THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Alex Kinlaw, Jr., Circuit Court Judge

Case No. 2020-001525

JAMES EARL TEGELER,

Appellant,

v.

CHARLOTTE COLLIER, HANNAH ELIZABETH COLLIER, LINDA SMITH, NORTHGATE BAPTIST CHURCH,

Respondents.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

Appellant James Earl Tegeler ("Appellant") sued Respondents Charlotte Collier ("Mother"), Hannah Elizabeth Collier ("Hannah"), Linda Smith ("Grandmother"), and Northgate Baptist Church ("Northgate") after James, who was employed as the director of the music program at Northgate, was fired from Northgate (R. pp. ___; Compl. ¶¶ 14-17, 54-62, 72, 74, 81, 83, 92-93, 95-97, 103, 113; Resp'ts Hannah Elizabeth Collier and Linda Smith's Am. Answer ¶ 6; Resp't Charlotte Collier Am. Answer ¶ 5). James requested a jury trial and pled the following causes of action: (1) false imprisonment against Northgate; (2) defamation against all respondents; (3) fraud in the inducement against Northgate; (4) negligent misrepresentation against Northgate; (5) negligent hiring, supervision, and retention of employees against Northgate; (6) intentional infliction of emotional distress against all respondents; (7) negligent infliction of emotional distress against all respondents; (8) wrongful termination against Northgate; and, (9) civil conspiracy against all respondents. (R. pp. ___; Compl. ¶¶ 124-215). Northgate responded with a motion to dismiss and a memorandum in support of its motion to dismiss that James's claims against Northgate were barred at the time of executing a severance agreement during James's termination from Northgate. (R. pp. ___; Resp't Northgate Baptist Church's Mot. Dismiss pp. 1-2; Resp't Northgate Baptist Church's Mem. Supp. Mot. Dismiss pp. 1-2, 4-5).

Hannah, Hannah's mother, and Hannah's grandmother filed an amended answer that denied James's material allegations and asserted the following affirmative defenses: (1) their accusation of James having an inappropriate relationship with Hannah was true; (2) James could not prove damages from harm to his reputation because of the alleged defamatory statement; (3) James was responsible for the publication of the alleged defamatory statement; (4) James's claim

for special damages was barred because the alleged defamatory statement was not defamatory per se; (5) James's claim for defamation was barred because their publication of the alleged defamatory statement was a privileged communication; (6) James's defamation claim was barred because they acted without malice toward James; (7) waiver, laches, release, estoppel, and unclean hands; (8) failure to mitigate James's damages; (8) James is barred from punitive damages; and, (9) sanctions against James. (R. pp. ___; Resp't Charlotte Collier's Am. Answer ¶¶ 60-93; Resp'ts Hannah Elizabeth Collier and Linda Smith's Am. Answer ¶¶ 55-81). Hannah, her mother, and her grandmother sought a motion for summary judgment on the pleadings. Rule12(c), SCRCP. (R. pp. ___; Resp't Charlotte Colliler's Mot. Dismiss p. 1; Resp't Charlotte Collier's Mem. Supp. Mot. Dismiss pp. 1, 6-8; Resp'ts Hannah Elizabeth Collier's Mot. Dismiss p. 1; Resp'ts Hannah Elizabeth Collier and Linda Smith's Mem. Supp. Mot. Dismiss pp. 1-3). Additionally, Hannah and her grandmother sought a motion to dismiss. Rule 12(b)(6), SCRCP. Resp'ts Hannah Elizabeth Collier's Mot. Dismiss p. 1; Resp'ts Hannah Elizabeth Collier and Linda Smith's Mem. Supp. Mot. Dismiss pp. 1-5, 9-10). Furthermore, Hannah admitted that no sexual relations occurred between Hannah and James in her affidavit. (R. pp. ___; Hannah Elizabeth Collier Aff. ¶ 4).

The Honorable Alex Kinlaw, Jr., heard all three motions. (R. pp. ___; Tr. 56:23-58:19). Judge Kinlaw granted all three motions and dismissed James's case. (R. pp. ___; Decision Grant Resp't Northgate Baptist Church's Mot. Dismiss p.1; Decision Grant Resp't Charlotte Collier's Mot. Summ. J. Pleadings p.1; Decision Grant Resp't Linda Smith Mot. Dismiss and Mot. J. Pleadings p. 1; Am. Decision Grant Resp'ts Hannah Elizabeth Collier and Linda Smith's Mot. Dismiss and Mot. Summ. J. Pleadings p.1). James moved to reconsider and filed supporting affidavits pursuant to Rule 60 of the South Carolina Rules of Civil Procedure. (R. pp. ___;

Appellant's Mot. Recons. pp. 1-3; James Earl Tegeler Aff.; Josie Allen Aff.; Anne Danciu Aff.; Caroline Jenkins Aff. Sue Lutz Aff.; Roy Sabean Aff.). Judge Kinlaw issued three separate formal orders granting respondents' motion to dismiss and motion for judgment on the pleadings (R. pp. ___; Order Grant Resp't Northgate Baptist Church's Mot. Dismiss 1-2, 10; Order Grant Resp't Charlotte Collier's Mot. Summ. J. Pleadings pp. 1-2, 4, 6-11; Order Grant Resp'ts Hannah Elizabeth Collier and Linda Smith's Mot. Dismiss and Mot. Summ. J. Pleadings pp. 1, 4, 9-12). James amended his motion to reconsider. (R. pp. ___; Appellant's Am. Mot. Recons. p. 1). Judge Kinlaw denied that motion without a hearing. (R. pp. ___; Order Den. Appellant's Am. Mot. Recons. to Resp't Northgate Baptist Church pp. 2-3; Order Den. Appellant's Am. Mot. Recons. to Resp't Charlotte Collier pp. 2-3; Order Den. Appellant's Am. Mot. Recons. to Resp'ts Hannah Elizabeth Collier and Linda Smith p. 2).

This appeal followed.

STATEMENT OF FACTS

Context matters. Words matter. The sheer ludicrous behavior from three generations of women in the same family have set a chain of events in motion tarnishing the reputation of an upstanding widower, reporting baseless allegations to this man's employer that gets him fired, and turning that widower into a social pariah in the Christian community at best. Or, a sexual predator at worst. (R. pp. ___; Compl. ¶¶ 14-17, 20-35, 38-42, 45, 46-52, 54-68, 72, 74, 81-84, 86, 92-93, 95, 96, 97, 100-103, 106, 108-109, 112, 113, 115-118; Resp't Charlotte Collier Am. Answer ¶¶ 14, 20, 26, 28, 81; Resp'ts Hannah Elizabeth Collier and Linda Smith's Am. Answer ¶¶ 9, 10, 14, 23-24; Resp't Charlotte Collier's Mem. Supp. Mot. Dismiss pp. 4-5; Resp'ts Hannah Elizabeth Collier and Linda Smith's Mem. Supp. Mot. Dismiss p. 1-3; Tr. 27:7-29:21, 33:5-14, 54:22-24; Anne Danciu Aff ¶¶ 3, 9, 21; Roy Sabean Aff. ¶¶ 2, 7-9, 11-14; Sue Lutz Aff. ¶¶ 7, 14-16, 24). Hannah, her mother, and her grandmother reported James to Northgate that he had an "inappropriate relationship" with Hannah. (R. pp. ___; Compl. ¶¶ 59-62; Resp'ts Hannah Elizabeth Collier and Linda Smith's Am. Answer ¶ 24; Resp'ts Hannah Elizabeth Collier and Linda Smith's Mem. Supp. Mot. Dismiss pp. 1-3; Resp't Charlotte Collier's Mem. Supp. Mot. Dismiss pp. 4-5; Tr. 54:22-24; Hannah Elizabeth Collier Aff. ¶¶ 2-4). They painted James as committing one of the worst, most morally reprehensible crimes that will forever haunt James and taint his reputation. (R. pp. ___; Compl. ¶¶ 59-62, 117; Tr. 54:22-24; Sue Lutz Aff. ¶¶ 14-15; Anne Danciu Aff. ¶¶ 20-21; Roy Sabean Aff. ¶¶ 17, 19).

James was a salaried employee of Northgate as a director of the music program at Northgate being a gifted pianist, musician, and choir director. (R. pp. ___; Compl. ¶¶ 13-17; Resp'ts Hannah Elizabeth Collier and Linda Smith's Am. Answer ¶ 6; Resp't Charlotte Collier Am. Answer ¶ 5). Hannah's grandmother, who is also the mother of Hannah's mother, asked

James to invite Hannah and have her sing at Northgate. (R. pp. ___; Compl. ¶¶ 20, 24, 25; Resp'ts Hannah Elizabeth Collier and Linda Smith's Am. Answer ¶ 9; Resp't Charlotte Collier Am. Answer ¶¶ 8, 11). Hannah was a college student and of legal age when she began singing intermittently at Northgate in James's Worship Team, or informal choir. (R. pp. ___; Compl. ¶¶ 21, 22, 25; Resp'ts Hannah Elizabeth Collier and Linda Smith's Am. Answer ¶ 10; Resp't Charlotte Collier Am. Answer ¶¶ 9, 11; Caroline Jenkins Aff. ¶¶ 4-6). Hannah came from a broken home and experienced emotional instability and immaturity. (R. pp. ___; Compl. ¶¶ 23, 38; Sue Lutz Aff. ¶¶ 4-6, 11-12; Roy Sabean Aff. ¶ 15; Anne Danciu Aff. ¶¶ 11-12). Hannah's mother was usually present during practice and performances for the Worship Team that James directed when Hannah sang. (R. pp. ___; Compl. ¶¶ 25-26, 39, 41, 45; Sue Lutz Aff. ¶ 10; Anne Danciu Aff. ¶ 6; Caroline Jenkins Aff. ¶¶ 6-8). Hannah asked James to become her mentor. (R. pp. ___; Compl. ¶¶ 27-29; Caroline Jenkins Aff. ¶ 14; James Earl Tegeler Aff. ¶ 4). The boundaries of this mentorship were clearly set and understood by both Hannah and James. (R. pp. ___; Compl. ¶¶ 32-33; James Earl Tegeler Aff. ¶ 5). Hannah and her mother usually left and skipped the sermons because they did not like the pastor Dr. Barry Jimmerson at Northgate. (R. pp. ___; Anne Danciu Aff. ¶ 5; James Earl Tegeler Aff. ¶ 19).

Over time, Hannah and her mother spent time with James in a group or family setting. (R. pp. ___; Compl. ¶ 37; Josie Allen Aff. ¶¶ 3, 6, 8; Sue Lutz Aff. ¶ 11; James Earl Tegeler Aff. ¶¶ 4, 6, 10). Hannah's mother indicated a romantic interest in James to date. (R. pp. ___; Compl. ¶¶ 47-52; Sue Lutz Aff. ¶¶ 12-13; Anne Danciu Aff. ¶¶ 5-9; Roy Sabean Aff. ¶ 16; Josie Allen Aff. ¶¶ 13-14, 16; Caroline Jenkins Aff. ¶ 16; James Earl Tegeler Aff. ¶ 4; Resp't Charlotte Collier Am. Answer ¶ 28). James, a widower and uninterested in dating, rejected Hannah's mother. (R. pp. ___; Compl. ¶¶ 50-51; James Earl Tegeler Aff. ¶ 4; Sue Lutz Aff. ¶¶ 12-13). James then

limited his interactions with Hannah, Hannah's mother, and Hannah's grandmother outside of work. (R. pp. ___; Compl. ¶ 52).

James hosted a family, social event outside of work that Hannah and her mother attended. (R. pp. ___; Compl. ¶¶ 54-58; James Earl Tegeler Aff. ¶¶ 12-15; Resp'ts Hannah Elizabeth Collier and Linda Smith's Am. Answer ¶ 23; Resp't Charlotte Collier Am. Answer ¶ 22). This event triggered Northgate terminating James (R. pp. ___; Compl. ¶ 59; James Earl Tegeler Aff. ¶¶ 16-18). The next day, Hannah, her mother, and her grandmother knowingly reported James to his employer and supervisor Dr. Jimmerson at Northgate that James had an "inappropriate relationship" with Hannah. (R. pp. ___; Compl. ¶ 59; Resp'ts Hannah Elizabeth Collier and Linda Smith's Am. Answer ¶ 24; Resp't Charlotte Collier Am. Answer ¶¶ 26, 81; Hannah Elizabeth Collier Aff. ¶ 3). Upon hearing the accusation "inappropriate relationship," Dr. Jimmerson immediately launched into questioning Hannah about any romantic or sexual involvement between James and Hannah. (R. pp. ___; Compl. ¶¶ 59-62). The insidious language "inappropriate relationship" tracked all the way to Northgate's termination of James. Dr. Shaler, who oversaw the Personnel Committee at Northgate, was responsible for investigating the claims of Hannah, her mother, and her grandmother. (R. pp. ___; Compl. ¶ 72). Dr. Laurel Shaler then accused James of having inappropriate contact with young girls in the congregation to the personnel committee. (R. pp. ___; Compl. ¶¶ 74, 81). Laurel obtained a vote of no confidence to recommend that Northgate fire James. (R. pp. ___; Compl. ¶ 81).

