

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Honorable Kristi F. Curtis, Circuit Court Judge

Appellate Case No. 2023-000289

Jack Kelly, ... *Appellant,*

vs.

Roger D. Cox, Cox Millwork & Supply Inc., Waterside Drive Boat Ramp, LLC,
and Cox Properties, LLC *Respondents.*

RECORD ON APPEAL
(Part II)

Wright, Worley, Pope, Ekster & Moss, PLLC
Attorneys for the Appellant

George N. Spirakis, Esquire, SC Bar No. 12024
628A Sea Mountain Highway
North Myrtle Beach, SC 29582
Tel: 843/ 281-9901/ Fax: 843/ 281-9903
Email: GeorgeSpirakis@wwpemlaw.com

The Snyder Law Group
Co-Counsel for the Appellant
Richard L. Snyder, Esquire, SC Bar No. 105192
2510 Barrett Street
Columbia, SC 29201
Tel: 980/ 297-9627
Email: rl@snyderlawgroupsc.com

Ross & Cristaldi, LLC
Attorneys for the Respondents

Philip P. Cristaldi, III, Esquire
Emily Christine Sheets, Esquire
Jeffrey A. Ross, Esquire
Brenten H. DeShields, Esquire
863 Coleman Boulevard, Suite B
Mt. Pleasant, SC 29464
Tel: 843/ 329-4040

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1 Q. Why not?

2 A. I just felt that way.

3 Q. Is there a specific event that led you
4 to that feeling?

5 A. I think it was a series of events.

6 Q. What were those events?

7 A. Just with regard to position changes in
8 the upcoming semester.

9 Q. There was quite a bit of hesitation
10 between that question and that answer. I'm
11 trying to understand what your daily life is
12 like, so I'm going to ask you again.

13 What changes in the fraternity led to
14 your decision to withdraw? What specific
15 circumstances?

16 A. I gave you an answer.

17 Q. What position changes in the fraternity
18 made you uncomfortable?

19 A. The upcoming changes to the executive
20 council of the fraternity.

21 Q. What type of change was happening that
22 made you uncomfortable?

23 A. The response to the brothers -- the
24 response of the brothers to changes of the EC.

25 Q. And what response was provided?

1 A. A loss of brotherhood.

2 Q. Meaning there were many people leaving?

3 A. No. A turning of -- a turning of the
4 brotherhood. Just a change in how the fraternity
5 wanted to look.

6 Q. How did the fraternity look before when
7 you were interested in being a member? How was
8 it different than how it was going to look with
9 the new administration?

10 A. A decrease in the importance of getting
11 things done and being productive.

12 I'd like to take break after this
13 question, if that's okay.

14 MS. SHEETS: Okay.

15 (A recess was taken.)

16 Q. Jack, we took a little break here.
17 We're back on the record. I've had a chance to
18 talk to your counsel. We went through a little
19 bit of the facts of this case, and so I think I
20 can be a little bit quicker now. Okay?

21 A. Okay.

22 Q. You have seen a counselor while you're
23 at Wofford, correct?

24 A. Yes. I've seen a couple.

25 Q. Before you got to Wofford, did you have

1 any counseling?

2 A. I spoke with a guidance counselor at
3 high school.

4 Q. Did you ask either of your parents to
5 help you get a counselor while you were in high
6 school?

7 A. No, ma'am.

8 Q. Is that because you were sort of just
9 trying to deal with things on your own?

10 A. I believe so.

11 Q. Is there any other reason why you didn't
12 try to get additional counseling help in high
13 school?

14 A. Not to my knowledge.

15 Q. I believe that you and your mom and Mr.
16 Cox kind of all moved in together, if you will,
17 sometime around when you were 12 or 13; is that
18 right?

19 A. Sounds right.

20 Q. When y'all first moved in together, did
21 that relationship sort of meet your expectations?

22 A. What do you mean by that?

23 Q. Initially, was your relationship with
24 Mr. Cox what you thought it would be?

25 A. Not really.

1 Q. What were you expecting as far as your
2 relationship with Mr. Cox when y'all moved in
3 together?

4 A. Can you repeat that question?

5 Q. Sure. Let me ask it a different way.
6 Were you expecting Mr. Cox to be a father figure
7 to you?

8 A. No, ma'am. I have a father.

9 Q. Were you expecting Mr. Cox to be a
10 supportive confidant for you?

11 A. I was just expecting another positive
12 male figure in my life, just like my dad. Like
13 just someone -- like another positive male role
14 model father figure like I have in my friend's
15 dad, [REDACTED], someone like that.

16 Q. Did that happen?

17 A. I don't feel like it did.

18 Q. Do you think things were better in the
19 beginning of your relationship with Mr. Cox than
20 they were at the end of your relationship with
21 Mr. Cox?

22 A. Yes.

23 Q. Is there an event where that
24 relationship sort of changed?

25 A. I'm not really sure.

1 Q. Is there a certain kind of time period
2 or age that you can point to when that
3 relationship changed?

4 A. No, ma'am. I don't know what happened.

5 Q. All you know is that it changed at some
6 point?

7 A. Yes, ma'am.

8 MS. SHEETS: Off the record.

9 (A recess was taken.)

10 Q. During the time that you were living
11 with your mom and Mr. Cox, were you ever
12 physically fearful of Mr. Cox?

13 A. What do you mean by that?

14 Q. Did you feel like your physical safety
15 was in danger?

16 A. Yes.

17 Q. Was there a particular event that made
18 you feel that way?

19 A. The incident with the car scared me.

20 Q. Before the car incident, had you had
21 that sort of fearful feeling for your safety
22 before?

23 A. Possibly, but I'm not sure.

24 Q. And by not sure, you just don't recall;
25 is that right?

1 A. Yeah. A lot of the high school time is
2 very blurry with regard to that.

3 Q. During high school, was there ever a
4 point where you lived somewhere else other than
5 with Mr. Cox and your mom?

6 A. I stayed with my dad sometimes.

7 Q. Any reason that when you went to your
8 dad's you didn't just stay there?

9 A. What do you mean?

10 Q. Did you have a choice kind of between
11 living with your mom and living with your dad
12 full time?

13 A. I primarily lived with my mom. I
14 didn't -- I could have easily throughout high
15 school stayed all with my dad or stayed all with
16 my mom or 50/50. Like, there was no -- ever set
17 guidelines.

18 Q. Sure. Mr. Kelly, I have placed in front
19 of you a set of subpoenaed records.

20 MS. SHEETS: For the record, we are
21 going to mark this as the next exhibit, which I
22 think is 3.

23 (Exhibit 3 was marked for
24 identification.)

25 MS. SHEETS: And for the record, that

1 subpoena response is Bates labeled
2 Wofford_SDT-Resp_0001-20.

3 Q. We're not going to go through every page
4 of this, but there are a few pages that I want to
5 briefly talk through with you. Okay. The first
6 page is going to be page 7.

7 A. Yes, ma'am.

8 Q. If you will, go to the paragraph that's
9 titled Details on that page.

10 A. Yes, ma'am.

11 Q. And then, if you go about five lines
12 down, there's a sentence that starts with he
13 reported. Do you see that?

14 A. Yeah.

15 Q. It talks here about going home to see
16 your parents. Do you see that?

17 A. Yeah.

18 Q. And how that is a trigger. And my
19 question is, are your parents the trigger or is
20 Myrtle Beach the trigger?

21 A. Myrtle Beach.

22 Q. And is it correct that Myrtle Beach is
23 the trigger because you've alleged here that
24 there are relationship -- what occurred between
25 you and Mr. Cox while you were living here; is

1 that correct?

2 A. Can you repeat that? I'm sorry.

3 Q. Sure. Myrtle Beach is a trigger for you
4 because the allegations that you have made in the
5 this lawsuit occurred here; is that correct?

6 A. Yes, ma'am.

7 MS. SHEETS: Off the record.

8 (A recess was taken.)

9 Q. Mr. Kelly, we're back on the record.
10 We're leaving page No. 7 and we're going to go to
11 page No. 10, please. When you get to page No.
12 10, there's also a paragraph on that page called
13 Details. For the record, the Bates label of the
14 subpoena record is 10 in the same range.

15 Sort of the same line of questioning.
16 It talks about the mall being a trigger. What
17 about the mall is a trigger?

18 A. Just being close to where everything
19 happened.

20 Q. So it's not any mall, it's the location
21 of that mall; is that correct?

22 A. Yes. You're speaking of just malls in
23 general, yes.

24 Q. So, for instance, if you were to go to a
25 mall in Greenville or a mall somewhere in North

1 Carolina, that would not have the same trigger
2 for you as the mall in Myrtle Beach; is that
3 correct?

4 A. Yes, that's correct.

5 Q. Mr. Kelly, on the same page, No. 10, it
6 talks about a girlfriend that you had at the time
7 of that counseling session. Do you have the same
8 girlfriend?

9 A. No. We're no longer together.

10 Q. Do you have a girlfriend at all?

11 A. I do not.

12 Q. Mr. Kelly, we are going to flip to page
13 No. 11, if you will, please. Is it your
14 understanding that Mr. Cox also attended Wofford?

15 A. No.

16 Q. I didn't think so, either, but something
17 about this note led me to believe that he may
18 have been a student at Wofford. But it's your
19 testimony that he has not been a student at
20 Wofford, correct?

21 A. Can you point that out to me?

22 Q. I can. If you go down around the
23 seventh line, there's a sentence that starts,
24 Jack acknowledges that it is an irrational fear
25 of his stepdad showing up.

1 A. Yeah. That has nothing -- that has more
2 of just the fear of the connection between Mr.
3 Cox and Wofford, as Wofford -- the location
4 has -- it has grown to have more effect from Mr.
5 Cox. It is not something that I have memories of
6 me and Mr. Cox. Through counseling and stuff, I
7 have talked more about Mr. Cox; and there's --
8 those thoughts have come into Wofford by Mr. Cox
9 -- me and Mr. Cox have never -- me and him were
10 never at Wofford together.

11 Q. And so the connection between Mr. Cox
12 and you and Wofford comes from the counseling
13 session notes that we are currently reviewing; is
14 that correct?

15 A. Slightly correct. The fear of like
16 talking about it at Wofford and just in general
17 is always an opening to Mr. Cox entering a place
18 just because there's a connection there. Like,
19 where I receive counseling is not my favorite
20 place to go on campus. But what I'm talking
21 about here more is the fear of him coming to
22 Wofford. Just the fear of -- talking about
23 physical fear that I've developed, just building
24 on that.

25 Q. The notes that we are currently talking

1 through talk about triggers, and so far we've
2 talked about locations and Myrtle Beach being a
3 trigger.

4 A. Yes.

5 Q. Are there any places where you --
6 outside of Myrtle Beach that trigger a memory or
7 response to the allegations that you've alleged
8 against Mr. Cox?

9 A. Not that I'm aware of at this time.
10 Really, with counseling, we focus a lot on home
11 just because that is when I'm not at Wofford.
12 That's why it's very difficult -- it makes it
13 difficult to come home when there is that
14 constant -- it's hard to use the word trigger.
15 Yeah. I think trigger is -- just the reminder of
16 everything that's happened.

17 Q. When you are outside of the Myrtle Beach
18 area, do you find it easier to not be triggered?

19 A. I think by physical things, yes, but
20 also still the thoughts of what has happened are
21 something that doesn't go away no matter where I
22 am. I mean, Myrtle Beach offers plenty of
23 physical reminders of things that have happened.
24 But the thoughts and the constant reminders of it
25 don't go away if I'm not in Myrtle Beach.

1 They're just not a physical reminder. It's
2 always in my mind. It never goes away.

3 Q. If you will, please flip to -- so we are
4 on the same sort of package of the exhibit, and
5 we're going to page 15. This record is dated
6 September 15, 2021, and the Bates label at the
7 bottom of the page is 15. It looks to me like
8 you have sort of left school for the summer and
9 then moved back in. Is that a correct
10 assessment?

11 A. Yes. I believe that sounds right.

12 Q. Where were you the summer of 2021?

13 A. I believe in Myrtle Beach.

14 Q. Did you work that summer?

15 A. I volunteered.

16 Q. Where did you volunteer?

17 A. Wellspring Church, I believe. That's
18 this past summer, correct?

19 Q. Yes.

20 A. Yes, Wellspring.

21 Q. What were your duties or activities that
22 summer for Wellspring Church?

23 A. I just helped around, like, the office
24 of the church, help them set up stuff. And then
25 I was -- I worked alongside the youth director in

1 helping plan the summer camp as well as work the
2 summer camp.

3 Q. Were you a summer camp counselor for the
4 summer camp?

5 A. Yes.

6 Q. What ages were the children at the
7 summer camp?

8 A. Rising twelfth-graders.

9 Q. And what were your duties as a camp
10 counselor to the children during the camp?

11 A. I don't know if I really got -- I was
12 thrown in at the last minute. It was never my
13 intention to be a camp counselor. It was -- I
14 got put into that position due to COVID. I was
15 just in charge of like -- there was five rising
16 twelfth-graders. I had to move them between
17 events and stuff and led some small group
18 conversations at times. Other times they would
19 just go with the rising eleventh-grader leader.

20 Q. The small group sessions, were they
21 focused on any particular topic?

22 A. There was connections to the messages
23 that were given through, like, the main messages.
24 And then some of them were just like
25 discussion-based, stuff like that. I don't

1 recall specific topics.

2 Q. Was there sort of a message theme to the
3 camp?

4 A. I can't recall the -- I remember it
5 was -- this was the first year, [REDACTED].
6 So it was -- the title of the camp was [REDACTED]
7 [REDACTED]. Wellspring Church, [REDACTED]. I
8 can't remember exactly what the title of the main
9 messages were.

10 Q. Did you attend any therapy last summer?

11 A. No, ma'am.

12 Q. I'm going to go backwards for just a
13 second, and I apologize. I can't remember if
14 I've asked you this or somebody else has asked
15 you. Other than your guidance counselor in high
16 school and the counselors at Wofford, are there
17 any other counselors that you've seen?

18 A. What do you consider a counselor?

19 Q. A licensed therapist or a psychologist
20 or a psychiatrist.

21 A. I don't believe I've seen anyone else.

22 Q. Mr. Kelly, we're going to go all the way
23 to the last page, which is Bates 20. I believe
24 -- actually, the date of the record is on page
25 19, so sorry about that. It looks like the note

1 date is February 23, 2022. Have you been back to
2 counseling at Wofford since that date?

3 A. Today is April 4. Yes, I have.

4 Q. About how frequently do you attend
5 counseling at Wofford?

6 A. It's about every two weeks is when I
7 scheduled my appointment after my current
8 appointment.

9 Q. Do you feel like therapy is helping?

10 A. At times. It's one of the things I'm
11 not -- I'm not convinced, but it's -- I have to
12 try something to help.

13 Q. Sure. Have you ever been prescribed any
14 medication to assist you with any sort of
15 emotional reaction that you've had to the
16 allegations in this lawsuit?

17 A. I haven't been prescribed anything. I
18 was told -- I suffer from not being able to sleep
19 some nights when the thought gets into my head.
20 It's very hard to go to sleep. And my counselor
21 suggested looking into Melatonin, potentially
22 looking into medication stuff. I believe we
23 talked about that at not my most recent one but
24 the appointment before that.

25 Q. Mr. Kelly, do you drink alcohol?

1 A. Rarely.

2 Q. When you were living with Mr. Cox and
3 your mom, did anyone else live there with you?

4 A. Mr. Cox's daughter, [REDACTED].

5 Q. What's the age difference between you
6 and [REDACTED]?

7 A. I believe one to two years. She's a
8 freshman in college, I believe. But I'm younger
9 for my grade. It's between one and two years, I
10 think.

11 Q. And do you and [REDACTED] have a
12 good relationship?

13 A. I don't know if good is the word I would
14 use. I don't know how to describe the
15 relationship.

16 Q. Let's take the converse of that. Would
17 you say that you had a bad relationship or a
18 normal kind of brother/sister, sort of sometimes
19 you fight, sometimes you're happy?

20 A. I don't think anything was out of the
21 ordinary. I don't know if it was good or bad. I
22 don't have anything to compare it to.

23 Q. You made some allegations in this
24 lawsuit about what your sort of living
25 environment was like with Mr. Cox. Do you feel

1 like anything happened between you and [REDACTED].
2 [REDACTED] that made that situation worse or
3 better?

4 A. Would you rephrase that?

5 Q. When you visit Myrtle Beach and you kind
6 of are triggered with an emotional reaction, if
7 you will, does [REDACTED] have any part in
8 that reaction?

9 A. I'm not sure.

10 Q. During the time that you were living
11 with your mom and Mr. Cox, was [REDACTED] always
12 also living there at the same time?

13 A. No.

14 Q. Do you know why that was?

15 A. She was with her mom, I believe, yes.

16 Q. During the times that you would observe
17 Mr. Cox's interaction with [REDACTED], did you
18 feel that that interaction was sort of typical
19 parent/child interaction?

20 A. I would not say typical, no.

21 Q. What about it wasn't typical?

22 A. It seemed inorganic. It didn't seem
23 like there was a great relationship between them
24 that I would expect from a daughter and a father.

25 Q. Is there a specific example that you

1 could give me for that?

2 A. Not a specific example, just the overall
3 feeling between the two.

4 Q. Did [REDACTED] ever sort of complain to
5 you or talk to you about, you know, kind of her
6 interaction with her dad?

7 A. Yes.

8 Q. What would she tell you during these
9 conversations?

10 A. There weren't many but a lot to do with
11 swimming.

12 Q. What about swimming?

13 A. At times [REDACTED] it feel like
14 to me that she was tired of swimming and that Mr.
15 Cox, her father, was very much forcing her to
16 continue to do it, which she didn't really want
17 to.

18 Q. Any other conversations or interactions
19 with [REDACTED] where she talked to you
20 about -- complaining of her difficult situation
21 she had with her dad?

22 A. Not that I can recall at the moment.

23 Q. Have any of the experiences that you
24 allege in this lawsuit kept you from pursuing or
25 taking a job opportunity?

1 A. As of now, no.

2 Q. Have any of the experiences that you
3 allege in this lawsuit kept you from undertaking
4 a social activity that you wanted to take?

5 A. Probably.

6 Q. Which social activity?

7 A. I can't think off the top of my head,
8 but I just know, like, days at Wofford or --
9 like, I wouldn't be in Myrtle Beach, right. I
10 would most likely not be in Myrtle Beach right
11 now if this lawsuit was still on right now --
12 like, if I didn't have my deposition right now.

13 Q. Where would you otherwise have been
14 today?

15 A. I would probably be in Edgefield, South
16 Carolina with my suite mate. I would have had my
17 dad move up his closing, and I would have left
18 earlier.

19 Q. Did you come from Wofford straight to
20 Myrtle Beach?

21 A. Yes.

22 Q. When did you come back here?

23 A. Friday afternoon.

24 Q. This past Friday? So today is Monday.

25 A. Yes. Like the first Friday back so,

1 like, this weekend.

2 Q. Were you staying with your dad or your
3 mom?

4 A. My mom. My dad is moving out, so all of
5 his stuff is getting taken out of his house.

6 Q. Is your dad staying in the Myrtle Beach
7 area?

8 A. Yes. What do you mean? Sorry. What do
9 you mean by that?

10 Q. Is he moving out of Myrtle Beach?

11 A. Yes, he is moving out of Myrtle Beach.

12 Q. Where is he moving?

13 A. He's going to stay with my aunt in Ohio
14 and he travels for work, but that's where he'll
15 put his belongings.

16 MS. SHEETS: Off the record.

17 (A recess was taken.)

18 Q. Mr. Kelly, I'm aware of the allegations
19 that you have made about Mr. Cox and some
20 scratches on your car, I'm aware of some
21 allegations involving your shoes, and I'm aware
22 of some allegations involving your toothbrush.

23 A. Yes.

24 Q. Did all of those allegations occur while
25 you were in high school?

1 A. I want to speak on your question -- the
2 scratches on my car were key marks on the car. I
3 think that -- I wanted to make sure that was
4 clear. I believe they did occur in high school
5 as I was no longer living with Mr. Cox after.

6 Q. Did you witness any of the events occur?

7 A. In person or through, like, the video
8 that we have?

9 Q. In person.

10 A. I did not witness any in person.

11 Q. When did you first become aware of the
12 allegations of the events occurring?

13 A. I'm not 100 percent sure of the
14 timetables of that.

15 Q. Did a particular person allege to you
16 the events occurred?

17 A. I believe my mom and me talked about it,
18 and it was later confirmed in the confessional
19 letter of Mr. Cox.

20 Q. I'll represent to you that I am in
21 possession of video footage of Mr. Cox in the
22 bathroom of his home. I'm in possession of a
23 41-minute recording, and I believe the
24 participants of that recording are your mom and
25 Mr. Cox.

1 Are you aware of any other video or
2 recording evidence that you think is related to
3 the allegations in this case?

4 A. Not that I'm aware of.

5 Q. The last time your deposition was being
6 taken on day one, if you will, you discussed some
7 photographs of scratches on your 2005 BMW. Do
8 you have possession of those photographs?

9 A. Yes.

10 Q. Would you please, if you have not
11 already, provide those to your counsel? Because
12 I do not have them in my file.

13 A. I can.

14 Q. Aside from photographs of scratch marks
15 on your 2005 BMW, are you aware of any other
16 photographs that you have related to the
17 allegations in this case?

18 A. Not that I'm aware of. Can I have a
19 piece of paper that I can write that on so I can
20 make sure I get that for you?

21 MR. SPIRAKIS: Off the record for a
22 minute.

23 (A recess was taken.)

24 (Exhibit 4 was marked for
25 identification.)

1 Q. Mr. Kelly, we took a brief break here.
2 And I am holding what's been marked as Exhibit
3 No. 4 to your deposition, and it appears to be
4 some photographs of a white vehicle; is that
5 correct?

6 A. Yes.

7 Q. And are the photographs pictures of your
8 white 2005 BMW?

9 A. They are.

10 Q. Do you know who took these pictures?

11 A. I believe I did.

12 Q. And do the pictures accurately depict
13 the allegations that you made in this lawsuit as
14 it relates to the damage to your 2005 white BMW?

15 A. To the best the lighting let me, I
16 believe so.

17 Q. Do you believe that there were any
18 additional damages to your 2005 BMW that are not
19 shown in these photographs?

20 A. The damages to the headlights aren't
21 really accounted for in these pictures. The key
22 marks along the side panel of the car aren't as
23 clear as I wish they were. I'm trying to think.
24 Is there anything else? And I believe the extent
25 of the damage to the black parts, figure 4, were

1 on both, but I think it's only shown in one.

2 Q. When you say both, what am I looking at
3 in this picture?

4 A. The hood has two, like, vents on it. I
5 don't know how to describe them with technical
6 terms.

7 Q. Figure 4 is showing --

8 A. One of two hood vents.

9 Q. On the front of the vehicle?

10 A. Yes. I think the pictures do a rough
11 job of showing the damages. They're not perfect
12 or complete, but they do show an outline of the
13 damages.

14 Q. Do you recall the date or general time
15 frame that you took the pictures?

16 A. I do not recall the exact date.

17 Q. Mr. Kelly, what do you want to be the
18 result of this lawsuit?

19 A. I would say justice for the actions of
20 Mr. Cox.

21 Q. And what would justice mean for you?

22 A. It's hard to -- my counselor and I
23 talked about that. There's not a real answer for
24 what is and what isn't justice. I don't really
25 get to depict that. I'm working on controlling

1 what I can, and I can't control what justice is.
2 Justice will be decided as it goes on.

3 Q. What do you believe are your damages as
4 a result of the allegations that you allege in
5 this suit?

6 A. I mean, there's physical damages to
7 what -- property, what Mr. Cox has done. I would
8 say a good bit of emotional damage. Spiritual
9 damage if you care to account for that. Mental,
10 mentally a lot of damage there. That probably
11 rounds out most of it.

12 Q. I want to be clear about the property
13 damage. The property damage, my understanding is
14 that that includes the 2005 BMW, which was
15 repaired, correct?

16 A. Incompletely repaired, yes.

17 Q. And has since been sold; is that
18 correct?

19 A. I'm not sure how the movement of the BMW
20 was, but it is no longer my primary vehicle that
21 I use.

22 Q. You were never the owner of the 2005
23 BMW, correct?

24 A. No, ma'am.

25 Q. And then the only other property damage

1 that I'm aware of are some tennis shoes.

