NO. 5-06-0403

STATE OF ILLINOIS
IN THE APPELLATE COURT OF ILLINOIS
FOR THE FIFTH DISTRICT

PAULA SMITH-CADE and FLOYD CADE,	)	
	)	Appeal from the First Judicial
Plaintiffs-Appellants,	)	Circuit, Williamson County
	)	
vs.	)	Circuit Court Number No. 03-L-98
	)	Hon. Phillip Palmer, Judge
LUTHERAN SOCIAL SERVICES OF ILLINOIS ILLINOIS UNIVERSITY and KIM HOLDER,	)	Presiding
	)	
	)	
Defendants.	)	
	)	

BRIEF AND ARGUMENT FOR PLAINTIFF-APPELLANT

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ORAL ARGUMENT IS REQUESTED

POINTS AND AUTHORITIES

NATURE OF THE ACTION

This action was brought to recover damages as a result of various actions taken by Defendants arising out of a contract for adoption services entered into between Plaintiffs and Defendant Lutheran Social Services of Illinois. Defendants moved to dismiss the initial Complaint. The court below granted the motion but gave Plaintiffs leave to file an Amended Complaint. Plaintiffs filed a First Amended Complaint and Defendants moved to dismiss that pleading. The court below granted that motion as well and gave Plaintiffs leave to file a Second Amended Complaint. Plaintiffs did so, Defendants filed a motion to dismiss that pleading and it was granted. The same pattern followed through a Third, Fourth and Fifth Amended Complaint. On July 18, 2006, the court below issued an Order granting Defendants' motion to dismiss with prejudice. This appeal arises from that Order.

The Order at issue was not based upon the verdict of a jury. All questions pertaining to this appeal are raised on the pleadings. The nature of the questions concern whether Plaintiffs have adequately stated claims for violations of the Mental Health and Developmental Disabilities Confidentiality Act, tortious interference with business relationship, defamation, intentional infliction of emotional distress, negligence and/or false light.

ISSUES PRESENTED FOR REVIEW

1. Whether the trial court should have ruled on motions to dismiss that did not identify which part of the Code of Procedure upon which they relied.

2. Whether Plaintiffs' Second Amended Complaint stated a claim for violations of the Mental Health and Developmental Disabilities Confidentiality Act.

3. Whether Plaintiffs' Second Amended Complaint stated a claim for tortious interference with business expectancy.

4. Whether Plaintiffs' Third, Fourth and Fifth Amended Complaints stated a claim for defamation.

5. Whether Plaintiffs' Fifth Amended Complaint stated a claim for intentional infliction of emotional distress.

6. Whether Plaintiffs' Fifth Amended Complaint stated a claim for negligence.

7. Whether Plaintiffs' Fifth Amended Complaint stated a claim for false light.

JURISDICTION

This Court's jurisdiction is conferred by Supreme Court Rule 301 and 303(a)(1). This appeal arises from the trial court's Order, filed July 18, 2006, granting Defendants' "Motion Attacking Plaintiffs' Fifth Amended Complaint," which was construed as a motion to dismiss, and dismissing Plaintiffs' Fifth Amended Complaint With Prejudice. (R. 247.) The July 18 Order was a final judgment of a circuit court in a civil case within the meaning of Rule 301. A Notice of Appeal was filed within the 30 days required by Rule 303(a)(1) on August 1, 2006. (R. 249.)

STATUTES INVOLVED

The Mental Health and Developmental Disabilities Confidentiality Act, 740 ILCS 110/1 et seq., reads, in pertinent part:

740 ILCS 110/2. [Definitions]

Sec. 2. The terms used in this Act, unless the context requires otherwise, have the meanings ascribed to them in this Section. . . .

"Confidential communication" or "communication" means any communication made by a recipient or other person to a therapist or to or in the presence of other persons during or in connection with providing mental health or developmental disability services to a recipient. Communication includes information which indicates that a person is a recipient. . . .

"Mental health or developmental disabilities services" or "services" includes but is not limited to examination, diagnosis, evaluation, treatment, training, pharmaceuticals, aftercare, habilitation or rehabilitation.

"Personal notes" means:

. . . (ii) information disclosed to the therapist by the recipient which would be injurious to the recipient's relationships to other persons, and

(iii) the therapist's speculations, impressions, hunches, and reminders. . . .

"Recipient" means a person who is receiving or has received mental health or developmental disabilities services.

"Record" means any record kept by a therapist or by an agency in the course of providing mental health or developmental disabilities service to a recipient concerning the recipient and the services provided. . . . . Record does not include the therapist's personal notes, if such notes are kept in the therapist's sole possession for his own personal use and are not disclosed to any other person, except the therapist's supervisor, consulting therapist or attorney. If at any time such notes are disclosed, they shall be considered part of the recipient's record for purposes of this Act.. . .

"Therapist" means a psychiatrist, physician, psychologist, social worker, or nurse providing mental health or developmental disabilities services or any other person not prohibited by law from providing such services . . . .

740 ILCS 110/3. [Confidentiality exemptions]

Sec. 3. (a) All records and communications shall be confidential and shall not be disclosed except as provided in this Act. . . .

740 ILCS 110/4. [Persons entitled to inspection of records]

Sec. 4. (a) The following persons shall be entitled, upon request, to inspect and copy a recipient's record or any part thereof:

(1) the parent or guardian of a recipient who is under 12 years of age;

(2) the recipient if he is 12 years of age or older . . . .

(c) Any person entitled to access to a record under this Section may submit a written statement concerning any disputed or new information, which statement shall be entered into the record. Whenever any disputed part of a record is disclosed, any submitted statement relating thereto shall accompany the disclosed part. Additionally, any person entitled to access may request modification of any part of the record which he believes is incorrect or misleading. If the request is refused, the person may seek a court order to compel modification.

740 ILCS 110/5. Disclosure; consent

Sec. 5. Disclosure; consent. (a) Except as provided in Sections 6 through 12.2 of this Act [*740 ILCS 110/6* through *740 ILCS 110/12.2*], records and communications may be disclosed to someone other than those persons listed in Section 4 [*740 ILCS 110/4*] of this Act only with the written consent of those persons who are entitled to inspect and copy a recipient's record pursuant to Section 4 [*740 ILCS 110/4*] of this Act.

(b) Every consent form shall be in writing and shall specify the following:

(1) the person or agency to whom disclosure is to be made;

(2) the purpose for which disclosure is to be made;

(3) the nature of the information to be disclosed;

(4) the right to inspect and copy the information to be disclosed;

(5) the consequences of a refusal to consent, if any; and

(6) the calendar date on which the consent expires, provided that if no calendar date is stated, information may be released only on the day the consent form is received by the therapist; and

(7) the right to revoke the consent at any time.

