No. 123152

IN THE
SUPREME COURT OF ILLINOIS

SCARLETT PALM,	)	
	)	
Plaintiff-Appellant,	)	On Appeal from the Illinois Appellate Court,
	)	Third District, Case No. 3-17-0087
v.	)	
	)	There Heard on Appeal from the Circuit Court
RUBEN HOLOCKER,	)	of the Tenth Judicial Circuit, Marshall County,
	)	Illinois, Case No. 16 L 5
Defendant-Appellee,	)	
	)	Hon. Thomas A. Keith and
and	)	Hon. Michael P. McCuskey,
	)	*Judges Presiding*
KARL BAYER,	)	
	)	
Contemnor-Appellee.	)	

REPLY BRIEF OF PLAINTIFF-APPELLANT

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ORAL ARGUMENT REQUESTED

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POINTS AND AUTHORITIES

ARGUMENT

I. RUBEN'S NEGLIGENCE IS RELIANT ON EVIDENCE OF HIS CONDITION BECAUSE IT CHANGES HIS DUTY OF CARE.

Ruben claims that negligence is "completely unreliant upon proof of any aspect of defendant's physical condition." (Ruben's Brief, p. 27) This is the first time Ruben has made this argument, seizing on the Opinion's beliefs that only Ruben's "driving, not the reason for his driving, is at issue" and that if Ruben drove "as a reasonably prudent person would, then he is not liable for [Scarlett's] injuries regardless of his health or vision." *Palm v. Holocker*, 2017 IL App (3d) 170087, ¶ 26; (A16). Previously, Ruben argued only that his condition was privileged, not that it was irrelevant.

As every law student learns on the first day of torts class, the condition of the negligent actor defines the duty of care. Restatement (Second) of Torts § 283C (1965). Scarlett must prove Ruben owed her a duty of care to prevail on her claim of negligence, and Ruben's physical condition is necessary to establish the duty of care because his vision problems demand different duties than someone without those problems. If Ruben is blind, his duty of care is not driving at all.

A. Ruben's duty is to act as a reasonably prudent person with the same physical condition as himself.

Ruben claims this basic principle of negligence is "specious," because it "assumes an infinitude of gradation of duty based upon a defendant's physical condition." (Ruben's Brief, p. 18) *Amicus* Illinois Association of Defense Trial Counsel ("IDC") alleges this principle is wrong because "an individual with a disability would automatically waive his right to confidentiality in his medical records solely by way of the fact that he suffers from a disability that changes the circumstances surrounding his duty of care in a negligence action." (IDC's Brief, p. 9)

What Ruben and IDC are arguing against is roughly two hundred years of basic tort law. To avoid being negligent, a party must act not just as a reasonably prudent person would, but as a reasonably prudent person would *under the same circumstances*. See *Advincula v. United Blood Services*, 176 Ill.2d 1, 22 (1996); *Chicago & A.R. Co. v. Pearson*, 184 Ill. 386, 394 (1900); *Vaughan v. Menlove*, (1837) 132 Eng. Rep. 490 (CP); Restatement (Third) of Torts: Phys. & Emot. Harm § 11 (2010); Restatement (Second) of Torts § 283C (1965).

The circumstances include physical conditions. The duty of care is a subjective standard to "make proper allowance for the actor's capacity to meet the risk apparent to him, and the circumstances under which he must act." *Advincula*, 176 Ill.2d at 22. "Accordingly, the basic reasonable person standard allows for and incorporates the physical characteristics of the defendant, himself." *Id.* "What would be due care and caution, if done by one person, might be negligence if done by another. Age, defective vision, or hearing, or other infirmity, are circumstances to be considered by the jury in determining whether due care and caution have been exercised." *Rosenthal v. Chicago & A.R. Co.*, 255 Ill. 552, 560 (1912).

This is not a profound statement of the law. This is a basic principle of negligence that has been applied for hundreds of years. A defendant's physical condition is part of the circumstances under which their duty exists.