2 A. Yes. Expensive tennis shoes.

3 Q. Those tennis shoes were replaced or
4 additional tennis shoes were purchased, correct?

5 A. Yes.

6 Q. Is there any other property damage that
7 you allege as a result of the allegations in this
8 suit?

9 A. Not that I'm aware of at this time, but
10 there could be. I'm drawing a blank.

11 Q. Are you aware of any pictures or video
12 footage that depict Mr. Cox allegedly tossing
13 your tennis shoes into the creek behind your
14 home?

15 A. Repeat the question.

16 Q. Are you aware of any video footage or
17 photographs that depict Mr. Cox throwing tennis
18 shoes into the creek behind your home?

19 A. I might if there's any video of that.

20 Q. Are you aware of anyone who can testify
21 about where Mr. Cox was allegedly standing when
22 he allegedly tossed your tennis shoes into the
23 creek?

24 A. What do you mean by that?

25 Q. Are you aware of anyone who saw Mr. Cox

1 toss tennis shoes, owned by you, into the creek
2 behind your home?

3 A. I'm not aware of someone that would know
4 that, but that doesn't mean that there isn't
5 someone.

6 Q. Sure. Are you aware of anyone who can
7 testify that they witnessed Mr. Cox scratch your
8 2005 BMW?

9 A. I'm not sure if there's someone who can
10 attest to seeing it in person, but that doesn't
11 mean it doesn't exist.

12 MS. SHEETS: Sure. Mr. Kelly, I believe
13 that's all the questions I have for you today.

14 I'm going to place on the record that
15 your counsel and I spoke during this deposition
16 and stated that if additional evidence is
17 discovered during this lawsuit that we reserve
18 the right to renote this deposition. But we
19 are going to close it today so that you may feel
20 free to speak with your counsel and for those
21 conversations to be privileged.

22 Is that an accurate representation?

23 MR. SPIRAKIS: That's an accurate
24 representation. I do have one or two questions,
25 assuming you're finished.

1 MS. SHEETS: I'm finished.

2 EXAMINATION

3 BY MR. SPIRAKIS:

4 Q. Jack, did you talk to any ministers
5 about your situation with Mr. Cox?

6 A. Yes. I talked to [REDACTED] on, I
7 believe, one or two times, maybe three about what
8 was going on. I believe the first time was at
9 the first summer camp Wellspring Church hosted.
10 And I talked to [REDACTED] about it, just in
11 like a big picture, when giving a message on -- a
12 message on church -- at church. Like at a youth
13 group about what was going on with me and just
14 the impact it had with me and my faith and stuff
15 like that.

16 Q. It's not only been licensed counselors
17 but ministers as well?

18 A. Yes.

19 MR. SPIRAKIS: That's all the questions
20 I have.

21 (The deposition was concluded at
22 11:42 a.m.)

23

24

25

1 CERTIFICATE OF REPORTER
2 STATE OF SOUTH CAROLINA
3 COUNTY OF HORRY

4 I, Eileen Madden, Registered
5 Professional Reporter and Notary Public for the
6 State of South Carolina at Large, do hereby
7 certify that the witness in the foregoing
8 deposition was by me duly sworn to testify to the
9 truth, the whole truth and nothing but the truth
10 in the within-entitled cause; that said
11 deposition was taken at the time and location
12 therein stated; that the testimony of the witness
13 and all objections made at the time of the
14 examination were recorded stenographically by me
15 and were thereafter transcribed by computer-aided
16 transcription; that the foregoing is a full,
17 complete and true record of the testimony of the
18 witness and of all objections made at the time of
19 the examination; and that the witness was given
20 an opportunity to read and correct said
21 deposition and to subscribe the same.

22 Should the signature of the witness not
23 be affixed to the deposition, the witness shall
24 not have availed himself/herself of the
25 opportunity to sign or the signature has been
waived.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto
affixed my official seal on April 11, 2022, at
Myrtle Beach, Horry County, South Carolina.

Eileen Madden
NCRA REGISTERED PROFESSIONAL
REPORTER, RPR
Notary Public,
State of South Carolina at Large
My Commission expires:
July 30, 2029



From: [REDACTED]
To: [REDACTED]
Cc: [CounselingServices](#)
Subject: FW: Counseling Records Release Form
Date: Thursday, March 3, 2022 9:39:34 AM

Pam,

This student has clarified that he wants counseling progress notes released. Can you pull those and send? Let me know if you need further information.

Thank you!

Perry

From: "system@wofford.edu" <system@wofford.edu>
Date: Thursday, February 17, 2022 at 2:52 PM
To: "Kelly, Jack A" <[REDACTED]>, CounselingServices <CounselingServices@wofford.edu>
Subject: Counseling Records Release Form

Name:	Mr. Jack Kelly
Date of Birth:	[REDACTED] 2001
Email:	[REDACTED]
Wofford ID:	[REDACTED] 542
Cell Number:	[REDACTED]
Current Student:	Yes
Starting Year	2019
Full name while attending Wofford:	Jack Austin Kelly
Request Type:	release to: attorney's paralegal
Contact Details:	[REDACTED] 863 Coleman Blvd Ste. B 843-329-4040
Records Released:	Progress Notes
Exclusions:	All that was asked for
Authorization:	This authorization will remain in effect until this request is processed.

Name: Jack A Kelly (Jack) **DOB:** [REDACTED]/2001 **Student ID:** [REDACTED]542
(M)

Diagnosis:

Wofford Wellness Center - Counseling
429 N. Church St. Wellness Center
Spartanburg, SC 29303
(864)597-4370

Jack A Kelly (M) [7149]

Pt. Phone: [REDACTED]

Note Date: 11/10/2020 10:19 AM

DOB: [REDACTED]2001 (Age 19)

Summary of note: Diagnosis Is Deferred.

Allergies: No known drug allergies -

Current Medications: multivitamins, tylenol

Session:

Student Completed Intake Form

Patient Info

Preferred Name	Jack Kelly	Cell Phone	[REDACTED]
Gender	Male	Is it okay to call this number and leave a message?	Yes
Housing Situation	On Campus (Please specify residence hall and room number) [REDACTED]		

Who referred you to our office? (If possible, specify who)	Self
Relationship Status	Committed Relationship
Sexual Orientation	Straight
What is your country of origin?	USA
Are you an international student?	No

Do you have a documented disability? (if yes, please indicate)	No
--	----

Emergency Contact Information

Name of emergency contact:	[REDACTED]
Emergency contact telephone number:	[REDACTED]
Emergency Contact Relationship	roommate

Military Affiliation

Are you a member of ROTC?	No
Have you been, or are you currently enlisted in any branch of the US military?	No
Did your military experiences include any traumatic or highly stressful experiences which continue to bother you?	No

Name: Jack A Kelly (Jack) **DOB:** [REDACTED]/2001 **Student ID:** [REDACTED] 542
(M)

Diagnosis:

Work / Participation

Do you participate on an athletic team that competes with other colleges or universities?	No
Please indicate your level of involvement in organized extra-curricular activities (e.g. sports, clubs, student government, etc.)	Two regularly attended activities
Please estimate the number of hours per week you are actively involved in organized extra-curricular activities.	3-5
What is the average number of hours per week you work during the school year (paid employment)?	0
Do you consider yourself to be spiritual or religious?	Yes
Do you affiliate yourself with an organized religion?	Yes RUF
To what extent does your spirituality play an important role in your life?	Very Important

Academic

Are you the first generation in your family to attend college?	Yes
Are you currently on academic warning?	No
Have you been on academic warning in the past?	No
Are you currently on academic probation?	No
Have you been on academic probation in the past?	No
Academic Status	Sophomore
Major:	Biology

Current Concerns

Please indicate your current concerns (check all that apply)	
Family	
Please briefly describe the reason for your visit to the Counseling Center today.	
I am about to go through a court case involving a past experience that put me through a bad time and I am hoping counseling will reduce the depression that this experience will bring.	
Is this visit required/mandated?	No
What are your goals for therapy?	to talk out my feelings so I do not compartmentalize my emotions. Trying to find peace with it.
Have you attended counseling for mental health concerns in the past?	Yes (please specify where) Wellness Center

Hospitalization/Medications

Have you taken prescribed medication for mental health concerns?	No
Please list ALL current medications, vitamins and herbs you may be taking	
vitamin c	
Have you ever been hospitalized?	No

Alcohol / Drug Use

Have you ever felt the need to reduce your alcohol or drug use?	Never
When was the last time you felt the need to reduce your alcohol	Never

Name: Jack A Kelly (Jack) **DOB:** [REDACTED]/2001
(M)

Student ID: [REDACTED]542

Diagnosis:

or drug use?	
Have others expressed concern about your alcohol or drug use?	Never
Have you ever received treatment for alcohol or drug use?	No
Do you have a family member with a history of mental health concerns?	Yes (Please specify) moms side of the family
Have you experienced any type of abuse/assault? (please check all that apply)	Emotional abuse (when) stepdad
Do you have a family member with a history of alcohol or other drug use concerns?	No
Are you currently having suicidal thoughts?	No
Have you ever seriously considered attempting suicide?	No
Have you ever purposely hurt yourself without the intention of committing suicide?	No
Have you seriously considered physically harming another person	Yes (please specify when) stepdad
Please indicate how much you agree with the following statements:	
I get the emotional help and support I need from my family	Somewhat agree
I get the emotional support I need from my social network (friends, acquaintances, etc.)	Somewhat agree

Please specify all members of your immediate family (specify name, relationship, age, occupation and year deceased [if applicable])

[REDACTED]

If there is any other important information that you would like to provide, please do so in the space below.

Counseling Session Notes

Appointment Date: November 10, 2020

Type:

Type: individual

Treatment/Interventions:

Treatment/Interventions: information gathering/history

Progress since last session:

Content:

Content: Therapist went over confidentiality policies for the Wellness Center. Jack explored his feelings about his upcoming court case and processed the events that led up to the court case. Jack explored how these events impact his day to day life and his ability to function. Jack also explored concerns for how the court case could impact his mental health moving forward and he reported wanting to find ways to prevent or cope with these feelings.

Assessment:

Assessment: Based on issues Jack reported in his intake he could benefit from counseling services to assist in processing his emotions and improving his coping skills. He denies any

Name: Jack A Kelly (Jack) **DOB:** [REDACTED]/2001 **Student ID:** [REDACTED] 542
(M)

Diagnosis:

current thoughts, plan or intent to harm himself or others.

Overall:

Overall: maintaining

Appearance:

Appearance: appropriate

Attention and Concentration:

Attention and Concentration: excellent

Interpersonal:

Interpersonal: cooperative

Psychomotor:

Psychomotor: within normal limits

Suicide risk:

Suicide risk: Client was asked and denies thought, plan or intent to self-harm

Mood:

Affect:

Affect: congruent with mood and thought

Thought process:

Thought process: normal

Judgment:

Judgment: good

Insight:

Insight: adequate

Reaction to session:

Reaction to session: cooperative

Homework given/Plan

Additional Comments

Focus/Reason for Therapy:

1)Diagnosis Is Deferred. -

Plan:

Name: Jack A Kelly (Jack) **DOB:** [REDACTED]/2001 **Student ID:** [REDACTED]542
(M)
Diagnosis:

PSYCHOTHERAPY PATIENT &/ FAMILY 45 MINUTES ()

Signed by: [REDACTED], LMFT-A on Jan/06/2022 08:59 AM

Locked by: [REDACTED] LMFT-A on Jan/06/2022 08:59 AM

Name: Jack A Kelly (Jack) **DOB:** [REDACTED]/2001 **Student ID:** [REDACTED]542
 (M)
Diagnosis:

Wofford Wellness Center - Counseling
429 N. Church St. Wellness Center
Spartanburg, SC 29303
(864)597-4370

Jack A Kelly (M) [7149]
 Pt. Phone: [REDACTED]

Note Date: 02/18/2021 08:33 AM
 DOB: [REDACTED]/2001 (Age 19)

Summary of note: Diagnosis Is Deferred.
Allergies: No known drug allergies -
Current Medications: multivitamins, tylenol

Session:

Date of Appointment: February 18, 2021

Case Type: Individual

Focus of session: Processing emotions

Topics/themes/critical incidents: Family of Origin, Process, Other

Details: Jack identified that keeping himself busy is a coping skill. He reported that he went home and processed how that made him feel. He processed feelings about the lawsuit. Jack reported that talking about it makes him feel worse but he is realizing it will get worse before it gets better. Jack and therapist explored him trying to find peace. Jack reflected on his reported trauma and struggling with having to go home on breaks. He reported that Wofford is his new home and going home is a constant reminder of what happened. He reported that he is avoiding places that reminds him of everything that happened and that he is unable to be happy when going home to visit his parents. Jack stated "Knowing that I have to go through the lawsuit and I'm worried about it becoming a normal part of my time at Wofford". Therapist and Jack processed him not wanting this to impact how he feels at Wofford. Jack explored his frustrated with the process and working on trying to forgive. Jack reported that he copes by finding ways to have control, going through the days and counting wins, not showing emotions so others do not see his hurt. Jack also processed how he is focused on what caused the situation and needing to have an understanding of why his step dad did what he did. Jack processed having unanswered questions "why me? what did I do?". Jack reported wanting to get to a place where "good days can just be good days and he is able to talk about bad days". He also reported wanting to be in a place where he can reduce the pain of what happened.

Modes of intervention/treatment: Emotion Regulation, Exploration, Motivational Interviewing, Support

Impressions of Client: Jack reported he is sleeping better than he was last semester. He will figure out how to be able to manage only wanting to control what he can and not being emotionally triggered when visiting certain places. Next session plan to identify specific locations that cause emotional and physical distress and working on coping skills. Continue sessions every two weeks as needed.

Name: Jack A Kelly (Jack) **DOB:** [REDACTED]/2001 **Student ID:** [REDACTED]542
(M)
Diagnosis:

Focus/Reason for Therapy:

1)Diagnosis Is Deferred. -

Plan:

PSYCHOTHERAPY PATIENT &/ FAMILY 45 MINUTES ()

Signed by: [REDACTED] LMFT-A on Jan/07/2022 12:05 PM

Locked by: [REDACTED] *LMFT-A on Jan/07/2022 12:05 PM*

Name: Jack A Kelly (Jack) **DOB:** [REDACTED]/2001 **Student ID:** [REDACTED] 542
(M)

Diagnosis:

Wofford Wellness Center - Counseling
429 N. Church St. Wellness Center
Spartanburg, SC 29303
(864)597-4370

Jack A Kelly (M) [7149]

Pt. Phone: [REDACTED]

Note Date: 03/04/2021 08:41 AM

DOB: [REDACTED]/2001 (Age 19)

Summary of note: Post-traumatic stress disorder, unspecified

Allergies: No known drug allergies -

Current Medications: multivitamins, tylenol

Session:

Counseling Check In

What state are you currently in? SC

What is your location? [REDACTED]

Are you in a private location with no one else present in the room? Yes

What number can you be reached at if we become disconnected? [REDACTED]

How has your sleep been since your last visit? Decreased, Problems falling asleep

How would you describe your mood since your last appointment? Other

How would you describe your appetite? Usual

How are you doing academically? Struggling

How are things going in your relationships/social life? okay

Medication:

Please list any medications you are currently taking for a mental health condition (include dosage and frequency).

Have you had any changes in medication? No

If yes, what changes to medication were made?

Safety/Risk:

Are there concerns for your safety? (Ex. urge to self harm, suicidal thoughts, relationship violence) If yes,

please tell your therapist at the beginning of the session. You may simply say "safety concerns". No

If there are safety concerns, what are they?

Therapeutic Focus:

What symptoms have you been experiencing that you would like to work on today?

In what areas do you feel like you have made progress since your last session?

What you like to focus on today? continuation from last week

What do you hope to get from your session today? Problem solve

Date of Appointment: March 04, 2021

Case Type: Individual

Focus of session: Processing trauma

Name: Jack A Kelly (Jack) **DOB:** [REDACTED]/2001 **Student ID:** [REDACTED]542
Diagnosis: (M)

Topics/themes/critical incidents: Process

Details: Jack and therapist worked on identifying places that cause him distress when at home. He identified "the bypass in Myrtle beach and driving past the intersection that would lead to my old house" and he reported that if he is at the mall he becomes "concerned of being close to the place where it all happened". On a scale of 1 to 10 he reported having a level 7 of distress when passing it and level 4 or 5 when in an area close to it. He reported having flashbacks of what happened and the pain it has caused him. He reported that he hides emotions from his mom. Jack reported being more vocal with his girlfriend about the situation and explored having her as a support. Jack identified and processed feelings of anger related to some of the events that occurred. Therapist and Jack explored theme of him needing to know why his stepdad did the things he did and how not being able to identify a clear cause and effect is impacting him. He reported feeling like if he had answers he could let go of some of the pain. He reported "half of the mental struggle is how and why". Jack explored feeling like he lost childhood memories from blocking things out during that time in his life. Jack acknowledges that he can not change what happened but has some control over the future. Therapist and Jack explored the possibility that there was not a why? or cause.

Modes of intervention/treatment: Emotion Regulation, Exploration, Problem Solving, Support

Impressions of Client: Jack is doing better with expressing his feelings. Jack will continue processing feelings of distress when passing the intersection to his old home. Continue sessions every two weeks.

Focus/Reason for Therapy:

1) Post-traumatic stress disorder, unspecified - F43.10, 47505003

Plan:

PSYCHOTHERAPY PATIENT &/ FAMILY 45 MINUTES (F43.10)

Signed by: [REDACTED], LMFT-A on Jan/07/2022 12:09 PM

Locked by: [REDACTED], LMFT-A on Jan/07/2022 12:09 PM

Name: Jack A Kelly (Jack) (M) **DOB:** [REDACTED]/2001 **Student ID:** [REDACTED]542
Diagnosis:

Wofford Wellness Center - Counseling
429 N. Church St. Wellness Center
Spartanburg, SC 29303
(864)597-4370

Jack A Kelly (M) [7149]
 Pt. Phone: [REDACTED]

Note Date: 03/18/2021 08:33 AM
 DOB: [REDACTED]/2001 (Age 19)

Summary of note: Post-traumatic stress disorder, unspecified

Allergies: No known drug allergies -

Current Medications: multivitamins, tylenol

Session:

Date of Appointment: March 18, 2021

Case Type: Individual

Focus of session: Processing trauma

Topics/themes/critical incidents: Academics, Process, Relationships, Other

Details: Jack processed his feelings of being ready for the semester to be over. He reported that he has not been sleeping well the past 3 days and uses that time awake to think about if he would be able to move on if he was unable to get answer to why his step dad did what he did. He explore consciously working toward finding peace with situation. He processed thinking about an toothbrush incident while brushing his teeth and how he will then inspect his toothbrush and take "unnecessary precaution" to make sure it is clean. Therapist and Jack explored how home is supposed to be your safe place and identifying Wofford now as his home and not wanting that to be tainted by his step dad coming here. Jack acknowledges that it is an irrational fear of his step dad showing up but he is worried that he could be unpredictable. Jack reported feeling like his step dad "did everything he did because he wanted me to fail". He explored how that causes him to push himself because he knows that there was someone who wanted him to fail and he has to prove them wrong. He processed how that contributes to his need to keep himself busy because of how he wants people to view him and make it look easy to balance everything. Jack also processed how this effects his need for control over things in his life. Jack identified needing to do better with managing time and balancing time to relax. Therapist and Jack explored the concept of forgiveness. Jack then processed a situation where he was able to show emotions and was able to be open up some and not be guarded. He identified this as one layer of opening up but still has some guard up with letting people in emotionally. He identified that this is deep stuff to hold from everyone including his mom, girlfriend and roommate.

Modes of intervention/treatment: Emotion Regulation, Exploration, Motivational Interviewing, Support

Impressions of Client: Next session we will explore Jack's identified need for outside validation. Continue sessions every two weeks.

Name: Jack A Kelly (Jack) **DOB:** [REDACTED]/2001 **Student ID:** [REDACTED]542
(M)
Diagnosis:

Focus/Reason for Therapy:

1)Post-traumatic stress disorder, unspecified - F43.10, 47505003

Plan:

PSYCHOTHERAPY PATIENT &/ FAMILY 45 MINUTES (F43.10)

Signed by: [REDACTED], LMFT-A on Jan/07/2022 12:11 PM

Locked by: [REDACTED] *LMFT-A on Jan/07/2022 12:11 PM*

Name: Jack A Kelly (Jack) **DOB:** [REDACTED]/2001 **Student ID:** [REDACTED]542
Diagnosis: (M)

Wofford Wellness Center - Counseling
429 N. Church St. Wellness Center
Spartanburg, SC 29303
(864)597-4370

Jack A Kelly (M) [7149]
 Pt. Phone: [REDACTED]

Note Date: 04/01/2021 08:43 AM
 DOB: [REDACTED]/2001 (Age 19)

Summary of note: Post-traumatic stress disorder, unspecified
Allergies: No known drug allergies -
Current Medications: multivitamins, tylenol

Session:

Date of Appointment: April 01, 2021

Case Type: Individual

Focus of session: Processing trauma

Topics/themes/critical incidents: Process, Other

Details: Jack reported that he had a flashback to a trauma event last Saturday and that it ruined his mood. He reported that he was able to talk himself down and rationalize the feelings. He explored how he struggled with his feelings and that kept him up an hour longer than he usually would have taken. Jack reflected on being able to process the trauma on his own instead of it lingering and causing him distress. Therapist and Jack explored preparing for going home to visit his mom and dad over spring break. He reported that he feels more confident that he will be able to work through any triggers that may be present at home. Therapist and Jack processed feelings about purposely exposing himself to one of his triggers in order to regain his control of his emotions. Jack processed a memory of a particular event that could of started the events that occurred to lead up to issues with his step dad.

Modes of intervention/treatment: Emotion Regulation, Exploration, Homework Assignment, Motivational Interviewing, Problem Solving, Support, Validation

Impressions of Client: Next session Jack will process how being home is impacting his feelings over spring break. He is to look over coping skills list to identify new ones he would like to try. Continue sessions at current frequency.

Focus/Reason for Therapy:
 1)Post-traumatic stress disorder, unspecified - F43.10, 47505003

Name: Jack A Kelly (Jack) **DOB:** [REDACTED]/2001 **Student ID:** [REDACTED]542
(M)

Diagnosis:

Plan:
PSYCHOTHERAPY PATIENT &/ FAMILY 45 MINUTES (F43.10)

Signed by: [REDACTED], LMFT-A on Jan/07/2022 12:13 PM

Locked by: [REDACTED] LMFT-A on Jan/07/2022 12:13 PM

Name: Jack A Kelly (Jack) **DOB:** [REDACTED]/2001 **Student ID:** [REDACTED]542
Diagnosis: (M)

Wofford Wellness Center - Counseling
429 N. Church St. Wellness Center
Spartanburg, SC 29303
(864)597-4370

Jack A Kelly (M) [7149]
 Pt. Phone: [REDACTED]

Note Date: 09/15/2021 01:04 PM
 DOB: [REDACTED]2001 (Age 20)

Summary of note: Post-traumatic stress disorder, unspecified
Allergies: No known drug allergies -
Current Medications: multivitamins, tylenol

Session:

Date of Appointment: September 15, 2021

Case Type: Individual

Focus of session: Managing current trauma symptoms

Topics/themes/critical incidents: Academics, Process

Details: Jack reported on what he did over the summer to keep himself occupied. Jack acknowledged that he used food to cope in the spring and that he spent time working on his physical self over the summer. Jack reported that he feels better physically when doing day to day stuff but still has trouble emotionally. Jack reported wanting to create healthier habits to start addressing his issues better. Therapist and Jack explored his feelings about having to continue to deal with the lawsuit. Therapist used motivational interviewing to explore Jack's concept of "finding peace".

Modes of intervention/treatment: Exploration, Support

Impressions of Client: Jack has implemented some new coping skills over the summer and would like to work on increasing his coping mechanism. He wants to continue sessions every two weeks. Homework to create a list of the moments in life where he has felt genuinely happy in his life.

