Superior Court of New Jersey
Appellate Division
Docket No. A-000155-24

MARY JO LAMB,

PLAINTIFF-APPELLANT,

v. CIVIL ACTION

SARA NOUR,

DEFENDANT-RESPONDENT.

On appeal from a final judgment
entered in the Superior Court
of New Jersey, Law Division,
Somerset County, SOM-L-1728-19
John E. Bruder, J.S.C.

BRIEF OF APPELLANT

Hegge & Confusione, LLC
309 Fellowship Road, Suite 200
Mount Laurel, NJ 08054
Mailing address: P.O. Box 366, Mullica Hill, NJ 08062-0366
(800) 790-1550; mc@heggelaw.com

Michael Confusione (Atty I.D. No. 049501995)
Of Counsel and on the Brief

BRIEF FILED ON DECEMBER 16, 2024

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Procedural History[1]

Plaintiff filed a complaint against the defendant, alleging defamation. The defendant denied the claim and counterclaimed for defamation, intentional infliction of emotional distress, and related causes. A1. In June 2024, the defendant moved for permission to file then filed an amended answer and counterclaim. A20, 130.

The plaintiff filed a motion *in limine* to exclude from admission into evidence several text messages that the defendant proffered in support of her counterclaims. A62 The plaintiff submitted the motion on July 2, 2024, and the judge granted the motion on July 8 (the first day of trial, 1T63), noting that the defendant had withdrawn her intention to introduce the text messages at trial. The judge stated, "So the first motion by plaintiff was to exclude defense text messages, Twitter screens from evidence. The defendant withdrew their intention to utilize those text messages, so that therefore renders that motion as moot." 1T63. This was per the representation of defendant's counsel, who told the trial judge during the motion hearing: "as to the other judge, the text messages you ordered that the -- we had to

[1] References to transcripts are as follows:

1T 7/8/24 (trial)
2T 7/9/24 (trial)
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4T 7/30/24 (trial)
5T 7/31/24 (trial)
6T 8/30/24 (bench trial decision)

give them the metadata. That's a pretty elaborate process, which requires filing a lawsuit, because they contacted the parties in question. I believe one is in Washington, one is in Nevada. And you have to hire -- they both told me that you would have to file a complaint in their state in order to have a subpoena honored. They do not honor out-of-state subpoenas. My client was unable to afford the cost of filing complaints in out of state, so that motion, Judge, we are withdrawing our request to admit into evidence the text messages. We are not -- we're not contesting that. It's moot." 1T10-12 (However, as argued in the Argument section below, the trial judge considered the non-authenticated and supposedly precluded text messages in the bench trial anyway in deciding the defendant's intentional infliction claim and the damages owed to the defendant on her claim).

A bench trial was conducted to address the competing claims. The court granted the plaintiff's motion to dismiss the defendant's untimely counterclaim for defamation (6T44-47) but denied the dismissal of the defendant's counterclaim for intentional infliction of emotional distress due to its untimeliness. At the conclusion of the trial, the court dismissed the plaintiff's claim and entered judgment in favor of the defendant on her claim against the plaintiff for intentional infliction of emotional distress, awarding $100,000 in compensatory damages and $100,000 in punitive damages, plus interest. 6T4-92. This judgment was finalized on September 16, 2024. The plaintiff is now appealing the court's decision. A132

Statement of Facts

The parties charged each other with defamation and related wrongs. A1-35. After the bench trial held below, Judge Bruder denied the claims of both parties, except for the defendant's claim that the plaintiff committed intentional infliction of emotional distress through a campaign of harassment that included phone calls, text messages, false social media posts, and other alleged conduct that the court determined was degrading, beyond the bounds of decency, and intended to cause emotional distress to the defendant. 6T4-92.

This appeal does not address the substance of the parties' dispute; rather, it concerns whether the lower court erred in failing to dismiss the defendant's counterclaims on the grounds of the statute of limitations. 6T4-92.

The trial judge agreed with the plaintiff that the statute of limitations barred the defendant's defamation claim, ruling, "Ms. Lamb's assertion of the affirmative statute of limitation defense is correct, and Sara Nour's defamation count fails on that ground, without regard to a further analysis of the merits or proofs as to whether that -- the statements are defamatory. So that resolves the second count of the plaintiff's -- or the defendant's counterclaim." 6T47.

The court rejected Ms. Nour's argument that the statute of limitations should be extended for her defamation claim under the Continuing Tort Doctrine. Nour claimed the defamatory statements began in January 2018 and continued until June

2019. The judge noted, however, that Nour's testimony revealed uncertainty regarding the dates of the messages and social media posts due to her dissociative symptoms. The court observed that none of the defamatory statements made to others were within one year before Nour filed her counterclaim on February 3, 2020, based on the dates she could recall or those that were documented. 6T23. All defamatory statements identified by Sara Nour were dated between 2016 and 2018, which is outside the one-year statute of limitations for defamation claims by the time she filed her counterclaim on February 3, 2020. The judge indicated that there was an inconsistency between the time outlined in the defendant's counterclaim and the actual testimony and evidence presented by Sara Nour. The court stressed that none of the defamatory statements occurred within one year before the February 3, 2020 filing date. The court thus ruled that Ms. Nour waited too long to bring a defamation claim, rejecting Nour's argument that the Continuing Tort Doctrine rendered her claim timely. 6T10-25.

The trial judge ruled differently, however, on the defendant's claim for intentional infliction of emotional distress—determining that this claim was timely by application of the continuous tort doctrine to sustain the claim. 6T48-50. In her final amended counterclaim, the defendant stated as follows:

> 2. Plaintiff's engaged in a pattern of behavior towards defendant, over the course of approximately eighteen months, involving actions and conduct that established a pattern of harassment, threats, intimidation, revenge porn, and witness tampering. These actions and

conduct commenced on or about January of 2018 and continued until on or about June of 2019.

3. These actions by plaintiff included the following:

a. Posting on the internet photos of the defendant's face superimposed upon photos of a nude women whose body and vagina purport to be defendant's body and vagina.

b. Posting on the internet photos depicting defendant's face performing fellatio upon an unknown man's penis.

c. Posting on the internet pictures of defendant's face also including lewd pictures of an unknown women's vagina next to plaintiffs face and an unknown man pointing his penis at defendants mouth, implying that defendant was performing fellatio on the unknown male's penis and implying defendant would perform sexual acts for unknown men.

d. Making statements that defendant sucked a man's balls while stretching her hands in their wallet.

e. Making statements calling defendant a dumb whore.

f. Making statements that defendant should stop acting like a good Islam girl when she sucks dick and gets fucked.

g. Making statements calling defendant a dirty Arab whore from a third world country.

h. Making statements calling defendant a hooker.

i. Making statements that asserted defendant had a venereal disease and the HPV virus.

j. Making statements that asserted defendant had a "purple pussy."

k. Making statements that asserted defendant had an "ugly and black pussy."

l. Making statements that asserted defendant had no husband because she was an armpit smelling hoe that smells like cold cuts in her vagina that's purpose roast.

m. Making statements calling defendant a hoe.

n. Making statements threatening to do damage to defendant's motor vehicle. [A20-35]

In assessing the application of the continuing tort doctrine, the trial judge noted that during her trial testimony, Ms. Nour stated that, as of July 8, 2019, Ms. Lamb had been harassing Ms. Nour for five years, dating back to 2014 (Ms. Nour previously informed the police that the harassment began in 2011). 6T47-50. "As discrete torts, they are not subject to the continuing violation doctrine," the plaintiff argued, noting that the doctrine is "typically applicable in employment discrimination cases"—not to intentional infliction of emotional distress claims. 6T47-50.

The trial judge denied dismissal of the defendant's claim, however, ruling that the continuous tort doctrine applied to the defendant's intentional infliction claim and stating, "In this case, the statute of limitation for the intentional infliction of emotional distress claim is not one year as with defamation, but instead is two years. As far as the beginning of that statute of limitations period, it would begin running from the date that the pattern of tortious conduct ceases. In this case, if the defendant/ counterclaimant's proofs are to be believed, then the statute of limitations would not have even begun running until some point in 2019 at its earliest, and as the defendant

testified that most or all of the harassing conduct ceased after Judge Hoebich had issued that no-contact order to Ms. Lamb as part of a case pending in the Piscataway Municipal Court. So the statute of limitations at its earliest would not close until some date in 2021, two years from that 2019 date. In this case, Ms. Nour instituted suit on her counterclaim for intentional infliction of emotional distress in February of 2020, well within the statute of limitations period." 6T49-50.

ARGUMENT

Related trial court errors show that the judgment entered in plaintiff's favor on her intentional infliction of emotional distress claim must be vacated and the cause remanded for a new trial on damages for the plaintiff (A132; 6T4-92)

A. The trial court erred by first granting plaintiff's *in limine* motion to exclude several text messages that defendant was proffering as evidence then, at trial, relying on the text messages anyway in determining the defendant's intentional infliction claim (1T10-12, 6T4-92)

Plaintiff *moved in limine* to exclude from admission into evidence several text messages and Twitter communications that the defendant proffered in support of her counterclaims. Plaintiff submitted the motion on July 2, 2024 (A62). Plaintiff identified and attached as Exhibit A to her motion the text messages she wanted excluded from evidence at trial (A69) and noted that defendant had affirmed in her answer to interrogatories that "all text messages were submitted" to plaintiff in discovery. Plaintiff stressed that neither defendant nor her counsel had provided "forensic identification to text messages and or social media posts as requested in

discovery. These text messages do not fall under N.J.R.E 902 Self Authentication. These text messages submitted by defendant require intrinsic identification. The several text messages with Mary Jo Lamb as sender do not provide any authenticity with phone number and were not in original discovery." Plaintiff stressed further, "There are random numbers on text messages that are not owned by Mary Jo Lamb. Defendant has all my phone records for my phone number 908 240 3311. See text numbers 718 208 4012, 929 382 5846, 732 201 7232."

