SUPREME COURT OF MISSOURI
en banc

MOUNA APPERSON, F/K/A NICHOLAS APPERSON, Appellant, v. NATASHA KAMINSKY, ET AL., Respondents.	)))))))))	***Opinion issued January 23, 2026*** No. SC101020

APPEAL FROM THE CIRCUIT COURT OF ST. LOUIS COUNTY
The Honorable David L. Vincent III, Circuit Judge

Mouna Apperson sued Natasha Kaminsky and Adriene Norman for defamation. At the close of Apperson's case, the circuit court sustained Kaminsky's and Norman's separate motions for directed verdict claiming Apperson failed to adduce independent evidence of actual damage to his reputation. Apperson appeals. This Court has jurisdiction pursuant to article V, section 10 of the Missouri Constitution, and the circuit court's decision is affirmed in part and vacated in part, and the case is remanded for a new trial.

BACKGROUND

When reviewing a circuit court's decision to direct a verdict for a defendant at the close of the plaintiff's case-in-chief, this Court views the evidence in the light most

favorable to the plaintiff, i.e., the Court assumes the jury will believe all evidence supporting the plaintiff's case, draw all reasonable inferences from the evidence in the plaintiff's favor, and reject all contrary evidence and inferences. *Brock v. Dunne*, 637 S.W.3d 22, 26-27 (Mo. 2021). Viewed in this light, it is appropriate to characterize Apperson's case-in-chief as follows.

Apperson had romantic involvements with Kaminsky from 2012 to 2013 and with Norman from 2016 to 2017. After these involvements ended, Norman told more than one person Apperson raped and abused her, and Kaminsky told others (in person and through an extensive social media campaign intended to reach those with whom Apperson dealt personally and professionally) that Apperson stalked and raped her, was a serial rapist and serial abuser, was restrained from coming within 500 feet of her, and threatened to kill both her and Norman. As a result of these statements, Apperson was confronted in his home by a group of people (several of whom were armed) supporting Kaminsky and Norman. Because of this confrontation, Apperson was forced out of his home for seven months. Kaminsky's statements also resulted in Apperson being asked not to patronize a local coffee shop, being made to disassociate himself from two organizations he founded, and losing a speaking engagement. Finally, Apperson was involuntarily removed from shared office space after Kaminsky told the management Apperson raped her and insisted management take action against him.

At the close of Apperson's case-in-chief, Norman and Kaminsky separately moved for directed verdicts under Rule 72.01 on the ground Apperson failed to offer independent evidence his reputation was damaged as a result of the defendants'

statements. Specifically, both motions assert: "Plaintiff must introduce evidence, ***beyond his own statements***, that their reputation has been harmed and that it was harmed by the statements attributed to the defendant." (Emphasis added). Norman and Kaminsky contended all of Apperson's evidence of reputational damage came from his own testimony and, therefore, was insufficient. The circuit court sustained the defendants' motions and entered judgment for the defendants,[1] presumably on the only grounds asserted in those motions, i.e., the lack of independent evidence of reputational injury.[2] Apperson appeals, and this Court affirms the judgment with respect to the four counts against Norman based on agency but vacates the circuit court's judgment with respect to all counts against Kaminsky and the one remaining count against Norman. These counts are remanded for a new trial.

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[1] Though the substance was flawed, the circuit court's procedural steps were correct. It sustained the defendants' motions by order dated January 19, 2024. The portion of that order indicating the case was dismissed was an apparent misstatement because the circuit court concluded the defendants were entitled to – and, on January 30, 2024, the circuit court entered – judgment for the defendants on the merits.

[2] Kaminsky's motion was based solely on this ground. Norman's motion was based both on her claim Apperson failed to adduce independent evidence of reputational damage (essential to all five of Apperson's counts against Norman) ***and*** on her claim Apperson failed to adduce evidence Kaminsky was acting as Norman's agent (essential only to four of the five counts against Norman). After transfer to this Court, Apperson abandoned the counts against Norman based on agency. Therefore, the circuit court's decision granting directed verdict on those four counts is affirmed. Because those counts are no longer at issue, it is fair to say – for purposes of this opinion – the only ground asserted in Norman's and Kaminsky's directed verdict motions pertaining to the one remaining count against Norman and all of the counts against Kaminsky is that Apperson failed to adduce independent evidence of reputational damage.