Focus/Reason for Therapy:

1) Post-traumatic stress disorder, unspecified - F43.10, 47505003

Plan:

PSYCHOTHERAPY PATIENT &/ FAMILY 45 MINUTES (F43.10)

Name: Jack A Kelly (Jack) **DOB:** [REDACTED] 2001 **Student ID:** [REDACTED] 542
(M)

Diagnosis:

Signed by: [REDACTED], LMFT-A on Jan/07/2022 12:14 PM

Locked by: [REDACTED] LMFT-A on Jan/07/2022 12:14 PM

Name: Jack A Kelly (Jack) **DOB:** [REDACTED]/2001 **Student ID:** [REDACTED] 542
Diagnosis: (M)

Wofford Wellness Center - Counseling
429 N. Church St. Wellness Center
Spartanburg, SC 29303
(864)597-4370

Jack A Kelly (M) [7149]
 Pt. Phone: [REDACTED]

Note Date: 10/08/2021 11:30 AM
 DOB: [REDACTED]/2001 (Age 20)

Summary of note: Post-traumatic stress disorder, unspecified
Allergies: No known drug allergies -
Current Medications: multivitamins, tylenol

Session:

Date of Appointment: October 08, 2021

Case Type: Individual

Focus of session: Processing trauma

Topics/themes/critical incidents: Academics, Process, Other

Details: Jack discussing the events in his life that have genuinely made him happy. He defined joy as being able to see the tangible efforts of time he has put into something. Therapist and Jack continued exploring Jack's idea of "finding peace". Jack explored his feelings about "the unknowns of when this would all be over". Jack reported he could be more optimistic about outcome if he had an idea of an end date. Jack identified competing in the Mr. Wofford competition soon as an activity that it will bring him genuine happiness in the future.

Modes of intervention/treatment: Emotion Regulation, Exploration, Motivational Interviewing, Support

Impressions of Client: Jack is still struggling some but has made improvement in being able to identify and process his emotions. He should continue sessions as needed.

Focus/Reason for Therapy:

1) Post-traumatic stress disorder, unspecified - F43.10, 47505003

Plan:

PSYCHOTHERAPY PATIENT &/ FAMILY 45 MINUTES (F43.10)

Signed by: [REDACTED] LMFT-A on Jan/07/2022 12:19 PM

Name: Jack A Kelly (Jack) **DOB:** [REDACTED]/2001 **Student ID:** [REDACTED]542
Diagnosis: (M)

Locked by: [REDACTED] *LMFT-A on Jan/07/2022 12:19 PM*

Name: Jack A Kelly (Jack) **DOB:** [REDACTED]/2001 **Student ID:** [REDACTED] 542
(M)

Diagnosis:

Wofford Wellness Center - Counseling
429 N. Church St. Wellness Center
Spartanburg, SC 29303
(864)597-4370

Jack A Kelly (M) [7149]
 Pt. Phone: [REDACTED]

Note Date: 02/23/2022 02:01 PM
 DOB: [REDACTED]/2001 (Age 20)

Summary of note: Post-traumatic stress disorder, unspecified

Allergies: No known drug allergies -

Current Medications: oseltamivir 75 mg capsule [Tamiflu], multivitamins, tylenol

Session:

Counseling Check In

How has your sleep been since your last visit? Decreased less sleep, Waking early not sure

How would you describe your mood since your last appointment? Sad, Irritable

How would you describe your appetite? Decreased

How are you doing academically? Okay

How are things going in your relationships/social life? okay

Medication:

Please list any medications you are currently taking for a mental health condition (include dosage and frequency).

Have you had any changes in medication? No

If yes, what changes to medication were made?

Safety/Risk:

Are there concerns for your safety? (Ex. urge to self harm, suicidal thoughts, relationship violence) If yes, please tell your therapist at the beginning of the session. You may simply say "safety concerns". **No**

If there are safety concerns, what are they?

Therapeutic Focus:

What symptoms have you been experiencing that you would like to work on today?

In what areas do you feel like you have made progress since your last session?

What you like to focus on today? just talking through deposition

What do you hope to get from your session today? Make sense of some things, Feel heard

Date of Appointment: February 23, 2022

Case Type: Individual

Focus of session: Processing trauma

Topics/themes/critical incidents: Process

Name: Jack A Kelly (Jack) **DOB:** [REDACTED]/2001 **Student ID:** [REDACTED]542
(M)

Diagnosis:

Details: Jack processed feelings about his recent deposition and having to talk about the events that caused his trauma. He also reported feelings of increased anxiety before, during and after the deposition. Jack reported recognizing that he is physically, mentally and emotionally more impacted by his trauma than he realized before. Therapist and Jack explored feelings of anger, sadness and fear related to the current process. Jack identified issues with trust especially with male figures since the traumatic events occurred. Therapist and Jack explored his avoidance of dealing with his emotions. Jack reported new feelings of self-doubt in all areas of his life since the deposition. Therapist explored her approach to counseling services and the effectiveness with helping him deal with his trauma. Therapist discussed with Jack using brain spotting to help with processing and healing from trauma in future session.

Modes of intervention/treatment: Emotion Regulation, Exploration, Motivational Interviewing, Support

Impressions of Client: Jack is struggling with managing his moods and reports an increase in symptoms since completing part of his deposition in December. Jack will resume biweekly counseling sessions.

Focus/Reason for Therapy:

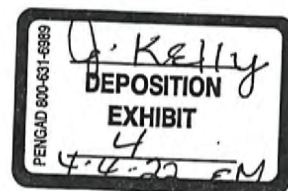
1) Post-traumatic stress disorder, unspecified - F43.10, 47505003

Plan:

PSYCHOTHERAPY PATIENT &/ FAMILY 45 MINUTES (F43.10)

Signed by: [REDACTED] LMFT-A on Feb/23/2022 03:11 PM

Locked by: [REDACTED] LMFT-A on Feb/23/2022 03:11 PM



Figures

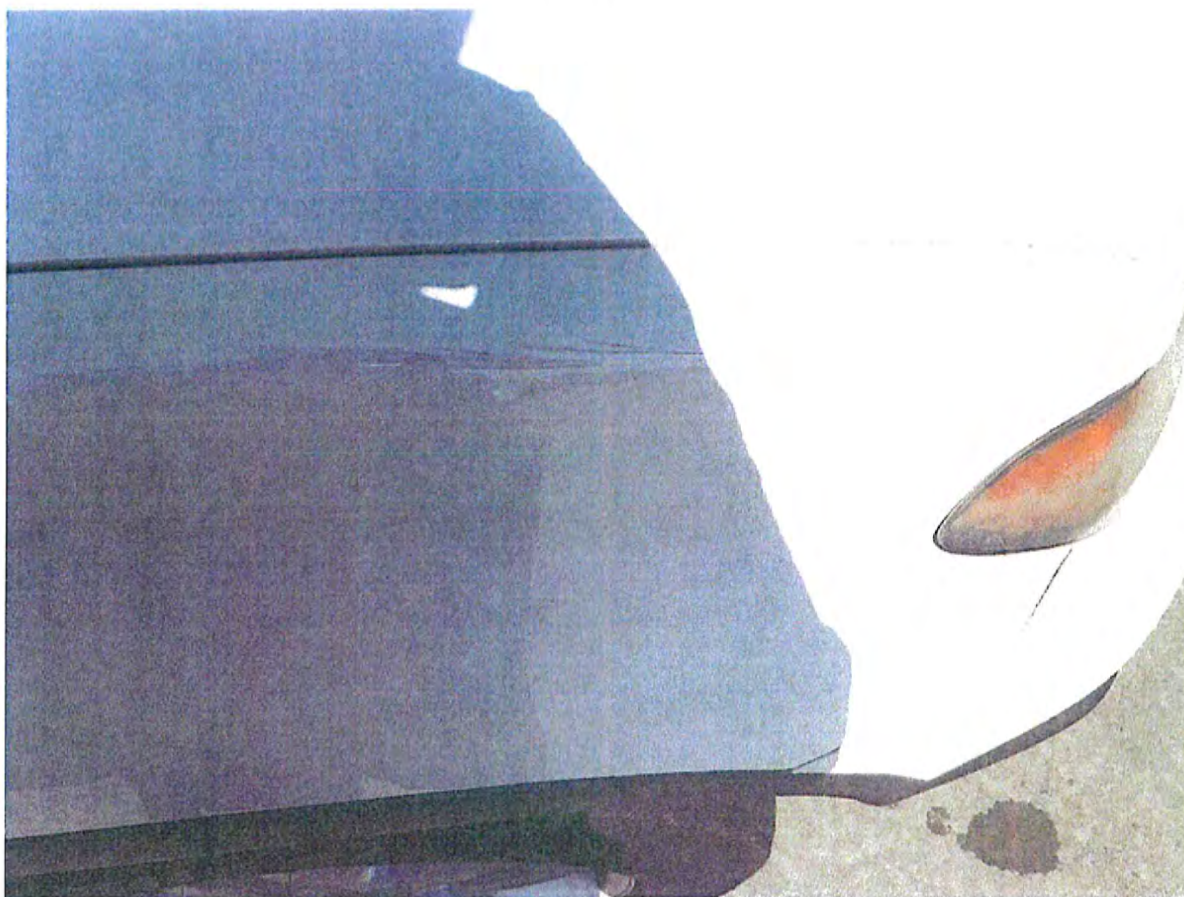


Figure 1



Figure 2

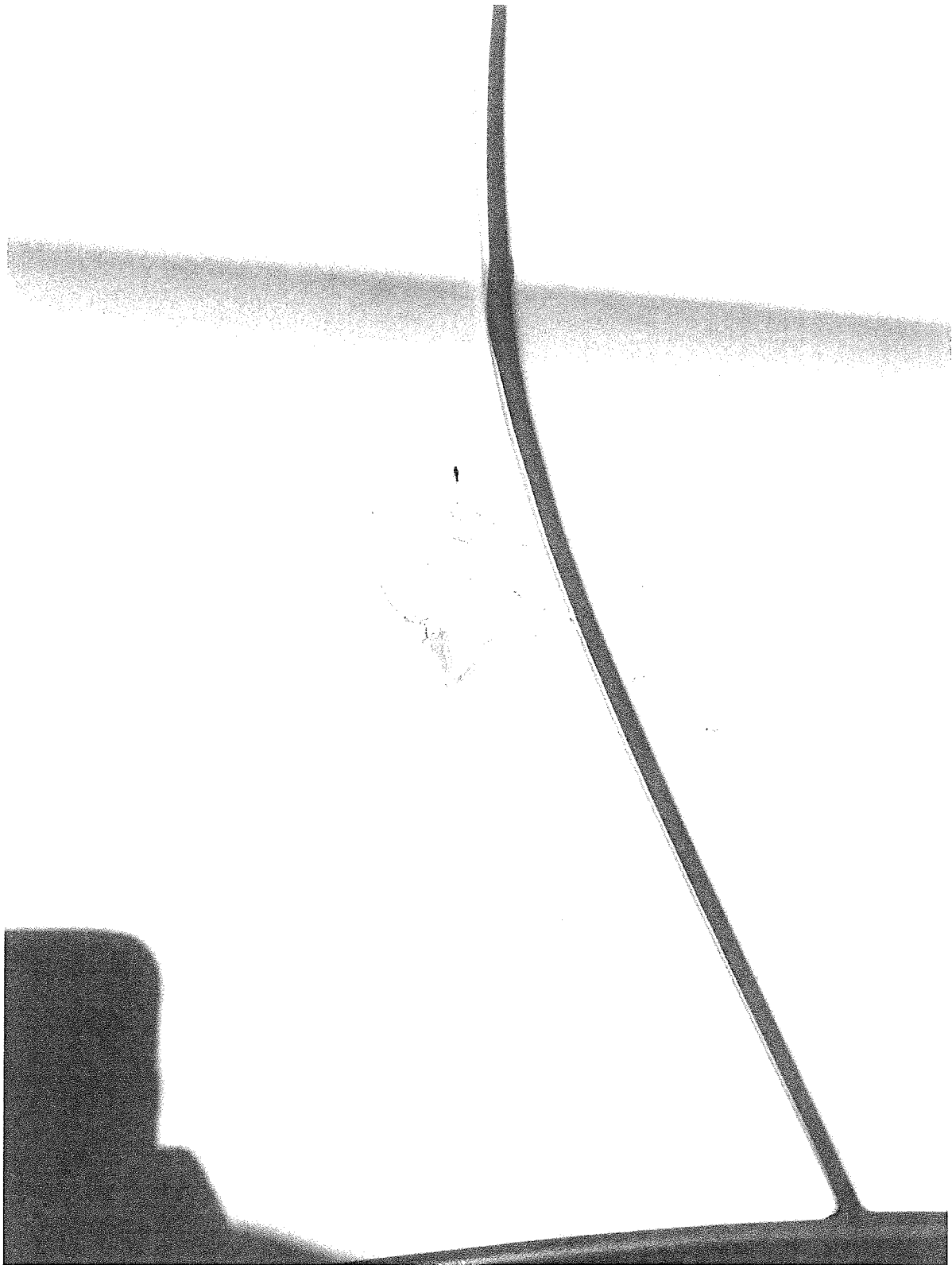


Figure 3



Figure 4



Figure 5

1 IN THE COURT OF COMMON PLEAS
2 FOR THE STATE OF SOUTH CAROLINA
3 Horry County

4 DEPOSITION OF DAWN SARTE COX
5 NOVEMBER 22, 2021

6 JACK KELLY,

7 Plaintiff,

8 vs.

9 CASE NO. 2020-CP-26-06286

10 ROGER D. COX, COX MILLWORK & SUPPLY, INC.,
11 WATERSIDE DRIVE BOAT RAMP, LLC and
12 COX PROPERTIES, LLC,

13 Defendants.
14 _____

15 TIME: 2:03 p.m.

16 LOCATION: WRIGHT, WORLEY, POPE, EKSTER
17 & MOSS, PLLC
18 N. MYRTLE BEACH, SOUTH CAROLINA

19
20
21 REPORTED BY: EILEEN MADDEN, RPR
22 CLARK BOLEN COURT REPORTING
23 AND VIDEOCONFERENCING
24 CHARLESTON, SC 29405
25 843-762-6294
 WWW.CLARK-ASSOCIATES.COM
 office@clark-associates.com

1 A P P E A R A N C E S

2 ON BEHALF OF PLAINTIFF:

3 WRIGHT, WORLEY, POPE, EKSTER
4 & MOSS, PLLC
5 BY: GEORGE N. SPIRAKIS, ESQ.
6 628A Sea Mountain Highway
7 N. Myrtle Beach, SC 29582

8 ON BEHALF OF DEFENDANTS:

9 ROSS & CRISTALDI, LLC
10 BY: KIRKLEY G. WHITE, ESQ.
11 863 Coleman Blvd., Suite B
12 Mt. Pleasant, SC 29464

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ALSO PRESENT: ROGER D. COX

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INDEX

EXAMINATION

BY MS. WHITE

4

CERTIFICATE OF REPORTER

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EXHIBITS

1

Facebook Post
Cox 003-004

56

1 DAWN SARTE COX,
2 having been first duly sworn, was examined and
3 testified as follows:

4 EXAMINATION

5 BY MS. WHITE:

6 Q. Ms. Sarte, my name is Kirkley White, and
7 I represent the defendants in the lawsuit that
8 your son has brought specifically against Mr.
9 Cox, Cox Millwork & Supply, Inc., Waterside Drive
10 Boat Ramp, and Cox properties.

11 Have you ever had your deposition taken
12 before?

13 A. I have.

14 Q. What for?

15 A. Car accident.

16 Q. When was that car accident?

17 A. 2016.

18 Q. Were you a plaintiff or a defendant in
19 that suit?

20 A. The plaintiff.

21 Q. Well, it's been a while since you've had
22 your deposition. And I'm sure your attorney went
23 over the rules with you, but I'm going to go over
24 a few things to make sure this goes smoothly.

25 Okay?

1 A. Uh-huh.

2 Q. First and foremost, the purpose of my
3 questions will not be to trick or confuse you.
4 So if I ask you anything and you don't understand
5 what I'm asking you, please ask me to rephrase.
6 Okay?

7 A. Yes.

8 Q. The second thing I'll ask is because
9 Madam Court Reporter is taking down everything
10 that we say, please make sure you give me a
11 verbal answer.

12 A. Yes.

13 Q. And I may remind you if you nod your
14 head. I'm not trying to be rude. I just want to
15 make sure we get your answer on the record.
16 Okay?

17 A. Yes.

18 Q. The other thing I'll ask related to that
19 is you'll probably see where I'm going with the
20 question and you'll want to go ahead and start
21 answering. But just wait for me to finish my
22 question before you start to answer and I'll try
23 to give you enough time to answer before I start
24 asking another question. Okay?

25 A. Yes.

1 Q. If you answer my question, I'm going to
2 assume that you understood my question. Is that
3 fair?

4 A. Yes.

5 Q. If you need to take a break, use the
6 restroom, get a snack, get some coffee, happy to
7 accommodate. I'd just ask that you not discuss
8 your testimony during that break. Okay?

9 A. Yes.

10 Q. Have you taken any substances that would
11 affect your ability to testify?

12 A. No.

13 Q. Have you taken any substances at all
14 today, any medication?

15 A. No.

16 Q. Will you state your full name for the
17 record.

18 A. Dawn Sarte Cox.

19 Q. What was your maiden name?

20 A. Sarte.

21 Q. Sarte is your maiden name. Have you
22 gone by any other names?

23 A. Yes, my previous marriages.

24 Q. What names did you go by then?

25 A. Dawn [REDACTED].

1 Q. Did you have a middle name before you
2 got married?

3 A. Yes.

4 Q. What was your middle name?

5 A. Andrea.

6 Q. How do you spell Andrea?

7 A. A-N-D-R-E-A.

8 Q. What's your date of birth?

9 A. [REDACTED]/65.

10 Q. What's your current address?

11 A. [REDACTED] in Myrtle
12 Beach.

13 Q. How long have you lived there?

14 A. A year and a half.

15 Q. Where did you live before that?

16 A. With my son's father.

17 Q. And what was the address?

18 A. [REDACTED].

19 Q. How long did you live there?

20 A. From October 2019 until May 2020.

21 Q. Before October of 2019, where did you
22 live?

23 A. I resided at Derek Cox's home.

24 Q. Are you from the Myrtle Beach area?

25 A. I moved to Myrtle Beach in 1979.

1 Q. Where are you originally from?

2 A. New Jersey.

3 Q. Other than New Jersey, have you lived in
4 any other states other than South Carolina?

5 A. Charlotte, North Carolina.

6 Q. When did you live in Charlotte?

7 A. I don't remember the exact date. I was
8 there 21 years.

9 Q. So did you -- just kind of generally --

10 A. I moved back to Myrtle Beach from
11 Charlotte in 2011.

12 Q. And is that when you moved in with Mr.
13 Cox?

14 A. No, I moved in with Mr. Cox in 2012.

15 Q. When you lived in Myrtle Beach the first
16 time what years was that?

17 A. When I moved with my mother?

18 Q. Yes.

19 A. 1979.

20 Q. Until when?

21 A. 1990, '91, somewhere in there.

22 Q. Then you moved to Charlotte?

23 A. That's correct.

24 Q. And then you moved back to Myrtle Beach?

25 A. That's correct.

1 Q. I'm just trying to get an understanding.
2 So do you have -- other than Jack and your
3 ex-husband, [REDACTED], any other relatives that
4 live in Horry County?

5 A. Yes.

6 Q. What are their names?

7 A. [REDACTED].

8 Q. Anyone else?

9 A. No.

10 Q. Is [REDACTED] first name?

11 A. Yes.

12 Q. I just wanted to make sure it wasn't a
13 nickname. Who lives with you currently?

14 A. No one. I live by myself.

15 Q. Some of the questions I ask you may seem
16 obvious but I just have to ask them to make sure
17 I get an answer on the record. Okay?

18 A. Yes.

19 Q. Are you currently married?

20 A. Yes.

21 Q. Who are you currently married to?

22 A. Roger Derek Cox.

23 Q. You didn't have a hearing on the divorce
24 in 2020 via Webex?

25 A. It was not finalized. Our separation

1 was finalized. We're not legally divorced.

2 Q. In the divorce are you the plaintiff or
3 the defendant?

4 A. Plaintiff.

5 Q. Is there a reason you haven't moved for
6 the divorce?

7 A. I could care less. I initiated the
8 separation. That was enough. I try to put that
9 piece out of me.

10 Q. I'm not understanding. What was the
11 purpose in moving for the separation if you're
12 not going to go through with the divorce?

13 A. My decision.

14 Q. Other than Jack, do you have any other
15 children?

16 A. I do not.

17 Q. Other than [REDACTED], any other previous
18 marriages that we haven't already talked about?

19 A. Yes. [REDACTED].

20 Q. When were you married to [REDACTED]?

21 A. I don't recall.

22 Q. Did that marriage end in divorce?

23 A. Yes.

24 Q. I just wanted to make sure it wasn't a
25 death.

1 A. Yes.

2 Q. Do you recall when you got divorced?

3 A. No.

4 Q. Where were you living when you got
5 married to [REDACTED]?

6 A. Myrtle Beach.

7 Q. Did you ever take [REDACTED] name?

8 A. I did.

9 Q. So Dawn [REDACTED] would have been another
10 name that you went by; is that correct?

11 A. Yes.

12 Q. So we've got [REDACTED], we've got [REDACTED], and
13 we've got --

14 A. And [REDACTED].

15 Q. When was that?

16 A. 1985.

17 Q. What state would that have been?

18 A. Myrtle Beach.

19 Q. Did that marriage end in divorce?

20 A. It did.

21 Q. Did you take [REDACTED] last name?

22 A. I absolutely did.

23 Q. Any other marriages?

24 A. No.

25 Q. What is the highest level of education

1 that you have?

2 A. High school.

3 Q. Where did you go to high school?

4 A. Myrtle Beach High School.

5 Q. Did you ever serve in the military?

6 A. I did not.

7 Q. Any sort of like technical degrees that
8 you have?

9 A. I went to cosmetology school but I
10 didn't finish through.

11 Q. Are you affiliated with any churches?

12 A. Wellspring.

13 Q. Any other social clubs or anything like
14 that that you're a member of?

15 A. No.

16 Q. Do you play any sports?

17 A. No.

18 THE WITNESS: May I ask a question?

19 MS. WHITE: Sure.

20 THE WITNESS: What's the relevance to
21 all of that?

22 MS. WHITE: I am just asking questions
23 to see what associations you're a member of
24 because I wouldn't want anyone from those
25 associations to be on our jury panel. Just like

1 I'm sure you wouldn't want anyone that I know to
2 end up on the jury panel, and that's really the
3 purpose.

4 THE WITNESS: Thank you.

5 MS. WHITE: I'm not trying to be nosy.
6 These are just things I have to ask to make sure
7 that our jury pool doesn't include people that
8 you know.

9 THE WITNESS: Okay.

10 BY MS. WHITE:

11 Q. Where do you work?

12 A. [REDACTED].

13 Q. What do you do for [REDACTED]?

14 A. Assistant vice president and mortgage
15 loan officer.

16 Q. How long have you done that?

17 A. I've worked for [REDACTED] -- February will
18 be 10 years. I was a junior up until -- I was a
19 junior loan officer up until about a year and a
20 half ago until I went into lead.

21 Q. And so was this the job that you held
22 when you lived with Mr. Cox then?

23 A. It is.

24 Q. And then before you worked for [REDACTED]
25 where did you work?

1 A. I'd have to give you my résumé.

2 Q. Let me ask you this question
3 differently. Overall, in your professional
4 career, what type of work have you done?

5 A. Loan officer. I've been in the mortgage
6 industry almost 30 years.

7 Q. Other than the lawsuit that you just
8 told me about that started with the car accident,
9 and divorces that you've been through, any other
10 lawsuits that you've been a part of?

11 A. No, none that I recall.

12 Q. I don't mean to offend you when I ask
13 you this series of questions. I ask them of
14 everyone. Have you ever been arrested?

15 A. No.

16 Q. So you've never been convicted of a
17 crime then either?

18 A. No.

19 Q. Any sort of drug abuse or addiction
20 issues that you've ever had?

21 A. No.

22 Q. Any sort of psychological treatment that
23 you've ever had?

24 A. No. Let me rephrase that. I did seek
25 counseling after we were in the car wreck.

1 Q. I think that's probably all the
2 background questions that I have for you for now.
3 I may revisit some of it if there's something I
4 forgot.

5 When did you first meet Mr. Cox?

6 A. When my sister was murdered.

7 Q. I'm so sorry to hear that. When was
8 that?

9 A. 2004.

10 Q. And where did you meet him?

11 A. He was married to my sister's best
12 friend. I met him at the funeral.

13 Q. And who was your sister's best friend?

14 A. [REDACTED].

15 Q. And so when did your relationship with
16 Mr. Cox, I guess, turn into a relationship?

17 A. 2009, 2010, 2009. Early -- beginning of
18 2010 is when he reached out to me.

19 Q. And when did you first introduce Mr. Cox
20 to your son?

21 A. 2011.

22 Q. That was before you moved in with him,
23 correct?

24 A. Yes.

25 Q. I guess when would you say that y'all

1 kind of labeled your relationship, would that
2 have been 2009/2010 relationship or after that?