The trial judge considered plaintiff's motion before trial began (on July 8, 1T63). The judge noted that the first motion by the plaintiff "is to exclude the defendant's text messages, Twitter screenshots from evidence." 1T7. The judge granted the plaintiff's motion to preclude the text messages because defendant withdrew her intention to introduce the text messages at trial. The judge stated, "So the first motion by plaintiff was to exclude defense text messages, Twitter screens from evidence. The defendant withdrew their intention to utilize those text messages, so that therefore renders that motion as moot." 1T63.

The judge's ruling was premised on the representation of defendant's counsel, who told the trial judge during the motion hearing: "the text messages you ordered that the -- we had to give them the metadata. That's a pretty elaborate process, which requires filing a lawsuit, because they contacted the parties in question. I believe one is in Washington, one is in Nevada. And you have to hire -- they both told me

that you would have to file a complaint in their state in order to have a subpoena honored. They do not honor out-of-state subpoenas. My client was unable to afford the cost of filing complaints in out of state, so that motion, Judge, we are withdrawing our request to admit into evidence the text messages. We are not -- we're not contesting that. It's moot." 1T10-12 .

During the trial, however, the defendant used essentially the same text and Twitter messages to support her intentional infliction claim—the same substantive messages that appeared in the texts and Twitter messages that, before trial began, the defendant's counsel acknowledged would not be used and the trial judge ruled were excluded. The judge permitted this despite the judge's earlier, July 8 ruling excluding this evidence from use at trial and despite the acknowledgment by defendant's counsel that these texts and Twitter messages would not be used at trial. Right before making his bench trial decision, the judge said that plaintiff's *in limine* motion "to exclude the defendant's texts and the Twitter screenshots" "is denied" (6T4-92) – despite the July 8 ruling excluding them and the acknowledgment by defendant's counsel that this evidence was not being presented. The judge said that the texts and Twitter "material was utilized effectively by the plaintiff during the course of the trial" and then relied on this evidence in making his substantive decision in the defendant's favor on her intentional infliction claim. The judge said during his decision,

- I'll review some of the messages. I note that many of them are very vulgar, graphic and offensive, and so I'm only referencing so many of them as are needed to illustrate the proofs. In defense exhibit 7.16, one of the earlier Twitter messages from June 14th, 2016, when the plaintiff was not so intent on hiding her identity, the tweet -- when I say -- yeah, the plaintiff was not so intent on hiding her identity, the tweet came from @kayleelamb, K-A-Y-L-E-E- L-A-M-B-7-1 -- obviously, the plaintiff's last name -- name to @Saranourxoxo, "If you think for one minute you're getting out of stealing my prescriptions with your husband...just getting started." 6T56.

- But those additional direct evidence facts helped to put the tweet at the D-7.16 that I've read into focus and the ominous threat in that message, "just getting started" proved to be true. D-9-1, a private direct message on Instagram from October 8th, 2018 from a burner account to Sara Nour. Amongst other things, it says some very vile things and then says quote, "Donnie abused you and you know that." Then it goes on to say, "I dare you to even call my job. I will come to your house again. If you come out this time, I will run you over. That's if you don't shoot me, since you make threats, dirty bitch." And then some more really obscene things about Sara Nour's body. 6T58.

- D-11-2, a text message from an unknown number directed to Ms. Nour's phone. "You fucked him for my money, you slut. You are basically my hooker." 6T59.

These texts and Twitter messages upon which the judge relied (*see* trial exhibits at A69) were the same in substance as the texts and Twitter messages the judge previously said were excluded, and the defendant's counsel represented would not be presented at the trial (*see* motion in limine at A62). The trial judge committed reversible error not only in permitting the defendant to introduce into evidence the precluded texts and Twitter messages but in relying on this material as part of the basis for the judge's decision granting relief to the defendant for her intentional infliction of emotional distress claim.

B. The trial court erred by denying the plaintiff's motion to dismiss that part of the defendant's counterclaim for intentional infliction of emotional distress, which was premised on discrete, allegedly tortious acts that occurred more than two years before the defendant filed her claim. This error warrants vacating the judgment entered in the defendant's favor and remanding for a new trial on damages (A132; 6T4-92)

The trial judge committed reversible error by relying, in his decision, on instances of allegedly wrongful conduct that occurred before February 3, 2018, and thus were outside the two-year statute of limitations for bringing an intentional infliction of emotional distress claim. The defendant should have been permitted to proceed only on claims that were premised on wrongs occurring within the two-year

limitations period. The trial court erred in permitting the defendant to base her claims on conduct that occurred outside the two-year statutory period. Moreover, this was a harmful error because the judge premised his ruling in the defendant's favor and his determination of the compensatory and punitive damages against the plaintiff on conduct that occurred before February 3, 2018, which should have been deemed no longer actionable. 6T4-92. Because of this error, this Court should vacate the judgment in the defendant's favor on her intentional infliction claim and remand for a new trial damages.

1. The trial judge erred in applying the continuous tort doctrine (6T49-50).

In the middle of trial, the defendant introduced the continuous tort doctrine in an informal request to amend her counterclaim. Plaintiff opposed and set forth reasons why the doctrine is not applicable to the defendant's three claims of defamation, invasion of privacy, and intentional infliction of emotional distress. New Jersey courts have applied the doctrine to workplace discrimination and harassment claims -- not to an intentional infliction claim like the defendant asserted in this case, Wilson v. Wal-Mart Stores, 158 N.J. 263, 271–72 (1999) (addressing the "subtle and demanding question" of "when the statute of limitations begins to run on a hostile-work-environment sexual harassment claim in the context of successor-business enterprises, each of which has contributed to the creation of a hostile environment" and finding "the relevant final date of harassment is March 4,

1994, the day when Wal–Mart terminated Wilson); Shepherd v. Hunterdon Developmental Ctr., 174 N.J. 1 (2002) (applying continuing violation doctrine to hostile work environment claims under the LAD); Ali v. Rutgers, 166 N.J. 280, 286 (2000) (applying doctrine to race discrimination claim); Schiavo v. Marina Dist. Dev. Co., LLC, 442 N.J. Super. 346, 371–72 (App. Div. 2015) (considering application of doctrine to plaintiff's LAD claim); cf. Terry v. Mercer Cnty. Bd. of Chosen Freeholders, 173 N.J. Super. 249, 253 (App. Div. 1980), modified, 86 N.J. 141 (1981) (relaxing filing requirement under N.J.S.A. 10:5-18 of Law Against Discrimination if "discriminatory conduct can be said to constitute a continuing violation").

Even if the doctrine can apply to an intentional infliction claim, the claim must involve a continual, cumulative pattern of tortious conduct (Wreden v. Twp. of Lafayette, 436 N.J. Super. 117 (App. Div. 2014); Roa v. Roa, 200 N.J. 555 (2010); Shepherd, supra, 174 N.J. 1; Schiavo, supra, 442 N.J. Super. 346). In this case, there were allegedly wrongful texts and postings in 2016, then a break until additional postings in 2018-2019. There was not a "continuous" act in light of that two-year gap. As the judge himself noted, "Sara Nour testified that the communication spanned several years starting in 2016, grew most intense in 2018, and then in 2019 they suddenly stopped for at least for the most part." 6T75.

Inseparability is a core element of the continuous tort doctrine. The doctrine applies where the wrongful acts are so interconnected and continuous that they cannot be separated into discrete actionable events but, rather, are parts of one alleged wrong. This concept of inseparability is a foundational condition for the doctrine to apply. There is not inseparability in this case, because the alleged actions by the plaintiff are too separated in time, and the messages and postings do not all constitute legal wrongs at all.

The relationship between Ms. Lamb and Ms. Nour also impacts the application of the continuing violation doctrine. For instance, some courts outside New Jersey have applied the doctrine to toll the running of the statute of limitations on claims of intentional infliction; however, those cases involve circumstances wherein the plaintiff is unable or afraid to assert the claim earlier—most often involving claims of abuse by a wife against a husband or similar relationships where the wrongdoer has power over the individual victim, *e.g.,* Twyman v. Twyman, 790 S.W.2d 819 (Tex. App. 1990), writ granted (Dec. 19, 1990), rev'd, 855 S.W.2d 619 (Tex. 1993) (wife's claim against husband); Curtis v. Firth, 123 Idaho 598 (1993) (woman's claim against former co-habitant). There was no such relationship between the parties in this case, the record shows.

Plaintiff questioned the defendant at the trial below regarding why she did not file a lawsuit earlier if she felt harassed. Nour stated that she delayed pursuing a

claim due to Lamb's alleged "financial advantage" and the intimidating use of the courts, noting the high costs and lengthy process of civil cases. These factors do not constitute grounds to excuse the running of a statute of limitations.