ANALYSIS

A. Standard of review examines plaintiff's evidence in the most favorable light

Whether a defendant's motion for a directed verdict at the close of the plaintiff's case should be sustained is a question of law, and appellate courts will review the circuit court's decision on such a motion *de novo*. *Brock*, 637 S.W.3d at 26. As noted, when evaluating such motions, circuit courts and appellate courts alike should view the evidence in the light most favorable to the plaintiff, assuming the jury will believe all evidence (and draw all reasonable inferences) tending to support the plaintiff's case and reject all evidence (and inferences) that do not. *Id*. at 26-27. Viewed through this prism, the plaintiff must offer substantial evidence supporting every element essential to the defendant's liability. *Id*. at 26. "Substantial evidence is evidence that has probative force upon the issues, and from which the trier of fact can reasonably decide the case." *Id*. (quotations omitted).[3]

Defamation is a cause of action for damage to one's reputation. The essential elements a plaintiff must prove to establish the defendant's liability are: (1) publication;

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[3] This standard is so demanding, it often has been said – incorrectly, but understandably – "there is a presumption in favor of reversing the grant of a motion for directed-verdict." *McCostlin v. Monsanto Co.*, 718 S.W.3d 435, 442 (Mo. App. 2025); *see also Marcantonio v. Bd. of Curators of Lincoln Univ.*, 702 S.W.3d 153, 167 (Mo. App. 2024) (noting, "while neither Supreme Court decisions, nor the Supreme Court Rules, explicitly endorse a 'presumption in favor of reversing' the grant of a directed verdict, this Court has expressed that principle on multiple occasions"). No such presumption exists, of course, because the appellant always bears the burden of showing error and a right to relief. Nevertheless, this sentiment reflects how strict the standard is for sustaining a directed verdict motion. Ideally, any case in which a directed verdict motion should be sustained will be resolved on a motion for summary judgment, so the

(2) with the requisite degree of fault; (3) of a defamatory statement; (4) that identifies the plaintiff; (5) is false; and (6) causes damage to the plaintiff's reputation. *Smith v. Humane Soc'y of United States,* 519 S.W.3d 789, 798 (Mo. 2017).

B. Evidence of reputational injury is required

With the exception of Norman's argument specific to the agency counts (which Apperson now has abandoned), the only challenge to the submissibility of Apperson's claims identified in Kaminsky's and Norman's motions for directed verdict is the lack of independent evidence for the element of damages, i.e., evidence other than Apperson's own testimony. Historical efforts to label some statements as presumptively damaging but to require proof of damages for other statements have been relegated to the judicial dustbin. *See Nazeri v. Mo. Valley Coll.*, 860 S.W.2d 303, 313 (Mo. 1993) (holding "plaintiffs need not concern themselves with whether the defamation was *per se* or *per quod,* nor with whether special damages exist, but must prove actual damages in all cases"). Now, "proof of actual reputational harm is an absolute prerequisite in [every] defamation action." *Kenney v. Wal-Mart Stores, Inc.*, 100 S.W.3d 809, 817 (Mo. 2003).

It would not be possible to list every conceivable type of proof that could establish the requisite reputational harm. *Id.* at 817 n.3 ("For an example of what might constitute proof of actual reputational injury, *see* David A. Anderson, *Reputation, Compensation, and Proof,* 25 Wm. & Mary L.Rev. 747 (1984)."). Fortunately, such a sisyphean task is not required to resolve the present case. The evidence and inferences set forth above are

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same analysis can be done without having put the parties and circuit court through the inconvenience and expense of empaneling a jury.

far and away sufficient to allow a jury to find Norman's and Kaminsky's statements caused actual damage to Apperson's reputation.[4] As a result, the circuit court should have overruled defendants' motions for directed verdicts, and the case should have gone to the jury.

