STATE OF MAINE

SUPREME JUDICIAL COURT

SITTING AS THE LAW COURT

LAW COURT DOCKET NO. PEN-25-308

DANIELLE NADEAU.

Plaintiff-Appellee,

v.

JASON D. NADEAU.

Defendant-Appellant.

On Appeal from the Superior Court
Civil Docket
Penobscot County

BRIEF OF APPELLEE, DANIELLE NADEAU

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I. STATEMENT OF FACTS AND PROCEDURAL POSTURE

Defendant-Appellant Jason D. Nadeau (*hereinafter* "Appellant") appeals the Superior Court's (Penobscot County, *Mallonee, J.*) decision granting judgment in favor of Plaintiff-Appellee Danielle Nadeau (*hereinafter* "Appellee") on a civil action seeking damages for personal injuries arising from child sex abuse. Following a bench trial, the court returned judgment for Appellee. (A. 8). The underlying facts germane on appeal are as follows:

In 2011, Appellee and Appellant were 16 and 37 years old, respectively. (A. 13, 15, 23, 29). Appellee and Appellant are first cousins. (A. 15-16, 23-24, 29-30). In/around January 2011, Appellant's father suffered a medical emergency while on a snowmobile trip with Appellant and Appellee's father. (A. 10, 24). Appellant's father was taken by ambulance to Eastern Maine Medical Center ("EMMC") in Bangor, Maine, accompanied by Appellee's father. (A. 24). Sometime during the crisis, Appellee's father contacted her via telephone and made plans for Appellee to meet the family at EMMC. (A. 24). Appellant contacted Appellee and said he would drive Appellee to EMMC in his vehicle. (A. 24).

During the drive to EMMC, Appellant solicited a sexual encounter with Appellee, persisting even when Appellee did not consent. (A. 13). Appellant made sexually suggestive comments to Appellee, asked Appellee sexually explicit

questions, and manually manipulated Appellee's vagina over clothing. (A. 13-14, 16, 24). Amidst the assault, Appellant informed Appellee that Appellant wanted to take a shower and proceeded to drive to an apartment in nearby Glenburn, Maine. (A. 24). Upon arrival, Appellee objected to entering the apartment, but Appellant cajoled her inside. (A. 25). Appellant assaulted Appellee again while entering the residence, manually manipulating Appellee's buttocks over clothing. (A. 16, 25). Once inside the apartment, Appellant took a shower from which he soon emerged into the kitchen—in sight of Appellee—naked and masturbating his erect penis. (A. 16, 25). Appellant asked Appellee if Appellee "liked it" and "wanted it." (A. 16, 25). Appellee froze and had no response. (A. 25).

Moments later, Appellee vacated the apartment and returned to Appellant's truck, where he soon joined her. (A. 25). Appellant threatened to harm Appellee's parents and brother by slitting their throats if Appellee disclosed the assaults to anyone. (A. 14, 25). Appellee believed Appellant's threats to be true. (A. 25).

At all times during these events, Appellee was a 16-year-old minor and Appellant was a 37-year-old adult. (A. 13, 15, 23, 29). There was a strong, unequal balance of power between the parties which Appellant exploited over Appellee. (A. 15, 26).

Appellant's conduct caused Appellee severe and debilitating emotional

injury, pain and suffering, physical and emotional trauma, and permanent psychological injuries. (A. 14-16, 18, 27).

Following a bench trial, the court entered judgment in favor of Appellee, assessing compensatory damages of $750,000 and punitive damages of $250,000 concurrent across Appellee's claims. (A. 3, 6-8, 21).

II. STATEMENT OF LEGAL ISSUES ON REPORT

i. Are Appellee's claims time-barred pursuant to the expiration of the general six-year statute of limitations under 14 M.R.S. §752, or are the claims unencumbered under 14 M.R.S. §752-C?

ii. Did the trial court commit clear error in finding that Appellee proved her claims for negligence, negligent infliction of emotional distress, and intentional infliction of emotional distress?

