

**STATE OF MAINE  
MAINE SUPREME JUDICIAL COURT  
SITTING AS THE LAW COURT**

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**LAW COURT DOCKET NO. PEN-25-308**

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**DANIELLE NADEAU**

**Plaintiff/Appellee**

**v.**

**JASON D. NADEAU**

**Defendant/Appellant**

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**ON APPEAL FROM THE PENOBSBOT COUNTY SUPERIOR COURT  
DOCKET NO. PENS-CIV-2024-00004**

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**REPLY BRIEF OF APPELLANT JASON D. NADEAU**

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## **I. INTRODUCTION**

The claims asserted by Appellee (“Danielle”) are time-barred by the general statute of limitations, 14 M.R.S.A. § 752, unless they meet the requirements of the limited statute of limitations for “actions based upon sexual actions toward minors”, 14 M.R.S.A. § 752-C. Danielle’s claims do not fall within the limited statute of limitations because there is no evidence that Jason acted with “criminal negligence” as required by the relevant portions of the statute. The Red Brief is devoid of any argument that refutes this failing, effectively ignoring the language of the statute.

Even if we assume, *arguendo*, that Danielle’s lawsuit was timely filed, Danielle failed to prove her claims. The only evidence of harm Danielle offered was emotional distress. She offered no evidence of physical harm. The Court made a factual finding that her emotional distress was “not at the extreme end of the kind of distress that people suffer and come to Court for.” (Tr., p. 75, l. 1-13.) Despite the lack of any expert testimony, the Court inferred severe emotional distress based upon a reference to a PTSD diagnosis in medical records admitted in evidence over objection and Danielle’s testimony that a “therapist or counselor”, whose therapy records were never produced, also diagnosed her with PTSD, which was also objected to.

The trial court's award of one million dollars in damages is not supported by either the relevant law or facts and should be reversed.

## **II. ANALYSIS AND RESPONSES**

### **A. The Statute of Limitations**

One central issue in this appeal is: are Danielle's claims barred by the general statute of limitations, 14 M.R.S.A. § 752? If the general statute of limitations applies, the claim is time-barred. Her Complaint was filed six years after the alleged assault which forms the basis of her lawsuit.

The only way the general statute of limitations would not apply is if Danielle can bring her claims within 14 M.R.S.A. § 752-C, which provides that "actions based upon sexual actions toward minors may be commenced at any time."

For Danielle to bring her claims within Title 14 M.R.S.A. § 752-C, she must establish that Jason acted with "criminal negligence", because 14 M.R.S.A. § 752-C defines those "sexual acts towards minors" which would apply to this case as requiring that the assailant acted with "criminal negligence." As was argued in Jason's Brief, Danielle did not establish at trial that Jason acted with criminal negligence. Danielle maintains Jason was aware that she did not consent to his actions, the Court concluded as a factual matter he was aware and Danielle concedes in her Brief "Appellee did not consent." (Red Brief at 5.) "Criminal negligence" as defined in Title 17-A M.R.S.A. § 35(4) requires that "the person

[subject to the statute] fails to be aware of the risk that the person’s conduct will cause such a result.” In other words, Danielle had to prove that Jason was unaware that she had not consented. The evidence and the Court’s factual findings were to the contrary.

In her Brief, Danielle argues that “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.’” (Red Brief at 12.)

It is not “Appellant’s thesis.” This requirement was imposed by the Legislature only recently, in October 2023. Danielle argues in her Brief that, “Appellant does not cite a single Maine case in support of his argument – because he cannot. No such precedent exists.” This is disingenuous. The statute has only been in effect for a little over two years. Indeed, contradicting her own argument, Danielle later asserts that “no Maine precedent squarely confronts the issue.” For good reason. There hasn’t been time to test it in the Courts.

Contrary to Danielle’s assertions, Jason is not advocating for “imposing criminal elemental authority and burdens of proof in a civil case.” (Red Brief at 13.) The revised statute cannot be ignored. Specifically, the Legislature has seen fit to tie the statute of limitations with respect to sexual assaults on minors to the

Maine criminal statutes. In this case, the applicable statutes require that the sexual act toward a minor require the assailant to act with “criminal negligence.”

The Red Brief argues that “Maine law has disallowed imposition of criminal burdens of proof in a civil action for 153 years. (Red Brief at 13.) Again, that is not a position Jason is advocating. Regardless, the case law cited by Danielle has no bearing on the issue before this Court, which involves construction of a statute of limitations for which the Legislature has incorporated a criminal *mens rea* element.

Danielle relies upon *Ellis v. Buzzell*, 60 Me. 209 (1872). *Ellis*, decided over 150 years ago, was a civil action for slander.<sup>1</sup> The Defendant asserted truth as an affirmative defense. The Court considered what burden the Defendant had to meet to establish his truth defense. It held that the appropriate burden in a civil case was “preponderance of the evidence.” 60 Me. at 214. Nothing in the *Ellis* decision involved construction of a civil statute of limitations which incorporates a criminal *mens rea*.