Kaminsky's and Norman's motions (and, presumably, the circuit court's decision) were based solely on their assertion Apperson was obligated to adduce ***independent*** evidence of damage to his reputation, i.e., Apperson's testimony on that issue cannot be considered. There is no authority for that proposition, nor would there be any justification for such a rule. True, a plaintiff's conclusory assertion of reputational damage is insufficient. *Kenney*, 100 S.W.3d at 817; *Bauer v. Ribaudo*, 975 S.W.2d 180 183, (Mo. App. 1998). A plaintiff's entirely subjective belief her "integrity" has been damaged also is insufficient. *Taylor v. Chapman*, 927 S.W.2d 542, 544-45 (Mo. App. 1996). But such holdings are mere applications of the general rule there must be evidence (or a reasonable basis for inferring) the defendant's defamatory statement caused damage to the plaintiff's reputation. *Kenney*, 100 S.W.3d at 817 (holding "proof of actual reputational harm is an absolute prerequisite in a defamation action"). This rule, and all the applications of it, are concerned only with the ***nature*** or ***substance*** of the evidence, not its ***source***. If the plaintiff can testify competently to such damage, doing so

[4] Apperson contends Kaminsky and Norman made judicial admissions their statements caused damage to Apperson's reputation. Because Apperson's other evidence was sufficient to make a submissible case on the element of damages, the Court does not reach – and, therefore, does not decide – what effect to give the defendants' admissions.

will suffice to make a submissible case on the issue of reputational injury as readily as evidence from any other source.

In *Kenney*, this Court held the plaintiff failed to make a submissible case on the element of reputational damage. The Court explained:

> Ms. Kenney made only a conclusory statement that her reputation was injured and that she felt embarrassed, shocked, mad because of the poster. … [She] did not name a single person who held her in lower regard after seeing the poster. … [T]he only witness Ms. Kenney called who actually saw the poster[] testified that it did not affect her relationship with Ms. Kenney.
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> Ms. Kenney's evidence of actual physical or emotional injury is equally tenuous. The entire presentation of evidence is summed up in [her] statement that she felt embarrassed, shocked, mad. … [She] did not seek medical treatment, psychiatric or psychological counseling, nor was she treated with any medication as a result of the poster. … Ms. Kenney presented no testimony or other evidence of stress or sleeplessness over the incident[], and apparently suffered no symptoms associated with mental distress. There was very little, if any, evidence of quantifiable professional or personal injury, such as interference with job performance, psychological or emotional distress, or depression.

Id. at 817-18 (quotations and citations omitted). In short, the plaintiff testified her feelings were hurt, not her reputation. *Id*. Defamation allows recovery for damage to reputation, not humiliation. *Fireworks Restoration Co. v. Hosto*, 371 S.W.3d 83, 87 (Mo. App. 2012) (holding evidence "must be founded upon more than the plaintiff's embarrassment or perception of their own reputation").

C. Evidence need not be "independent" of plaintiff's testimony

None of the analysis in *Kenney* suggests, and this Court certainly did not hold, that the plaintiff in a defamation suit could not supply the required evidence of damage to his reputation through his own testimony. Instead, aside from one unfortunate quotation

discussed below, the ***analysis*** in *Kenney* shows this Court understood the plaintiff was allowed to testify to her damages but simply could not or did not do so.[5]

In *Kenney*, this Court analyzed two cases from the court of appeals supporting its holding: *Bauer v. Ribaudo*, 975 S.W.2d 180 (Mo.App. 1998); and *Taylor v. Chapman*, 927 S.W.2d 542 (Mo. App. 1996). First, this Court noted the plaintiff in *Bauer* "specifically admitted that he did not have the name of one individual who voted for [his opponent] after seeing the [defamatory] commercial … [and] failed to present any evidence of his standing in the polls prior to and after the airing of the commercial." *Kenney,* 100 S.W.3d at 815 (*citing Bauer*, 975 S.W.2d at 182). Though *Kenney* does not expressly state *Bauer* would have been submissible had the plaintiff's testimony included one or both of these facts, there is nothing in its review of *Bauer* suggesting the shortcoming was the ***source*** of the evidence rather than its ***nature*** or ***substance***.