Laurel's investigation and recommendation to terminate James from Northgate did not follow Northgate's policies and procedures. (R. pp. ___; Compl. ¶¶ 66, 68-72, Ex. A pp. 2-9, Ex. B. pp. 2-26; Roy Sabean Aff. ¶¶ 4-8, 10, 18). Laurel held and directed the termination meeting with James along with Dr. Jimmerson, who was James's supervisor, and Warren Peden. (R. pp.

___; Compl. ¶¶ 86-89, 95, 97-98, 101-102). Warren was just an ordinary member of the church who held no supervisory role over James and his performance at Northgate. (R. pp. ___; Compl. ¶ 87; Caroline Jenkins Aff. ¶¶ 21-22). Laurel, Dr. Jimmerson, and Warren were aggressive toward James right at the outset of the termination meeting. (R. pp. ___; Compl.¶¶ 92, 94, 95). They shamed James. (R. pp. ___; Compl. ¶¶ 92-96). When Dr. Jimmerson and Warren heard "inappropriate contact"[1] and "inappropriate relationship"[2] earlier from Laurel, those accusations triggered them into shaming James for making unwanted touching or advances, whether sexual or romantic in nature, with Hannah or other young girls (of whom some were minors) in the congregation at Northgate. (R. pp. ___; Compl. ¶¶ 59-62, 66-68, 74, 91, 93, 95-96).

As the basis for terminating James, Laurel then raised the allegation of James having "inappropriate contact" with young girls in the congregation in addition to having an

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1 Inappropriate contact is commonly defined as sexual assault, or commonly referred to as a sex crime, that can also mean other synonyms such as inappropriate touching, sexual abuse, unwanted touching, and sexual harassment. *Inappropriate Contact Definition*, WORDHIPPO.COM, https://www.wordhippo.com/what-is/another-word-for/inappropriate_contact.html#/ (last visited on Apr. 12, 2021); *Sexual Assault Definition*, WORDHIPPO.COM, https://www.wordhippo.com/what-is/another-word-for/sexual_assault.html (last visited on Apr. 12, 2021). "Touch [] refers to both intentional and unintentional person-to-person bodily contact, mediated either via the skin or more indirectly." Lorraine Green, *The Trouble with Touch? New Insights and Observations on Touch for Social Work and Social Care*, 47 BRITISH J. SOC. WORK, no. 3, 2017, at 773, 774, *available at* https://academic.oup.com/bjsw/article/47/3/773/2622329 (last visited on Apr. 12, 2021). "Sexual or physical violence, whether perpetrated by workers, family members or others, constitutes touch violation (bad touch)." Green, *supra*.

2 The ordinary and popular meaning of an "inappropriate relationship" is commonly understood to mean a vulgar, or indecent, romantic or sexual involvement between two people in nature. Sociologists define "relationship" to include the meaning of a "*[r]omantic or sexual involvement*" between two persons. *Relationship Definition*, KENTON BELL, OPEN EDUCATION SOCIOLOGY DICTIONARY (2013-2021 ed. 2013), *available at* https://sociologydictionary.org/relationship/ (last visited on Apr. 12, 2021) (emphasis added). Inappropriate is defined as "someone or something that is not within the bounds of what is considered appropriate or socially acceptable." *Inappropriate Definition*, YOURDICTIONARY.COM, https://www.yourdictionary.com/inappropriate (last visited on Apr. 12, 2021). Inappropriate also refers to describing a person or thing as "[v]ulgar or indecent in nature or quality." *Inappropriate Definition*, WORDHIPPO.COM, https://www.wordhippo.com/what-is/another-word-for/inappropriate.html#/ (last visited on Apr. 12, 2021). Modern day popular language refers to the definition of inappropriate that has varied from "'not suitable or proper in the circumstances' [and] is used these days almost exclusively to mean anything that is sexually explicit, drug or alcohol related, violent, or otherwise obscene . . . [i]n the context of age in terms of children, rather than the traditional overall definition." *Inappropriate Definition*, URBANDICTIONARY.COM, https://www.urbandictionary.com/define.php?term=inappropriate&page=2 (last visited Apr. 12, 2021); *cf. Inappropriate Definition*, MERRIAM-WEBSTER.COM, https://www.merriam-webster.com/dictionary/inappropriate (last visited on April 12, 2021).

"inappropriate relationship" with Hannah. (R. pp. ___; Compl. ¶¶ 59-62, 66-68, 74, 91, 93, 95-96). They blindsided James. (R. pp. ___; Compl. ¶¶ 66-67, 86-87, 99). They denied James the opportunity to leave and seek legal advice before signing a severance agreement with Northgate. (R. pp. ___; Compl. ¶¶ 100-102, 106). They detained James. (R. pp. ___; Compl. ¶¶ 87-110). Should James refuse to sign the severance agreement, Dr. Jimmerson threatened to have him placed before the congregation at Northgate like a social pariah for the congregation to decide whether James should be fired for having inappropriate contact and inappropriate relationships with young girls in the congregation, including Hannah. (R. pp. ___; Compl. ¶¶ 103). James became emotionally distraught and overwhelmed. (R. pp. ___; Compl. ¶¶ 104-105, 107-111).

Laurel formulated her investigation and recommendation that James had inappropriate contact and inappropriate relationships with young girls in the congregation based on the allegations made by Hannah, her mother, and her grandmother unrelated to James's scope of employment with Northgate. (R. pp. ___; Compl. ¶¶ 59-62, 66-67, 72-74, 81, 84, 95-96). Both terminologies of inappropriate relationship and inappropriate contact are commonly understood to mean sex or sexual relations between two persons.[3] The former being consensual.[4] The latter being nonconsensual.[5] To illustrate, the accusation of a man being in a relationship with a young

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3 *See supra* text accompanying notes 1, 2.

4 Consent to a romantic or sexual relationship only occurs between two people who are the legal age of majority. *See supra* text accompanying note 2; *see also* Laura K. Murray, Ph.D, et al., *Child Sexual Abuse*, CHILD ADOLESC. PSYCHIATR. CLIN. N. AM., Apr. 2014, at 321-337, *available at* https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4413451/pdf/nihms-666885.pdf (last visited on Apr. 12, 2021) ("Because a legal age of majority is required for consent, all sexual acts between an adult and underage child (even with child assent) are, by definition, [Child Sexual Abuse].").

5 Nonconsensual touching of another refers to a sexual perpetrator making unwelcome and unwanted touching, sexual advances such as requests for sexual favors, or sexual abuse, for example, toward a victim. *See supra* text accompanying note 1; *Sexual Violence Definition*, WORLD HEALTH ORGANIZATION, https://apps.who.int/violence-info/sexual-violence (last visited on Apr. 12, 2021) ("Sexual violence is any sexual act, attempt to obtain a sexual act, or other act directed against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting.").

woman who is "old enough to be her father" invokes the taboo[6] of incest that may invite suspicion.[7] (R. pp. ___; Compl. ¶¶ 21-22, 27, 59-62, 66-67, 72, 74, 81, 95-96; Resp'ts Hannah Elizabeth Collier and Linda Smith's Am. Answer ¶ 24; Resp'ts Hannah Elizabeth Collier and Linda Smith's Mem. Supp. Mot. Dismiss pp. 1-3; Resp't Charlotte Collier's Am. Answer ¶¶ 26, 81; Resp't Charlotte Collier's Mem. Supp. Mot. Dismiss pp. 1-4, 7-8; Tr. 27:7-29:21, 33:5-14). This stigma[8] often blurs over into other examples such as alleging a teacher having a sexual relationship with a student that invokes scandal and social ruin resulting in ostracism, severe damage to one's reputation, and reprimand as in the loss of a job.[9] By contrast, the stigma then carries the popular meaning of characterizing an older man having sexual relations with a minor, or sexually abusing a minor, that invokes association with illegal conduct such as incest, pedophilia, sexual abuse, or rape that is reprehensible, taboo, illegal, and subject to legal punishment.[10] Here, respondents transformed a stigma into one of the most reprehensible, taboo, and illegal conduct and projected it onto James similar to James being in a teacher role to Hannah as a student and minor.

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6 According to sociologists, inappropriate is related to the definition of taboo that is defined as "[a] forbidden act considered so offensive to norms, particularly mores (moral norms) as to be reviled and unthinkable." *Taboo Definition*, KENTON BELL, OPEN EDUCATION SOCIOLOGY DICTIONARY (2013-2021 ed. 2013), *available at* https://sociologydictionary.org/?s=inappropriate (last visited on Apr. 12, 2021).

7 INAPPROPRIATE RELATIONSHIPS: THE UNCONVENTIONAL, THE DISAPPROVED, AND THE FORBIDDEN 13, 17 (Robin Goodwin & Duncan Cramer eds., 2005) [hereinafter INAPPROPRIATE RELATIONSHIPS].

8 A stigma is a learned behavior that is formed through social interactions creating shortcuts to cognitive associations through symbols, practices, or conduct for individuals to relate to one another in a society or a community. *See generally* Bernice A. Pescosolido et al., *Rethinking Theoretical Approaches to Stigma: A Framework Integrating Normative Influences on Stigma (FINIS)*, 67 SOC. SCI. MED. 3, Aug. 2008, at 431-440, *available at* http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2587424/ (discussing the role of stigma in society). A negative stigma usually results in exclusion by shame for members of society or community associated with that stigma. Richard H. McAdams, *The Origin, Development, and Regulation of Norms*, 96 MICH. L. REV. 338, 400-07 (1997). A powerful stigma may also arise from creating and reinforcing legislative schemes to reflect normative values as a means of social control. Matthew D. Lieberman, SOCIAL: WHY OUR BRAINS ARE WIRED TO CONNECT 7-70 (2013) (exploring the complex cognitive associations behind humans experiencing stigma in relation to humans' basic need for social interaction and the evolution of the human brain for social intelligence).

9 INAPPROPRIATE RELATIONSHIPS, *supra* note 7, at 18.

10 INAPPROPRIATE RELATIONSHIPS, *supra* note 7, at 19.

Undeniably, the more serious consequences of social ruin or criminalization of conduct relate to sexual relations, whether voluntary or involuntary, between two persons. None of which occurred between James and Hannah. (R. pp. ___; Compl. ¶¶ 60-61; Hannah Elizabeth Collier Aff. ¶ 4). Yet, Hannah, her mother, and her grandmother still knowingly accused James of the same "inappropriate relationship" terminology as a bald-faced lie while knowing that no sexual relations, whether voluntary or involuntary, occurred between James and Hannah. Moreover, Laurel still knowingly accused James of the same "inappropriate relationship" and "inappropriate contact" terminology while knowing that no sexual relations, whether voluntary or involuntary, occurred between James and Hannah. (R. pp. ___; Compl. ¶¶ 59-62, 66). Both Dr. Jimmerson, who changed from his earlier position, and Warren perceived this terminology that James was guilty of these accusations. (R. pp. ___; Compl. ¶¶ 59-62, 66-68, 92-93). Therefore, the severance agreement is a meaningless piece of paper under these circumstances. (R. pp. ___; Compl. ¶¶ 86-111). Northgate used this pretext for firing James to save payroll costs on James as one of the highest paid employees at Northgate during a multi-million-dollar fundraising campaign for aesthetic renovations to Northgate. (R. pp. ___; Compl. ¶¶ 15, 155; Appellant's Resp. Resp'ts Mot. Dismiss Ex. F pp. 3-13).

After James was fired from Northgate, Hannah's grandmother contacted others outside of the congregation and re-published the same defamatory remarks that James had an "inappropriate relationship" with Hannah. (R. pp. ___; Compl. 83-84, 140, 191; Sue Lutz Aff. ¶¶ 4, 14-16; Roy Sabean Aff. ¶¶ 11-14). Hannah's grandmother was involved in the meeting when Hannah and Hannah's mother reported James to his supervisor Dr. Jimmerson with Northgate. (R. pp. ___; Resp't Charlotte Collier's Mem. Supp. Mot. Dismiss pp. 4-5). Additionally, after James was fired from Northgate, Dr. Jimmerson and Warren also re-published defamatory

statements to other third parties that James had an inappropriate relationship with Hannah and inappropriate relationship with teenagers respectively. (R. pp. ___; Compl. ¶¶ 113, 138; Appellant's Resp. Resp'ts Mot. Dismiss pp. 21-22, Ex. H pp. 2-3; Caroline Jenkins Aff. ¶¶ 20-25, 29, 33-36, 38-39).

