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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM MCORMICK COUNTY
IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUT

J. Cordell Maddox, Jr., Eleventh Circuit Court Judge
Debra R. McCaslin, Eleventh Circuit Court Judge
McCormick County
Trial Court Case No. 2017CP3500045

R. Jay Lagroon.....Appellant,

V.

Crystal Suggs and Scott Suggs.....Respondents.

Appellate Case No. 2019-002018

FINAL REPLY BRIEF OF THE APPELLANT

Respectfully Submitted,

Robert Jay Lagroon
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STATEMENT

As set forth in the Brief of Appellant, this appeal involves the issues of whether the Circuit Court erred in granting the respondents, Suggs motion to compel, Dismissal of the plaintiffs cause of action for intentional and negligent infliction of emotional stress. Dismissal of the plaintiffs cause of action for civil conspiracy.

ARGUMENT

The Circuit Court erred Granting the defendants, Suggs motion to compel.

"A trial court's exercise of its discretionary powers with respect to sanctions imposed in discovery matters will be interfered with by the Court of appeals only if an abuse of discretion has occurred, " Karppi v. Greeveille Terrazzo Co., 327 S.C. 538,542, 489 S.E. 2d 679, 681 (Ct. App. 1997). An abuse of discretion occurs when the trial court's ruling is based on an error of law or when grounded in factual conclusions, is without evidentiary support." Rickerson v.Karl, 412 S.C. 215, 219-20, 770 S.E. 2d 767,770 (Ct. App. 2015). 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,line17)

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.

Nowhere in any pleading of any document filed in the Circuit Court does the appellate Lagroon state he has a "**Dental Emergency**". This is no more than a failed attempt of the defendant to misdirect this Court as to pleadings and hearings which occurred in the Circuit Court in McCormick County.

The appellate Lagroon received both defendants Suggs Interrogatories and Request to produce to plaintiff on July 6, 2019. (It should be noted July 4, 2019 fell on Thursday which certainly delayed delivery of the US mail.) Because of damage to the appellants Lagroon's mailbox after placement of the answers to discovery request on August 6, 2019 (R.p. appellant Lagroon mailed a second copy to defendants counsel on August 10, 2019 at 11:28 AM. The **USPS receipt shows Lagroon's answers where received on August 12, 2019** by the defendants Suggs counsel. On **August 13, 2019**, Counsel for the defendant Suggs filed a **frivolous motion** to compel plaintiffs discovery responses and attendance at a deposition **one day after they had received the answers to discovery request**. (It should be noted the deposition complained of in the above motion was scheduled for August 27, 2019, which is more than 2 weeks in the future of when the motion was filed.)

It is overwhelmingly obvious the factual conclusions reached by the Circuit Court is without evidentiary support in the Courts award of sanctions against Appellate Lagroon and therefore should be reversed.

Appellants Service of Notice of Appeal

Complies with South Carolina Rules of Civil Procedure

SCRCP 5(b)(1) states;

"Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him or **by mailing it to him at his last known address** or, if no address is known, by leaving it with the clerk of court."

Respondents Counsel has never provided this appellant, Lagroon, with any other address than what is shown on the certificate of service filed October 19, 2020. In accordance

with SCRCP 5(b)(1) service is proper upon mailing to counsels last known address. It should also be noted that both lawyers for the defendants now have identical addresses.

Motion Hearing on July 19, 2021 does not comply with South Carolina Rules of Civil Procedure

SCRCP Rule 6(d) states:

> "When a motion is to be supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 59(c), additional or opposing affidavits may be served not later than two days before the hearing, unless the court permits them to be served at some other time."

Appellant Lagroon received and email from Judge Steven DeBerry's clerk on July 18, 2021 at 7:45 PM requesting a suitable time for the plaintiffs motion hearing for Complete and Correct Transcript either Monday or Tuesday? Appellant Lagroon replied to that email on July 18, 2021 at 8:49 PM. (1 hour and 4 minutes later) stating, on Tuesday, July 20, 2021 anytime after 1pm if that works for everyone. On Monday, July 19, 2021 at 9:05 AM, I received a reply from Judge DeBerry's law clerk stated "Court would be starting at 1pm today. I replied to the email stating I would be unable to attend and requesting the hearing be rescheduled with at least 24 hours notice while offering to travel to Judge DeBerry's Court to expedite the motion hearing. To date I have received no reply from Judge DeBerry's Court or Clerk.