Caselaw supports this conclusion. In Roa, supra, 200 N.J. 569–70, our Supreme Court explained that the "continuing violation theory was developed to allow for the aggregation of acts, each of which, in itself, might not have alerted the employee of the existence of a claim, but which together show a pattern of discrimination. In those circumstances, the last act is said to sweep in otherwise untimely prior non-discrete acts." The Court stressed, however, "What the doctrine does not permit is the aggregation of discrete discriminatory acts for the purpose of reviving an untimely act of discrimination that the victim knew or should have known was actionable. Each such "discrete discriminatory act starts a new clock for filing charges alleging that act," c*iting* Nat'l R.R. Passenger Corp. v. Morgan, 536 U.S. 101, 113 (2002); Shepherd, supra, 174 N.J. 19 (quoting National R.R. Passenger Corp., supra, 536 U.S. 110) ("an employee under Title VII 'must file a charge within 180 or 300 days of the date of the [discrete] act or lose the ability to recover for it.'"). The Roa court concluded on the facts before it, "In other words, when Fernando was fired he clearly knew or should have known, that he had been the subject of retaliation by defendants and should have filed his complaint within two years thereof. When he did not do so, the termination, as a claim, was lost and

was not subject to a continuing violation analysis." That is where the trial judge in this case erred.

The Appellate Division applied the doctrine in Schiavo, supra, 442 N.J. Super. 371, ruling that the continuing violation doctrine did not apply to toll two-year statute of limitations to the plaintiff's LAD claim. Where only discrete acts of discrimination are alleged, the statute of limitations is easily calculated as two years from the date of the event, the court said. "Discriminatory termination and other similar abrupt, singular adverse employment actions that are attributable to invidious discrimination, prohibited by the LAD, generally are immediately known injuries, whose two-year statute of limitations period commences on the day they occur," *citing* Roa, supra, 200 N.J. 555.

This same analysis applies to Ms. Nour's claim of intentional infliction of emotional distress. Ms. Nour acknowledged in her testimony that she knew the defendant had committed wrongs against her at the time the texts and Twitter postings were made, and that the defendant saw them contemporaneously with their postings. This was not a continual, cumulative pattern of tortious conduct. (Wreden, supra, 436 N.J. Super. 117; Roa, supra, 200 N.J. 555; Shepherd, supra, 174 N.J. 1; Schiavo, supra, 442 N.J. Super. 346). This exception to the statute of limitations only applies to conduct that is continuous, cumulative, and synergistic (Roa, supra, 200 N.J. 555). It was improper for the judge to permit the defendant to use timely

claims (those that took place after February 3, 2018) to bootstrap into her case untimely ones (those that took place before February 3, 2018).

This conclusion is consistent with New Jersey's discovery rule as well, which provides that where a party "does not know or have reason to know that he has a cause of action against an identifiable defendant until after the normal period of limitations has expired, the considerations of individual justice and the considerations of repose are in conflict and other factors may fairly be brought into play" to extend the running of the statute of limitations. Roa, supra, 200 N.J. 555; Caravaggio v. D'Agostini, 166 N.J. 237, 245 (2001) (quoting Farrell v. Votator Div. of Chemetron Corp., 62 N.J. 111, 115 (1973); Fernandi v. Strully, 35 N.J. 434, 438 (1961)). At the heart of the discovery rule is the fundamental unfairness of barring claims of which a party is unaware. Mancuso v. Neckles ex rel. Neckles, 163 N.J. 26, 29 (2000).

New Jersey courts typically apply the rule to causes of action that are beyond the ken of the average layperson, e.g., Lapka v. Porter Hayden Co., 162 N.J. 545, 555–56 (2000) (applying "discovery rule" to occupational asbestos exposure claim); Vispisiano v. Ashland Chem. Co., 107 N.J. 416, 426 (1987); O'Keeffe v. Snyder, 83 N.J. 478, 493 (1980) (replevin of painting); Diamond v. New Jersey Bell Tel. Co., 51 N.J. 594, 599 (1968) (negligent installation of underground conduit); New Mkt.

Poultry Farms, Inc. v. Fellows, 51 N.J. 419, 425 (1968) (professional error of land surveyor).

Ms. Nour's intentional infliction claim in this case does not resemble such causes of action. Ms. Nour's testimony shows that she was aware of Ms. Lamb's actions against her and believed they were wrongful when they occurred. Ms. Nour delayed pursuing a claim against Lamb because of Lamb's alleged "financial advantage" over Nour and Ms. Nour's feeling of being intimidated by the courts, noting the high costs and lengthy process of civil cases. These are not grounds to apply the continuing tort doctrine or excuse the running of a statute of limitations. Statutes of limitations "promote repose by giving security and stability to human affairs." Caravaggio v. D'Agostini, 166 N.J. 237, 245 (2001) (quoting Wood v. Carpenter, 101 U.S. 135, 139 (1879)). "When a plaintiff knows or has reason to know that he has a cause of action against an identifiable defendant and voluntarily sleeps on his rights so long as to permit the customary period of limitations to expire, the pertinent considerations of individual justice as well as the broader considerations of repose, coincide to bar his action." Roa v. Roa, 200 N.J. 555, 570–71 (2010).

2. The trial court erred in permitting the defendant to base her intentional infliction claim in part on conduct that occurred more than two years before the defendant filed her claim (A132; 6T4-92)

The judge should have dismissed that part of the defendant's claim premised on alleged tortious conduct by the plaintiff that occurred more than two years prior to the February 3, 2020 filing of the claim. The defendant set forth the following in her amended counterclaim in support of her claim for intentional infliction of emotional distress:

> 2. Plaintiff's engaged in a pattern of behavior towards defendant, over the course of approximately eighteen months, involving actions and conduct that established a pattern of harassment, threats, intimidation, revenge porn, and witness tampering. These actions and conduct commenced on or about January of 2018 and continued until on or about June of 2019.
>
> 3. These actions by plaintiff included the following:
>
> a. Posting on the internet photos of the defendant's face superimposed upon photos of a nude women whose body and vagina purport to be defendant's body and vagina.
>
> b. Posting on the internet photos depicting defendant's face performing fellatio upon an unknown man's penis.
>
> c. Posting on the internet pictures of defendant's face also including lewd pictures of an unknown women's vagina next to plaintiffs face and an unknown man pointing his penis at defendants mouth, implying that defendant was performing fellatio on the unknown male's penis and implying defendant would perform sexual acts for unknown men.
>
> d. Making statements that defendant sucked a man's balls while stretching her hands in their wallet.

e. Making statements calling defendant a dumb whore.

f. Making statements that defendant should stop acting like a good Islam girl when she sucks dick and gets fucked.

g. Making statements calling defendant a dirty Arab whore from a third world country.

h. Making statements calling defendant a hooker.

i. Making statements that asserted defendant had a venereal disease and the HPV virus.

j. Making statements that asserted defendant had a "purple pussy."

k. Making statements that asserted defendant had an "ugly and black pussy."

l. Making statements that asserted defendant had no husband because she was an armpit smelling hoe that smells like cold cuts in her vagina that's purpose roast.

m. Making statements calling defendant a hoe.

n. Making statements threatening to do damage to defendant's motor vehicle. A20

Defendant claimed in her pleading that the plaintiff's "actions and conduct commenced on or about January 2018 and continued until on or about June 2019"; however, the evidence at trial showed that many of the charged wrongs occurred before February 3, 2018, and therefore should have been barred by the two-year statute of limitations for asserting intentional infliction claim.

The trial judge's ruling rejecting the application of the continuing tort doctrine to the defendant's claim for defamation shows that many of the texts and Twitter

communications upon which the defendant premised both her defamation and intentional infliction claims occurred more than two years before the defendant filed her claim counterclaim. The judge said, "In reviewing the proofs submitted by Ms. Nour, it appears from Sara Nour's testimony that she alleges a pattern of harassment from Ms. Lamb over a period of time spanning from approximately 2016 to 2019." 6T39. All the defamatory statements identified by Sara Nour were dated between 2016 and 2018, the judge determined. "The communications which Ms. Nour has indicated were defamatory mostly occurred in the forms of the fake Instagram accounts and Twitter messages from 2016 to 2018. Some defamatory statements were also made about Sara Nour to her sister, Lubna Nour. Lubna testified that those defamatory texts were made in 2017 to 2018." 6T40. "In addition, clear defamatory statements were texted to another of the defendant's witnesses, Christopher Lopez. Mr. Lopez, testified that those texts and communications occurred over the course of two years, from 2017 to 2018 and they stopped in 2018." The judge said that the "statements published to others all appear to be dated from 2016 to 2018. Throughout Sara Nour's testimony, the exhibits she identified with defamatory statements all occurred in 2016, 2017, and 2018." Id.

The judge noted, further, "that the time period set forth in the defendant's counterclaim and by counsel are not consistent with the actual testimony of the defendant in the evidence presented."

> In reviewing the various exhibits, beginning with the D-8 group of exhibits through the D-9 exhibits and the D-11 series of exhibits, all of those that were exhibits of published defamatory statements and not direct text messages alleged from Mary Jo Lamb are either undated and where the defendant couldn't remember the dates, or the dates are from 2016, '17, and '18. The Instagram posts were from late 2017 to early 2018, as per Ms. Nour's testimony. For instance, exhibit -- defense, exhibit 9- 3, the Instagram with Ms. Nour's face and someone else's naked body. I just use that as one illustration. The Twitter posts were testified by Sara Nour to be from 2016. The Seeking Arrangement document, 9-6 in evidence, is from 2019, but does not contain any defamatory statements. Also, I didn't see specifically the date in 2019, so that could call to question whether it was within the one-year statute of limitations from the 2/3/20 filing. But in any event, it didn't contain any defamatory statements." 6T45-48

The evidence further shows that the defendant's intentional infliction claim was premised in part on actions that took place outside the two-year statute of limitations period. The defendant introduced into evidence the following text and Twitter proofs which the record shows occurred before February 3, 2018:

- D-7.16, Twitter message from plaintiff to defendant (2T63); testimony showed this was from June 14, 2016, 2T49, 63. The trial judge relied on this evidence in his decision, 6T56.
- D-7.17, Text apology, (323) 473-1680 (2T64). Plaintiff denied having anything to do with the message (2T53); Defendant presented no proofs showing when this text was from.
- D-8-2 Twitter conversation (5T165). Nour said this was from 2016, 7/29 at 32, 39.