The consent form shall be signed by the person entitled to give consent and the signature shall be witnessed by a person who can attest to the identity of the person so entitled. A copy of the consent and a notation as to any action taken thereon shall be entered in the recipient's record. Any revocation of consent shall be in writing, signed by the person who gave the consent and the signature shall be witnessed by a person who can attest to the identity of the person so entitled. No written revocation of consent shall be effective to prevent disclosure of records and communications until it is received by the person otherwise authorized to disclose records and communications.

(c) Only information relevant to the purpose for which disclosure is sought may be disclosed. Blanket consent to the disclosure of unspecified information shall not be valid. Advance consent may be valid only if the nature of the information to be disclosed is specified in detail and the duration of the consent is indicated. Consent may be revoked in writing at any time; any such revocation shall have no effect on disclosures made prior thereto. . . .

740 ILCS 110/9. (Text of Section WITHOUT the changes made by P.A. 89-7, which has been held unconstitutional) Therapist's disclosure without consent

Sec. 9. In the course of providing services and after the conclusion of the provision of services, a therapist may disclose a record or communications without consent to:

(1) the therapist's supervisor, a consulting therapist, members of a staff team participating in the provision of services, a record custodian, or a person acting under the supervision and control of the therapist;

(2) persons conducting a peer review of the services being provided;

(3) the Institute for Juvenile Research and the Institute for the Study of Developmental Disabilities;

(4) an attorney or advocate consulted by a therapist or agency which provides services concerning the therapist's or agency's legal rights or duties in relation to the recipient and the services being provided; and

(5) the Inspector General of the Department of Children and Family Services when such records or communications are relevant to a pending investigation authorized by Section 35.5 of the Children and Family Services Act where:

(A) the recipient was either (i) a parent, foster parent, or

caretaker who is an alleged perpetrator of abuse or neglect or the subject of a dependency investigation or (ii) a non-ward victim of alleged abuse or neglect, and

(B) available information demonstrates that the mental health of the recipient was or should have been an issue to the safety of the child.

In the course of providing services, a therapist may disclose a record or communications without consent to any department, agency, institution or facility which has custody of the recipient pursuant to State statute or any court order of commitment.

Information may be disclosed under this Section only to the extent that knowledge of the record or communications is essential to the purpose for which disclosure is made and only after the recipient is informed that such disclosure may be made. A person to whom disclosure is made under this Section shall not redisclose any information except as provided in this Act. . . .

740 ILCS 110/11. Disclosure of records and communications

Sec. 11. Disclosure of records and communications. Records and communications may be disclosed:

(i) in accordance with the provisions of the Abused and Neglected Child Reporting Act [*325 ILCS 5/1* et seq.], subsection (u) of Section 5 of the Children and Family Services Act [*20 ILCS 505/5*], or Section 7.4 of the Child Care Act of 1969 [*225 ILCS 10/7.4*];

(ii) when, and to the extent, a therapist, in his or her sole discretion, determines that disclosure is necessary to initiate or continue civil commitment proceedings under the laws of this State or to otherwise protect the recipient or other person against a clear, imminent risk of serious physical or mental injury or disease or death being inflicted upon the recipient or by the recipient on himself or another;

(iii) when, and to the extent disclosure is, in the sole discretion of the therapist, necessary to the provision of emergency medical care to a recipient who is unable to assert or waive his or her rights hereunder;

(iv) when disclosure is necessary to collect sums or receive third party payment representing charges for mental health or developmental disabilities services provided by a therapist or agency to a recipient under Chapter V of the Mental Health and Developmental Disabilities Code [*405 ILCS 5/5-100* et seq.] or

to transfer debts under the Uncollected State Claims Act [*30 ILCS 205/1* et seq.]; however, disclosure shall be limited to information needed to pursue collection, and the information so disclosed shall not be used for any other purposes nor shall it be redisclosed except in connection with collection activities;

(v) when requested by a family member, the Department of Human Services may assist in the location of the interment site of a deceased recipient who is interred in a cemetery established under Section 100-26 of the Mental Health and Developmental Disabilities Administrative Act [20 ILCS 1705/100-26];

(vi) in judicial proceedings under Article VIII of Chapter III and Article V of Chapter IV of the Mental Health and Developmental Disabilities Code [*405 ILCS 5/3-800* et seq. and *405 ILCS 5/4-500* et seq.] and proceedings and investigations preliminary thereto, to the State's Attorney for the county or residence of a person who is the subject of such proceedings, or in which the person is found, or in which the facility is located, to the attorney representing the recipient in the judicial proceedings, to any person or agency providing mental health services that are the subject of the proceedings and to that person's or agency's attorney, to any court personnel, including but not limited to judges and circuit court clerks, and to a guardian ad litem if one has been appointed by the court, provided that the information so disclosed shall not be utilized for any other purpose nor be redisclosed except in connection with the proceedings or investigations;

(vii) when, and to the extent disclosure is necessary to comply with the requirements of the Census Bureau in taking the federal Decennial Census;

(viii) when, and to the extent, in the therapist's sole discretion, disclosure is necessary to warn or protect a specific individual against whom a recipient has made a specific threat of violence where there exists a therapist-recipient relationship or a special recipient-individual relationship;

(ix) in accordance with the Sex Offender Registration Act [*730 ILCS 150/1* et seq.];

(x) in accordance with the Rights of Crime Victims and Witnesses Act [*725 ILCS 120/1* et seq.];

(xi) in accordance with Section 6 of the Abused and Neglected Long Term Care Facility Residents Reporting Act [*210 ILCS 30/6*]; and

(xii) in accordance with Section 55 of the Abuse of Adults with

Disabilities Intervention Act [*20 ILCS 2435/1* et seq.].

Any person, institution, or agency, under this Act, participating in good faith in the making of a report under the Abused and Neglected Child Reporting Act [*325 ILCS 5/1* et seq.] or in the disclosure of records and communications under this Section, shall have immunity from any liability, civil, criminal or otherwise, that might result by reason of such action. For the purpose of any proceeding, civil or criminal, arising out of a report or disclosure under this Section, the good faith of any person, institution, or agency so reporting or disclosing shall be presumed.