STANDARD OF REVIEW

I. Motion to dismiss. Rule 12(b)(6), SCRCP.

A Rule 12(b)(6) motion to dismiss a cause of action fails "if facts alleged and inferences reasonably deducible therefrom [the plaintiff's complaint] would entitle the plaintiff to any relief on any theory of the case." *Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987). If a moving party challenges the plaintiff's cause(s) of action, then the lower court must view and admit the non-moving party's factual allegations in the complaint on its face as true in favor of the non-moving party. *Food Lion, Inc. v. United Food & Commer. Workers Int'l Union*, 351 S.C. 65, 78-79, 567 S.E.2d 251, 257-58 (Ct. App. 2002) (citing *Fields v. Melrose P'ship*, 312 S.C. 102, 104, 439 S.E.2d 283, 284 (Ct. App. 1993)) (Stilwell, J., dissenting). Here, the analysis under a Rule 12(b)(6) motion to dismiss draws upon inferences from the plaintiff's facts and conclusions of law therefrom in the complaint solely to determine whether the plaintiff sufficiently pled factual allegations that justify a cause of action. Rule 12(b)(6), SCRCP; *see Charleston Cty. Sch. Dist. v. Laidlaw Transit, Inc.*, 348 S.C. 420, 424, 559 S.E.2d 362, 364 (Ct. App. 2001); *Toussaint*, 292 S.C. at 416.

If the non-moving party alleges the ultimate facts tracking the elements of a cause of action that states a valid claim of relief under a cause of action, then that cause of action survives and the Rule 12(b)(6) motion to dismiss fails. *See Food Lion, Inc.*, 351 S.C. at 69-78; *Sloan Constr. Co. v. Southco Grassing, Inc.*, 377 S.C. 108, 112-21, 659 S.E.2d 158, 161-66 (2008).

Under Rule 8, the complaint must provide the opposing party fair notice by pleading the ultimate facts as alleged to support each cause of action—not all of the facts or mere legal conclusions. Rule 8, SCRCP; *Food Lion, Inc*, 351 S.C. at 78-79 (Stilwell, J., dissenting). The ultimate facts pertain to the plaintiff presenting "evidence [that] upon trial will prove, and not the evidence which will be required to prove those facts." *Brown v. Inv. Mgmt. & Research*, 323 S.C. 395, 400 n.3, 475 S.E.2d 754, 756 (1996); *Stroud v. Riddle*, 260 S.C. 99, 102-103, 194 S.E.2d 235, 237 (1973). Moreover, the lower court may not jump ahead of the process to dismiss the case prematurely merely for doubting whether the cause of action will prevail. *Food Lion, Inc.*, 351 S.C. at 78-79 (Stilwell, J., dissenting); *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). In a Rule 12(b)(6) motion to dismiss, the lower court must stay within the four corners of the complaint to determine if a plaintiff would prevail under a cause of action based on the plaintiff's allegations deemed as true—not on disputes from the underlying merits of the claim. *Food Lion, Inc.*, 351 S.C. at 69; *Skydive Myrtle Beach v. Horry Cty.*, 426 S.C. 175, 179-80, 826 S.E.2d 585, 587 (2019).

Additionally, transforming a Rule 12(b)(6) motion to dismiss into one of summary judgment and dismiss a case as a matter of law permits the introduction of matters outside of the pleadings that are construed in tandem with the totality of the pleadings, discovery, and affidavits under Rules 56(c) and 56(e) as to whether a genuine issue of any material fact exists. Rules 12(b)(6), 56(c), 56(e), SCRCP; *Dawkins v. Fields*, 354 S.C. 58, 69-71, 580 S.E.2d 433, 438-39 (2003); *Brown v. Leverette*, 291 S.C. 364, 366-67, 353 S.E.2d 697, 698-99 (1987). Nonetheless, the proper remedy available to the non-moving party subject to a Rule 12(b)(6) motion to dismiss is for the non-moving party to amend the complaint rather than face a dismissal with prejudice. Rules 8(f), 15(a), SCRCP (encouraging pleadings to be construed liberally "to do

substantial justice to all parties"); *Skydive Myrtle Beach*, 426 S.C. at 179-80, 189; *Spence v. Spence*, 368 S.C. 106, 129, 628 S.E.2d 869, 881 (2006); Rule 15(a), SCRCP; *see Quality Towing, Inc. v. City of Myrtle Beach*, 340 S.C. 29, 38, 530 S.E.2d 369, 373 (2000).

II. Motion for judgment on the pleadings. Rule 12(c), SCRCP.

If the plaintiff's complaint raises an issue of fact that would be resolved in the plaintiff's favor and entitle the plaintiff to judgment, then a moving party's Rule 12(c) motion for judgment on the pleadings must fail when "it appears that the plaintiff is entitled to any relief whatsoever." *Russell v. Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991); *McCurry v. Keith*, 312 S.C. 254, 255, 439 S.E.2d 861, 862 (Ct. App. 1994). Here, the lower court must "admit[] the well pleaded facts in the complaint and [] take those well pleaded factual allegations as true . . . ." *Firemen's Ins. Co. v. Cincinnati Ins. Co.*, 302 S.C. 234, 236, 394 S.E.2d 855, 856 (Ct. App. 1990). The lower court may not draw legal conclusions or inferences based on underlying merits of the claims from the plaintiff's factual allegations. *Id.* A plaintiff's factual allegations must raise a genuine issue of fact similar to evidence "that a reasonable jury could return a verdict for plaintiff." *Hyman v. Ford Motor Co.*, 142 F. Supp. 2d 735, 737-38 (D.S.C. 2001). Therefore, a motion for judgment on the pleadings must fail when the plaintiff's complaint sufficiently pled factual allegations for the plaintiff to recover under any legal theory of law—any cause of action or defense. *Russell*, 305 S.C. at 89; *see Diminich v. 2001 Enters., Inc.*, 292 S.C. 141, 142, 355 S.E.2d 275, 275 (Ct. App. 1987).

Any party may move for a Rule 12(c) motion for judgment on the pleadings to dismiss the case based on the pleadings "*[a]fter the pleadings are closed* but within such time as not to delay the trial . . . ." Rule 12(c), SCRCP (emphasis added); *Gregory v. Gregory*, 292 S.C. 587, 590, 358 S.E.2d 144, 147 (Ct. App. 1987). Under a Rule (12)(c) motion for a judgment on the

pleadings, the lower court "may not [usually] consider matters outside the pleadings." *Firemen's Ins. Co.*, 302 S.C. at 236; *but see Hooper v. Ebenezer Senior Servs. & Rehab. Ctr.*, 386 S.C. 108, 114, 687 S.E.2d 29, 32 (2009). In turn, when transforming a Rule 12(c) motion for judgment on the pleadings into one of summary judgment to dismiss a case as a matter of law, the lower court may allow the moving party to introduce other forms of admissible evidence outside of the pleadings together with affidavits. Rules 12(c), 56, SCRCP; *Hooper*, 386 S.C. at 114. Again, if the lower court finds any deficiencies in the plaintiff's complaint, then the plaintiff is entitled a meaningful chance to amend the complaint instead of facing dismissal with prejudice. Rule 15(a), SCRCP (encouraging "leave shall be freely given [by the court] when justice so requires and does not prejudice any other party."); *Skydive Myrtle Beach*, 426 S.C. at 179-80, 189; *Spence*, 368 S.C. at 129.

III. Motion for summary judgment. Rule 56(c), SCRCP.

A motion for summary judgment is, often, premature before preliminary discovery in litigation begins and pleadings are closed because the motion typically involves a variety of pleadings, including the complaint, answer, and preliminary discovery; affidavits; depositions; and, admissible evidence. Rule 56, SCRCP; *see Hooper*, 386 S.C. at 114. A motion for granting summary judgment under Rule 56(c) typically occurs "*after adequate time for discovery* and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-24, 106 S. Ct. 2548, 2552-53 (1986) (emphasis added). The moving party bears the burden to show the court the basis for a motion for summary judgment by identifying portions of the pleadings, discovery, and affidavits to "demonstrate the absence of a genuine issue of material fact." *Id.* at 323; *Baughman v. AT&T*,

306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). Therefore, a motion for "[s]ummary judgment is a drastic remedy and must not be granted until the opposing party has had a full and fair opportunity to complete discovery." *Dawkins*, 354 S.C. at 69; *see George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001) (citing *McClain v. Arnold*, 275 S.C. 282, 284, 270 S.E.2d 124, 125 (1980)).

In a Rule 56(c) motion for summary judgment, the court must determine "whether any triable issues of fact exist." *Bloom v. Ravoira*, 339 S.C. 417, 421-22, 529 S.E.2d 710, 712 (2000). Similar to the standard for a motion for directed verdict, the legal issue before the court is whether disposing a case as a matter of law against a non-moving party would be reasonably possible based on the facts of the case. *Id.* at 422. A Rule 56(c) motion for summary judgment must fail when the evidence and reasonable inferences therefrom construed in the light most favorable to the non-moving party shows a genuine disputed issue exists regarding any material fact for each essential element in the claim that "might affect the outcome of the lawsuit under governing substantive law." *Hyman*, 142 F. Supp. at 737-38; *Fay v. Total Quality Logistics, LLC*, 419 S.C. 622, 628, 799 S.E.2d 318, 322 (Ct. App. 2017). By contrast, even when no dispute of the evidentiary facts exits, a Rule 56 motion for summary judgment must fail when a dispute exits as to the legal conclusions "or inferences to be drawn from [the evidentiary facts]." *Bloom*, 339 S.C. at 422.

IV. Motion for relief. Rule 60(b), SCRCP.

An abuse of discretion standard applies to granting a motion under Rule 60(b) for relief from judgment or order whereby "the trial judge was controlled by an error of law or where his order is based on factual conclusions that are without evidentiary support." *Tri-County Ice & Fuel Co. v. Palmetto Ice Co.*, 303 S.C. 237, 242, 399 S.E.2d 779, 782 (1990); *Raby Constr.*,

L.L.P. v. Orr, 358 S.C. 10, 17-18, 594 S.E.2d 478, 482 (2004) ; Rule 60(b)(1), cmt. ¶ 3, SCRCP ("Rule 60(b) [provides that] . . . there may be a motion for relief from other mistakes."); *see also Patton v. Miller*, 420 S.C. 471, 489-93, 804 S.E.2d 252, 261-63 (2017) (finding the court's failure to do legal analysis and ruling on unsubstantiated grounds is an abdication of exercising discretion). Rule 60(b) motion for relief from judgment or order provides that:

> On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:
> (1) mistake, inadvertence, surprise, or excusable neglect;
> (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
> (3) fraud, misrepresentation, or other misconduct of an adverse party . . .
> The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken. Rule 60(b), SCRCP; *Tobias v. Rice*, 386 S.C. 306, 310, 688 S.E.2d 552, 554 n.3 (2010).

Public policy favors "the disposition of issues on their merits rather than on technicalities." *Mictronics, Inc. v. S.C. Dep't of Revenue*, 345 S.C. 506, 510-12, 548 S.E.2d 223, 225-26 (Ct. App. 2001). Fraud, misrepresentation, or misconduct by the adverse party relates to subverting the court's integrity that leads to a breakdown in the judicial machinery of adjudicating cases in a fair and impartial manner. *Chewning v. Ford Motor Co.*, 346 S.C. 28, 34, 550 S.E.2d 584, 587 (Ct. App. 2001) ; Rule 60(b)(3), SCRCP. The moving party has the burden of proof to show grounds under a Rule 60(b) for relief from judgment or order. *Rouvet v. Rouvet*, 388 S.C. 301, 309, 696 S.E.2d 204, 208 (Ct. App. 2010). The moving party typically relies upon affidavits with essential facts that entitle that party to relief. *Bowers v. Bowers*, 304 S.C. 65, 67-68, 403 S.E.2d 127, 129 (Ct. App. 1991).

ARGUMENTS

The lower court jumped the gun and prematurely decided upon genuinely disputed facts at issue based on undeveloped, underlying merits of the case. Rule 60(b)(1), SCRCP. The lower

court did not view James's factual allegations as true and in the light most favorable to James when considering the motions before it. *Id.* Thus, the lower court preemptively foreclosed James's case on issues that were expressly meant for the jury to decide by improperly ruling in respondents' favor in violation of James's rights to a jury trial and the right to be heard. *Id.* Ultimately, the lower court invaded the province of the jury to decide the issues before it. *Id.* If James had any defects in his complaint, then James should have been entitled to amend his complaint instead of face dismissal with prejudice as an overly drastic measure. *Skydive Myrtle Beach*, 426 S.C. at 179-80, 189.

I. The lower court erred dismissing Appellant James Earl Tegeler's claims against Respondent Northgate Baptist Church because the severance agreement did not bar his claims.