The Appellant was only allowed three (3) hours and fifty five (55) minutes to prepare and serve and affidavit for this motion hearing while forty eight (48) hours is allowed under SCRCP 6(d).

The Circuit Court erred in dismissing Appellant's cause of action for intentional and negligent infliction of emotional stress

In JM Mechanical Corp. v. United States et al. the Court States;

"if matters outside the bounds of the complaint are considered by the district court, the merits of the claim must be tested by way of motion for summary judgment. See Fed.R.Civ.P. 12(b). In that event, even if a motion to dismiss pursuant to Rule 12(b)(6) has been properly interposed, the court must convert it into a summary judgment proceeding and afford the plaintiff a reasonable opportunity to present all material made pertinent to a summary judgment motion by Rule 56. See Murphy, 611 F.2d at 573; Fed.R.Civ.P. 12(b); 5 C. Wright, A. Miller, & E. Cooper, Federal Practice & Procedure Sec. 1366 (1975). Were the district court to fail to convert the Rule 12(b)(6) motion into a motion for summary judgment, any determination made by the district court **pursuant to Rule 12(b)(6) could not stand.** See Murphy, 611 F.2d at 573; see also Johnsrud, 620 F.2d at 33". JM Mechanical Corp. v. United States, by the United States Dept of Housing and Urban Dev., 719 F.2d 190 (3d Cir. 1983)

The appellate Lagroon raised the following issues outside the pleadings in responses to the defendants 12(b)(6) argument.

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.
THE COURT: Okay. (R.p.28,line 5 - p.29,line 3)

Black Law Dictionary describes Presence as;

Act, fact, or state of being in a certain place and not elsewhere, or within sight of call, at hand, or in some place that is being thought of. The existence of a person in a particular place at a given time particularly with reference to some act done there and then. Besides actual presence, the law recognizes constructive presence, which latter may be predicated of a person who, though not on the very spot, was near enough to be accounted present by the law, or who was actively co-operating with another who was actually present.

At hearing Appellate Lagroon testified he was sleeping in the same room less than ten feet away from his twelve year old daughter. Appellate Lagroon was certainly not elsewhere and within sight of call of his daughter and son on the night the defendant Suggs coerced Daniel (son) and Becca (daughter) Lagroon out of Appellate Lagroon's home.
Daniel and Becca Lagroon are the biological children and immediate family of appellate Lagroon. (R.p.28 line 13-15)

As correctly stated in the Respondent's brief Circuit Court Judge R. Lawton McIntosh continued the initial defendants motion to dismiss on October 16, 2017 after noticing the appellate Lagroon required assistance in standing and approaching the Judge's Bench. At the Courts inquiry the appellate Lagroon informed the Court he was under the influence of prescription drugs because of the emotional stress caused by the respondent Suggs. The influence of the prescription drugs was so obvious and severe at hearing on October 16, 2017, appellant Lagroon was offered a courtesy ride home by the McCormick County Sheriffs Office.

At the motion to dismiss hearing of February 26, 2018 (The Order from which this appeal is taken), appellate Lagroon informed the Court that he was currently under the

influence of prescription drugs and had been for years because of the infliction of emotional stress as a direct and proximate cause of the respondents.

MR. LAGROON: Thank you, Your Honor. The actions, these particular causes of action have not been litigated by the Family Court. The Family Court simply appropriately endeavored into whether these allegations were true and after a two year investigation the children were returned to me and the slate was wiped clean, but that was **two long years of mental anguish and drugs that I'm still on today and expect to be on and I'm under today in this courtroom and expect to be on for the rest of my life** because of two not strangers, but people that were very well informed and knew that I had sole custody of those children and that they shouldn't be picking up my children in the middle of the night from my home or office and it's outrageous. (R.p.30,line 9-22)

On August 2, 2018 mediator Jim Harrison esquire, had also noticed the appellate Lagroon required assistance and after questioning Lagroon, learned of the influence of prescription drugs on that day as a result of the emotional stress caused by the respondent Suggs. As a direct result, Mr. Harrison refused to allow the respondents in the same room with the appellate Lagroon at any point during the mediation of this action.