The Clinical Social Work and Social Work Practice Act, 225 ILCS 20/1 et seq., states, in pertinent part:

225 ILCS 20/16. Privileged Communications and Exceptions
Sec. 16.

1. No licensed clinical social worker or licensed social worker shall disclose any information acquired from persons consulting the social worker in a professional capacity, except that which may be voluntarily disclosed under the following circumstances:

(a) In the course of formally reporting, conferring or consulting with administrative superiors, colleagues or consultants who share professional responsibility, in which instance all recipients of such information are similarly bound to regard the communication as privileged;

(b) With the written consent of the person who provided the information;

(c) In case of death or disability, with the written consent of a personal representative, other person authorized to sue, or the beneficiary of an insurance policy on the person's life, health or physical condition;

(d) When a communication reveals the intended commission of a crime or harmful act and such disclosure is judged necessary by the licensed clinical social worker or licensed social worker to protect any person from a clear, imminent risk of serious mental or physical harm or injury, or to forestall a serious threat to the public safety;

(e) When the person waives the privilege by bringing any public charges against the licensee; or

(f) When the information is acquired during the course of investigating a report or working on a case of elder abuse, neglect, or financial exploitation by a

> designated Elder Abuse Provider Agency and disclosure of the information is in accordance with the provisions of Section 8 of the Elder Abuse and Neglect Act [*320 ILCS 20/8*]. . . .
>
> 5. The Mental Health and Developmental Disabilities Confidentiality Act, as now or hereafter amended [*740 ILCS 110/1* et seq.], is incorporated herein as if all of its provisions were included in this Act.

STATEMENT OF FACTS

On May 12, 2003, Plaintiffs filed a Complaint against Defendants Lutheran Social Services of Illinois (hereinafter, "LSSI") and its employee, Licensed Social Worker Kim Holder, (R. 19.) The Complaint included counts for breach of contract, violations of the Mental Health and Developmental Disabilities Confidentiality Act, 740 ILCS 110/1 et seq., (hereinafter, "Confidentiality Act"), libel, intentional infliction of emotional distress and intentionally interference with a contract.

On July 14, 2003, Defendants filed a "Motion Attacking Plaintiffs' Complaint," which did not state whether it was brought pursuant to 735 ILCS 5/2-615 or 735 ILCS 5/2-619, but which sought to dismiss the Complaint or strike "certain portions." (R. 28-29.) Plaintiffs did not contest the Motion and the Court struck the Complaint, granting Plaintiffs leave to file an Amended Complaint. (R. 6-7.)

On October 6, 2003, Plaintiffs filed a First Amended Complaint, (R. 39), containing counts for breach of contract, violations of the Confidentiality Act, libel, intentional infliction of emotional distress and intentional interference with contract.

On October 14, 2003, Defendants filed a "Motion Attacking Plaintiffs' Amended Complaint," which did not state whether it was brought pursuant to 735 ILCS 5/2-615 or 735 ILCS 5/2-619, but which sought to dismiss the Complaint or strike "certain portions." (R. 47-48.)

No memoranda or other documents were filed either in support or opposition to Defendants' Motion, although oral argument was heard on February 2, 2004. (R.10.) On February 11, 2004, the Court granted Defendants' Motion, without elaboration, and ordered the Amended Complaint stricken. (R.10.) It gave Plaintiffs leave to file a Second Amended Complaint.

On March 5, 2004, Plaintiffs filed a Second Amended Complaint. (R. 58.) The Second Amended Complaint again alleged breach of contract, violations of the Confidentiality Act, defamation, intentional infliction of emotional distress and intentional interference with contract.[1] The Second Amended Complaint also included exhibits showing the initial assessment conducted by LSSI, (R. 73-81), a Statement of Account between Plaintiffs and LSSI evidencing a business relationship, (R. 82), and copy of an Adoptive Family Home Study Assessment – Addendum (hereinafter, "Addendum"). (R. 83-88), upon which much of Plaintiffs' claims were based, and a followup letter referenced in the intentional infliction of emotional distress count. (R. 89-95.)

On March 18, 2004, Defendants filed a "Motion Attacking Plaintiffs' Second Amended Complaint," which did not state whether it was brought pursuant to 735 ILCS 5/2-615 or 735 ILCS 5/2-619, but which sought to dismiss the Complaint with prejudice. (R. 96-98.) No memoranda or other documents were filed either in support or opposition to Defendants' Motion. However, Plaintiffs' counsel sought leave to withdraw and new counsel was substituted by leave of court. (R.100-107.) Plaintiffs then sought leave to file a Third Amended Complaint, (108-

[1] The Record on Appeal, as transmitted to Plaintiffs, includes a "post-it" appended to page 60, stating "missing page," and indeed it appears that page 4 of the Second Amended Complaint was somehow lost from the Record. It does not appear to be material to the issues raised by this appeal; however, Plaintiffs can supply a copy of the missing page to this Court if this Court determines it is needed.

1 09), which was granted. (R. 111.)

Plaintiffs' Third Amended Complaint was filed Feb. 28, 2005. (R. 113.) This Complaint alleged, at Count I, that Defendants committed defamation per se when Defendant Holder made false allegations in the Addendum implying that Plaintiff Paula Smith-Cade had committed a criminal offense and/or was mentally ill. Count II alleged that Plaintiff Floyd Cade was defamed by one of the same false allegations. (R. 115-116.) Count III alleged that the same defamatory statements constituted intentional infliction of emotional distress with respect to Plaintiff Paula Smith-Cade, (R. 116), and Count IV alleged that they constituted intentional infliction of emotional distress with respect to Plaintiff Floyd Cade. (R. 117.) Count V alleged that Defendants were negligent with respect to Plaintiff Paula Smith-Cade in that they breached their duty of care when they failed to fully investigate the allegations contained in the Addendum, failed to maintain Plaintiff's confidentiality and failed to keep Plaintiff informed of changes in her adoption status. (R. 118.)[2]

On March 3, 2005, Defendants responded by filing a "Motion to Dismiss and/or for Judgment on the Pleadings Pursuant to Chapter 735, ILCS, Section 5/2-615(e)." (R. 127.) That motion argued that the alleged defamatory statements by Defendant Holder were made pursuant to "eventual adoption proceedings," were judicial or quasi-judicial in nature and were therefore "absolutely privileged." (R. 128-129.) The Motion also argued that Plaintiffs' negligence claims should be dismissed because "there are no facts pleaded to raise a duty other than that established

[2] The Third Amended Complaint evidently contained a Count VI, alleging that Defendants were negligent with respect to Plaintiff Floyd Cade, on grounds similar to the claim of negligence with respect to Plaintiff Paula Smith-Cade. This may be inferred from the fact that page 7 of the Third Amended Complaint is missing from the Record on Appeal and that Defendants refer to a Count VI, alleging negligence, in their subsequent Motion to Dismiss.

by an arrangement to which Plaintiffs consented." (R. 130.)