Similarly, in reviewing *Taylor,* in which the plaintiff also failed to prove damages, *Kenney* notes the plaintiff "stated that her integrity had been tarnished" but "did not support this conclusion and admitted no one told her they had lost trust or confidence in

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[5] As noted above, *Kenney* cites a law review article discussing some of the multitude of ways in which reputational injury can be proven. *Kenney*, 100 S.W.3d at 817 n.3. Nothing in that article states the plaintiff cannot be the source for such evidence, however, and, quite often, it suggests the opposite. For example, the article states:

> [C]ourts should admit evidence that the plaintiff has been denied membership in social or professional organizations as proof that the defamation has affected relationships with other, unspecified individuals. This evidentiary rule should extend to informal relationships so that the ***plaintiff's perception that he is being shunned*** socially also would be admissible.

Anderson, *supra* at 769 (emphasis added).

her ability." *Kenney*, 100 S.W.3d at 816 (*quoting Taylor*, 927 S.W.2d at 544). *Kenney* also notes the *Taylor* plaintiff: (1) "did not seek medical treatment, psychiatric or psychological counseling, nor was she treated with any medication"; (2) "was not disciplined by her employer in any way and had no change in her duties"; and (3) "indicated no claim of stress or sleeplessness over the incidents, and apparently suffered no symptoms associated with mental distress." *Id.* (quotation omitted). Again, even though *Kenney* does not expressly state *Taylor* would have been submissible had the plaintiff testified to one or more of the listed facts, nothing in this Court's analysis suggests the *Taylor* plaintiff's testimony could not be the source for the evidence *Kenney* notes was missing.

Finally, Kaminsky's and Norman's separate motions for directed verdict both rely on *Fireworks Restoration Co. v. Hosto*, 371 S.W.3d 83 (Mo. App. 2012), though both motions incorrectly attribute that decision to this Court. There, the court of appeals held the plaintiff adduced sufficient evidence of damage to its reputation. *Id*. at 90. The plaintiff's president testified "that prior to [d]efendant's disparaging web reviews, [p]laintiff enjoyed a good reputation in the restoration industry[, but a]fter the reviews were posted, [he] contended the company's reputation was damaged." *Id*. at 88. "To assist in quantifying this claim, [he] introduced financial records intended to link [d]efendant's posting of the web reviews with [p]laintiff's subsequent loss of business." *Id*. Under *Kenney*, this evidence would have been sufficient. But *Fireworks Restoration* read *Kenney* (incorrectly, as explained below) to require more. Applying this erroneously heightened standard, the court of appeals held expert testimony from others in the

industry bolstered plaintiff's case by opining poor online reviews likely would harm plaintiff's reputation. *Id*. at 90.

D. *Dicta* in *Kenney* should be disregarded

Fireworks Restoration was misled by the following *dicta* in *Kenney*, which this Court quoted from a New Jersey appellate decision: "'Awards based on a plaintiff's testimony alone or on 'inferred' damages are unacceptable.'" *Kenney*, 100 S.W.3d at 816 (emphasis omitted) (*quoting Rocci v. MacDonald-Cartier*, 731 A.2d 1205, 1208 (N.J. App. Div. 1999), *aff'd as modified sub nom. Rocci v. Ecole Secondaire Macdonald-Cartier*, 755 A.2d 583 (N.J. 2000)). The New Jersey Appellate Division decision, in turn, quotes this sentence from *Sisler v. Gannett Co.*, 516 A.2d 1083, 1096 (N.J. 1986). *Fireworks Restoration* is not the first court of appeals decision to have taken the wrong path due to this quotation, *see, e.g.*, *Weidner v. Anderson*, 174 S.W.3d 672, 684 (Mo. App. 2005); *Scott v. LeClercq*, 136 S.W.3d 183, 194 (Mo. App. 2004), but this Court intends it to be the last.

The quotation in *Kenney* was, at best, poorly vetted. The issue decided by the New Jersey Appellate Division in *Rocci* had nothing to do with the source of evidence of reputational damage. Instead, the issue was whether such evidence was needed or could be presumed. *Rocci*, 731 A.2d at 1208. When the New Jersey Supreme Court affirmed *Rocci*, it did not include in its opinion the overstatement borrowed by this Court in *Kenney*, nor did it include any language to the same effect, for the simple reason that the source of the evidence of damage was not at issue. *See Rocci*, 755 A.2d at 589 (holding damages cannot be presumed when statements invoke the public interest). Finally, in

Sisler, the original source of the quote in *Kenney*, the New Jersey Supreme Court, again, was concerned only with the need for evidence of reputational damage, not its source.