3 A. 2010 is when he labeled it and said he
4 did not want me seeing anyone else.

5 Q. 2011 you introduce him to your son. How
6 were those interactions between Mr. Cox and your
7 son?

8 A. Not what one would expect.

9 Q. When he first met your son?

10 A. Yes. On my part, yes. It was not what
11 I would have hoped for.

12 Q. Can you explain that to me a little bit?

13 A. Very standoffish on both accounts in the
14 beginning.

15 Q. At the time that you -- well, first you
16 moved to Myrtle Beach before you moved in with
17 Mr. Cox, correct?

18 A. That's correct.

19 Q. Where was [REDACTED] living at that
20 point?

21 A. Here in Myrtle Beach.

22 Q. And when you moved to Myrtle Beach, how
23 often did Jack see [REDACTED]?

24 A. Whenever he wanted, but it was a week
25 with me, a week with his father.

1 Q. They were kind of standoffish at first,
2 when they first met, Mr. Cox and your son. Did
3 that relationship improve?

4 A. Tolerable.

5 Q. And then you chose to move in with Mr.
6 Cox?

7 A. I did.

8 Q. And did Jack move in with you when you
9 moved in with Mr. Cox?

10 A. His belongings moved in with me, that's
11 correct.

12 Q. What do you mean?

13 A. A week on, a week off.

14 Q. So he was still staying with his father
15 or whatever agreement you had with his father?

16 A. That's correct.

17 Q. And so at least when he had his weeks on
18 with you, he was also residing in Mr. Cox's
19 house, correct?

20 A. That's correct.

21 Q. And was the relationship still tolerable
22 at that point or did the relationship get better,
23 get worse?

24 A. I had spoken to Derek several times
25 about my expectations of what a parent is since

1 they differ. However, his -- Jack's father and I
2 never looked for Derek to be a father figure.
3 Jack had a father.

4 Q. What do you mean that your parenting
5 style differed?

6 A. We parent completely different. I don't
7 buy my children. I don't throw money at my son
8 to get love and to have a relationship.

9 Q. And that's what you think Mr. Cox does
10 with his children?

11 A. That's what Mr. Cox does do. I've
12 witnessed it.

13 Q. And so how long did you live with Mr.
14 Cox before you got married?

15 A. Four years.

16 Q. Do you remember the year you got
17 married?

18 A. '16.

19 Q. And how was the relationship between
20 Jack and Mr. Cox at the time that you got married
21 to Mr. Cox?

22 A. The same. Jack had asked me not to
23 marry him.

24 Q. Did he say why he didn't want you to
25 marry him?

1 A. Just -- we got off the boat one day. I
2 went to get -- I had to go to the grocery store.
3 Jack asked to ride with me and just said, Mommy,
4 don't marry him. And I did not elaborate.

5 Q. At the time that you moved in with Mr.
6 Cox, that time period before you got married to
7 him, did Mr. Cox provide food for you and Jack?

8 A. I bought the groceries.

9 Q. You bought the groceries. Okay. Did
10 Mr. Cox provide a home for you and Jack?

11 A. Of course.

12 Q. Did he contribute financially at all to
13 anything that had to do with Jack?

14 A. No, other than living.

15 Q. Did he participate -- let me ask you a
16 different way. Was Jack doing sports or
17 extracurricular activities or anything like that?

18 A. Yes.

19 Q. Did Mr. Cox participate in those?

20 A. At times.

21 Q. So he showed up for sporting events and
22 things like that; is that correct?

23 A. In the beginning, yes.

24 Q. Did y'all go on vacations and things
25 like that together?

1 A. He and I or with our children? He and
2 I, yes. As a family, no. We never did. We
3 never vacationed with our children.

4 Q. Did y'all do things as a family
5 together?

6 A. We would go out to eat dinner with no
7 conversation. We would go on the boat, again,
8 with minimal conversation.

9 Q. So you chose to marry Mr. Cox despite
10 what you're outlining to me, correct?

11 A. That's correct. I've made a lot of
12 mistakes and this will go down as my gravest.

13 Q. And so Jack asked you not to marry Mr.
14 Cox and you didn't really ask anything further
15 after that?

16 A. I did not.

17 Q. Did Jack ever exhibit any sort of
18 emotional issues before moving in with Mr. Cox?

19 A. No.

20 Q. Did he have any sort of emotional issues
21 as it relates to his father?

22 A. No. They have -- their relationship
23 works for them. Again, not -- that's their
24 relationship. That's between Jack and his
25 father.

1 Q. I want to talk about some of the things
2 that have been alleged, specifically that were
3 done by Mr. Cox, and just what you know about
4 them and your recollection of these events.

5 The pleading states that in October of
6 2016 Mr. Cox snuck out and damaged the BMW. Does
7 that sound like an accurate date?

8 A. I don't know the exact dates because
9 your client destroyed the footage.

10 Q. How do you know that he destroyed the
11 footage?

12 A. Because he took the black box from the
13 house when we were trying to get the footage and
14 he would not give me the security code to get to
15 the footage to see who was damaging the car.

16 Q. You don't know that the footage is
17 destroyed, you just weren't able to access it?

18 A. No. We took the footage. Once he got
19 -- once Mr. Cox got done with the box for the
20 weekend, he returned it to us and we had it
21 looked at and we were told the footage has just
22 been removed.

23 Q. Who told you that the footage --

24 A. Whoever Jack's father took it to.

25 Q. You don't know who Jack's father took it

1 to?

2 A. I do not.

3 Q. Do you have contact information for
4 Jack's father?

5 A. Yes, I do.

6 Q. Do you have cell phone number or a
7 home phone number?

8 A. I do.

9 Q. Can you provide me with that phone
10 number, please?

11 A. For what purpose?

12 Q. So that I can question him about this
13 security footage.

14 A. I'll speak to him, yes. I'll speak to
15 [REDACTED] about that and then Jack can talk to his
16 attorney about it.

17 MS. WHITE: Can we go off the record
18 real quick?

19 (Discussion off the record.)

20 BY MS. WHITE:

21 Q. Would you please provide [REDACTED]
22 phone number?

23 A. Yes.

24 Q. I mean, I'm asking for it right now.

25 A. [REDACTED].

1 Q. So Jack's father took it to someone who
2 said that the security footage was destroyed.
3 How do you know specifically that it was footage
4 of the BMW being destroyed?

5 A. I don't know anything specifically.

6 Q. Have you seen any security footage of
7 the BMW or him doing anything to the BMW before
8 it was destroyed?

9 A. He would not give me access to the
10 security footage. That Jack's father provided.

11 Q. What specifically was done to the BMW by
12 Mr. Cox?

13 A. What's in testimony. I don't have
14 everything in my recollection.

15 Q. Well, what do you recall?

16 A. He damaged Jack's BMW.

17 Q. What part of the BMW did he damage?

18 A. The car and the headlights.

19 Q. When you say "the car," do you mean --

20 A. The body.

21 Q. What did he do to the body of the car?

22 A. Keyed it.

23 Q. What did he do to the headlights?

24 A. Scraped them.

25 Q. I'm sorry. I may have asked you this.

1 I just need to make sure I get it on the record.

2 Who owned the BMW?

3 A. I don't recall. We'd have to pull
4 title.

5 Q. Jack didn't own it though, did he?

6 A. No.

7 Q. So did Mr. Cox own it?

8 A. No.

9 Q. So was it either you or [REDACTED] that
10 owned it?

11 A. Yes.

12 Q. So at some point was the BMW repaired?

13 A. Yes.

14 Q. And who paid for those repairs?

15 A. Mr. Cox.

16 Q. And was the BMW repaired to your
17 satisfaction?

18 A. No.

19 Q. It was not repaired to your
20 satisfaction?

21 A. The entire car was not repaired.

22 Q. I'm going to show you what was already
23 marked as Exhibit 1. I'll let you flip through
24 that. Take your time. Let me know when you're
25 done flipping through it.

1 A. I've already seen these. That's fine.

2 Q. I'm going to ask you, at the bottom
3 there do you see where it says "Beach Ford"?

4 A. Yes.

5 Q. Those are what's called Bates stamps.
6 If I refer to a Bates stamp, that's what I'm
7 talking about.

8 A. Yes.

9 Q. Flip to Bates stamp 16 for me, please.

10 A. Okay.

11 Q. And do you see -- there's these little
12 boxes. The second box says, "Category: Customer
13 Communication," and there's a paragraph under
14 there.

15 A. Yes.

16 Q. Can you read that photograph into the
17 record me?

18 A. "Dawn Sarte called and advised she is
19 the owner of the vehicle. She states she is fine
20 with all repairs written. Just wants the paint
21 matched good and wants to add cleaning/buffing to
22 the headlights. I added this on the estimate and
23 sent her a copy via email that what is on the
24 estimate now is what exactly we are doing unless
25 she wants to add anything else - she understood -

1 assigned tech -- repairs underway."

2 Q. Would you agree with me that according
3 to what's written in this document that you
4 stated you are fine with the repairs that were
5 made to the BMW?

6 A. No, that's -- I was not fine with the
7 repairs because this is before they assigned it
8 to the tech. I was not happy when we picked up
9 the car.

10 Q. But according to this document it says,
11 "She is fine with all repairs as written as is."

12 A. As we described, yes, that was going to
13 be done. I wanted the car painted. I wanted the
14 car to match the original.

15 Q. Do you have photos of the damage that
16 was done to the vehicle?

17 A. I don't.

18 Q. Do you have photos --

19 A. Jack does.

20 Q. Do you know why Jack hasn't produced
21 those to us?

22 A. I don't.

23 Q. Do you have photos of the repairs that
24 were made to the vehicle?

25 A. I don't.

1 Q. Does Jack still have the vehicle?

2 A. No.

3 Q. What does he have now?

4 A. 4Runner.

5 Q. And when was the 4Runner purchased?

6 A. I can't remember, '18 or '19.

7 Q. Was it a new 4Runner?

8 A. It was.

9 Q. Who purchased it?

10 A. His father.

11 Q. That would have been approximately two
12 years after Mr. Cox damaged the BMW; is that
13 correct? Or a year, maybe?

14 A. A year, possibly.

15 Q. Did you ever ask Mr. Cox to make
16 additional repairs to the BMW before he got the
17 4Runner?

18 A. I did not.

19 Q. Why not?

20 A. I did not. There is no why I didn't. I
21 just did not.

22 Q. Did you express to him that you weren't
23 satisfied with the repairs that were made?

24 A. I don't recall.

25 Q. The complaint also alleges that Mr. Cox

1 took Jack's shoes and threw them in the waterway.
2 What do you know about that?

3 A. I know that prior to us going to dinner
4 that night Jack had a pair of shoes sitting under
5 the bar in the kitchen. I moved them to the
6 buffet so that he would pick them up and take
7 them to his room when he walked past.

8 When we got home, I took the dog out,
9 smoked a cigarette, but walked through the house
10 to see Mr. Cox at the water and Jack's shoes
11 gone.

12 Q. Did you actually witness him throw the
13 shoes into the water?

14 A. I actually witnessed him moving his arm
15 throwing something into the water. It was dark.

16 Q. But you don't know that it was his shoes
17 that was in his hands?

18 A. No, I don't.

19 Q. Who purchased the shoes for Jack?

20 A. I did.

21 Q. Did you buy new ones for him?

22 A. I did not.

23 Q. Did Mr. Cox buy new ones for him?

24 A. He did not.

25 Q. Do you know if he ever got a new pair of

1 shoes?

2 A. Through the course of life, yes.

3 Q. Did Jack witness Mr. Cox throwing the
4 shoes away?

5 A. No, he did not.

6 Q. I think I forgot to ask you this. Do
7 you know if Jack witnessed Mr. Cox doing anything
8 to the BMW?

9 A. I don't know. You'd have to ask Jack.

10 Q. I just didn't know if you knew about
11 that. The complaint also states that you and Mr.
12 Cox engaged in many arguments due to Mr. Cox's
13 actions that have caused Jack mental anguish. Do
14 you know what arguments he's referring to?

15 A. Restate that again. I'm sorry.

16 Q. Sure, sure, sure. The complaint states
17 that you and Mr. Cox engaged in many arguments
18 over Mr. Cox's actions that caused Jack mental
19 anguish.

20 A. I don't understand that because I would
21 go after Jack and question Jack on what he was
22 doing to his car to cause the damage to his car.
23 Now, that caused Jack duress because Jack never
24 caused any issues as a child growing up.

25 Derek and I had conversation regarding

1 when he admitted what he had done. Could Jack
2 and [REDACTED] have overheard? Yes.

3 Q. Am I understanding you correctly that
4 you and Mr. Cox did not argue in front of Jack?
5 Is that what I'm understanding?

6 A. We never argued with the children
7 sitting at the roundtable.

8 Q. Did Mr. Cox ever physically threaten
9 Jack that you know of?

10 A. I cannot answer that.

11 Q. So you didn't witness that happen?

12 A. I personally did not.

13 Q. Did you ever witness Mr. Cox verbally
14 abuse Jack?

15 A. No.

16 Q. Who was Jack's primary care physician
17 when he was in high school?

18 A. I don't know his name. It's in the
19 records.

20 Q. Did you ever take him to a psychologist?

21 A. I did not. Are you referring to
22 everything that has occurred?

23 Q. Yes.

24 A. He spoke to everyone in the church and
25 he spoke to all the school counselors.

1 Q. But when he was in high school living
2 with you and Mr. Cox, did you ever take him to
3 seek any sort of counseling?

4 A. I did not.

5 Q. Did you ever think you had reason to
6 take him for counseling?

7 A. I did not.

8 Q. I want to talk about --

9 A. I'd like to add to that. I did not know
10 the amount of distress my son was under until
11 Jack gave his testimony at church in front of the
12 congregation regarding his relationship and what
13 Mr. Cox had done to him. At that point I did not
14 know what Jack was dealing with.

15 Q. Let's talk about that. What did Jack
16 describe that he was going through?

17 A. You'd have to speak to Jack on that.
18 I'm not going to speak for Jack.

19 Q. Well, you witnessed the --

20 A. I did. My son was under a lot of
21 distress.

22 Q. What is your recollection of --

23 A. Locking himself in the bathroom at
24 school, crying, questioning his worth, wanting to
25 know what he did for someone who was supposed to

1 be a role model in his life to target him the way
2 he did.

3 Q. And what actions of Mr. Cox prompted
4 this speech?

5 A. The automobile. That's all Jack was
6 privy to. He had suspicion of the shoes because
7 I had questioned Jack and he talked to me about
8 his shoes. And Mr. Cox and his daughter were on
9 their way to a swim meet, and I contacted him on
10 the telephone and spoke to him about the shoes.
11 And Jack was upstairs and did overhear me on the
12 phone.

13 Q. Was that the only time that Jack talked
14 in front of the congregation or did he do that
15 more than once?

16 A. That was the only time in front of the
17 congregation.

18 Q. At that point did you think you needed
19 to seek any sort of counseling for him?

20 A. No. I knew that he was speaking with
21 his church faculty and I think that's better than
22 -- that's what he needed because Jack is very
23 into church and follows his path with God.

24 Q. It's been alleged that Mr. Cox has done
25 some things with Jack's toothbrush. And before

1 we get into that, aside from the shoes and the
2 car, was there anything else that Mr. Cox did
3 that you think has contributed to Jack's
4 emotional distress?

5 A. I can't recall right off the top of my
6 head. I'm sorry.

7 Q. So let's talk about the toothbrush
8 incident. It's been alleged that Mr. Cox put
9 soap on Jack's toothbrush. And I will represent
10 to you and to the attorney, he can comment if he
11 thinks I'm mischaracterizing. I'm not trying to
12 do that. It's my understand from Jack's
13 testimony that he didn't know anything about this
14 toothbrush or what had been done to the
15 toothbrush until after he filed this lawsuit.

16 A. That is correct.

17 Q. But did you have knowledge of what
18 happened to the toothbrush?

19 A. I did.

20 Q. So why did you not tell Jack when it
21 happened?

22 A. Because I needed to do what I felt was
23 best as his mother.

24 Q. And how did you discover what was
25 happening with the toothbrush?

1 A. Through footage.

2 Q. And how did you get this footage?

3 A. I put up cameras in the bathroom.

4 Q. What prompted you to put cameras in the
5 bathroom?

6 A. When my son kept complaining that he
7 didn't feel good.

8 Q. What do you mean by that?

9 A. Just kept saying that his mouth felt
10 funny, his stomach would get upset. And knowing
11 Mr. Cox and how we did have video footage of the
12 house and how he would position the cameras to
13 look at the neighbor's yard when he was over
14 there, and if we were out to dinner to look at
15 the footage to see who was next door at the
16 neighbor's house, I knew. I just knew something
17 was not right.

18 Q. And so that prompted you to put up
19 cameras in the bathroom?

20 A. Yes, ma'am.

21 Q. And so help me understand, why the
22 bathroom? What did you think was happening in
23 the bathroom?

24 A. Well, Jack, from the time we went in,
25 did not want to use the bathroom that he and

1 [REDACTED] would be sharing and spoke to me about
2 that. He did not want to take away [REDACTED]
3 bathroom, having him in there. And I said that's
4 fine. It's not a big deal. You can just shower,
5 get ready in mine and Derek's bathroom, just as
6 long as it never interfered with Derek.

7 So Jack would shower at night, do all
8 his stuff at night. And when it was time for him
9 to get up for school, Derek was already gone for
10 work, so there was no interfering with his time
11 in the bathroom.

12 Q. How many full baths were in the house?

13 A. Upstairs, two, and then downstairs there
14 was a shower and a sink where Jack finally got
15 moved to.

16 Q. What was the reason that Jack couldn't
17 have used that other bathroom?

18 A. What other bathroom?

19 Q. The one you just described.

20 A. The one downstairs?

21 Q. Yes.

22 A. I guess he could have. I mean, he
23 eventually did when we cleaned everything out.
24 That was a storage room.

25 Q. He was in high school during this time

1 period that he was using the bathroom that you
2 and Mr. Cox shared; is that accurate?

3 A. He has using that bathroom since he was
4 in middle school.

5 Q. Was that ever a point of contention
6 between you and Mr. Cox that Jack used your --

7 A. He never said anything about it.

8 Q. You didn't think anything was strange
9 about, you know, a high school age child sharing
10 a bathroom with you and your husband?

11 A. No, I don't, when it's a bathroom. How
12 do other families live in one-bathroom homes? Is
13 that odd?

14 Q. I'm just asking. I mean, there were
15 multiple bathrooms in the house.

16 A. That's irrelevant.

17 Q. There was never any sort of indication
18 from Mr. Cox that that kind of put a strain on --

19 A. I don't understand. No. If there was a
20 strain, he would have spoken up and said
21 something.

22 But like I said, Jack showered at night
23 right after dinner while we were sitting on the
24 couch. And I would text Jack. If I didn't hear
25 the water running by 8 o'clock at night, I would

1 text him and say, go ahead and get in the shower.
2 So there was never any time that -- everything I
3 could do was to always keep Derek at peace with
4 everything.

5 Q. He never expressed to you that that kind
6 of felt like an invasion of your marital space?

7 A. No. And I didn't find it -- no. I'm
8 Greek and Italian. No. There is no martial
9 space to me.

10 Q. Again, help me understand why you
11 thought that something was going on in the
12 bathroom.

13 A. As I said earlier, when Jack was saying
14 that his mouth felt funny or his stomach hurt, I
15 just had -- knowing what Mr. Cox had done
16 previously, I felt he was up to something else.

17 Q. Did you ever take Jack to the doctor
18 when he said he felt funny?

19 A. No. I always asked him if he had a
20 bowel movement. Standard Mom answer.

21 Q. And so instead of taking him to the
22 doctor you decided to put up cameras to film your
23 husband in the bathroom?

24 A. That's correct.

25 Q. Well, while we're talking about it,

1 let's watch them. I'm going to show you these
2 videos.

3 A. I don't care to see them.

4 MS. WHITE: That is not how this is
5 going to work. We're going to watch the videos.
6 I am not introducing them as evidence, and I am
7 reserving my right to later have them excluded
8 from evidence pursuant to Rule 4243 and 611,
9 South Carolina Rules of Evidence, as I stated in
10 Jack's deposition.

11 We're going to watch these videos. I
12 want you to tell me specifically where Mr. Cox
13 does the things specifically to Jack's toothbrush
14 that it's been alleged that he did.

15 This is the first one. And you can
16 watch this as many times as you want. You can
17 press play whenever you're ready and you can back
18 it up and watch it however many times as you
19 want.

20 (Video is played.)

21 THE WITNESS: That right there.

22 BY MS. WHITE:

23 Q. What do you mean "right there"?

24 A. When he took the toothbrush and put it
25 behind him.

1 Q. Can you see specifically where he put
2 that toothbrush?

3 A. I can't. But I can read his letter of
4 testimony.

5 Q. Yeah, that's not what we're talking
6 about right now. We're talking about this video
7 specifically that you took.

8 So you can't see where the toothbrush
9 went, correct?

10 A. No, ma'am.

11 Q. And so can you tell me whose toothbrush
12 that is specifically by looking at this video?

13 A. No. I cannot see in this video
14 specifically.

15 MS. WHITE: Watch it to the end for me,
16 please.

17 (Video is played.)

18 THE WITNESS: That's his toothbrush.

19 BY MS. WHITE:

20 Q. How do you know?

21 A. I know where all the toothbrushes were
22 in the bathroom.

23 Q. But can you tell from this video
24 watching it specifically whose toothbrush it is?

25 A. No, not specifically watching this

1 video. But knowing the outlay of our bathroom
2 and where I kept everything and where I kept --
3 Jack's stuff never stayed out on the -- Jack's
4 stuff never stayed out. That's putting soap on
5 the toothbrush. Jack's stuff never stayed out on
6 our counter.

7 Q. Tell me in this video where you can see
8 that he's putting soap on toothbrushes.

9 A. What he's doing right now by his arm,
10 went and got Jack's toothbrush. He's putting it
11 back in the drawer right now.

12 Q. Can you specifically see the soap in
13 this video?

14 A. No, I cannot.

15 Q. Do you need to watch the video again?

16 A. I don't.

17 MS. WHITE: Let's watch the other one.

18 (Video is played.)

19 THE WITNESS: That's Jack's toothbrush.

20 BY MS. WHITE:

21 Q. How do you know specifically that's
22 Jack's toothbrush?

23 A. Because it's white and blue. And he
24 just put soap on it because the soap was right
25 there by the Aveeno bottle.

1 Q. But you can't specifically see the soap
2 in this?

3 A. No, I cannot.

4 Q. Do you need to watch it again?

5 A. No, ma'am.

6 Q. Did you specifically see Mr. Cox put the
7 toothbrush anywhere near his rear-end in either
8 of these videos?

9 A. No, ma'am.

10 Q. Have you shown this video to anyone
11 other than your attorney and Jack?

12 A. No, not even to his father.

13 Q. You haven't shown these videos to
14 anyone?

15 A. Not that I can recall.

16 Q. Have you ever heard the term voyeurism?

17 A. No.

18 Q. I'm going to show you something.

19 A. Yes, I have shown this video to someone
20 else.

21 Q. Who did you show it to?

22 A. [REDACTED], an attorney.

23 Q. He's an attorney?

24 A. He is.

25 Q. Why did you show them to that attorney?

1 A. Because I was in the middle of my
2 lawsuit and we were going to take it to trial and
3 I told -- oh, I had to have my surgery. I said
4 that I wasn't in a position to go to a trial on
5 that. I was dealing with too much at home. And
6 I showed them to him, what was going on.

7 Q. How do you spell his last name, the
8 attorney?

9 A. [REDACTED].

10 Q. So you showed your attorney those videos
11 because you weren't -- I'm not understanding what
12 prompted you to show him.

13 A. Because of everything going on with the
14 lawsuit. And I was not in my space to even go to
15 have the surgery and all of that. He wanted me
16 to have surgery before I finalized the lawsuit
17 with the car wreck.

18 Q. Just a second. I should have a third
19 copy of what I want to show you, but my papers
20 got a little jumbled. I'm going to give you
21 this. Do you see Section B?