If the lower court erred ruling that James's factual allegations did not survive a Rule 12(b)(6) motion to dismiss, then the lower court erred transforming a Rule 12(b)(6) motion to dismiss into a Rule 56 motion for summary judgment. Nonetheless, the lower court improperly dismissed James's case against Northgate under either analysis. First, the lower court erred ruling on a Rule 12(b)(6) motion to dismiss when it failed to deem and admit the factual allegations in James's complaint as true, and in favor of James, and improperly dismissing James's claims against Northgate for: (1) false imprisonment; (2) defamation; (3) fraud in the inducement; (4) negligent misrepresentation; (5) negligent hiring, supervision, and retention of employees; (6) intentional infliction of emotional distress; and, (7) wrongful termination against Northgate. (R. pp. ___; Order Grant Resp't Northgate Baptist Church's Mot. Dismiss pp. 2, 5-10; Order Den. Appellant's Am. Mot. Recons. to Resp't Northgate Baptist Church pp. 2-3). With respect to a Rule 12(b)(6) motion to dismiss, the lower court erred when it ruled on the underlying merits of the severance agreement as legally binding instead of finding that Northgate

did not provide any substantive legal arguments as to whether James sufficiently pled factual allegations that invalidated the formation and validity of the severance agreement or James's causes of action against Northgate. (R. pp. ___; Compl. ¶¶ 15, 17, 34, 59-62, 66-75, 81-84, 86-113, 124-136, 137-139, 142-143, 146-150, 151-166, 167-173, 174-182, 183-184, 186-188, 192-196, 197-200, 203-205, 206-210; Order Grant Resp't Northgate Baptist Church's Mot. Dismiss pp. 2, 5-10). Consequently, the lower court's adoption of Northgate's legal arguments is not subject to this appeal. Rule 60(b)(1), SCRP.

Second, the lower court also erred ruling on a Rule 56 motion for summary judgment when it dismissed James's claims against Northgate based on the underlying merits of the claims because James presented a genuine disputed issue of material fact that the severance agreement in question did not bar James's claims against Northgate. (R. pp. ___; Order Grant Resp't Northgate Baptist Church's Mot. Dismiss pp. 2, 5-10; Appellant's Resp. Resp'ts Mot. Dismiss pp. 7-18; Tr: 5:9-26:5). The lower court erred when it failed to take James's factual allegations as true and in his favor that the severance agreement: (1) was not legally binding under the circumstances; and, (2) did not bar James's claims arising from the day of and after signing the severance agreement. (R. pp. ___; Compl. ¶¶ 86-113, 124-136, 137-139, 142-143, 146-150, 151-166, 167-173, 174-182, 183-184, 186-188, 192-196, 197-200, 203-205, 206-210; Resp't Northgate Baptist Church's Mem. Supp. Mot. Dismiss, Ex. A ¶¶ 3(A), (D); Tr. 5:9-26:5). Instead, the lower court erred by invading the province of the jury because all of these genuine disputed issues of material facts are for a jury to decide after discovery had been developed in the case. Rules 56, 60(b)(1), SCRCP; *Hooper*, 386 S.C. at 114; *Dawkins*, 354 S.C. at 69; *Bloom*, 339 S.C. at 421-22; *Celotex Corp.*, 477 U.S. at 322-24.

A. Appellant James Earl Tegeler provided a genuine disputed issue of a material

fact that Respondent Northgate Baptist Church's severance agreement was not legally binding.

The lower court erred when transforming a Rule 12(b)(6) motion to dismiss into a Rule 56 motion for summary judgment the severance agreement was not legally binding because James signed the severance agreement under the totality of the circumstances that invalidated the formation of the severance agreement as a contract due to duress, lack of assent, and mental incapacity related to James's causes of action[11] against Northgate. (R. pp. ___; Compl. ¶¶ 86-112). Therefore, the severance agreement between James and Northgate is invalid and unenforceable. (R. pp. ___; Compl. ¶ 111). The elements of a contract include "offer, an acceptance, and valuable consideration." *Taylor v. Cummins Atl.*, 852 F. Supp. 1279, 1286 (D.S.C. 1994). Under the contract principles of mutual assent, a meeting of the minds is required to form a contract that objectively manifests an intent by the parties to enter a contract. *Player v. Chandler*, 299 S.C. 101, 104-05, 382 S.E.2d 891, 893-94 (1989).

At issue is the element of acceptance and lack of mutual assent. Duress is coercion that puts a person in such fear that he is bereft of the quality of mind essential to the making of a contract, and the contract was thereby obtained as a result of this state of mind. *In re Nightingale's Estate*, 182 S.C. 527, 545, 189 S.E. 890, 897 (1937). Duress is usually parasitic to a party's wrongful conduct, or torts, used to coerce or induce another party to sign a contract involuntarily rendering it voidable. *Scoggins v. Honeywell Int'l, Inc.*, Civil Action No. 2:11-3028-PMD-BM, 2012 U.S. Dist. LEXIS 174302, at *5-6 (D.S.C. Dec. 10, 2012); *Gainey v.*

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11 James pled factual allegations that invalidated the formation and validity of the severance agreement arising from: (1) false imprisonment; (2) fraud in the inducement; (3) negligent misrepresentation; (4) negligent hiring, supervision, and retention of employees; (5) intentional infliction of emotional distress; (6) negligent infliction of emotional distress; and, (7) wrongful termination. All of these causes of action invalidated James's entering into a contract voluntarily and of sound mind. (R. pp. ___; Compl. ¶¶ 86-113, 124-136, 137-139, 142-143, 146-150, 151-166, 167-173, 174-182, 183-184, 186-188, 192-196, 197-200, 203-205, 206-210).

Gainey, 382 S.C. 414, 428-29, 675 S.E.2d 792, 799-800 (Ct. App. 2009); *Holler v. Holler*, 364 S.C. 256, 266-67, 612 S.E.2d 469, 475-76 (Ct. App. 2005); *Whitlock v. Creswell*, 190 S.C. 314, 333-36, 2 S.E.2d 838, 846-47 (1939). Mental incapacity refers to "such insanity or mental weakness or unsoundness as amounts to an incapacity or occasions an inability to understand or co[m]prehend the subject of the contract or act and its nature and probable consequences." *In re Nightingale's Estate*, 182 S.C. at 541-42. James was coerced by Northgate into resigning under the circumstances and entering the severance agreement involuntarily being not of sound mind. (R. pp. ___; Compl. ¶¶ 86-112).

James pled factual allegations supporting a genuine disputed issue of material fact existed because the formation of the severance agreement between James and Northgate was invalid due to Northgate's wrongful conduct during the termination meeting.[12] (R. pp. ___; Compl. ¶¶ 86-112). James was restrained against his will under false imprisonment that removed his free will to enter a contract voluntarily. (R. pp. ___; Compl. ¶¶ 100-110). James was denied the opportunity to leave the room. (R. pp. ___; Compl. ¶¶ 100-110). James was denied time to review the document. (R. pp. ___; Compl. ¶¶ 100-110). James was denied the opportunity to seek legal counsel for review of the document or seek representation regarding this document. (R. pp. ___; Compl. ¶¶ 100-110). James signed the document under coercion and duress. (R. pp. ___; Compl. ¶¶ 100-110).

James was fraudulently induced to sign the document because Dr. Jimmerson threatened James that, if James refused to sign the document, then he would proceed with Northgate's policies and procedures to place James before the members of the congregation and obtain a vote

12 James refers to the following cause(s) of action against Northgate with respect to the severance agreement occurring on the termination date of April 10, 2018: false imprisonment; fraud in the inducement; negligent hiring, supervision, and retention of employees; and, wrongful termination.

of no confidence from them to fire James. (R. pp. ___; Compl. ¶ 103). At this future-would-be-meeting, Dr. Jimmerson threatened to humiliate James and expose the accusations of James having "inappropriate relationships" and "inappropriate contact" with young girls, or minors, in the congregation at Northgate. (R. pp. ___; Compl. ¶ 103). James did not know that Northgate's policies and procedures do not allow for such a process when terminating employees. (R. pp. ___; Compl. ¶ 158-160). In the alternative, Northgate negligently misrepresented the actual policies and procedures for investigating and terminating an employee when Dr. Jimmerson and Laurel should have known or followed the actual process for employee termination. (R. pp. ___; Compl. ¶¶ 66-73, 75, 81-84, 86-112, 124-136, 138, 142-143, 151-166, 167-173, 182, Ex. A pp. 2-9, Ex. B. pp. 2-26; Roy Sabean Aff. ¶¶ 4-8, 10, 18).

James experienced a total loss of free agency to voluntarily enter a contract and be of sound mind when he was overcome by Northgate being subjected to uneven handedness and unequal bargaining position in the employer-employee relationship with Northgate with little to no reasonable opportunity for other alternatives. (R. pp. ___; Compl. ¶¶ 86-112). Northgate should have ensured that its employees or agents on the premises did not engage in intentionally harming another during the scope of their employment or agency by exercising control over them to comply with Northgate's personnel policies and procedures and exercise due diligence when terminating an employee. (R. pp. ___; Compl. ¶¶ 66-73, 75, 81-84, 86-112, 124-136, 138, 142-143, 151-166, 167-173, 182, Ex. A pp. 2-9, Ex. B. pp. 2-26; Roy Sabean Aff. ¶¶ 4-8, 10, 18). Dr. Jimmerson, Laurel, and Warren intentionally engaged in wrongful termination by creating a hostile work environment—even as a singular incident—at the meeting based on offensive and harassing conduct that made conditions to remain at Northgate so intolerable that no one in James's position could endure it. (R. pp. ___; Compl. ¶¶ 59-62, 66-68, 83-112).

Consequently, James suffered extreme and severe distress during the termination meeting and afterward. (R. pp. ___; Compl. ¶¶ 86-112). At the outset of the meeting, Dr. Jimmerson and Warren were aggressive, hostile, and shouting at James when shaming him for having anything to do with young girls in the congregation without explanation. (R. pp. ___; Compl. ¶¶ 86-94). Laurel accused James of having "inappropriate contact" and "inappropriate relationships" with young girls, including Hannah, in the congregation without any warning or explanation. (R. pp. ___; Compl. ¶¶ 59-62, 66-67, 72, 74, 95-96). James was not of sound mind when being accused by Northgate of one of the most reprehensible criminal and morally reprehensible conduct for having "inappropriate contact" and "inappropriate relationships" with young girls in the congregation at Northgate. (R. pp. ___; Compl. ¶¶ 59-62, 66-67, 74, 95-96, 99-100, 107-111). But, James absolutely broke down and became mentally incapacitated after being threatened by Northgate that Northgate would publicly humiliate him like a social pariah, pedophile, child molester, or chaser of young women before the congregation of Northgate. (R. pp. ___; Compl. ¶¶ 81, 84, 117, 146, 192). All of these factual allegations when construed as true in support James's claims against Northgate present a genuine disputed issue that the severance agreement invalid, voidable, and an utterly meaningless piece of paper.

B. Appellant James Earl Tegeler provided a genuine disputed issue of a material fact that Respondent Northgate Baptist Church's severance agreement did not bar his claims.

The lower court erred when transforming a Rule 12(b)(6) motion to dismiss into a Rule 56 motion for summary judgment because a genuine disputed issue of a material fact exists that the construction and interpretation of the severance agreement did not bar James's claims against Northgate arising from the day of and after James signed the severance agreement under the circumstances due to the language in the severance agreement. (R. pp. ___; Compl. ¶¶ 86-113,

124-136, 137-139, 142-143, 146-150, 151-166, 167-173, 174-182, 183-184, 186-188, 192-196, 197-200, 203-205, 206-210; Resp't Northgate Baptist Church's Mem. Supp. Mot. Dismiss, Ex. A ¶¶ 3(A), (D); Appellant's Resp. Resp'ts Mot. Dismiss pp. 7-18; Tr. 5:9-26:5; Order Grant Resp't Northgate Baptist Church's Mot. Dismiss pp. 5-10; Appellant's Am. Mot. Recons. pp. 25-32). The severance agreement is essentially a release that is subject to garden-variety contract law and defenses as previously discussed. *Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC*, 374 S.C. 483, 492, 649 S.E.2d 494, 498 (Ct. App. 2007) (defining a release as a contractor discharging a duty owed to the maker of the release); *Hyman*, 142 F. Supp. 2d at 741-46; *Lowery v. Callahan*, 210 S.C. 300, 304, 42 S.E.2d 457, 458 (1947); *Aldridge v. Watts Mill*, 131 S.C. 222, 231-32, 127 S.E. 213, 216-17 (1925). Whether the construction of the contract between the parties is ambiguous as matter of contractual interpretation is a question of law. *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009).

