IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM McCORMICK COUNTY

The Honorable J. Cordell Maddox, Jr.
The Honorable Debra R. McCaslin
McCormick County
Trial Court Case No. 2017CP3500045

R. Jay Lagroon, Appellant,

v.

Crystal Suggs and Scott Suggs, Respondents.

Appellate Case No. 2019-002018

BRIEF OF APPELLANT

Robert J. Lagroon
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STATEMENT OF ISSUES ON APPEAL

1. Whether the circuit court erred in the dismissal of the plaintiffs cause of action for intentional and negligent infliction of emotional stress.

2. Whether circuit court erred in the dismissal of the plaintiffs cause of action for civil conspiracy.

3. Whether the circuit court erred in granting the defendants, Suggs motion to compel.

STATEMENT OF THE CASE

This combine appeal arose based on the orders of the Honorable Judge Cordell Maddox filed April 3, 2019 and the Order on motion to reconsider filed November 18, 2019.

Also included in this combined appeal is the Honorable Debra R. McCaslin Order filed August 26, 2020 and the Order on the motion to reconsider filed September 17, 2020.

It is these orders from which this combined appeal is taken.

STATEMENT OF FACTS

The Appellant, Dr. Lagroon, appeals the dismissal of the plaintiffs cause of action for intentional and negligent infliction of emotional stress based on the Order of the Honorable Judge Cordell Maddox Jr. filed April 3, 2019, which states: (R.p.2,line16)

> "The amended complaint fails to plead sufficient facts to state a cause of action for intentional inflection of emotional distress."

The Appellant, Dr. Lagroon, appeals the dismissal of the plaintiffs cause of action for civil conspiracy based on the Order of the Honorable Judge Cordell Maddox Jr. filed April 3, 2019, which states: (R.p.3,line15)

> "The amended complaint fails to plead sufficient facts to state a cause of action for civil conspiracy."

The Appellant, Dr. Lagroon, appeals the Granted motion to compel based on the Order of the Honorable Debra R. McCaslin filed April 3, 2019, which states: (R.p.12,line29)

> "The Court hereby GRANTS Defendants Scott and Crystal Suggs Motions to Compel and awards the Defendants $500 jointly in costs against Plaintiff Lagroon."

ARGUMENT

A. The Circuit Court erred in the dismissal of the plaintiffs cause of action for intentional and negligent infliction of emotional stress.

In Niece v. Sears, The Court has held, "The function of motion to dismiss is to test the law of the claims, not the facts supporting them."

The function of a motion to dismiss is to test the law of the claims, not the facts supporting them. Niece v. Sears, Roebuck & Co., 293 F. Supp. 792 (N.D.Okla. 1968); Citibank, N.A. v. K-H Corp., 745 F. Supp. 899 (S.D.N.Y. 1990).

In this appeal the Trial Court erred in its dismissal because as stated in Judge Maddox Order

"The litigation is in the early stages in this Case as Defendants have not yet had to file and answer and no discovery has taken place" (R.p.2,line13)

Because the Defendants had not filed and answer and no discovery taken place it is unlikely for the Trial Court to have opined that the plaintiff can prove no set of facts which would entitle him to relief as the Court has held in Niemeyer v. United States Fidelity.

"In assessing the sufficiency of [a] petition, the general rule is that a petition should not be dismissed for failure to state a cause of action unless it appears beyond doubt that the plaintiff can prove no set of facts which would entitle her to relief." Niemeyer v. United States Fidelity & Guar. Co., 789 P.2d 1318, 1321 (Okla. 1990) *(citing* Valley Vista Dev. Corp. v. City of Broken Arrow, 766 P.2d 344, 348 (Okla. 1988) *and* Buckner v. General Motors Corp., 760 P.2d 803, 812 (Okla. 1988).

In Upchurch v. New York Times Co.,431 SE 2d 558-SC: Supreme Court 1993, The South Carolina Supreme Court clarified the tort of intentional infliction of emotional distress.

