THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

D. Garrison Hill, Circuit Judge

Appellate Case No. 2015-000778
Case No. 2013-CP-23-01762

Carol Simpson, Appellant,

v.

Frank A. Landgraff, Carol Sutton, Sutton & Associates Investigations, Inc., Defendants,

Of Whom Frank A. Landgraff is the Respondent.

FINAL INITIAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

To coin a term, this is a case of "video wiretapping." Technology has outpaced jurisprudence when it comes to video recording. Thus, Appellant had to resort to claims for wrongful intrusion into private affairs, intentional infliction of emotional distress, and civil conspiracy to seek redress for the damages.

On March 18, 2013, Appellant sent the following documents to the trial court: (1) a Complaint for Wrongful Intrusion into Private Affairs, Intentional Infliction of Emotional Distress, and Civil Conspiracy along with a Summons, (2) a Motion to Proceed under Pseudonym along with a Proposed Order, (3) an *Ex Parte* Motion for a Temporary Restraining Order and Rule to Show Cause Why a Permanent Injunction Should Not Issue ("TRO") along with an Affidavit and Proposed Order. (R. pp. 27-29, 113-128). The *ex parte* motion simply

sought the enjoining of the disclosure of Appellant's identity until a timely hearing could be held. (R. pp. 114-128).

On March 20, 2013, the trial court instructed Appellant to "file the Summons and Complaint and Motion for Temporary Injunction and serve the Respondents in this matter. Once proof of service has been received by the Court, we will schedule a hearing, allowing for 10 day's notice to the Respondents." (R. p. 466). On March 27, 2013, Appellant filed the Summons, Complaint, and Motion to Proceed under Pseudonym. (R. p. 27-29, 113).

On March 29, 2013, Appellant filed the Motion for an *Ex Parte* TRO rather than just a Motion for Temporary Injunction. On April 17, 2013, the trial court denied Appellant's Motion by returning it to her and again instructing her to file the Summons, Complaint, and Motion for Temporary Injunction. On April 18, 2013, Appellant filed a Motion for Reconsideration which the trial court denied.

Appellant filed a Complaint and Motion to Proceed Anonymously on March 27, 2013. (R. pp. 27-29, 113). The Court granted Appellant's Motion to Proceed Anonymously without a hearing on May 17, 2013. (R. p. 8). On September 26, 2013, Respondent filed a motion asking the trial court to vacate its Order. (R. pp. 129-130). On November 11, 2013, Appellant filed her Motion in Opposition to Set Aside Order.

On January 8, 2014, the Court vacated its Order and denied Appellant's Motion to Proceed Anonymously without a hearing. (R. pp. 13-16). Appellant filed a motion asking the Court to vacate its January 8th Order or hold it in abeyance until a hearing could be held on her original Motion to Proceed Anonymously. (R. p. 136). The trial court denied Appellant's motion via a Form 4 order without a hearing on March 31, 2014. (R. p. 18).

Appellant filed the Amended Complaint which only changed the name of the Appellant from Jane Doe on June 20, 2014. (R. p. 39). Appellant also filed a Memorandum in Support of her Motion to Strike 19 unsupported affirmative defenses and for Partial Summary Judgment on June 20, 2014. (R. pp. 473-492). Respondent filed a Rule 56(f) affidavit on June 23, 2014. The Court denied Appellant's Motion to Strike and for Partial Judgment without a hearing by a Form 4 Order filed on July 1, 2014. (R. p. 19).

Respondent filed his Answer on July 10, 2014. (R. p. 42). Respondent filed a Motion to Compel on August 28, 2014. (R. pp. 137-197). Appellant re-filed her Motion to Strike 18 unsupported affirmative defenses on October 13, 2014. (R. p. 198). On October 30, 2014, she filed an Answer to Respondent's Motion to Compel and a Memorandum in Support of her Motion to Strike. (R. pp. 199-208, 493-507).

On November 7, 2014, Respondent filed a Motion for Summary Judgment. (R. p. 209-211). Appellant filed her Verified Memorandum in Opposition to Respondent's Motion on November 14, 2014. (R. pp. 253-285). Respondent filed a Supplemental Memorandum Supporting Summary Judgment on November 24, 2014. (R. pp. 508-524).

The other Defendants Carol Sutton and Carol Sutton & Associates - Investigations, Inc. ("Sutton") filed their Amended Complaint on November 26, 2014. (R. pp. 62-68).

On December 5, 2014, the trial court granted Respondent's Motion for Summary Judgment with instructions for Respondent's counsel to write a short order. Respondent submitted a Proposed Order. (R. p. 20). Appellant filed a Memorandum in Opposition to Respondent's Proposed Order on December 22, 2014. (R. pp. 525-552).

The trial court filed an Order granting Respondent's Motion for Summary Judgment on February 3, 2015. (R. pp. 21-26). Appellant filed a Motion for Reconsideration on February 12,

2015. (R. pp. 213-246). The trial court filed an Amended Order granting Respondent's Motion for Summary Judgment on February 27, 2015. (R. pp. 1-7). Appellant filed a Motion for Reconsideration of the Amended Order on March 16, 2015. The trial court filed an Order denying Appellant's Motion on March 23, 2015 without a hearing.

FACTS

Respondent introduced Appellant to his Wife and encouraged a friendship between them. Respondent then promoted a personal and physical relationship between himself, his Wife, and Appellant. Respondent became hostile when Appellant and his Wife refused to continue a physical relationship with him. (R. p. 383).

Respondent hired Sutton to, in his words, "document the activities of my Wife." Private Investigator documented approximately 185 hours of activity between Appellant and his Wife with no indication of any improper relationship. (R. p. 383).

Respondent with cooperation of Sutton installed a covert camera in the marital residence. Sutton's notes indicate that the camera was first installed in November. Sutton denies that the camera captured any activity of any kind. After this event, Respondent was again solicitous of time with Wife and Appellant. All three socialized together and even had Christmas dinner together with their families. Respondent continuously commented on how much he missed physical contact with his Wife and Appellant. Respondent planned a trip and made clear to his Wife that she should plan to spend the night at the house due to construction workers building a house next door. Respondent suggested that Appellant stay with his Wife while he was gone. (R. p. 383).