As this history shows, the troublemaking quote in *Kenney* was *dicta*, borrowed from *dicta* in *Rocci*, borrowed from *dicta* in *Sisler*. In its full context, which *Kenney* failed to supply, *Sisler* requires nothing more or less than what *Kenney* requires, i.e., the plaintiff must "offer some concrete proof that his reputation has been injured." *Sisler*, 516 A.2d at 1096. Accordingly, in the future, *Kenney* should not be understood to suggest a plaintiff's testimony cannot be considered in determining whether the plaintiff made a submissible case on the element of damages in a defamation case. Rather, as this Court now holds, a plaintiff makes a submissible case on the element of damages in a defamation case if the plaintiff offers evidence (or a basis for a reasonable inference) of actual injury to his or her reputation, regardless of whether that evidence comes from the plaintiff's testimony, the testimony of others, admissions, documentary evidence, or any other source.

E. Plaintiff made a submissible case on reputational injury

The admissibility of Apperson's testimony is not challenged, and he testified about a number of incidents showing – or, at least, supporting a reasonable inference that – the defendants' defamatory statements caused actual injury to his reputation. His testimony was neither entirely subjective as in *Kenney* and *Taylor*, nor mere speculation as in *Bauer*. Instead, he testified he was confronted in – and forced to leave – his home by third persons acting in response to statements by both defendants. He testified he was asked not to patronize a local coffee shop, also due to statements by both defendants. He

claims to have lost an important speaking engagement and was ejected from shared office space as a result of Kaminsky's statements. These are by no means all of the incidents showing (or allowing the jury reasonably to infer) the damage done to Apperson's reputation, but they are more than sufficient to make a submissible case under *Kenney*.

The jury, of course, is free to believe all, part, or none of Apperson's testimony based on its assessment of his credibility. But, under the standard of review, this Court must assume the jury will find him credible. Assigning weight to evidence to decide what and whom to believe is the reserved role of the jury. It plays no part in the purely legal enterprise of ruling on a motion for directed verdict. Then, the question is not the strength of a plaintiff's case. Instead, it is whether any reasonable juror could find the disputed element. In this case, there is sufficient evidence for a reasonable juror to find Norman's and Kaminsky's statements caused damage to Apperson's reputation.

F. There are no "alternative grounds" on which to affirm

Perhaps anticipating the argument on which they prevailed in the circuit court would not survive scrutiny here, Kaminsky and Norman do not devote a single page of their joint brief in this Court to defending the circuit court's decision on the ground they argued in their motions for directed verdict, i.e., that Apperson failed to adduce independent evidence of reputational damage. Instead, they urge this Court affirm on one of the following "alternative grounds": (1) Apperson failed to adduce evidence proving

the defendants' statements were false; or (2) he failed to adduce evidence proving the defendants were at least negligent with respect to whether their statements were true.[6]

Appellate courts, of course, may affirm a circuit court's judgment even though it is based on an improper ground, provided there was a proper ground on which the circuit court could have reached the same result. *See, e.g.*, *Conservation Comm'n v. Bailey*, 669 S.W.3d 61, 67 n.9 (Mo. 2023) (holding this "Court will affirm on any ground that supports the circuit court's judgment, regardless of the grounds on which the circuit court relied"). But this principle is limited to alternative grounds on which the circuit court might have done ***what it did***. When a circuit court sustains a motion to dismiss, this Court will affirm on any proper ground urged in the motion even if the circuit court relied on an improper ground. *See State ex rel. Mo. Coal. for the Env't v. Joint Comm. on*

