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SC Court of Appeals

**FORM 15
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-CP-23-01213

JAMES EARL TEGELER,

Appellant,

v.

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

Respondents.

RECORD ON APPEAL VOLUME II

DICKSON DAVIS LAW FIRM, LLC

Deborah D. Davis, Esq.
SC Bar No.: 102942
310 Rutherford Street
Greenville, SC 29609
(864) 729-3428 t
(864) 752-1424 f
d.davis@dicksondavislaw.com
www.dicksondavislaw.com

ATTORNEY FOR APPELLANT

Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
Charles E. McDonald & S. Michael Nail
300 North Main Street
P.O. Box 2757
Greenville, SC 29602
(864) 241-1813

Clawson and Staubes, LLC
Amy S. Snyder
1000 East North Street
Suite 200
Greenville, SC 29601
(864) 331-8940

Duggan & Hughes, LLC
Daniel R. Hughes
457-B Pennsylvania Avenue
P.O. Box 449
Greer, SC 29652
(864) 334-2500

ATTORNEYS FOR THE RESPONDENTS

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Edit

Messages



HC

Hannah



ELECTRONICALLY FILED - 2020 Aug 28 11:22 AM - GREENVILLE COMMON PLEAS - CASE#2020CP2301213

HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

You wouldn't do anything to hurt me, right? I don't think you would. People would think it's weird that we're so close. I know you don't care what people think. But.

And in other words. I trust you 100%

I hope it's not true either.

And you don't. But it's okay

I do. Absolutely do. And Hannah, I'll never hurt you in any form. Physically mentally emotionally spiritually. I'm here to build you up and help your life not detract from it. I mean that with all my heart and every fiber of my soul 😊

I'm here to see you smile. To laugh and to enjoy life. To go for your dreams and to surpass them!!!!

Why?

I don't mean that in a bad way. But why?

First because that's just how I am with everyone that knows me. Secondly I connect with you well. I prayed a lot about it and I know God caused our paths to cross for some reason. And it helps both of us. I've told you that before 😊

I care about you therefore I want to see you meet and surpass your dreams.

I know. But what is this supposed to be? And what did you pray for

I don't know who you hang around but I guess maybe I'm just totally different from most people because that's how I've been my whole life. It's how my dad is too

I have no idea what it's supposed to be. And I'm not going to question God. I'm just going to take today and make it the best I can and not worry about the rest

I feel like your big brother and when you need somebody talk to I'm here. You know that 😊

What do you think the answer is?

I know you like to plan things and figure things out and see your pathway clearly. But sometimes you just have to take one step at a time and see where God leads you

I've just been hurt before. There's always a motive. And I just don't know. I need a plan.

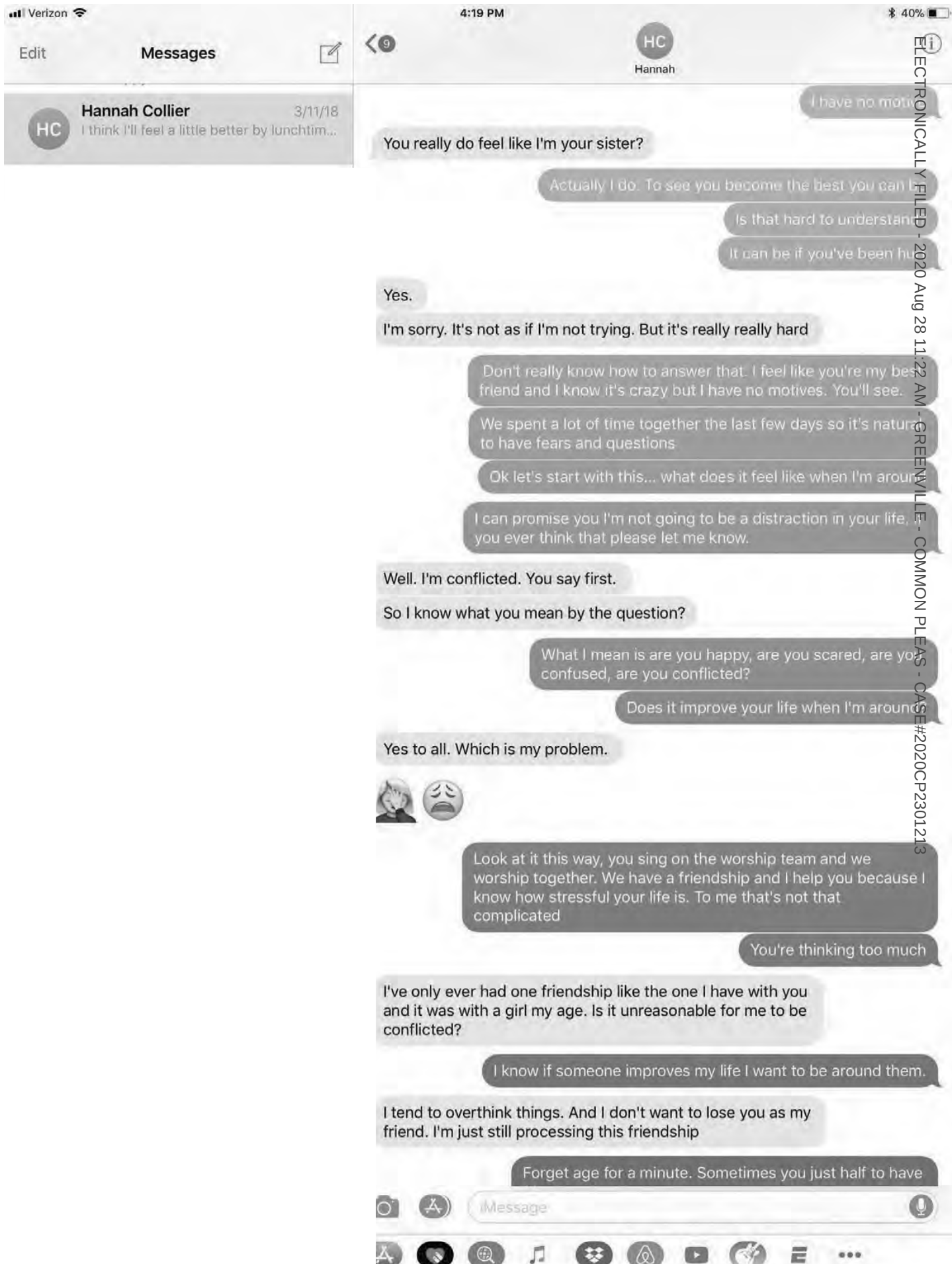
I have no motive

You really do feel like I'm your sister?



iMessage





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Edit

Messages



< 9

HC

Hannah

i

ELECTRONICALLY FILED - 2020 Aug 28 11:22 AM - GREENVILLE - COMMON PLEAS - CASE#2000002301213

HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

Forget age for a minute. Sometimes you just have to have friends you relate to.

I'm sorry.

It's fine

I over complicate things.

And that's o

It's not okay. I do not like myself for this.

Follow your heart. If I improve your life then I don't let it scar you.

Easier said than done.

I don't have to hang around you if it confuses yo

You didn't realize that I was such a nutcase.

Haha

I'm being serious.

You're just fir

That's the thing though!! I do like to spend time with you! I'm happy around you. But I'm also still processing my thoughts and trying to handle my feelings.

With what you've been through I totally understand why you're having these feelings. I'm here to be your friend. I am here to be a positive influence on your life.

It's difficult for me.

Here's what I think is happening in your mind, you really opened up and shared your past with me and now you kind of feel vulnerable. Do you think that's it? Bc if so it'll pass

Life is confusing and it'll always be confusing. Ask yourself this question. Is your life better when I'm in it or not and go with that. Sometimes you have to look the fear in the face and say stay out of the way. Take some time and process this. I'm never gonna force friendship on anyone. But I really enjoy you being my friend. And I really enjoy your contribution to our worship

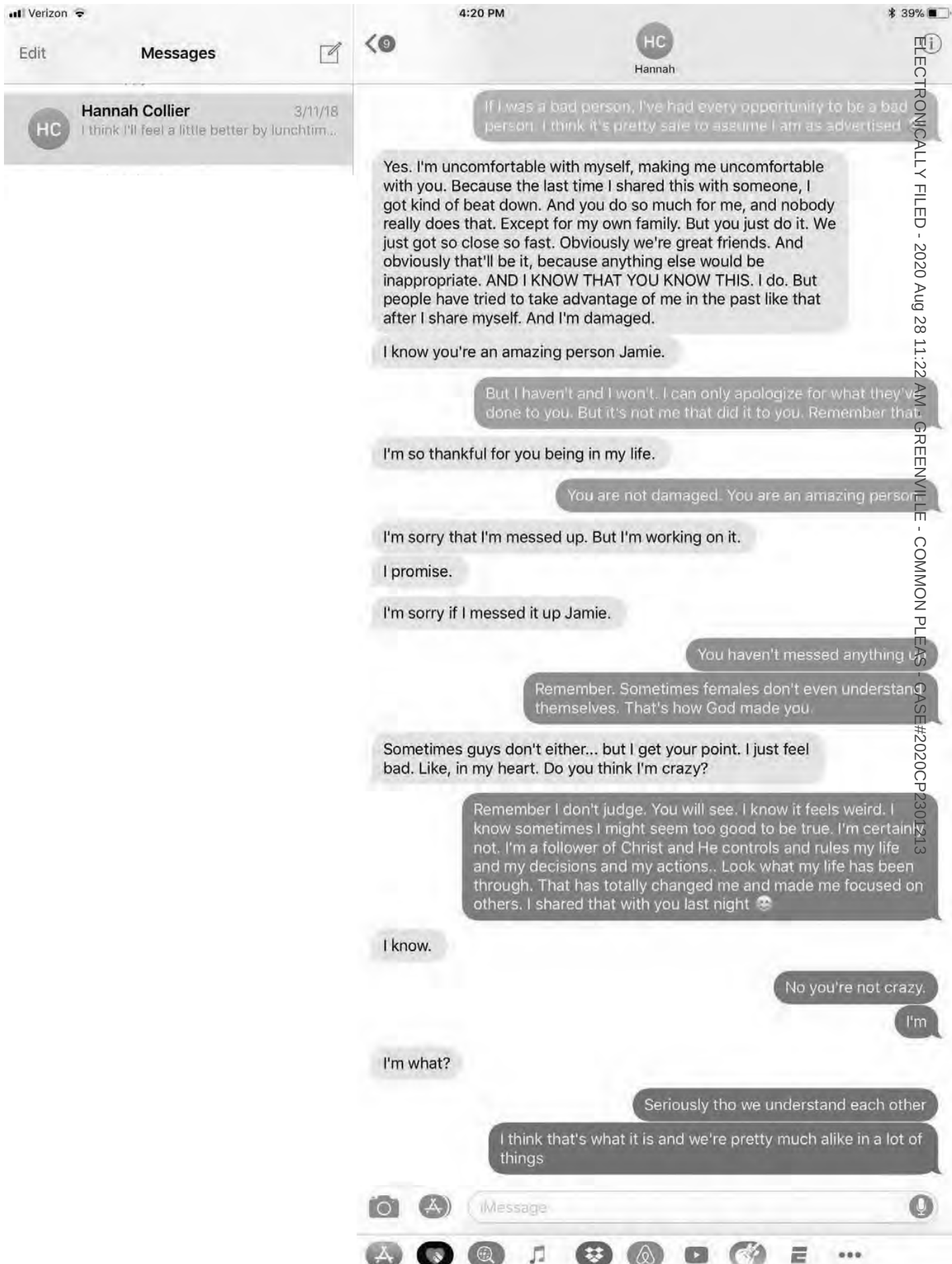
You have several years to digest your life and figure out what's best for you. You can't do it in one week. Remember that

If I was a bad person, I've had every opportunity to be a bad person. I think it's pretty safe to assume I am as advertised 🤖



iMessage





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Edit

Messages



HC

Hannah



ELECTRONICALLY FILED - 2020 Aug 28 11:22 AM - GREENVILLE - COMMON PLEAS - CASE#2020CP2301213

HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

Ollie looks cute. That's a lot to process right now. I really appreciate your honesty. I also really appreciate your friendship. I was completely shocked when I read what you said about romance and whatnot. I've seen you as a father figure. My own daddy can't be here to take care of me, and you've done fatherly things. Buying me an umbrella, supporting me at my audition, etc. This puts a bit of stress on me, because I don't want things to be awkward between us. Honestly, I don't know what to do or say. I don't want to feel uncomfortable around you. I think you're a great person. I feel really awkward right now, which I know was not your intention. That's kind of where I'm at right now. I don't have any other words right now.

Fri, Sep 8, 6:19 PM

And I've seen myself as a father figure to you. I haven't felt anything else except friendship toward you. I know that no one will ever replace your daddy. But I knew me being in your life may help a little with that. 😊 Plus I'm a thoughtful person. I just want you to be yourself and I hope you can. 😊 I didn't know what you were feeling, and I just was guessing to try to ease your mind because you asked me point blank last week what my motive was. Therefore I felt I owed you an explanation. My motive is friendship because you help me too. 😊

Thank you for explaining.

You're not the first person I've been a father figure to. I could give you a list of ppl whom I've helped... who either lost their father, didn't have a father, or were away from him. It's so cool to see how their lives were changed. One in particular is now happily married. Not a week goes by that her mother doesn't send me a message to thank me for what I did for her. Do you realize when she was 16 her mother drove her here from Virginia to stay for almost a week to spend time with me and the boys? Her mom told me that changed her life because she got to see how real families should spend time together and do things together and have fun. That's it. I was like I was helping people before you came into my life and I'm always going to be that way. Also, when I mentioned the word romance, I was solely talking about myself and my life. I wasn't talking about you and I. I was just telling you that that was not my motive since you asked me several times last Saturday night what my motive was. I hope you didn't misunderstand that.

That's really how it came across, and it made your motives even more unclear to me. I understand now, though. I think. I know you help people, and it's great.

So you thought I had romantic feelings for you? How could you ascertain this? So I'm a little shocked now. Please keep in mind, I've never done anything except help you. Those thoughts have never once entered my mind. Never. They never would. I'm not sure why you would feel uncomfortable if you view me as a father figure. And here's how well I know you. And this is kinda funny... I knew yesterday that you would not come Saturday bc I knew you'd feel like this today. It's how you are bc of what



iMessage



C

Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

ROA-000500



Edit

Messages



HC

Hannah



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HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

So you thought I had romantic feelings for you? How could you ascertain this? So I'm a little shocked now. Please keep in mind I've never done anything except help you. Those thoughts have never once entered my mind. Never. They never would. I'm not sure why you would feel uncomfortable if you view me as a father figure. And here's how well I know you. And this is kinda funny... I knew yesterday that you would not come Saturday bc I knew you'd feel like this today. It's how you are bc of what you've been through. I don't fault you I just understand bc I try to understand people. It's my job. And then when your texts were short all morning I was just waiting for that one that said you couldn't come. And voilà. Lol. But romantic feelings? Uhmmm no. Never gonna happen. If my motive was a bf/gf kinda thing I would've been married before now. My wife passed away over four years ago. What I was trying to tell you... which obviously I miserably failed at... is I'm not even going to date ANYONE because my responsibility right now is my boys... and take that very seriously. Not quite sure what else to say. But I hope it helps. 😊

I just feel like I've let you down somehow. And for that I'm disappointed in myself. But honestly I don't know how I could've conducted myself differently to not make you think that way... but please let me know so that I don't do it in the future. I'm going to go to the gym and stuff to clear my mind and I'll be back later and maybe we can straighten this out because we have a beautiful friendship and I don't wanna ruin it. You should clear your mind also. I'm so very sorry for coming across wrong. 🙏

I was driving, I just got here.

I'm not sure how I was supposed to take that. Do you not see how it could've come across that way? You should read it again, but put yourself in my shoes. My responsiveness today had nothing to do with tomorrow. I've had a very busy day, I don't feel well, and I'm exhausted. I clearly understand you now. Thank you.

Okay

I'm sorry you're upset. Be careful at the gym.

I'm not upset. I'm just perplexed. And honestly I have reread it. Many times. And not a single time did I see where you should've gotten that I had feelings for you. At one point I did surmise that if you had them for me, they'd subside. I mean I have no idea how you feel or felt. But I would've hoped with the way I've conducted myself around you that you woulda taken it differently. And this is why we should've talked a week ago like I mentioned so I could have explained my motives, or rather the absence thereof. It's impossible to understand the full meaning of texts sometimes. So that's probably the issue here. I'm sorry you feel bad, Hannah. I do care 😊

I am very upset right now. For many reasons. And I know you



iMessage



C

Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

ROA-000501

Edit

Messages



HC

Hannah



ELECTRONICALLY FILED - 2020 Aug 28 11:22 AM - GREENVILLE - COMMON PLEAS - CASE#2000CP230121

HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

I am very upset right now. For many reasons. And I know you care. I do too. That's the way it seemed to me, whether you meant it or not (obviously not). I realize that that's not actually how it is, and I was wrong. Which happens. I'm sorry. You have to understand that I don't spend time with people. I don't. So I didn't know how else I would've taken it. I do now. I was wrong. And I feel like an idiot. I knew that you wouldn't feel that way, but from what you said I thought that's what you were saying. And I was confused. But I get it now. I get it. I'm sorry I didn't understand it earlier.

It's okay Hannah. 😊. This stuff happens. I mean sometimes guys don't know how to word things and I obviously didn't. And especially since I don't have a female perspective to rely on, it's difficult for me to understand what it's like to be in your shoes. Remember I told you I'm not perfect. Well now you know for sure. 😊 I'm still learning every day. Last thing I'd ever wanna do is hurt you. Get feeling better. Clear your mind and let's start fresh! 😊

Okay. Thanks.

Fri, Sep 8, 9:18 PM

Are your boys coming Sunday?

I'm not sure if Andrew has to work yet or not. But Alexander said he was coming. I invited both Josie and Alexander's girlfriend to come over tomorrow so I'll see if his girlfriend can come Sunday too. 😊 I would like to be able to recognize him for the video. It always brings tears to my eyes when they come to church because I'm so proud of them

That's so nice. Hopefully they can all come.

Josie won't. She helps with a class at Newspring

Oh okay

That's nice of her.

Yes. I'd like you to meet her sometime. She's like a member of the family.

That'd be great.

Alexander has been building computers piece by piece since he was like 10 years old. No kidding. It amazes me

That's impressive

Did you see my announcement about Sunday on Facebook?



iMessage



C

Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

ROA-000502



EXHIBIT B

Edit

Messages



HC

Hannah



HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

Thank you

Mon, Nov 13, 3:34 PM



Great service yesterday! I appreciate you so much! Here are this weeks songs:

Revelation

<https://youtu.be/D-zk-E55dRk>

What a Beautiful Name

<https://youtu.be/aX82DS45a2k>

Hymns

Thank You, Lord

https://youtu.be/blCfzF1_3oY

Give Thanks

https://youtu.be/Bk_7wUR2Wdg

Mon, Nov 13, 8:15 PM

Thanks for bringing mocha to see me

You're welcome! I knew you would like seeing her and she liked it too 😊

She did

??

Yes! ❤️❤️

Aw

I'm sorry still

Whenever I say your name she perks up

Me too

I love you so much. 😊❤️

I'm sorry you're sorry. And I love mocha and Ollie and you and Alex and Andrew. Thanks for accepting me into your family. I love you so much too 💕

Aww. Thank you for being in our family!! We all love you! 💕

I know you and the pups do. Maybe Alex and Andrew will in time!

They already do dear 😊

Not yet

Why you say that

Cuz they don't know me enough yet. And they probably think



iMessage



Charlotte

1/2/18

Here are the songs this week. We are...

Revelation

ROA-000504

Edit

Messages



HC

Hannah



HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

Cuz they don't know me enough yet. And they probably think I'm a weirdo

Well now they definitely do not think of you as a weirdo. They think you are lots of fun really nice and funny

You may ask them to verify this 🤔

They told you that or you just made that up? And how am I supposed to ask them that? 🤔🤔 I never see them

We have talked and they think of you that way.

And the next time you're here to play games look him square in the eye and say, "hey do you think I'm a weirdo"?

Omg you talked to them about me 🤔🤔🤔 I will not

They'll say nope. You are nice and sweet and a cutie pie

I highly doubt they would say I was a cutie pie 🤔🤔

Well they take after me dear

I fell down the stairs and knocked over a candle while doing a ninja roll. That is NOT cute 🤔

That roll was very ninja esque.

That candle has been knocked over many times

Nope. It was not graceful at all

It was still kind of cute

Was it though? 🤔

I thought it was funny how Ty thought I might be upset about getting a Gatorade? That's what I have stuff here for. 🤔

He can have whatever he wants without asking

So can you

Makes me happy

Omg I know. I told him over and over again it was fine. He'd hide it in the cabinet whenever he'd hear you coming. And I told him that. And I know.

And yes.... CUTE

Not cute.

Terrifying



iMessage



Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

ROA-000505

Edit

Messages



< 8

HC

Hannah



HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

Hahahaha. Now that's hilarious. Hide in the cabinet? 🤖🤖🤖

I feared for my life 🤖

I just laughed out loud

Yes. He'd put it in the cabinet or behind something

I don't think that candle would take your life but that candlestick could do some damage

Yes I know. It almost hit me in the face

Oh no. I'll have to move them next time

Nah

I should've

I just won't roll in there

I'll roll down the stairs

Omg

Yah

May not be good for your back

No. I think that's what happened to my hip..

It's all part of the experience... Paper bowl tag

Ball



Those stupid things hurt.

Honestly, I'd have fun playing regular hide and seek tag

I can't hit anybody with the ball.... I always missed

They're supposed to hurt a little

So I just collected them

Otherwise you wouldn't know if you got tagged with one

I know. But if we played tag with no paper balls it would still be fun



iMessage



C

Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

ROA-000506

Edit

Messages



HC

Hannah



HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtime.

True. Very true

Yea. Andrew's giggle was cracking me up

Sun, Nov 19, 9:02 AM

I'm Otw

Sun, Nov 19, 12:55 PM

Hey do you have an extra headset for my mom

Yes it's at my house

Can I get it from you soon? And I still have that music for you

Are you okay?

Yes that would be good. And I'm fine dear

Okie dokie.

When do you want it?

I guess it depends when we can meet up or something

And yes you did sound great this morning and yes I do already miss you 🥺

What do you want to do? And I don't feel like it but thank you. I miss you too

It depends on what you're doing now and what you're going to be doing later and stuff. Are you out and about right now or do you want to meet later?

And you may not of felt like it but a lot of people told me they loved it and they mentioned you and I also have two ears 🙄❤️

I'm not out and about atm. I'll be going back to school tonight. They loved it because Amy crushed it. She did ask me to sing that verse with her so she could make sure she was on, and I thought that was nice of her. I was glad I could help.

She was good but they alsooooo mentioned you too so no more denying it dearest thank you. Would you like to meet a little bit later than after traffic dies down from lunch.