- D-8-5 Three text messages (roast beef), 2018 (5T165). Ms. Nour said these messages were "around 2018" (3T52-54; A140). These derogatory texts were referenced again in the redirect examination of Ms. Nour, 4T274
- Exhibit D-8-7 – referenced a forged RX prescription; the record indicates this was from 2015, 4T 62-63; 3T61
- D-8-8 Twitter post -- (5T167; A143. Ms. Nour said this was from 2016, 3T65, 78.
- D-8-9 Twitter post -- (5T167). This was from spring 2016, Ms. Nour said, 3T76-78.
- D-8-10 Twitter post -- (5T167). "The date is also in the spring/early summer of 2016," Ms. Nour affirmed, 3T78.
- D-9-2 Twitter Post -- (5T167). This is from the spring or early summer 2016, Ms. Nour said, 3T96.
- D-9-3 Instagram account, pornographic profile picture -- (5T167; A153). Ms. Nour said, "This was in 2018, like around that – late 2017/early 2018 period. It was around – there was three accounts around the same time." Ms. Nour then said, This one was 2017." Ms. Nour then said this was "around spring/early summer. So somewhere between March and July of 2016," 3T103.

- D-9-7 – "stealin your man" with graphic photo of a vagina; Ms. Nour affirmed this was from 2017, 3T122-23; the judge said it was from 2016, 4T 44.
- D-11-1, referencing Doni as a heroin junkie. The exhibit itself indicates it's from 2017, and Ms. Nour testified this was from February 19, 2017, 4T261 (and the judge referenced his in his decision, 6T69).
- D-14 – referencing sticky fingers; Ms. Nour testified this "had to be in 2017/2018. I don't recall the exact date." 5T96.
- Regarding D-1-8, Ms. Nour said this twitter post with pictures and words (the eggplant emoji picture) was from 2017, 3T29.

Some admitted exhibits were not proven by the defendant to have been sent or received on a certain date, *see*,

- Exhibit D-9-5, admitted 5T167, A155.
- Exhibit D-9-6, Seeking Arrangement account, admitted 5T167, A156.
- Exhibit D-10-3 Text, Rishi, Seeking Arrangement, admitted 5T168, A160.

Defendant's statements in her motion to file an amended counterclaim also show that much of this text and the Twitter postings occurred before February 3, 2018. Defendant stated that the plaintiff, on numerous occasions, unreasonably

published information from Defendant's medical records by including that information in social media posts available to the general public. These statements commenced on or about June of 2017 and continued until on or about December of 2018. A93.

At trial, Ms. Nour testified that harassment complaints are difficult to prove and that she waited to file a complaint against plaintiff until she had "substantial evidence." Ms. Nour stated that the harassment had been ongoing from 2015 to 2019 and included posting accusatory statements on social media platforms such as Twitter, Instagram, and Facebook, labeling her with derogatory terms. Nour said that the plaintiff was responsible for sending numerous derogatory messages since 2015. Nour said that the relevant Twitter interaction began on October 5, 2016. Ms. Nour examined Exhibit D-8-7, which Nour identified as containing Twitter messages, and stated that these messages were from 2016 and involved various Twitter handles that the plaintiff had used. Nour said that she experienced emotional distress when her real estate business gained traction in 2017 and Mr. Lamb targeted Nour's sister.

Lubna Nour, the defendant's sister, testified that she received approximately 15 text messages from the plaintiff between 2017 and 2018. Her sister Sara's mental health issues began around 2016-2017, Lubna stated. The harassment ceased for an extended period, Lubna also mentioned—indicating that there was not a continuous act of one single wrong (as argued above).

Christopher Lopez, a social media professional, testified that he received calls from Mary Lamb in 2017. The communications from Lamb, including both calls and texts, ceased around the beginning of 2018, Lopez stated. Lopez identified a set of text messages sent to him that he recalled receiving in 2017 or 2018.

All this testimony further demonstrates that at least a substantial part of the defendant's intentional infliction claim was premised on conduct that was beyond the two-year limitation period and should not have been considered by the judge in making his bench trial decision below.

This was a harmful error because the judge relied on this evidence as part of his ruling in the defendant's favor on her intentional infliction claim. For example, the judge stated that the "most important" and "first inquiry" was whether it was the plaintiff who indeed sent the messages upon which the defendant relied for her intentional infliction claim, 6T53-54. In finding that this person was the plaintiff, the judge cited text messages that were sent before February 2018:

> I'll review some of the messages. I note that many of them are very vulgar, graphic and offensive, and so I'm only referencing so many of them as are needed to illustrate the proofs. In defense exhibit 7.16, one of the earlier Twitter messages from June 14th, 2016, when the plaintiff was not so intent on hiding her identity, the tweet -- when I say -- yeah, the plaintiff was not so intent on hiding her identity, the tweet came from @kayleelamb, K-A-Y-L-E-E- L-A-M-B-7-1 -- obviously, the plaintiff's last name -- name to @Saranourxoxo, "If you think for one minute you're getting out of stealing my prescriptions with your husband...just getting started." 6T56.

The judge relied on D-14 – referencing sticky fingers; Ms. Nour testified this "had to be in 2017/2018. I don't recall the exact date." 5T96. The judge cited this in finding that the plaintiff was liable to the defendant on the intentional infliction claim, 6T73-74.

> D-14 reads as follows, in a series of text messages to Christopher Lopez. "Tell slimy Sara to stop committing fraud before she goes to jail and using you for food because she's broke to feed herself." Next, "She is stealing from you." Next, "Make sure Sara doesn't steal from you." Next, "She has sticky fingers." Next, "Yucky girl." Next, "Sara has gonorrhea." Next, "She likes you because she wants to get famous." Next, "She will use you and dispose you." So there you have it, direct evidence from Mr. Lopez as to a phone call that he had with Ms. Lamb, who identified herself by name and then disparaged Sara Nour. And then the circumstantial follow-up evidence, the text messages that followed from a bogus phone number, again someone masking their identity -- in this case, the someone being Ms. Lamb -- stating the same things about Sara Nour to him. 6T74; A151

In ruling on whether the defendant proved the second element of her intentional infliction claim – extreme and outrageous conduct, the judge again relied on the out-of-time evidence, stating, "some of the most obscene and offensive things that one could dream up to say about another person and their body, ethnic insults, racial and religious slurs, body shaming, disgraceful and sick comments. And it didn't stop there. The plaintiff would capture some actual pictures of Sara Nour's Facebook profile from Ms. Nour's own social media accounts, and then couple those pictures with nude female body parts that were not Sara Nour's, and then send them out to Sara Nour's family, friends, and business contacts, as though it was Sara Nour

posing nude and making very lascivious comments, all in a calculated and evil plan to humiliate Sara Nour and to ruin her reputation as much as possible." 6T 77. "Ms. Nour testified that it had a very grave effect on her and her family given the strict religious tenants of her family. Beyond that, the exhibits presented and testified to at trial show burner accounts on Instagram and Twitter with pictures of Sara Nour's face, but the placing of a male organ in there as well, or someone engaging in a sex act -- in a sexual act." 6T77.

> As yet another example of the egregious -- of the egregious, outrageous campaign which this Court finds is attributable solely and clearly to Ms. Lamb, she took Sara Nour's pictures and placed them on a fake -- a fake account, which she titled "Arabian Doll," and posted it to a site called seeking.com for married men and invited them to have sex with her, and then gave out Sara Nour's personal telephone number. Sara Nour testified she received and was humiliated by many, many messages from people calling her or messaging her on her personal phone, looking to have sex with her.
>
> Ms. Lamb created numerous fake accounts on Instagram and Twitter saying all sorts of profane things about Ms. Nour calling her a whore, describing specific sex acts that she would do, placing pictures of nude female anatomy alongside Ms. Nour's facial images as though the nude body was Ms. Nour's, and then sending them out to her family, her friends, and her business associates." 6T77-78

The judge relied on the out-of-time evidence by crediting the testimony of the defendant's psychological expert (6T82-83), Dr. Lovett, whose testimony was premised in part on the pre-February 3, 2018 conduct of the plaintiff and its effect on the defendant. In finding that punitive damages were warranted and awarding

$100,000 in punitive damages against the plaintiff, the judge again cited the evidence that included the out-of-time conduct:

> When a person trained to help people with mental health issues does everything in her power to torment another person over a long and repetitive campaign including telling Sara Nour again and again that she should just kill herself, Mary Jo Lamb knew the likelihood that serious harm would result and did result. Sara Nour testified convincingly that she started questioning whether Ms. Lamb was right about her. As Lubna Nour testified, Sara's entirely personality and demeanor changed for the far worse the longer Ms. Lamb tortured her incessantly for several years; not days, not weeks, not even months, but years. Punitive damages are usually the exception, but in this case, indeed, -- but this case, indeed, was exceptional. Punitive damages accordingly are warranted. 6T91

Because of the judge's error in permitting, and then relying upon, so much out-of-time conduct that it should have been ruled non-actionable, this Court should vacate the judgment entered in the defendant's favor on her intentional infliction claim and remand for a new damages trial.

C. Defendant's intentional infliction claim was premised on alleged conduct by the plaintiff that may be barred by the Tort Claims Act (6T4-92).

A new trial on damages is warranted, also, because some of the defendant's claim was premised on the alleged wrongful act of retrieving medical information during the plaintiff's position as a psychiatric nurse practitioner employed at Rutgers. (5T110).