B. Courts routinely hold defendants' physical conditions are relevant to negligence cases, regardless of the party raising the condition.

IDC, incorrectly believing Scarlett has invented a novel new approach to negligence, alleges no case anywhere has ever applied this principle to a defendant who did not affirmatively raise their condition first. (IDC's Brief, p. 10) This is simply not

true. There are innumerable cases holding a defendant's physical condition is relevant to a negligence claim.

For example, *Masters v. Alexander*, 225 A.2d 905 (Pa. 1967) is also a blind driver case. In *Masters*, the defendant ran over and killed a 12-year-old boy. *Masters*, 225 A.2d at 907. The defendant testified in his deposition that he never saw the child, but changed his story at trial, claiming the child did not come into his vision until he was 10 feet away, and that a passing car's headlights caused him to "adjust" his path of travel, running over the child. *Id.* at 908. The plaintiff, however, learned the defendant had cataract surgery six weeks after the accident and had been driving with 20/200 vision in one eye and 20/100 in the other. *Id.* at 908. The examining ophthalmologist noted the cataract was so bad he could not see into the eye, and testified the defendant's vision would have been just as bad at the time of the accident. *Id.*

The Pennsylvania Supreme Court strongly condemned the defendant's fabricated story and negligent conduct: "[t]o drive with vision so defective that one cannot detect a bicycle until within 10 feet of it is an act of negligence as flagrant as driving with both hands off the wheel." *Id.* at 909. Comparing the defendant's vision to driving in weather so poor it makes the decision to drive negligent, the court noted "[h]ow much more aggravated this negligence is bound to be when the motorist with defective vision moves forward in a constant fog which envelops him on all sides, endangering everybody that may happen to be in his immediate vicinity on or off the highway." *Id.*

The Pennsylvania Supreme Court did not allow the defendant to lie his way out of liability for the child he killed. Ruben and IDC believe that defendant should have been saved the "embarrassment" of having his vision revealed, leaving the dead child's family

with nothing but a perjured story to explain away their loss. Such a ruling would be abhorrent to our public policy of protecting the search for truth and justice.

Masters is not an outlier. This principle is applied routinely. See *Mayr v. Alvarez*, 14 N.Y.S. 3d 530, 532 (N.Y. App. Div. 2015) ("Plaintiff specifically claims that Alvarez owed her a duty to take his anti-seizure medication and that he could be held liable for his negligent failure to do so."); *Kent v. Crocker*, 562 N.W.2d 833, 838 (Neb. 1997) ("Whether a disabled person has breached his or her duty is based upon how a reasonably careful person with such a disability would have acted."); *Roberts v. State*, 396 So.2d 566, 567 (La. App. 3 Cir. 1981) (quoting W. Prosser, The Law of Torts, Section 32, p. 151-52 (4th ed. 1971) for proposition that "the conduct of the handicapped must be reasonable in the light of his knowledge of his infirmity….").

Ruben's duty is defined by the circumstances, and those circumstances include his vision. Ruben must act as a reasonably prudent person with the same vision issues, and cannot conceal proof of his negligence by claiming privilege. Ruben's vision is an "issue" and relevant in determining his negligence, making Exception (4) to the privilege applicable.

II. THE BALANCE BETWEEN THE PRIVILEGE AND THE EXCEPTIONS IS ILLINOIS PUBLIC POLICY, NOT THE PRIVILEGE ALONE.

Ruben and IDC bring up the public policy reason for the physician-patient privilege over and over again. Yet they never bring up the public policy reason for its exceptions: society's "desire to see that the truth is reached in civil disputes." *Petrillo v. Syntex Laboratories, Inc.*, 148 Ill.App.3d 581, 603 (1st Dist. 1986). The exceptions to the privilege exist because "the protection afforded by the physician-patient privilege ought give way to the public's desire to ascertain the truth." *Id.*

The public policy of Illinois is neither the privilege nor the exceptions. The public policy of Illinois is the balance between both. The legislature struck a balance between the competing interests of privacy and justice by excepting the privilege when the patient is a party to the litigation and the condition is relevant. 735 ILCS 5/8-802(4). The balance struck in Exception (4) is a "sound public policy" that respects society's desire for truth and society's desire for privacy. *Petrillo*, 148 Ill.App.3d at 603 (1st Dist. 1986). That is Illinois's public policy, not the "privacy at any cost" policy pushed by Ruben and IDC.