Plaintiffs filed a Response to the latter Motion on April 4, 2005, contesting the legal authority for Defendants' arguments. (R. 138.)

On July 1, 2005, the Court ruled, by docket entry, that "it is not prepared to decide as a matter of law whether the statements in the report by defendant are privileged," and that Defendants' Motion to Dismiss was, therefore, denied. (R. 13.)

On July 22, 2005, Defendants responded with another "Motion Attacking Third Amended Complaint Pursuant to Chapter 735, ILCS, Section 5/2-615." (R. 145.) This motion argued that Plaintiffs did not adequately plead facts to support a claim for defamation, either *per se* or *per quod*, and that it did not allege sufficient facts to state a cause of action for intentional infliction of emotional distress. (R. 146-147.) It sought only to dismiss counts I-IV of the Third Amended Complaint and made no mention of Plaintiffs' claims for negligence. (R. 147.)

On August 8, 2005, Plaintiffs filed a Response to the latter motion, citing authorities supporting the argument that they had adequately alleged defamation *per se* and intentional infliction of emotional distress. (R. 149-153.). On August 19, 2005, the court below, by docket entry, granted the Motion Attacking Third Amended Complaint, without elaboration or explanation, and gave Plaintiffs leave to further amend the Complaint. (R. 14.)

On September 15, 2005, Plaintiffs filed a Fourth Amended Complaint. (R. 154.) This Complaint included counts for defamation *per quod,* intentional infliction of emotional distress and negligence.

On October 5, 2005, Defendants filed a "Motion Attacking Plaintiffs' Fourth Amended Complaint," (R. 165), which did not state whether it was brought pursuant to 735 ILCS 5/2-615

or 735 ILCS 5/2-619, but which sought to dismiss the Complaint with prejudice. This Motion again argued that Plaintiffs failed to plead the necessary elements to meet any of their claims. Plaintiffs filed a Response on November 2, 2005. (R. 168.)

On December 27, 2005, following oral argument, the court below, by docket entry, granted Defendants' Motion Attacking Plaintiffs' Fourth Amended Complaint, without elaboration or explanation, and gave Plaintiffs leave to further amend the Complaint. (R. 15.)

On January 24, 2006, Plaintiffs file a Fifth Amended Complaint. (R. 179.) This version of the Complaint set forth a more detailed set of factual allegations than prior versions, (R. 179-184) and alleged, at Count I, that Defendants committed defamation *per quod* when Defendant Holder made false allegations in the Addendum implying that Plaintiff Paula Smith-Cade was a drug and alcohol user. (R. 185-187.) Count II alleged that Plaintiff Floyd Cade was defamed, *per quod*, by one of the same false allegations. (R. 187-188.) Counts III and IV alleged that the same defamatory statements constituted intentional infliction of emotional distress with respect to each Plaintiff. (R. 189-192.) Counts V and VI alleged that Defendants were negligent with respect to each Plaintiff in that they breached their duty of care when they failed to maintain Plaintiffs' confidentiality and failed to keep Plaintiffs informed of changes in her adoption status. (R. 192-194.) Counts VII and VII alleged that Defendants committed the tort of false light when Defendant Holder made the allegations in the Addendum, which were communicated to individuals with which Plaintiffs had a special relationship, including adoption professionals. (R. 194-196.)

On February 1, 2006, Defendants filed a "Motion Attacking Fifth Amended Complaint," (R. 213), which did not state whether it was brought pursuant to 735 ILCS 5/2-615 or 735 ILCS

5/2-619, but which sought to dismiss the Complaint with prejudice. This Motion again argued that Plaintiffs failed to plead the necessary elements to meet any of their claims and largely argued that the Fifth Amended Complaint was essentially similar to claims previously made and rejected by the court below. It did not provide any new points or authorities with respect to the new claims for false light.

Plaintiffs filed a Response on February 27, 2006, (R. 216), citing authorities supporting their claims. Defendants filed a Reply memorandum (titled "Reply to Plaintiffs' Response to Defendants' Motion Attacking *Third* Amended Complaint . . ." but actually addressing the Response to the Motion Attacking *Fifth* Amended Complaint) on March 1, 2006, which simply reiterated that the Fifth Amended Complaint did not cure the defects contained in the Fourth Amended Complaint. (R. 237.) On May 8, 2006, Plaintiffs filed a Supplemental Response to Motion Attacking Fifth Amended Complaint, raising additional points and authorities in support of the latter pleading. (R. 240.) Defendants filed another brief Response to that Response on May 12, 2006. (R. 245.)

On July 18, 2006, the court below issued an Order dismissing Plaintiffs' claims with prejudice (hereinafter, "July 18 Order.") (R. 247.) That Order stated that, in addition to the arguments of Defendants, the confidentiality provisions described at 89 Ill. Adm. Code 402.24 (under the Department of Children and Family Services' administrative rules on foster family homes) "only mentions protecting the information of the child." (R. 247.)

This Appeal arises from the July 18 Order, and also implicates the prior Orders of the court below dismissing the Second, Third and Fourth Amended Complaints.

ARGUMENT

I. STANDARD OF REVIEW AND STANDARD FOR REVIEWING MOTIONS TO DISMISS.

As a preliminary matter, this Court should note that, in attacking Plaintiffs' pleadings, Defendants repeatedly, with only two exceptions, filed generic "Motion[s] Attacking Complaint," without identifying whether they were filed under § 2-615 or § 2-619 of the Code of Civil Procedure, 735 ILCS 5/2-615, 619. The Code of Civil Procedure does not make any provision for such a non-descript "motion attacking complaint," and the Appellate Court has repeatedly admonished that, "[P]roper trial court practice requires that a motion to dismiss specifically state upon which section of the Illinois Code of Civil Procedure the movant is relying." *E. J. De Paoli Co. v. Novus, Inc.*, 156 Ill. App. 3d 796, 799, 510 N.E.2d 59 (1st Dist. 1987). While Plaintiffs have not located any authority stating that such a failing is itself grounds for reversal, Plaintiffs submit that the case at bar provides an especially suitable case for this Court to drive home the lesson that its rules of Civil Procedure should not be so casually and flagrantly disregarded.