III. SUMMARY OF ARGUMENT

Appellee's claims are actions based upon "sexual acts towards minors," and may be commenced any time. 14 M.R.S. §752-C. Since 2000, claims arising from sexual actions towards minors are unencumbered on limitations grounds. In frustration of Appellee's otherwise timely claims, Appellant asks this Court for an extreme remedy: imposition of a criminal burden ("beyond a reasonable doubt") in a civil case. For nearly two centuries, Maine law has prohibited this imposition. Appellee has not failed—nor is she required—to prove "criminal negligence," and the trial court properly permitted Appellee's claims to proceed as unexpired

pursuant to 14 M.R.S. §752-C.

The trial court did not commit clear error in entering judgment for Appellee. It was not clearly erroneous for the court to find that Appellee proved her claims for negligence upon the record. Similarly, it was not clear error for the court to find a special relationship between the parties based on record evidence. Nor was it clear error for the court to conclude that Appellee suffered severe emotional distress based on evidence in the record where the nature of the harm was obvious and not medically complex.

Judgment for Appellee must be affirmed.

IV. STANDARD OF REVIEW

Statute of Limitations

The interpretation of a statute is a legal issue that the Court reviews *de novo*. *Vill. at Ocean's End Condo. Ass'n v. Sw. Harbor Props. LLC*, 2025 ME 85, ¶ 17, ___ A.3d ___ (internal citations omitted). When interpreting a statute, the Court gives effect to the Legislature's intent in enacting the statute. *Id.* (citing *Bocko v. Univ. of Me. Sys.*, 2024 ME 8, ¶ 11, 308 A.3d 203). The Court gives effect to legislative intent by examining the statute's plain language, considering the entire statutory scheme to achieve a harmonious result. *Id.* (citing *Cassidy Holdings, LLC v. Aroostook Cnty. Commr's*, 2023 ME 69, ¶ 6,

304 A.3d 259).

The Court will not add to or detract from the statute's meaning conveyed by the plain language used. *See Cushing v. Inhabitants of Town of Bluehill*, 148 Me. 243, 247, 92 A.2d 330, 332 (1952) (internal citations omitted). Nor will the Court rewrite a statute to eliminate or change its elemental authority. *See State v. Conroy*, 2020 ME 22, ¶ 23, 225 A.3d 1011, 1022 (citing *Cape Elizabeth Sch. Bd. v. Cape Elizabeth Tchrs. Ass'n*, 459 A.2d 166, 171 (Me. 1983)). Even omissions by the Legislature are treated by the Court as intentional in advancing a comprehensive statutory scheme with exclusive definitions. *See Lee v. Massie*, 447 A.2d 65, 68 (Me. 1982); *Boles v. White*, 2021 ME 49, ¶ 18, 260 A.3d 697 (omitted language is excluded from application).

Appellate Review

The Court reviews a trial court's factual findings for clear error and its legal conclusions *de novo*. *Vargas v. Riverbend Mgmt. LLC*, 2024 ME 27, ¶ 15, 314 A.3d 241, 246 (quoting *Lyman v. Huber*, 2010 ME 139, ¶ 19 n.2, 10 A.3d 707).

Clear error exists when (1) there is no competent evidence in the record to support the trial court's finding; or (2) it is based on a clear misapprehension of the meaning of the evidence by the court; or (3) "the total force and effect of evidence rationally persuades to a certainty that the finding is so against the

great preponderance of the believable evidence that it does not represent the truth and right of the case." *Id.* ¶ 11 (quoting *Remick v. Martin*, 2014 ME 120, ¶ 7, 103 A.3d 552).

V. ARGUMENT

A. Appellee's claims are timely pursuant to 14 M.R.S. §752-C.

i. 14 M.R.S. §752-C applies to Appellee's claims, which arose in 2011 and are not encumbered by any statute of limitations.

Appellee's claims are actions based upon "sexual acts towards [a] minor[]," perpetrated by Appellant in 2011 when Appellee was just 16 years old. 14 M.R.S. §752-C. (A. 11-13, 23-26).

In 2011, the applicable statute of limitations provided that "[a]ctions based upon sexual acts towards minors may be commenced at any time." 14 M.R.S. §752-C (2000), *enacted by* P.L. 1999, c.639, §1 (effective Aug. 11, 2000).