Respondent and Sutton re-installed the covert camera. This time camera filmed his Wife and Appellant participating in activities encouraged by Respondent. Respondent did not

confront his Wife and continued to cohabit and have sexual contact with her. Respondent also attempted to renew a physical relationship between himself, his Wife, and Appellant. (R. p. 383).

Appellant had to been to the Respondent's house on many occasions. She and Wife often went into Wife's dressing room to change clothes. Respondent assured Appellant that the area was secluded. The residence has an alarm that chimes if any door is opened. On the evening of the videotaping, Appellant and his Wife believed Respondent was not at home. No one else was believed to be in the home and no security cameras were in the home. Appellant states that she believed that she could disrobe in private without being seen by anyone but Wife and without being videotaped by anyone. (R. p. 386).

Two months after having the video, Respondent demanded that Wife leave the marital home. Even with the videotape, the Judge at the Temporary Hearing did not deny alimony to the Wife. He stated that Wife may have a defense of connivance. (R. p. 383).

With his sexual history and encouragement of a threesome between himself, Wife, and Appellant, Respondent announced another motivation for making the videotape. When they refused to fully participate in his fantasy, he orchestrated events to capture it on videotape – for his own sexual desire. (R. p. 386).

Appellant reported Respondent to criminal justice authorities because she believed and still believes that she was the victim of a crime. Refusing the request of deputies and the sheriff and, despite his own admission that a statute had been violated, the 13th Circuit Solicitor refused to prosecute. The State Office of Victim Assistance determined that Appellant met the eligibility standards pursuant to South Carolina Laws to receive victim assistance from the Crime Victim's Compensation Fund. (R. p. 196).

Respondent claims that Appellant reported him to authorities to gain a tactical advantage in this lawsuit. To the contrary, had the State prosecuted the crime Respondent committed, there would be no civil action. Because of its declining to prosecute for whatever reason, the civil court was the only form of redress. Appellant waited as long as the law allowed before filing this lawsuit. (R. p. 196).

ARGUMENTS

I. The Trial Court Erred In Granting Summary Judgment When It Unequivocally Knew That Appellant Had Not Had A Full And Fair Opportunity To Complete Discovery.

Numerous South Carolina courts have made it clear that because "summary judgment is a drastic remedy, it must not be granted until the opposing party has had a 'full and fair opportunity to complete discovery.'" Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003).

This case has been pending for almost two years, but not because Plaintiff has been dilatory in its prosecution. "Under the circumstances, we agree with Plaintiffs that the grant of partial summary judgment on the personal injury claims was premature. . . . We acknowledge that more than three years elapsed between the filing of these actions and the final granting of partial summary judgment as to personal injury. The delays in completing discovery, however, may not fairly be attributed solely to Plaintiff's inaction." Baughman v. Amer. Tel. and Tel Co., 306 S.C. 101, 112, 410 S.E.2d 537 (S.C. 1990).

A. Respondent Filed A Rule 56 Affidavit Telling the Court Summary Judgment Was Premature

Appellant filed a Motion for Summary Judgment June 20, 2014. On June 23, 2014, Respondent's counsel filed a 56(f) affidavit in which he stated the following (R. p. 251):

1. Due to delays caused by issues relating to [Appellant's] pleadings, discovery remains in its infancy in this case.

2. [Respondent] has served written discovery upon [Appellant] but we only just recently received [Appellant's] responses. In my legal opinion, [Appellant's] responses are substantially incomplete, improper, and will require amended responses, either voluntarily or pursuant to a court order.

3. No depositions have been taken. No third-party subpoenas have been issued.

4. [Appellant] has alleged an intrusion of privacy claim against [Respondent]. Until [Appellant] amended her Complaint, which in our view she still technically has not, [Respondent] could not issue third-party subpoenas out of fear that [Appellant] would claim [Respondent] had further intruded upon her privacy. No meaningful subpoenas could issue without using [Appellant's] real name.

5. At a minimum, [Respondent] will need to depose [Appellant] and no less than (4) fact witnesses.

6. Before [Respondent] has the opportunity to complete such discovery, he cannot fully and fairly respond to [Appellant's] motion for partial summary judgment.

Based on Respondent's Rule 56 affidavit, the trial court issued a Form 4 Order without a hearing finding that that summary judgment was premature on July 1, 2014. (R. p. 19). Respondent filed his Amended Answer 10 days later. (R. pp. 49-54).

B. Review of the Record Shows Discovery Had Not Progressed Since Respondent Filed His Rule 56 Affidavit

Respondent served his first discovery requests on Appellant on May 8, 2014. (R. pp. 141-164). Appellant served her first discovery request on October 13, 2014 even though the Motion to Strike 19 unsupported affirmative defenses had not been heard yet. Appellant served additional discovery on Respondent in November 2014.

Sutton did not file an Amended Answer until November 26, 2014. (R. pp. 62-68). Appellant served discovery on Sutton on January 27, 2014. (R. pp. 298-319). At the time of the Order granting Summary Judgment was filed on February 3, 2015, the following discovery had been served, but remain unanswered. In addition, no deposition had been taken.

1. Request for Entry Upon Land for Inspection and Other Purposes;
2. Plaintiff's First Requests for Production to [Respondent];
3. Plaintiff's First Set of Interrogatories to [Respondent];
4. Plaintiff's First Set of Interrogatories to [Sutton];
5. Plaintiff's First Requests for Admissions to [Sutton]; and
6. Plaintiff's First Requests for Production to [Sutton].

(R. p. 236).

C. At the Hearing on the Motion for Summary Judgment, Respondent's Counsel Agreed That Discovery Was Not Complete

Appellant argued repeatedly before the trial court that she should be given an opportunity to complete discovery. (R. pp. 235-236, 550-551). At the hearing on the Motion for Summary Judgment, Respondent's attorney confirmed that the parties had not had an opportunity to complete discovery.

> THE COURT: Have y'all taken depositions?
>
> MR. DAVIS: No, sir.
>
> THE COURT: All right.
>
> MR. DAVIS: Part of the reasons we haven't taken depositions is because we were delayed with the snarling of the pleadings, and so on and so forth.
>
> . . .
>
> MR. DAVIS: For those reasons, we're asking your Honor to require the Plaintiff to participate in full and fair discovery in this

> case. It is imperative that discovery be full and fair in order for my client to have a fair shake. And we're asking the Court to require that.

(R. p. 100, lines 13-18; p. 106, lines 15-19).