"*The tort of intentional infliction of emotional distress arises when one by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another.* Ford v. Hutson, 276 S.C. 157, 162, 276 S.E.2d 776, 778 (1981) *(quoting*

Restatement (Second) of Torts § 46 (1965)). In order to recover for the intentional infliction of emotional distress, a plaintiff 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 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 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. Id.

The law limits claims of intentional infliction of emotional distress to egregious conduct toward a plaintiff proximately caused by a defendant. Christensen v. Superior Court, 54 Cal.3d 868, 820 P.2d 181, 2 Cal.Rptr.2d 79 (1991). It is not enough that the conduct is intentional and outrageous. ***It must be conduct directed at the plaintiff, or*** *occur in the presence of a plaintiff of whom the defendant is aware. Id. at 903, 820 P.2d at 202, 2 Cal.Rptr. at 100;"*

The South Carolina Supreme Court clearly states the tort of intentional infliction of emotional distress arises when the extreme and outrageous conduct is intentionally or recklessly directed at the plaintiff, **OR** occurs in the presence of a plaintiff. In this appeal the intentional, extreme and outrageous conduct, (abduction of the appellants minor children) is directed at the plaintiff, Lagroon. The appellate repeatedly pleads this undisputed fact in his amended complaint in paragraph 2,3,17,18,19,20.

2. *The Plaintiff will also show that shortly before this unlawful act the Defendant Suggs had repeatedly requested employment from the plaintiff (Lagroon) after being terminated from Piedmont technical College, McCormick Campus.*

3. The Plaintiff will show the Defendants (Suggs) had been put on both verbal and written trespass notice not to return to the property of Lagroon prior to the unlawful acts committed on or about June 18, 2014.

17. The Plaintiff (Lagroon) is informed and believes the Defendant (Suggs) intentional and outrageous conduct is directed at the Plaintiff (Lagroon) as he had repeatedly declined to employ the Defendant (Suggs) because of repeated abuse of alcohol after termination as administrator of Piedmont Technical College, McCormick Campus.

18. The Plaintiff (Lagroon) is informed and believes the Defendant (Suggs) intentional and outrageous conduct is directed at the Plaintiff (Lagroon) because he had been forced to place the Defendant (Suggs) on written and verbal trespass notice to protect his minor children because of the Defendant (Suggs) admission of illegal substance abuse.

19. *The Defendant (Suggs) intentional and outrageous conduct is directed at the Plaintiff (Lagroon) because of the aggressive driving and obscene gestures witnessed by the Plaintiff (Lagroon) and his wife prior to this outrageous and illegal act.*

20. *The Defendant (Suggs) intentional and outrageous conduct which was directed at the Plaintiff (Lagroon) was conducted in the presence of the Plaintiff (Lagroon) two minor children, Daniel Jay Lagroon and Becca Eloise Lagroon.* (R.p.60,line15)

At the hearing of this motion the plaintiff, Lagroon testifies that in the Supreme Court ruling in Upchurch v. New York Times Co., the Order clearly states it is not enough the conduct be intentional or outrageous, it must be conduct directed at the plaintiff.

MR. LAGROON: You're right, Judge. It does contain that in the Supreme Court ruling in 1993, but what he doesn't point out is that it also points out in that same order where he includes in that same order is it is not enough the conduct be intentional or outrageous, it must be conduct directed at the plaintiff and the parties that abducted the children on that evening certainly knew that I had sole custody of those children under South Carolina Family Court order and they also knew I was home that evening sleeping less than ten feet away from my daughter and that's why they parked their vehicle on the property.

THE COURT: This was your child?

MR. LAGROON: My child.

THE COURT: Okay. I didn't realize that.

MR. LAGROON: Yes. These are my children. I had sole custody granted by the South Carolina Family Court

under court order and they're simply leaving out part of the order under Upchurch versus New York Times where it clearly states it must be conduct directed at the plaintiff and it's undisputed that the defendants in this case had an axe to grind because I would not give the wife a job after she was readily dismissed from Piedmont Technical College as director in McCormick County. (R.p.28,line5)

In his ruling, Judge Maddox, further states.