As part of her invasion of privacy claim, the defendant charged that the plaintiff accessed the defendant's private medical records. The defendant testified

about Twitter communications she alleged the plaintiff sent from her Rutgers account. 3T98, 103; 2T174, 238, 274. Defendant's claim was premised on alleged conduct by plaintiff that included both her private practice and her public employment with Rutgers, *see* 2T71, 77-78 (alleging Rutgers involvement), 82--95 (discussing possible implication of Rutgers as negligent along with plaintiff as its employee). The defendant's intentional infliction claim was premised in part on alleged conduct by plaintiff that occurred in the course of her Rutgers employment. Despite that, defendant's counsel simply bypassed the Tort Claims Act and did not comply with any of its requirements. Moreover, this evidence formed part of the judge's bench trial decision:

> Regarding proof, Ms. Nour testified that Mary Jo Lamb had to have access to medical records, because, first, she's a medical professional and was formerly employed by the Rutgers Behavioral Health, albeit before Ms. Nour ever became a patient there, and thus Ms. Lamb would know how to access those records. And also, because the person harassing her was putting information into the social media posts that could only have come from her medical records. And Ms. Nour did argue at a couple of points in the trial that, well, you -- I was a patient at Rutgers Behavioral Health even long before the point in time where you were discharged. I was a patient in the past, so you could have gotten those records of mine from back then. So I am mindful of that. 6T34

The judge erred in failing to grant the plaintiff's motion to exclude this evidence as barred by the Tort Claims Act. Plaintiff filed a motion on June 17, 2024, before trial began, seeking to dismiss on this basis, stressing that the defendant's claim disregarded that "the Healthcare Facility is a public entity and covered along

with the Plaintiff[] (a public entity employee) under NJTCA New Jersey State Claims Torts Act. Also, under the NJTCA Plaintiff has right to have public entity pay legal fees for employee if the claims for relief occurred during the employee's employment. By requiring detailed factual allegations, the court ensures that only claims with a solid factual foundation proceed, thereby preventing frivolous or baseless lawsuits. Also, the Courts require detailed factual allegations so Defendants have a clear understanding of the claims against them, allowing them to prepare an appropriate defense. Defendants want a vague, conclusory counterclaim to pass through and then merely fill in the gaps later at some unspecified time. For these reasons above, the Defendants counterclaim must be dismissed in entirety with prejudice." A36.

The trial court erred by failing to grant plaintiff's motion and, instead, considering this part of the defendant's intentional infliction claim without determining whether the Tort Claims Act applied to it. Under the Act, public employees are generally protected from liability for tortious acts committed within the scope of their employment, except in certain circumstances. The Act provides immunity to public employees for injuries caused by their adoption or failure to adopt any law or by their failure to enforce any law (N.J.S.A. 59:3-5). Though immunity does not extend to conduct outside the scope of employment or conduct that constitutes a crime, actual fraud, actual malice, or willful misconduct (N.J.S.A.

59:3-14; Toto v. Ensuar, 196 N.J. 134 (2008), it is the obligation of the party asserting the claim, here the defendant on her counterclaim, to show this is so – that the tortfeasor's conduct was outside the scope of her employment or willful, wanton, or grossly negligent conduct of the employee (E.C. by D.C. v. Inglima-Donaldson, 470 N.J. Super. 41 (App. Div. 2021).

The defendant made no such showing in this case, and the judge made no such determination; rather, the judge simply assessed the plaintiff's conduct associated with her Rutgers employment as actionable and part of the basis for the defendant's intentional infliction claim without making any determination, first, of whether the conduct was protected in whole or in part by the Tort Claims Act. In Velez v. City of Jersey City, 180 N.J. 284, 294–95 (2004), our Supreme Court held that intentional torts by public employees require compliance with the Tort Claims Act. The Court stressed,

> Our interpretation of the Act is consistent with prior cases in which courts have concluded that the Act's notice requirements *295 apply to conduct that arguably could be classified as the intentional or outrageous conduct described in N.J.S.A. 59:3–14. See Epstein v. State, 311 N.J. Super. 350, 355–56, 709 A.2d 1353 (App. Div.), certif. denied, 155 N.J. 589, 715 A.2d 992 (1998) (barring claims for malicious prosecution, libel, slander, defamation, and emotional distress due to failure to file timely notice of claim with local public entities); Dunn v. Borough of Mountainside, 301 N.J. Super. 262, 275–76, 693 A.2d 1248 (App.Div.1997), certif. denied, 153 N.J. 402, 709 A.2d 795 (1998) (noting that under post–1994 Act, plaintiff's sexual assault claim against police officer would be barred due to failure to file timely notice of claim); Pisano v. City of Union City, 198 N.J. Super. 588, 590, 487 A.2d 1296 (Law Div.1984) (determining that claims of false arrest and

> false imprisonment must be presented to public entities within ninety days after accrual and are barred by the Act after two years have lapsed); Garlanger v. Verbeke, 223 F.Supp.2d 596, 602 (D.N.J.2002) (noting Act's notice requirement applicable to claims for intentional infliction of emotional distress, malicious prosecution and false arrest); Rolax v. Whitman, 175 F.Supp.2d 720, 730 (D.N.J.2001) (holding Act's notice requirement applicable to battery claim). [Velez, 180 N.J. at 294]

When public employment actions are interspersed with private actions – as the defendant alleged against the plaintiff in this case, the procedural requirements for the public actions per the Tort Claims Act (filing a timely notice of the claim, etc.), cannot be bypassed by invoking the continuous tort doctrine (which the trial judge improperly applied to defendant's intentional infliction of emotional distress claim in the first place, as argued above). As our Supreme Court has stressed, "Strict application of N.J.S.A. 59:8–8(a) … furthers the legislative intent." McDade v. Siazon, 208 N.J. 463, 474–76 (2011). "In light of the Legislature's express intent, '[g]enerally, immunity for public entities is the rule and liability is the exception.'" Id. (citing Fleuhr v. City of Cape May, 159 N.J. 532, 539 (1999)). "The Tort Claims Act's notice requirements are an important component of the statutory scheme." Id.

Though the discovery rule can apply to toll the date of accrual of a claim, it does so only "[u]ntil the existence of an injury (or, knowledge of the fact that a third party has caused it) is ascertained." McDade v. Siazon, supra. "The test for the application of the discovery rule is 'whether the facts presented would alert a reasonable person, exercising ordinary diligence, that he or she was injured due to

the fault of another.'" Id. (citing Caravaggio v. D'Agostini, 166 N.J. 237, 240 (2001); Roa v. Roa, 200 N.J. 555, 571 (2010)). As argued above, the record shows that the defendant knew as early as 2015 that she was injured due to plaintiff's conduct. The defendant did not file any notice of tort claim, let alone a timely one.

These errors by the trial judge, along with the other errors set forth above, warrant relief here on appeal.

Conclusion

The Court should vacate the judgment entered in the defendant's favor on her claim of intentional infliction of emotional distress and remand this matter with direction that a new trial on damages be held.

Respectfully submitted,

/s/ Michael Confusione
Hegge & Confusione, LLC
Counsel for Appellant,
Mary Jo Lamb

Dated: December 16, 2024

MARY JO LAMB, Plaintiff(s)-**Appellant**, v. **SARA NOUR,** Defendant(s)-**Respondent**.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-**155-24** CIVIL ACTION On **appeal** from: SUPERIOR COURT OF NEW JERSEY **LAW DIVISION** **SOMERSET** COUNTY DOCKET NO. **L-1728-19** Sat below: **John E. Bruder, J.S.C.**

BRIEF OF DEFENDANT-RESPONDENT, SARA NOUR

Alex Barrett Dowland – 433562023
The Law Office of Rajeh A. Saadeh, L.L.C.
1200 Route 22 East, Suite 2000
Bridgewater, New Jersey 08807-2943
Phone: (908) 864-7884
Fax: (908) 301-6202
Email: **adowland**@rajehsaadeh.com

On the brief:
Rajeh A. Saadeh – 018362010
Alex Barrett Dowland – 433562023

Submitted**: January 16, 2025**

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PRELIMINARY STATEMENT

After Defendant began dating Plaintiff's ex-boyfriend, Plaintiff undertook a decade-long campaign of torment against Defendant. Said abuse included multiple death threats, sexual harassment, stalking, sending sexually explicit photos to Defendant's friends and family, impersonating Defendant on websites to solicit sex and on social media, giving out Defendant's phone number to strangers, sending racist and demeaning text messages, and repeatedly telling Defendant to kill herself. Plaintiff's goal was to break down Defendant, humiliate her to her friends and family, and destroy her life.

The trial judge considered the facts, recognized the toll Plaintiff's harassment campaign caused Defendant, and entered judgment accordingly. Because that decision was based upon evidence adduced at trial and applicable law, it must be affirmed.

RELEVANT PROCEDURAL HISTORY

On December 18, 2019, Plaintiff filed a complaint. Pa1-3. On June 11, 2024, Defendant filed an amended answer and counterclaim. Pa20–35.

On July 2, 2024, Plaintiff moved *in limine*. Pa62; 1T63.[1] On July 8, 2024, the trial court denied Plaintiff's motion as moot. Pb1; 1T63.

[1] 1T: July 8, 2024 (trial)
2T: July 9, 2024 (trial)
3T: July 29, 2024 (trial)

Trial took place on July 8, 9, 29, 30, and 31, 2024. 1T-5T. On August 30, 2024, the trial court rendered its decision, including to deny Plaintiff's motion. 6T.