In 2011, 14 M.R.S. §752-C defined "sexual acts towards minors" by reference to the Maine Criminal Code's definitions for "sexual act" and "sexual contact." *Id.* (referencing 17-A M.R.S. §251(1)(C, D)). In pertinent part, the Maine Criminal Code defined "sexual contact" as

> [A]ny touching of the genitals or anus, directly or through clothing, other than as would constitute a sexual act, for the purpose of arousing or gratifying sexual desire or for the purpose of causing bodily injury or offensive physical contact.

17A M.R.S. §251(1)(D) (1975), *amended by* P.L. 1985, c.495, §1 (effective Sept. 19, 1985).

In 2023, the Legislature revised 14 M.R.S. §752-C's definitional references for "sexual acts towards minors" by striking reference to 17-A M.R.S. §251(1)'s "sexual act" and "sexual contact," and replacing them with references to the definitions for specific crimes of "gross sexual assault," "sexual abuse of a minor," "unlawful sexual contact," "unlawful sexual touching," "sexual exploitation of a minor," and "incest" under the Maine Criminal Code. 14 M.R.S. §752-C(2) (Supp. 2023), *enacted by* P.L. 2023, c.475, §1 (effective Oct. 25, 2023) (referencing 17-A M.R.S. §§ 253-54, 255-A, 260, 282, 556).

Under both the 2000 and 2023 versions of 14 M.R.S. §752-C claims arising out of specified conduct are unencumbered by an expiring limitations period.

Appellee brought claims alleging sexual contact by Appellant. (A. 26). The trial court found that Appellant made sexual contact with Appellee. (A. 11). At the time Appellee brought her claims, the applicable statute of limitations was 14 M.R.S. §752-C (Supp. 2023). Where the conduct underlying Appellee's claims constitutes "unlawful sexual contact" and "unlawful sexual touching" as defined by reference in 14 M.R.S. §752-C(2)(E-F), Appellee's instant claims are not subject to any statute of limitations and will be forever unencumbered.

ii. Application of 14 M.R.S. §752-C does not impute elements or burdens of the Maine Criminal Code (17-A M.R.S. §§1-2314).

Appellant's chief argument is that Appellee's claims are time-barred because Maine's general six-year statute of limitations (and not 14 M.R.S. §752-C) applies. (Blue Br. 12).

Appellant argues that Appellee cannot ". . . bring herself within the definition of '*sexual acts towards minors*'" under the applicable 2023 version of the statute. (Blue Br. 13) (emphasis in original). Appellant's central thesis is that civil litigants of child sex abuse claims must ". . . establish a specific *mens rea* that [the Defendant] was criminally negligent with regard to whether [the Plaintiff] consented to sexual contact or unlawful sexual touching. In other words, [the Plaintiff must] prove a criminal culpable state of mind on the part of [the Defendant] as to whether she consented to his actions." (Blue Br. 15). Essentially, Appellant argues that the 2023 definitional changes graft specific evidentiary burdens and elemental authority from the Maine Criminal Code onto the application of the civil statute of limitations. (Blue Br. 16-17). Appellant does not cite a single Maine case in support of his argument—because he cannot. No such precedent exists.

The argument is entirely unavailing. Because Appellee's claims are unencumbered pursuant to *either* version of the statute (though 2023 applies), the only way for Appellant to "stop" the claims from being litigated is to try and transpose inapposite criminal criteria. As *infra*, Appellant's advocacy for imposing

criminal elemental authority and burdens of proof in a civil case is inappropriate and at odds with Maine law on several fronts.

Maine law has disallowed imposition of criminal burdens of proof in a civil action for 153 years:

> It was formerly the rule in England, for reasons stated by Barrows, J., in Ellis v. Buzzell, 60 Me. 213, that when, in a civil suit, a party was charged with a criminal act, his guilt must be proved beyond a reasonable doubt; and this rule was naturally followed in the early cases in this country . . . . Such rule was held to apply in Butman v. Hobbs, 35 Me. 227, and in Thayer v. Boyle, 30 Me. 475. ***That rule is not now in accord with the weight of modern decisions in this country, which hold that in a civil suit it is sufficient to prove a criminal offense, like any other fact in issue, by a preponderance of evidence, discarding the doctrine of reasonable doubt in civil actions***.