Should this Court decline that invitation, Plaintiffs observe that all of Defendants' "Moiton[s] Attacking Complaint" apparently attacked the legal sufficiency of the pleadings, and further, lacked the affidavit required to be filed in support of a § 2-619 motion, and therefore should be regarded as motions to dismiss under § 2-615. In either instance, the lower court's ruling should be reviewed *de novo*. *Stinnes Corp. v. Kerr-McGee Coal Corp.*, 309 Ill. App. 3d 707, 712, 722 N.E.2d 1167 (5th Dist. 2000). A § 2-615 motion, in particular, raises pure issues of law and should be reviewed *de novo* for that reason. *Stroger v. Regional Transportation Authority*, 201 Ill. 2d 508, 516, 778 N.E.2d 683, 268 Ill. Dec. 417 (2002).

Since this appeal concerns only issues raised by the pleadings and Defendants' various motions to dismiss, the following general rules apply to all of the arguments advanced herein.

When ruling on a motion to dismiss (whether under § 2-615 or § 2-619), the trial court must interpret all pleadings and supporting documents in the light most favorable to the nonmoving party. *Stinnes Corp.*, 309 Ill. App. 3d at 712. The trial court should grant the motion only if the plaintiff can prove *no* set of facts that would support a cause of action on appeal. *Id.* Ultimately, "[t]he question to be determined is whether sufficient facts are contained in the pleadings which, if established, may entitle the plaintiff to relief." *Stroger*, 201 Ill. 2d at 516.

In this connection, a complaint need only "contain[] such information as reasonably informs the opposite party of the nature of the claim or defense which he or she is called upon to meet. Liberal construction of a pleading requires that 'no pleading is deemed to be bad which shall contain such information as shall reasonably inform the opposite party of the nature of the claim.'" *Zeitz v. Village of Glenview* 227 Ill. App. 3d 891, 592 N.E.2d 384, 387 (1st Dist. 1992) (internal citations omitted).

II. THE COURT BELOW ERRED IN DISMISSING PLAINTIFFS' CLAIMS FOR VIOLATION OF CONFIDENTIALITY, BASED ON THE MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES CONFIDENTIALITY ACT

A. Defendants were subject to the provisions of the Confidentiality Act and had a statutory duty to protect Plaintiffs' confidentiality and access to records.

Plaintiffs' Second Amended Complaint Count II alleged that both Defendants violated the Confidentiality Act, when they refused to allow Plaintiffs to obtain a copy of the Addendum for a period of 12 days, and when Defendant Holder released confidential information to an adoption attorney. (R. 41-42.) Although not specifically pled as a claim under the Confidentiality Act,

subsequent versions of the Complaint, such as the Fifth Amended Complaint, still alleged that Plaintiffs' confidentiality had been breached by Defendant Holder, that Defendant Holder did not obtain a proper release from Plaintiffs when she sought to share confidential information with, and breach the attorney-client privilege with, Plaintiffs' attorney (in violation of § 5 of the Confidentiality Act, 740 ILCS 110/5), and that Defendants kept the existence of the Addendum a secret from Plaintiffs from May 13, 2002 until June 17, 2002, and refused to allow Plaintiffs to obtain a copy of the Addendum from June 5 - June 17, 2002. (R. 182-184, ¶¶ 22-33.)

As alleged, Defendant Holder and her employer, LSSI, were plainly subject to the provisions of the Act. She was a licensed social worker, (R. 63, ¶ 3), and therefore was subject to the provisions of the Clinical Social Work and Social Work Practice Act, 225 ILCS 20/1 et seq., which states, in pertinent part, that "No licensed clinical social worker or licensed social worker shall disclose any information acquired from persons consulting the social worker in a professional capacity," except under certain circumstances. 225 ILCS 20/16. None of the exceptions named in that provision applied to the allegations made in the Second Amended Complaint.

Further, the same statute provides that, "The Mental Health and Developmental Disabilities Confidentiality Act, as now or hereafter amended [740 ILCS 110/1 et seq.], is incorporated herein as if all of its provisions were included in this Act." Thus, this provision, as well as the expansive definition of "mental health and developmental disabilities services" under the Confidentiality Act itself, 740 ILCS 110/2, removes any doubt that the provisions of the Confidentiality Act (as well as the Clinical Social Work and Social Practice Act itself) applied to Defendants. There is also no doubt that Plaintiffs were "recipients" of such services within the

meaning of the Confidentiality Act, since they were subject to "examination" and "evaluation" by Defendants, *id.*, having retained LSSI for the specific purpose of being evaluated for adoption placement. (R. 58-59, ¶¶ 1, 3 and 7.)

B. There is no question that, as alleged, Defendants violated the confidentiality and accessibility provisions of the Confidentiality Act.

The Second Amended Complaint alleged that Defendant Holder disclosed confidential information to one Laura Sipes, an attorney representing potential birth mothers, (R. 62, ¶ 21 G), without Plaintiffs' authorization or permission. (R. 66-67, ¶¶ 7 D, I and J.) It also alleged that Defendants denied Plaintiffs' request for copies of the Addendum prepared by Defendant Holder from June 5, 2002 to June 17, 2002. (R. 67, ¶¶ 7 G, H, and I.) The Fifth Amended Complaint contained similar allegations, (R. 184, ¶¶ 30-33.) It added allegations that Defendant Holder did not obtain proper consent to speak to Plaintiffs' attorney, (R. 182-183, ¶¶ 22-26), that Defendant LSSI denied Plaintiffs' request to add their own documents to the file after learning of the Addendum, (R. 184, ¶¶ 34-35), and that Defendants disclosed the confidential information contained in the Addendum to two other adoption agencies. (R. 185, ¶¶ 39-40.)

All of these allegations constitute clear violations of the Confidentiality Act. Section 3 of the Act provides that, "All records and communications shall be confidential and shall not be disclosed except as provided in this Act." 740 ILCS 110/3. Sections 3, 9 and 11 of the Confidentiality Act describe the various exceptions to this rule but not one of them applies to the allegations contained in Plaintiffs' Second or Fifth Amended Complaint – nor does the record reflect that Defendants ever attempted to raise any of these exceptions as a defense. " 740 ILCS 110/3, 110/9 and 110/11.

Section 4 of the Confidentiality Act makes explicit that recipients "shall be entitled, upon request, to inspect *and copy* a recipient's record or any part thereof." 740 ILCS 110/4 (a) (emphasis added). It also provides that, "Any person entitled to access to a record under this Section may submit a written statement concerning any disputed or new information, which statement *shall* be entered into the record. . . . Additionally, any person entitled to access may request modification of any part of the record which he believes is incorrect or misleading. 740 ILCS 110/4 (c) (emphasis added). Defendants cannot assert that any part of the record is privileged as against such a request by Plaintiffs, not only because of the clear words of the statute, but also because "the privilege the Act creates belongs to the patient" and does not create a privilege for the mental health practitioner to protect against litigation. *In re Bagus*, 294 Ill. App. 3d 887, 891, 691 N.E.2d 401 (2nd Dist. 1998).