The Supreme Court of South Carolina in HANSSON V. SCALISE BUILDERS OF SOUTH CAROLINA, 374 S.C. 352, 357, 650 S.E.2d 68, 70 (2007) wrote;

"Although this Court only recently formally recognized the tort of intentional infliction of emotional distress, the theory regarding recovery for emotional damages has an extensive history in South Carolina.[1] Prior to formal recognition of the tort, this Court had already indicated that willful and malicious conduct which proximately caused another's emotional distress, and without accompanying physical injury, may be actionable.[2] The landscape dramatically changed when this Court expressly defined the tort of intentional infliction of emotional distress-also known as the tort of "outrage"- in Ford v. Hutson, 276 S.C. 157, 276 S.E.2d 776 (1981). In Ford, the Court held that in order to recover for intentional infliction of emotional distress, the complaining party must establish that:

(1) the defendant intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from his conduct;

(2) the conduct was so "extreme and outrageous" so as to exceed "all possible bounds of decency" and must be regarded as "atrocious, and utterly intolerable in a civilized community;"

(3) the actions of the defendant caused plaintiff's emotional distress; and

(4) the emotional distress suffered by the plaintiff was "severe" such that "no reasonable man could be expected to endure it."

Id. at 162, 276 S.E.2d at 778 (quoting Restatement (Second) of Torts § 46, cmts. d, i, and j) (citations omitted). Thus, in Ford, the Court expressly ruled that a party could recover damages for emotional distress in the absence of physical impact or physical injury. Id...

Hansson's alleged emotional damages resulting from Petitioners' conduct rested on his testimony that he lost sleep at night and that he visited a dentist who told him he appeared to be grinding his teeth in his sleep. He further testified that his condition necessitated a second trip to the dentist and "a couple hundred dollars" for fillings and a tooth cap. Hansson admitted that he **neither visited nor received treatment or medication** from any other physician or counselor. Additionally, Hansson stated that his coworkers' conduct **did not cause him to lose any time from work.** Hansson also asserted that the conduct did not affect his **relationship with his wife**, or ability to perform his job."

In the present appeal, virtually no discovery has taken place because Judge Debra R. McCaslin's Order of August 26, 2020, Orders this case STAYED during the pendency of the appellate action. In consideration of little or no discovery the record in the present case clearly shows, appellant **Lagroon has missed work while visiting and receiving treatment from his physician and is under the influence of prescription drugs on a daily basis** and in all but one Court appearance because of the respondents Suggs intentional infliction of emotional distress in keeping with South Carolina Supreme Court opinion in Hansson. Furthermore, appellate Lagroon pleads he has **lost consortium** with both his children (Daniel and Becca Lagroon) and his wife (Kelli).

As stated in Upchurch v. New York Times Co. 314 S.C. 531, 431 S.E.2d 558, 562 (1993),

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.App.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; *see also* W. Keeton, D. Dobbs, R. Keeton D. Owen, *Prosser and Keeton on Torts* § 12 (1984 Supp. 1988) (hereinafter *Prosser Keeton*). There is no evidence that respondents targeted appellants to be harmed by their allegedly tortious acts.

The harm suffered by appellants arose only indirectly from respondents' publishing allegedly false information about Bodie. There are situations when plaintiffs may recover for intentional infliction of emotional distress for harm they suffer as the result of acts which have injured another. The Restatement (Second) of Torts § 46(2) (1965) provides:

§ 46. Outrageous Conduct Causing Severe Emotional Distress

. . . . . .

(2) Where such conduct is directed at a third person, the actor is subject to liability if he intentionally or recklessly 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, or

(b) to any other person who is present at the time, if such distress results in bodily harm.

(1) The defendant Suggs was certain or substantially certain that distress would result from the abduction of the appellant's minor biological children (Daniel and Becca Lagroon). Appellate Lagroon has been heavily medicated with prescription medication since this

kidnapping occurred and is informed and believes he will remain on prescription medication throughout his natural life.

(2) The defendant Suggs outrageous and extreme conduct cannot be condoned by any decent human being in Americas democratic society and is intolerable in a civilized community anywhere in the United States of America.

(3) The actions of the defendant Suggs continues to cause the appellant Lagroon emotional distress in so much as his children have never recovered from being placed in DSS foster care during the investigation of the South Carolina Family Court. An investigation which resulted in both children being returned to the sole custody of the appellate Lagroon. Before the outrageous abduction of the defendant Suggs, both children enjoyed the fruits of their labors academically including both children being admitted to BETA club prior to being kidnaped by the defendant Suggs. Since abduction by the defendant Suggs, both children have been subjected to continued counseling and prescription medication and are failing academically and socially. Daniel and Becca's mother (Rebecca Lagroon) was adjudicated as unfit by the South Carolina Family Court when the children were in 2nd and 3rd grade. Among the reasons the appellate Lagroon was granted sole custody of the minor children is both children where failing academically and the Court Ordered the minor children out of the school system where their mother had placed them.