What time are you driving back to school

Nooo. I will deny til I die. OH NO. IM SPEAKING IN RHYMES blast those who's 🙄🙄🙄

Idk yet about school



iMessage



C

Charlotte

1/2/18

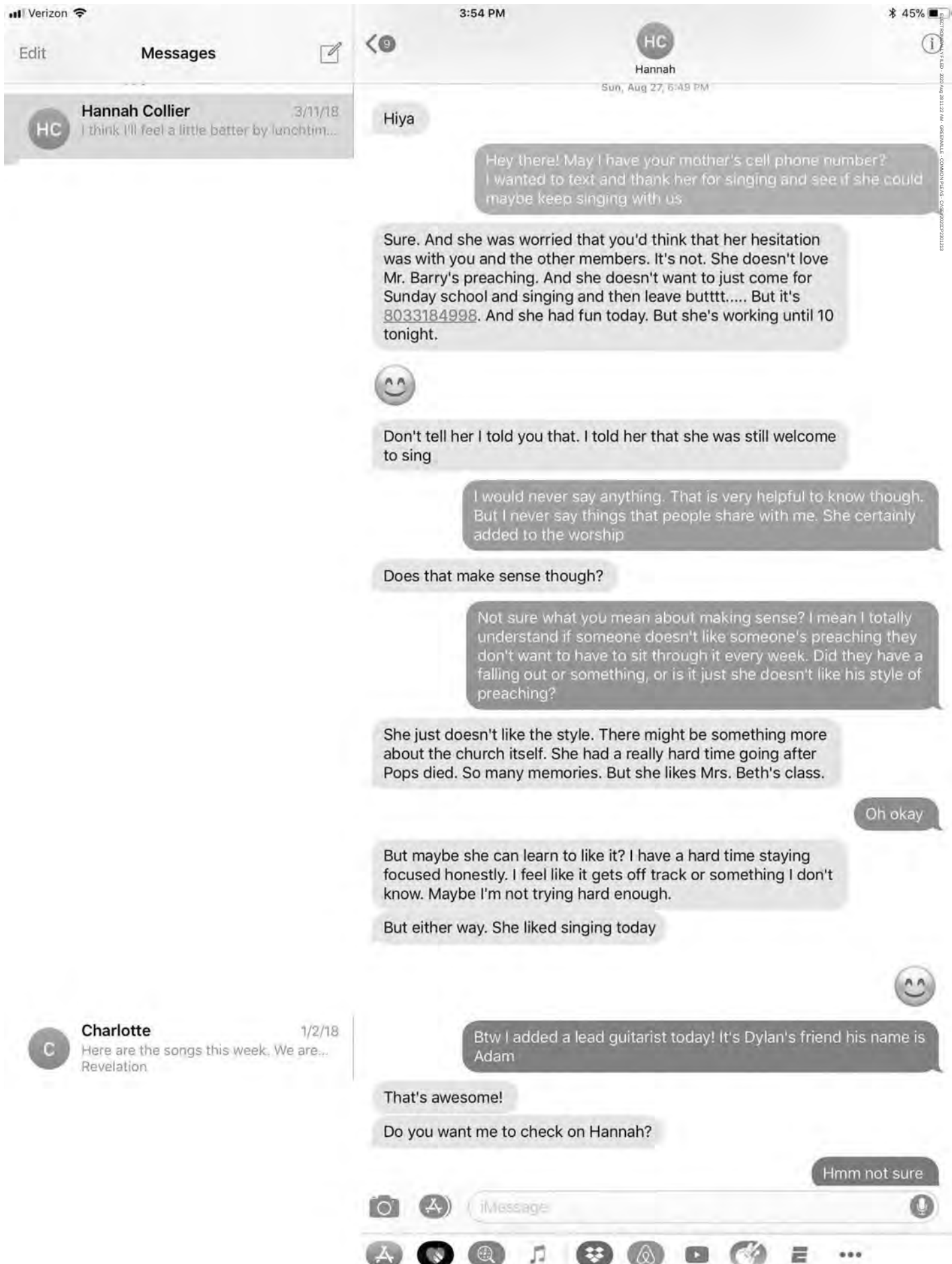
Here are the songs this week. We are...
Revelation

ROA-000507

EXHIBIT C

Verizon LTE 8:55 AM 100%
December 30, 2017 8:49 AM Edit
HANNAH
Wow. I don't have words. I just. I honestly don't know how God decided to give me you or why, but I am forever thankful. You are so beautiful. I promise to cherish your love and your heart forever and ever. I am so blessed to have you. I'm not usually so possessive, haha, but you are mine and I will love you always. Which is a long time. And I'll love you even longer than that. Forever and ever til the day I die. I'll be your little girl and your princess for as long as you'd have me. You just put into words what it means to be a father to a little girl. Keep my heart close and keep it safe. I'll trust you to help me make big decisions, just I trust my own Daddy. Just keep me safe. Let your arms always be a place I can come to and not be afraid. I love you. And that's that. Even when you're afraid that I don't anymore, that's when I love you most. I am so thankful for you. And for your family. I love you. 🍷🍷

EXHIBIT D



Edit

Messages



HC

Hannah



HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

You might not have meant to.

But you still did.

Idk what else to say. You know I like you singing with us. But I'm also glad you got friends.

I know. And I still will sing. But I still don't connect with Mr. Barry. So I just thought I could try something new.

And you can 😊

Alright

How many times have you heard Mr. Barry preach?

As an adult

As a legal adult, probably 8-10 times. I matured a bit quicker than others my age though. And I've been going to Northgate since I was little.

Okay. Bc The last two months he's been going through the book of James which is difficult.

I personally will be glad when he's out of it

Gotcha.

I still plan on attending northgate.



I'm just thinking. After you said that. I wonder if that's why the church hasn't been growing bc it hasn't.

Probably

Not good. It gets discouraging because it's hard to keep worship team members and it makes my job tougher

I know

But I love what I do and I love the people there.

I know

I really don't even connect with him on a personal level

And this stuff we're talking about is just between you and I of course. You know I trust you 😊

But that helps me

How's Spanish??

HC

SY

Sara & Hannah

2/22/18

Haha thank you!

JA

Josie Allen

1/3/18

thanks for having me i had fun!!!

C

Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

ROA-000512



iMessage



Edit

Messages



HC

Hannah

Sun, Oct 15, 1:46 PM

HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

Hey Jamie

Hey



Whatcha doing

Getting lunch 🍴

What are you doing

Sitting on the floor.

Still at Lulus?

No

I'm at home.

Did you have fun?

Yes very much! Did you?

I did. She asked me... again... about our relationship 😊😊 I've told her twice now. And she asked mama. She told her the same thing.

Crazy lady

Lol

I'm glad you think is funny

How did Lulu ask the question?

She said "what is going on between you two, it seems odd"

Just forget it.

I handled it.

Thank you!

No problem

My whole life I've been surrounded by people who try to make things out of nothing. I just go about my merry happy way and don't pay them any attention. People are still going to think what they want to think in life but we can't let it affect our own lives. You obviously have to make the decisions for your life but I'm sure you want to make it based on what you want for your life and not what other people want for your life. Regardless of



iMessage



C

Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

ROA-000513



Edit

Messages



HC

Hannah



HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

things out of nothing. I just go about my merry happy way and don't pay them any attention. People are still going to think what they want to think in life but we can't let it affect our own lives. You obviously have to make the decisions for your life but I'm sure you want to make it based on what you want for your life and not what other people want for your life. Regardless of who they are. That's just my philosophy and it helped me stay happy

I know.

Are you upset about it?

About what? Your philosophy?

No. Silly.

Like upset about her asking you

A little.

The only way something like that will affect you is if you let it. Don't let it affect you. I value you and your friendship so much and it means so much to me. People are going to be like that your entire life. It should be like water off a duck's back. They don't understand you they don't understand me and they don't understand us and it doesn't matter if they understand or not.

Alright.

To put it bluntly, just get used to it because no matter what decisions you make in your life Hannah, people are always going to question them and be like that. People want to rule other people's lives and make other people's lives as miserable as their own. Do not let them please Girl do not let them

I understand

Are you upset

No dear. And I don't want you to be upset.

I not

It's your life Hannah. You're an adult and we both view this relationship in a very healthy way. It helps us both. Especially me... it helps me a lot. I just want you to realize that people always try to be in your business.

I'm home 🏠

You're like my dad. I think our relationship is fine. So. And thank you. Thought you were already home

I decided instead of fixing lunch I would stop and get me something to eat so I stopped by Fire house subs



iMessage



C

Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

ROA-000514



Edit

Messages



Hannah

HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

I know that.

I'm salty

I can see all the way through

I know that



GIF Keyboard via #images

So are you having fun or am I actually getting on your nerves. I need to know this for future reference

No you're fine. I'll tell you if I'm genuinely annoyed with you

Haha

Or send a really bad gif

How could you get annoyed of me. I'm just a barrel of fun 🤪

I thought it was funny. Granted I didn't watch it all the way through. Just the first 5 seconds.



Someone sent me that because he made a bad grade on the quiz and I didn't.

Don't be salty 🤪

I get to be as salty as I wanna be.



GIF Keyboard via #images



Sorry!

Did you google?



iMessage



HC

Sara & Hannah

2/22/18

Haha thank you!

SY

JA

Josie Allen

1/3/18

thanks for having me i had fun!!!

C

Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

ROA-000515

Edit

Messages



HC

Hannah

HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim..

Thanks Jamie

Okay

Always! 😊

Hey Jamie. I know you're sleeping. Just wanted to let you know that I'm headed to Columbia

Listen to the song until the whole world hears by casting crowns

Columbia? To see Eryn?

And i will

Sun, Oct 1, 7:26 PM

Call me please

Mon, Oct 2, 9:51 AM

This weeks songs!
Old Church Choir
<https://youtu.be/ECP8uhj-9D8>
Resurrecting
<https://youtu.be/vFQoUkWiZnY>
Just as I am/I come broken to be mended
<https://youtu.be/TGXDfxWM2r0>

Hymn?

Can I do the bridge on resurrecting? If it's in my range?

Since Jesus came into my heart

And yes please

YAY



Made my day



marlafanning



You can't always



iMessage



JA

Josie Allen

1/3/18

thanks for having me i had fun!!!

C

Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

ROA-000516

Edit

Messages



HC

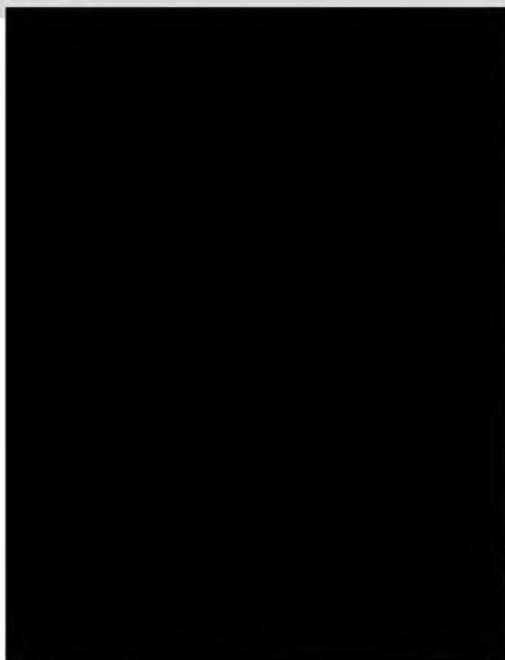
Hannah

HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...



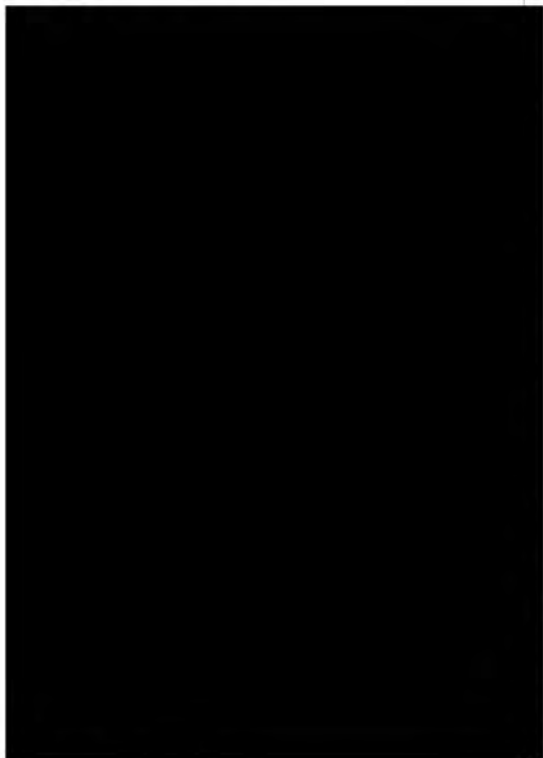
HC

SY

Sara & Hannah

2/22/18

Haha thank you!



JA

Josie Allen

1/3/18

thanks for having me i had fun!!!

C

Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

ROA-000517

**You can't always
have a good day. But you
can always face a bad day
with a good attitude.**



All this positivity 🤔🤔🤔🤔

Wow. I'm happy

Why??

Makes a difference for real

Because thinking like that changed my life

I know.

You inspire me.

Just btw

Aww. Really?

No.

Just kidding

Of course



Pfft 🤔



iMessage



Edit

Messages



HC

Hannah



Yes

Okay

HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

D

Dad

3/10/18

Link: dlm.christianbook.com

Oh. Thanks for the invitation. The girls wanted us to hang out tomorrow night though!

Are you upset?

If they change their mind it would be a good chance to get to know them

And no not upset 😊

You're inviting all of us?

I don't think I'm understanding

I was inviting you. And I meant to say that if the girls decide not to hangout it would be a perfect chance for you to get to know Andrew and Josie

Oh.

You said they and them.

I was just confused

Yes sorry about that

What time are y'all leaving? I'll let you know if I can go

Probably around 5

It's my favorite thing to do all year

I'll let you know. But please don't be upset if I don't go.

I won't

Just don't not go because you feel uncomfortable around them. You'd have an absolute blast

James Earl.

I swear.

Hannah Elizabeth

No.

I'm not going to tell you again that I'm not uncomfortable around them. I'm not using it as an excuse. I already told my roommates I'd spend tomorrow with them. I know I'd have a great time. If anything, I'll go next year. But I'm not uncomfortable around you or any of your family.

JA

Josie Allen

1/3/18

thanks for having me i had fun!!!

C

Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

ROA-000518



iMessage



Edit

Messages



HC

Hannah



ELECTRONICALLY FILED - 2020 Aug 28 11:22 AM - GREENVILLE - COMMON PLEAS - CASE#2020CP2301213

HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtime...

Ouch okay. I am fake. I'm sorry.

Thank you

I'm glad I'm in your family. I already love them

I didn't mean to hurt your de

No you didn't.

You were right. I was being fake

Fake about what? Did you not enjoy yourself

I did enjoy myself.

Sat, Nov 11, 10:12 AM

Someone who has been mentally abused will:

- Constantly apologize
- Hide their feelings in fear of upsetting you
- Break down during small disagreements thinking it will explode
- Need a lot of reassurance

Please be patient, we are trying.



POSITIVE REMINDERS



7M Views

Hannah Collier



Like



Comment



Share

I love you

I love you

Sun, Nov 12, 12:20 AM

Home



iMessage



Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

ROA-000519

Edit

Messages



Hannah



Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

grinch. We can watch it a million times

Yea it was kinda dumb 🤔

And I can't wait to watch it again with ya. Or anything 😊

I miss you

Sun, Dec 31, 6:51 PM

Hey. My snap is being weird.

Ha just like meeeee 🤔🤔



What's the last thing you sent me

HANNAH

Yes sir. I just love you so much

ME



HANNAH

How are you?

ME

I'm great dear!!

➤ Opened

HANNAH COLLIER TOOK A SCREENSHOT

Send a chat



I

Yes

I'm

Q

W

E

R

T

Y

U

I

O

P

A

S

D

F

G

H

J

K

L

That's last last of it

I asked how your nap was.

It was great!



iMessage



SY

Sara & Hannah

2/22/18

Haha thank you!



Josie Allen

1/3/18

thanks for having me i had fun!!!

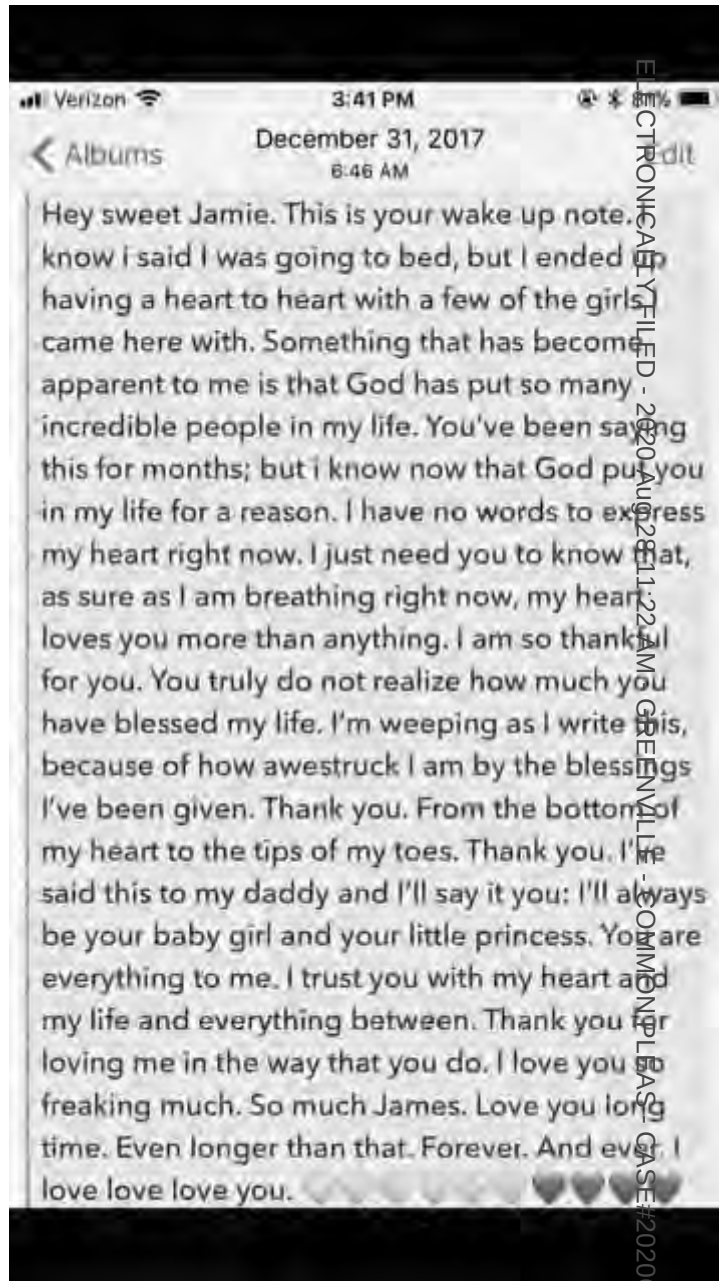


Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

ROA-000520



Hey sweet Jamie. This is your wake up note. I know I said I was going to bed, but I ended up having a heart to heart with a few of the girls I came here with. Something that has become apparent to me is that God has put so many incredible people in my life. You've been saying this for months; but I know now that God put you in my life for a reason. I have no words to express my heart right now. I just need you to know that, as sure as I am breathing right now, my heart loves you more than anything. I am so thankful for you. You truly do not realize how much you have blessed my life. I'm weeping as I write this, because of how awestruck I am by the blessings I've been given. Thank you. From the bottom of my heart to the tips of my toes. Thank you. I've said this to my daddy and I'll say it to you: I'll always be your baby girl and your little princess. You are everything to me. I trust you with my heart and my life and everything between. Thank you for loving me in the way that you do. I love you so freaking much. So much James. Love you long time. Even longer than that. Forever. And ever. I love love love you. ❤️❤️❤️❤️

Edit

Messages



HC

Hannah

HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

Snapchat may be having an issue my snaps don't look like they're getting to you. I'm sorry.

Thu, Feb 15, 2:55 PM

Snapchat seems to be acting up. I have sent you three messages. Two longer ones and one short. I hope they come through. It doesn't say you've read any of them. Anyways just wanted to let you know I am here. If you don't get them I can sent them another way. I love you!

I didn't get them. I'll wait until they come through. I love you

I'm sorry. I love you.

I love you too

Sun, Feb 25, 12:19 PM

I'm sorry.

It's okay. I should not have said anything. I'm sorry.

Why do you say that?

Because I should've kept my mouth shut and not hurt you and just dealt with it on my own.

I'd rather know so I can fix myself so I don't cause any more problems for you.

I just need to figure out myself. I clearly have some issues to work out. And I'm sorry that they've affected you.

Am I causing issues for you?

No.

I'm sorry for everything.

I just don't know what else to do.

It will be fine.

Ok

It simply seems like you say one thing to me and do something totally opposite with someone else, even though we are supposedly the same type of friend, and that hurts.

I know it hurts. I can't take it back. I didn't know. So. I can apologize again, but it doesn't seem to make any difference. But. I'm sorry. I hope you'll forgive me. And I don't know that I would be.

HC

SY

Sara & Hannah

2/22/18

Haha thank you!

JA

Josie Allen

1/3/18

thanks for having me i had fun!!!

C

Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

ROA-000522



iMessage





Hannah Collier
8h ago from Camera Roll



I know I post about him a lot, but 🙄

~~sorry~~ not sorry

I miss you babe

EXHIBIT E

Edit

Messages



Charlotte

iMessage
Sun, Aug 27, 6:57 PM

Hi Charlotte, thank you so much for singing with us this morning! You added so much to the harmony and the worship would like it very much if you could sing with us as much as you are able because it makes a huge difference with three parts. Plus I just added a lead guitarist today!

This is James Tegeler b

Sun, Aug 27, 10:49 PM

Sorry it's so late. Hope this doesn't disturb you. Thank you for letting me wing it! I haven't sung in a group like that in over 10 years. I do enjoy it and I do miss it. I have refrained from committing bc I can't seem to connect with Barry. I know it's not about "a man" but the one delivering the message impacts the message. I will pray about that and about singing when I can. Thanks again!

Sure thing!

Mon, Aug 28, 5:01 PM

Here are the songs for this week... that I'd send them just in case you can sing. You certainly added a lot to the worship. Plus I've added a lead guitarist starting this week!

Home Chris tomlin

<https://youtu.be/PtUTa5Nc-e0>

I saw the light/I'll fly away

David Crowder

<https://youtu.be/sXnTXfg9d94>

Come Holy Spirit

<https://youtu.be/OkTluCNidfl>

And since we'll have a full complement of lead, rhythm, bass and drums... If we have time to practice it, we'll also do this one. Depends on how quickly we learn "Come Holy Spirit", and how long the business meeting lasts. What a Beautiful Name



Thu, Aug 31, 8:36 AM



iMessage



Edit

Messages



C

Charlotte

Thu, Aug 31, 8:36 AM



Thank you for singing last night! Btw here is that PB I was referring to I get from Publix

I was more unsure about the music last night than Sunday. But I brought Hannah's music home so I can play it out. Thx for PB picture. I want to try it. See if it's as good as my Smuckers 🤔

I also wanted to thank you for being such a good friend to Hannah.

Thu, Aug 31, 12:52 PM

Prob won't be as good as your Smuckers but hey I tried! Lol. And I'm glad I can encourage Hannah and make her laugh. Not everyone relates to my type of humor but she has the same type 🤔🤔. My happiness comes from helping others. Most of the time it's just needing someone to listen. College life can be stressful bc it's more like "real life". If there's anything I can ever do please let me know! 😊

I am a firm believer in surrounding yourself with people that inspire and encourage. And for my kids to have kind, supportive adults in their lives besides their parents and extended family! I will not hesitate to call if she needs something 😊



iMessage



Edit

Messages



C

Charlotte

I am a firm believer in surrounding yourself with people that inspire and encourage. And for my kids to have kind, supportive adults in their lives besides their parents and extended family! I will not hesitate to call if she needs something 😊

Fri, Sep 1, 3:50 PM

Hey, do you happen to know Hannah's mailing address? I thought it would be neat to send her an encouraging note once in while through the mail. I remember in college it was always awesome when I got mail. 📬

Which wasn't all that often

That would be great!! And that was a great time to get mail!

Sun, Sep 3, 7:59 PM

Great service today! Here's the songs for next week
Fierce

<https://youtu.be/5zE4bNa-b88>

Whom shall I fear

<https://youtu.be/qOkImV2cJDg>

Sun, Sep 3, 10:20 PM

Thank you for your talent and your leadership! And your encouragement. I have to work Wednesday night and won't know Sunday's schedule until Wednesday morning 🙄 BUT if all that works out and I can sing in Sunday... are you playing these songs in the keys of the YouTubes?

I will check. Usually not in the same key

And it's okay if you can't come Wednesday. I can practice with you for Sunday. You always pick it up quickly

And thank you! I enjoy what I do very much

Tue, Sep 5, 1:35 PM

The recording of whom shall I fear is in the original key of C. We'll be doing it in the key of G so it'll be a fourth lower. The original key for fierce is D, and we will be singing it a fifth lower in G, so there will be quite a bit a difference in the range. But it's still not difficult to pick up.

Sat, Sep 8, 5:48 PM

Do you get to come tomorrow? 🙌

Yep!

Yayy! 🥳



iMessage



Josie Allen

1/3/18

thanks for having me i had fun!!!

Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

Hannah & Charlotte

12/15/17

He hasn't said. Just put it on his list. I'll see what I can find out n

Edit

Messages



C

Charlotte

Sun, Sep 10, 11:31 AM

Thank you for singing. It was awesome!

You're welcome! It was a great service.

Mon, Sep 11, 8:49 PM

Here are this weeks songs.