Section 5 lays out the rules for properly obtaining consent to disclose information and states that it "shall specify" the "person or agency to whom the disclosure is made," "the nature of the information to be disclosed," and other requisites. 740 ILCS 110/4 (b). It does not authorize mental health practitioners to have their clients execute blank, generic releases "for any purpose deemed important," in order to enable them to spread unsubstantiated gossip to the clients' attorney. (R. 182-183, ¶ ¶ 22, 25-26; R. 208.)

The recently decided case of *Cordts v. Chicago Tribune Co.*, No. 1-06-1158, 2006 Ill. App. LEXIS 1129 (1st Dist. Dec. 8, 2006) lends further support to Plaintiffs' position. In *Cordts*, the plaintiff alleged that he was evaluated on his claim of disability by an outside agency at the request of his employer. *Id.* at *1. An employee of that agency then disclosed to his ex-wife that he was receiving treatment for depression. *Id.* at *2-3. The plaintiff filed claims for the tort of

public disclosure of private facts but in the course of defending his pleadings argued that defendants' disclosure also violated the Confidentiality Act. *Id.* at *2, 7. The circuit court dismissed his claims on a 2-619 motion by the defendants. *Id.* at *2. The Appellate Court ultimately affirmed the lower court's ruling with respect to the common-law tort claim, *id.* at *20, but reversed in part, on the ground that the plaintiff had stated a claim under the Confidentiality Act, even though his pleadings were formally defective in not setting forth separate counts under the Act. *Id.* at *25-29. Plaintiffs in the case at bar *did* set forth explicit claims under the Act in their first three Complaints, (R. 20-21, 41-42, 63-67) but, after being shut down repeatedly by the lower court, did what the plaintiff did in *Cordts*, and implicated the Act in support of other tort claims. (R. 184-185.)

As in *Cordts*, Plaintiffs in the case at bar were evaluated by an agency, not for purposes of receiving therapy, but to qualify for a benefit (adoption). As in *Cordts*, an employee of that agency then disclosed compromising or potentially damaging confidential information to someone who arguably had an interest in the information. Yet the court in *Cordts* held that the Confidentiality Act applied and that the disclosure was a violation. In coming to that conclusion, the court observed:

> Our supreme court has emphasized that [the] few exceptions to the Confidentiality Act are strictly limited and are not to be expanded. *See, e.g., Norskog v. Pfiel*, 197 Ill. 2d 60, 71-72, 755 N.E.2d 1, 9, 257 Ill. Dec. 899 (2001) ("[i]n each instance where disclosure is allowed under the Act, the legislature has been careful to restrict disclosure to that which is necessary to accomplish a particular purpose. Exceptions to the Act are narrowly crafted. [Citation.] When viewed as a whole, the Act constitutes a 'strong statement' by the General Assembly about the importance of keeping mental health records confidential. [Citation.] *** Consequently, anyone seeking the nonconsensual release of mental health information faces a formidable challenge and must show that disclosure is authorized by the Act"); *Reda v. Advocate Health Care*, 199 Ill. 2d 47, 60, 765

> N.E.2d 1002, 1010, 262 Ill. Dec. 394 (2002). . . . The fact that a person has a "natural and proper interest" in another person's mental health records is not included in the Confidentiality Act's enumerated exceptions. Therefore, we find that the "natural and proper interest" defense to the common law tort of public disclosure of private facts is not a defense to a claim based on the Confidentiality Act.
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> *Cordts*, 2006 Ill. App. LEXIS 1129 at *22-23.

That Laura Sipes, attorney Kim Kuhlengel-Jones and/or other adoption agencies even arguably had a "natural and proper interest" in Defendant Holder's unsolicited, secretive, and revised opinion of Plaintiffs' suitability as adoptive parents did not provide her with a legal justification for disclosing this confidential information. Nor did any of the enumerated exceptions of the Confidentiality Act provide such a justification.

Further support for Plaintiffs' position is provided by *Bland v. Department of Children and Family Services*, 141 Ill. App. 3d 818, 490 N.E.2d 1327 (3rd Dist. 1986). In *Bland*, petitioners for adoption had been evaluated by a psychologist hired by DCFS when they previously sought placement of their granddaughter with them as foster parents. 141 Ill. App. 3d at 820. When the petitioners filed for adoption, a witness for DCFS disclosed the contents of some of the conversations between one of the petitioners and the psychologist. *Id.* at 826. The defendant argued that the privilege of confidentiality had been waived when the petitioner put her mental stability at issue by petitioning for adoption. *Id.* The court rejected that argument, holding that, "the privilege is too important to be brushed aside when the mental condition of the plaintiff may only be peripherally involved," and that "one does not place into issue his mental condition by filing a petition for adoption." *Id.* In the case *sub judice*, of course, Plaintiffs were a step *further* removed from any implied waiver, insofar as they had not even filed a petition for adoption. Thus, *Bland* supports Plaintiffs' contention that any exceptions to the confidentiality

provisions of the Confidentiality Act must be strictly and narrowly construed. It also vanquishes any lingering doubt that the provisions of the Confidentiality Act apply to evaluations or assessments conducted for purposes of determining the suitability of prospective adoptive parents.

By the clear terms of the statute and the additional authority provided by section 16 of the Clinical Social Work and Social Work Practice Act, 225 ILCS 20/16, *Cordts* and *Bland*, Plaintiffs have amply pled a claim under the Confidentiality Act.

III. THE COURT BELOW ERRED IN DISMISSING PLAINTIFFS' CLAIMS FOR TORTIOUS INTERFERENCE WITH BUSINESS EXPECTANCY.

The first three versions of Plaintiffs' Complaint included claims that Defendant Holder intentionally interfered with Plaintiffs' contractual relationship with another adoption agency when she prepared the Addendum after Plaintiffs' contract with LSSI had been terminated, shared it with another adoption agency and refused to provide Plaintiffs with a copy of the Addendum in a timely manner. (R. 23, 44-45, 71-72.) Although each such count was styled as "Intentional Interference With Contract," the allegations actually stated a claim for what is more sometimes referred to as "tortious interference with a business relationship" or "tortious interference with a business expectancy." *See River Park v. City of Highland Park*, 184 Ill. 2d 290, 703 N.E.2d 883 (1998). This is similar to the tort of "tortious interference with contract" or "contractual relations," but there are some subtle differences. *See generally, Film & Tape Works, Inc. v. Junetwenty Films, Inc.*, 368 Ill. App. 3d 462 , 468-469, 856 N.E.2d 612 (1st Dist. 2006).