The trial court entered judgment in favor of Defendant on her intentional infliction of emotional distress claim against Plaintiff in the amount of $100,000.00 in compensatory damages, $100,000.00 in punitive damages, and interest. 6T47–6T92. All other claims were denied. 6T. Plaintiff now appeals. Pa132–36.

COUNTERSTATEMENT OF MATERIAL FACTS

Plaintiff does "not [want to] address the substance of the parties' dispute" because it provides critical context – the backdrop – of a nearly ten-year harassment campaign Plaintiff conducted against Defendant. Pb3.

Plaintiff and Defendant met in 2013 through Doni Sahiti. 2T199. At the time, Mr. Sahiti was in a complicated dating relationship with Plaintiff and was friends with Defendant. 2T199. At first, the relationship between Plaintiff and Defendant was friendly. 2T199. Plaintiff would invite Defendant over to her house, along with Mr. Sahiti and other friends. 2T199.

4T: July 30, 2024 (trial)
5T: July 31, 2024 (trial)
6T: August 30, 2024 (bench trial verdict)

However, as Defendant grew closer to Mr. Sahiti and ultimately entered into a relationship with him, Plaintiff began to grow colder. 2T203; 2T209. Defendant's relationship with Mr. Sahiti was short-lived once she discovered that he had a serious drug problem and that some of the drugs were provided by Plaintiff. 2T210 – 2T213. Plaintiff began heavily harassing Defendant after Plaintiff filed a false police complaint against Mr. Sahiti in which she also levied accusations at Defendant. 2T215. The onslaught of communications from Plaintiff began in 2014 and "suddenly stopped for the most part" in 2019. 2T219; 6T75.

Plaintiff does not even attempt to dispute that she engaged in a plot to ruin Defendant's life. The trial court described Plaintiff's conduct as "some of the most obscene and offensive things that one could dream up to say about another person and their body, ethnic insults, racial and religious slurs, body shaming, disgraceful and sick comments." 6T77-2–6. Plaintiff would take "actual pictures of Sara Nour's Facebook profile from Ms. Nour's own social media accounts, and then couple those pictures with nude female body parts that were not Sara Nour's, and then send them out to Sara Nour's family, friends, and business contacts, as though it was Sara Nour posing nude . . . all in a calculated and evil plan to humiliate Sara Nour and to ruin her reputation as much as possible."

6T77-7 – 15. This had a particularly severe effect on Defendant because of "the strict religious tenants of her family. 6T77-17 – 18.

Plaintiff also impersonated Defendant on a website called seeking.com, which is designed to connect married men with women who were open to affairs by creating an account called "Arabian Doll" (a reference to Defendant's ethnic background) and soliciting men for sex while using photographs of Defendant. 6T78. Then, Plaintiff would give those men Defendant's phone number, and those men would message Defendant with sexual propositions and naked photos, thinking that Defendant had consented to receiving those messages because of Plaintiff's deception. 6T78.

In his decision, the trial judge began by noting that "the overwhelming amount of evidence proves very clearly and certainly, by a preponderance of the evidence, that [Plaintiff] was the person behind the series of severe, outrageous communications." 6T75-16 – 19. Plaintiff's "actions were of offensive, initiating, attacking, and a pattern of egregious harassment designed to torture Sara Nour." 6T80-11 – 13. This series of events, viewed collectively, was the basis of Defendant's counterclaim. Pa20–35. It is inaccurate to describe Plaintiff's torrent of harassment as a set of particular discrete acts; rather, as the trial court understood, each communication built upon a background of threats and created an interlinking puzzle of malice directed at Defendant. 6T50; *cf.*

N.J.S.A. 2C:33-4(c) (criminal harassment can be a "course of alarming conduct or of repeatedly committed acts").

LEGAL ARGUMENT

I. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING PLAINTIFF'S MOTION IN LIMINE TO EXCLUDE CERTAIN TEXT AND TWITTER MESSAGES. (6T4–6T7).

Rulings on motions *in limine* are reviewed for abuse of discretion. Brenman v. Demello, 191 N.J. 18, 31 (2007) (citing Green v. N.J. Mfrs. Ins. Co., 160 N.J. 480, 492 (1999)). An abuse of discretion occurs "when a decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Flagg v. Essex Cty. Prosecutor, 171 N.J. 561, 571 (2002) (quoting Achacoso-Sanchez v. Immigration and Naturalization Service, 779 F.2d 1260, 1265 (7th Cir.1985)). "Under that standard, an appellate court should not substitute its own judgment for that of the trial court, unless 'the trial court's ruling "was so wide of the mark that a manifest denial of justice resulted."'" State v. Brown, 170 N.J. 138, 147 (2001) (quoting State v. Marrero, 148 N.J. 469, 484 (1997) (further citation omitted)).

On the first day of trial, the trial court ruled on Plaintiff's motion *in limine* and neither granted nor denied it; instead, the court ruled that it was moot because defense counsel withdrew his intention to introduce the text messages

and Twitter screenshots at issue. 1T63. Said messages were introduced and, over Plaintiff's objection, admitted.[2] 4T274.

Plaintiff's brief ignores the overwhelming evidence relied on by the trial court. Said evidence displayed Plaintiff's pattern of harassment spanning nearly a decade against Defendant. Instead, Plaintiff hyper focuses on eight specific messages as if they were consequential to the outcome of trial. Pa69–78. These messages were just the proverbial "tip of the iceberg" and do not include some of the most insidious things that Plaintiff sent to Defendant and her family. In his decision, Judge Bruder listed many other pieces of evidence he considered and that Plaintiff did not appeal, including:

- **Evidence of Plaintiff concealing her identity:** the trial court considered Defendant's testimony and the context of phone calls, text messages, social media posts, and Plaintiff's own questioning and testimony to find that Plaintiff was the one targeting Defendant. 6T48–6T68.

- **Text messages from Plaintiff to Doni Sahiti and his wife:** Exhibit D-11-1, to which Plaintiff did not object and of which Plaintiff does not appeal,

[2] Plaintiff did not appeal the evidentiary ruling, so we will not make any arguments as to said issue. *See* R. 2:6-2(a)(6) ("The legal argument for the appellant . . . shall be divided, under appropriate point headings . . . into as many parts as there are points to be argued). To the extent the appellate court considers such arguments anyway, including if Plaintiff inappropriately raises them on reply, we respectfully reserve the right to address such arguments as if they were properly appealed.

contained text messages that Plaintiff sent to Doni Sahiti and his new wife. While Plaintiff concealed her identity, Doni Sahiti immediately recognized that she was the one who texted his wife. 6T68–6T69. Mr. Sahiti responded to Plaintiff and stated that he would go to the police if she kept contacting him or his wife. Da17–18.

- **Testimony from Lubna Nour:** Defendant's sister, Lubna Nour, testified that she had received calls and texts from Plaintiff, including fifteen text messages "that were sexually explicit and critical of [Defendant], calling her a ho[e], a thief, trying to steal, [and] accusing [Defendant]" of attempting to steal from Lubna Nour. 6T71–6T72.

- **Testimony from Christopher Lopez:** Christopher Lopez was a business associate of Defendant who works as a social influencer. He began working with Defendant in late 2017 and shortly thereafter began receiving communications from Plaintiff. The first communication was a phone call where Plaintiff introduced herself by name. 6T73. In that call, Plaintiff told Mr. Lopez to stay away from Defendant by accusing her of using him for his money and fame. 6T73. Plaintiff also told Mr. Lopez that Defendant had gonorrhea. 6T73. Despite blocking Plaintiff's number, Mr. Lopez continued to receive calls from her through different numbers and even received text messages that were consistent with Plaintiff's repeated derogations of Defendant. 6T73; Da22–23.

- **The timeline of harassing conduct:** Judge Bruder noted that the purported anonymous text messages suddenly halted in 2019, at the same time that Judge Hoebich issued a no-contact order against Plaintiff with Defendant as the protected party. 6T75.

- **Pornographic photos sent to Defendant's family members:** Evidence was presented that Plaintiff took photos of Defendant's face, photoshopped them onto naked women, and then sent those doctored photos to Defendant's family members, friends, and business contacts to humiliate her. 6T77. When sending those photos, Plaintiff impersonated Defendant and would write sexually explicit messages as though Defendant was the one sending the pictures. 6T77.

- **Creating false accounts on seeking.com:** Plaintiff used Defendant's photos and personal information to create at least one fake account, entitled "Arabian Doll," on seeking.com, which is a website commonly used for married men to seek women who are open to affairs. 6T78. Plaintiff impersonated Defendant on the website, solicited men for sex, and gave men Defendant's personal mobile phone number, leading to Defendant receiving hundreds of messages from men sexually propositioning her and sending explicit photos. 6T78.

- **Evidence of surveillance:** Plaintiff sent messages indicating that she knew Defendant's whereabouts, where her car was parked, that she was sleeping on an air mattress at Lubna Nour's house, and made references to "You," which is a Netflix show involving a stalker. 6T78–6T79; 2T219.

- **Weaponization of mental health knowledge:** Plaintiff is a mental health professional and "weaponized" her experience and training in the field of mental health to cause psychological torture to Defendant and break her down. 4T14; 6T79. Judge Bruder found this to be an exacerbating factor in the intentional infliction of emotional distress claim. 6T79.

- **The testimony of Dr. Roy Lubit:** Dr. Roy Lubit, a board certified physician in psychiatry and neurology, testified as an expert witness. 6T81–6T82. Dr. Lubit reviewed the records in this case and testified as to the psychological and physiological damage that Plaintiff's conduct inflicted on Defendant, including causing chronic post-traumatic stress disorder. 6T82. Plaintiff did not present any expert testimony to counter Dr. Lubit's. 6T83.