22 A. Uh-huh.

23 Q. Can you read that into the record for
24 me, Section B?

25 A. "A person commits the crime of voyeurism

1 if, for the purpose of arousing or gratifying
2 sexual desire of any person, he or she knowingly
3 views, photographs, audio records, video records,
4 produces, or creates a digital electronic file,
5 or films another person, without the person's
6 knowledge or consent, while the person is in a
7 place where he or she would have a reasonable
8 expectation of privacy. A person who violates
9 this provision of this subsection" --

10 Q. Stop there. Did Mr. Cox give you
11 consent to film him nude in the bathroom?

12 A. No, he did not.

13 Q. And would you feel like your privacy was
14 violated if he had done the same to you?

15 A. No, I would not.

16 Q. You wouldn't feel that your privacy was
17 violated if someone took a video of you nude
18 without you knowing it?

19 A. No, ma'am.

20 Q. Do you think his privacy is violated by
21 you showing it to third parties?

22 A. No, ma'am.

23 Q. Why do you not think that?

24 A. It's his actions.

25 Q. What action?

1 A. Of what he had admitted he did.

2 Q. What he admitted he did. What did those
3 videos show?

4 A. What he did.

5 Q. Did they show him putting a toothbrush
6 in his rear-end?

7 A. No, the video did not, but we know what
8 he did.

9 Q. So you thought that it was okay to show
10 people a video of Mr. Cox nude brushing his teeth
11 and you don't think that that's a violation of
12 his privacy?

13 A. I don't.

14 Q. And if he did the same to you you
15 wouldn't have any problem with it?

16 A. No, ma'am.

17 Q. Again, just for the record, you couldn't
18 see the soap in either of those videos, could
19 you?

20 A. No.

21 Q. And you never told Jack to see a
22 psychologist during any of this time, did you?

23 A. No, I did not. As I stated, he was
24 speaking to people.

25 MR. SPIRAKIS: Off the record for a

1 moment.

2 (Discussion off the record.)

3 MS. WHITE: For the record, what I had
4 you read into the record was 2012 South Carolina
5 Code of Laws, Title 16, Chapter 17, Section
6 16-17-470, Eavesdropping, Peeping, Voyeurism.

7 BY MS. WHITE:

8 Q. So tell me about this Letter of Omission
9 that Mr. Cox signed. Who prepared that document?

10 A. He did.

11 Q. What were the circumstances of him
12 preparing that document?

13 A. After I viewed the video I went to his
14 job and asked him to write down what he had done
15 to Jack.

16 Q. And at that point had you requested a
17 separation?

18 A. No, ma'am.

19 Q. So let's look at that document. I think
20 I had that as an exhibit as well. The last item
21 talks about him making car payments on the CLS
22 550. What was that about?

23 A. The car was a gift to me. For our
24 wedding he got it for me, after we got married.

25 Q. And why did you have him write this down

1 on this Letter of Omission?

2 A. I don't recall. I just said what you
3 did to Jack.

4 Q. Do you know what "omission" means?

5 A. It's his letter of guilt.

6 Q. So what was the purpose of you coming to
7 his work that day? Was it specifically to get
8 him to admit he had done those things?

9 A. Yes, and to ask why.

10 Q. Why did you do it at his place of
11 business?

12 A. I don't know why. I mean, I left my
13 place of business because that's where I viewed
14 the document, the video footage that I saw.

15 Q. What do you mean that's what -- you
16 viewed it at your workplace?

17 A. Uh-huh. I was at work when I finally
18 decided to look at it.

19 Q. And you took it with your phone or did
20 you take it with a --

21 A. I was on a break, so I looked at the
22 video. It was the way I had it downloaded so I
23 could look at it.

24 Q. So you decided to look at it at work and
25 then go to his place of business. And did y'all

1 have a conversation before he wrote those things
2 down or how did this go down?

3 A. I don't recall exactly.

4 Q. At what point did you request a
5 separation from Mr. Cox?

6 A. Shortly thereafter I started speaking to
7 different attorneys.

8 Q. And I also have an audio recording
9 that's about 42 minutes long. I'm not going to
10 play it. When did that audio recording take
11 place?

12 A. I'm sorry. Say that again.

13 Q. When did you take that audio recording
14 of the conversation between you and Mr. Cox?

15 A. The same day.

16 Q. The same as this? (Indicating.)

17 A. That's correct.

18 Q. I'm not going to play it just because
19 it's so long and we'll be here all afternoon if I
20 do. But at one point in that video in the
21 recording you mention something about Mr. Cox
22 having supported his prior wives but not
23 supporting you. What's that about?

24 A. I don't recall.

25 Q. Was that a point of contention for you,

1 that prior wives had been supported but not you?

2 A. No. I have worked. I never asked Derek
3 for anything.

4 Q. Well, you asked him to pay for your
5 vehicle.

6 A. A gift. I wanted -- the car, it was a
7 gift to me, so I wanted the car paid off because
8 it was a gift.

9 Q. Why did you want it paid off?

10 A. I didn't care if he paid it off. I gave
11 him different options through speaking to the
12 first attorney of what different options were --
13 to get the car, you know, paid off and however he
14 opted to do so.

15 Q. At this point when he signed this, you
16 were already speaking to attorneys?

17 A. Shortly thereafter.

18 Q. So this is Mr. Cox's handwriting?

19 A. That is.

20 Q. Did you instruct him what to put in this
21 letter or did he put this there himself?

22 A. He wrote it all himself.

23 Q. Did you ever show him the videos that
24 you took?

25 A. I told him I would be happy to show them

1 to him while I was standing at his office.

2 Q. What signs of emotional distress has
3 Jack exhibited that you know of?

4 A. Jack has a lot of issues with trust,
5 self-worth, not understanding -- to trust someone
6 of that position. I have worked diligently to
7 teach Jack to put everything into a compartment
8 and deal with it at hand. I can only do so much.
9 He's still in counseling at Wofford.

10 Q. What examples can you give me of him not
11 trusting authority?

12 A. I can't give you stuff offhand. I'm
13 sorry.

14 Q. Jack now has seen these videos, right?

15 A. I don't know if he has or not, to be
16 quite honest.

17 Q. Have you ever attended any of the
18 counseling sessions with him at Wofford?

19 A. No. He's considered an adult.

20 Q. Sure. Who else was present when the
21 Letter of Omission was signed? Anyone other than
22 you and Mr. Cox?

23 A. No.

24 Q. What's the business of Cox Millwork, to
25 your understanding?

1 A. Millwork, doors, windows.

2 Q. What of these actions, if any, did Mr.
3 Cox do in his capacity as an owner, agent or
4 officer of Cox Millwork?

5 A. Can you rephrase that?

6 Q. What actions has Mr. Cox done that are
7 being alleged in this lawsuit, did he do as an
8 officer, agent or owner of Cox Millwork?

9 A. I can't answer that.

10 Q. What is Cox Properties, to your
11 knowledge?

12 A. Where his company -- Cox Properties
13 handles everything through Cox Millwork, if I'm
14 saying it right. I don't know. I never got
15 involved with what he and his brother and his
16 father had.

17 Q. Do you know if he committed any of these
18 acts that are being alleged in his capacity as an
19 owner, officer or agent of Cox Properties?

20 A. He's an owner of them, so, yes.

21 Q. Sure. But was he committing these acts
22 on behalf of Cox Properties?

23 A. On behalf?

24 Q. Sure, yes.

25 A. I would say not on behalf of.

1 Q. What is Waterside Drive Boat Ramp, LLC?

2 A. The boat ramp beside the property line.

3 Q. What is the business of the boat ramp?

4 A. Again, I don't get involved with his
5 stuff, Mr. Cox's stuff or his business affairs.

6 Q. Do you know if he committed any of these
7 acts as an owner, officer or agent of the boat
8 ramp?

9 A. Again, I can't answer that.

10 Q. One of the allegations that Jack has
11 brought against Mr. Cox is violation of South
12 Carolina Code 44-29-145. And it's being alleged
13 that Mr. Cox has knowingly transmitted HIV or
14 some other sexually transmitted disease by way of
15 what is being alleged with the toothbrush. What
16 evidence do you have that Mr. Cox has HIV?

17 A. I can't answer that. I don't know what
18 is between Jack and his attorney.

19 Q. I'm not asking what's between Jack and
20 his attorney. I'm asking if you're aware of my
21 client having HIV.

22 A. I'm not.

23 Q. Are you aware of him having any other
24 sexually transmitted disease?

25 A. I'm not.

1 Q. Since you are married to him, I assume
2 you were sexually active with him. Is that fair
3 to assume?

4 A. Yes.

5 Q. Did you ever have an STD test following
6 your marriage with him?

7 A. I didn't.

8 Q. Did you have any other sexual partners
9 throughout your relationship with Mr. Cox?

10 A. No.

11 Q. As we sit here today, in your opinion,
12 is there any basis for the allegation that he may
13 have transmitted HIV to your son?

14 A. Until tests are done I can't answer
15 that.

16 Q. And you haven't had a test done?

17 A. I have not.

18 Q. Are you aware if Jack has had a test
19 done?

20 A. He's 18 years -- 20 years old. I don't
21 know. He's grown.

22 Q. And you don't have any knowledge as to
23 Mr. Cox having any sort of STD; is that correct?

24 A. I have no knowledge.

25 Q. What evidence do you have that Jack had

1 an injury by way of intellectual or psychological
2 capacity as being alleged in the complaint?

3 A. I don't -- I can't answer that. Jack
4 has to answer that.

5 Q. Specifically what's being alleged is
6 violation of South Carolina Code 20-7-49, which
7 states the existence of the impairment is
8 afforded by the opinion of a mental health
9 professional or medical professional.

10 Would you agree that you have never
11 taken Jack to a mental health professional
12 throughout the time you lived with Mr. Cox?

13 A. I have not.

14 Q. And did you ever take him to a medical
15 professional to seek help for the issues?

16 A. I did not.

17 Q. Do you know why Jack filed this lawsuit?

18 A. I can't answer on behalf of Jack.

19 Q. Did you ask him to file this lawsuit?

20 A. Why would I ask my son to -- if I wanted
21 to do anything, I would have done something prior
22 to. I wanted to leave Mr. Cox when I found out
23 about the car.

24 Q. Why didn't you?

25 A. Because when we sat down with Jack, his

1 father and I, and told him that it was Mr. Cox,
2 Jack's response -- I said we were leaving. And
3 Jack said that was not right. That maybe
4 something was wrong with Derek and he deserved a
5 second chance. And Derek assured me he would be
6 getting counseling for his actions.

7 Q. And at one point Mr. Cox asked you to
8 sit down with Jack so he could talk and apologize
9 to him; is that correct?

10 A. He did when this first happened. When
11 he wrote his letter he asked me where Jack was.
12 I said, "Now is not the time to go near Jack."

13 Q. Did that conversation ever happen, to
14 your knowledge?

15 A. Yes. Jack -- because -- yes. Derek did
16 not initiate a conversation with Jack but the
17 conversation did occur.

18 Q. Did Mr. Cox ever apologize to him, to
19 your knowledge?

20 A. Yes.

21 Q. I'm trying to understand. If Mr. Cox
22 caused all of this trauma to Jack and you were
23 aware of it when he was still within your custody
24 and care, why didn't you take him to seek
25 professional help?

1 A. Because he was speaking to the church
2 and I felt that was better than sitting in front
3 of a therapist. And he had a huge support group
4 at church.

5 Q. Are you aware of any damages that Jack
6 has as it relates to this lawsuit?

7 A. Rephrase, please.

8 Q. Sure. Does he have any damages as it
9 relates to what happened to the BMW?

10 A. I don't understand. I mean, I don't
11 understand where you're going with this.

12 Q. He didn't own the BMW, right?

13 A. No. There's no personal -- to his
14 property because he did not own it. It's all
15 psychological.

16 Q. And you never took him to seek
17 psychological help; is that correct?

18 A. That's correct.

19 Q. We don't have any medical bills or
20 medical evidence during the time that he lived
21 with you to suggest that he has any sort of a
22 clinical issue that's been diagnosed; is that
23 correct?

24 A. No, not while he was with me. I mean,
25 maybe his counselors at Wofford since he speaks

1 to them on his own accord.

2 Q. So you didn't ask Jack to file this
3 lawsuit because you were unhappy with the
4 settlement agreement?

5 A. I didn't really care about a settlement
6 agreement.

7 MS. WHITE: We'll mark this one as an
8 exhibit.

9 (Exhibit 1 was marked for
10 identification.)

11 BY MS. WHITE:

12 Q. This is a Facebook post. I believe it
13 came from your Facebook, dated November 6, 2019.
14 Do you remember making this post?

15 A. I do.

16 Q. Can you read that first post for me.

17 A. "One month ago today, my marriage to
18 Derek Cox came to an end. It has been a
19 whirlwind of emotions for me. Yet, I think about
20 6.

21 The outreach of love and prayers. For
22 those inquiring, it took a year. It was August
23 of 2017 when Derek confessed to part one of his
24 actions. But until you know the whole story, I
25 ask that you keep your opinions to yourself and

1 keep Jack in prayer. This is far from over. And
2 if you are wondering, please come to me. I have
3 a lot of video footage. Derek is not what he
4 portrays. In a town of the good ole boys, be
5 careful. Because a vow to God didn't stop him."

6 Q. What did you mean by this is far from
7 over?

8 A. What my child is going through and
9 witnessing and hearing when my son gave his
10 testimony, knowing this was not going to be
11 brushed under the rug. It's not an I'm sorry and
12 you can take away what a grown person did to a
13 child.

14 Q. So at this point did you have any
15 intention of having Jack file a lawsuit about
16 these things?

17 A. No. I didn't know what Jack was going
18 to do. If I had any -- if I was going to do
19 anything, I could have done it when I reached out
20 and got my separation because Jack was not of age
21 at that time.

22 Q. So when you say "this is far from over,"
23 what did you expect to happen after that then?

24 A. Far from over as a mother, knowing what
25 -- the guilt that I have that was caused to my

1 child by a vow I took.

2 Q. When you said, "I have a lot of video
3 footage," what footage are you referring to?

4 A. The videos we looked at.

5 Q. Other than the people that we've already
6 spoken about, did this refresh your recollection
7 as to anyone else that you might have shown that
8 video footage to?

9 A. I don't recall.

10 Q. And you also said that he confessed to
11 part one of his actions. What do you consider
12 part one of his actions?

13 A. The car.

14 Q. And so at this point was Jack aware of
15 what had happened in the video?

16 A. The car. Jack was not aware -- I don't
17 know when Jack was made aware of everything.

18 Q. I may have asked you this already and I
19 apologize if I have. Was Jack aware of the video
20 footage at the time this lawsuit was filed?

21 A. Jack knew that I had a written letter,
22 statement.

23 Q. But he hadn't seen the video?

24 A. (Witness shakes head.) And he hadn't
25 seen the letter.

1 Q. So he hadn't seen the letter and he
2 hadn't seen the videos, but he filed a lawsuit
3 about a letter and a video that he hadn't
4 actually seen?

5 A. And asked the attorneys to contact me.

6 Q. To contact you?

7 A. That I had everything. I did not want
8 Jack to see any of it. I tried to do what I
9 could do to protect my child knowing that
10 eventually I couldn't. But I did the best that I
11 could at that time that I thought was right.

12 Q. What did you talk to the attorneys about
13 when they contacted you about Jack's case?

14 A. What I had.

15 Q. So did they talk to you about this case
16 before Jack filed the lawsuit?

17 A. No. Jack had already had the attorney
18 and I had to give what I had.

19 Q. So you didn't have any conversation with
20 his attorney about these actions before Jack
21 filed the lawsuit?

22 A. Not to my knowledge, no.

23 Q. Go to the next page. There's a comment
24 by [REDACTED]. That's your ex-husband, correct?

25 A. That's correct.

1 Q. What does he say in that post?

2 A. "Sometimes you have to remove their mask
3 to see the true demon that lies underneath."

4 Q. And is this actually Derek Cox in this
5 photo?

6 A. It is.

7 Q. And what is your comment beneath that?

8 A. "This is Derek out on Halloween. This
9 is who he truly is. Make no mistake, I will not
10 stop. You may have been able to turn your other
11 wives' lives upside down but, Derek Cox, I'll see
12 you in hell."

13 Q. What did you mean by that, "I will see
14 you in hell"?

15 A. I will do what I have to do to support
16 my child through this.

17 Q. So at the time that you wrote this post
18 you had no intention of any legal action being
19 taken against Mr. Cox?

20 A. If I wanted to have any legal action I
21 would have done it through my divorce.

22 MS. WHITE: Let's take a break for a
23 minute. I just want to go through my notes and
24 make sure that's all the questions I have. I'm
25 going to take a break real quick.

1 (A recess was taken.)

2 BY MS. WHITE:

3 Q. Ms. Sarte, when you originally filed for
4 your divorce from Mr. Cox, did you bring similar
5 allegations against him in the initial divorce
6 pleadings?

7 A. I did not.

8 Q. When you filed for separation, did you
9 bring any of these allegations against him?

10 A. I don't recall any of that. I'm sorry.

11 Q. Did you ever bring any of this up during
12 any of the separation or divorce proceedings?

13 A. I don't recall.

14 Q. Do you think you would have?

15 A. I don't recall.

16 Q. Is there a reason you wouldn't have?

17 A. I don't recall.

18 MS. WHITE: I think that's all the
19 questions I have for you.

20 MR. SPIRAKIS: I don't have any.

21 (The deposition was concluded at
22 3:12 p.m.)

23

24

25

1 CERTIFICATE OF REPORTER
2 STATE OF SOUTH CAROLINA
3 COUNTY OF HORRY

4 I, Eileen Madden, Registered
5 Professional Reporter and Notary Public for the
6 State of South Carolina at Large, do hereby
7 certify that the witness in the foregoing
8 deposition was by me duly sworn to testify to the
9 truth, the whole truth and nothing but the truth
10 in the within-entitled cause; that said
11 deposition was taken at the time and location
12 therein stated; that the testimony of the witness
13 and all objections made at the time of the
14 examination were recorded stenographically by me
15 and were thereafter transcribed by computer-aided
16 transcription; that the foregoing is a full,
17 complete and true record of the testimony of the
18 witness and of all objections made at the time of
19 the examination; and that the witness was given
20 an opportunity to read and correct said
21 deposition and to subscribe the same.

22 Should the signature of the witness not
23 be affixed to the deposition, the witness shall
24 not have availed himself/herself of the
25 opportunity to sign or the signature has been
waived.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto
affixed my official seal on November 29, 2021, at
Myrtle Beach, Horry County, South Carolina.

Eileen Madden
NCRA REGISTERED PROFESSIONAL
REPORTER, RPR
Notary Public,
State of South Carolina at Large
My Commission expires:
July 30, 2029

Nov 6, 2019, 8:24 AM



Dawn Sarte

...

Yesterday at 7:05 AM · 👥

1 month ago today my marriage to Derek Cox came to an end. It has been a whirlwind of emotions for me. Yet, I think about the outreach of love and prayers. For those inquiring, it took a year, it was August of 2017 when Derek confessed to PART 1 of his actions. But until you know the whole story I ask that you keep your opinions to yourself and keep Jack in prayer. This is far from over. And if you are wondering please come to me. I have lots of video footage. Derek is NOT what he portrays. In a town of good ole boys, be careful. Because a vow to God didn't stop him.

Cox 0003

🙄👍❤️ 101

135 Comments



Sometimes you have to remove their mask to see the true demon that lies underneath.



19h Like Reply



Dawn Sarte

this is Derek out on Halloween!
This IS who he truly is. Make no
mistake, I will not stop! You may
have been able to turn your other
wives lives upside down but
Derek Cox.... I will see you in hell

Cox 0004

State of South Carolina	)	
	)	Court of General Sessions
County of Horry	)	2020-CP-26-06286

Jack Kelly	)	
	)	
vs.	)	Transcript of Record
	)	
Roger D. Cox, et al.	)	

November 29, 2023
Conway, South Carolina

B E F O R E:

The Honorable Kristi F. Curtis, Judge.

A P P E A R A N C E S (All present by video or telephone):

George N. Spirakis
Attorney for the Plaintiff

Emily C. Sheets
Attorney for the Defendants

Amelia Mastandrea
Transcriber



1 THE COURT: Okay. I'm showing the next matter on the
2 docket is Jack Kelly v. Roger Cox.

3 MS. SHEETS: Good afternoon, Your Honor, Emily --

4 THE COURT: That's me.

5 MS. SHEETS: -- Sheets, Mr. Cox and the defendant
6 business entities.

7 MR. SPIRAKIS: Good afternoon, George Spirakis for Jack
8 Kelly.

9 THE COURT: Good afternoon. Okay. This is defendant's
10 motion for summary judgment. So Ms. Sheets, I'll be glad to
11 hear from you first, and then Mr. Spirakis I'll hear from you
12 in response.

13 MR. SPIRAKIS: Thank you, Your Honor.

14 MS. SHEETS: Thank you, Your Honor. May I please the
15 Court, we here today, of course, on a motion for summary
16 judgment. Just by way of brief factual background, Your
17 Honor, the plaintiff is alleging that in or around October
18 2016, Defendant Cox participated in various acts that were
19 designed to harass, defame, and torture him, including
20 scratching his car, harming his toothbrush, and throwing his
21 shoes into a waterway. At the time, Mr. Cox was the
22 plaintiff's stepfather. The plaintiff is now an adult. Mr.
23 Cox is no longer his stepfather; the plaintiff's mother and
24 Mr. Cox are divorced.

25 During October 2016, however, Mr. Cox was also the owner

1 of various entities, one of them being Cox Millwork & Supply;
2 another, Waterside Drive Boat Ramp; and another, Cox
3 Properties, LLC. Your Honor, we're moving to dismiss the
4 entire lawsuit, but there are several kind of rabbit trails
5 we're going to have go down to kind of get to that ultimate
6 motion. So if the Court will indulge me here, I'll try to
7 keep it succinct, but I'll need to kind of knock them off one
8 by one.

9 THE COURT: Go ahead.

10 MS. SHEETS: Number one, we are moving to dismiss this
11 lawsuit against the business entities. While the defendant
12 wholeheartedly disagrees with the allegations, wholeheartedly
13 disagrees with the characterization of them, and in most cases
14 disagrees that these events happened at all, they definitely
15 didn't happen during the course of business. Even the
16 plaintiff himself has admitted in his deposition that these
17 actions allegedly took place in their home. Mr. Cox runs
18 these businesses, but they have places of business. Like most
19 professionals, he may work from time to time from his house,
20 but he was not working, if these events even occurred.

21 Again, these entities, we'll take them one by one, the
22 Cox Millwork & Supply, as you might could guess is a
23 woodworking company. Waterside Drive Boat Ramp, as you can
24 guess, operates a boating ramp. And then Cox Properties LLC
25 is an entity that's used to operate and hold real property.

1 If the plaintiff's shoes were thrown in the waterway, that is
2 not within the scope of anything these businesses do. There's
3 no allegation that they were thrown in from the boat ramp.
4 The plaintiff did not see the defendant throw his shoes into
5 the waterway. The defendant does not know of anyone who saw
6 the shoes thrown into the waterway. This is all in the
7 plaintiff's deposition transcript which has been submitted
8 with our memorandum, and so it's pretty hard to say that shoes
9 are any part of a woodworking business, are any part of the
10 boat ramping business, and certainly not something that those
11 businesses undertake. So that's sort of part number one.

12 Part number two is that Mr. Cox owns these entities, and
13 the plaintiff has filed a cause of action for respondent's
14 superior, and respondent's superior has to do with the actions
15 of an employee or a servant. Well, it's hard for an owner to
16 be an employee or a servant. They are an owner; and
17 therefore, there's no master for him to answer to other than
18 himself, and so that sort of addresses respondent's superior.

19 They have also filed a cause of action for negligent
20 retention and supervision. There's no supervisory
21 relationship between Mr. Cox and anyone else. Mr. Cox owns
22 these businesses. So again, Your Honor, toothbrushes and
23 shoes and cars have nothing to do with any of these
24 businesses, and so even if the plaintiff did or the defendant,
25 I'm sorry, did what the plaintiff says he did and threw shoes

1 in the river and scratched his car and did nefarious things
2 with this toothbrush, he didn't do them within the scope of
3 this business, and he certainly didn't do them as an employee
4 of this business. And so the causes of action for negligent
5 retention and respondent's superior should be dismissed as to
6 these defendant entities.

7 The next part of this is there has been a lawsuit filed
8 against everyone under this concept of outrageous acts being
9 committed. Your Honor, there are certain elements to
10 filing --

11 THE COURT: I'm sorry. Okay. Can you all hear me now?

12 MS. SHEETS: I can hear you.

13 MR. SPIRAKIS: Yes, Your Honor.

14 THE COURT: Okay. We had a little glitch there. I lost
15 your audio and video --

16 MR. SPIRAKIS: Okay.

17 THE COURT: -- for a minute there. So what I -- the last
18 thing I heard you say was that they had asserted the cause of
19 action for negligent retention and supervision. Mr. Kelly is
20 the owner -- I'm sorry, Mr. Cox is the owner and not an
21 employee and that any of these actions were not alleged to be
22 in the course and scope of his employment.