Ruben and IDC justify the destruction of the legislative balance by repeatedly asserting that privileges are not designed to promote the truth-seeking process. There is a serious flaw with this argument—Exception (4) is designed to promote the truth-seeking process. There is no reason for Exception (4) to exist if the legislature's only policy concern was privacy. The legislature was concerned with both truth and privacy, and Exception (4) balances those competing interests when they are in conflict.

This balancing of policy interests is for the legislature. The legislature "occupies a 'superior position' in determining public policy" to the courts, and this Court "strictly adheres" to the proposition that the legislature, not the judiciary, sets public policy. *Phoenix Ins. Co. v. Rosen*, 242 Ill.2d 48, 55-56 (2011). Statutory interpretation is not a vehicle to justify judicial encroachment into the legislature's role of setting public policy. *Weingart v. Department of Labor*, 122 Ill.2d 1, 15 (1988). The Opinion overstepped its bounds by using dubious statutory interpretation to replace the legislature's public policy determination with its own.

If Ruben and IDC do not like the legislature's balance, the place to argue for something different is in the Capitol Building. The Opinion unjustifiably upset the legislature's careful balance of policy issues.

III. EXCEPTION (4) DOES NOT ALLOW "FISHING EXPEDITIONS" BECAUSE IT ONLY APPLIES TO RELEVANT EVIDENCE.

Ruben and IDC believe the statute must be an impenetrable bulwark repelling all relevant discovery requests or risk parties abusing the discovery process. IDC worries that if Exception (4) is applied as written, parties will "go on fishing expeditions in hopes of discovering information that either (1) helps their case; or (2) prejudices their opponent." (IDC's Brief, p. 9) Ruben believes courts will "take on *in camera* review or protective orders for virtually every single defendant in every single injury case in order that plaintiffs can fish for issues." (Ruben's Brief, p. 29)

The boat will remain docked—discovery "cannot be used as [a] fishing expedition to build speculative claims." *Cooney v. Magnabosco*, 407 Ill.App.3d 264, 270 (2011). Exception (4) does nothing to modify the discovery process. Exception (4) only applies to relevant "issues," so irrelevant conditions are privileged. The trial court's role in determining the range of relevance and balancing the needs of truth against the burdens of discovery is unchanged. *Y-Not Project, Ltd. v. Fox Waterway Agency*, 2016 IL App (2d) 150502, ¶ 43. The legislature did not authorize any abuses of the discovery process by enacting Exception (4).

No discovery abuse occurred in this case. The trial court specifically found Scarlett was not on a "fishing expedition." (R27-28) Ruben has a duty to safely operate his vehicle, and his vision is an issue in determining his negligence. The trial court determined Ruben's vision was "an issue" just as other trial courts will determine the

relevance of conditions in other cases. Litigants can still seek protective orders, *in camera* reviews, or any other relief they feel necessary, and our trial courts will resolve them as they always have. Ruben and IDC have far too little trust in our trial courts' ability to manage discovery.

They have even less trust for Illinois attorneys, conjuring up an unscrupulous Boogeyman, *Esq*. who will stop at nothing to dig up irrelevant medical records on his opponents and embarrass them into submission. Their fear is unwarranted—the Court's rules disallowing irrelevant discovery and punishing discovery abuses have already slain that monster. See Ill. S. Ct. R. 201(c) (eff. May 29, 2014); R. 213(b) (eff. Jan. 1, 2018); R. 214(a) (eff. July 1, 2014); R. 219(d) (eff. July 1, 2002).