Despite this overwhelming evidence, Plaintiff seeks to overturn a verdict because of eight messages, alleging that they were improperly considered, while ignoring the mountain of additional evidence that was considered. Considering the significant case presented and proven before the trial court, those eight

messages would likely have had no impact on the outcome of trial, meaning their admission – if erroneous – was harmless.

Judge Bruder properly denied Plaintiff's motion *in limine* at the end of trial; at the very least, the trial court did not abuse its discretion in denying said motion. Further, even if those eight messages were stricken, it would have had no impact on the trial judge's decision, including the quantum of damages, in light of the overwhelming evidence and testimony supporting the court's findings.

For these reasons, Plaintiff's request to reverse the outcome of a five-day bench trial because of eight messages must be denied.

II. THE CONTINUING TORTS DOCTRINE APPLIES TO PLAINTIFF'S DECADE-LONG CAMPAIGN TO TORMENT DEFENDANT. (6T48–6T51).

The continuing torts doctrine evolved due to the practical necessity of extending the statute of limitations for a continuing tort. Plaintiff engaged in a pattern of harassment that goes back nearly a decade. During that period, Plaintiff often sent threatening and vulgar text messages to Defendant, posted Defendant's personal information on websites that solicit sex, photoshopped Defendant's head onto the bodies of naked women engaging in sex acts and distributed those images to Defendant's family, and used burner accounts on social media to further stalk and harass Defendant. Judge Bruder correctly

determined that Plaintiff's continuous pattern of behavior determines Plaintiff's liability and, therefore, when the statute of limitations begins to run: when Plaintiff stopped committing the continuing tort.

"When an individual is subject to a continual, cumulative pattern of tortious conduct, the statute of limitations does not begin to run until the wrongful action ceases." Wilson v. Wal-Mart Stores, 158 N.J. 263, 272 (1999) (citing Cyrus v. Nero, 546 N.E.2d 328, 331 (Ind. Ct. App. 1989)).

"A significant number of courts recognize that the cumulative effect of a series of discriminatory or harassing events represents a single cause of action for tolling purposes and that the statute of limitations period does not commence until the date of the final act of harassment." Wilson, 158 N.J. at 273 (citing decisions from Indiana, Minnesota, Louisiana, New York, the Northern District of California, and the Southern District of Georgia). The continuing torts doctrine in New Jersey "is unrestricted to discrimination claims." Bolinger v. Bell Atlantic 330 N.J. Super. 300, 306 (App. Div. 2000).

There is no applicable law or coherent logic to support Plaintiff's argument that this rationale only applies to sexual harassment and workplace discrimination. Adopting Plaintiff's position would exempt individuals like Defendant who have to endure the torment of an ongoing tort – which includes sexually demeaning components – and who would otherwise have valid claims

barred without recognition of the insipid nature of a pattern of continued harm. As this case demonstrates, people suffer through continuing torts outside of the employment and physical sexual harassment spheres, and the continuing tort doctrine should apply to those situations and be left to a factfinder to determine whether the acts were numerous, discrete ones or a pattern of ongoing conduct.

The continuing torts doctrine has frequently been applied in the context of employment discrimination, most notably in Shepherd v. Hunterdon Developmental Ctr., 174 N.J. 1 (2002). The Shepherd plaintiffs experienced racial discrimination and retaliation over approximately six years. Id. at 8-16. The final act of discrimination occurred on April 19, 1995, but a complaint was not filed until February 27, 1997. Id. at 16. "The conduct alleged in plaintiffs' complaint was continual in nature and occurred during the period [of 1989 to 1995.]" Id. at 21. Even though many of the alleged acts occurred outside the two-year statute of limitations, the Court applied Wilson while adopting the federal standard of AMTRAK v. Morgan, 536 U.S. 101 (2002). In determining whether the continuing tort doctrine applies, two questions must be considered:

> First, have plaintiffs alleged one or more discrete acts of discriminatory conduct by defendants? If yes, then their cause of action would have accrued on the day on which those individual acts occurred. Second, have plaintiffs alleged a pattern or series of acts, any one of which may not be actionable as a discrete act, but when viewed cumulatively constitute a hostile work environment?
>
> Shepherd, 174 N.J. at 21.

The Shepherd Court's interpretation of Morgan was that "a victim's knowledge of a claim is insufficient to start the limitations clock so long as the defendant continues the series of non-discrete acts on which the claim as a whole is based." Id. at 22.

Defendant's intentional infliction of emotional distress claim was not based only on one or two discrete instances of harm; it was based on a nearly ten-year pattern of regular, targeted abuse committed against her by Plaintiff. That was Defendant's claim, and that is what the trial court found. Plaintiff wants to limit Defendant's claim to one or two instances of harassment as if the course of conduct Plaintiff undertook are a series of separate, distinct acts. After considering the facts and evidence, Plaintiff's narrative was rejected by the trial court.

The seriousness of Plaintiff's conduct can only be appreciated if it is seen for what it was: a multi-year campaign of targeted abuse against Defendant. In addition to liability, Defendant's damages accrued because of the continuing nature of the tort. Plaintiff's ongoing conduct constitutes intentional infliction of emotional distress Defendant's counterclaim was filed on February 3, 2020, and the most recent example of the ongoing tortious conduct by Plaintiff was committed in 2019. Pa4; 6T75. This is within the two-year statute of limitations for intentional infliction of emotional distress claims. N.J.S.A. 2A:14-2.

In the unpublished decision of Poiner v. County of Middlesex, an appellate court held that the continuing torts doctrine applied to both a hostile work environment claim under the LAD and an intentional infliction of emotional distress claim. No. A-2651-05T1, 2007 N.J. Super. Unpub. LEXIS 2641, at *12 (App. Div. June 7, 2007).[3] In Poiner, the trial court "erred in dismissing plaintiff's claim of gender-based harassment, and her claims for intentional infliction of emotional distress, based on the statute of limitations" when it failed to consider the continuing torts doctrine. Id. at *16. After applying Wilson and Shepherd, the appellate panel remanded the case to determine whether the alleged acts "were isolated events or part of a pattern of sexual harassment that created a hostile work environment and caused plaintiff severe emotional distress." Id. In rendering his decision, Judge Bruder cited to Poiner and Wilson to apply the continuing torts doctrine to the facts in this case. 6T49.

Plaintiff's claim that there was a gap in communications between 2016 and 2018 is demonstrably false. Defendant testified that, in 2017, harassing messages were sent by Plaintiff to Defendant's sister, mother, former mother-in-law, and coworkers, as well as to Christopher Lopez. 3T13–3T17. Defendant further testified that a fake Instagram account was created by Plaintiff in 2017 with the username "@thesarahore," and Plaintiff used that account to send friend

[3] There are no "contrary unpublished opinions known to counsel." R. 1:36-3.

requests to Defendant's acquaintances, colleagues, coworkers, and family members. 3T26–3T29. Plaintiff created an additional account on Instagram to impersonate Defendant in approximately the spring of 2017, which included three photos of Defendant and a fourth photo of a stranger's "vagina spread wide open," which was meant to sexually humiliate Defendant by attempting to connect her actual photos with an explicit photo that is not of her. 3T122–3T123; Da15–16. Defendant also testified that she received death threats from Plaintiff consistently from 2015 through 2018. 4T10.

Plaintiff attempts to reinforce this fiction by quoting Judge Bruder, but the trial judge's comment actually *reinforces* Defendant's testimony: "[Defendant] testified that the communication spanned several years **starting** in 2016, grew **most intense** in 2018, and then in 2019 they suddenly stopped for the most part." 6T75 (emphasis added). The trial judge demarcated the time when the communications began and grew most intense, but the judge said nothing about any sort of gap or break because the evidence at trial demonstrated a continuous pattern of harassing communications throughout 2016, 2017, 2018, and 2019.

Plaintiff can claim those communications were unrelated to one another, but they were sent by one person to another person and those connected to her over the course of multiple, uninterrupted years. This shows that the

communications were interconnected and continuous. This case is not about one or two messages from Plaintiff to Defendant; Plaintiff sent an avalanche of incessant communications to Defendant and those close to her. She used burner accounts, fake phone numbers, fake social media accounts, and fake dating profiles to harass Defendant. The communications were relentless. They persisted from year to year. Defendant was unable to escape from Plaintiff's plot. When she blocked one phone number, another one would reach out. When she blocked one social media profile, another one would pop up. When she reported a profile impersonating her, another one would be created. Defendant received **hundreds** of messages from men seeking sex and sending explicit photos because Plaintiff impersonated her on seeking.com and gave Defendant's phone number to these men. 3T112–3T113. This caused measurable harm to Defendant; as Dr. Lubit testified, the isolation and stress that Defendant has experienced "is equivalent in terms of harm to 15 cigarettes a day." 3T177.

Citing to other jurisdictions that have applied the continuing torts doctrine to intentional infliction of emotional distress claims, Plaintiff notes that "those cases involve circumstances wherein the plaintiff is unable or afraid to assert the claim earlier—most often involving claims of abuse by a wife against a husband or similar relationships where the wrongdoer has power over the individual victim[.]" Pb14. That is not the law in New Jersey. Defendant did not

delay in filing suit because the tort was ongoing, and Defendant's election to file suit when she did is allowable. There is no requirement that she bring suit earlier while an ongoing tort is being committed against her. All she is required to do is bring suit before the statute of limitations runs, and she did so.