The court will give plain, unambiguous language the ordinary meaning intended when reading the contract as a whole document. *Id.* A contract is ambiguous when it is construed with more than one meaning, the meaning is unclear, the meaning is obscure through indefiniteness of expression, or having a double meaning. *Ecclesiastes Prod. Ministries*, 374 S.C. at 499-500; *Penton v. J.F. Cleckley & Co.*, 326 S.C. 275, 280, 486 S.E.2d 742, 745 (1997) (permitting extrinsic, parol evidence "to ascertain the true meaning and intent of the parties."); *Carolina Ceramics, Inc. v. Carolina Pipeline Co.*, 251 S.C. 151, 155-56, 161 S.E.2d 179, 181 (1968). The courts construe ambiguity strictly against the drafter of the contract in favor of the non-drafter. *Ecclesiastes Prod. Ministries*, 374 S.C. at 499-500. Overly broad exculpatory clauses in waivers and releases contravene public policy and are generally unenforceable and against public policy. *McCune v. Myrtle Beach Indoor Shooting Range, Inc.*, 364 S.C. 242, 248-52, 612 S.E.2d 462,

465-67 (Ct. App. 2005); *Fisher v. Stevens*, 355 S.C. 290, 295, 584 S.E.2d 149, 152 (Ct. App. 2003) (subjecting exculpatory to strict scrutiny). A party is prohibited to use exculpatory contracts and exempt that party from that party's own negligence, gross negligence, reckless conduct, willful or wanton conduct, or, intentional acts in the absence of explicit, clear language indicating doing so was the parties' consent. *Id.* at 248-52; *Fisher*, 355 S.C. at 297; *S.C. Elec. & Gas Co. v. Combustion Eng'g, Inc.*, 283 S.C. 182, 191, 322 S.E.2d 453, 458 (Ct. App. 1984).

The severance agreement did not bar James's claims against Northgate on the day of his termination. The severance agreement was a release and covenant not to sue under Section 3:

> In exchange for the Company's agreement to provide the above payment, Employee agrees not to make any claims or demands or to commence any lawsuits against the Company on any matters arising from or related in any way to the Employee's employment with or termination from the Company. (R. pp. ___; Resp't Northgate Baptist Church's Mem. Mot. Dismiss, Ex. A, ¶ 3(A)).

Specifically, the severance agreement provided that James did not waive or release his claims against Northgate on the day of his termination under Section 3(A) because the severance agreement only barred claims against Northgate "*prior to the date of this Separation Agreement and Release . . . .*" (R. pp. ___; Resp't Northgate Baptist Church's Mem. Supp. Mot. Dismiss, Ex. A, ¶ 3(A)). Moreover, under Section 3.D. of the severance agreement, James never "release[ed] or waiv[ed] any rights or claims which may arise *after this Agreement is executed*, any claims for the sole purpose of enforcing [James]'s rights under this Agreement, or any claims which by law cannot be waived." (R. pp. ___; Resp't Northgate Baptist Church's Mem. Mot. Dismiss, Ex. A, ¶ 3(D)). Therefore, the severance agreement did not bar any of James's prospective claims against Northgate after he signed the severance agreement at his termination. Sections 3(A) and 3(D) appear clear and unambiguous that these provisions operated for James to bring his claims against Northgate arising from the day of and after signing the severance

agreement. (R. pp. ___; Resp't Northgate Baptist Church's Mem. Supp. Mot. Dismiss, Ex. A, ¶¶ 3(A), (D)). But, if the Court were to find the construction ambiguous, then ambiguity is construed against Northgate as the drafter of the severance agreement. Nevertheless, James pled factual allegations supporting his claims occurring on the day of and after signing the severance agreement. (R. pp. ___; Compl. ¶¶ 86-113).

Additionally, the exculpatory provisions of the release in the severance agreement, whether in part or in full, were also overly broad, unenforceable, and against public policy:

> This [Section 3(A)] specifically includes, but is not limited to, a release of any and all rights, claims, and causes of action of any sort arising under . . . any other legal theory or cause of action, regardless of type, character or form, he may have; any and all causes of action, whether in law and/or in equity, for any expense, reinstatement, loss, mental or physical injury, costs, attorneys' fees, mental anguish, pain and suffering, medical bills or costs, physical or mental impairment, damage to reputation, loss of enjoyment of life, loss of consortium, lost earnings or profits, lost wages of commissions, lost bonuses, lost seniority or retirement benefits, other lost employment benefits including, but not limited to, vacation, or holiday pay and long or short term disability, or any other damage (whether actual, compensatory, punitive, treble or otherwise) suffered or which may be suffered by Employee due to any event which occurred prior to the date of this Separation Agreement and Release . . . . (R. pp. ___; Resp't Northgate Baptist Church's Mem. Mot. Dismiss, Ex. A, ¶ 3(A); Appellant's Resp. Resp'ts Mot. Dismiss pp. 12-15; Tr. 5:9-7:12-18, 19:6-21:12; 23:22-24:2).

In Section 3.D. of the severance agreement, the language stating "[t]he intent of this Agreement is to fully and finally resolve all claims and possible claims against the Company that are waivable whether legal or equitable" does not clearly and explicitly indicate a meeting of the minds for both parties to release specifically cause(s) of action for negligence, intentional torts, gross negligence, reckless conduct, or willful or wanton conduct. (R. pp. ___; Resp't Northgate Baptist Church's Mem. Mot. Dismiss, Ex. A, ¶ 3(D); Appellant's Resp. Resp'ts Mot. Dismiss pp. 12-15; Tr: 5:9-7:12-18, 19:6-21:12; 23:22-24:2). Therefore, this provision is unenforceable as void against public policy because no escape hatch exists for Northgate to avoid liability from

committing the aforementioned torts.

C. Respondent Northgate Baptist Church failed to recognize Appellant James Earl Tegeler's notice of an implied offer to return the severance pay.

On or around April 26, 2018, James placed Northgate on notice in a timely manner within ten (10) business days after his termination from Northgate concerning an implied offer to return the severance payment in exchange for James returning to work during preliminary settlement negotiations:

> Reinstatement of my client's former position provided that Charlotte Collier, Hannah Collier, and Linda Smith are not permitted to remain as members of the congregation along with a signed affidavit from Dr. Laura Shaler as the chair of the personnel committee renouncing the allegations against my client concerning Charlotte Collier, Hannah Collier, and Linda Smith as baseless and unfounded. (R. pp. ___; Appellant's Am. Mot. Recons. pp. 30-31, Ex. A, p. 5).

This correspondence during settlement negotiations is admissible for the purpose of showing that Northgate was placed on notice that James made an implied offer to return the severance pay. *See Meehan v. Commercial Cas. Ins. Co.*, 166 S.C. 496, 503-04, 165 S.E. 194, 197 (1932); *cf.* Rule 408, SCRE. If James received a severance pay in exchange for executing a release, and he wants to unwind the release agreement, then he may either return or make an offer to return the severance pay to Northgate. *Jones v. Massingale*, 251 S.C. 456, 461, 163 S.E.2d 217, 219 (1968). Common sense dictates that, if James returned to work for Northgate, then Northgate would have to adjust James's compensation upon resuming his position.

Therefore, the lower court's ruling on this matter should be set aside under mistake or excusable neglect when the issue was raised promptly for relief; counsel for James must correct and clarify the legal argument presented before the lower court based on failure to distinguish between two separate settlement negotiations that occurred between James and Northgate; James does have a meritorious defense of making an implied offer to return the severance pay; and,

Northgate is not prejudiced because it is in the possession of the same documents prior to litigation. Rule 60, SCRCP; *Hill v. Fotts*, 345 S.C. 304, 309, 547 S.E.2d 894, 897 (Ct. App. 2001). (R. pp. ___; Order Grant Resp't Northgate Baptist Church's Mot. Dismiss pp. 9-10; Tr. 18:17-19:5; Appellant's Am. Mot. Recons. pp. 30-31, Ex. A, p. 2-10).

II. Appellant James Earl Tegeler provided a genuine disputed issue of material fact that respondents defamed him in the most reprehensible light that resulted in severe emotional distress to suffer utter, inescapable social ruin.

If the lower court erred ruling that James's factual allegations did not survive a Rule 12(c) motion for judgment on the pleadings, then the lower court erred transforming a Rule 12(c) motion for judgment on the pleadings into a Rule 56 motion for summary judgment. Rule 60(b), SCRCP. After considering facts outside the pleadings, the lower transformed a Rule 12(c) motion for judgment on the pleadings into a Rule 56 Motion for Summary Judgment.[13] (R. pp. ___; Hannah Elizabeth Collier Aff. ¶ 4, Ex. A pp. 2-12; Tr. 40:24-48:24, 56:23-58:19). Nonetheless, the lower court improperly dismissed James's case against Hannah, her mother, and her grandmother under either analysis. Rule 60(b), SCRCP. First, the lower court erred ruling on a Rule 12(c) motion for judgment on the pleadings when it failed to deem and admit the factual allegations in James's complaint as true, and in favor of James, and improperly dismissing James's claims against Hannah, her mother, and her grandmother for: (1) defamation; and, (2)

13 The lower court erred by failing to substantiate any grounds for dismissing James's claims for defamation and intentional infliction of emotional distress against Hannah and her grandmother under the Rule 12(b)(6) motion to dismiss. *See Patton*, 420 S.C. at 489-93. (R. pp. ___; Order Grant Resp'ts Hannah Elizabeth Collier and Linda Smith's Mot. Dismiss pp. 1-12). The lower court misstated the effect of dismissing a case under a Rule 12(c) motion for judgment on the pleadings standing alone when the lower court did permit facts outside of the pleadings. (R. pp. ___; Order Grant Resp't Charlotte Collier's Mot. Dismiss pp. 10-11; Tr. 40:24-48:24, 56:23-58:19; Hannah Elizabeth Collier Aff. pp. 2-12). Hannah presented an affidavit. (R. pp. ___; Hannah Elizabeth Collier Aff. pp. 1-2, Ex. A pp. 3-12). Hannah's mother presented no admissible evidence or affidavits. James presented affidavits and admissible evidence from statements by party opponents. Rule 802(d)(2), SCRE. (R. pp. ___; Appellant's Resp. Resp'ts Mot. Dismiss pp. 3-5, 11, 17, 20-22, Ex. A pp. 2-13, Ex. B pp. 2-16, Ex. C p. 2, Ex. D pp. 2-6, Ex. E p. 2).

intentional infliction of emotional distress. Rule 60(b), SCRCP. (R. pp. ___; Order Grant Mot. Dismiss to Charlotte Collier p. 3-11; Order Grant Mot. Dismiss to Hannah Elizabeth Collier and Linda Smith p. 3-12). With respect to a Rule 12(c) motion for judgment on the pleadings, the lower court erred when it ruled on the underlying merits of the claims before the pleadings have closed because James's factual allegations in his complaint were sufficient to warrant relief under different theories of law, including defamation and intentional infliction of emotional distress, against Hannah, her mother, and her grandmother. Rule 60(b), SCRCP. (R. pp. ___; Order Grant Mot. Dismiss to Charlotte Collier p. 3-11; Order Grant Mot. Dismiss to Hannah Elizabeth Collier and Linda Smith p. 3-12).

Second, the lower court also erred ruling on a Rule 56 motion for summary judgment when it dismissed James's claims against Hannah, her mother, and her grandmother based on the underlying merits of the claims because James presented a genuine disputed issue of material fact that arose from: (1) the meaning ascribed to the defamatory statement of "inappropriate relationship;" and, (2) James suffered severe distress because the conduct of Hannah, her mother, and her grandmother was extreme and outrageous. Rule 60(b), SCRCP. (R. pp. ___; Order Grant Mot. Dismiss to Charlotte Collier p. 3-8, 10; Order Grant Mot. Dismiss to Hannah Elizabeth Collier and Linda Smith p. 4-10). Instead, the lower court erred by invading the province of the jury because all of these genuine disputed issues of material facts are for a jury to decide after the pleadings were closed and discovery was developed in the case.[14] Rules 56, 60(b)(1), SCRCP; *Hooper*, 386 S.C. at 114; *Dawkins*, 354 S.C. at 69; *Bloom*, 339 S.C. at 421-22; *Celotex Corp.*, 477 U.S. at 322-24.

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14 The only pleadings in question are James's complaint and answers from Hannah, her mom, and her grandmother. No preliminary discovery has occurred at this time.

Third, James requested for the remedy of amending his complaint in his prayer for relief if a defect was noted. (R. pp. ___; Compl. p. 22; Appellant's Resp. Resp'ts Mot. Dismiss pp. 6, 24; Appellant's Mot. Recons. pp. 1-3, 5, 10, 19-20, 25, 32-33). Under a Rule 12(c) motion for judgment on the pleadings, the lower court erred when denying James the remedy to amend his complaint in lieu of dismissing his case with prejudice when the pleadings were not closed and discovery had not been done. (R. pp. ___; Resp'ts Hannah Elizabeth Collier and Linda Smith's Am. Answer ¶¶ 57-81; Resp't Charlotte Collier Am. Answer ¶ 61; Order Grant Mot. Dismiss to Charlotte Collier p. 3-11; Order Grant Mot. Dismiss to Hannah Elizabeth Collier and Linda Smith p. 3-12).