Campbell v. Burns, 94 Me. 127, 46 A. 812, 815 (1900) (emphasis added).

Originally adopted in *Ellis* in 1872, the Court has drawn a clear boundary between criminal and civil evidentiary standards:

> [W]e think it time to limit the application of a rule which was originally adopted *in favorem vitæ* in the days of a sanguinary penal code, to cases arising on the criminal docket, and no longer to suffer it to obstruct or encumber the action of juries in civil suits sounding only in damages. Nor in so doing do we deprive the plaintiff in an action of this sort of any substantial right. . . .
> [T]o go further, and say that this shall be done by such a degree and quantity of proof as shall suffice to remove from their minds every reasonable doubt that might be suggested, is to import into the trial of civil causes between party and party a rule which is appropriate only in the trial of an issue between the State and a person charged with

> crime and exposed to penal consequences if the verdict is against him.

Ellis v. Buzzell, 60 Me. 209, 213–14, 215 (1872).

The rule adopted in *Ellis* remains the law in Maine and is fatal to Appellant's arguments on appeal.

Looking beyond *Ellis, arguendo,* nothing in the text of 14 M.R.S. §752-C requires a civil plaintiff to prove the *mens rea* of a criminal offense. Maine law has long supported the application that cross-references to criminal statutes incorporate the conduct described, not the criminal elements or culpable mental states associated therewith, unless the Legislature expressly commands otherwise. In *Dickau v. Vermont Mut. Ins. Co.*, the Court reaffirmed the principle that it interprets the plain language of a statute to avoid results that "wreak[] havoc on, rather than preserve[]" legislative intent. 2014 ME 158, ¶ 23, 107 A.3d 621 (internal citations omitted). In *Dickau*, the Court rejected an interpretation of the Maine UM coverage statute that would expand application to umbrella policies absent explicit intent. *Id.* ¶ 24. This principle controls here: nowhere does the text of 14 M.R.S. §752-C state that a civil plaintiff must prove the *mens rea* required for criminal conviction under 17-A M.R.S. §§ 255-A or 260.

The Court also considers whether a particular interpretation of the statute creates an absurd, illogical, unreasonable, inconsistent, or anomalous result. *Dickau*, 2014 ME 158, ¶ 22, 107 A.3d 621. If such a result impedes the statute's practical

operation and potential consequences, the Court may reject the interpretation. *Id.* (internal citations omitted). Applied here, a requirement that survivors of child sex abuse prove the criminal *mens rea* (e.g. criminal negligence) under the Maine Criminal Code would eviscerate the procedural purpose of 14 M.R.S. §752-C. Such an interpretation would convert civil remedial rights into a *de facto* criminal prosecution standard—a result the Legislature did not state and which Maine canons of construction squarely reject. 14 M.R.S. §752-C tests categories of actions in relation to the application of a limitations period, not the sufficiency of evidence under a standard of beyond reasonable doubt.

Functionally, Maine civil proceedings routinely use criminal statutory language without imputing criminal *mens rea*. Although no Maine precedent squarely confronts this "issue," the Court has repeatedly declined to impose criminal *mens rea* requirements in civil proceedings even when the civil statute directly incorporates criminal statutory definitions. For example, in child protection cases, conduct paralleling criminal assault or contact does not require proof of criminal intent. *See, e.g., In re E.A.*, 2015 ME 37, ¶ 10, 114 A.3d 207 (father's assault conviction constituted an "aggravating factor" pursuant to 22 M.R.S. § 4002(1-B)(B)(5)).

What's more, the Maine Criminal Code is facially inapplicable. 17-A M.R.S. §§1-2314 is rife with explicit prohibitions for the transposition of criminal

evidentiary and elemental standards onto civil matters. For example, the Code states outright that nothing contained therein impairs civil rights and liabilities:

> This code does not bar, suspend, or otherwise affect any right or liability for damages, penalty, forfeiture or other remedy authorized by law to be recovered or enforced in a civil action, ***regardless of whether the conduct involved in such civil action constitutes an offense defined in this code***.

17-A M.R.S. §3(2) (emphasis added).