Nothing in Exception (4) or this Court's Rules regulating the discovery process allow any of the abuses Ruben or IDC allege will occur. Physical conditions under Exception (4) exist under the same discovery rules as any other discovery topic.

IV. SCARLETT DID NOT WAIVE ANY ARGUMENT REGARDING RUBEN'S NEGLIGENCE AND DUTY OF CARE.

Ruben and IDC both claim Scarlett waived any argument about how Ruben's vision affects his duty in a negligence claim by not raising it. Scarlett's argument has always been that "an issue" in Exception (4) means relevant, and Ruben's vision is relevant because he is charged with negligence for driving into a pedestrian he allegedly did not see. Duty is an element of negligence, and Ruben's inability to see proves the breach of the duty to not drive with such an impairment. Scarlett did not waive this argument: she raised it in the trial court, (R22-29) in her appellee brief, (Scarlett's

Appellee Brief, p. 6-7, 10, 17), at oral argument in the Appellate Court,[1] and in her Petition for Leave to Appeal. (Scarlett's Petition for Leave to Appeal, p. 16-17) Scarlett more than adequately preserved this argument.

Furthermore, there would be no reason for the Opinion's findings that Ruben's "driving, not the reason for his driving, is at issue" or that if Ruben "operated his vehicle as a reasonably prudent person would, then he is not liable for Palm's injuries regardless of his health or vision," unless Scarlett had raised this argument. *Palm v. Holocker*, 2017 IL App (3d) 170087, ¶ 26; (A16). Ruben never argued his vision was irrelevant, he argued it was privileged. The only reason for the Opinion to make these findings was its legally incorrect rejection of Scarlett's argument that his vision is relevant to the negligence claim.

If Scarlett never actually made these arguments as alleged, then she clearly could not have waived them. With no request for such findings, these would be new legal issues created *sua sponte* by the Opinion. There would be no way for Scarlett to waive a response to the Opinion's incorrect rulings if neither Scarlett nor Ruben requested the Appellate Court make such rulings. In that event, the first opportunity Scarlett would have had to address them would be in this Court. So, if the allegation that Scarlett never raised these arguments were true, they could not be waived.

Scarlett did expand her discussion of negligence principles in this Court from the Appellate Court, but that is not waiver. Arguments are not waived simply because they are expanded to "offer additional support" for a position. *Weinberg v. Department of Employment Sec.*, 2015 IL App (1st) 140940, ¶ 29. The reason Scarlett offers additional

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[1] http://multimedia.illinois.gov/court/AppellateCourt/Audio/2017/3rd/102517_3-17-0087.mp3 (at 19:55 to 20:48; 28:48 to 29:10).

support now is perfectly reasonable: Scarlett did not foresee the Opinion reversing centuries of common law negligence precedent by holding Ruben need only act as a "reasonably prudent person" and not a "reasonably prudent person" *under the same circumstances*. See *Advincula v. United Blood Services*, 176 Ill.2d 1, 22 (1996) (standard of care is subjective to incorporate the circumstances, including "physical characteristics of the defendant, himself"); *Chicago & A.R. Co. v. Pearson*, 184 Ill. 386, 394 (1900); *Vaughan v. Menlove*, (1837) 132 Eng. Rep. 490 (CP); Restatement (Third) of Torts: Phys. & Emot. Harm § 11 (2010); Restatement (Second) of Torts § 283C (1965).

Scarlett presumed when she brought up negligence and duty the Appellate Court understood she was referencing foundational principles of our civil justice system, not points open for debate. The Opinion's error was so egregious Scarlett felt compelled to discuss it further, as she would never have anticipated such a ruling. Every court in this state should know what negligence encompasses. See 735 ILCS 5/8-1003 ("Every court of this state shall take judicial notice of the common law…."). These are elemental legal principles the Opinion should not have gotten wrong, even if Scarlett had said nothing.

Scarlett did not waive any argument regarding Ruben's negligence. Scarlett raised these arguments, but the Opinion was determined to reject them.