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[6] Kaminsky and Norman also argue this Court should affirm the circuit court's judgment on directed verdict, on some counts at least, because Apperson failed to distinguish which damages were caused by which statements. As with their arguments concerning the truth of their statements or reasonableness of their beliefs, this argument was not made in either of their directed verdict motions, nor would it be well-taken if it had. The defendants rely on language in *Kenney*, 100 S.W.3d at 818, and *Taylor*, 927 S.W.2d at 544, to the effect recovery is denied or limited when the defamatory statements were published by a defendant on one hand and by one or more third parties who could not be (or were not) sued on the other. In the present case, however, ***all*** of Norman's and Kaminsky's statements are actionable, and Apperson sued them as joint and several tortfeasors. *See Kenney*, 100 S.W.3d at 818 (noting "[t]his is not a situation where Wal-Mart is a joint tortfeasor with [the TV station] as to the broadcast or with [another individual] as to the other 99 posters"). As a result, if the jury finds Apperson was damaged by the defendants' defamatory statements, it will award fair and reasonable damages and apportion fault between the defendants. *See, e.g., Lippard v. Houdaille Indus., Inc.*, 715 S.W.2d 491, 518 (Mo. 1986) (Satz, J., concurring) (noting "apportionment is made in cases of separate repetitions of the same defamatory statements"), *superseded by statute on other grounds*.

Admin. Rules, 519 S.W.3d 805, 809-10 (Mo. 2017) (holding the "Court must affirm the dismissal if it can be sustained on any ground supported by the motion to dismiss"); *Reed v. Reilly Co., LLC*, 534 S.W.3d 809, 811 (Mo. 2017) (holding the "judgment of the circuit court will be affirmed if the dismissal is justified on any ground alleged in the motion" (quotation omitted)). Similarly, when a circuit court grants summary judgment, this Court may affirm on any proper basis raised in the summary judgment motion even though the circuit court relied on an improper ground. *See Williams v. Hubbard*, 455 S.W.3d 426, 439 n.12 (Mo. 2015) (holding respondents "have not persuaded the Court that any of their other claims for summary judgment on these counts is a sufficient alternative basis on which to affirm the [circuit] court's judgment").

The key premise in these cases, however, is the "alternative ground" must have been argued to the circuit court as an alternative basis for doing what it did ***before*** that basis can be argued as an alternative ground to affirm on appeal should the circuit court's stated basis be found improper. *See Rizzo v. State*, 189 S.W.3d 576, 578 (Mo. 2006) (holding "this Court may consider other constitutional arguments made by the parties and may affirm on any such ground").

Kaminsky's and Norman's "alternative ground" arguments fail because the circuit court's action at issue in this appeal was its order sustaining the defendants' separate motions for directed verdict and entry of judgment for the defendants on those verdicts. Under Rule 72.01(a), a motion for directed verdict "shall state the specific grounds therefor." The crcuit court may not sustain a directed verdict motion on a ground not stated in that motion. *See Howard v. City of Kan. City*, 332 S.W.3d 772, 790 (Mo. 2011)

(holding "a motion for directed verdict that does not comply with the requirements of Rule 72.01(a) neither presents a basis for relief in the trial court nor preserves the issue in the appellate court" (quotations omitted)).

The circuit court could not have sustained Kaminsky's and Norman's directed verdict motions on the "alternative ground" Apperson failed to adduce evidence their statements were false because the defendants failed to state that ground in their motions. By the same token, the circuit court could not have sustained Kaminsky's and Norman's directed verdict motions on the "alternative ground" Apperson failed to adduce evidence they acted negligently with regard to the falsity of their statements because the defendants failed to state that ground in their motions. Because the circuit court could not have sustained their motions on either unstated ground, this Court cannot use either of them as "alternative grounds" to affirm the circuit court's erroneous decision to sustain their motions on the only ground they actually asserted. *Cf Howard*, 332 S.W.3d at 791 (holding a motion for directed verdict must state specifically each element on which the defendant claims the plaintiff failed to make a submissible case, the circuit court cannot direct a verdict on an element not specified, and the issue cannot be asserted on appeal)*; Burrell ex rel. Schatz v. O'Reilly Auto., Inc.*, 175 S.W.3d 642, 648 (Mo. App. 2005) (holding, because a party "waived its claim that [p]laintiff's evidence failed to create a jury question … by not presenting that claim in its directed verdict motions," it could not be raised on appeal). Accordingly, this Court cannot and will not affirm the circuit court's judgment based on arguments neither Norman nor Kaminsky made in their separate motions for directed verdict.

CONCLUSION

For the reasons set forth above, the circuit court's judgment is affirmed in part and vacated in part, and the case is remanded for a new trial.

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Paul C. Wilson, Judge

All concur.