A. The lower court erred deciding on the meaning of the defamatory statement "inappropriate relationship" that was an issue of fact for the jury to decide.

Under a Rule 56 motion for summary judgment, the lower court erred dismissing James's cause of action defamation when deciding the meaning of "inappropriate relationship" because the lower court may only decide as to *whether a defamatory statement is capable of*: (1) a susceptible defamatory meaning in the mind of a reasonable listener under the circumstances subject to defamation per quod; or, (2) an offensive meaning in the mind of a listener subject to defamation per se. *See Parrish v. Allison*, 376 S.C. 308, 321-23, 656 S.E.2d 382, 389-90 (Ct. App. 2007); *Adams v. Daily Tel. Printing Co.*, 292 S.C. 273, 279, 356 S.E.2d 118, 122 (Ct. App. 1986) (citations omitted); *Herring v. Lawrence Warehouse Co.*, 222 S.C. 226, 234-35, 72 S.E.2d 453, 455 (1952) (citations omitted); *Flowers v. Price*, 192 S.C. 373, 377-78, 6 S.E.2d 750, 751-52 (1940). For a defamation cause of action, the plaintiff must prove: "(1) a false and defamatory statement concerning another; (2) an unprivileged publication to a third party; (3) fault on the part of the publisher; and (4) either actionability of the statement irrespective of special harm or

the existence of special harm caused by the publication." *Holtzscheiter v. Thomson Newspapers*, 332 S.C. 502, 518, 506 S.E.2d 497, 501-03 (1998) (Toal, A.J., concurring). Spoken defamation published to a third party is slander. *See id.* at 508-13. A defamatory communication is presumed false under common law. *Parrish*, 376 S.C. at 326.

At issue is the element of actionability for the slanderous statement "inappropriate relationship." The analysis is twofold as to whether the statement is defamation per quod or defamation per se. *Parrish*, 376 S.C. at 321-23. . However, slander per se that is actionable only applies to statements made regarding certain categories. *Id.*; *Holtzscheiter*, 332 S.C. at 510-11. If a defamatory statement is actionable per se, then common law malice and general damages are presumed. *Holtzscheiter*, 332 S.C. at 509-10. Ultimately, under either analysis, the lower court may not unilaterally decide on the meaning ascribed to a slanderous statement to justify dismissing a cause of action for defamation accordingly. *Parrish*, 376 S.C. at 321-23; *Adams*, 292 S.C. at 279; *Herring*, 222 S.C. at 234-35; *Flowers*, 192 S.C. at 377-78. Here, the lower court blatantly admitted to improperly deciding the legal meaning of the defamatory statement "inappropriate relationship" before submitting this issue of fact to a jury: "Plaintiff's Complaint accurately pleads the statement he contends to be defamatory. This statement fails to meet the legal standard for defamation." (R. pp. ___; Order Den. Appellant's Am. Mot. Recons. to Resp't Charlotte Collier p. 3). Therein lies the dispute. Only the jury decides on the meaning ascribed to the defamatory statement. *Adams*, 292 S.C. at 279.

1. **The lower court erred dismissing Appellant James Earl Tegeler' s defamation claim when the statement "inappropriate relationship" was susceptible to a defamatory meaning for the jury to decide.**

The lower court erred when dismissing James's claim of defamation when transforming a Rule 12(c) motion for judgment on the pleadings into a Rule 56 motion for summary judgment

because a genuine disputed issue of a material fact exists that "inappropriate relationship" could be possibly construed as susceptible to a defamatory meaning in the mind of a reasonable listener. *See Adams*, 292 S.C. at 279; *Flowers*, 192 S.C. at 377-78. (R. pp. ___; Compl. ¶¶ ; Hannah Elizabeth Collier Aff. ¶¶ 3-4). In the first element for defamation, "[a] communication is defamatory if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him." *Holtzscheiter*, 332 S.C. at 518. Whether a statement is defamatory is objectively determined by the effect that the statement has on the listener (i.e., the impression in the minds of those who hear the statement). *Flowers*, 192 S.C. at 377-78. Whether the defamatory statement is actionable per se permits the "contemplation of the context and circumstances under which words are spoken when determining if the words have a defamatory meaning or are actionable per se . . . ." *Parrish*, 376 S.C. at 321-23. Defamatory statements susceptible of two meanings in which one is defamatory and the other is innocent are not actionable per se because reasonable minds might differ on the meaning of the statement as defamation per se. *Parrish*, 376 S.C. at 321-23; *Adams*, 292 S.C. at 279. Under a Rule 56 motion for summary judgment, the lower court may only decide whether a statement is capable of one possible defamatory meaning when that defamatory statement is susceptible to two different meanings. *See Parrish*, 376 S.C. at 321-23. If the defamatory statement is susceptible to two different meanings, then the jury must determine the meaning under the circumstances and how the witnesses understood the words. *Herring*, 222 S.C. at 234-35.

Under a Rule 12(c) motion for judgment on the pleadings, the lower court erred dismissing James's defamation case against Hannah, her mother, and her grandmother because James pled factual allegations that the defamatory statement "inappropriate relationship"

supported at least one possible defamatory meaning:

> Because of the action(s) or omission(s) of Defendant(s), whether acting individually or collectively, Defendant(s) destroyed Plaintiff's reputation by portraying Plaintiff a social pariah within the congregation of Defendant CHURCH akin to negative stereotypes of a child molester, pedophile, an older man pursuing a romantic or sexual interest(s) in a young girls, or any of the above associated with a man in Plaintiff's position in a Christian church. (R. pp. __; Compl. ¶ 117).

James pled that "inappropriate relationship" meant a mentor-mentee relationship being characterized as a romantic or sexual relationship. (R. pp. __; Compl. ¶¶ 21, 27, 32-33, 60-62, 81, 84, 92-93, 95-96, 103, 113, 117, 140, 144-146, 187). When Hannah, her mother, and her grandmother reported to Dr. Jimmerson that James was having an "inappropriate relationship" with Hannah, Dr. Jimmerson perceived "inappropriate relationship" to mean in his mind that James was accused of being in a romantic or sexual relationship with Hannah. (R. pp. __; Compl. ¶¶ 59-62). Almost a month before Northgate fired James, both Dr. Jimmerson and Laurel were present in the same meeting with James when Dr. Jimmerson told James that Hannah had accused him of having an "inappropriate relationship" with her. (R. pp. ___; Compl. ¶¶ 66-67). The effect of hearing "inappropriate relationship" in the mind of James was that Hannah accused him of a having romantic or sexual relationship with her. (R. pp. ___; Compl. ¶ 67). In his defense, James showed Dr. Jimmerson and Laurel a text message, or snapchat, from Hannah expressing daughterly affection and respect toward James to demonstrate that his relationship with Hannah outside the scope of his employment with Northgate was nothing more than a strictly a mentor-mentee or surrogate father-daughter characterization. (R. pp. ___; Compl. ¶ 27, 32, 33, 41, 42, 54-58, 64; Appellant's Resp. Resp'ts Mot. Dismiss, Ex. E p. 2).

James pled that "inappropriate relationship" meant an adult being characterized as a

pedophile and attracted to young children.[15] (R. pp. ___; Compl. ¶¶ 21, 81, 84, 92-93, 95-96, 103, 117). The effect of hearing "inappropriate relationship" in the mind of Laurel was that James was being accused of having "inappropriate contact" with Hannah whom she characterized as a child (akin to a minor). (R. pp. ___; Compl. ¶¶ 21, 59-62, 66-67, 72, 74, 95-96, 103, 117). Prior to James's termination meeting, Laurel informed both Dr. Jimmerson and Warren that James had "inappropriate contact" with young girls in the congregation at Northgate, including Hannah. (R. pp. ___; Compl. ¶¶ 74, 81, 84, 86-87, 82-97, 117). Despite Hannah denying any romantic or sexual relationship with James earlier when talking with Dr. Jummerson, Dr. Jimmerson perceived "inappropriate contact" with such repugnance that he was clearly incensed to the point of shouting and shaming James for having anything to do with young girls in the congregation at James's termination meeting. (R. pp. ___; Compl. ¶¶ 59-62, 74, 81, 84, 92-96, 103, 117).

At James's termination meeting, Warren echoed the same impression when hearing "inappropriate contact" as Dr. Jimmerson with respect to James and young girls in the congregation, including Hannah. (R. pp. ___; Compl. ¶¶ 74, 81, 84, 86-87, 82-97, 117). Moreover, the day after James was fired, Warren announced to the choir at Northgate's choir practice that James was let go because he had "inappropriate relationships with teenagers." (R. pp. ___; Compl. ¶ 113; Caroline Jenkins Aff. ¶¶ 20-23, 33-34). Clearly, Warren perceived "inappropriate contact" in his mind that was interchangeable or similar with "inappropriate relationships with teenagers" and in line with Hannah's accusation. Caroline Jenkins, who was a member of the choir and sang with Hannah, perceived "inappropriate relationships with

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15 A pedophile is one who is affected with "a sexual perversion in which children are the preferred sexual object." *Pedophilia Definition*, MERRIAM-WEBSTER.COM, https://www.merriam-webster.com/dictionary/pedophilia (last visited on Apr. 22, 2021).

teenagers" to mean in her mind that James was accused of being "a criminal, or predator, for being some kind of child molester in church setting." (R. pp. ___; Compl. ¶ 113; Caroline Jenkins Aff. ¶¶ 20-23, 33-34). Caroline further perceived "inappropriate relationships with teenagers" in her mind characterizing James because of "an age difference [with Hannah] that had the stigma of an older man pursuing a minor in a sexual manner." (R. pp. ___; Compl. ¶ 113; Caroline Jenkins Aff. ¶¶ 20-23, 33-34).

James pled that "inappropriate relationship" meant an older man pursuing a romantic or sexual interest(s) in young girls.[16] (R. pp. ___; Compl. ¶¶ 81, 84, 117, 146). When Hannah's grandmother informed Judy Butchert, a mutual friend with Sue Lutz, that James had an "inappropriate relationship" with Hannah, Judy shared the same with Sue Lutz, a member of Northgate. (R. pp. ___; Compl. ¶¶ 83-84, 117; Sue Lutz Aff. ¶¶ 4, 14-15). Sue perceived "inappropriate relationship" in her mind that James was being accused of "chasing Hannah like an older man chasing young girls in a perverted sense" when she observed Hannah behaving toward James as a surrogate father figure and Hannah and her mother started spending time with James and his family outside of church. (R. pp. ___; Compl. ¶¶ 83-84, 117; Sue Lutz Aff. ¶¶ 4, 10-11, 14-15). When Hannah's grandmother informed Roy Sabean, a former long-standing deacon of Northgate, that James had an "inappropriate relationship" with Hannah, Roy perceived "inappropriate relationship" in his mind that James was being accused of "acting sexually inappropriate toward Hannah" in a church setting where James was in charge of music program at Northgate and supervising the Worship Team in which Hannah sang (R. pp. ___; Compl. ¶¶ 17, 25, 27; Roy Sabean Aff. ¶¶ 13, 15).

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16 INAPPROPRIATE RELATIONSHIPS, *supra* note 7, at 17 (characterizing an older man in a relationship with a young woman who is "old enough to be her father" invokes the stigma and taboo of incest).

James pled that "inappropriate relationship" meant an adult being characterized as a child molester, which is a crime.[17] (R. pp. ___; Compl.). Josie Allen, who is a long-standing family friend of the Tegeler family, attended the motion to dismiss hearing in this case on August 18, 2020. (R. pp. ___; Josie Allen Aff. ¶ 19). When Hannah's mother alleged that James was in a predatory relationship with Hannah because he was older than Hannah, Josie perceived "predatory relationship" in her mind that James was accused of being a sexual predator toward Hannah in the way "a person sexually preys on another person—usually in the context of an adult molesting an underage child." (R. pp. ___; Tr. 54:22-24; Josie Allen Aff. ¶ 19; James Earl Tegeler Aff. ¶¶ 21, 37). Hence, a variety of susceptible defamatory meanings apply.

Therefore, the lower court may not dismiss James's cause of action for defamation because one possible meaning of the statement "inappropriate relationship" is capable of a defamatory meaning: James engaged in a romantic or sexual involvement with Hannah, or he made unwanted romantic or sexual advances toward Hannah, when Hannah was characterized as a minor instead of as a legal adult.[18] (R. pp. ___; Compl. ¶¶ 21, 59-62, 66-67, 72, 74, 95-96, 103, 117; Anne Danciu Aff. ¶¶ 11, 20-21; Roy Sabean Aff. ¶¶ 11-15, 17-20; Sue Lutz Aff. ¶¶ 14-17, 22-24; Caroline Jenkins Aff. ¶¶ 31-38, 45; Josie Allen Aff. ¶¶ 17-20; Tr. 54:22-24).