In short, both parties made it clear to the trial court that they had not had a full and fair opportunity to complete discovery and had a desire to do so. Nevertheless, the court took the drastic step of dismissing the case.

II. A Genuine Issue Of Material Fact Exists Between The Facts And The Trial Court's View Of The Facts

"It is the duty of the court, on motion for summary judgment, not to try issues of fact, but only to determine whether there are genuine issues to be tried; and once having found that triable issues exist, must leave those issues for determination at trial." Title Ins. Co. of Minnesota v. Christian, 226 S.E.2d 240, 267 S.C. 71 (S.C., 1976).

Regardless of how "selective" it thinks Appellant's account of the facts is, the trial court is not to try the issue. The trial court should not decide whether the facts are credible or whether it believes one party or the other. Rather, it is to leave the truth or falsity of the issue for determination at trial.

A. Appellant Has Always Reported That Respondent Orchestrated The Events He Secretly Videotaped.

From November 3, 2010, when Appellant met with the Sex Crimes Unit of the Greenville County Sheriff's Office until today, her account of the facts has not changed. Respondent orchestrated the evening for his own sexual gratification. This account has been considered by three unrelated entities.

First, the judge in the Greenville County Family Court refused to deny alimony to Respondent's then-wife based on the same affidavits this Court has considered – indicating that

at least some evidence of connivance existed. Significantly, based on the affidavits, the Family Court made an initial finding that Respondent may have connived to be certain that Appellant was present and engaging in the activity he intentionally videotaped. (R. p. 385).

Second, the Greenville County Sheriff's Office investigated the account thoroughly. From the Incident Report, we know the following were reviewed: (1) Affidavits from Sutton; (2) Sutton's PI report; (3) the videotape and still grabs from it; (4) All the affidavits filed in the Family Court case (including Respondent's); and (5) case statements. The investigator talked to witness and various others in law enforcement and the solicitor's office. After a full investigation, Appellant's account was not contradicted. (R. pp. 377-397).

Third, the State Office of Victim Assistance (part of the Office of the Governor) conducted an investigation of Appellant's application for compensation from Crime Victim's Compensation Fund. It also determined that Appellant was the victim of the crime and qualified for financial help from the Crime Victims' Compensation Fund. (R. p. 398).

B. Respondent Offered No Evidence To Contradict Appellant's Account.

Respondent entered not one fact from the pleadings, answers to interrogatories, admissions on file, affidavits, prior court orders, and other documents on file to support his case. He has established NO fact. Thus, the ONLY facts in the record are those supporting Appellant's position.

Respondent's counsel has incessantly harped on Appellant's wrongful conduct and adulterous affair, but has offered no proof of an affair. Considering the arguments of Respondent's counsel is improper. The Supreme Court "has repeatedly held that statements of fact appearing only in argument of counsel will not be considered. . . . " McManus v. Bank of Greenwood Et.Al., 171 S.C. 84, 171 S.E. 473, 475 (S.C. 1933). "[T]his court ordinarily will not

consider statements of fact presented only in an attorney's argument in determining whether a genuine issue of material facts exists sufficient to preclude summary judgment." West v, Gladney, 533 S.E.2d 334, 341 S.C. 127, 135 (S.C. App. 2000) "[F]actual statements of the attorneys, whether made during argument or in written briefs or memoranda, ordinarily may not be considered by the court in determining whether a genuine issue of material fact exists." Higgins v. Medical Univ. of SC, 486 S.E.2d 269, 272, 326 S.C. 592 (S.C. App. 1997).

Respondent has never contradicted Appellant's account. He has not filed one affidavit in this case, the Family Court case, or the prior civil case referenced in the Court's Jan. 8, 2014 Order to deny that he orchestrated the evening or that it was for his own sexual gratification. His silence is deafening.

C. The Court Erred In Drawing An Inference Contrary To The Undisputed Evidence

The standard the Court must use is well-settled -- "In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party." Lord v. D&J Enters., Inc. (S.C. 2014), *quoting* David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). In this case, the Court has drawn inferences that directly contradict to all the facts in the record.

Other than the one evening Respondent orchestrated, the record is void of any inappropriate touching, much less of an affair. Sutton documented approximately 185 hours of activity between Appellant and Respondent's then-Wife with no indication of any improper relationship. (R. p. 383-397). Yet, the trial court adopted contention of Respondent's counsel as fact – one totally unsupported by the record -- that Appellant was having an affair with Respondent's then-wife.

"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." Gilliland v. Elmwood Properties, Inc., 301 S.C. 295, 391 S.E.2d 577, 579 (1990). The Court has clearly concluded that Appellant was having an ongoing an affair with Respondent's wife. On the other hand, the Greenville County Sherriff and SOVA have clearly concluded that Appellant was the victim of video voyeurism committed by the Defendants. (R. pp. 389, 398). The conclusions are obviously in dispute and summary judgment was improper.

III. THE TRIAL COURT ERRED IN FINDING THAT APPELLANT'S CLAIMS ARE BARRED BY THE WRONGFUL CONDUCT BAR AND THE *IN PARI DELICTO* DOCTRINE?

Each theory that the trial court puts forth to bar Appellant's claims is founded on the premise that Respondent and Appellant are equally at fault so that the law should leave them as it finds them.

> It is upon that ground the court goes; not for the sake of the defendant, but because they will not aid the plaintiff. So, if the plaintiff and the defendant were to change places, and the defendant was to bring his action against the plaintiff, the latter would then have the advantage of it, for, where both are equally in fault, *potior est conditio defendentis* [Better is the condition of the defendant than that of the plaintiff].

Holman v. Johnson, 1 Cowper, 343 (Emphasis added.)

In other words, Appellant should be barred from recovery because she is equally at fault. Thus, if Respondent brought an action against her, he could recover. Consequently, the court will not aid Appellant.

The theories are sound, but inapplicable for all the reasons articulated below. However, the clearest indication that the theories do not apply is that Respondent filed NO counterclaims against Appellant.

A. South Carolina Courts Have Not Recognized a Wrongful Conduct Bar

While the wrongful conduct bar may have been "long part of American law" in other states, South Carolina and the Fourth Circuit courts do not recognized it. In fact, a search of the Fastcase database reveals that no case in South Carolina or the Fourth Circuit even contains the words "wrongful conduct bar," "wrongful conduct rule," or "wrongful conduct exception." Instead, they have chosen instead to define and articulate three separate doctrines -- the illegality doctrine, the *ex turpi causa* doctrine, and the *in pari dilecto* doctrine – all of which are inapplicable to this case, but discussed below.