(4) The appellate Lagroon is frightened and worried for the physical and psychological health and safety and both himself and his minor children. Appellate Lagroon continues to grieve for the time lost with the childhood years of his children which can never be recovered. Appellate Lagroon and his wife have become introverted and are humiliated and embarrassed to patronize local businesses or participate in any civic activities within the community in which he resides. The appellate Lagroon and his wife travel to towns more that thirty miles away just for the simple task of grocery shopping. The anger and resultant shame felt by the appellate Lagroon is intolerable without his daily prescription medications for insomnia , hypertension, and for the control of rage and negative emotions. Appellate Lagroon also is being treated with prescription medication and counselling for Intermittent explosive disorder (IED) which is focused solely and primarily at the defendant Suggs.

Dismissal of the plaintiffs cause of action for civil conspiracy.

In Paradis v. Charleston Cnty. Sch. Dist., Op. No. 28030 the Court clarified;

A plaintiff must prove the following elements to maintain a civil conspiracy action:

(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 a overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff. Id.

III. CONCLUSION Because the court of appeals upheld the dismissal of Petitioner's civil conspiracy claim based on the failure to plead special damages, we ***reverse*** *and remand the matter to the circuit court for further proceedings on Petitioner's claim for civil conspiracy. Our decision in Petitioner's case is based solely on the narrow question before the Court regarding the abolishment of the Todd rule...*

In Paradis v. Charleston Cnty. Sch. Dist,. Op. No. 28030 (S.C Sup. Ct refiled Aug.18, 2021) (Howard Adv. Sh. No 28, at 12, 22).

In the present appeal, Judge Cordell Maddox Jr. dismissed the cause of action for civil conspiracy citing ;

"A claim for civil conspiracy must allege additional acts in furtherance of a conspiracy rather than reallege other claims within the complaint. Moreover because the quiddity of a civil conspiracy claim is the special damage resulting to the plaintiff, the damages must go beyond the damages alleged in other causes of action, "

(1) The Defendant (Suggs), by their own admission, conspired with the Non-custodial mother (Rebecca Lagroon). (2) 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). (3) The Defendant (Suggs) did acts and things herein alleged pursuant to and in furtherance of the conspiracy in the above

alleged agreement by cooperating with the Non-Custodial parent (Rebecca Lagroon) and lent aid and encouragement to the Non-custodial parent (Rebecca Lagroon) and ratified and adopted the acts of the Non-Custodial parent (Rebecca Lagroon) by trespassing onto the property of the Plaintiff (Lagroon) multiple times in the middle of the night, prior to the removal of the children, to coerce and enjoin the minor children in this outrageous and illegal act willingly and knowingly. (4) To deliberately inflict harm to the Plaintiff (Lagroon). In furtherance of this conspiracy the Defendant (Suggs) appeared in the South Carolina Family Court, **after the abduction of the minor children,** (It should be noted there was no action pending in the South Carolina Family Court at the time of the abduction by the defendant Suggs.), 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. 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). 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; Loss of consortium during the investigation by the South Carolina Family Court. Medical expenses for the minor children for counseling of Daniel Jay Lagroon and Becca Eloise Lagroon. Ongoing Medical expenses for the minor child Daniel Jay Lagroon for medical testing for sexually transmitted diseases. 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).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).

Chief Polygraph Examiner for South Carolina Law enforcement Division Mr. Johnny Hartley, concluded appellant Lagroon's minor child, Daniel Lagroon, who is diagnosed as HIV Positive, is **TRUTHFUL** when questioned directly concerning the Defendant (Suggs) role in his abduction. Daniel Lagroon deteriorating medical condition is a direct and proximate result of the Defendant (Suggs) egregious and illegal conduct. (R.p.67-68)

CONCLUSION.

For the foregoing reasons, 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.**

The Appellate further respectfully request the Order granting the Respondents' Motion to compel be **REVERSED.**

BY: _____

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CERTIFICATE OF COMPLIANCE

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

By:_____

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CERTIFICATE OF COUNSEL

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

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CERTIFICATE OF SERVICE

The undersigned Pro Se Appellant does hereby certify that service of the Final Appellants Reply 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 24th day of January 24, 2022 addressed as follow:

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