This is Amazing Grace

<https://youtu.be/zPQKj2Zpt>

Jesus Messiah

<https://youtu.be/f4whBsh9o>

Worthy is The Lamb

https://youtu.be/LApIJ0_jDF

Mon, Sep 18, 10:17 PM

Songs for this week:

The Lion and the Lamb

<https://youtu.be/rMTfj4xQjZk>

Lord I Need You

<https://youtu.be/LuvfMDhTyM>

Mon, Sep 25, 8:19 PM

Here's the songs for Sunday

Shout to The Lord

<https://youtu.be/gwodt3Nhjm>

Oh Praise the Name

<https://youtu.be/LqBpifDpNK>

Mon, Sep 25, 10:20 PM

I'm sorry I routinely do not respond to your message. I will make an effort to do a better job. I know I am working Wednesday and I won't know until Wednesday morning what my schedule is for the weekend. I will try to remember to let you know before practice Wednesday Night

I save these songs on my YouTube and they make for nice reflective morning walk background music. 😊

lol it's fine! I understand you have a lot on your plate. I always enjoy it when you can sing, it adds so much! It was great to spend time with you all Sunday... Even if it was 125°. 🤗🤗

Thanks! My plate is full and most of the time my life runs me! 😊 It leaves little time free time outside of my kids so I appreciate that I can hop in and sing anytime. Sunday was fun! We'll have to hang out again but in the A/C! 🌟🌟🌟



iMessage



Edit

Messages



C

Charlotte

Mon, Oct 2, 9:57 AM

This weeks songs!
 Old Church Choir
<https://youtu.be/ECP8uhj-9D8>
 Resurrecting
<https://youtu.be/vFQoUkWiZnY>
 Just as I am/I come broken to be mended
<https://youtu.be/TGXDFxWM2r0>

Mon, Oct 9, 9:55 AM

Songs for this week:
 No rehearsal Wednesday
 Lord I Lift Your Name on High
 Chain breaker
<https://youtu.be/JGYjKR69M6U>
 Hymn: Down at the Cross (Glory to His Name)
 How Great is Our God
<https://youtu.be/cKLQ1td3MbE>

Tue, Oct 17, 7:34 PM

So Hannah said she's thinking about telemarketing for you.
 From what she's told me it sounds like something I might be
 interested in. Definitely would like to know more.

Okay sounds good!

Definitely will talk about it after I get back from NYC. We are
 coming up on open enrollment and the parent company I
 represent has the only major medical product other than
 Obamacare. Therefore we stay extremely busy during that time
 and I don't really have time to make the number of calls I'd like.
 So I to like to hire telemarketers to free up my time. It's a simple
 job, but it takes someone who is tenacious and can get through
 the no's on the phone to a yes. Basically its a numbers game. It
 can be done from home, but I have had Alexander out
 searching for office space this week, which will simplify things
 for everyone. I had an office here before, but kinda minimized
 things and worked from home for a while in order to spend
 more time with the boys when we lost their mom. But they're at
 the age now where I can expand again. I have a girl in Indiana
 going to start and if I can get some here it would be a great
 help. I usually hire females to tele-market because people
 respond more favorably to a female voice I've found. Funny but
 true. Sorry for the book and thank you for your interest! 🙏

Tue, Oct 17, 11:36 PM

I started this text last night but by the time I got back to finish it
 was way late. I know you're a night owl but I have my do I dare
 reply so late! After NY sounds good.

Haha!!! I just accidentally sent it. Oh well. It's way past my



iMessage



Edit

Messages



C

Charlotte

Haha!!! I just accidentally sent it. Oh well. It's way past my bedtime and clearly I need to sleep.

Lol it's all good! I just got home from the gym

Oh good!

Wed, Oct 25, 10:45 PM

Sorry I haven't sent these. This weeks been a whirlwind.
The Lion and the Lamb
<https://youtu.be/rMTfj4xQjZk>
Just as I am/I come broken to be mended
<https://youtu.be/TGXDFxWM2r0>
Come Holy Spirit
<https://youtu.be/OkTluCNidfl>

I had an epiphany earlier today (before Hannah gave me your message 🙄). I would like to sing Sunday. I'm not going to reduce myself because of Craig and Casey any more. 😊

I'm proud of you! And I agree 100%

I've tried for years to keep the peace and minimize the impact for the kids. Just not doing that anymore

And thanks!

You're a better person than I am bc I don't think I could have done that so well. Looking forward to Sunday!

Sun, Oct 29, 1:23 PM

Thank you for singing today! You did great!

Thank you! Idk about great but I enjoyed it. I appreciate you fostering and encouraging the music in Hannah! She amazes me every time!!

You're welcome! I enjoy bantering with her, and it's fun to watch young people become their own person. She did awesome today!

Sun, Oct 29, 8:48 PM

Hey my phone died so I'm plugging it up. James is here

Ok. lol! I just asked you if he was. And we're almost there.

Okie do joe

Dokie

Mon, Oct 30, 2:53 PM

Hey was wondering what time would be good for tomorrow to look at the telemarketing thing. Hannah had mentioned you could be here like 5 or so. That would be fine. I'd say as close to



iMessage



Edit

Messages



C

Charlotte

Mon, Oct 30, 2:53 PM

Hey was wondering what time would be good for tomorrow to look at the telemarketing thing. Hannah had mentioned you could be here like 5 or so. That would be fine. I'd say as close 5 as possible so we have enough time, bc if it gets too late the trick or treaters will start. Plus, I have an online appointment to do at like 6 so y'all could even watch what I do with clients. You could also help with trick or treaters for me while I'm making sales! Alexander will be showing you the dialer system. If you have a laptop computer, and/or a computer headset then bring it. The dialing system is done via a computer. 😊

Mon, Oct 30, 4:12 PM

Alexander is purchasing new headsets today for you. If you own a desktop, the dialing system can be downloaded to that as well

Hey! Tomorrow is good. I should be able to sneak away from work a little early and be there close to 5. I don't have a laptop or headset so I'll just bring me!

Sounds good

Tue, Oct 31, 4:46 PM

When you get here just come on in through the garage



Tue, Oct 31, 7:47 PM

My schedule
M-F 8:30-5 Insurance
M & W 5-10p and some weekend hours Publix (for now)
T & Th 5-8ish gym training
I have 30 mins for lunch every day. My work day is flexible and I frequently have time that I'm not busy. So if no one is working I can possibly jump in.

Wed, Nov 1, 4:32 PM

So are you saying that Monday through Friday from 8:30 AM to 5 PM is when you're available for calling?

No. I'm saying I work my full time job during that time. I sent you the times I am previously committed.

Gotcha. The word insurance threw me

Haha! I can see how that would happen.

Wed, Nov 1, 6:35 PM

Would you like me to mention to Baxter about Ty being in the youth Sunday?



iMessage



Edit

Messages



C

Charlotte

Wed, Nov 1, 8:06 PM

Thanks for thinking of that. I asked Ty earlier and he said no.

Sun, Nov 5, 10:42 PM

Here are the songs for this coming week.

Oh Praise the Name oct

<https://youtu.be/LqBpiDpNKc>

I Surrender

<https://youtu.be/ZFORjUcHkKU>

Mon, Nov 6, 12:30 PM

Can you make sure you got the dialer log in information from Alexander? Hannah said she didn't so he just re sent it to both of y'all 😊

Also, not sure what kind of insurance office you work at, but if you receive calls for health insurance and you all cannot help them, if you refer them to me I will pay you the split commission as well. Just an idea.

Mon, Nov 6, 2:47 PM

I did get the email! And we don't do health ins. It's always been so tedious 😊

OK good. What I'm saying is if someone calls in asking if you do health insurance just refer them to me and I will pay you for the referral

Oh! Gotcha!!

Tue, Nov 14, 10:40 PM

Not sure of your schedule this coming Sunday but here are the songs. Hope you are having a good week!

Revelation

<https://youtu.be/D-zk-E55dRk>

What a Beautiful Name

<https://youtu.be/aX82DS45a2k>

Hymns

Thank You, Lord

https://youtu.be/bICfzF1_3oY

Give Thanks

https://youtu.be/Bk_7wUR2Wdg

Since we will not be having practice next Wednesday, the day before Thanksgiving, we will need to run over these songs tomorrow night as well for the following Sunday.

This is Amazing Grace

<https://youtu.be/zPQKj2Zptr0>

Great are You Lord

<https://youtu.be/3jCnAAeEJSQ>

Wed, Dec 6, 10:16 AM

Wasn't sure of your schedule but here are the Songs for this



iMessage



Edit

Messages



C

Charlotte

Wed, Dec 6, 10:16 AM

Wasn't sure of your schedule but here are the Songs for the week:

I am

<https://youtu.be/cHLLGiE0f0>

Cornerstone

<https://youtu.be/QvLxZEU02ul>

Fri, Dec 15, 11:55 AM

You're welcome to go with Hannah this afternoon. Not that you need my permission. 😊 I'm going to try to leave work early to go too.

I was debating because Andrew mentioned it to me out of the blue and I didn't know if he wanted me there for like an approval kind of thing. I wasn't initially planning on going bc I figured that for Hannah it would kind of be like a girls thing. So we will see. 😊

I understand the conflict!

Fri, Dec 15, 9:56 PM

I meant to talk to you about this when I saw you and in all of the tattoo excitement I forgot. I am available on Sunday to be your assistant before the cantata. Just someone to be there to help with whatever may come up. If you need water, or copies, or a message given to the kids or a reminder of who's supposed to be there. I know when I did church productions I would have been lost without my right hand helper. Just let me know what time you need me there!

That would be awesome! I could've used you Wednesday. It was a mess! 🤦🤦🤦 Anyways the choir and everyone is supposed to be there at 9 AM to practice. That is really nice of you! 😊

A bad rehearsal means a great performance! What time will YOU be there?

I'm usually there 8:45 to warm up my fingers 😊

I'll see you then!

Okay thank you!!

Yw! 😊

Sat, Dec 16, 3:51 PM

Thinking about this for Ty for cmas. Craig & casey would get a barbell and plate weights. Until then he could use dumbbells. As a fellow fitness buff what do you think?

Gold's Gym XR 10.1 Olympic Weight Bench
facebook.com



iMessage



Edit

Messages



HC
Hannah

C
Charlotte

iMessage
Fri, Dec 15, 11:50 AM

Charlotte

Ty's Christmas Wish List

- Crewneck sweatshirts
- Long sleeve gamecock shirts
- Neymar jr jersey long sleeve
- Khaki pants and shorts not cargo
- Long sleeve columbia silky shirt
- Under Armour running shorts
- Soccer pants/goalkeeper pants
- Fit bit
- Gift cards/ money

Which fit bit does he like? And find out if anyone else is getting it for him if you can

Charlotte

He hasn't said. Just put it on his list. I'll see what I can find out n

ELECTRONICALLY FILED - 2020 Aug 28 11:22 AM - GREENVILLE - COMMON PLEAS - CASE#2020CP2301213

JA

Josie Allen

1/3/18

thanks for having me i had fun!!!

C

Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

HC

Hannah & Charlotte

12/15/17

He hasn't said. Just put it on his list. I'll
see what I can find out n



iMessage



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Messages



C

Charlotte

Sat, Dec 16, 4:53 PM

I love it

Sat, Dec 16, 7:36 PM

Thanks! He says he wants to get into weight lifting so we'll see if he uses it!

Well that will definitely encourage him to get into it. Once he starts seeing changes in his body hopefully it will turn into a habit

He loves going to the gym with me and he is super excited to do another competition. This will help him get there!

Sun, Dec 17, 8:50 AM

Coffee?

I had some already! ☺️. Thank you

Yw. Otw and bringing mine. Didn't want to show up without a second if you were jonesing 😊

Sun, Dec 17, 12:56 PM

Thank you so much for being there and for helping me this morning! I really really appreciate it! Have a great day!

Sun, Dec 17, 5:16 PM

It was my pleasure! I didn't do much but I'm glad it helped. They sounded awesome! And having the nativity was (always is) special.

Sun, Dec 17, 6:51 PM

Still you were very helpful and the fact that I could relax because I knew the children were going to come in at the right spot was worth everything

I don't know how much of the performance you heard, but the sound of the choir during the performance was 100 percent better than the reversible. I was very proud of them

I'm so glad! The kids did great! I was able to stay until just after the kids came in. And I stayed in the sanctuary so I could listen. The choir sounded great! You have every reason to be proud!

Sun, Dec 17, 9:58 PM

I just remembered... I have your present from Hannah in the trunk of my car. I'll drop it off Wednesday

Oh right! I forgot about that. I'm working Wednesday til 830. I'm planning on coming to cmas eve service too.



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Josie Allen

1/3/18

thanks for having me i had fun!!!

Charlotte

1/2/18

Here are the songs this week: We are... Revelation

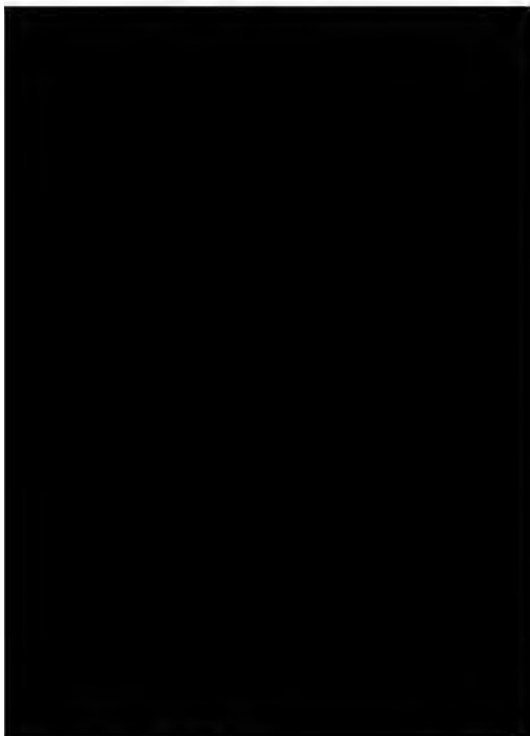
Hannah & Charlotte

12/15/17

He hasn't said. Just put it on his list. I'll see what I can find out n

Edit

Messages



JA

Josie Allen

1/3/18

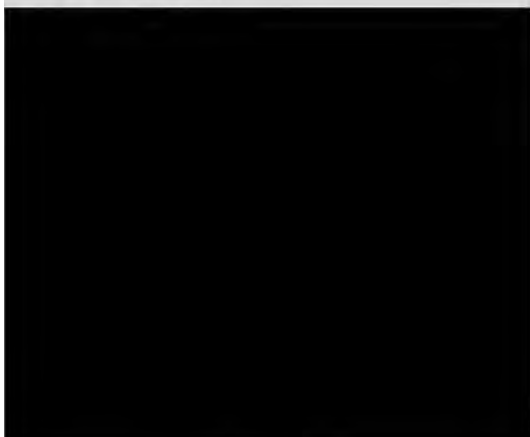
thanks for having me i had fun!!!

C

Charlotte

1/2/18

Here are the songs this week: We are... Revelation

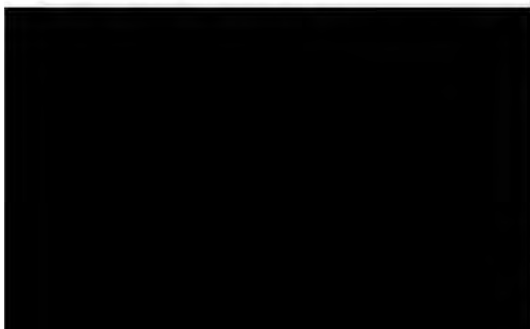


HC C

Hannah & Charlotte

12/15/17

He hasn't said. Just put it on his list. I'll see what I can find out n



C

Charlotte

Mon, Dec 18, 8:21 AM

Amazon's Choice

for "fitbit charge 2 small"

Color:
BlackSize:
Small (5.5 - 6.7 in)\$129⁰⁰ ~~\$149.95~~ Save \$20.95 (14%)

FREE Shipping

Arrives before Christmas.

In Stock

About this item

Features

- PurePulse continuous, automatic wrist-based heart rate tracking to better measure calorie burn all day
- Maximize your workouts using simplified heart rate zones (Fat Burn, Cardio and Peak)
- See call, text & calendar notifications on the OLED display; Automatically track how long and how well you sleep and wake with a silent vibrating alarm
- Get a better understanding of your fitness level and see how you can improve over time with a personalized Cardio Fitness Score; Use Connected GPS during run mode to see real-time stats like pace and distance on your wrist
- Track all-day activity like steps, distance, calories burned, floors climbed and active minutes; Find moments of calm throughout your day with personalized guided breathing sessions based on your



iMessage



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Messages



C

Charlotte

Product

I ordered Ty a Fitbit and a three year extended warranty! I'm excited! 😊

Also last night, Anne was commenting what a great job you did and she said, "I'm gonna ask her to do that every time." So I thought that was a pretty good complement and you certainly did help a lot and I appreciate it!

Oh my! You are so generous! He will be excited!!

A complement from Anne?! We'll wonders never cease 🤔😂
I am happy to help in anyway. I realized yesterday how much I miss being involved in that sort of stuff. We had years of original productions for Easter and Christmas at our "before divorce" church. Super stressful and incredibly wonderful. I hope this year i won't be as busy and can work less to live life more.

Sun, Dec 24, 8:02 AM

Wasn't sure if you were planning on coming today but I wanted to let you know that someone hit a power pole near the church and knocked out the electricity. Currently Sunday school has been canceled and they will know by 10 AM if there will be services. So there's no need to come by 9 AM, and I will let you know if you should be there by 10:00 AM. If so we could run over songs then.

Update: I am at church and the power is now on

Sun, Dec 24, 10:17 AM

Thanks! I'm working today :(but I get off at 2 and will see you tonight!

Mon, Dec 25, 9:34 PM

Christmas dinner

Dutch Oven Chicken
Mashed potatoes
Mac & cheese
Roasted veggies
Green beans
Crescent rolls
Sara is making Dessert

- Chicken (duh)
- Potatoes (I like Yukon Gold for mashed)
- (I'd like to use butter and almond milk so they're vegan)
- 8 oz elbow noodles
- 13 oz can evaporated milk
- 1/4 cup butter
- 3 large eggs
- 4 cups grated cheddar
- 1/4 cup Parmesan cheese



iMessage



Josie Allen

1/3/18

thanks for having me i had fun!!!

Charlotte

1/2/18

Here are the songs this week: We are...
Revelation

Hannah & Charlotte

12/15/17

He hasn't said. Just put it on his list. I'll see what I can find out n

Edit

Messages



C

Charlotte

- Brussel sprouts
- Butternut squash or sweet potatoes
- Big can green beans (Hanover - White can)
- Crescent rolls

Tue, Dec 26, 9:56 PM

2-3 pounds boneless, skinless chicken breasts
8 cups water
3 tablespoons salt
2 garlic cloves, whole
1/2 tablespoon coconut aminos or homemade substitute
1 bay leaf
1 teaspoon whole coriander seeds
1 teaspoon whole cumin seeds
1 teaspoon whole black peppercorns
2-3 pounds boneless, skinless chicken breasts

BRINING DIRECTIONS:

- 1 Put water in a large ziplock bag and add the salt, garlic, coconut aminos, bay leaf, coriander seeds, cumin seeds, and peppercorns. Let the salt dissolve.
- 2 Add the chicken breasts to the bag. This will look gross; ignore it.
- 3 Put the bag in the fridge and forget about it for 2 hours.

Wed, Dec 27, 11:11 AM

I don't see Yukon gold potatoes. Only like Idaho russet

Do your mean instant?

Not instant. Russet are fine



iMessage

**Josie Allen**

1/3/18

thanks for having me i had fun!!!

JA

Charlotte

1/2/18

Here are the songs this week: We are...
Revelation

C

Hannah & Charlotte

12/15/17

He hasn't said. Just put it on his list. I'll
see what I can find out n

HC

C

Edit

Messages



C

Charlotte

dissolve.

- 2 Add the chicken breasts to the bag. This will look gross; ignore it.
- 3 Put the bag in the fridge and forget about it for 2 hours.

Wed, Dec 27, 11:11 AM

I don't see Yukon gold potatoes. Only like Idaho russet

Do your mean instant

Not instant. Russet are fine



We are rich. I found gold

Potatoes that

JA

Josie Allen

1/3/18

thanks for having me i had fun!!!

C

Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

LOL!

Excellent!

Do you mean shredded cheddar set of graded? I can't find it

Grate

Grated would be good. But we can grate it by hand if you can't find any.

Would it be in the deli

Should be with sandwich stuff. It comes in bags of 2-3 cups. Usually hanging.

I did happen to find 2 gallon Ziploc freezer bags

Good!

Tue, Jan 2, 9:53 PM

Here are the songs this week. We are practicing Wednesday night.
 Revelation
<https://youtu.be/D-zk-E55dRk>
 Death was arrested
<https://youtu.be/uMsMiluCUUJ>

Delivered



iMessage



EXHIBIT F

Edit

Messages



HC

Hannah



HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtime.

I'm sorry. I'm sorry. I'm sorry.

Tue, Mar 6, 10:46 PM

Hi Princess, I didn't know your schedule but this is what I was thinking about for Sunday. The songs are more together like you suggested! 🥰🥰
Here in the Presence
<https://youtu.be/98vDI1ebJsw>
Thy will be done
https://youtu.be/iCR_Fa8YV2U
And at the end:
Draw me close to You
https://youtu.be/a_tdG9yM93A

Thank you! Songs look great, I will listen to them tomorrow!

Fri, Mar 9, 8:11 AM

Are you awake?

I have a question about work, please call me.

I have another question, so please give me a call when you can

Fri, Mar 9, 10:52 AM

pdf

March 11, 2018.pdf

Fri, Mar 9, 1:44 PM

I know you're driving. I just sent you two more worksheets.

And that bulletin looks good

And another one

Some people are RUDE 🙄

Another one

Sat, Mar 10, 10:29 PM

d1m.christianbook.com



d1m.christianbook.com



Yea. Sorry. It's giving me fits currently.

No worries. If anything, I'll bring in the CD from my car and we can sing over it. And divide t up

Sun, Mar 11, 8:54 AM



iMessage



C

Charlotte

1/2/18

Here are the songs this week. We are...

Revelation

ROA-000541



Edit

Messages



HC

Hannah



HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtime.

Fri, Mar 9, 1:44 PM

I know you're driving. I just sent you two more worksheets.

And that bulletin looks good

And another one

Some people are RUDE 🙄

Another one

Sat, Mar 10, 10:29 PM

dln.christianbook.comdln.christianbook.com

Yea. Sorry. It's giving me fits currently.

No worries. If anything, I'll bring in the CD from my car and we can sing over it. And divide t up

Sun, Mar 11, 9:54 AM

Will you be upset if I don't come this morning? We can still meet you at lunch.

Sorry was singing. That's up to you and how you are feeling dear.

My mom and brother aren't going, and I don't feel great. I'm not going to come. I'm gonna hopefully eat something and I guess I'll talk to you after. If you still want us to come to lunch, just let me know and I'll be ready. Please don't be upset at me

Its okay. I'm sorry you don't feel well.

It doesn't seem okay but thank you

Well like he's coming to church and then going to eat on his birthday and I just wanted to make it special for him but if you don't feel well you don't feel well. I kind of wanted you to critique how we sounded and how the worship flowed today since you would be in the audience but it's fine and I'm not upset. Do you think you're still feel well enough to meet us for lunch?