The trial court cites three treatises and relies on cases from other states to define the wrongful conduct bar. The first treatise is The Plaintiff's Illegal Act as a Defense in Actions of Tort, Davis, 18 Harv. L. Rev. 505. A careful search of the entire article and its footnotes reveals that the treatise cites no South Carolina or Fourth Circuit case.

The second treatise is Outlaws and Outlier Doctrines: The Serious Misconduct Bar in Tort Law, King, 43 Wm. & Mary L. Rev. 1011 (2002). A careful search of the entire article and its footnotes reveals that the treatise cites no Fourth Circuit case. It does cite one South Carolina case that involves legal malpractice cases involving criminal prosecutions.

The third treatise is The Nature of the Judicial Process, Cardozo, 41 (Yale Univ. Press 1921). A careful search of the entire article and its footnotes also reveals that the treatise cites no South Carolina or Fourth Circuit case.

In addition, none of the cases cited by the Court from other jurisdictions are applicable to any of Appellant's conduct.

In Greenwald v. Van Handel, 311 Conn. 370, 88 A.3d 467, 474, (2014) the plaintiff "has admitted to conduct that constitutes a serious felony, and such conduct has a direct causal

connection to his alleged injuries." In the instant case, Appellant has not engaged in or admitted to any conduct that constitutes a crime, much less a felony.

Ryan v. Hughes-Ortiz, 959 N.E.2d 1000 (Mass. App. 2012) involves a convicted felon. The record is clear that Appellant has not been convicted (nor can she be) and the only crime alleged by Respondent or the Court is a misdemeanor.

In Price v. Purdue Pharma Co., 920 So.2d 479 (Miss. 2006), the Court failed to respond to summary judgment motions alleging crimes of fraud and subterfuge, so "the trial judge took these motions as confessed." Appellant has not engaged in or confessed to any crime.

In Correll v. St. John's Hospital-Macomb Center, 2002 WL 226935 (Mich. App. 2002), the Court addressed the "culpability exception" to the wrongful conduct bar which is inapplicable to this case.

In Barker v. Kallash, 63 N.Y.2d 19, 468 N.E.2d 39 (1984), the Court found that "the Plaintiff's grievous criminal conduct – the construction of a 'pipe bomb' was a proximate cause of the injuries suffered and was so plainly violative of paramount public safety concerns . . . " Appellant has not engaged in any grievous criminal conduct that raises public safety concerns.

In Everet v. Williams, 9 L.Q. Rev. 197 (1893), also known as *The Highwayman's Case*, one accomplice sued the other accomplice demanding a bigger share of the profit from their crime. Appellant was not an accomplice of any defendant so the law leaving "the quarreling accomplices where it finds them" is inapplicable to this case.

B. Appellant's Conduct was Not Wrongful or Unlawful

The trial court identifies Appellant's wrongful conduct as "adulterous conduct." (R. p. 6). To support its claim, the trial court states that adultery is a crime. Appellant has exhaustively demonstrated that she has not committed a crime. (R. pp. 499-504).

The trial court also states that adultery is a ground for divorce. While true, this fact is irrelevant to this case for two reasons. First, due to a connivance defense, Respondent was not granted a divorce on the grounds or adultery and the Family Court did not deny alimony to Respondent's wife (even though he admitted the videotape into evidence). (R. p. 385).

Second, to state the obvious, Appellant was not married to Respondent. While spouses may suffer consequences for adultery committed without excuse during their marriage, third parties do not. South Carolina has abolished the torts of criminal conversation and alienation of affection as being against public policy. Russo v. Sutton, 422 S.E.2d 750, 310 S.C. 200, 204-205 (S.C. 1992). The South Carolina Supreme Court finds it against public policy to allow Respondent to bring a claim against Appellant for her conduct. Would it not then be inconsistent to grant summary judgment based on that same conduct?

A New York case directly addressed adultery and the wrongful conduct bar. "The Court recognized the applicability of the serious conduct bar in principle, but refused to apply it on the merits in the instant case because it believed that adultery did not rise to the level of a 'serious crime."" Hernandez v. Yoon, 661 N.Y.S. 753, 754, (Sup. Ct. 1997).

The Yoon Defendant moved for summary judgment motion "on the premise that the plaintiff should not be permitted to recover for injuries that arose from adultery." *Id.* The court found that adultery – which is a misdemeanor in New York as it is in South Carolina -- does not rise to the level of a "serious crime." *Id.* The court's research also disclosed no "cases which hold adultery to be so serious a crime that recovery is precluded in a civil suit." *Id.*

C. Appellant's Conduct Did Not Cause Her Damages

The trial court stated the circumstances that must exist for her claims to be barred:

> A Plaintiff's wrongful conduct will bar his right to claim damages caused by the conduct. The misconduct must be immoral,

> criminal, or otherwise prohibited. And it must have been at least a concurring cause of the injury. See Restatement (Second) of Torts § 889 (1979) (one injured not barred from recovery merely because at time of injury he was committing a tort or crime).

(R. p. 4).

Even assuming the conduct was wrongful, it was not a cause, concurring or otherwise, of Appellant's injuries. She makes no claim that her actions damaged her in any way. All or her claims for damages rest solely on Respondent's actions. In short, if Respondent had not acted, Appellant would not have been damaged. Note: For purposes of this appeal, Appellant is generally only addressing Respondent's actions and not those of his co-conspirator Sutton.

The trial court stated that "[Appellant] brought this action claiming [Respondent] hired [Sutton] to place a video camera in [Respondent's] bedroom for the purpose of capturing evidence of her adultery with [Respondent's] then-wife." (R. p. 1).

Nothing could be further from the truth. Appellant's Complaint does not even contain the word "adultery." Appellant filed an action for wrongful intrusion into private affairs because Respondent placed a video camera in the bedroom where he invited Appellant to spend the night to invade her privacy. Appellant has never wavered from her initial statement that Respondent's actions were for his own sexual gratification. The trial court's fundamental misunderstanding of why Appellant brought the action may explain its erroneous conclusion that her actions caused her damages.