Though not controlling, this interplay between civil violation statutes and criminal sentencing standards is illustrative and is consistent with *Ellis*. The Code specifically requires that statutes outside Title 17-A be designated as classified crimes in order for sentencing for violations of such statutes to be governed by the Code. 17-A M.R.S. §4-A(2-A). And, in instances where statutes outside the Code and defining crimes do not expressly designate classified crimes, the classification depends on correlative imprisonment penalties. *Id.* The Code is clear that any law or ordinance prohibiting defined conduct without a specified imprisonment penalty is a civil violation. 17-A M.R.S. §4-B(2). The Code is explicit that all civil violations are expressly declared not to be criminal offenses. 17-A M.R.S. §4-B(1).

The foregoing are primary evidence of Maine's statutory scheme separating and strictly regulating the intersection of criminal and civil laws. In those limited instances where the Legislature has intended criminal elements to apply to civil burdens, it has been explicit. In *State v. Santerre*, the Legislature explicitly required

the State to prove causation under the Maine Criminal Code when prosecuting a civil violation under 29-A M.R.S. § 2413-A. *See* 2023 ME 63, ¶ 11, 301 A.3d 1244, *as revised* (Nov. 7, 2023). The Court cited 17-A M.R.S. § 4-B(3) as controlling authority for the imposition of criminal standards, but drew a bright line regarding blending elements of the Criminal Code with civil law with regard to sentencing:

> None of the analogies to criminal law in this opinion should be read to permit trial courts to use criminal statutes as controlling law when imposing civil penalties. As we discuss later, *infra* ¶ 21, the trial court correctly rejected relying on the sentencing structure set out in Title 17-A, including 17-A M.R.S. § 1608 (2023), in its analysis and merely referenced criminal cases for illustrative purposes where necessary. *See City of Lewiston v. Verrinder*, 2022 ME 29, ¶ 22, 275 A.3d 327.

Santerre, 2023 ME 63, ¶ 13 n. 3, 301 A.3d 1244 *as revised* (Nov. 7, 2023).

In *Richards v. Sec'y of State*, the Court reaffirmed that "[t]he question of whether an offense defined by statute is civil or criminal is a matter of statutory construction . . . ." 2018 ME 122, ¶ 9, 192 A.3d 611 (internal citations omitted). Interpreting such statutes, the Court looks to plain language to determine legislative intent; takes into account the subject matter and purposes of a statute; considers the consequences of a particular interpretation; and gives due weight to design, structure, and purpose as well as aggregate language. *Id.* Importantly, *Richards* made clear that where by plain language a statute is civil in nature, it necessarily imposes

a preponderance of the evidence standard of proof. *Id.* ¶ 10. The Court also held that despite clear legislative intent to make a statute civil in nature, mere labeling is insufficient; rather, the statutory scheme must be punitive either in purpose or effect as to negate that intention with regard to the constitutional protection at issue." *Id.* ¶ 11.

If *Santerre* and *Richards* appear to travel far from the instant matter, it is because no precedent exists to support Appellant's argument. The closest analogue for that which Appellant calls is the blending of criminal elements in civil violation statutes. The statute at issue here—14 M.R.S. §752-C—is purely a creature of civil law. It seeks to impose no penalties. It classifies no crimes. Instead, it makes nominal, definitional reference to specific physical acts (e.g. sexual abuse, exploitation, incest, etc.) to expand categories of conduct to which the term "sexual acts towards minors" applies.

Under whatever version of the statute (2000 or 2023, though the 2023 version applies)—whether for "sexual contact" or some more-specifically defined conduct named in the Criminal Code—14 M.R.S. §752-C does not and has never called for the imposition of criminal evidentiary standards or elemental authority. Grafting these upon a civil statute of limitations substantively impairs the civil rights granted by 14 M.R.S. §752-C, and is inconsistent with the plain language and purpose of the statute.

Appellant asks the Court to adopt a rule it has not recognized since 1872—that whenever a civil statute references a criminal statute, the civil plaintiff must prove the criminal *mens rea* of the referenced offense. No controlling or modern Maine case holds that. Nothing in 14 M.R.S. §752-C supports such a reading.