Read 3/11/18

I think I'll feel a little better by lunchtime. Honestly, my anxiety is giving me a fit for some reason. I'd still like to come to lunch if you're okay with that. I have a really good feeling about the music today. I love the layout of the songs. I can always listen online.



iMessage



C

Charlotte

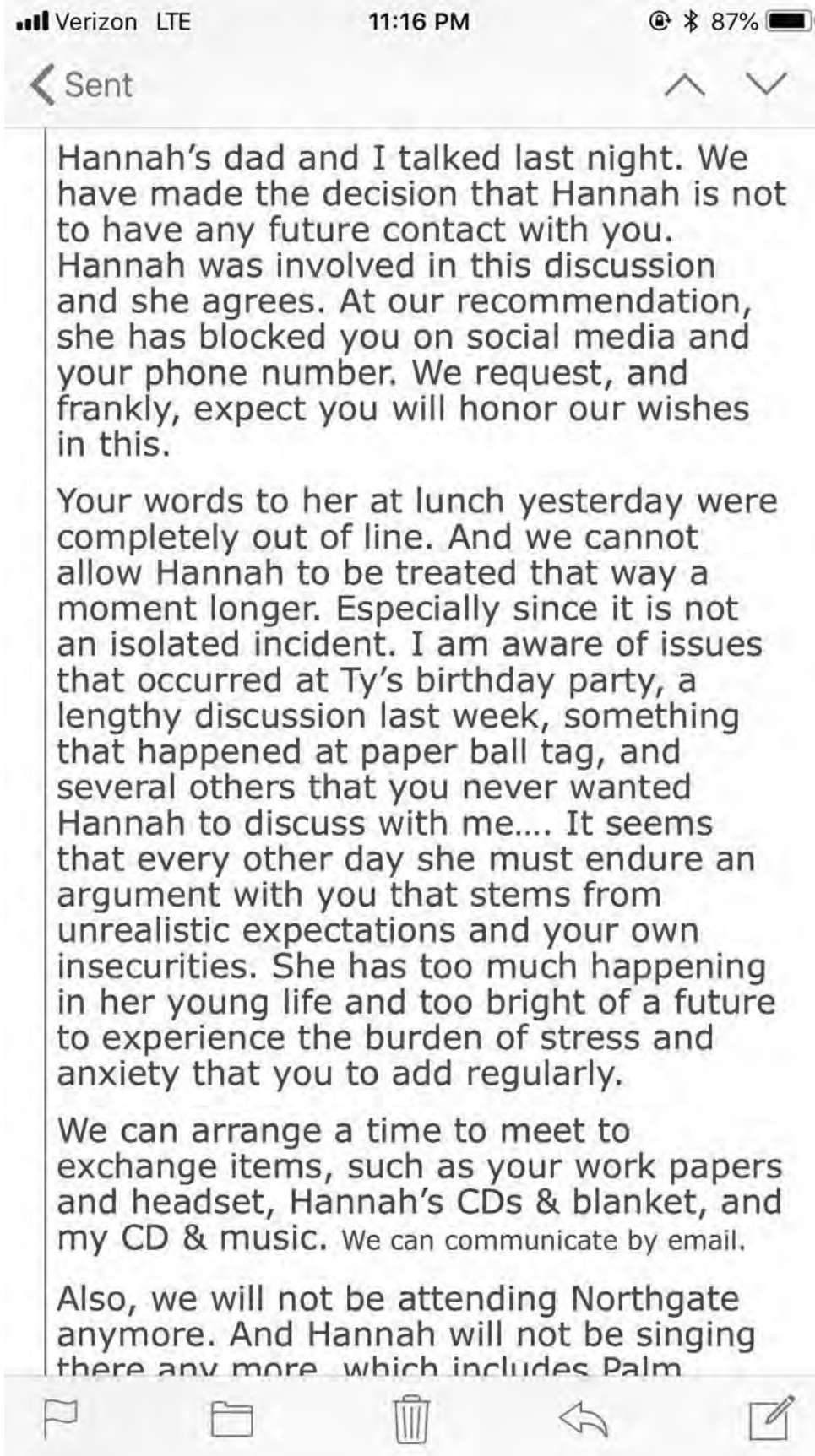
1/2/18

Here are the songs this week. We are...
Revelation

ROA-000542



EXHIBIT G



On Mar 12, 2018, at 10:40 AM, Charlotte Collier [REDACTED] wrote:

James,

Hannah's dad and I talked last night. We have made the decision that Hannah is not to have any future contact with you. Hannah was involved in this discussion and she agrees. At our recommendation, she has blocked you on social media and your phone number. We request, and frankly, expect you will honor our wishes in this.

Your words to her at lunch yesterday were completely out of line. And we cannot allow Hannah to be treated that way a moment longer. Especially since it is not an isolated incident. I am aware of issues that occurred at Ty's birthday party, a lengthy discussion last week, something that happened at paper ball tag, and several others that you never wanted Hannah to discuss with me.... It seems that every other day she must endure an argument with you that stems from unrealistic expectations and your own insecurities. She has too much happening in her young life and too bright of a future to experience the burden of stress and anxiety that you to add regularly.

We can arrange a time to meet to exchange items, such as your work papers and headset, Hannah's CDs & blanket, and my CD & music. We can communicate by email.

Also, we will not be attending Northgate anymore. And Hannah will not be singing there any more, which includes Palm Sunday.

Thanks,

Charlotte

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

From: James Tegeler [REDACTED]
Date: March 12, 2018 at 9:10:58 PM EDT
To: Charlotte Collier <[REDACTED]>
Subject: Re: your letter clarification

Charlotte,

I would like for you to clarify a few things. Because I didn't do anything to her during our paper ball tag game, or at Ty's birthday. At Ty's birthday I simply wanted to know why she was avoiding me and she wouldn't tell me and was very rude for no reason. Turned out she thought I was upset about something. If that's being insecure I'll take it. You have a lot of misinformation, and even though I don't really care anymore, just know that I take great offense to some of your accusations because they are simply not true. Honestly I'm glad this is over because I'm really tired of the high school antics and drama. All I have done for both of you from the day one is to do my best to make your lives better. I do not appreciate the accusations, and I will be more than happy to sit down with you and anyone else and go over exactly what occurred every single time. But to accuse me of wanting to hide things from you? Are you kidding me?? I'll show you every single message I have between us. Frankly I'm tired of this nonsense. Life is too short to act like she did yesterday. It would be nice to receive even a little bit of credit for what I did for her, as opposed to being berated and accused of doing things I did not do. I was going to just sit and

take it and let it go, but I can't because it's untrue and hurtful to me and my family. And I certainly have never had an insecurity problem before now.

I also take great offense to you saying that I used phone calls to yell at her and upset her. That is not all the case whatsoever. But all that gets lost in the fact that she has been very difficult to get along with, especially lately. If you were honest with yourself, and you looked in her past you would see that she has lost quite a few friends for similar reasons. She even told me this herself, and she was so afraid of losing me. And if you think blocking me from her life is best for her, fine. I don't agree based on her fragile state, but frankly I don't need that in my life. Based on what she has told me I know what most of her issues are, and they aren't me. But if you want to lay the blame for her issues on me and my insecurities, which I consider very rude from you, that's your prerogative. But I find it very offensive and I do not appreciate it. I have overlooked a lot of things just to be there for her when she had no one. But yet to blame me for being a huge part of her problems? I know what a lot of her problems are, and I even know what some solutions would be. I've been a very good single parent placed into a very difficult situation. But guess what, it's blame James for my daughter's rudeness so we all feel better about ourselves. Anyway it's none of my business and I don't really care anymore. Actually that's not true, I do care. I care for her more than myself and my heart is broken right now.

Just know I take offense to what you said in your letter because the majority of it is simply not true. I'll be glad to talk to you anytime, anyplace, and with anyone else listening. I don't need this kind of drama in my life or in my children's lives. We're not used to this negativity and moodiness. If anything I could've used a little more patience, but frankly I was spent and yesterday kind of broke the camels back. I only put up with it for as long as I did the sake of betterment of your daughter's life.

Some of the things she told me in confidence were shocking. That's why I wanted to make her life happier and more positive. I was in her life for one reason, and that was to improve it. Anyway, Take some time to look honestly within yourself, because if you do, you know what I'm telling you is true. I wish you the best.

James

EXHIBIT H

Edit

Messages



HC

Hannah



HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

Weren't

It's not too heavy.... and I walk a lot faster than that normally.

Give it a little bit and I bet you'll see a difference. You look great just like you are. Seriously. If you do anything with fitness, do it for yourself. Don't do it for others

Aw

Thank you.

That's a good reason.

You're adorkable

Get it?? Dorky?

Oh yes

I relate to that very very well 🤔🤔🤔

That's a really good word actually. I've never heard that before

Me too: the dork part. And really???

Yes. That's a Hannah word

I make them up. Because of the BFG

I love words. They are so powerful.

You are very good with words

Gracias señor!!

I thought it was very powerful when she prayed tonight between songs

I wonder if we shouldn't do something like that in the middle of come Holy Spirit. Something short at the very beginning of the ad Lib part

Me too. I can see what I can do.

Not good at public prayers

Gosh I'm still blown away by how sweet you are. You bought me an umbrella. You bought me dinner. You played for my audition and stayed here until almost 10, if not later. I'm so blessed to have you. Thank you so much. From the tips of my toes.



Message



Edit

Messages



HC

Hannah



HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim..

Silly

That was a vocal text and I was actually laughing 🤣

That's classic Hannah. That picture

I'm just showing you where it is

Of that I am aware

Good it's glaringly obvious

Glaringly?

That must be pretty obvious

I was deliberate with my word choice james.

Did you know my dad started a Christian camp in Virginia? It's still going today. It's in the mountains of southwestern part of Virginia. It's beautiful. About 3 1/2 hours from here.

I know. I'm sharpening my vocabulary because of you 😊

That's awesome.

the "destinations" tab of the IVHQ website volunteerhq.org. This trip is for Honors students and members of Honors Societies only.

- ☐ Quito, Ecuador
- ☐ Marrakech, Morocco
- ☐ Ubud, Bali (Indonesia)
- ☐ Table View, South Africa
- ☐ Cordoba, Argentina

Submit Vote

JA

Josie Allen

1/3/18

thanks for having me i had fun!!!

C

Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

ROA-000551



iMessage



Edit

Messages



HC

Hannah



HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

Just noticed they didn't give me fvs co

It's okay. I have something he can drink

We can go to a vending machine and get him o

It's okay.

Sat, Sep 2, 2:36 PM

I made it home. But I'm going to run to the grocery store and get groceries for next week.

Okay have fun!

I know you said your kids go to their own church, but you should bring them by northgate soon!

They'll come on special occasions. Alexander goes with his girlfriend and Andrew goes with his friend Josie. She's like a sister. She's going to New York City with us. And yes I always have a blast in the grocery store. Who wouldn't? 🤪

And will you please be sure to get a nap. You don't need to be getting sick 🤒

You should bring them tomorrow. They can see how awesome their dad is at leading worship. I'm about to leave so don't worry

Well you should've stopped here for a min bc they're both here and so is Sara



What do you mean should've

They've been quite a few times. I understand what you are saying. But my thinking was since they'd already kinda had their lives ripped apart losing their mom and their grandma I didn't want to tear them away from their friends too at their churches, yk? . But I will ask them!! 🤔🤔

Oh yi haven't left yet 🤔

You 🤔

I do understand. I'm sorry. Not trying to be pushy. And no I haven't left yet

I don't want to intrude in your home. I appreciate it tho

Don't be sorry

You're not an intruder



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Edit

Messages



HC

Hannah



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HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

eh

There's a difference between intruding and being invited. But you're also tired and worn out so you should probably rest and we plan it another time 😊

Lol I'm having typing issues

Oh and homework

Alright.

Headed home.

Are you okay?

Yep. I'm good.

I'll let you know when I get back.

Okay thank you

Yep

I'm here.

Yayy! Have fun

With what lol

Lol. I guess about the same kinda fun I had at the store

I enjoy the grocery store. As long as people don't follow me.

Follow you? Why would ppl follow you?

Last time I went to Walmart by myself an employee, about my age, followed me through the store and cornered me on an empty aisle. He was just hitting on me. It just freaked me out that he followed me around. It's because I put on real clothes and didn't look like a hobo. Hobo life works for me. 🙄

Wow. But you could terrorize him if you wanted to. 🤖🤖

Wym

I was terrified.

I'm sorry. I can shop for you bc Noone follows me

It's okay. And it was in lugoff so it's fine

I bet people do follow you

Pfft



iMessage



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Messages



HC

Hannah



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HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

Oh. Have fun. Do great! I'm about to go to the chiropractor.

Drive safely please let me know

Okay ok 🙄

Okay ok

Here

Okay ok 🙄 🙄

Thank you

You're welcome. 🙄

Tue, Sep 12, 4:43 PM

Back

How was your presentation? Or is still happening?

It was good. How is your back

It's okay 🙄

Is it improving from the treatment

I'm not sure honestly.

You're a crazy person

That's a given. 🙄 What makes you say that

You'll find out eventually.



I certainly hope so 🙄

Do you ever check your mail

Every once in a while. I haven't been lately. Why?

Are you trying to tell me something??

No

That was a question. If I was trying to tell you something I would've stated it in the form of a statement

Okay. I'm too tired to go right now. Maybe tomorrow. Or next week 🙄



iMessage



C

Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

ROA-000554



Edit

Messages



HC

Hannah

HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtime...



Not right now

So why am I crazy?

You just are. No specific reason.

Michael drives me up THE WALL

I like him

HE irritates me. It's like he thinks he's cute but it makes me want to jump out the window.

If I say "ok" signaling the end of a conversation, he'll say "ok"

Like?! DONT REPEAT WHAT I SAID

same with "yea"

He'll say something, and I'll say yes. He said well that's good. I say yep. He goes "yep". Why??

And he wants me to come "hang out" at SMC this week. Ummm I don't have time to sleep. Let alone hang out at SMC.

Drives me bonkers.

He means well. I know. But bless his heart.

Hahaha! Bless his heart! 🤔🤔 All I can say about it is, it's dang good thing your window doesn't open.

I'd kill him.

He knows better than that. He knows my daddy. He calls just to remind him "he's everywhere" 🤔🤔🤔 scares the poor kid to death. It's hilarious.

He really is though. Some of the campus officers know him. Some of his agents live here in Spartanburg, they're watching out for me

That's nice! And as for Michael, you did tell me from the very beginning that he was a bit goofy so there you go

I know. He is. I think he's got some sort of mental or social thing that's not quite fully developed yet. I don't know but sometimes I just want to choke him



Message



Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

ROA-000555

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Edit

Messages



HC

Hannah



ELECTRONICALLY FILED - 2020 Aug 28 11:22 AM - GREENVILLE - COMMON PLEAS - CASE#2020CP2301213

HC

Hannah Collier

3/11/18

I think I'll feel a little better by lunchtim...

I know. He is. I think he's got some sort of mental or social thing that's not quite fully developed yet. I don't know but sometimes I just want to shake him.



I might be crazy but you're hilarious. Specially the way you w... things.

Shaking him might hel...



I'm not trying to be ugly! But maybe if I shake him, his brain will click and he'll be like, wow this annoying maybe I shouldn't repeat everything she says

Or it could further loosen something up and make it even wors...

Oh gosh.

He thinks he's cute. But then it's just annoying. He was all like, I'm gonna move to upstate so I can keep an eye on ya. Like no. I'll punch you in the face. Go away.

And to make you feel better, it is a fact that guys brains take longer to develop in the social skills area. So above average intelligent females have a difficult time dealing with that sometimes

Is that what I am? Above average? what if I was secretly a dude?

That's hilarious.

I'm not. But I don't know what that's so funny to me

I'm so tired

Well if you are a guy, then congratulations on developing your social skills so early. And yes, you are far above average in the intelligence category. I think we all know this.

I'm sorry... not to bug you, but did you eat dinner?



That's hilarious

What do you think?

Sorry. That sounds rude. No. I've not eaten yet.



iMessage



C

Charlotte

1/2/18

Here are the songs this week. We are...
Revelation

ROA-000556



EXHIBIT I

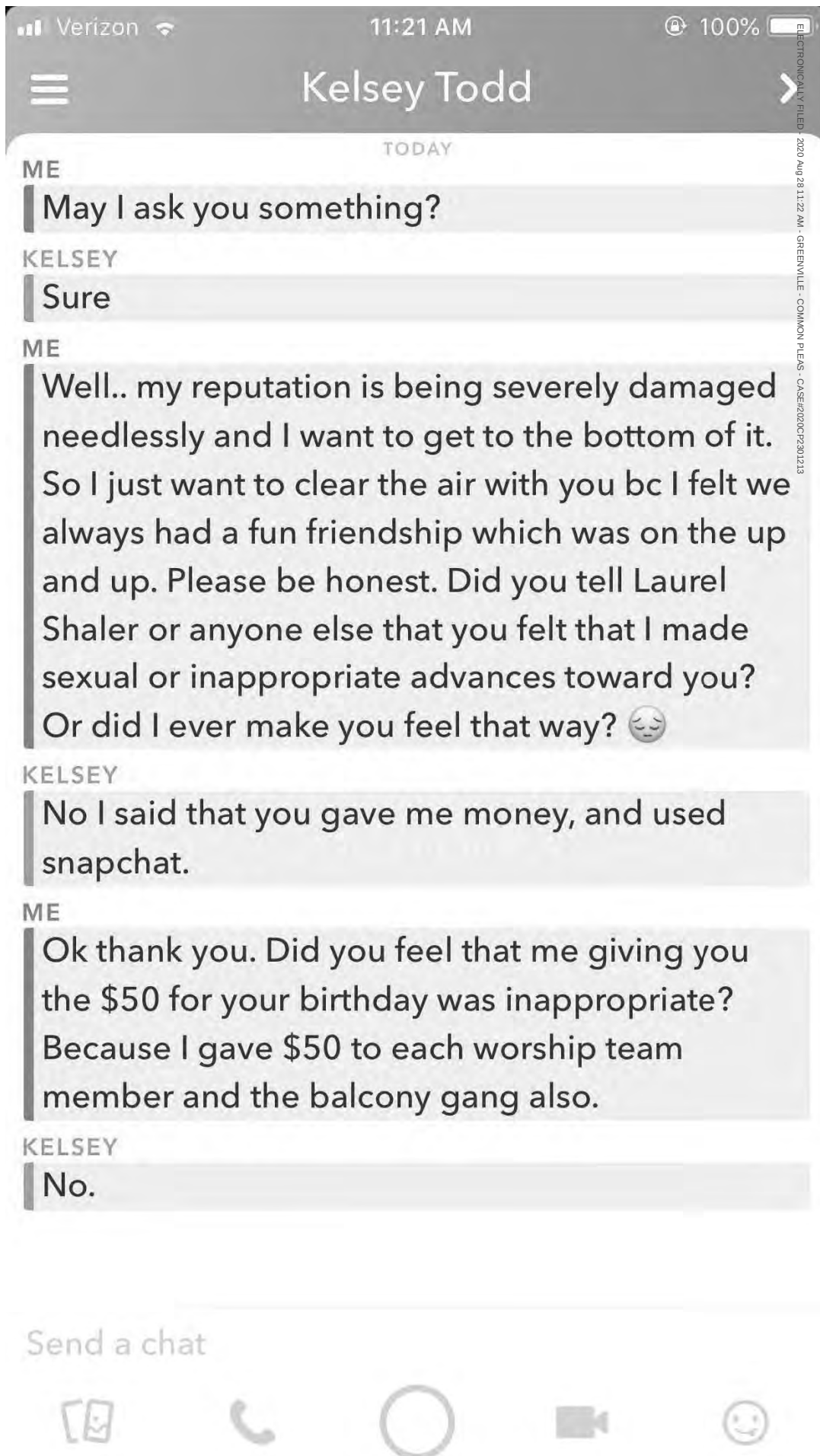
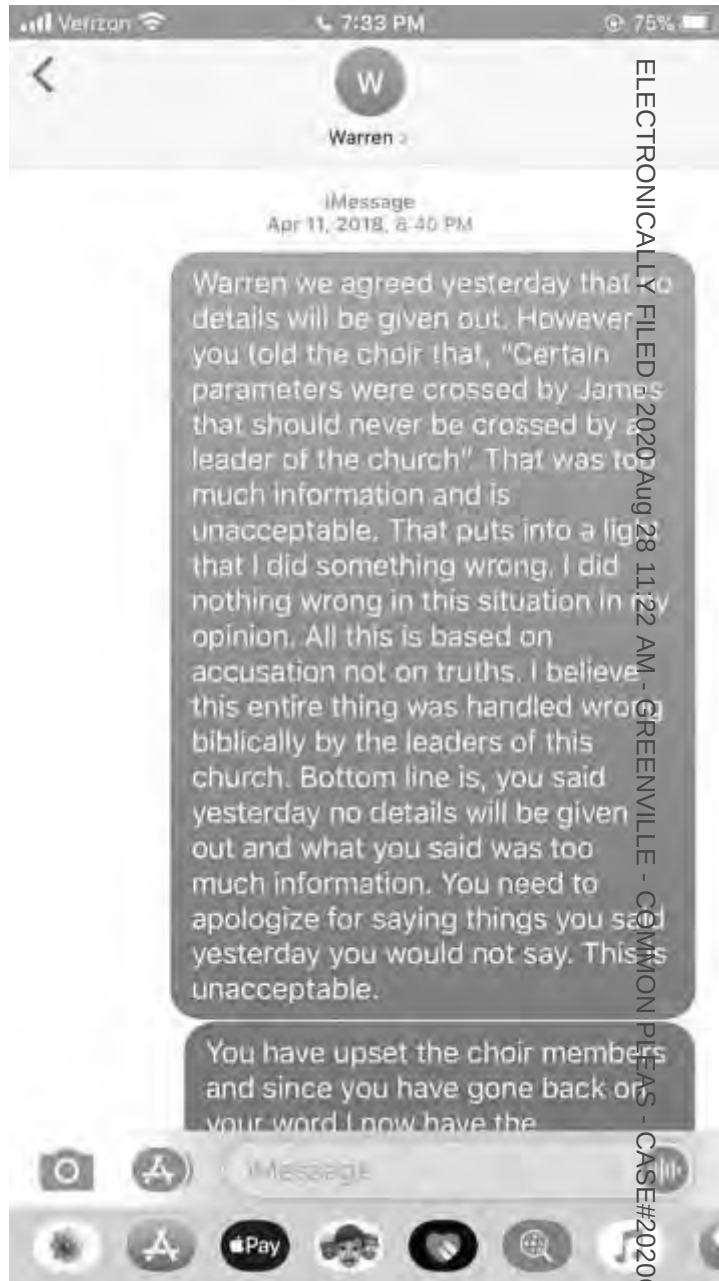
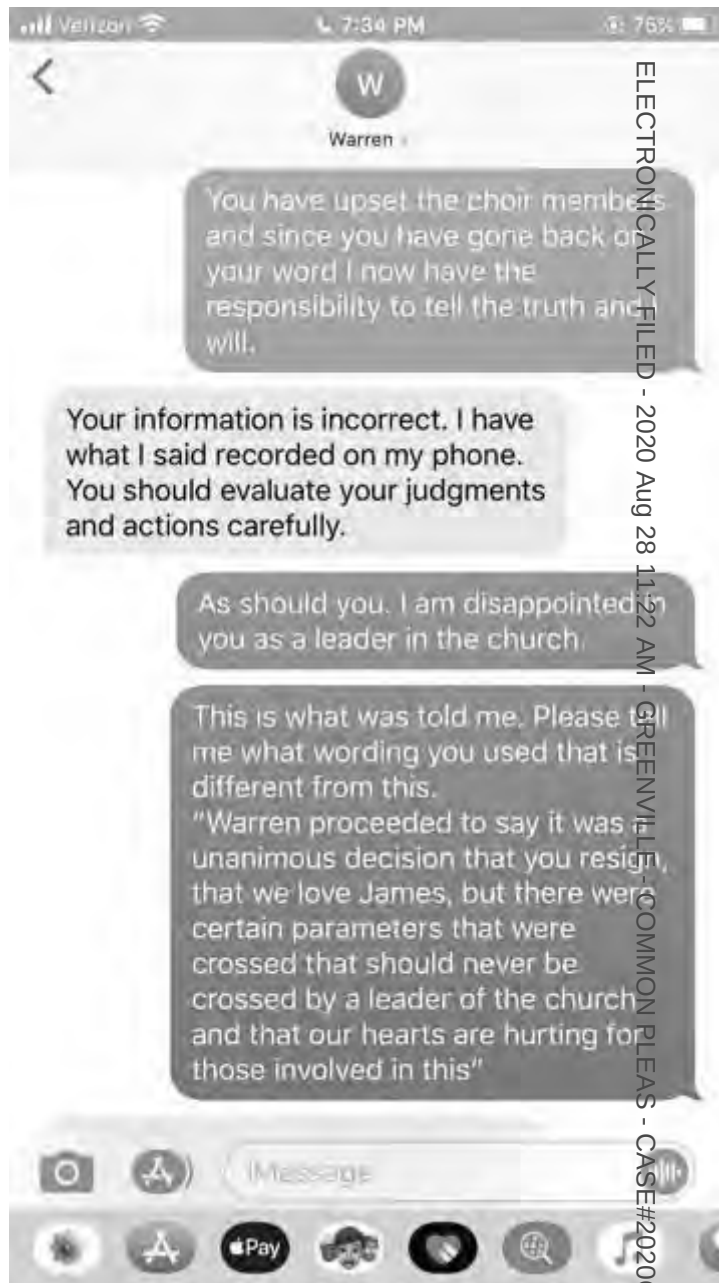