Appellant is not seeking to profit from her acts, unlawful or otherwise. Even if she committed a crime, she is not seeking damages for the legal consequences of the alleged criminal acts. She is simply seeking to be made whole. Respondent intruded on Appellant privacy not to be videotaped without her consent, inflicted emotional damage on her, and conspired with Sutton to damage her.

1. Respondent's Spying Caused Appellant's Damage for the Intrusion Claim

"In an action for wrongful intrusion into private affairs, the damage consists of the unwanted exposure resulting from the intrusion." Snakenberg v. Hartford Casualty Ins. Co., Inc., 383 S.E.2d 2, 6, 299 S.C. 164, 172 (S.C. App. 1989. "An intrusion may consist of watching, spying, prying, besetting, overhearing, or other similar conduct." *Id.*

The basis of Appellant's wrongful intrusion claim is Respondent's intentional making of the covert videotape. Respondent describes the camera he installed as motion-sensitive. Consequently, Appellant appeared on the video when she walked in front of the camera's trigger. At that time, the intrusion occurred, the tort was complete, and the damage suffered -- regardless of Appellant's subsequent acts.

Respondent's trespass upon Appellant's solitude is the issue, not her behavior. In other words, what is actually captured on the videotape is not the gravamen of the offense. The act of wiretapping is illegal, regardless of what is recorded. Similarly, the act of intrusion is tortious, regardless of what is recorded.

The issue of the content of the videotape has been addressed by other courts. For example, in In re the Marriage of Tigges, 758 N.W.2d 824, 826, 829-30. (Iowa 2008), the husband was found liable for intruding on the privacy of his wife in their shared bedroom without regard to the content of the videotape or whether or not a third party had seen it.

> Although the tape was not offered in evidence, we credit [Wife's] testimony that it recorded the "comings and goings" from the bedroom she regularly used. Notwithstanding the unremarkable activities recorded on the tape, [Wife] suffered damage as a consequence of [Husband's] actions.
>
> It is undisputed that he covertly installed the video recorder, recorded [Wife's] bedroom activities, and attempted to retrieve a

> cassette from the recorder. We find this conduct clearly constituted an intentional intrusion upon [Wife's] privacy.
>
> [T]he content of the videotape is not determinative of the question of whether [Husband] tortiously invaded [Wife's] privacy. . . . The wrongfulness of the conduct springs not from the specific nature of the recorded activities, but instead from the fact that [Wife's] activities were recorded without her knowledge and consent at a time and place and under circumstances in which she had a reasonable expectation of privacy.
>
> An intrusion upon seclusion "does *not* depend upon any publicity given to the person whose interest is invaded or to his affairs...." *See* Restatement (Second) of Torts § 652B cmt. a (emphasis added). Accordingly, [Wife] had no burden to prove the videotape was published to a third party without her consent.

The issue of video wiretapping is a novel issue in South Carolina. This alone may make this case inappropriate for summary judgment. "We find it extremely troubling this case was resolved on a summary judgment basis, especially considering the injury to Schmidt and the *novel* issue involved in this case. No South Carolina cases discuss the issue of personal injury from the impact of errant golf shots." Schmidt v. Courtney, 357 S.C. 310, 318, 592 S.E.2d 326 (S.C. App. 2003).

In a case involving errant golf shots, the Court was concerned about resolving the case on summary judgment. In this case, the issue involved whether it is an invasion of privacy to secretly make a video recording of someone in a private residence without the person's knowledge or consent. The law is well-settled that secretly making an audio recording of someone under the same circumstances is a crime.

2. Respondent's Connivance and Attempts to Publicly Embarrass Appellant Caused Her Damages for the Intentional Infliction of Emotional Distress Claim

The basis of the intentional infliction claim is actions taken by Respondent before and after the wrongful intrusion as well as the wrongful intrusion itself. Appellant has not claimed

that anything she did caused her any emotional damages. Only Respondent's actions damaged her. Again, had Respondent done nothing, Appellant would not have been damaged.

Specifically, Respondent actions in conniving to be certain that Appellant would be present to be recorded and his outrageous conduct after the intrusion comprise the basis for his intentionally inflicting of emotional distress on Appellant. For example, a reasonable person would know that Respondent's actions in Family Court would cause Appellant distress. If he were truly just making the videotape in an attempt to prove his then-wife's adultery, revealing Appellant's name and printing still shots from the videotape to enter into the record were legally unnecessary. If he thought such actions were legally necessary, he could have entered the evidence under seal to protect Appellant as a third party to that action.

On the other hand, from his words and actions, Respondent demonstrated that he profited from Appellant's actions. He fulfilled his fantasies of being with two women and his fantasy of having a "homemade" videotape of two women together. In addition, he used the videotape to gain a tactical advantage, or more explicitly, to extort a more favorable divorce settlement from then-wife. (R. p. 194).

3. The Co-Conspirators Actions Caused Appellant's Damages for the Civil Conspiracy Claim

The basis of Appellant's civil conspiracy claim is Respondent's setting up the circumstances to ensure Appellant would be present to be recorded, recording the videotape, and then using it for his benefit. (R. p. 37). Appellant makes a claim for specific damages, *inter alia*, of loss of professional reputation. (R. p. 37). Her actions in a private place, by definition, could not damage her reputation without independent disclosure.

A reasonable person could infer that Respondent intended to injure Appellant by his actions. He could have achieved all of his legal goals without ever mentioning Appellant's name

or entering any pictures of her into evidence. He could have opted not to name Appellant. He could offer to produce all copies of the videotapes and destroy them after his legal battles. He could have gotten whatever legal benefit by entering the images under seal or redacted the names. He could have opted not to allow still pictures to be entered into evidence that could be easily viewed by anyone. He could have opted not to talk about the images. He could have opted not to name Appellant and enter her affidavit in an open file in his Common Pleas case to which she was not a party.

Respondent did none of this. Instead, he took every possible action to cause Appellant to lose credibility with the judges, attorneys, witnesses, court personnel, and others involved in the cases. In addition, Appellant's Affidavit provides the following:

> Since that day, I have talked to many people who confirmed that Frank had told them that [Wife] and I were having an affair. Even as early as November, he was telling people to watch us. I soon learned that my alleged affair was known to many people including those in corporate McDonald's from Atlanta to Raleigh.

(R. p. 416). In short, Respondent took every opportunity to spread the news to further the conspiracy.