The Court should reject Appellant's unsupported attempt to hijack criminal standards in these civil proceedings for the purpose of frustrating an otherwise applicable civil standard that favors Appellee's claims.

B. No evidence supports Appellant's contention that the trial court committed clear error in entering judgment for Appellee.

In Maine, a trial court's findings are affirmed if they are supported by competent evidence in the record. *Doe v. Hewson*, 2022 ME 60, ¶ 11, 288 A.3d 382 (citing *Boulette v. Boulette*, 2016 ME 177, ¶ 10, 152 A.3d 156). The Court will only vacate a finding ". . . if there is ***no*** competent evidence in the record to support it; if the fact-finder ***clearly*** misapprehends the meaning of the evidence; or if the finding is ***so contrary to the credible evidence*** that it does not represent the truth and right of the case." *Mitchell v. Mitchell*, 2022 ME 52, ¶ 8, 284 A.3d 89 (quoting *In re Child of Carl D.*, 2019 ME 67, ¶ 5, 207 A.3d 1202) (emphasis added).

This standard is harmoniously applied in matters such as protection from abuse proceedings and sexual abuse claims given the trial court's intimate observation of the parties and evidence. As the Court has explained, this deferential standard is ". . . particularly appropriate in actions . . . where the trial court's ability

to observe the witnesses invariably plays a part in its assessments of the impact a particular person's words and actions had on another person." *Doe*, 2022 ME 60, ¶ 11, 288 A.3d 382. (quoting *Smith v. Hawthorne*, 2002 ME 149, ¶ 16, 804 A.2d 1133).

Here, Appellant argues that the trial court committed error in three ways: (1) by finding that Appellee had proven her negligence claim (Blue Br. 19); (2) by finding that a special relationship existed between the parties (Blue Br. 19-21); and (3) by finding that Appellee had suffered severe emotional distress. (Blue Br. 22-23). To prevail now, Appellant must show that the record was bereft of any evidence in support of the court's findings, that the court clearly misapprehended the evidence, or that the court's findings were so contrary to the evidence that they distort reality. Appellant proves none of the foregoing.

Negligence

Appellant contends that the trial court erred by admitting medical records documenting Appellee's post-traumatic stress disorder ("PTSD") diagnosis without expert testimony in support thereof. (Blue Br. 19). Appellant also contends that the trial court erred by finding the elements of negligence proven in the absence of physical harm to Appellee. (Blue Br. 19). Both arguments miss the mark.

But for special circumstances, Maine law has long recognized that "mental distress is insufficient in and of itself to establish the harm necessary to make negligence actionable, ***without either accompanying physical consequences, or an***

independent underlying tort." *Rowe v. Bennett*, 514 A.2d 802, 806 (Me. 1986) (quoting *Rubin v. Matthews Int'l Corp.*, 503 A.2d 694, 698 (Me. 1986) (internal citations omitted; emphasis added). In *Rowe*, the plaintiff brought claims for mental and emotional distress arising from alleged negligence of a defendant psychotherapist. *Id.* at 803-04. Although *Rowe* represents a rare instance in which negligence may be proven without physical harm (incident to a patient-provider relationship), the Court importantly established that a viable claim for negligence may be maintained by proof of "tactile contact or the usual indicia of harm"—both of which it considered to constitute "objective evidence . . . that the defendant's negligence actually caused the plaintiff to suffer emotional distress." *Id.* at 806.

In the instant case, Appellant physically molested Appellee, manually manipulating her vagina and buttocks over clothing and without consent. (A. 13-14, 16, 24-25). Upon the record and testimony at trial, the court inventoried evidence that Appellee's negligence claims were proved, finding:

- Appellee was a 16-year-old girl trapped in a truck with a 37-year-old man in a snowstorm during a family emergency for literally hours (A. 13);

- In his truck for hours, driving through sparsely populated areas, Appellant solicited a sexual encounter hoping Appellee would consent (A. 13);

- When Appellee did not consent, Appellant nevertheless persisted (A.13);

- Appellant's actions were not reasonable or ordinary, and caused harm to Appellee (A. 13-14);

- Appellant made offensive physical contact with Appellee's body, groping Appellee's genitals repeatedly for several hours (A. 14);

- Appellant kept his hand over the locking mechanism of the truck, depriving Appellee of the opportunity to escape (A. 14);

- Appellant's foregoing conduct was the proximate cause of Appellee's damages (A.14);

- Appellant's subsequent conduct exposing and masturbating his erect penis in front of Appellee compounded these damages (A. 14);

- Appellant's threats of physical violence and death to Appellee's family compounded these damages (A. 14); and

- In its entirety, the extended incident of Appellant's misconduct on that day was the source of Appellee's damages. (A. 14).