Similarly, Danielle’s reliance on *Campbell v. Burns*, 94 Me. 127, 46 A. 812 (1900) is misplaced. It is another burden of proof case, styled as “an action of debt” brought by the Treasurer of Knox County against an individual charged with possession of lobster under the legal length. The Defendant requested a jury

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<sup>1</sup> Plaintiff alleges Defendant had accused him of adultery, at that time a crime.

instruction that the County had to prove its case beyond a reasonable doubt. 46 A. at 814. The Court held: “. . . in a civil suit it is sufficient to prove a criminal offense, like any other fact in issue, by a preponderance of evidence, disregarding the doctrine of reasonable doubt in civil case.” 46 A. at 815.<sup>2</sup>

Again, in *Campbell*, the Court was not called upon to construe a statute which incorporates a criminal *mens rea* requirement.

*In re E.A.*, 2015 ME 37, relied upon by Danielle, has no relevance to this appeal. It was a child custody case in which the lower Court considered a parent’s assault conviction as an aggravating factor in determining its custody award, as it was entitled to do under the relevant statutory scheme. It had nothing to do with the statute of limitations generally, or Title 14 M.R.S.A. § 752-C specifically.

Nor does *State v. Santerre*, where this Court noted in a footnote that in imposing civil penalties, Courts should not utilize the criminal sentencing structure. 2023 ME 63, ¶ 13, fn. 3.

Danielle’s reliance on *Richards v. Secretary of State*, 2018 ME 122, also adds nothing to the analysis in this case, holding that a question of whether an

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<sup>2</sup> The *elements* of Title 14 M.R.S.A. § 752-C did not have to be *proven at trial* for Danielle to prevail on her causes of action for negligence, negligent infliction of emotional distress and intentional infliction of emotional distress. If this had been a jury trial, the jury would not have been instructed on the statute of limitations, consideration of which was exclusively within the province of the Court. Danielle did have to establish that her claims fell within Title 14 M.R.S.A. § 752 as a threshold matter, as defined by Title 17-A M.R.S.A. § 35 which *defines* culpable states of mind. That is why Title 17-A M.R.S.A. § 34(3) is not relevant to the analysis. Danielle was not proving the elements of a crime; rather she was obligated to establish that her claims fell within the exception to the statute of limitations. (See, *State v. Idris*, 2025 ME 17, ¶ 16 (fn. 7).

offense defined by statute is civil or criminal is a matter of statutory construction. 2018 ME 122, ¶ 9. Danielle argues, “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. (Red Brief at 17, 18.) Again, this case does not involve standards of proof, but rather what as a matter of law a particular statute means and does the case fit within it.

## **B. Plaintiff’s Claims**

Danielle failed to prove her claims at trial. Nothing in her Brief supports an argument she did.

### **1. Negligence**

Danielle did not prove she suffered physical harm. Without proof of physical harm, she cannot recover for negligence.

In her Brief, Danielle cites to *Rowe v. Bennett*, 514 A.2d 802 (1986). *Rowe* was decided at a time when negligent infliction of emotional distress was not recognized as an independent tort. 514 A.2d at 804. Danielle argues that this Court “established that a viable claim for negligence may be maintained by proof of ‘tactile contact or the usual indicia of harm.’” (Red Brief at 21.) That is a distortion of the holding. This Court clearly, under the then state of the law, held that in the patient-therapist context, damages for emotional distress can be recovered if proven. The case has no application here.

Danielle then pivots and references an “inventory” of evidence that she maintains supports her claims of physical harm. (Red Brief at 21, 22.) None of the bullet points listed by Danielle demonstrate physical harm, but rather reference conduct by Jason. To the extent the trial court was persuaded by this argument, it conflated conduct with proof of physical harm.

The Red Brief does not respond to the Court’s admission of a PTSD diagnosis without supporting expert testimony, while ignoring the admission, over objection, of hearsay testimony by Danielle as to her diagnosis. This was error, but is significant only insofar as this Court feels that evidence of PTSD proves “physical harm.” It does not. To the extent someone suffers from PTSD, this is an emotional harm, not a physical one.<sup>3</sup>

In sum, Danielle failed to prove she suffered any physical harm, and as a result, the Court erred in finding for her on her negligence claim.

## **2. Negligent Infliction of Emotional Distress**

The trial court found for Danielle on her negligent infliction of emotional distress claim. The parties are in agreement that the only way for it to have done so is to find a special relationship between Danielle and Jason. None existed.

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<sup>3</sup> The Court did factor the PTSD “diagnosis” into its conclusion that Danielle suffered severe emotional distress, which was error and is discussed later in this brief.