Further confusing matters, courts frequently use the term "tortious interference with prospective economic advantage," *see, e.g., Dowd & Dowd, Ltd. v. Gleason*, 352 Ill. App. 3d

365, 816 N.E.2d 754 (1st Dist. 2004), interchangeably with the broader term, "tortious interference with a business expectancy." *See, e.g., Clarage v. Kuzma*, 342 Ill. App. 3d 573, 795 N.E.2d 348 (3rd Dist. 2003) (defining "tortious interference with business expectancy" by citing to *Fellhaeur v. City of Geneva*, 142 Ill. 2d 495, 568 N.E.2d 870, 878 (1991) – a seminal case using the term "prospective economic advantage"). Yet this very case illustrates the need to keep these two concepts distinct. Plaintiffs *did* have a "business expectancy," in the sense that they were seeking and expecting to reach an actual agreement for adoption of a child, which entails reaching an enforceable agreement. Yet the business aspects of adoption are obviously secondary to the other, personal, human and societal interests served – one does not ordinarily enter into an agreement for adoption in order to realize a "prospective economic advantage."[3]

That said, *Clarage* demonstrates that Plaintiffs did state a claim for tortious interference with business expectancy:

> In order to state a cause of action for tortious interference with a business expectancy, plaintiff must allege: (1) that he had a reasonable expectation of entering into a valid business relationship; (2) the defendant had knowledge of the plaintiff's expectancy; (3) the defendant purposefully interfered in a way that prevented the plaintiff's legitimate expectancy from ripening into a valid business relationship; and (4) damages to the plaintiff resulted from the defendant's interference.

In, for example, their Second Amended Complaint, Plaintiffs clearly pled each of these elements. Through their existing contract with an adoption agency, the Center for Family Building, Plaintiffs had a "reasonable expectation of entering into a valid [further] business

[3] There are, of course, certain economic advantages attendant to the transaction of an adoption, however, such as tax credits available to the adoptive parents as well as fees collected by the adoption agencies and attorneys, all of which are implicated in the instant case. Thus, while "business expectancy" is the preferred term here, Plaintiffs' claims also could meet the requirements for tortious interference with prospective economic advantage.

relationship" with both the Center and a birth mother for purposes of consummating an adoption. (R. 71, ¶¶ 1, 2.) Defendant Holder had knowledge of the relationship with the Center, and, therefore, Plaintiffs' expectancy that an agreement for adoption would be reached. (R. 71, ¶ 3.) Defendant Holder purposefully interfered with that legitimate expectancy in a way that prevented it from ripening, by preparing the negatively worded Addendum, refusing to provide Plaintiffs with a copy in a timely manner and disseminating the Addendum to the Center for Family Building, and other adoption agencies. (R. 71-72, ¶¶ 5, 6, 9 and 10.) Plaintiffs suffered damages as a result of the interference. (R. 71-72, ¶ 9.)

Although not specifically pled as a cause of action, the Fifth Amended Complaint provided even more factual allegations sufficient to support each element of a claim for tortious interference with business expectancy, including Defendant LSSI's refusal to allow Plaintiffs to add their own addendum to the record. (R. 184-185, ¶¶ 34-35.) It alleged that Defendants interfered with Plaintiffs' business relationship – and expectancy – with another adoption agency, Journeys of the Heart, as well as attorney Laura Sipes. (R. 184-185, ¶¶ 28, 30, 32-40.) It alleged that Defendant Holder deceptively lured Plaintiff Paula Cade-Smith into signing a release, without informing her that it would be used to obtain confidential information from her attorney, (R. 182-183, ¶¶ 22-23, 25-26), then used damaging information (purportedly) obtained from the same attorney in the Addendum. (R. 208.)

In this connection, Defendants' conduct was tortious in another sense: It rose to the level of fraud within the meaning of the Adoption Act:

> Fraud, for purposes of the Adoption Act, is defined as 'anything calculated to deceive, whether it be a single act or combination of circumstances, whether the suppression of truth or the suggestion of what is false, whether it be by direct

> falsehood or by innuendo, by speech or by silence, by word of mouth or by look or gesture.' *Regenold v. Baby Fold, Inc.*, 68 Ill. 2d 419, 435, 369 N.E.2d 858, 12 Ill. Dec. 151, [] (1977), quoting *People ex rel Chicago Bar Ass'n v. Gilmore,* 345 Ill. 28, 46, 177 N.E. 710 (1931). Where such fraud is proved, it vitiates all transactions touched by it. *Gilmore,* 345 Ill. at 46." *In re Adoption of E.L., A minor,* 315 Ill. App. 3d 137, 151, 733 N.E.2d 846, 858, 248 Ill. Dec. 171 (2000).
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> *In re O.S.*, 364 Ill. App. 3d 628, 640, 848 N.E.2d 130 (3rd Dist. 2006).

The point here, of course, is not that Plaintiffs stated a claim for fraud, which was never specifically pled, but to underscore the tortious character of Defendants' conduct – which certainly had the effect of undermining Plaintiffs' transactions with other agencies and prospective birth mothers.

Hence, Plaintiffs adequately alleged all the ultimate facts needed to support a claim for tortious interference with business expectancy.

IV. THE COURT BELOW ERRED IN DISMISSING PLAINTIFFS' CLAIMS FOR DEFAMATION.

In their Third Amended Complaint, Plaintiffs alleged that Defendants committed defamation *per se* when Defendant Holder made false allegations in the Addendum strongly implying that Plaintiff Paula Smith-Cade had committed a criminal offense and/or was mentally unstable, and that both Plaintiffs were suspected of (illegal) drug and/or dangerous alcohol usage. (R. 115-116.) In their Fourth and Fifth Amended Complaints, Plaintiffs alleged that the same statements by Holder constituted defamation *per quod* when viewed in the larger context in which they were used. (R. 154-157, 185-189.) Actually, Plaintiffs' pleadings stated valid claims for defamation *per se and* defamation *per quod.*

To state a defamation claim, a plaintiff must present facts that a defendant made a false statement about a plaintiff, the defendant made an unprivileged publication of that statement to a

third party, and that this publication caused damages. *See Solaia Technology, LLC v. Specialty Publishing Co.*, 221 Ill. 2d 558, 579, 852 N.E.2d 825, 304 Ill. Dec. 369 (2006).