As to the sufficiency of the foregoing evidence, the court found overwhelmingly that Appellee had satisfied the burden of proof: "I could apply any standard of proof recognized by the law, and I would find in [Appellee's] favor, from preponderance of the evidence through clear and convincing evidence to beyond a reasonable doubt." (A. 11).

The trial court next considered the credibility of the evidence, finding that Appellant had offered no counter-narrative (A. 12); Appellant's sworn testimony

was "pretty dramatically different" than the sworn testimony of other witnesses who lacked motivation to offer countervailing narratives (A. 12); and that the painful circumstances of Appellee's allegations favored truth-telling over some ulterior motive (A. 13). Specifically, the court was unequivocal in its assessment of credibility, stating "I believe you [Appellee], and I don't believe you [Appellant]. And it's not even close." (A. 11). The court recognized that memories are imperfect and subjective and can produce dueling narratives. (A. 13). The court recognized that Appellee had "calculated badly" in failing to disclose the abuse immediately or attempt to seek help when the opportunity presented itself (A. 12). Nevertheless, the court concluded that ". . . for a 16-year-old who's in over her head emotionally and situationally . . . that did not undercut the believability of what [Appellee] told me." (A. 12).

Appellant offers no argument to rebut the trial court's well-supported finding that the record contained myriad instances of competent evidence in support of a negligence finding. Appellant offers no argument that the court clearly misapprehended the meaning of any of the evidence cited in its oral decision. Nor does Appellant show that the court's findings were so contrary to the cited, credible evidence that they did not represent the truth and right of the case. For these reasons, Appellant has failed to demonstrate that the trial court committed clear error in finding that Appellee proved her negligence claims based upon the evidence in the

record and at trial.

Special Relationship

Appellant argues that the trial court committed error when it found that a special relationship existed between the parties, incident to Appellee's claims for negligent infliction of emotional distress. (Blue Br. 20). Specifically, Appellant argues that the court ". . . attempted to work around this failing by concluding a special relationship existed by virtue of the fact Danielle and Jason were first cousins, and because Jason was driving a vehicle in which Danielle was a passenger." (Blue Br. 21).

Maine follows the Restatement, which defines special relationships as arising in four instances: (1) common carriers and their passengers; (2) innkeepers and their guests; (3) possessors of land and members of the public who are their invitees; and (4) those who are required by law ***take physical custody of another or who voluntarily do so such as to deprive the other of [her] normal opportunities for protection***. *Dragomir v. Spring Harbor Hosp.*, 2009 ME 51, ¶ 18, 970 A.2d 310 (quoting RESTATEMENT (SECOND) OF TORTS §314A (AM. L. INST. 1965) (emphasis added). What's more, a fiduciary relationship may qualify as an additional means by which a special relationship is demonstrated ***where there exists a "great disparity of position and influence between the parties."*** *Id.* ¶ 19 (quoting *Fortin v. Roman Catholic Bishop of Portland*, 2005 ME 57, ¶¶ 34, 37, 871 A.2d 1208; RESTATEMENT

(SECOND) OF TORTS §315(b) (AM. L. INST. 1965)) (emphasis added).

Applying Maine law, the trial court determined that the evidence supported finding that a special relationship existed between the parties. (A. 14-15). Although Appellant's argument underrepresents the trial court's actual findings, the record is replete with references to factual findings that a special relationship existed, including the objective, familial closeness of the parties (A. 15), and most importantly, the fact that Appellant assumed ". . . responsibility to transport this girl during a specifically family emergency, 21 years older, and he was entrusted with her welfare." (A. 15). This is a straightforward application of the voluntary-custody test articulated in *Dragomir* and the disparity-of-position factors referenced in *Fortin*.