Danielle argued that the Court correctly found a special relationship between Danielle and Jason based upon a “familial closeness.” Danielle and Jason are cousins. This Court has never held that a special relationship can be proven simply on the basis that the parties are related.

Danielle next argues that a special relationship can be premised on the fact that Danielle was a passenger in a vehicle driven by Jason. Again, there is no precedent for this. Danielle cites to the Restatement (Second) of Torts, which provides support for establishing a special relationship between common carriers and their passengers. Jason is obviously not a common carrier.

Danielle also argues that Jason took “physical custody” of Danielle by virtue of the fact that he voluntarily agreed to transport her in his vehicle (and she agreed to be transported), and that as a result, a special relationship was created. There is no legal basis for this argument. In *Richards v. Town of Eliot*, 2001 ME 132, this Court affirmed the trial court’s granting of summary judgment on a negligent infliction claim against a police officer who had taken the plaintiff into custody. 2001 ME 132, ¶ 34, noting, “[i]n this case, there is no suggestion of a unique relationship between Richards and either of the police officers.” There is no basis to conclude that Jason took Danielle into “physical custody” and thereby created a special relationship, where no special relationship is created when a police officer takes an individual into custody.

The import of Danielle’s argument is that a special relationship exists between a driver of a vehicle and her passengers, a conclusion this Court has never reached and should not now reach.

The trial court erred in finding a special relationship between Danielle and Jason.

### **3. Intentional Infliction of Emotional Distress**

The trial court found that Danielle suffered severe emotional distress as a result of Jason’s conduct. This was error because the evidence was legally insufficient to reach this conclusion.

In its findings, the Court indicated the severity of the distress “was satisfied by the “[PTSD] diagnosis that does appear in the medical records.” (Tr., p. 73, 74.) The Court noted that Danielle did not call an expert witness, and it would have preferred that there had been.” (Tr., p. 74.) The Court then observed, “. . . there was nothing in the factual record or this trial to correlate that diagnosis other than what Danielle told me.” (Tr., p. 74.) That’s precisely the error. The Court effectively allowed Danielle to self-diagnose. The only other evidence of Danielle suffering from PTSD was (1) hearsay evidence from Danielle herself, admitted over objection; and (2) a reference in medical records to a PTSD diagnosis. The medical records do not indicate what practitioner made the diagnosis; what her

qualifications were to make the diagnosis or provide any opinion on causation, prognosis or severity of the condition.

The trial court's finding that Danielle suffered **severe** emotional distress (independent of a PTSD diagnosis) was based on an **inference** that she must have suffered severe emotional distress because of what it concluded was the outrageous nature of Jason's conduct.

This inference is problematic and was error. Danielle offered no evidence that would support a finding of severe emotional distress, as opposed to emotional distress. The trial court was unconvinced of severity, characterizing such a conclusion as "paradoxical", noting Danielle was "doing awfully well" and finding her symptoms "not at the extreme end of the kind of distress that people suffer and come to court for." That "extreme end" is what the law deems "severe emotional distress." The Court made a factual finding that the objective symptomatology did not support severe emotional distress.

What the trial court did is infer severe emotional distress from Jason's conduct.<sup>4</sup> That was error because the inference is contrary to the Court's factual finding that Danielle's emotional distress was not at the extreme (i.e. severe) end of the emotional distress spectrum.

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<sup>4</sup> The Court also improperly factored in Jason's alleged threats. (Tr., p. 74.) Those threats should not have been factored into the analysis because that particular conduct was time-barred as it did not involve sexual abuse.

This Court's holding in *Deane v. Central Maine Power Company*, 2024 ME 72, allows a Court to infer severe emotional distress based on a defendant's conduct alone. In this appeal, this Court is urged to reconsider that holding and rule that to prove severe emotional distress requires expert testimony.

Regardless, a trial court cannot infer severe emotional distress when the evidence is to the contrary – that a plaintiff's emotional distress is established, but not to a degree it can be deemed "severe". Hypothetically, if a plaintiff was subjected to the most heinous torture imaginable, and thereafter testified she was "ok", it would be improper for a Court to infer severe emotional distress simply because it was repulsed by the conduct. That is ignoring the actual evidence to reach a result the Court deems morally appropriate, despite the evidence.

There is no question that the trial court, in its role as a factfinder found Daielle experienced emotional distress, but it was error to artificially elevate that distress to a level beyond what anyone could be expected to endure when the Court's factual conclusion was that was not the case. To do so is to reach a result not supported by the evidence.

## **CONCLUSION**

Because Danielle's claims are barred by the statute of limitations and because she failed to prove her claims at trial, the Judgment should be reversed and Judgment entered in favor of Jason.

Dated: December 15, 2025

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## CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2025 I served true copies of the above Appellant's Brief and Appendix, by providing electronic copies and paper copies to Appellee's counsel:

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