V. THERE IS NO CONSTITUTIONAL PRIVACY PROTECTION AGAINST DISCOVERY INTO RELEVANT MEDICAL CONDITIONS.

IDC claims Ruben's constitutional privacy interests will be violated unless he alone controls the admission of his physical condition. But the case IDC relies on, this Court's decision in *Kunkel v. Walton*, 179 Ill.2d 519 (1997), says nothing like that. In fact, *Kunkel* unequivocally supports Scarlett.

"The text of our constitution does not accord absolute protection against invasions of privacy. Rather, it is *unreasonable* invasions of privacy that are forbidden. In the context of civil discovery, reasonableness is a function of relevance." *Kunkel*, 179 Ill.2d at 538. If a discovery request seeks relevant evidence, it is not unreasonable, and if it is not unreasonable, then no constitutional privacy protection is violated. See *id.* This Court could not have put it more plainly—"[i]t is reasonable to require disclosure of medical information that is relevant to the issues in the lawsuit." *Id. Kunkel* turns on the same relevance considerations as Exception (4).

Not only does *Kunkel* support Scarlett's position, the reason IDC cited *Kunkel* is not even accurate. IDC claims the Court found the statute in *Kunkel* unconstitutional "because it prevented plaintiffs from making 'a free and consensual decision'" about revealing their medical records. (IDC's Brief, p. 4) But the Court specifically said it was not holding that, rejecting the trial court's holding on that ground. *Kunkel*, 179 Ill.2d at 540. *Kunkel* held the Illinois Constitution's statement on privacy was not an "operative constitutional limitation" and there was no basis for the trial court's determination that the statute was "overly coercive and prevents a Plaintiff from making a free and consensual decision." *Id.*

What IDC cited was the trial court's holding that the Court rejected instead of its actual holding. The reason the statute was unconstitutional was because it "requires a blanket consent to disclosure of all medical information *without regard to the issues being litigated*." *Id.* at 538 (emphasis added). The statute's disregard for relevance to the litigation is what made it unreasonable and therefore unconstitutional.

There is no constitutional issue in this case or any other case applying Exception (4). Exception (4) only applies when the medical condition is relevant. The legislature carefully minded the rationale in *Kunkel* that privacy rights are not violated when the medical information sought "is relevant to the issues in the lawsuit." *Id.* at 538. Exception (4) operates within that framework by limiting the exception to only relevant conditions. Exception (4) is not unconstitutional, and no defendant has a constitutional privacy interest to hide their relevant medical information from discovery.

VI. RUBEN'S INTERPRETATION OF THE STATUTE REQUIRES EVEN MORE VIOLATIONS OF STATUTORY CONSTRUCTION.

Ruben claims the Opinion did not violate any rules of statutory construction, but the argument he makes shows a complete misunderstanding of this Court's statutory interpretation precedent. Ruben argues both for and against ambiguity, requesting the statute have two separate definitions at once, at the same time he alleges it is not ambiguous.

A. There is no authority to support different definitions of "issue" for criminal and civil cases.

Ruben claims there are two definitions of an "issue" in Exception (4), one for criminal cases and a different one for civil ones. According to Ruben, a physical condition is an "issue" in a criminal case if the condition is "an element of the offense charged," but only an "issue" in a civil case when "the defendant makes it an issue by pleading an 'affirmative' act." (Ruben's Brief, p. 15)

This distinction has zero support in the statute, as Exception (4) applies the same "in all actions…." 735 ILCS 5/8-802(4). The only interpretation warranted by that language is that Exception (4) "must be construed as extending to 'all actions,' criminal,

civil or administrative." *People v. Krause*, 273 Ill.App.3d 59, 63 (3rd Dist. 1995). Ruben's distinction finds no support in the Opinion either. The Opinion holds that "section 8-802(4) applies only where a defendant affirmatively presents evidence that places his or her health at issue." *Palm v. Holocker*, 2017 IL App (3d) 170087, ¶ 24; (A16). The Opinion made no finding separating the statute into criminal and civil versions.