23 MS. SHEETS: That's correct. And the plaintiff has
24 testified in his depositions that he is unaware of any of
25 these business entities or any of these actions occurring

1 within the operation of these business entities. In fact, the
2 plaintiff has testified that for two of these entities, he
3 doesn't even know what they do, and so I think it would be
4 hard to argue that something is taking place within the scope
5 of the business if you don't even know what the business is.
6 I mean, if you're going to allege that, then you sort of, one,
7 need to know what the business is so that you can, two, tell
8 how that action was related to the business. And so that's
9 sort of part one of this as to the business entities.

10 Part two as to all entities for the cause of action of
11 negligence and this sort of concept of intentional infliction
12 of emotional distress is that the plaintiff has incurred no
13 damages here. Even if these things happened, even if the
14 plaintiff threw the shoes into the river -- sorry, I keep
15 saying that -- even if the defendant threw the shoes into the
16 river, even if the defendant scratched the plaintiff's car,
17 even if defendant did do nefarious things with a toothbrush,
18 there are no damages in this action.

19 The scratches on the headlights of the car were repaired.
20 The missing shoes were replaced. The toothbrush was replaced.
21 The plaintiff has incurred no medical bills, either for
22 psychological or physical treatment in this action. The
23 plaintiff has had no trouble making straight A's in school as
24 a pre-med student. He has hadn't no trouble getting a job and
25 keeping a job.

1 And Your Honor, there's a case directly on point here.
2 It's Hansson v. Scalise Builders of South Carolina. It is a
3 2007 Supreme Court case. And what that case tells us is that
4 you've got to show both extreme and outrageous conduct and
5 that it caused such distress that the plaintiff wasn't allowed
6 to either function or sort of complete normal activities. And
7 in that particular case, it was shown that the plaintiff was
8 complaining that he hadn't been able to sleep and that he had
9 to go to see a dentist, and that he had a couple of hundred
10 dollars in damages. And what the court said there is no,
11 that's not what we're talking about when we think about
12 outrageous and extreme conduct. We're not talking about a few
13 hundred bucks and you not being able to sleep. We're talking
14 about you not being able to function.

15 So if we're talking about this case, if the plaintiff was
16 unable to go to school and college at Wofford and not being
17 able to complete his pre-med degree or be able to hold his
18 scholarship, okay, but that hasn't happened here. The
19 plaintiff was able to start school at Wofford. He is now a
20 junior at Wofford. He has made straight A's the whole time he
21 is at Wofford. He maintains his scholarship at Wofford. If
22 he was not able to do certain jobs, the plaintiff has
23 testified that he enjoys doing a lot of church work, and
24 obviously, that is a positively wonderful thing, but he hasn't
25 had any trouble getting those jobs or having jobs where he is

1 in a position to sort of provide some mentorship and guidance
2 to youth students that he is working with at these church.
3 That hasn't happened. He's been able to hold that job. He's
4 been able to apply for them.

5 There's also been no medical treatment. I mean, we think
6 about someone who is outrageously damaged to an emotional
7 context, we would think that they would need psychiatric
8 treatment, that they might need medical treatment. There are
9 certainly wonderful drugs out there that treat depression and
10 that treat all kinds of anxiety conditions. The plaintiff
11 hasn't sought any of that treatment. He hasn't been on any of
12 that treatment.

13 These events occurred in 2016, some six years ago. And
14 in six years, he has not been treated by a psychiatrist. He
15 has not been treated by a medical physician. He has not been
16 on any medication he's had to take to be able to function in
17 his day-to-day life. And so Your Honor, the reality here is
18 the damages portion just isn't met, and that's not a factual
19 thing. That's something that the Court can rule on, right.
20 That is a legal element of this cause of action. It doesn't
21 matter whether these things happened or didn't happen. What
22 matters is has the plaintiff shown actual damages, and he
23 hasn't.

24 We've been litigating this case now for over two years,
25 and there has not been one piece of evidence produced in

1 written discovery, and there has not been one shred of
2 evidence produced in the two days that the plaintiff has been
3 produced that he has any quantifiable damages in this case.

4 And Your Honor, that brings us to the last two causes of
5 action today. The plaintiff has alleged, and I have a hard
6 time with this still, Your Honor, but the plaintiff has
7 alleged that defendant Cox has violated the South Carolina
8 Code 44-29-145. They've also alleged that the defendant at
9 some point in time took a toothbrush and wiped his bottom with
10 it, and then stuck it back in a position for the plaintiff to
11 be able use it.

12 Now, Your Honor, let's take this one from the top because
13 honestly, it really, truly is, no pun intended, just an
14 outrageous unfounded claim. Number one, the plaintiff doesn't
15 have HIV. Number two, defendant Cox doesn't have HIV. Number
16 three, the plaintiff has absolutely zero basis for thinking
17 the defendant has HIV. His mother was married to this man for
18 years. She does not have HIV. She does not have a sexually
19 transmitted disease of any kind, nor does the plaintiff or the
20 plaintiff's mother who's also been deposed had any knowledge
21 that Mr. Cox has HIV or any other STD.

22 Your Honor, the plaintiff literally opened up a book, and
23 it's like he threw darts at whatever claim he could pick out
24 that would be so scandalous and so absurd that the defendant
25 might be pressured in settling so it wasn't out there. It's

1 really what they've done here, Your Honor. It's what they've
2 done for the business entities. It's what they've done in
3 making this absolutely absurd claim that the defendant, a)
4 wipes his bottom with a toothbrush, which categorically didn't
5 happen. But even if it did, Your Honor, he doesn't have HIV.
6 And so how do you bring this claim, which by the way is also a
7 criminal offense; and yet, the Cox have never been called.
8 There is certainly Social Services did not show up.

9 The plaintiff was a minor at the time. There was no
10 government entity, and so they somehow want us to believe that
11 this criminal act occurred, but they have no basis for it.
12 They have no evidence for it, and for some reason, a minor
13 child was allegedly harmed by a man who allegedly had HIV, and
14 they don't call the cops? I mean, Your Honor, this is
15 honestly it doesn't add up. And so for the cause of action
16 that they filed, this violation of 44-29-145, first we move
17 that it's dismissed; but honestly, Your Honor, the cost of
18 having to file the motion to add this claim to be dismissed
19 should also be awarded. It just goes go beyond the pale, Your
20 Honor.

21 I imagine that the plaintiff is going to offer here
22 shortly, well, he might have HIV; I mean, we don't know
23 because he hasn't taken a blood test. Well, let's cover that
24 too. The plaintiffs have had two years to send written
25 discovery, and they sent written discovery. They've sent

1 requests to admit. Neither in their interrogatories, nor
2 their request for production, nor their request to admit have
3 they requested that the defendant get a test for HIV. They
4 haven't requested medical records showing he doesn't have HIV.
5 In two years, they haven't noticed the deposition of the
6 defendant to ask him himself whether or not he has HIV, and
7 Your Honor, the reality is they haven't done these things
8 because what they're hoping for here is that they'll be able
9 to show up at trial, and they'll be able to waive this claim
10 in front of a jury, and they'll be able to enflame them under
11 the guise of, well, I mean, if we didn't see the tree fall,
12 how do we know how it got there. And Your Honor, this claim
13 just simply cannot be permitted to stand with zero evidence
14 and zero attempt to prosecute it by the plaintiffs.

15 Your Honor, I want to cover one other thing here. We are
16 arguing that the causes of action for everyone as to
17 negligence be dismissed. I imagine the plaintiff's counsel is
18 about to get on here and argue to you well, Your Honor,
19 there's questions of fact. There probably are questions of
20 fact here, Your Honor, and we're not suggesting that there are
21 no questions of fact. What we're saying is the questions of
22 fact don't really matter when there's no damages because you
23 need all of those things. You need the duty. You need the
24 breach. You need the causation, but the law also requires you
25 to have damages.

1 We can't just go around suing people because we're
2 disappointed. We can't just go around suing people because
3 we're offended. We can't go around asking the Court to be
4 involved in our disagreements with other people when there's
5 no damage associated with that. The law is very clear, and so
6 I just want to make sure that while we're thinking about these
7 motions and we're thinking about the basis of them, we don't
8 sort of get caught up in a factual argument because that's not
9 the legal basis for the motion.

10 The legal basis for the motion for all of these causes of
11 action, even if what the plaintiff claims happened happened,
12 he simply has no damages. And for that reason, Your Honor, we
13 move that all causes of action against all defendants be
14 dismissed.

15 Thank you, Your Honor.

16 THE COURT: Thank you. Mr. Spirakis?

17 MR. SPIRAKIS: Yes, Your Honor. First of all, I'd like
18 to do some procedural evidence, if we can, because that, I
19 think, will show that the motion for summary judgment is
20 premature, and here's why -- before I get to the substance of
21 the argument against summary judgment.

22 On August 11th, we were noticed, as well as the
23 defendants, that we were on the September 12th jury roster.
24 We discussed, between myself and defense counsel, that we
25 needed to do a scheduling order because we were not prepared

1 by any means, nor were they, to proceed to trial. The
2 scheduling order was approved and put on electronic -- on
3 August 31st. The motion was filed on August the 17th. Now,
4 if you're going to have a summary judgment motion, why are you
5 allowing a scheduling order? If you're prepared to go to
6 trial, why didn't you go to the roster? You didn't because
7 nobody is prepared to go forward, and the scheduling order
8 allows me until April the 30th to complete my discovery. I
9 can theoretically wait until April 29th to take the
10 defendant's deposition.

11 Discovery is not complete. This motion is premature, and
12 for the reason I have taken defendant's motion is because he
13 has circumvented every single way to not file things in a
14 timely manner, and the last thing I was waiting on was his tax
15 returns. I didn't get those until October 26th, some 33 days
16 ago. I'm not going to take somebody's deposition if I don't
17 have full knowledge of what he's got.

18 Now, as far as the medical is concerned, I have had a
19 conversation with defense counsel about those medical records.
20 I haven't noticed them for interrogatories or request for
21 production because I'm trying to do this without having to
22 come in front of the Court and talk about all this, but I'm
23 going to send interrogatories and requests for production. My
24 discovery is not complete. Therefore, I think that summary
25 judgment is way ahead of the Court, way ahead of the force,

1 Your Honor. We're just not complete with discovery.

2 Now, with that being said, he signed, and I have the
3 originals, of everything that's in the complaint. I didn't
4 make these things up. He signed that he threw the boy's shoes
5 in the waterway. That is an expense of about 150 dollars
6 those shoes were worth. Whether they were replaced or not,
7 that's an expense that was incurred by my client. Even if you
8 just look at the 150 dollars, I've met the damage requirement.
9 I'm there.

10 He said I wiped my butt with his toothbrush. Not only do
11 I have his confession, his written confession, I have video of
12 him naked in the bathroom putting the toothbrush behind him
13 which would suggest, I don't have it going particularly on his
14 asshole, excuse my language, but it would show that he made an
15 inadvertent maneuver with the toothbrush to go behind him like
16 this, waves it back out, looks at it, and puts it down.

17 She doesn't want to talk about facts, and that's fine,
18 but I have these things already. He says he put toothbrush.
19 He says I've scratched the car. He's made payments to pay off
20 the car with the scratches on it. I understand that, but he
21 hasn't made payment on the shoes, and my client has gone to
22 counseling at school. I can't bring out or I'm still trying
23 to find the amount of money that is considered counseling
24 within his tuition because you pay a tuition, you're allowed
25 to go to counseling. He hasn't gone just once or twice. He's

1 gone a lot, and I'm scheduling the deposition of her, we'll
2 notice the scheduling deposition of the counselor. I reason I
3 haven't is because she had to clear it with her client because
4 there are procedures within the university as well as
5 professional procedures that wouldn't allow her to talk to me
6 until she confirmed with the client.

7 These are as well monetary damages. We've met the
8 burden, and the only thing that's keeping me from not knowing
9 about Cox's Millwork and Boat Ramp and Cox's Property is
10 because I haven't gotten all my requests for productions, and
11 I just finally got the tax returns. How am I supposed to
12 depose somebody if I don't have full disclosure of the
13 evidence I'm asking for?

14 THE COURT: Mr. Spirakis, help me understand how Cox
15 Millwork & Supply, Waterside Drive Boat Ramp, and Cox
16 Properties, LLC would have anything to do whatsoever with any
17 of these allegations.

18 MR. SPIRAKIS: Okay. Here's how it is. It's not
19 Georgia's Millwork. It's not just Curtis' Millwork. It's Cox
20 Millwork. He is both master and servant. He owns it, from my
21 understanding, with his brother.

22 THE COURT: If he owns it lock, stock, and barrel, and he
23 is the only owner, and he's the sole employee, tell me what he
24 has done that's in the course and scope of his employment.

25 MR. SPIRAKIS: I don't know. I'm sorry, Your Honor.

1 THE COURT: We know what you've alleged --

2 MR. SPIRAKIS: His employment --

3 THE COURT: -- so what are you hoping to gain by looking
4 at the documents from the business? You'd have to allege
5 something in the course and scope of his employment. The fact
6 that he owns some completely separate business has absolutely
7 nothing to do with this lawsuit that I can see.

8 MR. SPIRAKIS: Well, first of all, the boat ramp is right
9 beside his property. So without taking his deposition, I
10 don't know if he walked down the property and threw them from
11 the boat ramp or he threw them from the property.

12 THE COURT: Okay. Let's say he did. Let's say he walked
13 down the boat ramp, and he flung them into the river from the
14 boat ramp that he owns. That still doesn't mean that he did
15 it in the course and scope of his employment. What would that
16 possibly have to do with his employment or (indiscernible)
17 boat ramp?

18 MR. SPIRAKIS: He owns it. It's his corporation.

19 THE COURT: Again --

20 MR. SPIRAKIS: He's on his property.

21 THE COURT: What difference does that make?

22 MR. SPIRAKIS: Your Honor, he is the owner --

23 THE COURT: What difference does it make whose property
24 he was on when he flung it? He wasn't acting on behalf of
25 Waterside Drive Boat Ramp.

1 MR. SPIRAKIS: I don't know that, and neither do you, and
2 neither does defense counsel. He has been asked that
3 question --

4 THE COURT: Waterside Boat -- tell me what possible
5 liability Waterside Drive Boat Ramp would have for an
6 intentional act, an intentional tortious act for somebody
7 who's not doing the business of the boat ramp?

8 MR. SPIRAKIS: It is his boat ramp. He could have, or we
9 are alleging that, he went to that boat ramp in the scope of
10 him being the owner and master and servant of that corporation
11 and threw those shoes into the waterway.

12 THE COURT: And based on what evidence, sir?

13 MR. SPIRAKIS: I haven't been able to take his
14 deposition, Your Honor. As I'm telling the Court, I just got
15 his tax returns.

16 THE COURT: I mean, this just sounds like a complete
17 fishing expedition.

18 MR. SPIRAKIS: It's not, Your Honor.

19 THE COURT: You have absolute zero factual basis for
20 this, and you're bringing in -- okay, tell me what Cox
21 Millwork & Supply has to do with this?

22 MR. SPIRAKIS: Your Honor, he is the master and servant
23 of a business. It is our allegations that he is never off the
24 clock. He is constantly working. If we walked up to him in a
25 bar at 9 o'clock at night, and said Mr. Cox, I am so and so

1 contractor; I want you to do millwork for me. Do you think
2 he's going to say no, call me in the office tomorrow?

3 THE COURT: That's not what the law is. I mean, if I own
4 Advance Auto Parts, and I go to a bar in the evening, and I
5 slug somebody in the face when I'm off work, I am not somehow
6 causing vicarious liability to Advance Auto just because I own
7 a separate business.

8 MR. SPIRAKIS: I would suggest that if you're opening up
9 at that business after hours constantly, that that is you
10 doing business constantly.

11 THE COURT: And tell me what evidence there is -- first
12 of all, that's not the law, and secondly, tell me what
13 evidence there is that Cox Millwork & Supply was open and
14 doing business in any way connected with any of these actions.

15 MR. SPIRAKIS: Your Honor, again, if I had the ability to
16 depose him, that is my whole reason that this motion is
17 premature.

18 THE COURT: But you're hoping that something will come
19 out?

20 MR. SPIRAKIS: I'm hoping that I can prove my point, yes,
21 Your Honor.

22 THE COURT: Okay. Tell me what factual basis you have to
23 bring this cause of action on exposing someone to HIV?

24 MR. SPIRAKIS: Your Honor, he put that toothbrush in an
25 orifice. I don't know what his medical is. He needs to show

1 me those medical records. He has it. I've asked for them
2 politely through conversation with defense counsel. I'm going
3 to move now to put it in interrogatory request production form
4 so I can look at that. He put it into an orifice, Your Honor.
5 It would be just as bad as if he put it in his mouth. Those
6 are two areas that are able to transmit any type of virus. I
7 don't, I --

8 THE COURT: So you have no information, no knowledge,
9 nothing --

10 MR. SPIRAKIS: No, Your Honor.

11 THE COURT: -- that would suggest that this man has kind
12 of communicable disease?

13 MR. SPIRAKIS: No, Your Honor, other than the fact that
14 he stuck a toothbrush up his ass, and that's not me. That's
15 him saying it.

16 THE COURT: It's really hard for me to listen to this.

17 MR. SPIRAKIS: Yeah.

18 THE COURT: So let me ask what evidence do you have of
19 damages in this case besides he lost a pair of shoes? Did he
20 testify in his deposition that he had received counseling?

21 MR. SPIRAKIS: Yes, Your Honor.

22 MS. SHEETS: Your Honor, he did testify that he has
23 attended, and I believe it's four or five counseling sessions,
24 and maybe one or two more that is part of his tuition there at
25 school, but appreciate that this occurred years after 2016.

1 The plaintiff was still in high school when these events
2 occurred, if they occurred at all, and Your Honor, I really
3 didn't want to get into a factual basis because I don't think
4 it matters as to the legal action of this motion, but now that
5 Mr. Spirakis has honestly somewhat proven my point, but even
6 if he hasn't proven my point, now that we have all this stuff
7 on the record, let me address a couple of things here.

8 He is holding a statement with four or five things listed
9 on it that is signed by my client. He submitted RTAs to us
10 asking us to admit 1) that the client signed it, and 2) that
11 it's a genuine authentic document. Your Honor, it is my
12 client's signature, but that document was drafted by the
13 plaintiff's mother. It was then taken to my client's place of
14 business where she proceeded to loudly berate him in front of
15 other people until he signed it so that she could get her
16 Mercedes in a divorce. And so yes, he did sign that sheet of
17 paper, but he would have signed that sheet of paper whether it
18 said the sky outside is purple, or whether it said I am a
19 monkey because it was done under duress.

20 The plaintiff has testified. His mother has testified.
21 His biological father has testified. Three pastors at his
22 church have testified. His girlfriend at the time of this
23 lawsuit and for the few years after this lawsuit was filed has
24 testified. None of them saw these incidents happen, not one
25 of them. There is no eyewitness to any of these events, and

1 here's why that matters, Your Honor. Again, I don't think the
2 factual basis is terribly important here, except to the
3 motions as to the defendant entities.

4 The law in this country does not allow us to sue people
5 because we feel like it or we think it's a good idea. The law
6 allows us to sue people because there has been a violation of
7 the law, and there is evidence of that violation of the law.
8 There simply just is none here a) because no one saw it. Your
9 Honor, I literally deposed --

10 THE COURT: Of course, the plaintiff's testimony can be
11 evidence, I guess --

12 MS. SHEETS: But Your Honor --

13 THE COURT: -- although, I guess, he says he didn't see
14 it either.

15 MS. SHEETS: No, he has seen none of these things happen.
16 The only reason he knows they happened, and again allegedly
17 happened, is because his mother showed him this piece of
18 paper, which, Your Honor, the last time I checked is literally
19 the definition of hearsay. I mean, you cannot get any closer
20 to hearsay than that piece of paper. It is literally an out-
21 of-court statement created for the truth of the assertion,
22 therein, that the plaintiff neither participated in the
23 creation of, knows how it was created, or saw my client sign
24 it.

25 As for this video, Your Honor, frankly, one, am appalled

1 that it got produced. I'm really appalled that it got
2 produced to me all this with no warning because there were a
3 couple of ladies in this office that inadvertently watched it
4 before they realized what it was. It is deeply offensive, and
5 I'll tell you what it shows.

6 It does show my client, unaware that he's being recorded,
7 in the nude in the bathroom, doing bathroom things. But the
8 plaintiff was shown that video in the first day of his
9 deposition and asked to tell us what he saw. He was asked
10 again about it in his second deposition, and you know what he
11 can't testify to; one, whose toothbrush the defendant is
12 holding. The plaintiff has no idea which toothbrush was his,
13 what his toothbrush looked like, where his toothbrush was
14 located in that bathroom. He can't testify to what the
15 defendant is actually doing, and Your Honor, I'll represent to
16 you that I've watched this video, and I have no intention of
17 watching this video, and I can assure you that it is right for
18 a motion in limine if and when this case ever gets to a trial,
19 and hopefully, it will not.

20 But other people in the office have watched it. The
21 plaintiff has watched it. The plaintiff's mother has watched
22 it, who, by the way, took the video, delightful as she may be.

23 It simply doesn't show what they're alleging. It shows a
24 man in the bathroom naked holding a toothbrush. That's what
25 it shows, and we can be crude and yell and scream and make all

1 the --

2 THE COURT: All right. You all, I have ask --

3 MS. SHEETS: But does he --

4 THE COURT: I have to ask this. If the defendant's wife
5 took a video and in that video he is doing that with her son's
6 toothbrush, then -- I mean, I'm a mother -- I guess my next
7 action after taking that video would be to take that
8 toothbrush and throw it in the trash. So who is
9 surreptitiously taking this video and then allowing the kid to
10 use the toothbrush?

11 MS. SHEETS: His mother, allegedly.

12 THE COURT: That one?

13 MR. SPIRAKIS: My understanding is that the house has
14 cameras throughout; that the defendant knows that the house
15 has cameras throughout. There's cameras on the outside.
16 There's cameras on the inside.

17 MS. SHEETS: There's no cameras in the bathroom, Your
18 Honor. There were never cameras in the bathroom.

19 THE COURT: All righty.

20 MR. SPIRAKIS: One last thing --

21 THE COURT: Okay. Let me hear from Mr. Spirakis. Yes,
22 sir?

23 MR. SPIRAKIS: Your Honor, one last thing. Even if
24 there -- for a summary judgment motion by the nonmoving party,
25 if there's a scintilla, and that's case law, a scintilla of

1 evidence to show that summary judgment should not be
2 allowed --

3 THE COURT: I'm aware of the standard for a summary
4 judgment, sir.

5 MR. SPIRAKIS: I have that benefit, Your Honor, and I
6 think we have at least a scintilla of evidence on damages as
7 well as negligence.

8 THE COURT: Okay. At this point, I'm really not seeing
9 any basis to allow the business entities to remain in the
10 case. I am going to take a close look at it before I make a
11 final ruling. I will look carefully at the remaining grounds
12 for the motion for summary judgment on the other causes of
13 action. I will email you all with my ruling.

14 MS. SHEETS: Your Honor, we appreciate your time very
15 much today. Thank you.

16 MR. SPIRAKIS: Thank you.

17 THE COURT: Thank you.

18 (End of Transcript of Record)

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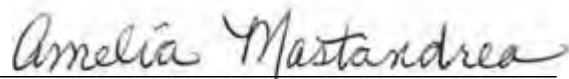
CERTIFICATE OF TRANSCRIBER

State of South Carolina)
)
County of Horry)

I, AMELIA MASTANDREA, 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 Court of General Sessions for Horry County, South Carolina, on the 29th day of November, 2023.

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

April 15, 2023



Amelia Mastandrea, CDLT-113
Transcriber

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Jack Kelly,

Plaintiff,

v.