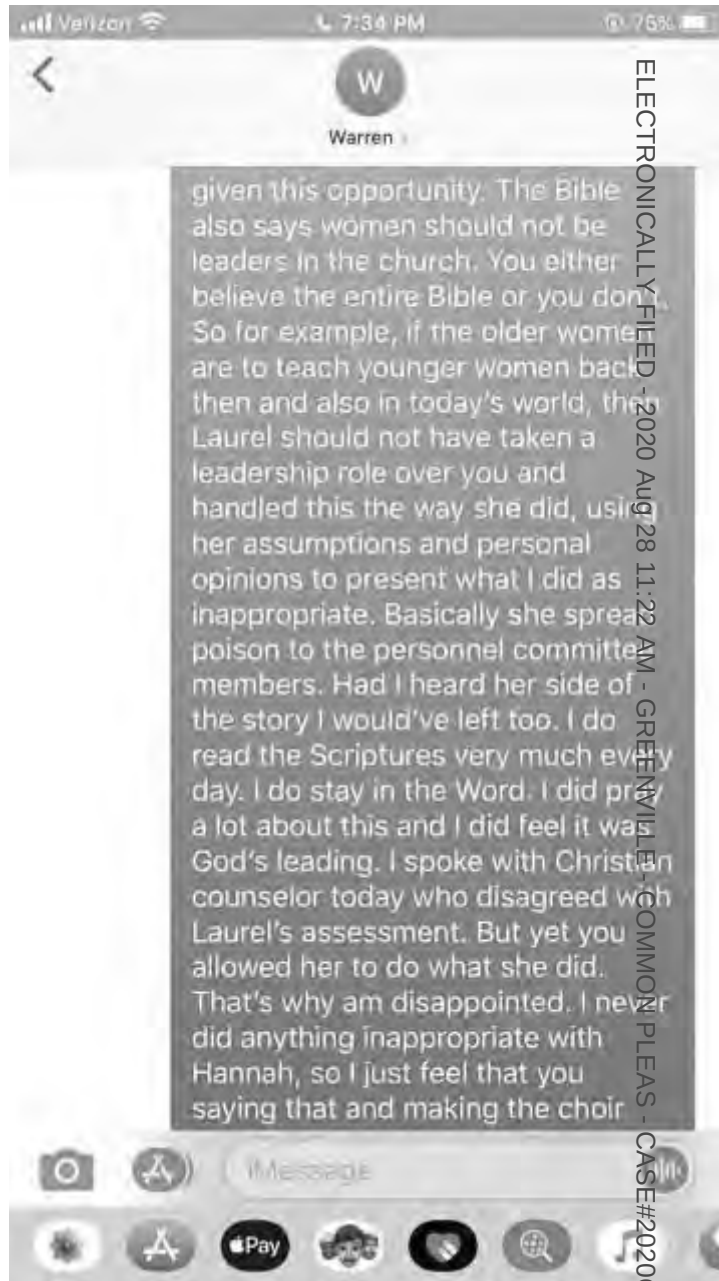
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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

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

DICKSON DAVIS LAW FIRM, LLC

Deborah D. Davis, Esq.
SC Bar No.: 102942
310 Rutherford Street
Greenville, SC 29609
(864) 729-3428 t
(864) 752-1424 f
d.davis@dicksondavislaw.com
www.dicksondavislaw.com

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. Whether the lower court erred granting a motion to dismiss Appellant's Complaint when the factual allegations in Appellant's Complaint were sufficient to form a cause of action for the following causes of action:**
 - a. Defamation**
 - b. Intentional Infliction of Emotional Distress**
 - c. Negligent Infliction of Emotional Distress**
 - d. False Imprisonment**
 - e. Fraud in the Inducement**
 - f. Negligent Misrepresentation**
 - g. Negligent Hiring, Supervision, and Retention of Employees**
 - h. Wrongful Termination**

- II. Whether the lower court erred granting a summary judgment when a genuine dispute of facts existed for the following causes of action:**
 - a. False Imprisonment**
 - b. Defamation**
 - c. Fraud in the Inducement**
 - d. Negligent Misrepresentation**
 - e. Negligent Hiring, Supervision, and Retention of Employees**
 - f. Intentional Infliction of Emotional Distress**
 - g. Wrongful Termination**

- III. Whether the lower court erred dismissing Appellant's Complaint when a severance agreement did not bar Appellant's claims at the time of signing the document and afterward related to the following causes of action:**
 - a. Defamation**
 - b. Fraud in the Inducement**
 - c. Negligent Misrepresentation**
 - d. Negligent Hiring, Supervision, and Retention of Employees**
 - e. Intentional Infliction of Emotional Distress**
 - f. Wrongful Termination**

- IV. Whether the lower court erred denying Appellant the opportunity to amend Appellant's Complaint when granting a motion for judgment on the pleadings.**

- V. Whether the trial court erred denying a motion to reconsider based on Respondents' misconduct under Rule 60 of the South Carolina Rules of Civil Procedure.**

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. Rule 12(c), SCRPC. (R. pp. ____; Resp't Charlotte Collier'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), SCRPC. 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 Sabeau 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 Sabeau 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 Sabeen 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 Sabeen 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

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

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 taboo⁶ 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 stigma⁸ 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.

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 Sabeen 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), SCRPC.

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), SCRPC; *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), SCRPC; 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), SCRPC.

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), SCRPC (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, SCRPC; *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), SCRPC (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), SCRPC.

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, SCRPC; *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 exists, a Rule 56 motion for summary judgment must fail when a dispute exists 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), SCRPC.

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, SCRCPP (“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), SCRCPP; *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.”

Micronics, 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), SCRCPP. 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), SCRCPP. 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), SCRPC; *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 action¹¹ 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.*

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 Sabeen 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 Sabeen 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.

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

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 Sabeen, 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 Sabeen Aff. ¶¶ 13, 15).

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 Sabeau 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

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 Sabeau 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 Sabeau 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.

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), SCRCPP. 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, SCRCF. 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 society²⁴ 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 Sabeau 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 Sabeau 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

relationship²⁵ 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, SCRPC.

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

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)).

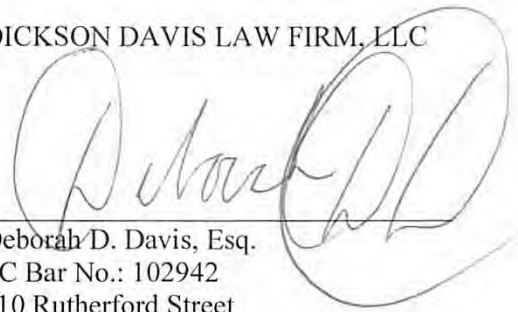
duty; (3) the defendant's breach of duty was the actual and proximate cause of the plaintiff's injury; and, (4) the plaintiff suffered damages.²⁸ See *Metallo v. Torrington Bd. of Educ.*, 2010 Ct. Sup. 10762, 10764 (Conn. Super. Ct. 2010). Whether James's cause of action for negligent infliction of emotional 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 .

DICKSON DAVIS LAW FIRM, LLC



Deborah D. Davis, Esq.
SC Bar No.: 102942
310 Rutherford Street
Greenville, SC 29609
(864) 729-3428 t
(864) 752-1424 f
d.davis@dicksondavislaw.com
www.dicksondavislaw.com

ATTORNEY FOR APPELLANT

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; *Rodriguez 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):

Northgate Baptist Church
c/o Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
Charles E. McDonald & S. Michael Nail
300 North Main Street
P.O Box 2757

RECEIVED
Apr 23 2021
SC Court of Appeals

Greenville, SC 29602

Charlotte Collier

c/o Clawson and Staubes, LLC

Amy S. Snyder

1000 East North Street

Suite 200

Greenville, SC 29601

Hannah Elizabeth Collier and Linda Smith

c/o Duggan & Hughes, LLC

Daniel R. Hughes

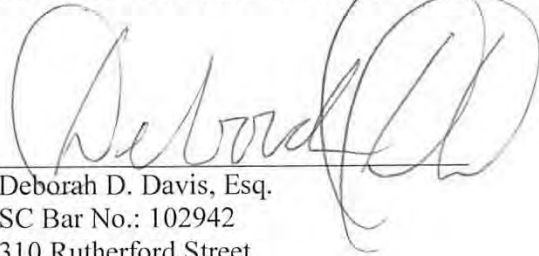
457-B Pennsylvania Avenue

P.O. Box 449

Greer, SC 29652

Respectfully submitted this 23 day of April , 2021 .

DICKSON DAVIS LAW FIRM, LLC



Deborah D. Davis, Esq.
SC Bar No.: 102942
310 Rutherford Street
Greenville, SC 29609
(864) 729-3428 t
(864) 752-1424 f
d.davis@dicksondavislaw.com
www.dicksondavislaw.com

ATTORNEY FOR APPELLANT



DICKSON DAVIS LAW FIRM

**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
Columbia, SC 29211

RECEIVED

Apr 23 2021

SC Court of Appeals

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.

Deborah D. Davis, Esq.
SC Bar No.: 102942
Attorney for Appellant

cc: Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
Charles E. McDonald & S. Michael Nail
300 North Main Street
P.O. Box 2757
Greenville, SC 29602
(864) 241-1813

Clawson and Staubes, LLC
Amy S. Snyder
1000 East North Street
Suite 200

DICKSON DAVIS LAW FIRM, LLC ■ 310 RUTHERFORD STREET ■ GREENVILLE, SOUTH CAROLINA ■ 29609
864.729.3428 TEL ■ 864.752.1424 FAX ■ WWW.DICKSONDAVISLAW.COM ■ INFO@DICKSONDAVISLAW.COM

Greenville, SC 29601
(864) 331-8940

Duggan & Hughes, LLC
Daniel R. Hughes
457-B Pennsylvania Avenue
P.O. Box 449
Greer, SC 29652
(864) 334-2500

ATTORNEYS FOR THE RESPONDENTS

/ddd

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

RECEIVED
May 21 2021
SC Court of Appeals

JAMES EARL TEGELER,..... Appellant,

v.

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

INITIAL BRIEF OF RESPONDENT NORTHGATE BAPTIST CHURCH

Charles E. McDonald III
S. Michael Nail
OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.
300 North Main Street, Suite 500
Greenville, South Carolina 29601
(864) 271-1300 (telephone)
(864) 235-8806 (facsimile)
charles.mcdonald@ogletree.com
michael.nail@ogletree.com

Attorneys for Respondent Northgate Baptist Church

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STATEMENT OF ISSUES ON APPEAL

1. **WHETHER THE TRIAL COURT ERRED IN CONCLUDING THAT THE AGREEMENT BETWEEN THE PARTIES IS VALID AND ENFORCEABLE AND THE APPELLANT’S CLAIMS AGAINST NORTHGATE ARE BARRED PURSUANT TO THE RELEASE CONTAINED IN THE AGREEMENT.**

STATEMENT OF THE CASE

A. Procedural History Relevant to Northgate.

On February 25, 2020, Appellant James Earl Tegeler (“Appellant”) filed a Complaint against Respondents Northgate Baptist Church (“Northgate”), Charlotte Collier, Hannah Elizabeth Collier, and Linda Smith.¹ (See Complaint.). In the Complaint, Appellant asserted the following claims against Northgate: false imprisonment; defamation; fraud in the inducement; negligent misrepresentation; negligent hiring, supervision, and retention of employees; intentional infliction of emotional distress; negligent infliction of emotional distress; wrongful termination; and civil conspiracy. (Complaint ¶¶ 124–215.). On March 25, 2020, Northgate filed a Motion to Dismiss (“Northgate’s Motion”), which attached a copy of Appellant’s Separation Agreement and Release of Claims (“Agreement”) with Northgate. (Northgate’s Motion to Dismiss and Exhibit A – Separation Agreement and Release of Claims.). The Agreement contains a waiver of all claims stemming from Appellant’s employment with Northgate. Accordingly, Northgate argued dismissal was proper under either a motion to dismiss or motion for summary judgment standard. (Northgate’s Motion to Dismiss, FN1.). On August 13, 2020, Northgate filed its Memorandum in Support of its Motion to Dismiss. (Defendant Northgate Baptist Church’s Memorandum in Support of Its Motion to Dismiss (“Northgate Memo”).) On August 17, 2020, Appellant filed his response to Northgate’s Motion to Dismiss,

¹ Charlotte Collier, Hannah Elizabeth Collier, and Linda Smith are collectively hereinafter referred to as “Co-Respondents.”

which included a number of affidavits and exhibits. (Plaintiff's Response to Defendant Northgate Baptist Church's Motion to Dismiss and Memorandum in Support of Its Motion to Dismiss, Defendant Charlotte Collier's Motion to Dismiss, Defendants Hannah Elizabeth Collier and Linda Smith's Motion for Judgment on the Pleadings and Motion to Dismiss ("Plaintiff's Opposition").).

On August 18, 2020, a hearing was held before the Honorable Alex Kinlaw, Jr. Counsel for Appellant, Northgate, and Co-Respondents were all present and presented oral argument. The same day, Judge Kinlaw entered a Form 4 Order Granting Northgate's Motion and indicating that a formal order would follow within twenty (20) days. ("Form 4 Order"). Before the Form 4 was entered, on August 28, 2020, Appellant filed a Motion for Reconsideration to Alter or Amend a Judgment and Motion for Relief from Judgment ("Motion for Reconsideration"), which also included a number of untimely affidavits and exhibits – even one from Appellant himself – wherein he inappropriately attempts to provide testimony refuting Northgate's position it asserted at the hearing. Appellant's Motion for Reconsideration also contained a number of untimely arguments that were not presented at the hearing, and thereby waived. Those arguments are also not properly before this Court. Northgate's Response to Appellant's Motion for Reconsideration to Alter or Amend a Judgment and Motion, which it filed on September 3, 2020, addressed these deficiencies. (See Northgate's Response to Appellant's Motion for Reconsideration, pp. 2-5.).

On September 8, 2020, Judge Kinlaw issued the formal, written Order Granting Northgate's Motion. ("Order Granting Defendant Northgate Baptist Church's Motion to Dismiss"). Nevertheless, on September 14, 2020, Appellant filed an Amended Motion for Reconsideration to Alter or Amend a Judgment and Motion for Relief from Judgment

(“Amended Motion for Reconsideration”), which contained even more untimely exhibits² and waived arguments. On September 15, 2020, Northgate filed its response to Appellant’s Amended Motion for Reconsideration, only addressing the newly-formed and untimely arguments asserted by Appellant. (“Defendant Northgate Baptist Church’s Response to Plaintiff’s Amended Motion for Reconsideration to Alter or Amend a Judgment and Motion for Relief from Judgment”, pp. 2-6.). On November 9, 2020, Judge Kinlaw issued an Order Denying Appellant’s Amended Motion for Reconsideration. (“Order Denying Plaintiff’s Motion for Reconsideration to Alter or Amend a Judgment and Motion for Relief from Judgment”).

On November 19, 2020, Appellant filed a Notice of Appeal (“Notice”). Following an Order Granting Appellant’s Motion to File Appellant’s Initial Brief Out of Time, Appellant filed his Initial Brief of Appellant (“Appellant’s Brief”) on April 23, 2021. Northgate now submits this response to Appellant’s Brief as to the matters related to Northgate.

B. Appellant Released His Claims Against Northgate.

Before Appellant’s separation from Northgate, he entered into a written and enforceable Agreement³ with Northgate wherein he released all claims against Northgate related to his employment or separation from Northgate in exchange for valuable monetary consideration (severance):

² What is more is Appellant’s inclusion of confidential pre-suit settlement communications between counsel. Accordingly, Northgate requested that those exhibits be disregarded by the court and stricken from the record. Northgate respectfully issues the same request to this Court.

³ While the Agreement was referenced in multiple paragraphs of the Complaint, it was not attached. The trial court had the option of treating a motion under SCRCP 12(b)(6) as a motion for summary judgment and consider matters presented outside of the pleadings, since the parties were afforded a reasonable opportunity to respond to such matters in accordance with Rule 56(c) and (e) of the Rules of Civil Procedure. *Brown v. Leverette*, 291 SC 364, 353 S.E.2d 697 (1987).

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.

See Separation Agreement and Release of Claims ("Agreement"), Exhibit A to Defendant Northgate Baptist Church's Memorandum in Support of Its Motion to Dismiss, filed August 13, 2020, at ¶ 3(A).

Appellant even negotiated the terms of the Agreement, requesting and receiving an increase to the original severance amount offered by Northgate which is evident from the face of the Agreement.⁴ Appellant signed the Agreement and kept the severance payment. Appellant has released his claims against Northgate that are the subject of the claims brought in the lawsuit.

STANDARD OF REVIEW

I. Judicial Review of a Settlement Agreement is a Question of Law.

Settlement agreements "are viewed as contracts" under South Carolina law. *Byrd v. Livingston*, 398 S.C. 237, 241, 727 S.E.2d 620, 621-22 (Ct. App. 2012) (quoting *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009)). "An action to construe a contract is an action at law." *Id.* at 241, 727 S.E.2d at 622 (citing *Silver v. Abstract Pools & Spas, Inc.*, 376 S.C. 585, 590, 658 S.E.2d 539, 541 (Ct. App. 2008)). Because it is an action at law, this Court is to review the Court's Order enforcing the Settlement Agreement "under an 'any evidence' standard." *Pruitt v. S.C. Med. Malpractice Liability Joint Underwriting Ass'n*, 343 S.C. 335, 339, 540 S.E.2d 843, 845 (2001) (citing *Felts v. Richland County*, 303 S.C. 354, 400 S.E.2d 781 (1991)). Accordingly, "the judge's findings will not be disturbed unless they are without evidentiary support." *Byrd*, 398 S.C. at 241, 727 S.E.2d at 622 (citing *Townes Assocs. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976)).

⁴ See Separation Agreement at ¶ 1(A), wherein the proposed consideration is doubled from \$2,600.00 to \$5,200.00.

II. Motion to Dismiss

A motion to dismiss under Rule 12(b)(6), SCRCP is the usual and proper method of testing the legal sufficiency of the Complaint and is directed to the factual and legal sufficiency of the Complaint. *See Food Lion, Inc. v. United Food & Commercial Workers Int'l Union*, 351 S.C. 65, 567 S.E.2d 251 (S.C. Ct. App. 2002); *Woodell v. Marion Sch. Dist. ONE*, 307 S.C. 297, 414 S.E.2d 794 (S.C. 1992). “[A] motion under Rule 12(b)(6) . . . admits the well pleaded facts in the Complaint, but it does not admit the inferences drawn by the Plaintiff from such facts, nor does it admit conclusions of law.” *Carolina Winds Owners’ Ass’n, Inc. v. Joe Harden Builder, Inc.*, 297 S.C. 74, 76, 374 S.E.2d 897, 899 (S.C. Ct. App. 1988); *Carrington v. City of Spartanburg*, 283 S.C. 298, 322 S.E.2d 28 (S.C. Ct. App. 1984), overruled on other grounds, *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (S.C. 1985).

III. Motion for Summary Judgment

“The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.” *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003) (citing to *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)). Summary judgment “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” SCRCP 56(c).

The moving party has the initial burden of demonstrating the absence of a genuine issue of material fact. *Baughman v. American Telephone and Telegraph Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). The moving party may discharge this responsibility by pointing out to the trial court that there is an absence of evidence to support the nonmoving party’s case. *Id.* It

is not necessary for the moving party to “support its motion with affidavits or other similar materials negating the opponent’s claim.” *Id.* (emphasis in original). “Once the moving party carries its initial burden, the opposing party must . . . do more than simply show that there is some metaphysical doubt as to the material facts, but must come forward with specific facts showing that there is a genuine issue for trial.” *Id.* (citing *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 538, 552 (1986)) (emphasis in original) (internal quotations omitted).

Courts may treat a motion under SCRCP 12(b)(6) as a motion for summary judgment and consider matters presented outside of the pleadings, if the parties are afforded a reasonable opportunity to respond to such matters in accordance with Rule 56(c) and (e) of the Rules of Civil Procedure. *Brown*, 291 S.C. at 353 S.E.2d at 697. This clearly occurred in the case as the Appellant had a copy of the Agreement and Appellant was provided opportunity to brief legal arguments and attend a hearing with trial judge.

ARGUMENT⁵

1. THE TRIAL COURT PROPERLY CONCLUDED THAT THE AGREEMENT IS A VALID AND ENFORCEABLE CONTRACT AND THE APPELLANT’S CLAIMS AGAINST NORTHGATE ARE BARRED PURSUANT TO THE RELEASE CONTAINED IN THE AGREEMENT.

A. Appellant’s claims against Northgate are barred.

Appellant’s primary claims and arguments are not really directed toward Northgate but, rather, to the other Respondents and focus on the underling allegations and not the issue on

⁵ Northgate only addresses Appellant’s arguments directed to his claims against Northgate: Section I, subparts A through C. Appellant’s other assertions are irrelevant to Northgate, and have no bearing on whether Appellant’s claims against Northgate, alone, survive. However, Northgate incorporates the Co-Respondents’ arguments herein to the extent they are not inconsistent with Northgate’s position on appeal.

appeal as to Northgate. This is clear from a review of how Appellant begins his 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.”

(Initial Brief of Appellant, p. 5.) Because Appellant begins the substantive portion of his brief with this sentence, Northgate presumes Appellant finds it important. This statement is one of many, however, that are superfluous and simply have no bearing on the issues in this appeal as they relate to Appellant’s claims against Northgate.

The sole issue before this Court (as was the issue before the trial court) regarding Northgate is simple: are Appellant’s claims against Northgate barred by the terms of the Agreement? The trial court properly concluded the answer is “Yes.” And because the answer is “yes,” then all of Appellant’s claims against Northgate are extinguished and barred as a matter of law and Appellant’s appeal as to his claims against Northgate must be dismissed. Indeed, the evidence in the record clearly shows that the trial court correctly answered in the affirmative and as a matter of law, Appellant’s claims against Northgate fail and should be dismissed and this appeal denied.

A release is a contract, and releases are governed by same principles of adequacy of consideration that apply to other contracts. *See Hyman v. Ford Motor Co.*, 142 F. Supp. 2d 735, 741 (D.S.C. 2001); *see also Lowery v. Callahan*, 210 S.C. 300, 304, 42 S.E.2d 457, 458 (1947) (wrongful death settlement of \$500 enforced). No set form of words is necessary to constitute a release. *Gardner v. Columbia Police Dep’t*, 216 S.C. 219, 223, 57 S.E.2d 308, 309-10 (1950)

(construing terms of release of tortfeasor "of any trouble whatsoever" in consideration of cash payment exonerated tortfeasor from all liability). Further, words and expressions in releases are given their ordinary meaning unless the context of the instrument indicates that the words are being used in a different sense. *Id.*

In construing the terms of a contract, a court must first look at the language of the contract to determine the intentions of the parties. *C.A.N. Enterprises, Inc. v. South Carolina Health & Human Services Fin. Comm'n*, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988). When a contract unambiguously sets forth the contracting parties' intent, a court is bound by that clearly expressed intent without resort to extrinsic evidence. *Id.* "Extrinsic evidence giving the contract a different in meaning from that indicated by its plain terms is inadmissible." *Id.* at 377-78, 373 S.E.2d at 586.

It is well established that a broad and general release of all claims, which is executed in exchange for valid consideration, acts as a bar to any claim covered by the time period of the release. *Virginia Impression Products Corp. v. SCM Corp.*, 448 F.2d 262, 265 (4th Cir. 1971) (a general release indicates that "the parties desire to settle all matters forever . . . not only enumerated specific differences, but claims of every kind or character, known and unknown") (internal citations omitted); *see also Hause v. AstraZeneca, LP*, 2015 WL 1524409 (D.S.C. 2015); *Scoggins v. Honeywell Int'l, Inc.*, 2012 WL 6102031 (D.S.C. 2012).

The trial court correctly determined that the release in the Agreement meets the requirements of South Carolina law: it unambiguously⁶ represents a voluntary and bargained-for

⁶ In determining as a matter of law whether a contract is ambiguous, the court must consider the contract as a whole, rather than deciding whether phrases in isolation could be interpreted in various ways: "[O]ne may not, by pointing out a single sentence or clause, create an ambiguity." *Yarborough v. Phoenix Mut. Life Ins. Co.*, 266 S.C. 584, 592, 225 S.E.2d 344, 348 (1976).

exchange whereby Appellant released Northgate and all of its employees and agents from any liability arising out of his employment. The plain terms of the Agreement unambiguously reveal Appellant's intent to release all claims against Northgate:

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. . .

See Agreement, at ¶ 3(A).

Employee further expressly agrees that this Agreement may be treated as a complete defense to any action or proceeding that may be brought by Employee . . . against the Company . . . for relief or damages of any kind arising from Employee's employment or termination from employment with the Company. . .

Id. at ¶ 3(B).

The 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. . .

Id. at ¶ 3(D).

Indeed, all of the allegations against Northgate contained in Appellant's Complaint contain allegations relating to his employment with Northgate and/or circumstances surrounding his termination therefrom. Accordingly, all claims related to his employment are covered by the release in the Agreement. As such, Appellant released all such claims against Northgate when he signed the Agreement and accepted the monetary consideration in exchange for signing the release, which cannot now be the basis of a lawsuit.

"Whether a contract is ambiguous is to be determined from the entire contract and not from isolated portions of the contract." *Farr v. Duke Power Co.*, 265 S.C. 356, 362, 218 S.E.2d 431, 433 (1975). So, despite Appellant's attempt to isolate only a certain provision of the Agreement to cast doubt on its validity, the trial court properly determined it is enforceable based on a review of the Agreement as a whole.