If the legislature intended Exception (4) to operate one way for criminal cases and a different way for civil cases, it would not have applied Exception (4) to all actions. The rest of the statute makes clear that the legislature knew exactly what it was doing when it worded Exception (4) that way, as other exceptions delineate the types of actions in which they apply. See *e.g.* 735 ILCS 5/8-802(1) ("in trials for homicide"); *Id.* § 5/8-802(2) ("in actions, civil or criminal"); *Id.* § 5/8-802(11) ("in criminal actions"). The legislature could have created separate exceptions to divide Exception (4) as Ruben wants, but it did not. Ruben cannot rewrite the statute.

Ruben invented this distinction as a convenience. The Opinion's "affirmatively placed in issue" requirement will hamstring the State and allow the guilty to go free, and Ruben cannot defend it because it is indefensible. So, he contrived a distinction that would allow the State to "affirmatively place" a criminal defendant's physical condition at issue, but no one else. This way, Ruben does not have to rationalize the Opinion's version of the statute with the long line of criminal cases the Opinion ignored.

Ruben would, however, need to rationalize why a criminal defendant charged with reckless driving for driving while blind could have his condition revealed against his will in that proceeding, but hide it from the people he ran over in a contemporaneous civil

suit. Would the criminal case have to be stayed so the defendant could first cheat justice in the civil case? Would the plaintiff be able to bring a petition for post-judgment relief after the defendant's blindness is revealed in the criminal case? Ruben offers no explanation. The procedural and constitutional problems with Ruben's distinction would pop up immediately.

Leaving aside that the statute does not say what he alleges, Ruben is now arguing against himself. By asserting the statute has separate definitions of "issue" for criminal and civil cases, Ruben is arguing the statute is subject to multiple interpretations, and therefore ambiguous. See *Board of Education of Springfield School District No. 186 v. Attorney General of Illinois*, 2017 IL 120343, ¶ 25. The Opinion never found the statute ambiguous and Ruben never argued it was to the Appellate Court. Even now, Ruben claims the Opinion never violated any rules of statutory interpretation. (Ruben's Brief, p. 26) Ruben cannot now argue the statute is ambiguous.[2]

Even if he could, this dual definition is not warranted. When a statute does not define its terms, the words used must be given their plain and ordinary meaning. *Castro v. Police Bd. of City of Chicago*, 2016 IL App (1st) 142050, ¶ 32. That includes the dictionary definition of those words. *Id.* Just because Ruben says the statute means something else does not make the statute ambiguous. See *id.* (disagreeing over meaning of plain language is not evidence of ambiguity). Only if the statute's meaning "cannot be

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[2] IDC also suggests the statute is ambiguous, but it cannot do so. An *amicus* takes the case with the issues framed by the parties, and any other arguments must be stricken. *Karas v. Strevell*, 227 Ill.2d 440, 450-51 (2008). This would also include the *amicus* argument that the statute violates the Americans with Disabilities Act of 1990, a claim never made in this case.

interpreted from the plain language or if it is capable of being understood by reasonably well-informed persons in more than one manner" does it become ambiguous. *Id.*

The problem Ruben faces is that the statute can be interpreted by its plain language. The dictionary definition of "issue" is synonymous with relevance. Worse for Ruben, this Court could poll millions of "reasonably well-informed persons" about what the definition of "issue" is, and they are all going to give an explanation synonymous with relevance. Not one of them would define "issue" as "when a defendant in civil litigation utilizes an affirmative defense based on a medical condition or when the State charges a criminal defendant with a crime that contains the defendant's physical condition as an element of the offense."

There is no justification for holding the statute applies differently to criminal proceedings than it does in civil ones. The statute is not ambiguous, and there is no justification for Ruben's dual definitions of "issue."