But more, Plaintiff was in a position of power over Defendant. Plaintiff is a licensed healthcare professional who is significantly older and wealthier than Defendant, who testified that "[Plaintiff] makes triple my income, I'm sure – quadruple my income." 2T221. Plaintiff is the direct cause of the closure of Defendant's real estate business that she ran with her sister. 5T24–5T30. Lubna Nour testified at length about the direct harm that Plaintiff's harassment caused to the business and stated that Plaintiff's conduct was the primary cause of the business's failure. 5T33.

> [Defendant] can't function normally. Every time that she would try to start working or start building something, [Plaintiff] would interject. She would contact business associates. She would contact personal friends. The harassment would be nonstop. It would be constant messages until 4:00 o'clock in the morning. Kill yourself. Why don't you die? You're a homewrecker. I'm going to expose you.
>
> 5T29–5T30.

A person with the power to bring down your business – due to her particular skills, experience, and wealth – is an intimidating person to sue. Plaintiff has repeatedly threatened she would commit violence against

Defendant, harm her family, send doctored naked pictures of her to her family and friends, and call the police on her. Because of that power imbalance, Defendant did not bring this suit and instead counterclaimed, only because Plaintiff went too far by bringing a meritless defamation claim against her first. That new and final expression of power by Plaintiff was the impetus for Defendant's decision to seek relief, and she did so for the years of nonstop abuse and domination Plaintiff inflicted upon her.

For these reasons, Plaintiff's arguments against the application of the continuing tort doctrine to this matter are without merit.

III. THE TORT CLAIMS ACT IS INAPPLICABLE. (6T4–6T92).

The New Jersey Tort Claims Act is codified at N.J.S.A. 59:1-1 *et seq*. It generally limits public entity liability for injuries. N.J.S.A. 59:2-1. Public entity "includes the State, and any county, municipality, district, public authority, public agency, and any other political subdivision or public body in the State." N.J.S.A. 59:1-3. Injury "means death, injury to a person, damage to or loss of property or any other injury that a person may suffer." Ibid.

Plaintiff is not a public entity, nor did Defendant bring a claim against Rutgers. This is because Plaintiff was not an employee of Rutgers at the time she improperly accessed Defendant's medical records. 6T34. Nor does Plaintiff's tortious conduct stem from her employment with Rutgers or

Defendant's care or treatment there. This case is purely about Plaintiff's intentional conduct in her personal capacity – outside of any employment context – against Defendant.

Defendant alleged that Plaintiff 1) accessed Defendant's medical records only after Plaintiff's employment with Rutgers ended and 2) would have known how to access those records as a medical professional. Defendant never alleged that Plaintiff's misconduct regarding Defendant's medical records occurred in connection with or even during her employment with Rutgers. Accordingly, the TCA does not apply.

Further, the trial court found that Defendant did not satisfy her burden to establish that Plaintiff improperly accessed her medical records.

> [D]efendant asks this [c]ourt to make the leap of faith to conclude that there could be no one else who could have accessed those medical records other than [Plaintiff], and then the additional leap of faith to conclude that the shared information could have only come from [Defendant]'s medical records. In fact, during her testimony, Defendant conceded as much when she -- when questioned about her proofs on cross-examination by [Plaintiff], and [Defendant] said that at that time, she felt it was [Plaintiff] who had obtained her records. And she also testified that she didn't make the actual determination as to whether [Plaintiff] had accessed her medical records, but rather, it was up to the authorities to make that determination. And this authority, this [c]ourt is making the determine -- that determination that the defendant has failed in her proofs.
>
> 6T36–6T37.

For these reasons, Plaintiff's arguments about the TCA are both meritless and moot.

CONCLUSION

The trial court did not abuse its discretion in denying Plaintiff's motion *in limine*. Even if the motion would have been granted and the eight messages that are the subject of this appeal were stricken, it would have had no impact on the trial court's findings and verdict given the overwhelming evidence and testimony in support of Defendant's claim.

The continuing torts doctrine applies to Defendant's intentional infliction of emotional distress claim.

The TCA is inapplicable, and the trial court was not even convinced about the incident Plaintiff believes implicates the TCA rendering her argument on it moot.

For the foregoing reasons, Defendant respectfully requests the Appellate Division affirm the trial court's judgment of August 30, 2024.

THE LAW OFFICE OF RAJEH A. SAADEH, L.L.C.
Attorneys for **Defendant-Respondent**

Alex Barrett Dowland

Superior Court of New Jersey
Appellate Division
Docket No. A-000155-24

MARY JO LAMB,

PLAINTIFF-APPELLANT,

v. CIVIL ACTION

SARA NOUR,

DEFENDANT-RESPONDENT.

On appeal from a final judgment
entered in the Superior Court
of New Jersey, Law Division,
Somerset County, SOM-L-1728-19
John E. Bruder, J.S.C.

REPLY BRIEF OF APPELLANT

Hegge & Confusione, LLC
309 Fellowship Road, Suite 200
Mount Laurel, NJ 08054
Mailing address: P.O. Box 366, Mullica Hill, NJ 08062-0366
(800) 790-1550; mc@heggelaw.com

Michael Confusione (Atty I.D. No. 049501995)
Of Counsel and on the Brief

BRIEF FILED ON FEBRUARY 10, 2025

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ARGUMENT

Related trial court errors show that the judgment entered in plaintiff's favor on her intentional infliction of emotional distress claim must be vacated and the cause remanded for a new trial on damages for the plaintiff (A132; 6T4-92)

Regarding the continuous tort doctrine, the respondent argues, "When an individual is subject to a continual, cumulative pattern of tortious conduct, the statute of limitations does not begin to run until the wrongful action ceases," citing Wilson v. Wal-Mart Stores, 158 N.J. 263, 272 (1999). However, Wilson was a discrimination case under the LAD, as are the other out-of-state cases the respondent cites in her Opposition Brief.

The respondent's claim in this case concerns an intentional infliction of emotional distress. There is no case law applying the continuous tort doctrine—an exception to the typical statute of limitations—to such claims of intentional infliction of emotional distress claim.

Even if the doctrine could apply to an intentional infliction claim, the evidence does not support applying it to the respondent's claim in this case because it does not show a continual, cumulative pattern of tortious conduct by the appellant. Respondent mentions *Poiner v. County of Middlesex* regarding the intentional infliction of emotional distress, but that was not a primary focus of the case. In *Poiner*, emotional distress was referenced to describe the impact of harassment; it was not treated as an independent intentional infliction of emotional

distress claim as in this case. The distress, rather, was part of the damages arising from the Law Against Discrimination claim. The case did not expand the continuous tort doctrine to a distinct – and here solitary – intentional infliction of emotional distress claim that is asserted outside a discrimination context. This makes sense because, in workplace employment settings, it is often difficult to identify a single incident that is actionable by itself; it's the cumulative effect of repeated acts that typically gives rise to the discrimination claim. Employment relationships are unique because they present an imbalance of power between the two parties and an environment where the employee is often forced to tolerate ongoing harassment for fear of retaliation – until enough discriminatory actions take place that override this. There is no such power imbalance between the parties in this case; nothing precluded the respondent from asserting her claimed legal claims against the appellant once she took any of the alleged actions charged to be intentional infliction of emotional distress. The respondent's claims are indeed hinged on what were discrete acts (mostly text messages) spread out over a decade, each of which was actionable alone; these were not parts of one large continual and cumulative pattern of conduct such that the continuous tort doctrine should have been applied by the court below.

Regarding the trial court's *motion in limine* ruling, the judge granted the plaintiff's motion to preclude the text messages because defendant withdrew her

intention to introduce the text messages at trial. The judge stated, "So the first motion by plaintiff was to exclude defense text messages, Twitter screens from evidence. The defendant withdrew their intention to utilize those text messages, so that therefore renders that motion as moot." 1T63. The judge's ruling was premised on the representation of defendant's counsel, who told the trial judge during the motion hearing that the evidence would not be introduced at trial. 1T10-12.

The respondent does not contradict this. Instead, she argues that the specific messages introduced during the *in limine* hearing were not "consequential to the outcome of the trial." Resp. Brief at 6. However, these were eight exhibits, not just a single erroneous admission and the judge relied on this material to decide the defendant's case (as we detailed in the Appellant's Brief).

Moreover, the defendant withdrew the evidence in question because the defendant had no proof demonstrating its forensic validity for admission. As the appellant argued, the text communications were altered to align with the defendant's testimony; these texts were, at least in part, fabricated evidence, 1T10-12; 2T8, 13-14, 69, 88-89, 105-109, 139-141, 144, 151-153, 175-176, 220 (discussing issues with the presented documentary proofs). As the plaintiff objected before the trial court, the texts submitted by the defendant lacked authentication of dates, and the plaintiff had not encountered any of them prior to their presentation in the trial proceeding, *see, e.g.*, 4T85-89, 90-99, 108 (illustrating the absence of specific dates of the

claimed text evidence); 4T10-12, 46-47 (showing the witness's lack of authentication for the claims) texts). It was erroneous for the trial judge to acknowledge the defendant's representation that these texts and Twitter messages would not be used at trial, only to permit the defendant to introduce the precluded texts and Twitter messages into evidence and then rely on them to rule in the defendant's favor on her intentional infliction of emotional distress claim. This further warrants relief for the appellant here on appeal, we submit.[1]

Conclusion

The Court should vacate the judgment entered in the defendant's favor on her claim of intentional infliction of emotional distress and remand this matter with the direction that a new trial on damages be held.

Respectfully submitted,

/s/ Michael Confusione
Hegge & Confusione, LLC
Counsel for Appellant,
Mary Jo Lamb

Dated: February 10, 2025

[1] Appellant continues to rely on her Appellant's Brief for the entirety of the grounds on which relief is warranted in this appeal.