Again, Appellant's arguments fail to demonstrate that the trial court committed clear error by premising its findings on a record containing no competent evidence, or that the trial court misapprehended the meaning of evidence, or even that the trial court's finding distorted the truth and right of available evidence. Appellant fails to show that the trial court committed clear error because the record does not permit the argument.

Expert Testimony

Appellant argues that the trial court committed clear error when it found that Appellee suffered severe emotional distress as a result of Appellant's conduct.

Appellant acknowledges that the trial court's determination—that the severity of Appellee's emotional distress may be inferred from the nature of the alleged conduct—was, in fact, the basis upon which it ruled. ("the trial court concluded that Danielle's severe emotional distress could be inferred from Jason's conduct.") (Blue Br. 23). Because Appellant cannot attack this as an invalid basis for the court's finding, it mischaracterizes the court's rationale as "equivocal." (Blue Br. 23). The trial transcript refutes this position.

A plaintiff may prove severe emotional distress by inference if the defendant's conduct is "sufficiently extreme and outrageous." *Id.* ¶ 23 (quoting RESTATEMENT (SECOND) OF TORTS §46 cmt. k (AM. L. INST. 1965)).

The trial court was explicit in describing the extremity and outrageousness of Appellant's conduct:

- "I don't think inflicting a lot of dirty sex talk on your 16-year-old cousin probably qualifies, as bad as it would be. But sex talk plus groping, that qualifies. Sex talk, plus groping, plus exposing yourself, that qualifies," (A. 16); and

- "And you add the threats, and I think that . . . that element is fulfilled and then some," (A. 16).

Ultimately, the trial court found Appellant's conduct to be sufficiently extreme that malice could be inferred therefrom, resulting in punitive damages. (A. 8, 21).

Appellant attempts to salvage his argument and divert the calculus, arguing

that it was error for the trial court to infer severe emotional distress without expert testimony on the record. Appellant justifies this position with a bare, unsupported argument: evidence at trial showed that ". . . the emotional distress Danielle suffered was not severe." (Blue Br. 23).

Maine law is clear: though rare, severe emotional distress claims may be proven without the corroborating testimony of an expert medical or psychological witness. *Lyman*, 2010 ME 139, ¶ 23, 10 A.3d 707.

Appellant's labeling is insufficient in showing clear error. Appellant again fails to show that the trial court ruled on an empty record, misapprehended the record, or distorted the truth and right of the evidence contained therein.

CONCLUSION

WHEREFORE, Plaintiff-Appellee seeks a ruling from this Court AFFIRMING the Superior Court's Order entry of Judgment in favor of Plaintiff-Appellee.

Respectfully Submitted,

Dated: November 24, 2025

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CERTIFICATE OF SERVICE

I, Kristin T. Murray-James, Esq., hereby certify that two copies of the Brief of Appellee Danielle Nadeau are being served upon counsel at the address set forth below by email and USPS mail delivery on November 25, 2025:

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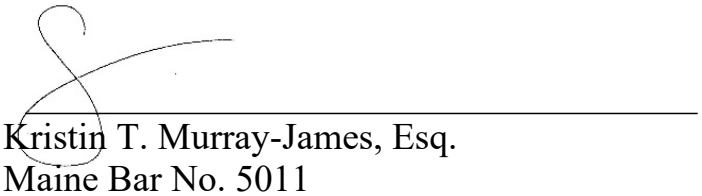

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STATE OF MAINE

SUPREME JUDICIAL COURT
Sitting as the Law Court
Docket No. PEN-25-308

DANIELLE NADEAU,
Plaintiff-Appellee,

v.

JASON D. NADEAU,
Defendant-Appellant.

CERTIFICATE OF SIGNATURE AND COMPLIANCE

I am filing the electronic copy of a brief with this certificate. I will file the paper copies as required by M.R. App. P. 7A. I certify that I have prepared (or participated in preparing) the brief and that the brief and associated documents are filed in good faith, conform to the page or word limits set by the Order of this Court (dated July 7, 2025), and conform to the form and formatting requirements of M.R. App. P. 7A(g).

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