B. The Court's rules of statutory construction are applicable to all cases regardless of their underlying facts.

Ruben complains the statutory interpretation cases cited by Scarlett are factually dissimilar to this case, and do not analyze the privilege "in the context of a defendant in a personal injury case." (Ruben's Brief, p. 27) Ruben claims relying on cases with different fact patterns is an "analytical error." (Ruben's Brief, p. 28)

Statutory construction is a question of law. *Bank of New York Mellon v. Laskowski*, 2018 IL 121995, ¶ 12. The Court's rules of statutory interpretation are legal principles, unconnected to any fact pattern and applicable to any type of statute. The underlying facts of those cases are irrelevant to this one. Those cases are not "analytical errors"; they are this Court's pronouncements on how Illinois interprets the legislature's

enactments. The Opinion violated the Court's process for analyzing a statute at least a dozen times, and all Ruben can respond with is that the fact patterns in the cases cited were different, which is of no concern.

Ruben also claims "no case is cited that the physician-patient privilege … was enacted in derogation of Plaintiff's common law right to put Defendant's physical condition on trial." (Defendant's Brief, p. 28) Ruben appears to be confusing why a statute was enacted versus what the statute does to the common law. Why the statute was enacted is irrelevant to the common law: the statute is either in derogation of the common law or it is not. The physician-patient privilege is in derogation of the common law. *People ex rel. Dept. of Professional Regulation v. Manos*, 202 Ill.2d 563, 570 (2002); *Geisberger v. Willuhn*, 72 Ill.App.3d 435, 436-37 (2nd Dist. 1979).

As such, the statute must be construed in favor of the persons subjected to its operation. *Schultz v. Performance Lighting, Inc.*, 2013 IL 115738, ¶ 12. Further, the Court cannot construe a statute in derogation of the common law "beyond what the words of the statute expresses or beyond what is necessarily implied from what is expressed." *Murphy-Hylton v. Lieberman Management Services, Inc.*, 2016 IL 120394, ¶ 11 (quoting *Adams v. Northern Illinois Gas Co.*, 211 Ill.2d 32, 69 (2004)). In this case, Scarlett is the one subjected to the operation of a statute in derogation of the common law, and the statute must be construed in her favor and not beyond the words of the statute.

Ruben confuses this principle as well, claiming the statute cannot be construed in her favor because "no one has any vested right in a rule of evidence either in a civil or criminal matter." (Defendant's Brief, p. 28) Scarlett is not claiming a vested right in any rule of evidence. Scarlett is applying this Court's "well-established rule that statutes in

derogation of the common law are to be strictly construed in favor of persons sought to be subjected to their operation." *In re W.W.*, 97 Ill.2d 53, 57 (1983). The Court "will not presume that the legislature intended an innovation of the common law further than that which the statutory language specifies or clearly implies." *Williams v. Manchester*, 228 Ill.2d 404, 419 (2008). The Opinion presumed the legislature intended an unstated "innovation of the common law" in the statute that nothing in the language "specifies or clearly implies." *Id.* The destruction of the common law cannot occur by questionable statutory construction based on terms that do not even appear in the statute.

At its core, this is a case about the plain and ordinary meaning of a single word. That Ruben's argument requires that word have two different, complicated meanings at once while all other statutory interpretation precedent is ignored is yet another example of the fundamentally flawed statutory interpretation that occurred in this case. The Opinion abandoned the Court's statutory interpretation rules to reach an absurd definition of "issue."

VII. CONCLUSION.

For these reasons, Scarlett Palm prays the Court reverse the Appellate Court's Opinion, affirm the trial court's discovery orders, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 17 pages.

Christopher H. Sokn

CERTIFICATE OF FILING/SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

I, Christopher H. Sokn, an attorney, certify that on June 7, 2018 I caused to be filed the foregoing **REPLY BRIEF OF PLAINTIFF-APPELLANT** with the Supreme Court of Illinois through the Odyssey E-Filing System.

I, Christopher H. Sokn, an attorney, further certify that on June 7, 2018 I caused the foregoing **REPLY BRIEF OF PLAINTIFF-APPELLANT** to be served on the parties through the Odyssey E-Filing System. In addition, I further certify that on June 7, 2018 I caused the foregoing document to be emailed to all primary and secondary email addresses of the persons named below:

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