"Where a plaintiff makes a claim for intentional infliction of emotional distress based on a defendant's actions that injure a third party, the actor will be liable to a plaintiff who witnesses the third-party injury if the actor's intentional or reckless conduct, causes severe emotional distress

(a) to a member of such person's immediate family who is present at the time, whether or not such distress results in bodily harm" (R.p.3,line 1)

The appellate in this action is the father and custodial parent of, Daniel and Becca Lagroon, the two minor children abducted by the respondents, Suggs on or about June 18, 2014.

Daniel and Becca Lagroon are the **immediate family** of this appellate. Daniel and Becca spent several months in the state's custody and were released temporarily to their mother, Becky Lagroon, while the Family Court investigated.

Ultimately, Daniel and Becca were returned permanently to the appellate under the original Family Court Order in effect prior to abduction by the respondent, Suggs. Daniel Lagroon, the son of the appellate, was infected with HIV after being raped by a sexual predator on or about December 5, 2014 while in the temporary custody of his mother. This event could have never occurred without the heinous acts of the respondents, Suggs.

On August 11, 2016, Johnny W. Hartley, Chief Polygraph Examiner for SLED for 18 years confirmed Daniel was being truthful in his statements about the respondents, Suggs. (polygraph exam of Daniel Lagroon) (R.p.67,line 23)

B. The Circuit Court erred in the dismissal of the plaintiffs cause of action for civil conspiracy.

The tort of civil conspiracy has three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, and (3) causing plaintiff special damage.

The appellate, Lagroon pleads in his amended complaint:

22. The Defendant (Suggs), by their own admission, conspired with the Non-custodial mother (Rebecca Lagroon) to intentionally and maliciously violate the Order of the South Carolina Family Court by removing the two minor children, Daniel Jay Lagroon and Becca Eloise Lagroon from the physical custody of the Plaintiff (Lagroon). (R.p.71,line5)

Special damages are those elements of damages that are the natural, but not the necessary or usual, consequence of the defendant's conduct. Loeb v. Mann, 39 S.C. 465, 469, 18 S.E. 1, 2 (1893). General damages are inferred by the law itself, as they are the immediate, direct, and proximate result of the act complained of. Sheek v. Lee, 289 S.C. 327, 328-29, 345 S.E.2d 496, 497 (1986). Special damages, on the other hand, are not implied at law because they do not necessarily result from the wrong. Id. at 329, 345 S.E.2d at 497. Special damages must, therefore, be specifically alleged in the complaint to avoid surprise to the other party. Id

The appellate, Lagroon pleads in his amended complaint:

Special Damages as Direct Result of Conspiracy

27. As a direct result of the atrocious and illegal conduct of the Defendant (Suggs) the Plaintiff (Lagroon) has suffer and continues to suffer Special Damages as a direct result of the Conspiracy complained of as follow:

a. Loss of consortium during the investigation by the South Carolina Family Court.
b. Medical expenses for the minor children for counseling of Daniel Jay Lagroon and Becca Eloise Lagroon.
c. Ongoing Medical expenses for the minor child Daniel Jay Lagroon for medical testing for sexually transmitted diseases.
d. Ongoing medical expenses for the Plaintiff (Lagroon) in the treatment of mental anguish as a direct result of the egregious and illegal conduct of the Defendant (Suggs).
e. Ongoing medication expenses for the Plaintiff (Lagroon) in the treatment of mental anguish as a direct result of the atrocious and illegal conduct of the Defendant (Suggs).
f. Professional polygraph examination fees for the minor child, Daniel Jay Lagroon, as a direct and proximate result of the Defendant (Suggs) egregious and illegal conduct.
g. Attorney's fees incurred during the Investigation of this Conspiracy by the South Carolina Family Court. (R.p.64,line 17)

A claim for civil conspiracy must allege additional acts in furtherance of a conspiracy rather than reallege other claims within the complaint.