D. The Illegality Doctrine Does Not Bar Appellant's Claims

While South Carolina does recognize the principle stated in Jackson v. Bi-Lo Stores, Inc., 313 S.C. 272, 437 S.E.2d 168, 170 (S.C. App. 1993), the defense is not "known as *in pari delicto*."

In the Jackson case, the parties entered into an illegal contract so they were obviously in privity. Because they then sought damages for lost profits pursuant to the illegal contract, the Court barred their recovery. This led to the Court's discussion of the illegality doctrine, not the *in pari delicto* doctrine:

> The illegality doctrine has also been recognized by the United States Supreme Court which, in *McMullen v. Hoffman*, 174 U.S. 639, 19 S.Ct. 839, 43 L.Ed. 1117 (1899), held illegality is a defense to a contract action:
>
> The authorities from the earliest time to the present unanimously hold that no court will lend its assistance in any way towards carrying out the terms of an illegal contract. In case any action is brought which it is necessary to prove the illegal contract in order to maintain the action, courts will not enforce it, *nor will they enforce any alleged rights directly springing from such contract.*

Jackson, 313 S.C at 170.

In short, because the parties had entered into an illegal contract, the "well founded policy of law that no person be permitted to acquire a right of action from their own unlawful act and one who participates in an unlawful act cannot recover damages for the consequence of that act . . . . The authorities from the earliest time to the present unanimously hold that no court will lend its assistance in any way towards carrying out the terms of an illegal contract." *Id.* Appellant and Respondent did not enter into a contract. Thus, the illegality defense is not applicable to this case.

E. The *Ex Turpi Causa* Doctrine Does Not Bar Appellant's Claims

The *Ex Turpi Causa* doctrine has formed the basis of seven South Carolina decisions, all of which concern illegal contracts -- a 1874 case involving an illegal bidding contract, Dudley v. Odom, 5 S.C. 131, 134 (S.C. 1874); a 1895 case involving an illegal agreement between co-conspirators, Milhous v. Sally, 43 S.C. 218, 21 S.E.2d 268, 270 (S.C. 1895); a 1902 case involving co-defendants in a tax scheme to defraud the government, Brown v. Newell, 64 S.C. 27, 41 S.E. 835, 839 (S.C. 1902); a 1903 case involving bank stock, White v. Bank, 66 S.C. 419, 45 S.E. 94, 101-2 (S.C. 1903); a 1913 case involving an illegal lottery ticket, Rountree v. Ingle, 94 S.C. 231, 77 S.E. 931, 932 (S.C. 1913); and a 1949 case involving a partnership to illegally

operate a liquor store, Pendarvis v. Berry, 214 S.C. 363, 52 S.E.2d 705, 707 (S.C. 1949). The parties in all these cases were equally at fault because they were parties to the same illegal contract.

Ex turpi causa would apply only if Appellant's causes arose from the transgression of a positive law of this country:

> The objection that a **contract is immoral or illegal**, as between the plaintiff and the defendant, sounds at all times very ill in the mouth of the defendant. It is not for his sake, however, that the objection is ever allowed; but it is founded in general principles of policy which the defendant has the advantage of, contrary to the real justice, as between him and the plaintiff, by accident, if I may say so. The principle of public policy is this: *Ex dolo malo non oritur actio* [an action does not arise from a fraud]. No court will lend its aid to a man who founds his cause upon an immoral or illegal act. If, from, the plaintiff's own stating or otherwise, the cause of action appears to arise *ex turpi causa*, or the **transgression of a positive law** of this country, there the court says he has no right to be assisted.

Holman v. Johnson, 1 Cowper, 343 (Emphasis added.)

Black's Law Dictionary 794 (7th ed. 1999) defines a positive law as one "actually and specifically enacted or adopted by the proper authority for the government of an organized jural society." The "positive law" propounded by the trial court is adultery:

> Adultery is a criminal offense. S.C. Code § 16-15-60. While this statute is rarely enforced and regularly violated, it still represents our state's express public policy. Consequently, [Appellant's] adulterous conduct bars her claims.

S.C. Code § 16-15-70 defines adultery as "the living together and carnal intercourse with each other or habitual carnal intercourse with each other without living together of a man and woman when either is lawfully married to some other person." By definition (and Respondent's admission), neither Appellant, nor Respondent's ex-wife, is a man. As a result, any activity between them is not "adulterous."

Appellant's second affidavit presents the additional fact that Appellant has discussed the issue of whether her behavior was criminal or in violation of the law with both the Greenville County Solicitor and a deputy in the Greenville County Sheriff's office. Both indicated that it was not. (R. p. 256).

Thus, the *ex turpi casua* defense is not applicable to this case.

F. The *In Pari Delicto* Doctrine Does Not Bar Appellant's Claims

Respondent never pled this defense. In his Answer and Amended Answer, Respondent raised the defense of *ex turpi causa* alleging that "[o]ne who participates in an unlawful act cannot recover damages for the consequences of that act." Appellant filed her Memorandum in Support of Plaintiff's Motion to Strike with a full analysis showing that she had not committed the statutory (or common law) crime of adultery. Afterwards, Respondent filed a Supplemental Memorandum in which he mentioned the *in pari delicto* defense for this first time. This violates Rule 12(b). "Every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto . . . . " SCRCP 12(b). Thus, the trial court erred in even considering this defense.

Nevertheless, in South Carolina, the doctrine of *in pari delicto* is "[t]he principle that a plaintiff who has participated in wrongdoing may not recover damages resulting from the wrongdoing." Myatt v. RHBT Fin. Corp., 370 S.C. 391, 395, 635 S.E.2d 545, 547 (Ct. App. 2006) (quoting Black's Law Dictionary 794 (7th ed. 1999)). In South Carolina, this doctrine precludes one joint tort-feasor from seeking indemnity from another. *See* Rock Hill Tel. Co. v. Globe Commc'ns, Inc., 363 S.C. 385, 389 n. 2, 611 S.E.2d 235, 237 n. 2 (2005) ("In general, there is no right to indemnity between joint tortfeasors."); Atlantic Coast Line R. Co. v. Whetstone, 243 S.C. 61, 68, 132 S.E.2d 172, 176 (1963) (holding that there generally is no right

to indemnity between joint tortfeasors). Obviously, Appellant and Respondent are not joint tortfeasors so this doctrine does not apply.