The trial court considered all of the Appellant's plethora of arguments and documents, but correctly determined that the Agreement was enforceable and that all of Appellant's claims against Northgate are barred. To hold otherwise would (1) require the parties and the Court to waste time and resources litigating matters and determining issues that have already been released by way of an unambiguous and enforceable contract, and (2) taking Appellant's arguments seeking to challenge the validity of the Agreement after the fact to their logical conclusion, nearly every release agreement in this state would be unenforceable, subject to challenge by simply purporting to argue after the fact that the individual was induced to sign the release. At the least, allowing Appellant's claims against Northgate to proceed would essentially mandate every contractual dispute of its kind to reach trial, which would discourage resolutions and lead to absurd results. Indeed, the issue of the enforceability of a contract is a legal claim and thus properly suited for determination at Rule 12(b) or converted Rule 56 motion for summary judgment. This is a simple and straightforward issue before this Court, but one that Appellant attempts to complicate in order to make a last-ditch effort to salvage his claims against Northgate. However, as the trial court correctly determined, Appellant's efforts miss the mark, and they cannot be fixed through any amendment of the Complaint.

B. The lower court correctly determined appellant has not met the conditions precedent for asserting duress because he executed the Agreement by his own free will and further ratified the Agreement by retaining the severance payment.

Nearly two years after he executed the Agreement, Appellant's appeal (and his Complaint) is improperly riddled with the notion that Northgate somehow forced him to execute the Agreement. However, it is undisputed that Appellant voluntarily executed the Agreement

(even actively negotiating⁷ an increase in the amount of consideration he received from Northgate for his release of claims against Northgate) and retained the monetary benefit thereof without raising the issue of duress until he filed the Complaint—two years after his termination. As such, his duress argument fails.

Under South Carolina law, duress has been defined as 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); *Cherry v. Shelby Mut. Plate Glass & Cas. Co.*, 191 S.C. 177, 4 S.E.2d 123 (1939) (duress is defined as “a condition of the mind produced by improper external pressure of influence that practically destroys the free agency of a party and causes him to do an act or form a contract not of his own volition”). As noted in *Nightingale's Estate*, the fear which makes it impossible for a person to exercise his own free will is not so much to be tested by the means employed to accomplish the act, as by the state of mind produced by the means invoked. 182 S.C. at 547, 189 S.E. at 898. Whether duress exists in a particular case is a question of fact to be determined according to the circumstances of each case, such as the age, sex, and capacity of the party influenced. *See Gainey v. Gainey*, 382 S.C. 414, 428–29, 675 S.E.2d 792, 799 (Ct. App. 2009). However, there is no question of fact of duress in this case as

⁷ An agreement is unconscionable if there is an absence of meaningful choice on the part of one party due to onesided contract provisions, and if there are “terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them.” *Brown v. Santander Consumer USA, Inc.*, No. CA 0:12-2825-CMC-PJG, 2013 WL 4017162, at *4 (D.S.C. Aug. 5, 2013) (internal citations omitted). Thus, to the extent Plaintiff’s argument is guised as unconscionability, the argument still falls flat because Appellant negotiated the terms of his release, rendering it impossible to claim that the Agreement was “oppressive.”

it is undisputed Appellant clearly negotiated the terms of the severance amount and kept the severance amount and did not challenge the validity of the Agreement for over two years.

As stated *supra*, Appellant cannot demonstrate that he had no other alternative but to sign the Agreement. Indeed, his suggestion that he was under duress is deflated by his active negotiation for an increased severance payment in exchange for his release of all claims against Northgate. Additionally, the general rule in South Carolina is that when a party seeks to set aside a release, he must first return any consideration received by him for the release. *Hyman*, 142 F. Supp. 2d at 747–48 (citing *Gray v. Petoseed Co.*, 1997 WL 716454, 129 F.3d 1259 (4th Cir. 1997) (table) (affirming dismissal of fraud because under South Carolina law when a party to a compromise settlement wishes to avoid a valid release and be restored to his original rights, he must restore the other party to his original position by returning or offering to return the consideration received under the compromise); *McCarty v. Kendall Co.*, 242 F.Supp. 495 (W.D.S.C. 1965) (action to avoid a release allegedly induced by fraud dismissed due to plaintiff's failure to return or tender consideration given for settlement); *Dunaway v. United Ins. Co. of America*, 239 S.C. 407, 410, 123 S.E.2d 353, 354 (1962) (failure to tender or return consideration given for settlement precluded recovery in action for fraudulent inducement of settlement); *State Farm Mut. Auto. Ins. Co. v. Turner*, 303 S.C. 99, 102, 399 S.E.2d 22, 23 (1990) (“it is well settled that one who seeks to avoid the effects of a release must first return or tender consideration paid thereof”).

In *Hyman*, a former automobile dealer insisted upon retaining the benefits which he received under the contract releasing manufacturer from liability, and, at the same time, insisted upon escaping the obligations imposed by the release. *Hyman*, 142 F. Supp. 2d at 748 (D.S.C. 2001). Thus, the court noted that the condition precedent to avoiding the release (the return or

tender of consideration for the release), had not been complied with. *Id.* The court took issue with the fact that the dealer knew of the alleged “duress” at the time he signed the release but did not raise the issue for over three years. *Id.* Thus, the court held that the dealer “clearly waived his right to avoid the release on claims of duress and has affirmed the release.” *Id.*

Importantly, the *Hyman* court also recognized that a release which is procured by duress is not void, but merely voidable and is capable of being ratified. *Id.* The person claiming duress must act promptly to repudiate the contract or release, or he will be deemed to have waived his right to do so. *Id.* It is a well-established proposition that a voidable contract may be ratified by a party's failure to act promptly to repudiate the contract. *Id.* (citing *Anselmo v. Manufacturers Life Ins. Co.*, 771 F.2d 417, 420 (8th Cir. 1985) (plaintiff signed a release under threat of losing severance pay, then sued to rescind, claiming duress, and court held for defendant on ground that employee accepted and thereby ratified the contract)). A party may ratify an agreement entered into under duress in a number of different ways: by intentionally accepting benefits under the contract; by remaining silent or acquiescing in the contract for a period of time after he has the opportunity to avoid it; or by recognizing its validity by acting upon it, performing under it or affirmatively acknowledging it. *Id.* (internal citations omitted). Thus, one seeking to repudiate an agreement allegedly entered into under duress must promptly complain of the circumstances under which the document was signed. *Id.* The *Hyman* court concluded as follows: “The undisputed facts indicate that [the dealer] ratified the release by retaining the benefits of the release for over three years. [The dealer] seeks to have it both ways—to retain the benefits of the buy back privilege and to sue [the manufacturer] —and that is something which this court cannot allow.” *Id.* at 749.

Here, it is undisputed that Appellant retained the monetary consideration he received from Northgate in exchange for his agreement to release all claims against Northgate in the Agreement. However, nearly two years later when he filed the Complaint, he then claimed that he was under “duress” when he signed the Agreement. Finally, while Appellant now alleges that he “impliedly offered” to return the consideration, the document which purports to support the notion reveals nothing of the sort.⁸ (Initial Brief of Appellant, p. 27, which cites to Exhibit A to Appellant’s Amended Motion for Reconsideration, at p. 5, specifically the language in paragraph (2).) Similar to *Hyman*, Appellant has not met the conditions precedent to asserting his new proposition of “duress” and it cannot be used to circumvent the valid and enforceable Agreement. Further, by his extreme delay in raising the issue, he has nevertheless ratified the Agreement.

CONCLUSION

There is sufficient evidence to support the trial court’s conclusion that the Agreement is a valid and enforceable contract that was not executed under the guise of duress. Indeed, the trial

⁸ The argument on page 27 of the Initial Brief of Appellant continues to display Appellant’s far-reaching attempts to keep his claims alive. In his Amended Notice and Motion for Consideration to Alter or Amend a Judgment and Motion for Relief from Judgment, he stated that he offered to return the severance payment: “For example, Defendant CHURCH was placed on notice of Plaintiff’s offer to return back to the status quo when expressing a desire to reinstate Plaintiff’s employment operating as an offer to reconcile funds received upon termination of Plaintiff’s employment when reinstated. Ex. A; see also Rule 60(b). Clearly, if Plaintiff were reinstated by Defendant CHURCH, said funds from the termination agreement would have been reconciled with payroll accordingly to place the parties at status quo. Defendant CHURCH was fully aware of these correspondences when claiming Plaintiff never made an offer to return the consideration and return the parties’ status back to status quo prior to the Agreement.” Indeed, Appellant has morphed the allegation of returned consideration (all after the trial court hearing) into an “implied” offer. A review of the record reveals neither an actual offer or implied offer to return the severance payment, and the argument is nevertheless waived because he did not timely present it to the trial court.

court rightly concluded that Appellant waived all of his claims against Northgate by way of his execution of the valid and enforceable Agreement and retention of the severance payment. Accordingly, Respondent Northgate Baptist Church requests that the Court affirm the decision of the trial court.

Respectfully submitted,

s/Charles E. McDonald III
Charles E. McDonald III
S. Michael Nail
OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.
300 North Main Street, Suite 500
Greenville, South Carolina 29601
(864) 271-1300 (telephone)
(864) 235-8806 (facsimile)
charles.mcdonald@ogletree.com
michael.nail@ogletree.com

Attorneys for Respondent Northgate Baptist Church

May 21, 2021

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

May 21 2021

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

SC Court of Appeals

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 Respondent Northgate Baptist Church the Appellant and Co-Respondents by sending their attorneys of record a copy of the same via electronic mail and first class mail, properly addressed, postage prepaid at the following addresses:

Deborah D. Davis, Esq.
Dickson Davis Law Firm, LLC
310 Rutherford Street
Greenville, SC 29609
d.davis@dicksondavislaw.com
Attorneys for Appellant

Amy S. Snyder
Clawson and Staubes, LLC
1000 East North Street
Suite 200
Greenville, SC 29601
asnyder@clawsonandstaubes.com
Attorneys for Respondent Charlotte Collier

Daniel R. Hughes
Duggan & Hughes, LLC

457-B Pennsylvania Avenue
P.O. Box 449
Greer, SC 29652
dhughes@dugganhughes.com
Attorneys for Respondents Hannah Elizabeth
Collier and Linda Smith

May 21, 2021

s/Charles E. McDonald III

RECEIVED

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Alex Kinlaw, Circuit Court Judge

Case No.: 2020-001525

James Earl Tegeler Respondent/Appellant

v.

Charlotte Collier, Hannah Elizabeth Collier, Linda Smith, Northgate Baptist Church
.....Appellant/Respondent

INITIAL BRIEF OF THE RESPONDENT CHARLOTTE COLLIER

Amy M. Snyder
CLAWSON and STAUBES, LLC
Bar No.: 7968
1000 E North Street, Suite 200
Greenville, South Carolina 29601-3106
Phone: (864) 331-8940
Fax: (864) 232-2921
Email: asnyder@clawsonandstaubes.com
Attorney for Respondent Charlotte Collier

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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT CORRECTLY GRANT RESPONDENT CHARLOTTE COLLIER'S MOTION FOR JUDGMENT ON THE PLEADINGS ON THE BASIS THAT THE APPELLANT'S COMPLAINT FAILED TO STATE ANY CLAIMS FOR WHICH RELIEF COULD BE GRANTED?
2. WERE THE STATEMENTS CLAIMANT ALLEGES WERE DEFAMATORY SUBJECT TO QUALIFIED PRIVILEGE?
3. DID THE COURT APPROPRIATELY DISMISS THE APPELLANT'S COMPLAINT WITH PREJUDICE?

STANDARD OF REVIEW

An appellate court applies the same standard of review as the trial court when reviewing the dismissal of an action pursuant to Rule 12(b)(6) or Rule 12(c), SCRCP. See *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007) (discussing the standard of review of a motion to dismiss under Rule 12(b)(6), SCRCP); *Hambrick v. GMAC Mortg. Corp.*, 370 S.C. 118, 122, 634 S.E.2d 5, 7 (Ct. App. 2006) (discussing the standard of review of a motion for judgment on the pleadings). A ruling on a Rule 12(b)(6) motion must be based solely on the allegations set forth on the face of the complaint. *Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987). When considering a motion for judgment on the pleadings under Rule 12(c), SCRCP, the court must regard all properly pleaded factual allegations as admitted. *Falk v. Sadler*, 341 S.C. 281, 286-87, 533 S.E.2d 350, 353 (Ct. App. 2000).

While Appellant argues that Rule 60 has application to his case, it does not. A motion filed under both Rule 59(e) and Rule 60(b) should be analyzed only under Rule 59(e) if it was filed no later than 10 days after entry of the adverse judgment

and seeks to correct that judgment. Small v. Hunt, 98 F.3d 789, 797 (4th Cir. 1996); see also Vaughan v. Murray, No. 95-6081, 1995 U.S. App. LEXIS 31288, 1995 WL 649864, at *3 n.3 (4th Cir. Nov. 6, 1995) Robinson v. Wix Filtration Corp. LLC, 599 F.3d 403, 412, 2010 U.S. App. LEXIS 6298, *23, 15 Wage & Hour Cas. 2d (BNA) 1781. "The purpose of Rule 59(e), SCRPC, to alter or amend the judgment[,] is to request the trial judge to 'reconsider matters properly encompassed in a decision on the merits.'" Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992)(quoting Budinich v. Becton Dickinson and Co., 486 U.S. 196, 200, 108 S. Ct. 1717, 100 L. Ed. 2d 178 (1988)). Collins Music Co. v. Igt, 353 S.C. 559, 562, 579 S.E.2d 524, 525 (Ct. App. 2002)

FACTS

The Respondent Charlotte Collier is the mother of the Respondent Hannah Collier. The Respondent Charlotte Collier has been sued as a result of meeting with her Pastor to discuss concerns she had regarding the relationship between her 18 year old daughter Hannah and a 50+ year old Appellant who represented to Ms. Collier that his relationship with her daughter was part of his employment with their Church. All of the claims against the Respondent Charlotte Collier arise from this meeting. During the course of that meeting Charlotte Collier and her daughter referred to the relationship between Appellant and Hannah Collier as inappropriate but specifically stated it was not physical or sexual in nature. (Complaint P. 60 – 61) The Appellant later received a vote of "no confidence" from the church as a result of texts between Hannah Collier and himself that Appellant presented to Church authorities. (Complaint P. 74) The no

confidence vote was also a result of decisions he had made regarding other young girls in the church. (Id.) Appellant resigned with a negotiated severance payment made to him under a separation agreement and release between himself and the Church. (Transcript p. 6 ll 7 – 11)

The Appellant James Tegeler was hired by Northgate Baptist Church in July of 2015. (Complaint. P. 14) He was later promoted to worship leader. (Complaint P. 15) This was a part time position. (Complaint P. 15) Appellant did not serve as a youth pastor or youth director at the Church. (Complaint P. 16) Appellant who is in his 50's alleges that Respondent Hannah Collier, a member of the church who had just turned 18, requested that he be her "mentor." (Complaint P. 21 and 27) The Appellant considered Hannah Collier to be a troubled youth from a broken home. (Complaint P. 23) The Appellant "assisted with gift giving" for Hannah Collier. (Complaint P. 31) He invited her to his family gatherings and on trips. (Complaint P. 31) The Appellant in his Complaint published the following very personal details from Hannah's life that she had shared with Appellant, including but not limited to

- Difficulties with her parents;
- That her father committed adultery;
- That she had personal issues regarding mental illness, self-development, self-esteem, self-perception, maturity, anger management, anxiety, separation anxiety or abandonment issues, eating disorders, self-inflicting physical harm and disorders from coping with a sexual assault; and
- Details regarding her psychological counseling;

(Complaint P. 38)

The Appellant alleges that his “mentoring” was done in his capacity as an employee of Northgate Baptist Church and was authorized by Dr. Barry Jimmerson, the Pastor of Northgate Baptist Church.. (Complaint p. 35) Over the course of this “mentorship” the Appellant perceived Hannah Collier being expressive and affection toward him “akin to daughterly affection.” (Complaint P. 41) Most importantly Appellant admits that this was noticed by her mother Respondent Charlotte Collier and Pastor Jimmerson. (Complaint P. 41 and 43) The Appellant would attempt to “redirect” behaviors by Hannah Collier and when he attempted to do so she became “unreasonably angry.” (Complaint P. 44) This would occur in the presence of Hannah’s mother Respondent Charlotte Collier. (P. 45) This all came to a head on March 11, 2018 when Hannah Collier was “playing on her phone at the table” during Appellant’s son’s birthday party. Appellant notes that the Colliers were aware that it was against Appellants “rules” to have a cell phone at the table and that Hannah did not put the phone away when he asked her to and did not respond well to Appellants “redirection.” (Complaint P. 56 – 58) This interaction is described by Appellant’s counsel in great detail during the course of the hearing in this case. Counsel for Appellant describes this interaction between her client and Hannah Collier as follows:

[S]o what happened with -- there was -- my client had a birthday party for his son on March 11th. At that time, Hannah Collier had complained of throwing up at the table during a meal and then, simultaneously, was playing on her phone and texting. So my client disputes the allegation that he told Hannah to go throw up if that made her feel better. So that's -- we dispute that.

In addition, my client's comment was, if you feel good enough to text, then you should feel good enough to talk to us, instead of being on the phone.

This is a common issue now with the younger generation of bringing phones to the table.
(Transcript p. 8 ll. 1 – 12)

The next day both Hannah and her mother Respondent Charlotte Collier went to speak with Pastor Jimmerson regarding Appellant's relationship with Hannah Collier. Appellant concedes that Pastor Jimmerson was the Appellant's supervisor with regard to all things related to the church. Charlotte Collier told Pastor Jimmerson that she considered the Appellant's relationship with her daughter to be inappropriate. (Complaint P. 59) During that meeting Hannah Collier specifically told Pastor Jimmerson that she did not believe the Appellant had any romantic interest, feelings or aspirations toward her and that they had not had any sexual or intimate relations. (Complaint P. 60 – 61)

Subsequent to that meeting the Appellant met with Pastor Jimmerson to tell him that the mentorship was at an end. (Complaint P. 64) At that meeting Appellant shared texts between him and Hannah Collier with Pastor Jimmerson. (Complaint P. 65) Appellant had a second meeting with Pastor Jimmerson and the chairman of the Church personnel committee Laurel Shaler where Pastor Jimmerson told Appellant of his conversation with the Colliers. At this meeting the Appellant showed texts between himself and Hannah Collier to both Jimmerson and Shaler. (Complaint p. 66 – 67) In that meeting Pastor Jimmerson stated that it was not his understanding that the Appellant had engaged in "improper relations" with Hannah Collier (Complaint P. 68) The Appellant alleges that Ms. Shaler concluded that the Appellant had had "inappropriate relations" with Hannah Collier based upon the texts that the Appellant

showed Ms. Shaler. (Complaint P. 72) Shaler then stated that in addition to the Hannah Collier situation, Appellant had texted another young girl during the church service and asked a different young girl to go on a vacation. (Complaint P. 74)

On April 10, 2018 Appellant attend a staff meeting at the Church where he was accused by Pastor Jimmerson, Ms. Shaler and a Warren Paden of having inappropriate contact with young girls (plural) in the congregation. (Complaint P. 93) The Church asked the Appellant resign and presented him with a separation agreement. (Complaint P. 97) The Appellant has negotiated the check representing payment pursuant to the separation agreement and has not returned that payment. (Transcript p. 19 ll. 2 - 5).

ARGUMENT

I. THE RECORD IN THIS CASE WITH REGARD TO THE RESPONDENT CHARLOTTE COLLIER'S MOTION TO DISMISS IS LIMITED TO THE PLEADINGS IN THIS CASE.

Much of the Appellant's recitation of facts is from affidavits replete with gossip opinions and hearsay some of which were not before the court when it heard Respondent's Motion to Dismiss.¹ While these additional filings may have bearing as

¹ In response to Respondent Charlotte Colliers Motion to Dismiss, Appellant filed the following with the court:

- A series of texts between Appellant and Hannah Collier,
- An affidavit of Roy Sabean, criticizing church leaders and opining as to the character of all parties to this litigation,
- An affidavit of Sue Lutz another church member who sets forth her opinions as to the character of all the parties in this litigation,
- An affidavit of Anne Danciu who knew Appellant's parents. She stated scathing opinions as to the Respondents ranging from her belief that mental illness runs in their family that Hannah's father was intimidating and had not used good

to whether or not amendment of the Complaint would be futile, they are not within the trial court's scope of review under SCRCP 12(c) which provides as follows:

c) Motion for Judgment on the Pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Rule 12, SCRCP

In this instance the court chose not to consider matters outside the pleadings and the Respondent's motion was decided under Rule 12(c).² Therefore the question before the court was whether the extremely detailed Complaint in this case stated a claim and whether the legal defenses raised by the Respondent barred those claims.

manners in failing to let her to pass first through a doorway, that Respondent Charlotte Collier wore provocative clothes to church and that certain church employees were self-righteous and entitled,

- Texts between Hannah Collier and another church member where Hannah states she had nothing to do with Appellant being "fired,"
- Rule 11 correspondence between Respondent's prior counsel Daniel Hughes and counsel for Appellant,
- An email from Respondent Charlotte Collier to the Appellant requesting he have no further contact with her daughter and Appellant's response,
- Emails between Laurel Shaler and Appellant regarding hiring a worship intern.
- Cease and desist letters from Appellant's counsel to the Respondents,
- Texts between unknown persons discussing a meeting at the church, and
- Texts between Appellant and Warren Peden discussing a church meeting where Appellant notes biblically Laurel Shaler as a woman should not be in authority over men.

² Appellant states several time in his brief that the court converted Respondent Charlotte Colliers motion to a Rule 56 motion. This is not the case as is reflected in the trial court's order in this case.

The affidavits and texts would have not been properly received in evidence had the court broadened its scope of review. The affidavits contain hearsay and opinion. None of the affiants were witnesses to the discussion between Respondent Charlotte Collier and her pastor upon which this action is based. Several of the affidavits relate to the way that Respondent Charlotte Collier dressed for church and the opinion of affiants that she was romantically interested in Appellant and thus behaved as “woman scorned.” The affidavits are merely sworn statements of uncharitable gossip to the extent they pertain to the claims against the Respondent Charlotte Collier.

The Appellant additionally filed text messages between himself and Hannah Collier with no authentication or foundation. However a review of those text messages is disturbing. In what purports to be a text message from Appellant to Hannah Collier he writes:

And I earn peoples trust. Like Josie’s mom is excited that she is going to New York City with me and Andrew. Plus I’m taking a couple other friends. Josie is 17. Normally that would be weird but people who know me well understand know what I’m all about and that makes me feel really good. I love earning people’s trust.....
(Exhibit A, Plaintiff’s Response in Opposition to Motion to Dismiss)

Throughout these texts selected and submitted by Appellant, Respondent Charlotte Collier’s daughter Hannah expresses that she is uncomfortable with the relationship with Appellant and is confused as to whether it is romantic or not. Appellant never attempts to break off the “mentorship” but in these texts is insistent that the relationship continue reminding the Hannah Collier how much he cares for her. These texts do not help the Appellant’s case. Appellant is the beneficiary of the court’s decision to exclude the matters outside the pleadings in his decision.

Lastly, Appellant argues that he has pled “actual allegations that the defamatory statement “inappropriate relationship” supported at least one defamatory meaning. However, the paragraphs of the Complaint Appellant sets forth in support of this are all conclusory or opinion, not factual. Additionally, Appellant seeks to hold Charlotte Collier responsible for statements made by others as regarding the relationship between Appellant and Hannah Collier using the words “inappropriate relationship,” ignoring the undisputed fact that the Colliers specified the relationship was not sexual. If others made statements taken out of the context admitted in the Complaint, i.e. that the relationship was non sexual, that is not actionable against Charlotte Collier.

II. THE RESPONDENT CHARLOTTE COLLIER DID NOT MAKE ANY DEFAMATORY STATEMENTS TO HER PASTOR.

"The tort of defamation allows a plaintiff to recover for injury to her reputation as the result of the defendant's communication to others of a false message about the plaintiff." *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 508, 506 S.E.2d 497, 501 (1998). "Slander is a spoken defamation while libel is a written defamation or one accomplished by actions or conduct." *Id.* "To establish a defamation claim, a plaintiff must prove: (1) a false and defamatory statement was made; (2) the unprivileged statement was published to a third party; (3) the publisher was at fault; and (4) either the statement was actionable regardless of harm or the publication of the statement caused special harm." *West v. Morehead*, 396 S.C. 1, 7, 720 S.E.2d 495, 498 (Ct. App. 2011); *Erickson v. Jones Street Publishers, LLC*, 368 S.C. 444, 465, 629 S.E.2d 653, 664 (2006); *Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860

(2002). *Garrard v. Charleston Cty. Sch. Dist.*, 429 S.C. 170, 190-91, 838 S.E.2d 698, 708-09 (Ct. App. 2019)

The alleged defamatory statement made by Respondent Charlotte Collier was made to her Pastor in a meeting concerning what is alleged to have been a “mentorship” approved by her pastor between the 50 year old Appellant and her 18 year daughter was that the relationship was inappropriate. The question before the trial court was whether Respondent’s statement was defamatory. Appellant argues this is a jury question. However our courts do not require a jury determination where a reasonable interpretation of the statement is that it is not defamatory. The Appellant cannot rely on “purely conjectural” interpretations to avoid dismissal. *Fountain v. First Reliance Bank*, 398 S.C. 434, 443, 730 S.E.2d 305, 310 (2012)

In this instance the Appellant cannot rely on innuendo since Appellant pleads that the Respondents told their pastor specifically that the relationship was not sexual or physical. Appellant’s argument requires the court to cherry pick the word “inappropriate” out of the conversation and to interpret it outside it’s meaning in the context of the conversation.