The appellate, Lagroon pleads in his amended complaint:

25. In furtherance of this conspiracy the Defendant (Suggs) appeared in the South Carolina Family Court in a failed attempt to conceal and condone the Defendant (Suggs) outrageous and egregious behavior in this conspiracy during the ongoing criminal investigation by both local and federal law enforcement agencies.

26. In furtherance of this conspiracy the Defendant (Suggs) trespassed onto the property of the Plaintiff (Lagroon) in the middle of the night to meet the Non-Custodial parent (Rebecca Lagroon) before the illegal removal of the minor children Daniel Jay Lagroon and Becca Eloise Lagroon from the Custodial Parent and Plaintiff (Lagroon). (R.p.64,line9)

Each and every requirement set forth to plead a claim for civil conspiracy has been met by the amended complaint filed by the appellate in this matter.

C. The Circuit Court erred in granting the defendants, Suggs motion to compel.

The appellate Lagroon, made a good faith effort to resolve this scheduling of this deposition as noted in this Motion to Reconsider. This Court Should not consider or condone this behavior when the appellate, Lagroon offered another date to be deposed 24hours later in the same week along with additional dates.

"On August 8, 2019 (almost 3 weeks in advance) this plaintiff informed defense counsel he was unable to be deposed on August 27, 2019. This plaintiff offered to reschedule his deposition August 30, 2019 (2 days later) which fell within the same work week. The plaintiff sited "Patients schedules requiring timely procedures". Additionally, the plaintiff, Lagroon offered two additional dates to be deposed. On August 13, 2019 (a full week later) Defendants counsel stated the deposition could not be rescheduled because "We have reserved space in McCormick Courthouse". (Email attached) (R.p.15,line15)

At hearing plaintiff Lagroon, presented the affidavit of Lisa Trotter (plaintiff's patient requiring timely treatment) which states:

"I am scheduled for a surgical procedure in the office of R. Jay Lagroon at 9:45 am on August 27, 2019. I scheduled the appointment for this procedure in early June 2019 and because of my current medical condition I have stopped medication and also been pre-medicated for this procedure. I am informed by both of my physicians, that delays in this procedure will have adverse effects on my health in my current medical condition". (R.p.69,line13)

Miss Trotter, who has now completely recovered because of the timely treatment she received from Dr. R. Jay Lagroon, Plaintiff, offers her amended affidavit which states:

"I am informed by both my physicians, that delays in this procedure will have adverse effects on my health, in my current medical condition, including further deterioration of my eyesight which will result in blindness". (R.p.19,line13)

Plaintiff Lagroon, could neither ethically nor legally attend the deposition scheduled on August 27, 2019, causing the loss of Lisa Trotter's eyesight and allowing her to spend the rest of her adult life blind.

CONCLUSION

A. For the foregoing reasons, the Appellate, R. Jay Lagroon, respectfully submits that the above captioned matter be **REVERSED** and the Appellate be allowed to proceed on his claims of **intentional and negligent infliction of emotional stress and civil conspiracy.**

B. The Appellate further respectfully request the Order granting the Respondents Motion to Compel be **REVERSED.**

BY: _____

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McCormick, South Carolina September 1, 2021

CERTIFICATE OF COUNSEL

The undersigned Pro Se Appellant certifies the Appellant's Brief complies with Rule 211(b), SCACR

By:_____

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CERTIFICATE OF COMPLIANCE

The undersigned Pro Se Appellant certifies the Appellant's Brief complies with the Supreme Court's Order of Augusta 13, 2007, regarding personal identifies and sensitive information.

By:_____

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CERTIFICATE OF SERVICE

The undersigned Pro Se Appellant does hereby certify that service of the Appellants Brief in the above captioned matter was made upon all counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addressed clearly indicated on said envelopes this 3rd day of September, 2021 addressed as follow:

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South Carolina Court Of Appeals
1220 Senate Street
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September 3, 2021

Re: R. Jay Lagroon v. Scott Suggs Crystal Suggs
Appellate Case No. 2019-002018

Please find attached the court filings for the above case No. 2019-002018

Respectfully,
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