The Court seems to think that *in pari delicto* doctrine is simply another way of saying "wrongdoers cannot recover" or that no one can recover if both parties are "in equal fault." This is an incorrect interpretation of the law. The Court is open to criminals.

> The door of a court is not barred because the plaintiff has committed a crime. The confirmed criminal is as much entitled to redress as his most virtuous fellow citizen; no record of crime, however long, makes one an outlaw. The court's aid is denied only when he who seeks it has violated the law in connection with the very transaction as to which he seeks legal redress.

Olmstead v. United States, 277 U.S. 438, 484, 48 S.Ct. 564, 72 L.Ed. 944 (1928). (Footnote omitted.)

One is not barred from recovery for an interference with his legally protected interests merely because at the time of the interference he was committing a tort or a crime. 4Restatement (Second), Torts § 889 (1979). In this case, Appellant was not committing a crime or a tort.

Excluding criminal adultery which is not applicable, the trial court fails to identify any unlawful act in which Appellant allegedly engaged. She has not entered into any illegal contract or other illegal endeavor. She has not committed a crime, violated any public policy, or been a party to a tort. The record contains a certified copy of a criminal records search that shows Appellant has no convictions in Greenville County. (R. p. 259).

A careful review of all the Offenses Against Public Policy in South Carolina confirm that she has not violated any of them under any reading of the facts of this case. (R. p. 232). In fact, before it became a statutory offense, adultery was "not an indictable offense in this state: nor can an indictment be maintained for living in adultery by charging it as an offense against public decency." SC Digest, 1783-1886 Vol. 1, West Publishing Co. summarizing State v. Brunson, 2

Bailey 149.

"The primary source of the declaration of the public policy of the state is the General Assembly; the courts assume this prerogative only in the absence of legislative declaration." Citizens' Bank v. Heyward, 135 S.C. 190, 133 S.E. 709, 713 (1925). An exhaustive search of the S.C. Code of Laws for the words "public policy" reveals no prohibitions which apply to any of Appellant's actions. *See* Titles 1, 2, 5, 6, 8, 12, 15, 16, 17, 20, 26, 27, 29, 30, 33, 34, 38 39, 41, 43, 44, 48, 51, 56, 57, 58, 59, 62, and 63.

Appellant actions are not tortious. As mentioned above, South Carolina has abolished the torts of criminal conversation and alienation of affection as being against the public policy.

On the one hand, Appellant has committed no crime, no tort, no Offense Against Public Policy, and violated no public policy as articulated by the General Assembly. On the other hand, pursuant to the sheriff's investigation and SOVA inquiry, Respondent has committed the crime of aggravated voyeurism which is a felony. In this action, he is a party to three torts.

One crime and three torts trump no crimes and no torts. Based on the foregoing, the *in pari delicto* principle – in equal fault -- is inapplicable.

IV. The Trial Court Should Not Grant Summary Judgment Based On Two Inapplicable Hypotheticals

The trial court propounds two hypotheticals that form "an alternative basis for granting Defendant Landgraff summary judgment." (R. p. 5, fn. 2). Evidently, these inapplicable hypotheticals form the basis of the trial court's finding that "there is no proof of a substantial and unreasonable intrusion . . . is insufficient proof of extreme and outrageous conduct by Defendants . . . [and] there can be no civil conspiracy without proof of special damages or an agreement to injure Plaintiff." (R. p. 5, fn. 2).

""[A circuit] court's order on summary judgment must set out facts and accompanying legal analysis sufficient to permit meaningful appellate review.' 'Such an order must include those facts which the circuit court finds relevant, determinative of the issues and undisputed.'" The order should also 'provide clear notice to all parties and the reviewing court as to the rationale applied in granting ... summary judgment.'" Froneberger v. Kirkland Dale Smith, etal, 406 S.C. 37, 748 S.E.2d 625, 634 (S.C. App. 2013). The trial court's order fails on all accounts.

Numerous other courts have ruled that this type intrusion is legally cognizable and granted damages for emotional distress. In a Wisconsin criminal case, a boyfriend was convicted for secretly videotaping his girlfriend, without her consent, while she was nude. The Court stated that

> By placing limits of the ability of others to record, the statute protects a person's interest in limiting, as to time, place, and persons, the viewing of his or her nude body.
>
> and
>
> It is one thing to be viewed in the nude by a person at some point in time, but quite another to be recorded in the nude so that a recording exists that can be saved or distributed and viewed at a later time.

State of Wisconsin v. Jahnke, 762 N.W.2d 696, 699 (Wis. App. 2008), review denied, 765 N.W.2d 578 (Wis. 2009).

In a domestic case in Iowa, a husband installed a motion-activated camera in the parties master bedroom. It only captured the "comings and goings" of the wife, but the court held that the wife "did not forfeit through marriage her expectation of privacy. " In doing so, the Court stated that

> . . . the videotaping of a person without consent or awareness when there is an expectation of privacy goes beyond the rights of a spouse because it may record private matters which could later be exposed to the public eye.

In re Tigges, 758 N.W.2d at 828.

In deciding whether the federal government had a right to videotape suspected terrorists in a federal building, a Seventh Circuit case followed in six other federal circuits observed the following:

> It is true that secretly televising people (or taking still or moving pictures of them) while they are in what they think is a private place is an even greater intrusion on privacy than secretly recording their conversations.

United States v. Torres, 751 F.2d 875, 878 (7th Cir. 1984).

A Minnesota case, a husband videotaped his wife (not even an invited guest), without her knowledge while she was undressed in their shared residential bathroom. The court used the wiretapping prohibition and also tangentially addressed the trial court's hypothetical in observing that

> If marriage does not erase a spouse's reasonable expectation of privacy in his or her phone calls, it surely cannot erase his or her reasonable expectation of privacy from being videotaped while undressed without his or her knowledge or consent.
>
> . . .
>
> The basic question we must answer here is not whether appellant had a right to enter the bathroom while K.P. was there. If he had entered, K.P. would have been aware of that entry, and she might have acquiesced in appellant's presence or she might have asked him to leave. Her expectation of privacy might have been intruded upon, but she would have been aware of that intrusion and been able to address it. While knowledge of appellant's presence in the bathroom might have temporarily lessened or frustrated K.P.'s reasonable expectation of privacy, his surreptitious videotaping of her violated both her reasonable expectation and the provisions of the statute.

State v. Perez, 779 N.W.2d 105, 109-110 (Minn.App. 2010).