2. The lower court erred when ruling that the defamatory statement "inappropriate relationship" was not slander as actionable per se.

Upon transforming a Rule 12(c) motion for judgment on the pleadings into a Rule 56 motion for summary judgment, the lower court erred dismissing James's defamation cause of action against Hannah, her mother, and her grandmother because James presented a genuine

17 "Child molestation is a crime involving a range of indecent or sexual activities between an adult and a child, usually under the age of 14." *Child Molestation Definition*, FARLEX, INC., https://legal-dictionary.thefreedictionary.com/Child+Molestation (last visited on Apr. 22, 2021).

18 *See supra* and accompanying text notes 2, 4, 6, 8.

disputed issue of material fact that the defamatory statement "inappropriate relationship" is capable of an offensive meaning in the mind of a reasonable listener as slander per se. *See Adams*, 292 S.C. at 279. In this case, slander per se that is actionable applies to defamatory statements charging the plaintiff with a commission of a crime, a crime of moral turpitude,[19] and unfitness in one's profession.[20] *Parrish*, 376 S.C. at 321-23; *Holtzscheiter*, 332 S.C. at 510-11. For these slander per se categories, the legal analysis for defamation per se versus defamation per quod is not applicable because the damage may be the same when the third party listener understood the charge made. *Lesesne v. Willingham*, 83 F. Supp. 918, 921 (D.S.C. 1949) (citations omitted). Any words, whether standing alone, or by reference to extraneous circumstances, are capable of attributing an offensive meaning is a defamatory statement that is actionable per se. *Adams*, 292 S.C. at 279; *lowers*, 192 S.C. at 377 . For defamation per se, "*words are to be given their ordinary and popular meaning.*" *Parrish*, 376 S.C. at 325 (emphasis added).

The defamatory statement "inappropriate relationship" published by Hannah, her mother, and her grandmother as slander per se when reporting James to his employer and supervisor implicated that: (1) James was culpable of committing a crime toward minors in the congregation at Northgate during his scope of employment with Northgate; (2) James was culpable of committing a crime of moral turpitude towards young girls in the congregation at Northgate, including Hannah, during his scope of employment with Northgate; (3) James lacked a sense of

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19 A crime of moral turpitude is an accusation based on "an act of baseness, vileness, or depravity in private and social duties that a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man . . . ." *Smith v. Smith*, 194 S.C. 247, 251, 9 S.E.2d 584, 586 (1940).

20 A slanderous statement inferring a plaintiff's impropriety or lack of integrity when performing plaintiff's job is actionable per se as plaintiff being unfit for plaintiff's profession. *Moshtaghi v. Citadel*, 314 S.C. 316, 316-24, 443 S.E.2d 915, 915-20 (Ct. App. 1994); *Woodward v. S.C. Farm Bureau Ins. Co.*, 277 S.C. 29, 31, 282 S.E.2d 599, 600 (1981).

propriety in his profession while in charge of the music program at Northgate; or (4) any of the above.[21] (R. pp. ___; Compl. ¶¶ 15-16, 21, 27, 32-33, 59-62, 66-67, 72, 74, 81, 84, 92-96, 103, 117; Anne Danciu Aff. ¶¶ 11, 20-21; Roy Sabean Aff. ¶¶ 11-15, 17-20; Sue Lutz Aff. ¶¶ 14-17, 22-24; Caroline Jenkins Aff. ¶¶ 31-38, 45; Josie Allen Aff. ¶¶ 17-20; Tr. 54:22-24). As discussed in the previous section, James made factual allegations of "inappropriate relationship" as defamatory statement according to the ordinary, popular meaning of those words that are clearly capable of an offensive meaning.[22] Sexual involvement or misconduct is the major theme. Coincidentally, the term "inappropriate relationship" is capable of the offensive meaning ascribed to it concerning a romantic or sexual relationship between two people, or an adult with a minor, that is considered taboo.[23] Therefore, the statement "inappropriate relationship" is capable of the offensive meaning ascribed to it in James's complaint as slander per se that portrays James as a social pariah, pedophile, child molester, chaser of young women, or any of the above during James's scope of employment Northgate. (R. pp. ___; Compl. ¶¶ 81, 84, 117, 146, 192). Ultimately, the effect on the listener from this defamatory statement "inappropriate relationship" is that James has been characterized as vile, predatory, and morally reprehensible in one of the worst ways. (R. pp. ___; Compl. ¶¶ 21, 27, 32-33, 59-62, 66-67, 72, 74, 81, 84, 92-96, 103, 117; Anne Danciu Aff. ¶¶ 11, 20-21; Roy Sabean Aff. ¶¶ 11-15, 17-20; Sue Lutz Aff. ¶¶ 14-17, 22-24; Tr. 54:22-24). What Hannah, her mother, or her grandmother thought the defamatory statement meant is irrelevant because the effect on the listener is objective—not subjective.

3. The lower court improperly gave respondents the benefit of raising affirmative defenses without presenting them before a factfinder.

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21 *See supra* and accompanying text notes 2, 4, 6, 8.
22 *See supra* and accompanying text notes 2, 4, 6, 8.
23 *See supra* and accompanying text notes 2, 4, 6, 8.

The lower court erred dismissing James's claims of defamation, intentional infliction of emotional distress, and negligent infliction of emotional distress against Hannah, her mother, and her grandmother based on their affirmative defenses that was improper for disputing the underlying merits of the claims and premature before any discovery had taken place or the pleadings were closed. *See Garrard v. Charleston Cty. Sch. Dist.*, 429 S.C. 170, 195-202, 838 S.E.2d 698, 711-15 (Ct. App. 2019) (opinion); *McBride v. Sch. Dist. of Greenville Cty.*, 389 S.C. 546, 562, 698 S.E.2d 845, 852 (Ct. App. 2010) (privileged communication); *Swinton Creek Nursery v. Edisto Farm Credit*, 334 S.C. 469, 484-85, 514 S.E.2d 126, 134 (1999) (privileged communication); *Herring*, 222 S.C. at 232-35 (truth). (R. pp. ___; Order Grant Mot. Dismiss to Charlotte Collier p. 3-11; Order Grant Mot. Dismiss to Hannah Elizabeth Collier and Linda Smith p. 3-12). These affirmative defenses dispute an issue of fact that must be properly submitted to the factfinder or jury before the plaintiff faces a dismissal. *Garrard.*, 429 S.C. at 95-202 (opinion); *City of San Diego v. Roe*, 543 U.S. 77, 78-85, 125 S. Ct. 521, 522-26 (2004) (opinion); *Dawkins*, 354 S.C. at 69 (truth, privileged communication); *Adams*, 292 S.C. at 279 (truth); *Rivers v. Florence Printing Co.*, 141 S.C. 364, 370, 139 S.E. 781, 782 (1927) (privileged communication). First, for reasons previously discussed, the lower court erred by invading the province of the jury and unilaterally deciding that James having an "inappropriate relationship" with Hannah was true. Rule 60(b)(1), SCRCP. And, James did not need to plead damages or malice because damages and malice are presumed when the factual allegations in James's complaint alleged slander per se that is actionable at law. *Holtzscheiter*, 332 S.C. at 509-10.

Second, the lower court erred by invading the province of the jury and deciding that a privileged communication existed. (R. pp. ___; Order Grant Mot. Dismiss to Charlotte Collier p. 3-7, 10-11; Order Grant Mot. Dismiss to Hannah Elizabeth Collier and Linda Smith p. 8-9).

James presented a genuine disputed issue of fact that no privilege existed or, if one did, then the privilege was lost for Hannah, her mother, and her grandmother. (R. pp. ___; Resp'ts Hannah Elizabeth Collier and Linda Smith's Am. Answer ¶¶ 14, 24; Resp't Charlotte Collier Am. Answer ¶ 26; Appellant's Resp. Resp'ts Mot. Dismiss pp. 18-22, Ex. D pp. 2-6; Appellant's Am. Mot. Recons pp. 3, 11-12, 20-25; Tr. 12:16-19, 30:11-23, 45:19-24, 55:8-56:11). The defendant cannot benefit from prematurely by raising the affirmative defense of a privileged communication and shifting the burden of proof on the plaintiff to rebut the presumption that the defendant acted with malice. *Rivers*, 141 S.C. at 370. For defamatory statements published to a third party, the issue must be submitted to a jury when a conflict raises susceptible inferences as to: (1) whether a privilege existed; or, (2) whether a privilege was lost or abused. *See Swinton Creek Nursery*, 334 S.C. at 484-85; *Ford v. Hutson*, 276 S.C. 157, 166, 276 S.E.2d 776, 780 (1981). Here, James disputed the existence of a conditional or qualified privilege for Hannah, her mother, and her grandmother when they reported him to his supervisor for conduct unrelated to and outside the scope of his employment with Northgate. (R. pp. ___; Appellant's Resp. Resp'ts Mot. Dismiss pp. 18-22, Ex. D pp. 2-6).

While Hannah claims reporting James to his supervisor, Hannah's mother claims reporting James to the church because the church is the "source" of Hannah's relationship with James, yet they never raised an issue concerning James's job performance related to his scope of employment with Northgate. (R. pp. ___; Resp'ts Hannah Elizabeth Collier and Linda Smith's Am. Answer ¶ 24; Resp't Charlotte Collier Am. Answer ¶ 26). James alleged that Hannah, her mother, and Linda reported James to his supervisor in bad faith and outside the scope of Northgate's interest in the matter as James's employer: they engaged in supercilious retaliation against James; James rejected Charlotte's attempts to date him; and, James had a falling out with

Hannah and her mother from a social engagement. (R. pp. ___; Compl. ¶¶ 46-51, 54-58; Resp'ts Hannah Elizabeth Collier and Linda Smith's Am. Answer ¶¶ 14, 24; Resp't Charlotte Collier Am. Answer ¶ 26; Appellant's Resp. Resp'ts Mot. Dismiss pp. 18-22, Ex. D pp. 2-6; Appellant's Am. Mot. Recons pp. 3, 11-12, 20-25; Tr. 7:17- 14:6, 30:11-23, 45:19-24, 55:8-56:11).

Third, the lower court erred by invading the province of the jury when deciding that Hannah, her mother, and her grandmother's publication of James having an "inappropriate relationship" with Hannah was an opinion because the court's decision is premature and without any legal foundation. Rule 60, SCRCP. The lower court never did the preliminary analysis as to whether Hannah, her mother, and her grandmother's opinion is protected speech as a public or private concern. *Id.* (R. pp. ___; Order Grant Mot. Dismiss to Charlotte Collier p. 3-7, 10-11; Order Grant Mot. Dismiss to Hannah Elizabeth Collier and Linda Smith p. 8-9). Regarding opinions as being protected speech, the proper legal analysis is whether a statement is a matter of public concern or private concern that warrants more or less protection respectively under the First Amendment. *Garrard*, 429 S.C. at 195-202; *Connick v. Myers*, 461 U.S. 138, 146-48, 103 S. Ct. 1684, 1690 (1983) (public concern); *Snyder v. Phelps*, 562 U.S. 443, 453, 131 S. Ct. 1207, 1216 (2011) (private concern). Opinions are unprotected under the First Amendment when it conveys false, defamatory statement of facts that may be actionable. *Garrard*, 429 S.C. at 198-99. A private statement does not concern a public issue that is done solely for the speaker's personal interest and told in confidence to the speaker's specific audience such as an employer regarding an employee's conduct outside the scope of employment; because, such a statement does not inform the public about the aspects of the employer's function or operations. *Snyder*, 562 U.S. at 453; *see also City of San Diego*, 543 U.S. at 78-85.

Here, James presented a genuine disputed issue of fact that Hannah, her mother, and her

grandmother's statement of "inappropriate relationship" was not an opinion, a matter of public concern, or protected speech. (R. pp. ___; Appellant's Resp. Resp'ts Mot. Dismiss pp. 18-22, Ex. D pp. 2-6; Tr. 7:17- 14:6, 30:11-23, 45:19-24, 55:8-56:11). Hannah, her mother, and her grandmother reporting that James had an "inappropriate relationship" with Hannah to his supervisor and employer was merely a private concern and wholly subject to the state laws of defamation. Moreover, their private concern related to matters outside of James's scope of employment that did not reflect on James's role in the mission and purpose of Northgate's music program. (R. pp. ___; Appellant's Resp. Resp'ts Mot. Dismiss pp. 18-22, Ex. D pp. 2-6; Tr. 7:17- 14:6, 30:11-23, 45:19-24, 55:8-56:11).