Roger D. Cox, Cox Millwork & Supply, Inc.,
Waterside Drive Boat Ramp, LLC, and Cox
Properties, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No. 2020-CP-26-06286

**ROGER D. COX, COX MILLWORK &
SUPPLY, INC., WATERSIDE DRIVE
BOAT RAMP, LLC, AND COX
PROPERTIES, LLC'S MOTION FOR
SUMMARY JUDGMENT AGAINST
PLAINTIFF****TO: KENNETH R. MOSS, ESQ. AND GEORGE N. SPIRAKIS, ESQ., ATTORNEYS
FOR PLAINTIFF:**

PLEASE TAKE NOTICE that Defendants Roger D. Cox, Cox Millwork & Supply, Inc., Waterside Drive Boat Ramp, LLC, and Cox Properties, LLC, by and through their undersigned counsel, will move before the presiding Judge for the Court of Common Pleas for Horry County on the tenth (10th) day after service hereunder, or as soon as counsel may be heard, for an Order granting their Motion for Summary Judgment pursuant to Rule 56(c) of the South Carolina Rules of Civil Procedure. Defendants Roger D. Cox, Cox Millwork & Supply, Inc., Waterside Drive Boat Ramp, LLC, and Cox Properties, LLC, so move on the grounds that there is no issue of material fact, and that all Defendants are entitled to judgment as a matter of law. More specifically:

1. Plaintiff has offered no evidence that the allegations in the complaint relate to Defendants Cox Millwork & Supply, Inc., Waterside Drive Boat Ramp, LLC, or Cox Properties, LLC. As such all claims related to these entities fail as a matter of law.
2. There is no evidence to support Plaintiff's claim for Intentional Infliction of Emotional Distress / Outrage to any Defendant and as a result these claims fail as a matter of law.

3. There is no evidence that any Defendant violated the provisions of S.C. Code § 44-29-145 and/or § 20-7-490 and therefore these claims fail as a matter of law.

This motion is supported by the pleadings and applicable common and statutory law. Defendants reserve the right to support this motion with additional supporting exhibits and Memorandum of Law to be filed prior to the hearing.

WHEREFORE, Defendants respectfully move this Honorable Court for an order granting summary judgement in their favor as to all claims by Plaintiff or in the alternative partial summary judgement as to the Defendants Cox Millwork & Supply, Inc., Waterside Drive Boat Ramp, LLC, and Cox Properties, LLC.

Defendants' MSJ against Plaintiff
Case No.: 2022-CP-26-06286

ROSS & CRISTALDI, LLC

s/ Emily C. Sheets

Jeffrey A. Ross, Bar No.: 74254

Philip P. Cristaldi, III, Bar No.: 102219

Emily C. Sheets, Bar No.: 78768

863 Coleman Boulevard, Suite B

Mt. Pleasant, South Carolina 29464

Phone: (843) 329-4040

Email: jross@rclawsc.com

pcristaldi@rclawsc.com

esheets@rclawsc.com

**Attorney for Roger D. Cox, Cox Millwork &
Supply, Inc., Waterside Drive Boat Ramp, LLC,
and Cox Properties, LLC**

Mt. Pleasant, South Carolina
August 17, 2022

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Jack Kelly,

Plaintiff,

v.

Roger D. Cox, Cox Millwork & Supply Inc.,
Waterside Drive Boat Ramp, LLC and Cox
Properties, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No. 2020-CP-26-06286

**DEFENDANTS' MEMORANDUM IN
SUPPORT OF THEIR MOTION FOR
SUMMARY JUDGMENT AGAINST
PLAINTIFF**

Defendants Roger D. Cox, Cox Millwork & Supply Inc., Waterside Drive Boat Ramp, LLC, and Cox Properties, LLC, (hereinafter collectively referred to as "Defendants"), respectfully submit this Memorandum in Support of their Motion for Summary Judgment as to the Claims of Plaintiff and Defendants respectfully request that the Court grant this Motion on the grounds asserted herein.

STATEMENT OF THE CASE

In or around October 2016, the Plaintiff was the stepson of Defendant Roger D. Cox. During that time and continuing through the present, Mr. Cox was an owner of the various business entities Cox Millwork & Supply Inc., Waterside Drive Boat Ramp, LLC, and Cox Properties, LLC. Plaintiff filed this action on October 30, 2020, alleging that Mr. Cox committed various acts that were designed to harass, defame, and torture Plaintiff including scratching his car, harming his toothbrush, and throwing his shoes into the waterway. The Defendants filed answers on January 15, 2021, denying the causes of action. At this time substantial discovery has been completed and the facts do not support the causes of action asserted against these Defendants. A Motion for

Summary Judgement was filed on August 17, 2022. This Memorandum is submitted in support of that Motion.

STANDARD OF REVIEW

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCF. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *Hancock v. Mid-South Mgmt., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). “However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.” *Moore v. Barony House Restaurant, LLC*, 382 S.C. 35, 40, 674S.E.2d 500, 503 (Ct. App. 2009). The plain language of Rule 56(c), SCRCF, mandates the entry of summary judgment against a party who fails to make a showing sufficient to establish the existence of an element essential to the party’s case and on which that party will bear the burden of proof at trial. *Bray v. Marathon Corp.*, 347 S.C. 189, 553 S.E.2d 477 (Ct. App. 2001).

LEGAL ARGUMENT

I. Plaintiff has failed to show that the allegations in this suit in any way relate to Defendants Cox Millwork & Supply Inc., Waterside Drive Boat Ramp, LLC, and Cox Properties, LLC.

Plaintiff has brought claims against Defendants Cox Millwork & Supply Inc., Waterside Drive Boat Ramp, LLC, and Cox Properties, LLC (hereinafter also collectively referred to as the “Businesses”) for negligence by respondeat superior and negligent retention and supervision. These claims both fail as a matter of law.

A. Allegations against the Businesses for Respondeat Superior fail.

Under the doctrine of respondeat superior, the employer is "...called to answer for the tortious acts of his servant, the employee, when those acts occur in the course and scope of the employee's employment." *James v. Kelly Trucking Co.*, 661 S.E.2d 329, 377 S.C. 628 (S.C. 2008), citing *Sams v. Arthur*, 135 S.C. 123, 128-131, 133 S.E. 205, 207-08 (1926). "Such liability is not predicated on the negligence of the employer, but upon the acts of the employee, whether those acts occurred while the employee was going about the employer's business, and the agency principles that characterize the employer-employee relationship." *James v. Kelly Trucking Co.*, 661 S.E.2d 329, 377 S.C. 628 (S.C. 2008).

Defendant Cox is an owner of the Defendant Businesses and is therefore himself the master. He cannot also be the servant. Even if it can be construed that Defendant Cox is both master and servant, the Plaintiff has no evidence that Defendant Cox was acting in the scope of his employment when he is alleged to be committing tortious conduct against the Plaintiff.

"If the servant is doing some act in furtherance of the master's business, he will be regarded as acting within the scope of his employment, although he may exceed his authority." *Kase v. Ebert*, 392 S.C. 57, 707 S.E.2d 456, 458 (S.C. App. 2011), quoting *Jones v. Elbert*, 211 S.C. 553, 558, 34 S.E.2d 796, 798-99 (1945). "On the other hand, if the servant acts for some independent purpose of his own, wholly disconnected with the furtherance of his master's business, his conduct falls outside the scope of his employment." *Kase* at 458, quoting *Crittenden v. Thompson-Walker Co.*, 288 S.C. 112, 116, 341 S.E.2d 385, 387 (Ct. App. 1986). "If a servant steps aside from the master's business for some purpose wholly disconnected with his employment, the relation of master and servant is temporarily suspended; and this is so no matter how short the time, and the

master is not liable for his acts during such time.” *Kase* at 458, quoting *Lane v. Modern Music, Inc.*, 244 S.C. 299, 305, 136 S.E.2d 713, 716 (1964) (emphasis added).

Plaintiff has offered no evidence that Defendant Cox’s alleged actions occurred within the scope of his employment with the Businesses and none of the allegations in Plaintiff’s complaint could be reasonably construed to be “in furtherance of the master’s business.” Plaintiff has described Defendant’s alleged acts as “a campaign to harass, defame and torture Plaintiff.” *See* Complaint at ¶ 7. These allegations couldn’t be reasonably related to any business much less these Businesses which engage in woodwork, boating, and real estate.

In his deposition, Mr. Kelly testified that Cox Millwork & Supply, Inc. is a “woodworking company”. (See Dep. J. Kelly at Pg. 64:3-5). Mr. Kelly alleges in his complaint that Defendant Cox began a campaign to harass, defame, and torture Plaintiff. (See Complaint ¶ 4). Specifically, the Complaint alleges that Defendant Cox scratched Plaintiff’s BMW, that Defendant Cox threw Plaintiff’s tennis shoes in the waterway behind their residence, that Defendant Cox put soap on Plaintiff’s toothbrush, and that Defendant Cox used the Plaintiff’s toothbrush to wipe his butt. (See Complaint ¶¶ 8-16). While Defendant Cox denies these events occurred as Plaintiff describes them, even if they are true, none of them have anything to do with running, operating, or working at a woodworking company.

As to Waterside Drive Boat Ramp, LLC, Plaintiff testified that the business relations to ownership of a boat ramp, he does not know if the LLC does any business, and he has no specific evidence that Mr. Cox did anything to him as the owner of this business:

Q. What’s your understanding of what Waterside Drive Boat Ramp, LLC does?

A. I know it’s an Owner –it’s an LLC for the boat ramp.

Q. Does it do business?

A. I’m unaware if it does or does not do business.

Q. What evidence do you have that Mr. Cox did anything as an owner, officer, agent of the boat ramp?

A. I have no specific evidence.
(See Dep. J. Kelly at Pg. 67:3-13)

Here again, none of the allegations in the Complaint, if true at all, relate in any way to the ownership of a boat ramp and the Plaintiff has no testimony to show that the allegations of the Complaint occurred during the operation of this LLC.

Likewise, Plaintiff was asked about Cox Properties, LLC's involvement in the allegations. He testified as follows:

Q. What evidence do you have that Mr. Cox did anything you're alleging in his capacity as an owner, officer, agent of Cox Properties?

A. I'm not sure.
(See Dep. J. Kelly at Pg. 67:14-17)

Owning your own business does not automatically trigger respondeat superior liability for everything you do. Just as working from home does not mean everything one does from home is within the scope of employment. The law as it stands allows, and demands, that lines be drawn. As previously cited, "If a servant steps aside from the master's business for some purpose wholly disconnected with his employment, the relation of master and servant is temporarily suspended; and this is so no matter how short the time, and the master is not liable for his acts during such time." *Kase* at 458, quoting *Lane v. Modern Music, Inc.*, 244 S.C. 299, 305, 136 S.E.2d 713, 716 (1964). Sleeping, doing the dishes, eating dinner, or brushing your teeth in the morning are all things people do at home. Working at home does not automatically bring actions wholly unrelated to a master's business within the scope of employment.

Plaintiff has no evidence that any of the allegations in the complaint are or could have been reasonably related to Defendant Cox's role as owner or servant of the Businesses. Therefore, the Plaintiff's claims of respondeat superior against Cox Millwork & Supply Inc., Waterside Drive Boat Ramp, LLC, and Cox Properties, LLC should be dismissed.

B. Allegations against the Businesses for negligent retention and supervision fail.

This cause of action is also premised on the master-servant relationship. It is simply illogical to claim that a business owner (the master) can be sued for negligently retaining and supervising themselves. Plaintiff's claim for negligent retention and supervision fails because Defendant Roger D. Cox is an owner of Defendant entities Cox Millwork & Supply Inc., Waterside Drive Boat Ramp, LLC, and Cox Properties, LLC.

South Carolina courts have used the Restatement to describe negligent retention and supervision as:

A **master** is under a duty to exercise reasonable care **so to control his servant** while acting outside the scope of his employment as to prevent him from intentionally harming others or from so conducting himself as to create an unreasonable risk of bodily harm to them, if

(a) the servant

(i) is upon the premises in possession of the master or upon which the servant is privileged to enter only as his servant, or

(ii) is using a chattel of the master, **and**

(b) the master

(i) knows or has reason to know that he has the ability to control his servant, and

(ii) knows or should know of the necessity and opportunity for exercising such control.

(emphasis added) *Kase v. Ebert*, 392 S.C. 57, 707 S.E.2d 456, 459-460 (S.C. App. 2011), citing *Degenhart v. Knights of Columbus*, 309 S.C. 114, 116-17, 420 S.E.2d 495, 496 (1992).

Plaintiff's claim fails as a matter of law because Defendant Cox is the master of the Businesses, and he cannot negligently retain and supervise himself.

II. Plaintiff has no evidence that any of the alleged "outrage" caused by Defendant Cox led to damages incurred by Plaintiff.

Plaintiff's complaint contains a series of acts allegedly committed by Defendant Cox. Defendant Cox strongly disputes these allegations. However, solely for the purposes of this motion

and the arguments contained herein, Defendant Cox will take the following acts at face value to outline how they fail to meet the requirements of intentional infliction of emotional distress.

Plaintiff has alleged that:

- a. Defendant Cox “intentionally snuck out in the night and scratched Plaintiff’s new BMW and further used some liquid paint remover to damage the vehicle’s paint. Defendant Cox further damaged the headlights to obstruct the headlights intended purpose.”
- b. Defendant Cox “continued to sneak around and scratch Plaintiff’s vehicle in order to get him in trouble with his mother and biological father.”
- c. Defendant Cox “took Plaintiff’s new shoes and tossed them into the waterway behind their residence to make it look like Plaintiff does not take care of his belongings.
- d. Defendant Cox “also took additional of Plaintiff’s clothing to further traumatize the Plaintiff.
- e. “Defendant Cox admitted that he took Plaintiff’s toothbrush and put soap on it.”
- f. “Defendant Cox admitted that he used the Plaintiff’s toothbrush to wipe his butt.”

See Complaint at ¶¶ 8-16.

The Supreme Court of South Carolina has explained “that in order to recover for intentional infliction of emotional distress, the complaining party must establish that:

- (1) the defendant intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from his conduct;
- (2) the conduct was so "extreme and outrageous" so as to exceed "all possible bounds of decency" and must be regarded as "atrocious, and utterly intolerable in a civilized community;"
- (3) the actions of the defendant caused plaintiff's emotional distress; and
- (4) the emotional distress suffered by the plaintiff was "severe" such that "no reasonable man could be expected to endure it."

Hansson v. Scalise Builders of S.C., 650 S.E.2d 68 (S.C. 2007), citing *Ford v. Hutson*, 276 S.C. 157, 162, 276 S.E.2d 776, 778 (1981).

In addition to the elements the Court in *Ford* stated, the Plaintiff must show both extreme and outrageous conduct and show that the conduct caused distress of an “extreme or severe nature”.

Hansson v. Scalise Builders of S.C., 650 S.E.2d 71 (S.C. 2007), citing *Ford v. Hutson*, 276 S.C. 157, 162, 276 S.E.2d 776, 778 (1981).

In *Hansson* the court found that the Plaintiff did not meet the burden of proof as his damages were limited to loss of sleep, a dentist, and a couple hundred dollars. *Id.* In addition, Plaintiff's relationships with others, nor his employment suffered. *Id.*

Here, even if the Plaintiff's allegations are true and even if those allegations are in fact "outrageous," there are no real damages.

The Plaintiff has testified that he performs well in school:

Q: I believe the last time you were being deposed you testified you were premed at Wofford; is that right?

A: Yes Ma'am.

Q: Are you still premed at Wofford?

A: According to administration, yes.

Q: Why do you qualify it that way?

A: I'm registered under the premed track of Wofford.

Q: Are you taking premed courses?

A: Yes.

Q: Are you currently a junior?

A: Yes, ma'am.

Q: When your first semester grades came out, what did they look like? What was your GPA?

A: I don't recall my first semester GPA.

Q: Did you have any grades on that transcript below a C?

A: No, ma'am. I've never had a grade below a C.

(See Dep. J. Kelly, Part 2 at Pg. 83:7-25 and Pg. 84:1).

The Plaintiff has testified that he has been able to seek and hold employment that he wanted to hold:

Q: Have any of the experiences that you allege in this lawsuit kept you from pursuing or taking a job opportunity?

A: As of now, no.

(See Dep. J. Kelly, Part 2 at Pg. 106:23-25 and Pg. 107:1).

The Plaintiff has not been treated by a medical professional; he has only sought periodic counseling when he is in school at Wofford:

Q: I'm going to go backwards for just a second, and I apologize. I can't remember if I've asked you this or somebody else has asked you. Other than your guidance counselor in high school and the counselors at Wofford, are there any other counselors that you've seen?

A: What do you consider a counselor?

Q: A licensed therapist or a psychologist or a psychiatrist.

A: I don't believe I've seen anyone else.

(See Dep. J. Kelly, Part 2 at Pg. 102:12-21).

In addition, his car was repaired, and his toothbrush and shoes were replaced, so there is no monetary damage:

Q: I want to be clear about the property damage. The property damage, my understanding is that that includes the 2005 BMW, which was repaired, correct?

A: Incompletely repaired, yes.

Q: And has since been sold; is that correct?

A: I'm not sure how the movement of the BMW was, but it is no longer my primary vehicle that I use.

Q: You were never the owner of the 2005 BMW, correct?

A: No, ma'am.

Q: And then the only other property damage that I'm aware of are some tennis shoes.

A: Yes. Expensive tennis shoes.

Q: Those tennis shoes were replaced or additional tennis shoes were purchased, correct?

A: Yes.

Q: Is there any other property damage that you allege as a result of the allegations in this suit?

A: Not that I'm aware of at this time, but there could be. I'm drawing a blank.

(See Dep. J. Kelly, Part 2 at Pg. 113:12-25 and Pg. 114:1-10).

Based on the lack of damages demonstrated by the Plaintiff, there is no damage evidence to submit to the jury and this cause of action must fail.

III. There is no evidence to support that Defendant Cox violated S.C. Code § 44-29-145.

To prove negligence per se, the plaintiff must show that the defendant owed them a duty of care arising from a statute. *Norton v. Opening Break of Aiken, Inc.*, 443 S.E.2d 406, 408 313 S.C. 508 (S.C. App. 1994), citing *Whitlaw v. Kroger Co.*, 306 S.C. 51, 53, 410 S.E.2d 251, 252 (1991). To do this, a plaintiff must show:

(1) that the essential purpose of the statute is to protect from the kind of harm the plaintiff has suffered; and (2) that he is a member of the class of persons the statute is intended to protect. If the plaintiff makes this showing, he has proven the first element of a claim for

negligence: viz., that the defendant owes him a duty of care. If he then shows that the defendant violated the statute, he has proven the second element of a negligence cause of action: viz., that the defendant, by act or omission, failed to exercise due care. This constitutes proof of negligence per se.

Id.

Plaintiff claims that Defendant Cox committed a felony by violating S.C. Code § 44-29-145 for knowingly exposing him to HIV. This reckless and defamatory accusation must be dismissed. Section 44-29-145 is a criminal statute that says in pertinent part:

It is unlawful for a person who knows that he is infected with Human Immunodeficiency Virus (HIV) to:

- (1) knowingly engage in sexual intercourse, vaginal, anal, or oral, with another person without first informing that person of his HIV infection;
- (2) knowingly commit an act of prostitution with another person;
- (3) knowingly sell or donate blood, blood products, semen, tissue, organs, or other body fluids;
- (4) forcibly engage in sexual intercourse, vaginal, anal, or oral, without the consent of the other person, including one's legal spouse; or
- (5) knowingly share with another person a hypodermic needle, syringe, or both, for the introduction of drugs or any other substance into, or for the withdrawal of blood or body fluids from the other person's body without first informing that person that the needle, syringe, or both, has been used by someone infected with HIV.

A person who violates this section is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than ten years.

Plaintiff has no evidence that Defendant Cox violated this statute.

First, and arguably most important, **Defendant Cox does not have HIV**. Therefore, he can't have violated Section 44-29-145. One must both have HIV and know about their infection. Defendant Cox has no knowledge of an HIV infection because he does not have HIV. Plaintiff has not produced any evidence to the contrary.

Plaintiff's mom was married to Defendant Cox for years and they were sexually active:

Q: Since you are married to him, I assume you were sexually active with him. Is that fair to assume?

A: Yes.

(See Dep. D. Sarte at Pg. 52:1-4).

She was asked if she was aware of Defendant Cox having HIV. She responded, "I'm not."

Q: I'm asking if you're aware of my client having HIV.

A: I'm not.

(See Dep. D. Sarte at Pg. 51:20-22).

Plaintiff's mom was also asked if she was aware of Defendant Cox having any other STDs:

Q: And you don't have any knowledge as to Mr. Cox having any sort of SDT; is that correct?

A: I have no knowledge.

(See Dep. D. Sarte at Pg. 52:22-24).

Again she responded, "I am not." *Id.* She had "no knowledge" of Defendant Cox having any sort of STD. *Id.* at 52.

In his deposition, Plaintiff testified he had no evidence that Mr. Cox has HIV:

Q: You've also alleged that Mr. Cox violated South Carolina Code 44-29-145. What evidence do you have that my client has HIV or any other sexually transmitted disease?

A: I do not have evidence.

(See Dep. J. Kelly at Pg. 67:18-22).

Plaintiff also testified that he has not received an STD test and has no knowledge that Mr. Cox transmitted HIV to him:

Q: But you haven't had an STD test?

A: Correct.

Q: So it's my understanding that you have no evidence that Mr. Cox has transmitted HIV or any other sexually transmitted disease to you; is that correct?

A: Correct.

(See Dep. J. Kelly at Pg. 68:4-10).

Plaintiff was reckless in alleging that Defendant Cox committed a felony by knowingly exposing him to HIV. This claim for negligence per se should be dismissed and the costs of filing this motion should be awarded to Defendant Cox.

CONCLUSION

Based on the arguments, authorities, and evidence contained in this memorandum, and the records of this case, Defendants Roger D. Cox, Cox Millwork & Supply Inc., Waterside Drive Boat Ramp, LLC, and Cox Properties, LLC pray the Court to grant its Motion for Summary Judgment and for any other relief the Court deems just and proper.

Defendants' MIS of MSJ
Case No.: 2020-CP-26-06286

ROSS & CRISTALDI, LLC

s/ Emily C. Sheets

Jeffrey A. Ross, Bar No.: 74254

Philip P. Cristaldi, III, Bar No.: 102219

Emily C. Sheets, Bar No.: 78768

863 Coleman Boulevard, Suite B

Mt. Pleasant, South Carolina 29464

Phone: (843) 329-4040

Email: jross@rclawsc.com

pcristaldi@rclawsc.com

esheets@rclawsc.com

**Attorney for Roger D. Cox, Cox Millwork &
Supply, Inc., Waterside Drive Boat Ramp, LLC,
and Cox Properties, LLC**

Mt. Pleasant, South Carolina
November 18, 2022

STATE OF SOUTH CAROLINA	)	IN THE FIFTEENTH JUDICIAL CIRCUIT
	)	COURT OF COMMON PLEAS
COUNTY OF HORRY	)	CIVIL ACTION No. 2022-CP-26-06286
Jack Kelly,	)	
	)	
Plaintiff,	)	
	)	MEMORANDUM IN OPPOSITION TO
	)	MOTION FOR SUMMARY
-vs-	)	JUDGMENT
	)	
Roger D. Cox, Cox Millwork & Supply	)	
Inc., Waterside Drive Boat Ramp, LLC,	)	
and Cox Properties, LLC,	)	
	)	
Defendants.	)	
_____	)	

The Plaintiff respectfully submit this Memorandum in Opposition to Defendants' Motion for Summary Judgment Pursuant to Rule 56, SCRPC. For the reasons set forth below, the Plaintiff prays that the Court deny the Motion.

STANDARD OF REVIEW

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003). "Rule 56(c) of the South Carolina Rules of Civil Procedure provides that a trial court may grant a motion for summary judgment 'if 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.'" *Id.* (quoting Rule 56(c), SCRPC). "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 329-

30, 673 S.E.2d 801, 802 (2009); Melton v. Medtronic, Inc., 389 S.C. 641, 698 S.E.2d 886 (Ct. App. 2010).

Summary judgment is not appropriate where 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); Baugus v. Wessinger, 303 S.C. 412, 401 S.E.2d 169 (1991). Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. Tupper, *supra*. All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the movant. True v. Monteith, 327 S.C. 116, 489 S.E.2d 615(1997); Tupper, *supra*. The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991).

STATEMENT OF THE CASE

This is a case involving the Plaintiff and his abusive stepfather Defendant Roger D. Cox who committed various outrageous acts against the Plaintiff. In October of 2016 Defendant Cox intentionally snuck out in the night and scratched Plaintiff's new BMW and further used some liquid paint remover to damage the vehicle's paint. "Defendant Cox further damaged the headlights to obstruct the headlights intended purpose. Defendant Cox continued to sneak around and scratch Plaintiff's vehicle in order to get him in trouble with his mother and biological father. Defendant Cox erased the security footage from the home security system that showed him vandalizing Plaintiff's vehicle. After questioning from Plaintiff's mother Defendant Cox admitted to being the one who was vandalizing Plaintiff's vehicle." Compl. ¶ 8-11. "Defendant Cox, took Plaintiff's new shoes and tossed them into the waterway behind their residence to make it look like

Plaintiff does not take care of his belongings.” Compl. ¶13. Defendant Cox took Plaintiff’s toothbrush and wiped his butt with it. Compl. ¶ 16. There is still substantial discovery to be completed in this case as the Plaintiff has not taken any depositions of the Defendants to date. Plaintiff intends on doing so along with serving supplemental discovery.