V. An "If Appropriate" Analysis Shows That The Trial Court Should Not Have Granted Summary Judgment When It Is Acknowledged That Evidence May Exist That Negates The Wrongful Conduct Bar

The trial court stated that "There is no evidence [Respondent] has disclosed [the images] to non-parties outside of the judicial process, and if there was such evidence the wrongful conduct rule likely would not apply. If such disclosure ever occurs, other state and federal remedies may be available." (R. p. 6). This statement screams that summary judgment is inappropriate in this case.

The Court has an affirmative duty to grant summary judgment only if it is appropriate. SCRCP, Rule 56(e) mandates that the trial court deny a summary judgment motion unless it determines that it is appropriate -- "If he does not so respond, summary judgment, **if appropriate**, shall be entered against him." (Emphasis added.)

According to the United States Supreme Court, even where there is no manifest material factual dispute, the trial judge nevertheless may "believe that the better course would be to proceed to a full trial, presumably because in the circumstances of the case a fuller record might afford a more substantial basis for decision." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

The trial court's identification of one fact that it doesn't know that might make summary judgment improper clearly indicates that a fuller record would be helpful. The trial court obviously has questions that need answers; so does Appellant. That is why she served discovery asking, *inter alia*, for the following information:

1. Set forth an inventory of all originals or copies of the videotape, of all portions of the videotape, and/or of all screen grabs made from the videotape, identifying who has each item inventoried and whether it is possible to copy any of the items.

2. Identify any and all persons with whom Defendant or anyone else known by Defendant has discussed the existence and/or content of the videotape or screen grabs, who has viewed the videotape or screen grabs, or to whom Defendant or anyone else known by Defendant has shown the videotape or screen grabs.

(R. p. 305).

By granting Respondent's summary judgment, the trial court cut off further inquiry into the facts. Thus, Appellant has no vehicle to gather such evidence that would likely eliminate the basis of the trial court's decision to grant summary judgment.

South Carolina courts have also found that summary judgment "is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." Lanham v. Blue Cross & Blue Shield of S.C., 349 S.C. 356, 362, 563 S.E.2d 331 (2002). Arguably, as Appellant develops the facts through discovery, the trial court may learn that Respondent disclosed the images to someone.

The trial court gives Appellant no insight into its rationale as to why "whether the contents were shared with a third party" or not entitles Respondent to summary judgment. This is an action for wrongful intrusion into private affairs, not wrongful publication of private affairs. Interesting, in a North Carolina criminal case, the Court convicted a man **when there was no evidence that he, much less a third party, had ever viewed the videotape**. State v. McClees, 424 S.E.2d 687, 690 108 NC App. 648, 654 (N.C. App. 1993). (Emphasis added.)

Even so, Respondent embarked on a course of action that indicates that the images have likely been disclosed to innumerable third parties. First, he sent a letter to his former wife telling her leave the house in six days and have her lawyer call his. Even though his then- wife complied, he told so many people that subsequently sued him. (R. p. 14). He later admitted his deception by signing letter that stated "To set the record straight, Lynn did not leave me but

rather I asked her to leave. Further, I have no reason to believe that Lynn lived with another woman." (R. p. 363).

Second, Respondent allowed his lawyers to exceed all ethical bounds in the manner in which he introduced the images to the Family Court. The South Carolina Supreme Court promulgated Rule 4.4(a) to prevent Respondent's actions. ("In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.").

Respondent and his co-conspirator introduced affidavits that exceeded all evidentiary requirements, arguably to embarrass Appellant. They made no effort to enter the evidence under seal to protect Appellant. Instead, they identified her by name and include still grabs from the video in an open court room. (R. pp. 255-256).

Third, when Respondent's former wife filed an action against him for defamation, wrongful intrusion into private affairs, wrongful publication of public affairs, and civil conspiracy, Respondent included Appellant's name in a motion filed that action. As a result, the public at large had the information needed to point it to Family Court file that was open to public inspection and contained the images.

Fourth, before the trial court ordered Appellant to identify herself in this case, Respondent added the footnote drafted for the trial judge's signature: "The Court will refrain from detailing the content of the Prior Affidavit but for purposes of a complete record does incorporate the Prior Affidavit by reference herein." Just to make sure no one has an issue finding it, Respondent continued, "The Prior Affidavit can be found attached as Exhibit 2 to the Motion to Strike in the Circuit Court's record in Mulligan v. Landgraff, C.A. No. 2010-CP-23-

6024." (R. p. 14, fn. 2).

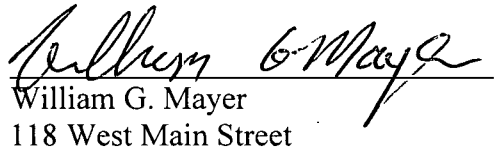
In sum, Respondent inaccurately broadcast that his wife left him for a woman and signals to the public to see Family Court file for further details. He is sued by then-wife so he unnecessarily mentions Appellant and points the public to the Family Court file for details. When Appellant sues him, he points the public to the prior lawsuit since the Family Court file is now sealed.

Without discovery, no one will know to whom Respondent personally disclosed the images. Even so, the record is clear that Respondent worked hard to make sure as many curious people as possible would know where to look for the images. Sadly, the Court granted the summary judgment motion due the absence of evidence that its decision prevents Appellant from obtaining. A jury may agree that Appellant should not recover on her claims, but, she should, at least, be allowed to be heard.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court.

Respectfully submitted



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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

D. Garrison Hill, Circuit Judge

Appellate Case No. 2015-000778
Case No. 2013-CP-23-01762

RECEIVED
JUN 03 2016
SC Court of Appeals

Carol Simpson, Appellant,

v.

Frank A. Landgraff, Carol Sutton, Sutton & Associates Investigations, Inc., Defendants,

Of Whom Frank A. Landgraff is the Respondent.

PROOF OF SERVICE

I HEREBY CERTIFY that hereby certify that I have served a copy of Final Initial Brief upon the individuals named below, by hand delivering a copy to the addresses below on this 2nd day of June, 2016:

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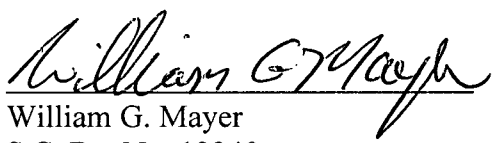

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