IN THE COURT OF APPEALS
STATE OF GEORGIA

DIANA HUMBLE,	:	
Cross-Appellant/Plaintiff,	:	Case No. A23A0205
	:	
v.	:	
	:	
MALCOLM SIDNEY MOORE, JR.,	:	
Cross-Appellee/Defendant.	:	

REPLY BRIEF OF CROSS-APPELLANT

COMES NOW Cross-Appellant/Plaintiff (hereinafter "Plaintiff") in the above-captioned appeal, and replying to the Brief of Cross-Appellee/Defendant (hereinafter "Defendant"), respectfully shows the Court as follows:

Jurisdictional Issue

Defendant claims that this Court's prior denial of Plaintiff's interlocutory appeal in case no. A21I1042 is an adjudication on the merits. Defendant, however, confuses "discretionary" appeals with "interlocutory" appeals. While it may be entirely true that this Court's denial of a "discretionary" appeal application is on the merits (at least when it is from a final judgment), the prior appearance of this case in this Court in case no. A21I1042 was a petition for "interlocutory" review pursuant to the provisions of O.C.G.A. § 5-6-34(b), *not* a "discretionary" appeal pursuant to O.C.G.A. § 5-6-35, and there is certainly no rule that the denial of an interlocutory appeal petition is on the merits. Indeed, this Court specifically stated in *Davis v. Foreman*, 311 Ga. App. 775 (2011), that "this Court's denial of [an] Application for

Interlocutory Review does *not* operate as res judicata." 311 Ga. App. at 778 (emphasis added). Thus, this Court clearly has jurisdiction of this appeal.

Statement of Facts

In response to Defendant's Statement of Facts, Plaintiff shows that:

(1) Her Complaint in this action was, in fact, verified, contrary to Defendant's "unsubstantiated allegation" insinuation. Thus, it will be up to a jury to determine the credibility of *both* parties' testimony. Defendant's continued denials of any wrongdoing simply underscore the need for the additional discovery that he continues to resist. If Defendant's reputation is "impugned" by the evidence he is trying to conceal, it isn't due to the Plaintiff, but rather to his own egregious, fraudulent misconduct.

(2) Her discovery was not only directed to Defendant's finances and worldly circumstances, but sought things like cell phone records and credit card receipts that are directly relevant to his conduct giving rise to this action in the first place. As discussed in Plaintiff's prior Brief, just the small amount of such evidence Plaintiff already had in her possession is extremely relevant to her liability claims, and the trial court has properly ruled in the main appeal that she has a jury question.

(3) To the extent Plaintiff's discovery was directed to Defendant's financial circumstances, her claims for Fraud and Intentional Infliction of Emotional Distress carry with them the potential for punitive damages under O.C.G.A. § 51-12-5.1

and/or O.C.G.A. § 51-12-6, and even if the trial is bifurcated, Plaintiff would still need to have this evidence to prove her punitive damages claim.

(4) Also as previously noted, Plaintiff has repeatedly offered to have any such evidence produced under an appropriate Confidentiality Agreement, so Defendant's worries about his reputation are at least to that extent meritless.

Enumeration of Error No. 1
Initial Discovery Order

As stated above, the issues in this cross-appeal are indeed properly before the Court, and Defendant's arguments to the contrary confuse "interlocutory" and "discretionary" appeals, which are two completely different things.

Plaintiff does not dispute the generalities about the scope of discovery and the trial court's discretion, but asks this Court to consider how that works out in the context of this specific case. The trial court has put Plaintiff into quite a conundrum: It has ruled that yes, indeed, she has presented a jury question on all her claims against Defendant, while at the same time denying her access to the very evidence she needs to prove her case! Plaintiff's research fails to turn up a single Georgia case involving this exact situation, most likely because it is such an improbable occurrence.

Defendant tries to limit the scope of *Ewing v. Ewing*, 333 Ga. App. 766 (2015), discussed in Plaintiff's prior Brief, to divorce cases, but the rationale of *Ewing* with regard to the importance and relevance of discovery of such matters as

emails and cell phone records in proving an opposing party's misconduct is equally applicable and valid to *any* case involving misconduct. It simply cannot be said in good faith that such evidence has no bearing on how and to what extent Defendant breached his promise to marry Plaintiff, or how and to what extent he went about systematically defrauding her over a period of years.

Enumeration of Error No. 2
Order on Motion to Reopen Discovery

As stated in the prior Brief, a major reason for Plaintiff's Motion to Reopen Discovery, and a change in circumstances warranting that motion, was Defendant's Motions for Partial Summary Judgment. As previously discussed, O.C.G.A. § 9-11-56(f) allows for discovery to be conducted in order to obtain evidence needed to oppose such a motion. If this Court rules in the main appeal that there is in fact a jury question in this case, then, as previously stated, this specific enumeration would be moot, but this Court should under no circumstances countenance the "Catch-22" situation the trial court has put the Plaintiff into by telling the Plaintiff she can go to a jury, but denying her access to the bulk of the evidence she needs to prove her case. Thus, the overall issue in this cross-appeal, the permissible scope of discovery, remains very much a matter for this Court's careful consideration, in order to give this grievously injured Plaintiff not only her day in court, but her *whole* day in court.

Cross-Appellant certifies that this submission does not exceed the word count limit imposed by Rule 24.

Respectfully submitted this 25th day of October, 2022.

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CERTIFICATE OF SERVICE

In accordance with Rule 6 of this Court and other applicable provisions of law, I hereby certify that, based upon a prior agreement with the recipient party I have this day served a PDF copy of the within and foregoing document via email upon all parties and counsel in this action, to:

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I father certify that there is a prior agreement with all parties and counsel herein to allow documents in a PDF format sent via email to suffice for service.

This 25th day of October, 2022.

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