ARGUMENT

Defendant’s Motion for Summary Judgment should be denied as there exists genuine issues of material fact as to whether Defendant Cox was acting as an agent of his respective companies and acting within the scope of his employment when engaging in the actions complained of in the Complaint, the amount of punitive damages Defendants’ are liable for to the Plaintiff based on their actions, and the degree and amount of mental anguish that Defendant Cox’s outrageous actions caused Plaintiff harm. It is clear from the Complaint in this action and Defendant Cox’s signed confession (attached and incorporated herein as Exhibit A) that Defendant Cox is not getting out of this action on this motion for summary judgment as there exists substantial questions of fact to be submitted to the jury to decide damages and the degree to which his behavior is outrageous.

A. Liability of Business Entities

“Generally, the principal is held liable to third persons in civil suits for the following: frauds, deceptions, concealments, misrepresentations, negligences, and other malfeasances and omissions of duty of his agent in the course of his employment, although the principal did not authorize or justify or participate in, or indeed, know of such misconduct, or even if he forbade the acts or disapproved of them.” Rickborn v. Liberty Life Ins. Co., 321 S.C. 291, 468 S.E.2d 292 (S.C. 1995).

"In all such cases, the rule applies respondeat superior; and it is founded upon public policy and

convenience, for in no other way could there be any safety to third persons in their dealings, **either directly with the principal...**" Id. (Bold for emphasis added). "What is within the scope of employment may be determined by implication from the circumstances of the case. Any doubt as to whether the servant was acting within the scope of his authority when he injured a third person must be resolved against the master, at least to the extent of requiring that the question be submitted to the jury." Froneberger v. Kirkland Dale Smith, Janel Elizabeth Smith, Euro Mortg. Bankers, Inc., 406 S.C. 37, 748 S.E.2d 625 (S.C. App. 2013).

In this case, although Defendant Cox is the owner of the respective Defendant business entities he is also an agent of said entities and therefore the Defendant business entities may be held liable for the acts of Defendant Cox. It is established from the Rickborn case that a company will be held liable to third-parties when its principal engages in tortious conduct with a third-party. While Defendant tries to escape liability by hiding behind the fact that he is the master and therefore cannot be held liable is unavailing. There is nothing in the record that conclusively shows that Defendant Cox was not acting on behalf of one or more of his business entities when engaging in the outrageous actions against the Plaintiff. As stated in the Complaint, Defendant Cox erased the video footage of him throwing Plaintiffs new shoes in the waterway, which likely could have happened at the boat ramp owned by Defendant Waterside Drive Boat Ramp, LLC. Furthermore, Defendant Cox very well could have been on the phone engaging in business for any of the respective entities while committing said act. The record will continue to be developed as Defendants' depositions are taken.

Defendant Cox does not only conduct business when he is in the office but is also acting in furtherance of his business entities when he works from home, takes business calls while at home or wherever he may be, speaks to patrons at restaurants about his businesses for purposes of

securing potential customers, and in holding himself out as the principal of the Defendant business entities within the Horry County community. It is clear that Defendant Cox committed the various acts complained of in the Complaint as evidenced by his signed confession attached as Exhibit A. Plaintiff contends that these acts do further Defendant Cox's business as if his campaign to harass and torture Plaintiff was successful, Plaintiff would no longer be around the home and him and his mother's relationship would have become estranged allowing Defendant Cox to make more use of his ability to work from home without Plaintiff. Defendant Cox would no longer have to pay out of his business's profits for any care whatsoever for Plaintiff. Defendant Cox would not have to pay for any of Plaintiff's education out of the profits of said businesses. Furthermore, at this juncture in the lawsuit it is unclear whether or not Defendant Cox formulated this scheme and campaign at his places of business with co-workers or not.

It is clear from South Carolina case law that the Defendant business entities may be held liable for the tortious conduct of its principal Defendant Cox when he is acting on behalf of said companies and within the scope of his employment. It is further articulated that any doubts as to whether Defendant Cox was acting within the scope of his employment with the respective companies is a question that is submitted to the jury. Thus, Defendants' motion for summary judgment as to the relative business entities should be denied as there exists genuine issues of material fact as to whether Defendant Cox was acting on behalf of said companies and within the scope of his employment when engaging in the acts he has confessed to.

B. DAMAGES/OUTRAGE

Again, it is clear from Exhibit A that summary judgment should not be granted as to Defendant Cox as the damages to which he is liable to Plaintiff is a question for the jury. It is well settled that

the amount punitive damages to be awarded is a question for the jury in South Carolina. It is also noted in actions for outrage/intentional infliction of emotional distress that where reasonable persons may differ as to whether the Defendant's conduct was so outrageous to permit recovery it is a question for the jury. See. Holtzscheiter v. Thomson Newspapers, 306 S.C. 297, 302, 411 S.E.2d 664, 666 (1991). "It is for the court to determine whether on the evidence severe emotional distress can be found; it is for the jury to determine whether, on the evidence, it has in fact existed." Hansson v. Scalise Builders of S.C., 650 S.E.2d 68 (S.C. 2007). When there exists evidence of outrageous conduct and severe emotional distress the question of damages is a jury question. See *Id.*

Here, there is clearly evidence of outrageous conduct which has resulted in severe emotional distress to the Plaintiff. Defendant Cox confessed to the outrageous conduct as shown in Exhibit A. This conduct includes wiping his butt with Plaintiff's toothbrush, throwing Plaintiff's shoes in the waterway, scratching Plaintiff's car, and putting soap on Plaintiff's toothbrush. Defendant Cox wiping his butt with Plaintiff's toothbrush alone would evidence outrageous conduct warranting a submittal of damages to the jury. Plaintiff has brought a claim for punitive damages and emotional damages both of which are submitted to a jury to decide the amount awarded. Therefore, Defendants' motion for summary judgment as to the outrage cause of action must fail as there is clearly a question for the jury as to the level or outrageous conduct and amount of damages to be awarded.

C. NEGLIGENCE PER SE

"Citing long-standing South Carolina precedent, the Court of Appeals held the violation of a statute constitutes negligence per se, and negligence per se is some evidence of recklessness and

willfulness that requires submission of the issue of punitive damages to the jury." Fairchild v. S.C. Dep't of Transp., 727 S.E.2d 407, 398 S.C. 90 (S.C. 2012). Here, Defendant wiped his butt with Plaintiff's toothbrush and Plaintiff has plead that Defendant Cox S.C. Code Ann. § 44-29-145. Defendant Cox has provided no medical record evidence that he does not have HIV. Thus, Defendants' motion for summary judgment must be denied and the question of punitive damages for violation of § 44-29-145 is a question that is submitted to the jury.

Conclusion

Pursuant to the aforementioned, Defendants' motion for summary judgment must fail as there exists a genuine issue of material facts as to whether Defendant Cox was acting on behalf of his business entities within the scope of his employment, to what extent his conduct was outrageous, and the amount of punitive and emotional damages to be awarded. Therefore, Plaintiff respectfully requests that this court deny Defendant's motion for summary judgment.

**WRIGHT, WORLEY, POPE,
EKSTER & MOSS, PLLC**
Counsel for Plaintiff

s/ Richard L. Snyder

Kenneth R. Moss, SC Bar No: 15520
George N. Spirakis, SC Bar No: 12024
Richard L. Snyder, SC Bar No: 105192
628A Sea Mountain Highway
North Myrtle Beach, SC 29582
tel: (843) 281-9901 fax: (843) 281-9903
Email: KennethMoss@wwpemplaw.com
Georgespirakis@wwpemplaw.com
richardsnyder@wwpemplaw.com

7/17/14

- 1) I threw away Jack's shoes into waterway.
- 2) I Wiped my ~~butt~~ butt w/ Jack's Toothbrush
- 3) I Scratched Jack's Car Headlights
- 4) I put soap on Jack's toothbrush
- 5) I will make car payments on the CLS 550 till payoff
At payoff I will sign over title



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CIVIL ACTION NO. 2020-CP-26-06286
	)	
JACK KELLY,	)	
	)	
Plaintiff,	)	PLAINTIFF'S NOTICE OF MOTION
	)	AND MOTION FOR RECONSIDERATION
vs.	)	PURSUANT TO RULE 59 SCRC
	)	
ROGER D. COX, COX MILLWORK &	)	
SUPPLY, INC., WATERSIDE DRIVE	)	
BOAT RAMP, LLC AND COX	)	
PROPERTIES, LLC,	)	
	)	
Defendants.	)	
	)	

To The Honorable Kristi F. Curtis and Opposing Counsel Emily Christine Sheets;

TAKE NOTICE that pursuant to Rule 59, South Carolina Rules of Civil Procedure (SCRC), the Plaintiff, by and through his undersigned attorneys, moves that the Court reconsider its Order dated and filed December 29, 2022. A copy of the said Order is attached hereto as Exhibit A.

In support of the within motion, the undersigned would show unto the Court as follows:

PROCEDURAL BACKGROUND

This matter came for a hearing on November 29, 2022, upon a motion for Summary Judgment as to all Defendants that was filed on August 17, 2022. The Court's Order recited that the Court had considered the Motion, reply, pleading, discovery and depositions on file, together with arguments of counsel, and expressly granted Defendants Roger D. Cox, Cox Millwork & Supply Inc., Waterside Drive Boat Ramp, LLC and Cox Properties, LLC (Defendants) Motion for Summary Judgment. Thus, final judgment is entered on their behalf, ending this case with prejudice.

In oral arguments and pleadings, Plaintiff has asserted that this is a case involving the Plaintiff and his abusive stepfather, Defendant Roger D. Cox, who committed various outrageous acts against the Plaintiff. With motivation to cause trouble between Plaintiff, his mother and biological father, his mother who was at the time married to Defendant. In October of 2016, Defendant Cox intentionally snuck out in the night and scratched Plaintiff's new BMW and further used some liquid paint remover to damage the vehicle's paint. "Defendant Cox further damaged the headlights to obstruct the headlights intended purpose. Defendant Cox continued to sneak around and scratch Plaintiff's vehicle. Defendant Cox erased security footage from the home security system that would have shown him vandalizing Plaintiff's vehicle. After questioning from Plaintiff's mother Defendant Cox admitted to being the one who was vandalizing Plaintiff's vehicle." Compl. ¶ 8-11. "Defendant Cox, took Plaintiff's new shoes and tossed them into the waterway behind their residence to make it look like Plaintiff does not take care of his belongings." Compl. ¶13. "Defendant Cox took Plaintiff's toothbrush and wiped his butt with it." Compl. ¶ 16, see Exhibit B.

There is still substantial discovery to be completed in this case as the Plaintiff has not taken any depositions of the Defendants to date. Plaintiff intends on doing so, along with serving supplemental discovery.

REQUEST FOR RECONSIDERATION

Plaintiff's counsel informed the Court that discovery had not been completed and informed the Court of the existence of an Amended Consent Scheduling Order filed with the Court on August 31, 2022 (exhibit C). Plaintiff's counsel informed the Court that discovery was open pursuant to the Amended Scheduling Order through May 31, 2023 and that the Court was putting the cart before the horse since discovery was not complete. Counsel for the Plaintiff also argued

to the Court that Plaintiff had just thirty-two days earlier to the Summary Judgment hearing received the Defendant's tax returns and had not had the opportunity to depose the Defendant (exhibit D). "Summary Judgment is a drastic remedy and must not be granted until the opposing party has had a full and fair opportunity to complete discovery." Id. at 69, 580 S.E.2d at 439. "Summary Judgment is not appropriate when further inquiry into the facts of the case is desirable to clarify the application of the law." Gary v Askew, 417 S.C. 232, 789 S.E.2d 94, 98 (Ct. App 2016), reh'g denied (Aug. 17, 2016).

Again, it is clear from Exhibit B that Summary Judgment should not be granted as to Defendant Cox as the damages to which he is liable to Plaintiff is a question for the jury. It is well settled that the amount of actual damages and punitive damages to be awarded is a question for the jury in South Carolina. It is also noted in actions for outrage/intentional infliction of emotional distress that where reasonable persons may differ as to whether the Defendant's conduct was so outrageous to permit recovery it is a question for the jury. See. Holtzscheiter v. Thomson Newspapers, 306 S.C. 297, 302, 411 S.E.2d 664, 666 (1991). "It is for the court to determine whether, on the evidence, severe emotional distress can be found; it is for the jury to determine whether, on the evidence, it has in fact existed." Hansson v. Scalise Builders of S.C., 650 S.E.2d 68 (S.C. 2007). When there exists evidence of outrageous conduct and severe emotional distress, the question of damages is a jury question. See Id.

Here, there is clearly evidence of outrageous conduct which has resulted in severe emotional distress to the Plaintiff. Defendant Cox confessed to the outrageous conduct as shown in Exhibit B. This conduct includes wiping his butt with Plaintiff's toothbrush, throwing Plaintiff's shoes in the waterway, scratching Plaintiff's car, and putting soap on Plaintiff's toothbrush. Defendant Cox wiping his butt with Plaintiff's toothbrush alone would evidence outrageous conduct warranting a

submittal of damages to the jury. Plaintiff has brought a claim for punitive damages and emotional damages, both of which are submitted to a jury to decide the amount awarded. Therefore, Defendants' motion for Summary Judgment as to the outrage cause of action must be denied as there is clearly a question for the jury as to the level of outrageous conduct and amount of damages to be awarded. "Summary Judgment should not be granted even when there is no dispute as to evidentiary facts if there is dispute as to the conclusion to be drawn from those facts" Lyons v Fid. Nat Title Ins. Co. 415 S.C. 115, 123, 781 S.E.2d 126, 130-131 (Ct. App. 2015), reh'g denied (Jan. 21, 2016).

Plaintiff's counsel further argued to the Court that if there was a scintilla of evidence that it must deny the motion for Summary Judgment. There is a scintilla of evidence against Defendant Cox. Counsel argued that Plaintiff had received counseling at his University and there was a cost for this counseling. Counsel for the Plaintiff also argued that there were costs associated with the throwing of the clothes into the waterway that was admitted by the Defendant in a written note (see exhibit B). "Summary Judgment is a drastic remedy to be invoked cautiously and must be denied if Appellants demonstrate a scintilla of evidence in support of their claims." Jericho State Cap. Corp. of Fla. v Chicago Title Ins. Co., 431 S.C. 437, 444, 848 S.E.2d 572, 575 (Ct. App. 2020).

Conclusion

Pursuant to the aforementioned, Defendants' motion for Summary Judgment must fail as there exists a genuine issue of material facts as to Defendant Cox, to what extent his conduct was outrageous, and the amount of actual damages, punitive damages and emotional damages to be awarded. Therefore, Plaintiff respectfully requests that this court deny Defendant's motion for Summary Judgment.

**WRIGHT, WORLEY, POPE, EKSTER
& MOSS, PLLC**
Attorneys for Plaintiff

/s/ George N. Spirakis

Kenneth R. Moss, Esquire, S.C. Bar No. 15520
George N. Spirakis, Esquire, S.C. Bar No. 12024
Wright, Worley, Pope, Ekster & Moss, PLLC
628-A Sea Mountain Highway
North Myrtle Beach, SC 29582
(843) 281-9901
Facsimile (843) 281-9903
KennethMoss@wwpemplaw.com
GeorgeSpirakis@wwpemplaw.com

January 5, 2023
North Myrtle Beach, SC

7/17/17

- 1) I Threw away Jack's Shoes into waterway.
- 2) I Wiped my ~~butt~~ butt w/ Jack's Toothbrush
- 3) I Scratched Jack's Car Headlights
- 4) I put soap on Jack's toothbrush
- 5) I will make car payments on the CLS 550 till paid off
At payoff I will sign over title




STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Jack Kelly,

Plaintiff,

v.

Roger D. Cox, Cox Millwork & Supply, Inc.,
Waterside Drive Boat Ramp, LLC, and Cox
Properties, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No. 2020-CP-26-06286

**AMENDED CONSENT SCHEDULING
ORDER**

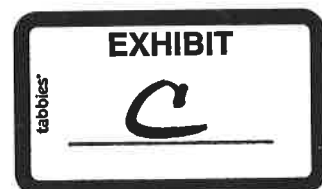
THE UNDERSIGNED, counsel for the parties herein, have consented to the dates set forth herein, and the Court has determined that good cause exists to approve the dates set forth herein;

It is therefore, ORDERED, ADJUDGED AND DECREED that the above-captioned matter is hereby subject to the following scheduling:

1. Discovery, including depositions of the parties, shall be completed on or before **April 30, 2023**. Said deadline shall not affect the obligation of the parties to supplement their discovery responses through the time of trial, nor the right to compel additional discovery pursuant to an appropriate motion.
2. Motions shall be completed on or before **May 31, 2023**.
3. The case shall not be called to trial prior to **June 1, 2023**.

IT IS SO ORDERED.

The Honorable Letitia H. Verdin
Judge Thirteenth Judicial Circuit

CONSENT SIGNATURES ON FOLLOWING PAGE

Case No. 2020-CP-26-06286
2022.08.26 Amended Consent Scheduling Order

WE CONSENT:

WRIGHT, WORLEY, POPE, EKSTER & MOSS, PLLC
Attorneys for Plaintiffs

s/George N. Spirakis
George N. Spirakis (SC Bar No. 12024)
Kenneth R. Moss (SC Bar No. 15520)
628A Sea Mountain Highway
North Myrtle Beach, SC 29582
Telephone: (843) 281-9901
Facsimile: (843) 281-9903
GeorgeSpirakis@wwpemlaw.com
KennethMoss@wwpemlaw.com

Ross & Cristaldi, LLC
Attorneys for Defendants

s/Emily C. Sheets
Jeffrey A. Ross, Bar No.: 74254
Philip P. Cristaldi, III, Bar No.: 102219
Emily C. Sheets, Bar No.: 78768
863 Coleman Boulevard, Suite B
Mt. Pleasant, South Carolina 29464
Phone: (843) 329-4040
Email: jross@rclawsc.com
pcristaldi@rclawsc.com
esheets@rclawsc.com

FILED ELECTRONICALLY FILED - 2022 AUG 30 12:36 PM - Horry County - COMMON PLEAS - CASE#2020CP2606286



Horry Common Pleas

Case Caption: Jack Kelly VS Roger D Cox , defendant, et al

Case Number: 2020CP2606286

Type: Order/Scheduling Order

So Ordered

s/Letitia H. Verdin, SC Judge 2162

ROSS & CRISTALDI^{LLC}
ATTORNEYS AT LAW

Jeffrey A. Ross
Philip P. Cristaldi, III
Scott H. Winograd
Emily C. Sheets

Emily C. Sheets
863 Coleman Blvd., Ste. B
Mt. Pleasant, SC 29464
esheets@rclawsc.com
(843) 329-4040

October 26, 2022

VIA ELECTRONIC MAIL

Kenneth R. Moss, Esq.
George N. Spirakis, Esq.
Wright, Worley, Pope, Ekster & Moss, PLLC
628 A Sea Mountain Highway
North Myrtle Beach, SC 29582
kennethmoss@wwpemlaw.com
georgespirakis@wwpemlaw.com

Re: Kelly v. Roger D. Cox, et al.
Case No.: 2020-CP-26-06286

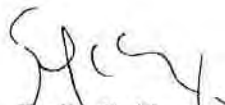
Dear Counselors:

Please find Roger D. Cox and Cox Millwork & Supply, Inc.'s Supplemental Response to Plaintiff's First Set of Supplemental Requests for Production in connection with the above referenced matter. Responsive documents bates stamped CoxTaxes0001-0520 are provided herewith.

Should you have any questions or concerns, please do not hesitate to contact me.

Thank you very much for your attention to the above.

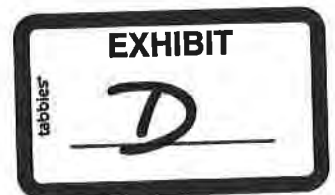
Best Regards,


Emily C. Sheets

ECS/im

Enclosures

cc: All counsel of record (*via email only, with enclosures*)



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Jack Kelly,

Plaintiff,

v.

Roger D. Cox, Cox Millwork & Supply Inc.,
Waterside Drive Boat Ramp, LLC and Cox
Properties, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No. 2020-CP-26-06286

**DEFENDANTS ROGER D. COX AND
COX MILLWORK & SUPPLY, INC.'S
SUPPLEMENTAL RESPONSES TO
PLAINTIFF'S FIRST SET OF
SUPPLEMENTAL REQUESTS FOR
PRODUCTION OF DOCUMENTS**

**TO: KENNETH R. MOSS, ESQ., GEORGE N. SPIRAKIS, ESQ., AND RICHARD L.
SNYDER, ESQ., ATTORNEYS FOR PLAINTIFF;**

GENERAL OBJECTIONS

A. Defendants, Roger D. Cox and Cox Millwork & Supply, Inc. (hereinafter referred to as "Defendants" or "Cox"), object to the Requests for Production of Documents of Plaintiff, above named, to the extent that they are inconsistent with or enlarge upon the South Carolina Rules of Civil Procedure.

B. Defendants object to each Request for Production to the extent that it seeks the disclosure of information protected by the attorney-client privilege, the work product doctrine, and/or any other applicable privilege or doctrine which protects the mental impressions, theories, and strategies of counsel. Defendants further object to each Request for Production, inasmuch as it seeks to discover information, documents, opinions, and/or other tangible evidence that was prepared in anticipation of litigation.

C. Defendants object to each Request for Production to the extent that it requests information in the possession of persons or entities that are not under our control.

D. Defendants reserve the right to supplement or amend these responses at any time during the course of discovery.

RESPONSES TO REQUESTS FOR PRODUCTION

1. Copies of any and all federal and state income tax returns of Defendant Cox Millwork & Supply, Inc. from the last 5 years.

RESPONSE

Pursuant to the Order filed October 11, 2022, please see documents produced herewith bates stamped CoxTaxes0001-0520 and marked confidential.

Cox Supp Resp to Plt's Supp RFP
Case No. 2020-CP-26-06286

ROSS & CRISTALDI, LLC


Jeffrey A. Ross, Bar No.: 74254
Philip P. Cristaldi, III, Bar No.: 102219
Emily C. Sheets, Bar No.: 78768
863 Coleman Boulevard, Suite B
Mt. Pleasant, South Carolina 29464
Phone: (843) 329-4040
Email: jross@rclawsc.com
pcristaldi@rclawsc.com
esheets@rclawsc.com

**Attorney for Roger D. Cox, Cox Millwork &
Supply, Inc., Waterside Drive Boat Ramp, LLC,
and Cox Properties, LLC**

Mt. Pleasant, South Carolina
October 26, 2022

CERTIFICATE OF SERVICE

Case No. 2020-CP-26-06286

The undersigned hereby certifies that a true and correct copy of **Defendants Roger D. Cox and Cox Millwork & Supply, Inc.'s Supplemental Responses to Plaintiff's First Set of Supplemental Requests for Production with documents bates stamped CoxTaxes0001-0520** has been served electronic mail to the following counsel of record on the 26th day of October, 2022:

Attorney for Plaintiff

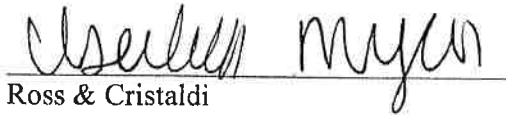
Kenneth R. Moss, Esq.

George N. Spirakis, Esq.

Wright, Worley, Pope, Ekster & Moss, PLLC

628 A Sea Mountain Highway

North Myrtle Beach, SC 29582

kennethmoss@wwpemplaw.com;georgespirakis@wwpemplaw.com
Ross & Cristaldi

RECEIVED

May 07 2026

SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Wright, Worley, Pope, Ekster & Moss, PLLC
Attorneys for the Appellants

s/ George N. Spirakis

George N. Spirakis, Esquire, SC Bar No. 12024
628A Sea Mountain Highway
North Myrtle Beach, SC 29582
Tel: 843/ 281-9901/ Fax: 843/ 281-9903
Email: GeorgeSpirakis@wwpemplaw.com

The Snyder Law Group

Co-Counsel for the Appellants
Richard L. Snyder, Esquire, SC Bar No. 105192
2510 Barrett Street, Columbia, SC 29201
Telephone No.: 980/ 297-9627

North Myrtle Beach, SC
October 06, 2023