

THE STATE OF SOUTH CAROLINA

In The 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.

REPLY BRIEF OF APPELLANT

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Attorney for Appellant

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Jan 09 2026

SC Court of Appeals

1. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS:

In the Appellant's Eleventh Cause of Action (as against all defendants) Plaintiff alleged in Paragraph 125: Plaintiff alleges that defendant intentionally failed and refused to perform the conditions of the contract entered into between plaintiff and defendants. In 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. In Paragraph 127: Defendants had no legitimate purpose for the conduct as heretofore described. In Paragraph 128: Plaintiff alleges that Defendants' intentional conduct was extreme and outrageous. In 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. In 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. In 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 as to each paragraph numbered 124 To 131 the response is the same and all "boiler plate" denials with no defenses whatsoever on the merits. Whereas Appellant in her complaint described in painful detail the elements and extent of her emotional distress, but Respondents argue that if she sought no treatment then defendants are entitled to judgment as a matter of law and that Appellant cannot rely on the allegations in her complaint although they have no meritorious defenses to the allegations in her complaint

2. DEFENDANT TODD UNAUTHORIZED PRACTICE OF MEDICINE.

The Respondents don't appear to understand that that Plaintiff 's claim, (EIGHTH CAUSE OF ACTION) is not against Todd for unauthorized practice of medicine as the complaint clearly alleges a tort claim. Paragraph 110: 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 deleting medical records without chiropractic consent, authorization or approval. Todd, for all practical purposes, was directing patient care, without having a medical or chiropractic license to do so, nor was she a student of chiropractic or had any other legal authority to act or omit as she did as mentioned herein. 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. [this statement is not a claim where plaintiff was seeking damages but rather that she was liable for penalties pursuant to state law.] Then in Paragraph 112: Moreover, Plaintiff alleges that TODD'S actions, and or omissions as described heretofore **constitute a tort per se in violation of state law (emphasis added)**, 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.

A reading of the complaint makes it crystal clear that Plaintiff's claim in her EIGHTH CAUSE OF ACTION is for tortious injury and in that TODD violated state law makes it tortious per se, and no claim is made for violation of state law other than that the state could penalize her. In Defendants' answer to the EIGHTH CAUSE OF ACTION as to the said paragraphs 108-113 it consists only of boiler plate denials with no meritorious defenses alleged.

3. APPELLANT FAILED TO BRING DOCUMENTS TO HER DEPOSITION

Respondent (Defendants) served a subpoena to Appellant (Plaintiff) to bring documents to her deposition. That request ignored the fact that the deponent was a party to the litigation and therefore the subpoena was not in accordance with Rule 30(b)(5) of the South Carolina Rules of Civil Procedure: “The notice to a party deponent may be accompanied by a request made in accordance 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.”

In Plaintiff’s Motion For Reconsideration, filed and served on defendants on July 30, 2025, the Appellant stated therein as follows, “The Plaintiff produced the material requested in the subpoena directed to her. The subpoena was not in accordance with Rule 30-b-5 but Plaintiff produced the documents, never the less, by emailing the documents to Defendant’s counsel. They were easy to download and easy to print. There was no objection to this production made at the Plaintiff’s 2nd deposition. It would seem better to produce the documents prior to the deposition so that the Defendant’s lawyer would not have to delay the deposition while he sorted through hundreds of documents produced at the deposition.” The fact that the defendants persisted in trying to force plaintiff to perform discovery outside of the discovery rules reinforces the concept that defendants had no defenses on the merits and were trying to create a defense via discovery abuse.

4. WHETHER THE CIRCUIT COURT CORRECTLY FOUND THAT APPELLANT AND HER COUNSEL IMPROPERLY DISRUPTED HER TESTIMONY WHERE DEPOSITION TRANSCRIPT PROVIDES AMPLE EVIDENCE TO SUPPORT THIS CONCLUSION

Plaintiff was deposed twice for a total of nine hours and twenty-one minutes. In that Defendants in their Answer set out no meritorious defenses it again appears that the depositions were for nothing more than an attempt to create a defense via discovery abuse.

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s/ Allen W. Johnson

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Attorney for Appellant

This 9th day of January, 2026

CERTIFICATE OF SERVICE

I certify that on January 9, 2026 I served the foregoing Reply

Brief on counsel for Respondents by e mail as follows:

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s/ Allen W. Johnson