Appellant relies upon numerous “authorities” such as “Word Hippo.com” in in support of his argument that the only kind of inappropriate relationship is a sexual one. Any validity this argument is negated by the allegations of the Complaint that allege the Respondents informed their pastor the relationship was not sexual. The allegations of the Complaint, taken as a whole indicate the Respondent Charlotte Collier told her pastor she was concerned that the nonsexual relationship between the Appellant and

her daughter was inappropriate. Any reading of Complaint and certainly the texts submitted by Appellant would lead any parent to that same conclusion.

Furthermore Respondent Collier's statement that the relationship was inappropriate is opinion. The Appellant is required to establish the alleged defamatory statement was false. However, when a statement is opinion it cannot be proven true or false.³ The facts Appellant pled that were given in support of the opinion --- that a relationship existed and that the relationship was not sexual or physical ---- are true and thus not defamatory.

Appellant's focus is on the characterization of the non-sexual relationship as "inappropriate." There are no South Carolina cases directly on point. The Fourth Circuit has addressed this issue in *Biospherics, Inc. v. Forbes, Inc.*, 151 F.3rd 180 (4th Cir. 1998). The court concluded that when "the bases (sic) for the . . . conclusion are fully disclosed, no reasonable reader would consider the term anything but the opinion of the author drawn from the circumstances related." *Chapin*, 993 F.2d at 1093; see also *Standing Comm. on Discipline v. Yagman*, 55 F.3d 1430, 1439 (9th Cir. 1995) ("A statement of opinion based on fully disclosed facts can be punished only if the stated facts are themselves false and demeaning."); *Moldea*, 15 F.3d at 1144-45 ("Because the reader understands that such supported opinions represent the writer's interpretation of the facts presented, and because the reader is free to draw his or her

³ Appellant argues that the court failed to do a "required preliminary analysis" as to whether the statement constitutes protected opinion. This matter was not raised by Appellant in his Rule 59 (e) motion and thus is waived. *Lucas v. Rawl Family Ltd. P'shp*, 359 S.C. 505, 598 S.E.2d 718((2004)

own conclusions based upon those facts, this type of statement is not actionable in defamation."); *Phantom Touring, Inc. v. Affiliated Publications*, 953 F.2d 724, 730-31 (1st Cir. 1992) (when statement provides factual bases for its conclusion, it is a "personal conclusion" rather than a statement of fact subject to a defamation claim). *Biospherics, Inc. v. Forbes, Inc.*, 151 F.3d 180, 185 (4th Cir. 1998).

The Appellant pleads in his Complaint the following regarding the relationship between himself and Respondent's daughter.

- He is an adult male who has placed himself in a supervisory position over an 18 year old Defendant (P. 17)
- He was giving the 18 year old Defendant financial gifts (P. 18)
- Plaintiff alleges the 18 year old Defendant was vulnerable (P. 23)
- Plaintiff alleges he decided to form a mentoring relationship with an 18 year old female (P. 27)
- Plaintiff invited the 18 year old to social gatherings and on trips (P. 31)
- Plaintiff reported on observations, assessments and issues of an 18 year old girl to church staff (P. 36)
- Plaintiff became a confidant to 18 year old girl for her personal issues and family issues (P. 38)
- Others noticed the vulnerable 18 year old Defendant being expressive and affectionate toward the Plaintiff. (PP. 42 and 43)
- Plaintiff attempted to "redirect" the anger of the 18 year old Defendant in a public setting and the Defendant did not respond well to this. (P. 45)
- After the Plaintiff alleges that the mentorship was not working and was "reduced and limited," (P. 53) he invited the 18 year old Plaintiff to a family birthday party then corrected her behavior with regard to her cell phone usage at the table.

These facts are not in dispute. The facts upon which the opinion are based are pled in the Complaint. Clearly under these facts “appropriateness,” like beauty, is in the eye of the beholder. Hannah Collier’s mother considers this relationship to be inappropriate. Appellant undoubtedly considers this type of relationship to be hunky-dory. This conflict merely underscores that the characterization of the relationship as “inappropriate” is opinion. It is not for a jury to decide whose opinion it agrees with.

Appellant’s argument taken to its logical conclusion would require a trial, the goal of which would be to determine whether the relationship between Appellant and Hannah Collier was appropriate or not. This is not the function of a jury in a claim for defamation. This is why opinion under the facts as pled cannot be defamatory.

III. ALL STATEMENTS MADE BY THE RESPONDANT COLLIER TO HER PASTOR WERE PRIVILEGED.

A defendant in a defamation action may assert the affirmative defense of conditional or qualified privilege. *Swinton Creek Nursery v. Edisto Farm Credit, ACA*, 334 S.C. 469, 484, 514 S.E.2d 126, 134 (1999). "Under this defense, one who publishes defamatory matter concerning another is not liable for the publication if (1) the matter is published upon an occasion that makes it conditionally privileged, and (2) the privilege is not abused." *Id.* The party asserting a qualified privilege must prove the following elements: (1) good faith, (2) an interest to be upheld, (3) a statement limited in its scope to this purpose, (4) a proper occasion, and (5) publication in a proper manner and to proper parties only. *Manley v. Manley*, 291 S.C. 325, 331, 353 S.E.2d 312, 315 (Ct. App. 1987). Whether an occasion gives rise to a qualified or conditional privilege is generally

a question of law for the court. *Murray v. Holnam, Inc.*, 344 S.C. 129, 140, 542 S.E.2d 743, 749 (Ct. App. 2001). This court has previously found the qualified privilege applies "to situations in which an employee's job performance is properly evaluated." *Wright v. Sparrow*, 298 S.C. 469, 474, 381 S.E.2d 503, 506 (Ct. App. 1989) *Harris v. Tietex Int'l, Ltd.*, 417 S.C. 533, 540, 790 S.E.2d 411, 415 (Ct. App. 2016).

Appellant alleges he was the participant in a church approved mentorship of Hannah Collier. Appellant alleges that Pastor Jimmerson was his supervisor. Appellant alleges that Pastor Jimmerson was aware of the mentorship and that Appellant had discussed Hannah Collier with Pastor Jimmerson. Appellant alleges that Pastor Jimmerson was Respondent Charlotte Collier's pastor. Appellant alleges that the only participants in the meeting where his relationship with Hannah Collier was discussed were Pastor Jimmerson, Charlotte Collier and Hannah Collier. Appellant alleges that in this meeting Hannah Collier denied that the relationship was romantic, intimate or sexual. If a parent cannot have this conversation under the facts as pled, how can they ever have their concerns addressed? The comments by the Colliers were limited, private, circumspect and to the point. They did not gossip within the church regarding their concerns but took them privately to their pastor, the Appellant's supervisor. Under the factors set out in *Murray v. Holnam, Inc.*, 344 S.C. 129, 140, 542 S.E.2d 743, 749 (Ct. App. 2001) these statements are to afforded qualified privilege. Furthermore, the application of the privilege is a question of law for the court, not a question for a jury.

IV. THE TRIAL COURT CORRECTLY RULED THAT THE APPELLANT FAILED TO STATE A CLAIM FOR OUTRAGE UNDER THE FACTS AS PLED.

To recover for the intentional infliction of emotional distress, a plaintiff must establish (1) the defendant intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from his conduct; (2) the defendant's conduct was so extreme and outrageous that it exceeded all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community; (3) the actions of the defendant caused 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. Ford v. Hutson, 276 S.C. 157, 276 S.E.2d 776 (1981). Fleming v. Rose, 338 S.C. 524, 536-37, 526 S.E.2d 732, 739 (Ct. App. 2000).

The court determines, from the materials before it, whether the defendant's conduct may reasonably be regarded as so extreme and outrageous as to permit recovery. See McSwain v. Shei, 304 S.C. 25, 402 S.E.2d 890 (1991). See also Andrews v. Piedmont Air Lines, 297 S.C. 367, 377 S.E.2d 127 (Ct. App. 1989) (question of whether defendant's conduct may be reasonably regarded as so extreme and outrageous as to allow recovery for outrage is question for court to determine). The majority of cases finding outrageous conduct generally require "hostile or abusive encounters" or "coercive or oppressive conduct." See Gattison v. South Carolina State College, 318 S.C. 148, 456 S.E.2d 414 (Ct. App. 1995); Wright v. Sparrow, 298 S.C. 469, 381 S.E.2d 503 (Ct. App. 1989).

Here, there is no evidence of any hostile or abusive encounter with Respondent Charlotte Collier or any suggestion of coercive or oppressive conduct. There are no facts to establish the conduct of Charlotte Collier was so extreme and outrageous as to constitute intentional infliction of emotional distress. Instead, Charlotte Collier did as any good mother would do in a civilized society; she noted the inappropriateness of the relationship between her daughter and a much older man and did what she could to protect her child. The facts alleged fall short of conduct that exceeds all possible bounds of decency.

V. SOUTH CAROLINA DOES NOT RECOGNIZE A CAUSE OF ACTION FOR
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS UNDER THE FACTS AS
PLEAD.

The seminal case in South Carolina regarding negligent infliction of emotional distress is Kinard v. Augusta Sash & Door Co., 286 S.C. 579, 582–83, 336 S.E.2d 465, 467 (1985). In Kinard v. Augusta Sash & Door Co., the South Carolina Supreme Court adopted the cause of action for negligent infliction of emotional distress with the following elements: (a) the negligence of the defendant must cause death or serious physical injury to another; (b) the plaintiff bystander must be in close proximity to the accident; (c) the plaintiff and the victim must be closely related; (d) the plaintiff must contemporaneously perceive the accident; and (e) the emotional distress must both manifest itself by physical symptoms capable of objective diagnosis and be established by expert testimony. Stewart v. State Farm Mut. Auto. Ins. Co., 341 S.C. 143, 154, 533 S.E.2d 597, 603 (Ct. App. 2000) (citing Kinard v. Augusta Sash & Door Co., 286 S.C.

579, 582–83, 336 S.E.2d 465, 467 (1985)). The South Carolina Supreme Court has strictly limited this cause of action to the “bystander liability” scenario. Id.

The Plaintiff in this case cannot meet any of the elements of this cause of action and this is far from the “bystander liability” scenario. The trial court correctly dismissed this claim.

VI. THE COMPLAINT FAILS TO STATE A CLAIM FOR CIVIL CONSPIRACY.

The Appellant pled that Charlotte Collier individually and collectively with the other Respondents were joint and several tortfeasors conspiring together to injure the Appellant. The Appellant does not include any allegations of fact or damages in support of his purported civil conspiracy cause of action that are different from the elements that he attempts to establish for his other purported causes of action.

To state a claim for civil conspiracy the Appellant must show:

(1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff. See *Charles II*, 199 S.C. at 176, 18 S.E.2d at 727; *Charles I*, 192 S.C. at 101, 5 S.E.2d at 472; see also 16 Am. Jur. 2d *Conspiracy* § 53 (2020) (enumerating the prevailing elements of a claim for civil conspiracy recognized in most jurisdictions); 15A C.J.S. *Conspiracy* § 4 (2012) (same). By doing so, we are returning not only to our historical roots, but also to the traditional elements of a civil conspiracy claim as they have been similarly defined by the majority of jurisdictions.

Paradis v. Charleston Cty. Sch. Dist., No. 28030, 2021 S.C. LEXIS 56, at *16-17 (May 19, 2021)

The Appellant does not allege any facts in connection with this cause of action. The Appellant has failed to allege an unlawful act by the Respondent Charlotte Collier. Even

if Appellant were to plead this cause of action properly, if her defamation claim fails so does her civil conspiracy claim. As “In a civil conspiracy claim, one must plead additional acts in furtherance of the conspiracy separate and independent from other wrongful acts alleged in the complaint, and the failure to properly plead such acts will merit the dismissal of the claim.” Hackworth v. Greywood at Hammett, LLC, 385 S.C. 110, 115–16, 682 S.E.2d 871, 875 (Ct. App. 2009).⁴

The Appellant does not plead any actions apart from the actions giving rise to his other claims. He does not plead any damages different from what he alleges in relation to his other claim. The fact that there are multiple Defendants does not in and of itself give rise to a claim for Civil Conspiracy.

VII. THE TRIAL COURT PROPERLY DISMISSED THE CASE WITH PREJUDICE
SINCE AMENDMENT WOULD BE FUTILE.

The Appellant has not filed a motion to amend in this case. This argument addresses whether amendment if requested would have been appropriate in lieu of dismissal of the Complaint with prejudice.⁵ [A] trial court may deny a motion to amend if the amendment would be clearly futile. See Jennings v. Jennings, 389 S.C. 190, 209, 697 S.E.2d 671, 681 (Ct. App. 2010) (“Although leave to amend should generally be ‘freely given,’ . . . it may be denied where the proposed amendment would be futile.”),

⁴ The court in *Paradis*, decided since this order, has done away with the requirement of special damages. It does not address the requirement of separate wrongful acts.

⁵ Appellant argues that he has in fact requested leave to amend his Complaint because it is in the prayer for relief of his Complaint. Respondent submits this is not a substitute for a written or oral motion.

rev'd on other grounds, 401 S.C. 1, 736 S.E.2d 242 (2012); Skydive Myrtle Beach v. Horry Cty., 426 S.C. 175, 182-83, 826 S.E.2d 585, 589 (2019)

While the court's consideration of Respondent Charlotte Collier's 12(c) motion is limited to the pleadings, the consideration of a Motion to Amend does not have the same constraints. The Appellant has filed three lengthy memoranda in opposition to dismissal without ever making any mention of how an amendment could cure a defect in the pleadings, or why that amendment would not be futile. Additionally Plaintiff has filed 76 pages of exhibits and six affidavits with exhibits with numerous emails and texts as attachments since the filing of the Motion to Dismiss. Nothing in the volumes of documents filed has would change or expound upon the allegations in the complaint as they pertain to Charlotte Collier. The Defendant contends that even if this information --- most of which consists of irrelevant insults to the character of Ms. Collier and her daughter Hannah --- were true, Appellant's Complaint would still fail to state a claim.⁶ Appellant's Complaint accurately pleads the statement he contends to be defamatory. This statement fails the legal test.

Plaintiff's other claims also fail on legal grounds. The Plaintiff's claims do not meet the legal criteria for outrage or intentional infliction of emotional distress. These are questions of law for the court. There are no facts set forth in the hundreds of pages of documents filed by the Plaintiff that would change this. Amendment would be futile and is not required.

⁶ Most of the affidavits as they pertain to Charlotte Collier insult her apparel and refer to his daughter as awkward and immature. None of them advance the Plaintiff's claims.

The only amendment suggested by the Appellant is in reference to his claim for civil conspiracy. (Plaintiff's Motion to Reconsider filed August 28, 2020 p. 14) Appellant requests the court allow him to amend to insert the word "special" in his Complaint with regard to damages. Appellant's claim for civil conspiracy cannot be cured with this amendment. In a civil conspiracy claim, one must plead additional acts in furtherance of the conspiracy separate and independent from other wrongful acts alleged in the complaint, and the failure to properly plead such acts will merit the dismissal of the claim. Todd v. S.C. Farm Bureau Mut. Ins. Co., 276 S.C. 284, 278 S.E.2d 607 (1981) (dismissing plaintiff's civil conspiracy claim because "the [civil conspiracy] action does no more than incorporate the prior allegations and then allege the existence of a civil conspiracy and pray for damages resulting from the conspiracy. No additional acts in furtherance of the conspiracy [were] plead"); Kuznik v. Bees Ferry Assocs., 342 S.C. 579, 611, 538 S.E.2d 15, 31 (Ct. App. 2000) ("Because [the third party plaintiff] . . . merely realleged the prior acts complained of in his other causes of action as a conspiracy action but failed to plead additional acts in furtherance of the conspiracy, he was not entitled to maintain his conspiracy cause of action."); Doe v. Erskine Coll., No. 8:04-23001RBH, 2006 U.S. Dist. LEXIS 35780, 2006 WL 1473853, at *17 (D.S.C. May 25, 2006) (granting defendant's motion for summary judgment on plaintiff's civil conspiracy action because "the Complaint does not plead specific facts in furtherance of the conspiracy; instead the Complaint simply restates alleged wrongful acts pled in relation to the plaintiff's other claims for damages."); James v. Pratt & Whitney, 126 Fed. Appx. 607, 613 (D.S.C. 2005) ("If appellant failed to allege facts for his civil

conspiracy claim separate and distinct from his other two claims, then his civil conspiracy claim would fail under Todd."). Hackworth v. Greywood at Hammett, LLC, 385 S.C. 110, 115-16, 682 S.E.2d 871, 875 (Ct. App. 2009).

The Complaint in this case contains 215 allegations. As is evident, it contains a plethora of detail most of which is irrelevant and negatively impacts Appellant's claims. The before the trial court was not whether there were insufficient facts to support the causes of action plead. The trial court dismissed the Appellant's claims because under the abundance of facts pled, those claims failed on legal grounds.

While the Respondent Charlotte Collier did not file any documents or request her motion be heard beyond the scope of the pleadings the Appellant and Hannah Collier filed documents. As stated, the content of the text messages Appellant filed would be disconcerting to any parent. The most disconcerting of the text messages was not filed by Appellant but by Hannah Collier. This text message purports to be from Appellant to Hannah Collier and states as follows:

Here is your letter to wake up to, Princess [heart emoji] Btw, you fell asleep on my shoulder tonight which was really special to me. I can't tell you how much you mean to me. I had one of the best days of my life. I really enjoyed just getting to ride with you, and chat with you and laugh with you. I enjoyed that so much. And then to get to hold your hand, and go ice-skating and eat dinner with your family, and have you fall asleep on my shoulder crated some really special memories for me. But tomorrow, (which is actually today now [smile emoji]) Is going to create even more special memories that I will remember and cherish forever. I can honestly say without a doubt that you are the most amazingly special person to ever by in my live. I love you **even longer**, Sweet Princess! Forever **and ever**! Sweet dreams! [love and smiley and heart and tree and kiss blowing emojis] (Emphasis in original)

There is no way to amend the Complaint to state a claim for defamation, outrage, negligent infliction of emotional distress or civil conspiracy under the facts as pled in the Complaint. The documents outside the pleadings that appellant and others have submitted to the court put an exclamation point on the conclusion that there is no legal cognizable claim for Appellant under these facts regardless of amendment.

CONCLUSION

The Respondent Charlotte Collier requests that this court affirm the dismissal with prejudice of Appellant's Complaint.

CLAWSON and STAUBES, LLC

s/ Amy M. Snyder
Amy M. Snyder
Bar No.: 7968
1000 E North Street, Suite 200
Greenville, South Carolina 29601-3106
Phone: (864) 331-8940
Fax: (864) 232-2921
Email: asnyder@clawsonandstaubes.com
Attorney for Respondent Charlotte Collier

May 21, 2021

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Alex Kinlaw, Circuit Court Judge

Case No.: 2020-CP-23-01213
Appellate Case No: 2020-001525

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Jul 08 2021

SC Court of Appeals

James Earl Tegeler.....Appellant

v.

Charlotte Collier, Hannah Elizabeth Collier, Linda Smith, Northgate Baptist
Church..... Respondents

**INITIAL BRIEF OF THE RESPONDENTS, HANNAH ELIZABETH COLLIER AND
LINDA SMITH**

Daniel R. Hughes
DUGGAN & HUGHES, LLC
(SC Bar #72547)
457-B Pennsylvania Avenue
P. O. Box 449
Greer, SC 29652-0449
Telephone: (864) 334-2500
Facsimile: (864) 879-0149
ATTORNEYS FOR RESPONDENTS

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Jul 08 2021

SC Court of Appeals

STATEMENT OF ISSUES ON APPEAL

- I. **DID THE TRIAL COURT PROPERLY GRANT RESPONDENT HANNAH ELIZABETH COLLIER'S AND LINDA SMITH'S MOTION FOR JUDGMENT ON THE PLEADINGS PURSUANT TO RULE 12(C) BECAUSE APPELLANT'S COMPLAINT FAILS TO RAISE ANY ISSUES OF FACT THAT WOULD ENTITLE HIM TO RELIEF IF RESOLVED IN HIS FAVOR? YES**

STATEMENT OF THE CASE

On February 25, 2020, Appellant James Earl Tegeler ("Appellant") filed a Complaint against the Respondents Charlotte Collier ("C. Collier"), Hannah Elizabeth Collier ("H. Collier"), Linda Smith ("Smith"), and Northgate Baptist Church ("Northgate"). In the 215 paragraph Complaint, Appellant asserts the following four (4) causes of action against the Respondents, C. Collier, H. Collier, and Smith: defamation, negligent infliction of emotional distress, intentional infliction of emotional distress, and civil conspiracy. On March 30, 2020, H. Collier and Smith filed their initial Answer. On April 27, 2020, H. Collier and Smith filed an Amended Answer and Motion to Dismiss pursuant to Rule 12(c), *SCRPC* and/or Rule 12(b)(6), *SCRPC*. On August 17, 2020, H. Collier and Smith filed a Memorandum in Support of their Motion to Dismiss.

On August 18, 2020, a hearing was held before the Honorable Alex Kinlaw, Jr. Counsel for all parties appeared and presented oral arguments. By Form 4 Order filed August 18, 2020, and by formal Order filed September 8, 2020, this Court dismissed the Complaint against H. Collier and Smith pursuant to Rule 12(c), *SCRPC*. Prior to the issuance of the formal Order, Appellant filed a Motion for Reconsideration on August 28, 2020 along with numerous affidavits that were untimely filed and an Amended Motion for Reconsideration on September 14, 2020 pursuant to Rule 59(e) and Rule 60(b), *SCRPC* asserting arguments not raised at the hearing.

On September 14, 2020, Appellant filed an Amended Motion for Reconsideration to Alter or Amend the Judgment and Motion for Relief from Judgment which contained additional untimely exhibits and waived arguments. On October 9, 2020, H. Collier and Smith filed a Reply to Appellant's Amended Motion to Reconsider. On November 10, 2020, the lower court issued an Order denying Appellant's Amended Motion for Reconsideration as to H. Collier and Smith.

On November 19, 2020, Appellant filed a Notice of Appeal. H. Collier and Smith submit their response to Appellant's Brief as to the matters related to H. Collier and Smith.¹

FACTS

H. Collier, an eighteen (18) year old student, was a member of a worship team led by the Appellant, a 50+ year old male and an employee of Northgate Baptist Church. (Pl.'s Comp. ¶¶ 21, 25). Appellant formed a mentor relationship with H. Collier, (Pl.'s Comp. ¶ 27), and the following is a summary of Appellant's action pursuant to this so-called mentor relationship as described by the Complaint: (1) giving financial gifts and presents to H. Collier and her family (Pl.'s Comp. ¶ 18 and 31); (2) inviting H. Collier and her family to family gatherings and activities (Pl.'s Comp. ¶ 31); (3) discussing with her deeply personal issues regarding her mental illness, self-development, self-esteem, self-perception, anger management, anxiety, separation anxiety, eating disorder, self-inflicting physical harm, coping with a previous sexual assault, and ongoing psychological treatment (Pl.'s Comp. ¶ 38); (4) having others in the Church notice H. Collier being expressive and affectionate toward the Appellant. (Pl.'s Comp. ¶ 42, 43); (5) attempting to "redirect" the anger of H. Collier (Pl.'s Comp. ¶ 45); (6) receiving text messages from H. Collier "expressing daughterly affection" toward Appellant (Pl.'s Comp. ¶ 64); and, (7)

¹ The legal issues, arguments, and interests of H. Collier, Smith and Charlotte Collier have been the same through the course of this litigation. H. Collier and Smith hereby incorporate the legal issues and arguments raised in Charlotte Collier's Initial Brief to the extent they are not inconsistent with their legal issues and arguments.

inviting H. Collier to a family birthday party and correcting a violation of Appellant's cell phone rules (Pl.'s Comp. ¶ 59).²

On March 12, 2018, after the foregoing events, H. Collier and her mother, C. Collier, met in private with the head pastor of Northgate Baptist Church, Dr. Barry Jimmerson. (Pl's Comp. ¶ 63). H. Collier informed Dr. Jimmerson that she believed Appellant's conduct and relationship with her was "inappropriate." (Pl.'s Comp. ¶ 59) (hereinafter the "Statement"). According to Appellant's Brief, it was this "insidious language," which was made in private with the pastor of Northgate, that caused Appellant to be terminated from his position as a music minister and ruin his life.