B. The lower court erred deciding that the conduct of Respondents Hannah Elizabeth Collier, Charlotte Collier, and Linda Smith's conduct was not extreme or outrageous.

The lower court erred when transforming a Rule 12(c) motion to dismiss into a Rule 56 motion for summary judgment because James presented a genuine disputed issue of a material fact exists that Hannah, her mother, and her grandmother's conduct was extreme and outrageous. (R. pp. ___; Order Grant Mot. Dismiss to Charlotte Collier p. 7-8; Order Grant Mot. Dismiss to Hannah Elizabeth Collier and Linda Smith p. 9-10). If the "evidence is in conflict and susceptible of more than one reasonable inference, [then] it is the province of the jury to make a factual determination." *Ford*, 276 S.C. at 166. For an intentional infliction of emotional distress cause of action, the plaintiff must prove: "(1) the defendant intentionally or recklessly inflicted severe emotional distress, or knew that distress would probably result from his conduct; (2) the defendant's conduct was so extreme and outrageous that it exceeded all possible bounds of decency and was furthermore atrocious, and utterly intolerable in a civilized community; (3) the actions of the defendant caused the plaintiff's emotional distress; and (4) the emotional distress

suffered by the plaintiff was so severe that no reasonable person could be expected to endure it." *Gattison v. S.C. State Coll.*, 318 S.C. 148, 151, 456 S.E.2d 414, 416 (Ct. App. 1995).

Of these elements, Hannah, her mother, and her grandmother only disputed that their conduct did not rise to the level of extreme and outrageous conduct. (R. pp. ___; Resp't Charlotte Collier's Mot. Dismiss ¶ 5; Resp't Charlotte Collier's Mem. Supp. Mot. Dismiss pp. 11-13; Resp'ts Hannah Elizabeth Collier and Linda Smith's Mot. Dismiss ¶ g; Resp'ts Hannah Elizabeth Collier and Linda Smith's Mem. Supp. Mot. Dismiss p. 7). Extreme and outrageous conduct exceeds all possible bounds of decency that amounts to being "'atrocious, and utterly intolerable in a civilized community.'" *Ford*, 276 S.C. at 162 (citing RESTATEMENT (SECOND) OF TORTS § 46, cmt. d (1965)). James presented a genuine disputed issue of material fact that the conduct of Hannah, her mother, and her grandmother was extreme and outrageous because they portrayed him committing one of the worst morally and criminally reprehensible conduct in today's society[24] by characterizing his relationship with Hannah as if she was a child, or minor, even though they knew nothing sexual or romantic occurred between Hannah and James. (R. pp. ___; Compl. ¶¶ 21, 27, 32-33, 59-62, 66-67, 72, 74, 81, 84, 92-96, 103, 117; Anne Danciu Aff. ¶¶ 11, 20-21; Roy Sabean Aff. ¶¶ 11-15, 17-20; Sue Lutz Aff. ¶¶ 14-17, 22-24; Tr. 54:22-24).

The behavior of Hannah, her mother, and her grandmother is susceptible of one or more findings as to whether their conduct was extreme and outrageous. One possible susceptible finding is that no reasonable person would report James to his supervisor for having an "inappropriate relationship" with Hannah knowing full well nothing romantic or sexual occurred between James and Hannah. The implication of such an accusation, as understood by its ordinary and popular meaning, would have devastating effects on a man's livelihood, personal

24 *See supra* and accompanying text notes 2, 4, 6, 8, 26.

relationships, and reputation. This accusation traveled from Hannah, her mother, and her grandmother to Northgate and beyond like wildfire destroying James's peace of mind that was reasonably foreseeable to occur at the moment Hannah, her mother, and her grandmother opened their mouths. They invoked a scandalous affair in the extreme: James lost his job; James was ostracized by Northgate and members of the community; they drove him into social ruin; they devastated him; and, they tainted his reputation forevermore. Former members, or visitors, of Northgate are outraged by their intolerable, indecent behavior. (R. pp. ___; Compl. ¶¶ 59-61, 83-84, 117, Anne Danciu Aff. ¶¶ 11, 20-21; Roy Sabean Aff. ¶¶ 11-15, 17-20; Sue Lutz Aff. ¶¶ 14-17, 22-24; Caroline Jenkins Aff. ¶¶ 31-38, 45; Josie Allen Aff. ¶¶ 17-20). Therefore, the lower court erred ruling on an issue of material fact that was for a jury to decide.

C. The lower court's disavowment of naming Appellant James Earl Tegeler a predator does not align with the record that is a far more damaging defamatory statement than "inappropriate relationship" thereby abusing any qualified privilege therefrom.

On or around August 18, 2020, Hannah's mother alleged in the lower court: "If this [case] is allowed to go forward, then a parent has no ability to protect their child against somebody they consider to be in a predatory relationship. . . [t]hat's not what the law envisions. That's not what the law says." (R. pp. ___; Tr. 54:22-24; James Tegeler Aff. ¶ 21; Josie Allen Aff. ¶ 19; Order Den. Appellant's Am. Mot. Recons. to Resp't Charlotte Collier p. 3). By contrast, the lower court disavows Hannah's mother calling James a predator at the hearing:

> Lastly, Plaintiff attempts to raise a new claim in his post hearing motions. He alleges in the course of the August 18, 2020 hearing on these motions, counsel for Charlotte Collier referred to him in her argument before the Court as a predator. I have reviewed the record in this case find this argument to be wholly without merit. Ms. Collier's counsel did not call the Plaintiff a predator and all arguments made by counsel were appropriately within the context of the matters before the Court. (R. pp. ___; Tr. 54:22-24; James Tegeler Aff. ¶ 21; Order Den. Appellant's Am. Mot. Recons. to Resp't Charlotte Collier p. 3).

The logical connection and reasonable inference between accusing James of being in a predatory

relationship[25] with Hannah clearly alleges James as the "predator" and Hannah as the childlike "victim." The lower court's disavowment of naming James as a "predator" is logically absurd. Hannah's mother confirmed that the terminology "inappropriate relationship" was akin to sexual violence against a child that did not occur.[26] Hannah is a legal adult—not a child. (R. pp. ___; Compl. ¶¶ 21, 96; Resp't Charlotte Collier's Am. Answer ¶¶ 9, 11, 13, 14, 20, 26, 28, 81; Resp'ts Hannah Elizabeth Collier and Linda Smith's Am. Answer ¶¶ 10, 24; Tr. 54:22-24). Moreover, Hannah's mother had knowledge that Hannah filed an affidavit stating the contrary that Hannah's relationship with James was not sexual in nature. (R. pp. ___; Hannah Elizabeth Collier Aff. ¶ 4). Therefore, the lower court's ruling on this matter should be set aside due to misconduct. Rule 60, SCRCP.

III. Another legal theory under the cause of action for negligent infliction of emotional distress comes before the court as a question of undecided law.

The cause of action for negligent infliction of emotional distress beyond the bystander theory is an undeveloped area of law in South Carolina.[27] Other jurisdictions have defined and expanded this cause of action under the direct victim theory: (1) the defendant has a duty to not create an unreasonable risk of causing another emotional distress; (2) the defendant breached that

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25 In relation to the subject matter of this case as James has pled the meaning of "inappropriate relationship" and "inappropriate contact," a predatory relationship is generally described as a perpetrator who plans to harm someone by way of unwanted sexual assault, an act of violence, rape, touch, or fondling, for example. Steven Finkelstein, *Learning to Recognize Predatory Behavior in Relationships*, BETTERHELP.COM, *available at* https://www.betterhelp.com/advice/behavior/learning-to-recognize-predatory-behavior-in-relationships/ (last updated on Jan. 28, 2021).

26 A sexual predator is defined as one who seeks sexual contact with another in a predatory or abusive way such as sex crimes like sexual harassment, rape, pedophilia, assault, or some form of "inappropriate contact in one way or another." Dan Brennan, MD, *Signs of a Sexual Predator*, WEBMD.COM, *available at* https://www.webmd.com/sex-relationships/signs-sexual-predator (last visited on Apr. 13, 2021).

27 In South Carolina, the cause of action for the negligent infliction of emotional distress is a relatively new cause of action subject to expanding the application to other factual settings. *Kinard v. Augusta Sash & Door Co.*, 286 S.C. 579, 582 n.2, 336 S.E.2d 465, 467 (1985); *see McCaskey v. Shaw*, 295 S.C. 372, 375, 368 S.E.2d 672, 673 (Ct. App. 1988); *Folkens v. Hunt*, 290 S.C. 194, 204-05, 348 S.E.2d 839, 845 (Ct. App. 1986) (citing *Hensley v. Heavrin*, 277 S.C. 86, 87-88, 282 S.E.2d 854, 855 (1981)).

duty; (3) the defendant's breach of duty was the actual and proximate cause of the plaintiff's injury; and, (4) the plaintiff suffered damages.[28] *See Metallo v. Torrington Bd. of Educ.*, 2010 Ct. Sup. 10762, 10764 (Conn. Super. Ct. 2010). Whether James's cause of action for negligent infliction of emotional distress against all respondents should survive is a question of undecided law as to whether the Court will recognize this cause of action under the direct victim theory.[29]

CONCLUSION

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

Respectfully submitted this 23 day of April , 2021 .

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28 The capstone to limiting this cause of action under the direct victim theory from going unchecked is foreseeability under proximate causation. Also, the emotional distress must be foreseeable and severe enough to physically manifest in illness or bodily harm including depression and anxiety. *See Metallo*, 2010 Ct. Sup. at 10764; *Rodrigues v. State*, 52 Haw. 156, 518-19 (1970); *see also Moore v. Weinberg*, 383 S.C. 583, 588-89, 681 S.E.2d 875, 878 (2009); *Bray v. Marathon Corp.*, 347 S.C. 189, 118, 553 S.E.2d 477, 480 (Ct. App. 2001); *Gattison*, 318 S.C. at 151; *Kinard*, 286 S.C. at 581; *SPAUGH v. A. C. L. R.R. CO.*, 158 S.C. 25, 29-32, 155 S.E. 145, 146-48 (1930); *Mack v. S. Bound R.R. Co.*, 52 S.C. 323, 329-38, 29 S.E. 905, 907-11 (1898).

29 *Bray*, 347 S.C. at 118-19; *Kinard*, 286 S.C. at 582 n.2; *Padgett v. Colonial Wholesale Distrib. Co.*, 232 S.C. 593, 604-08, 103 S.E.2d 265, 270-72 (1958); *Mack*, 52 S.C. at 329-38; *see also Charleston Cty. Sch. Dist. v. State Budget & Control Bd.*, 313 S.C. 1, 7-8, 437 S.E.2d 6, 9 (1993).

PROOF OF SERVICE OF INITIAL BRIEF OF APPELLANT AND DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Alex Kinlaw, Jr., Circuit Court Judge

Case No. 2020-001525

JAMES EARL TEGELER,

Appellant,

v.

CHARLOTTE COLLIER, HANNAH ELIZABETH COLLIER, LINDA SMITH, NORTHGATE BAPTIST CHURCH,

Respondents.

PROOF OF SERVICE

I certify that I have served the Initial Brief of Appellant and Designation of Matter to be Included in the Record on Appeal on Respondents **CHARLOTTE COLLIER, HANNAH ELIZABETH COLLIER, LINDA SMITH,** and **NORTHGATE BAPTIST CHURCH** electronically and by depositing a copy of it in the United States Mail, postage prepaid, or by South Carolina Supreme Court Order 2020-05-29-02, on April 23, 2021, addressed to the attorney of record, to the following address(es):

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Respectfully submitted this 23 day of April , 2021 .

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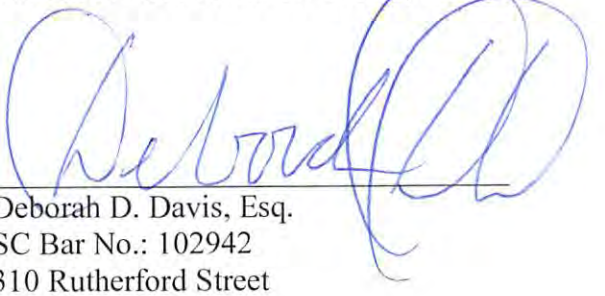

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NOTICE OF MOTION INITIAL BRIEF OF APPELLANT AND DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

April 23, 2021

Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
P.O. Box 11629
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VIA EMAIL CTAPPFILINGS@SCCOURTS.ORG

Re	:	*Tegeler v. Collier et al.*
Case No.	:	2020-CP-23-01213
Appellate Case No.	:	2020-001525
File Id.	:	2018-01-123

Dear Clerk of Court:

Please see the enclosed the Initial Brief of Appellant and Designation of Matter to be Included in the Record on Appeal.

Please let me know what further you require from me at this time. Thank you for assistance with this matter.

Respectfully submitted this 23 day of April, 2021.

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