Health Ins. Co. (1947) 209 S.C. 512 and State v. Barnes (1922), 119 S.C. 213, 112 S.E. 62, chiropractors are engaged in the practice of medicine and subject to state licensure requirements.” Going to Paragraph #110 it reads, “Plaintiff alleges that Todd, for all times mentioned herein, engaged in the unauthorized practice of medicine by controlling patient care, modifying, amending and deleting procedure and diagnosis codes without consent, authorization or approval of Plaintiff, the treating chiropractor, and modifying, altering, and/or delating medical records without chiropractic consent authorization or approval. TODD, for all practical purposes, was directing patient care, not having a medical or chiropractic license to do so, nor was she a student of chiropractor or had any other legal authority to act or omit to act as she did as mentioned herein.”

In Paragraph 111. “Plaintiff alleges that TODD violated Section 40-9-110 of the South Carolina Code of Laws which makes ‘it ... unlawful for any person to practice chiropractic in violation of the provisions of

this chapter..." "Plaintiff further alleges that TODD is liable for penalties pursuant to Section 40-9-110."

And then in Paragraph 112. "Moreover, Plaintiff alleges that TODD's action and/or omissions as described heretofore constitute a tort per se in violation of state law, that said tort(s) were the actual and proximate causes of injuries and harm to plaintiff, were substantial factors in causing her injuries and harm, and did in fact cause harm and injuries to plaintiff, both in her person and in her reputation." Then in Paragraph 113. "Finally, Plaintiff further alleges that the aforesaid conduct was willful, wanton, and reckless, entitling Plaintiff to punitive damages under S.C. Code Ann. §§ 15-32-510. et seq."

The Defendants' Answer to the Eighth cause of action was merely denials as to all Paragraphs (#108 to #113) with no defense on the merits.

What we have here is clearly not a cause of action for violation of the law, but for tortious injury and that Plaintiff's counsel in admitting that there is no private cause of action for the unauthorized practice of medicine is true but is of no consequence. It could be compared to

the situation where motorist "A" is driving down the road and motorist "B" passes him going 90 MPH. Motorist "A" does not have a cause of action against motorist "B" for violating the law by speeding in excess of the lawful speed limit but if Motorist "B" in passing Motorist "A" scrapes the side of the car of Motorist "A" thereby damaging it then Motorist "A" has a claim against Motorist "B" not for speeding but for damages for tortious conduct.

- III. *The said Order of August 4 in Paragraph 3 states that "The plaintiff failed to bring any documents to her deposition in response to the subpoena requiring her to do so."*

This ruling or statement ignores Rule 30(b) (5) of the South Carolina Rules of Civil Procedure that states, "The notice to a party deponent may be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34 shall apply to the request." The plaintiff delivered the requested documents by furnishing them to defense counsel prior to her deposition. This Rule makes sense because if Plaintiff deponent were to bring 200 or more documents to

her deposition, the deposition would likely have to be put on hold while counsel reviews the documents. The demand that she bring them rather than furnish them in advance, tends to indicate the attempt to create a defense via discovery abuse. This action was filed in June of 2022 and the defendants are still doing discovery. Prior to the last mediation in 2025 the defendants were not heard to say that they could not participate in mediation because they needed to do more discovery.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court as to the arguments set out herein.

Respectfully submitted,

October 22, 2025

/s/ Allen W. Johnson
Allen W. Johnson
S.C. Bar No. 003002
P.O. Box 1162
Augusta, Georgia 30903
(706) 722-3496
Attorney for Appellant