In response to Dr. Jimmerson's questions about the relationship, H. Collier denied that the relationship was sexual or romantic. (Pl's Comp. 60-61). H. Collier denied to Dr. Jimmerson that (1)...she had any romantic interest, romantic feelings, romantic aspirations, or any of the above toward Appellant; (2) that she did not believe Appellant had any romantic interest, romantic feelings, romantic aspirations toward, or any of the above toward her; and, (3) that she never had any sexual, or intimate relations with Appellant. (Pl's Comp. ¶¶ 60-61).

On March 13, 2018, Appellant met with Jimmerson and other staff members at a staff meeting and reported that his mentorship role with H. Collier had deteriorated in a drastically short period of time. (Pl's Comp. ¶ 63). At this meeting, Appellant shared a text message from H. Collier with Dr. Jimmerson and other staff members in which H. Collier expressed daughterly affection and respect towards Appellant as a mentor. (Pl's Comp. ¶ 64). On March 14, 2018, Appellant had a meeting with Dr. Jimmerson and Laurel Shaler, the chairman of Northgate's personnel committee, in which Dr. Jimmerson shared with Appellant his previous conversations

² If the Court were to allow consideration of the Appellant's Affidavit filed after the lower Court's order in this case, said Affidavit and the accompanying Exhibits, including the text messages attached thereto, provide further proof that the relationship was inappropriate. (See Tegeler Aff. filed August 28, 2020).

with H. Collier and C. Collier. (Pl.'s Comp. ¶ 66). Dr. Jimmerson admitted to Appellant and Shaler that he did not believe Appellant's mentorship of H. Collier or the text message from H. Collier to Appellant supported or warranted the allegation that Appellant had an inappropriate relationship with H. Collier. (Pl.'s Comp. ¶ 68). However, according to the Appellant, Laurel Shaler perceived the text message from Appellant to H. Collier that Appellant showed to Shaler, was indicative of Appellant having a sexual relationship with H. Collier. (Pl.'s Comp. 72).

Ms. Shaler also alleged that Appellant had inappropriate contact with young girls *other than* H. Collier. (Pl.'s Comp. ¶ 74). Based upon Shaler's accusation that the Appellant had inappropriate contact with young girls, Dr. Jimmerson and a parishioner of the Church also believed Appellant had inappropriate contact with young girls in the congregation and Shaler presented Northgate's view of H. Collier as a "child, minor or both outright accusing [Appellant] being akin to a pedophile and child molester on baseless grounds (Pl.'s Comp. ¶ 93, 96). Subsequent to a vote of "no confidence" by the Church, Ms. Shaler asked for Appellant's resignation and presented a separation agreement for Appellant to sign. (Pl.'s Comp. ¶¶ 95, 97).

As to Smith, Appellant's allegation against her was that on March 12, 2018, Smith "promulgated to third parties inside and outside the congregation of Defendant CHURCH the allegations of C. Collier and H. Collier" that Appellant had an inappropriate relationship with H. Collier based upon Appellant's inappropriate behavior at a family-friendly social event. (Pl.'s Comp. ¶ 83). And then, based upon this portrayal by H. Collier, C. Collier, and Smith, Shaler and other church members shunned the Appellant. (Pl.'s Comp. ¶ 84).³

Appellant's Complaint fails to identify the actual statement(s) made by Smith or any of the alleged third parties. Appellant attempted to rescue his failure to identify who or what was

³ Appellant's Brief (p. 11, 2nd ¶) says that Smith was involved in the meeting between H. Collier, C. Collier, and Jimmerson, citing Pl.'s Comp. ¶ 83-84. That is not what ¶ 83 and 84 allege. Furthermore, Appellant's Brief (p. 5, 1st ¶) says Smith reported Appellant to Northgate, citing ¶59-62 of the Complaint. Again, that is not what the Complaint states and is not supported by any other statements or documents.

said by Smith by filing Affidavits after the issuance of the Order dismissing his case. Notwithstanding that these Affidavits are not properly before the Court, none of the Affidavits indicate that what was said by H. Collier or Smith led to Appellant's termination. The Affidavit of Roy Sabean says that Linda Smith called him after Appellant was fired to tell him Appellant had an inappropriate relationship with H. Collier. (Sabean Aff. ¶¶ 11-12). The Affidavit of Sue Lutz says that her friend, "Judy," told her that Linda Smith said that Appellant had an inappropriate relationship with H. Collier after Appellant was fired. (Lutz Aff. ¶ 14). Both Affidavits indicate that neither Affiant believed Smith nor put any credibility in Smith's statement. Also, neither Affidavit says that Smith stated nor even implied that the relationship was sexual.

As a result of the foregoing, there is no factual dispute that H. Collier ever told or even insinuated to Dr. Jimmerson that Appellant had an inappropriate sexual relationship with H. Collier and there is no factual dispute that Jimmerson ever believed the nature of the relationship was sexual. Additionally, there is no factual dispute that Smith told anyone that the relationship was sexual in nature and there is no factual dispute that the people she told believed the relationship was sexual. Rather, according to Appellant, the Church misinterpreted the Statement, and failed to properly investigate the Statement, which led to his termination. H. Collier and Smith cannot be held liable for others misinterpretation of the Statement.

STANDARD OF REVIEW

On review of a motion to dismiss on the pleadings, the appellate tribunal applies the same standard of review that was implemented by the trial court as to Rule 12(b)(6) or Rule 12(c), SCRPC. *See Williams v. Condon*, 347 S.C. 227, 233, 553 S.E.2d 496, 500 (Ct.App.2001); *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007).

On appeal from the grant of a motion to dismiss for failure to state facts sufficient to constitute a cause of action, appellate courts are concerned only with whether the allegations of the complaint, which must be accepted as true, state a cause of action. Rule 12(b)(6), *SCRCP*; *Chestnut v. AVX Corp.*, 413 S.C. 224, 776 S.E.2d 82 (2015).

After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. Rule 12(c), *SCRCP*. A judgment on the pleadings shall be granted “where there is no issue of fact raised by the complaint that would entitle the plaintiff to judgment if resolved in plaintiff’s favor.” *Sapp v. Ford Motor Co.*, 386 S.C. 143, 687 S.E.2d 47 (2009) citing *Russell v. City of Columbia*, 305 S.C. 86, 406 S.E.2d 338 (1991). *Home Builders Ass’n of S.C. v. Sch. Dist. No. 2 of Dorchester Cty.*, 405 S.C. 458, 460, 748 S.E.2d 230, 231 (2013). When considering such motion, the Court must regard all properly pleaded factual allegations as admitted, and any inference of law or conclusions of fact that may properly arise therefrom are to be regarded as embraced in the averment. *Falk v. Sadler*, 341 S.C. 281, 533 S.E.2d 350 (Ct. App. 2000).

Rule 56, SCRCP

Appellant devotes an entire section of his brief to Rule 56, *SCRCP*; however, Rule 56, *SCRCP* does not apply because the Court made its ruling pursuant to Rule 12(c), only, and did not consider any evidence outside of the Complaint.

Rule 60, SCRCP

Appellant devotes another section of his brief to Rule 60, *SCRCP*. While Appellant did file a Motion to Alter or Amend the Judgment pursuant to Rule 60 along with its Motion to Reconsider pursuant to a Rule 59(e) motion, the Rule 59(e) motion is the proper rule when timely filed because it allows the Court to reconsider all matters considered in its decision on the merits. A review pursuant to Rule 60(b) is limited to one of the five (5) reasons listed under

Rule 60(b). None of the five (5) reasons apply, but in any event, a review under Rule 60(b) would be limited to a review of Rule 60, only. Since the Court did not review the motion pursuant to Rule 60, this argument is moot, and furthermore, such limited review would actually be to Appellant's detriment.

Amendment of the Appellant's Pleadings

Appellant discusses at length how he should be entitled to Amend his Pleadings. Appellant never filed a Motion to Amend his Complaint, and therefore, the issue is waived and not properly before this Court. Furthermore, as set forth in the Brief of C. Collier, Appellant has been allowed to submit voluminous briefs, exhibits, and affidavits in support of his Complaint and in opposition to the Respondents' motions. If there was any error on the part of the lower court to not allow the Appellant *sua sponte* to amend his pleadings, any error was harmless. The Appellant has had his opportunity to fully plead his case, and he failed.

ARGUMENT

I. THE TRIAL COURT PROPERLY GRANTED RESPONDENT HANNAH ELIZABETH COLLIER'S AND LINDA SMITH'S MOTION FOR JUDGMENT ON THE PLEADINGS PURSUANT TO RULE 12(C) BECAUSE APPELLANT'S COMPLAINT FAILS TO RAISE ANY ISSUES OF FACT THAT WOULD ENTITLE HIM TO RELIEF IF RESOLVED IN HIS FAVOR.

The Appellant's asserted causes of action for (A) Defamation, (B) Intentional Infliction of Emotional Distress, (C) Negligent Infliction of Emotional Distress, and (D) Civil Conspiracy fail pursuant to Rule 12(c), SCRCF. Each cause of action fails under Rule 12(c), SCRCF.

(A) Defamation

To recover for defamation, the Appellant must prove, that there was: (1) a false and defamatory statement made; (2) the unprivileged publication was made to a third party; (3) the

publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.” *Erickson v. Jones St. Publishers, L.L.C.*, 368 S.C. 444, 464, 629 S.E.2d 653, 664 (2006).

The allegations of Plaintiff’s Complaint fail to meet the elements of defamation. The statement was true and not defamatory; the statement was privileged; there was no fault in publishing the statement; and, the statement is not actionable itself or special harm caused by the publication.

Furthermore, Appellant’s allegations as to Smith was that she told unidentified third parties that Appellant had an inappropriate relationship with H. Collier. The Complaint fails to allege what Smith said, who the “hearers” of the statement(s) were, or that what Smith did caused any damage to Appellant.

Opinion Statement

As an initial matter, the Court must address whether or not the Statement was fact or opinion. An opinion statement cannot be defamatory. Our courts have held that facts are statements that can be proven true or false; by contrast, opinions are matters of belief or ideas that cannot be proven one way or the other. Moreover, because a statement must be false to be defamatory, a statement of opinion cannot form the basis of a defamation claim because it cannot be proven true or false. Specifically, under the First Amendment, there is no such thing as a false idea. *Garrard v. Charleston Cty. Sch. Dist.*, 429 S.C. 170, 198, 838 S.E.2d 698, 713 (Ct. App. 2019).

H. Collier’s and Smith’s statement that they believed the relationship described in the Complaint between an 18 year old and 50+ year old worship leader to be inappropriate is an opinion. It can be neither true nor false and thus cannot form the basis of a defamation claim.

Nevertheless, even if the statement were deemed to be factual, it does not qualify as a defamatory statement.

True Statement

If the Statement was not an opinion, then it was true. H. Collier's statement to Dr. Jimmerson and Smith's alleged statement to a third party that Plaintiff had an inappropriate relationship with her were true. As set forth above in Respondents' statement of facts, the following is a summary of what actions Appellant took pursuant to this so-called mentor relationship as described by the Complaint: (1) giving financial gifts and presents to H. Collier and her family (Pl.'s Comp. ¶ 18 and 31); (2) inviting H. Collier and her family to family gatherings and activities (Pl.'s Comp. ¶ 31); (3) discussing with her deeply personal issues regarding her mental illness, self-development, self-esteem, self-perception, anger management, anxiety, separation anxiety, eating disorder, self-inflicting physical harm, coping with a previous sexual assault, and ongoing psychological treatment (Pl.'s Comp. ¶ 38); (4) having others in the Church notice H. Collier being expressive and affectionate toward the Appellant. (Pl.'s Comp. ¶ 42, 43); (5) attempting to "redirect" the anger of H. Collier (Pl.'s Comp. ¶ 45); (6) receiving text messages from H. Collier "expressing daughterly affection" toward Appellant (Pl.'s Comp. ¶ 64); and, (7) inviting H. Collier to a family birthday party and correcting a violation of Appellant's cell phone rules (Pl.'s Comp. ¶ 59).

H. Collier filed an Affidavit on August 17, 2020 with attached text messages from the Appellant. These texts, along with the texts filed by the Appellant on August 28, 2020, provide additional proof outside of the four (4) corners of the Complaint that the relationship was inappropriate. For example, Appellant texted H. Collier as follows:

Hey Princess. While I'm falling asleep I was thinking of you and how thankful I am to have you in my life....I love you so much and I can't wait for our first family Christmas together! You're a sweetie pie and a cutie pie all mixed into

one amazing person. I'm so proud to have you in my life, and I can't get enough of ya!! I'll snap you in the Am! I love you my sweet, awesome Ninja Princess Daughter!!!

Here is my letter to wake up to, Princess (heart emoji) Btw, you fell asleep on my shoulder tonight which was really special to me. I can't tell you how much you mean to me. I had one of the best days of my life. I really enjoyed just getting to ride with you, and chat with you and laugh with you. I enjoyed that so much. And then to get to hold your hand, and go ice-skating, and eat dinner with your family, and have you fall asleep on my shoulder created some really special memories for me....

Hannah. Princess. Sweetie Pie. I love you....I promise to never stop loving you. Ever. You are the sweetest, most precious thing that's ever happened in my life, other than my children being born. That's you baby girl. I hope you know how special you are to me. Sometimes I hold your blanket that here and close my eyes and smell your smell, and hope that when I open my eyes you are here.

Based upon the foregoing, and the texts from Appellant to H. Collier, the relationship was inappropriate and the statement was true.

Not a Defamatory Statement

The Statement does not qualify as a defamatory statement. A defamatory statement is (1) either defamatory *per se* or defamatory *per quod* and (2) actionable *per se* or not actionable *per se*. A defamatory statement *per se* has a defamatory meaning apparent on its face, and therefore, susceptible to only one meaning. A defamatory statement *per quod* has a defamatory meaning through referring to facts or circumstances beyond the statement itself or innuendo. *Parrish v. Allison*, 376 S.C. 308, 321, 656 S.E.2d 382, 389 (Ct. App. 2007).

Plaintiff's entire Complaint is premised on the Statement meaning that Appellant had a sexual relationship with H. Collier. Appellant cites numerous definitions in her Complaint about the definition of "inappropriate contact" and "inappropriate relationship." However, Appellant concedes that the Statement is not a defamatory statement on its face because he admits that H. Collier denied that the relationship was sexual, but when the Statement was conveyed by Dr. Jimmerson to Shaler, it was then misinterpreted to mean something worse. (Pl's Comp. ¶ 72, 74,

93, and 96). Therefore, “[i]f the defamatory meaning is not clear unless the hearer knows the facts or circumstances not contained in the statement itself, then the statement is defamatory *per quod*.”

In cases involving defamation *per quod*, the plaintiff must introduce facts extrinsic to the statement itself to prove a defamatory meaning on innuendo. *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 508-509, 506 S.E.2d 497, 501 (1998). A statement is classified as "defamatory per quod" when the defamatory meaning is not clear unless the hearer knows facts or circumstances not contained in the statement itself, and the plaintiff must introduce extrinsic facts to prove the defamatory meaning. *Erickson v. Jones Street Publishers, L.L.C.*, 629 S.E.2d 653 (S.C. 2006).

Plaintiff cannot get around his admission in his Complaint that Dr. Barry Jimmerson, the “hearer” of the statement, did not believe Plaintiff engaged in a sexual or romantic relationship with Hannah Collier and his admission that Hannah Collier denied to Dr. Jimmerson that the relationship was romantic sexual. The Appellant’s cause of action for defamation ends here – even before you analyze the defenses of opinion, truth, and qualified privilege. If Dr. Jimmerson did not believe the Statement meant that the Plaintiff had a sexual relationship with H. Collier, then Plaintiff cannot prove that Dr. Jimmerson knew facts or circumstances to support the alleged defamatory meaning.

Furthermore, based upon the foregoing, the Court correctly decided this issue as a matter of law, and it was not necessary for this issue to go before a jury.

Defamatory Statement Not Actionable *Per Se*

In addition to being defamatory *per se* or *per quod*, “[a] separate issue is whether the statement is ‘actionable *per se*’ or not. This issue is one of pleading and proof, and is always a question of law for the court.” *Holtzscheiter*, 332 S.C. at 510, 506 S.E.2d at 502. If the

defamation is actionable *per se*, the law presumes the defendant acted with common law malice and that the plaintiff suffered general damages. If the defamation is not actionable *per se*, then the plaintiff must plead and prove common law actual malice and special damages. *Holtzscheiter*, 332 S.C. at 510, 506 S.E.2d at 502.

“Slander is actionable *per se* only if it charges the plaintiff with one of five types of acts or characteristics: (1) commission of a crime of moral turpitude; (2) contraction of a loathsome disease; (3) adultery; (4) unchastity; or (5) unfitness in one's business or profession.” *Id.* at 511, 506 S.E.2d at 502. “In all other cases-namely, when slander does not fall into the above-named categories-special damages must be established.” *Id.* at 526, 506 S.E.2d at 510 (Toal, J., concurring). *Parrish v. Allison*, 376 S.C. 308, 322, 656 S.E.2d 382, 389 (Ct. App. 2007).

Therefore, if the defamation is not actionable *per se*, then the plaintiff must plead and prove common law actual malice, that is “the defendant was activated by ill will in what he did, with the design to causelessly and wantonly injure the plaintiff; or that the statements were published with such recklessness as to show a conscious indifference toward plaintiff's reports.” *Holtzscheiter*, 332 S.C. 502, 510, 506 S.E.2d 497, 502.

By Appellant's own admission, subsequent to March 12, 2018, the Statement was misinterpreted by the Church to mean that Appellant had a sexual relationship with Appellant. A statement's meaning based upon a misinterpretation of the same cannot be actionable *per se* because it does not directly charge the Appellant with one of the five characteristics or acts. Therefore, since the Statement is not actionable *per se*, the Appellant must prove actual malice.

Appellant fails to present facts that support a finding of actual malice. By Appellant's own admission, the Statement was made in private by a member of the Church, H. Collier, to the head pastor, Dr. Jimmerson. As to Smith, even if the Court were to consider the Affidavits submitted after the Court's Order, the Statement was made to two individuals after Appellant

was terminated who did not believe that Appellant had a sexual relationship with H. Collier. The facts pled do not provide evidence of ill will by H. Collier or Smith, a desire to purposely injure the Appellant with the Statement, or to publish the Statement with reckless disregard towards Appellant.

In summary, the Statement is not defamatory. It is not defamatory *per se* or *per quod*, neither was it actionable *per se* or made with malice. And the lower Court properly made this determination as a matter of law. This is not an issue for the jury.

Qualified Privilege and No Fault in Publication

The Statement is subject to a qualified privilege. If the qualified privilege exists, the claim will fail unless the plaintiff can prove actual malice. *Constant v. Spartanburg Steel Products, Inc.*, 316 S.C. 86, 447 S.E.2d 194, 196 (1994). A qualified privilege is defined as “[a] communication made in good faith on any subject matter in which the person communicating has an interest or duty ... if made to a person with a corresponding interest or duty even though it contains matter which, without this privilege, would be actionable.” *Id.* To maintain the privilege, “[t]he publisher must not wander beyond the scope of the occasion.” *Id.* *Johns v. Amtrust Underwriters, Inc.*, 996 F. Supp. 2d 413, 420 (D.S.C. 2014).

In this case, the Statement was made in good faith, with proper motives, in private, and to the proper party – Appellant’s supervisor, Dr. Jimmerson. Therefore, it qualifies as a privileged communication. It is reasonable that a member of the Church would go to the pastor or other authority within the Church to report behavior they believed was inappropriate, especially when Appellant was in position of authority over H. Collier.

Therefore, because the alleged defamatory statement is privileged, Appellant must prove the statement was made with actual malice. As set forth above, Appellant fails to plead facts sufficient to meet the standard that the Statement was made with actual malice.

Based upon the foregoing, Appellant's cause of Defamation must be dismissed pursuant to Rule 12(c), *SCRCP*.

(B) Intentional Infliction of Emotional Distress

To recover for intentional infliction of emotional distress, the complaining party must establish that (1) the defendant intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from his conduct; (2) the conduct was so "extreme and outrageous" so as to exceed "all possible bounds of decency" and must be regarded as "atrocious, and utterly intolerable in a civilized community;" (3) the actions of the defendant caused plaintiff's emotional distress; and (4) the emotional distress suffered by the plaintiff was "severe" such that "no reasonable man could be expected to endure it." *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 356, 650 S.E.2d 68, 70 (2007).

H. Collier made the Statement to Dr. Jimmerson in private and advised Dr. Jimmerson that she did not want Appellant to get in trouble. Again, according to Appellant, Dr. Jimmerson did not believe that the relationship was sexual. Smith allegedly made the Statement to third parties. Smith did not state or imply that the relationship was sexual.

Accordingly, Appellants fails to present facts necessary to support that the Statement constitutes conduct that "exceeds all bounds of decency" or was "utterly intolerable." This cause of action also fails pursuant to Rule 12(c), *SCRCP*.

(C) Civil Conspiracy

The elements of a civil conspiracy in South Carolina are (1) the combination of two or more people, (2) for the purpose of injuring the plaintiff, (3) which causes special damages. *Cowburn v. Leventis*, 366 S.C. 20, 49, 619 S.E.2d 437, 453 (Ct.App.2005); see also *Peoples Federal Savings & Loan Ass'n of S. Carolina v. Resources Planning Corp.*, 358 S.C. 460, 470, 596 S.E.2d 51, 56–57 (2004) ("A civil conspiracy is a combination of two or more

parties joined for the purpose of injuring the plaintiff and thereby causing special damage.”) (citation omitted). It is essential that the plaintiff prove all of these elements in order to recover. *Lyon v. Sinclair Refining Co.*, 189 S.C. 136, 200 S.E. 78 (1938).

The “essential consideration” in civil conspiracy “is not whether lawful or unlawful acts or means are employed to further the conspiracy, but whether the primary purpose or object of the combination is to injure the plaintiff.” *Lee v. Chesterfield General Hosp., Inc.*, 289 S.C. 6, 13, 344 S.E.2d 379, 383 (Ct.App.1986).

“[I]n order to establish a conspiracy, evidence, direct or circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise.” *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 601, 358 S.E.2d 150, 153 (Ct.App.1987); *accord Cowburn*, 366 S.C. at 49, 619 S.E.2d at 453. *Pye v. Estate of Fox*, 369 S.C. 555, 566–67, 633 S.E.2d 505, 511 (2006).

According to the Appellant’s Complaint, “Defendant(s), and each Defendant individually and collectively as joint and several tortfeasors, have conspired together to injure Plaintiff.” (Pl’s Comp. ¶ 213). Appellant’s Complaint then states that “each Defendant individually and collectively as joint and several tortfeasors, have caused Appellant damages.” (Pl’s Comp. ¶ 214). Appellant’s blanket statements of a civil conspiracy do not constitute facts sufficient to create such a cause of action. Appellant’s allegations do not specify how Smith and H. Collier conspired with each other or any other party for the purpose of injuring Appellant. Therefore, this cause of action must be dismissed pursuant to Rule 12(c).

(D) Negligent Infliction of Emotional Distress

To prove a cause of action for negligent infliction of emotional distress with the following elements, the Appellant must prove that (a) the negligence of the defendant must cause death or serious physical injury to another; (b) the plaintiff bystander must be in close proximity

to the accident; (c) the plaintiff and the victim must be closely related; (d) the plaintiff must contemporaneously perceive the accident; and (e) the emotional distress must both manifest itself by physical symptoms capable of objective diagnosis and be established by expert testimony.

Kinard v. Augusta Sash & Door Co., 286 S.C. 579, 582–83, 336 S.E.2d 465, 467 (1985).

This cause of action is limited to bystander recovery involving some type of accident, which does not apply to the facts of this case. Therefore, this cause of action must be dismissed pursuant to Rule 12(c), *SCRCP*.

CONCLUSION

Based upon the foregoing, Respondents Hannah Elizabeth Collier and Linda Smith ask this Court to affirm the lower court's decision.

Respectfully submitted,

DUGGAN & HUGHES, LLC

s/Daniel R. Hughes

Daniel R. Hughes (SC Bar #72547)

457-B Pennsylvania Avenue

P. O. Box 449

Greer, SC 29652-0449

Telephone: (864) 334-2500

Facsimile: (864) 879-0149

Attorney for Respondents, Hannah E. Collier and
Linda Smith

July 8, 2021