As this Court correctly observed in *Myers v. The Telegraph*, 332 Ill. App. 3d 917, 773 N.E.2d 192 (5th Dist. 2002):

> Five categories of statements are considered "defamatory *per se*" and give rise to a cause of action for defamation without a showing of special damages: (1) words that impute the commission of a criminal offense, (2) words that impute an infection with a loathsome communicable disease, (3) words that impute an inability to perform or want of integrity in one's discharge of the duties of office or employment, (4) words that prejudice a party, or impute a lack of ability, in his or her trade, profession, or business, and (5) false accusations of fornication or adultery.
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> 332 Ill. App. 3d at 922, *citing Bryson v. News America Publications, Inc.*, 174 Ill. 2d 77, 672 N.E.2d 1207, 220 Ill. Dec. 195 (1996).

Although *Myers* dealt with the question of whether a person who pled guilty of misdemeanor possession of cannabis could bring a defamation claim based on the false allegation that he had pled guilty to a felony (answering in the affirmative, *id.* at 922), implicit in its holding is the none-too-startling proposition that a false accusation of cannabis possession is defamatory per se, since it is, indeed, a criminal offense. *Id. Accord Larson v. Decatur Memorial Hosp.*, 236 Ill. App. 3d 796, 799, 602 N.E.2d 864 (4th Dist. 1992). Plaintiffs allege that Defendant Holder attributed two false statements to Plaintiff Paula Cade-Smith about needing "some weed" – an obvious reference to cannabis, especially since she supposedly stated that she needed it "to calm herself." (R. 114 ¶ 5.) In this connection, it should be noted that "courts must interpret the words as they appeared to have been used and according to the idea they were intended to convey to the reasonable reader. Courts are not required to strain to find an unnatural innocent meaning for words when a defamatory meaning is far more reasonable." *Tuite v. Corbitt*, No. 101054, 2006

IL L. LEXIS 1668 at *31-32 (Ill. Dec. 21, 2006), *citing Bryson,* 174 Ill. 2d at 93-94.

These statements were published to third parties, as the Addendum containing the statements was disseminated to Attorney Laura Sipes and two adoption agencies – causing damages. (R. 184-185, ¶¶ 30-40.) Therefore, Plaintiffs adequately pled causes of action for defamation *per se*.

In order to a claim for defamation *per quod*, a plaintiff must allege extrinsic facts that demonstrate that an otherwise innocent statement has a defamatory meaning and must allege "special damages" – meaning pecuniary damages – caused by the statement. *Bryson*, 174 Ill. 2d at 103. In the case at bar, even assuming, *arguendo* (and contrary to *Tuite)*, that the statements regarding cannabis use, alcohol consumption and the need for a full investigation of same, (R. 185-186), are capable of an "innocent" construction or interpretation, Plaintiffs did allege extrinsic facts demonstrating that they had a defamatory meaning and that they suffered special damages. The Addendum, after reporting these false statements, concludes:

> Because of the unresolved issues stated above, Lutheran Social Services of Illinois recommends that this family not be considered for an adoptive placement at this time. Lutheran Social Services of Illinois believes that it would not be appropriate to compete any post-placement services for this family by an other agency or attorney at law until the above issues are addressed.
>
> (R. 212.)

When viewed in context, such statements were plainly intended to damage Plaintiffs' reputation in the adoption services community and impair their efforts to consummate an adoption. They had the effect of "blacklisting" the Plaintiffs as adoptive parents, and did in fact cause the failure of one or more prospective adoptions. (R. 184-185, ¶¶ 38-40.) Additionally, Plaintiffs alleged that they suffered consequential depression, serious and debilitating emotional distress, chronic insomnia and anxiety requiring Plaintiffs to seek psychiatric counseling at their

own expense. (R. 186-189, ¶¶ 45, 41.)[4] Thus they alleged pecuniary, "special" damages.

Accordingly, even if this Court should somehow distinguish the instant case from its own prior holding in *Myers* and the Supreme Court's recent holding in *Tuite*, Plaintiffs also adequately stated a claim for defamation *per quod*.

Defendants only colorable argument against Plaintiffs' defamation claims was based on the proposition that any statement made by Defendant Holder regarding Plaintiffs was privileged, because it was made for the purpose of "impacting" an "eventual adoption [judicial] proceeding." (R. 128-130.) It relied primarily on the case of *Bond v. Pecaut*, 561 F. Supp. 1037 (N.D. Ill. 1983). In *Bond*, a party to a divorce proceeding sued a psychologist who had conducted a custody evaluation pursuant to a *court order*. *Id.* at 1038. The psychologist had written a recommendation initially favorable to the plaintiff, but after receiving new information about plaintiff's subsequent conduct, she wrote to the court expressing concerns about the impact of that conduct on the divorced couple's minor child. *Id.* Reviewing a number of Illinois cases, the court concluded that "any statement made in preparation for or in relation to a pending proceeding" was absolutely privileged. *Id.* at 1039.

The problems with this argument are glaring, beginning with the fact that there was no "pending proceeding" at the time Defendant Holder made her defamatory statements. Further, the Illinois Appellate Court, in *Renzi v. Morrison*, 249 Ill. App. 3d 5, 618 N.E.2d 794 (1st Dist. 1993), distinguished *Bond* and restricted its holding to the specific facts of that case. *Id.* at 9. In *Renzi*, a psychologist who had evaluated and counseled a party to a divorce voluntarily appeared

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[4] The paragraphs in the Fifth Amended Complaint obviously contained typographical or scrivener's errors in enumeration.

at a custody hearing and testified for the other party, over objection of the former client. The Court explicitly held that the Confidentiality Act modified "absolute common law witness immunity in order to provide a remedy of damages against persons who violate" it. *Id.* at 8. Thus, unless the Act's provisions requiring an a priori in camera review were adhered to, the patient's right to confidentiality trumped absolute witness immunity. *Id.* Therefore, the "absolute immunity" argument holds no water in the case at bar.

The lower court actually ruled in favor of Plaintiffs on this point – at first. On July 1, 2005, it ruled that "it is not prepared to decide as a matter of law whether the statements in the report by defendant are privileged," and that Defendants' Motion to Dismiss was, therefore, denied. (R. 13.) However, after Defendants filed another motion to dismiss, that simply asserted, in conclusory fashion, that Plaintiffs did not adequately plead facts to support a claim for defamation, either *per se* or *per quod*, (R. 145-146), the court below somehow found this more compelling, and without elaboration or explanation, granted the motion. (R. 14.)

The lower court had it right the first time. For the foregoing reasons, it erred in dismissing Plaintiffs' claims for defamation.

V. THE COURT BELOW ERRED IN DISMISSING PLAINTIFFS' CLAIMS FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

> In order to state a cause of action for intentional infliction of emotional distress, a party must allege facts which establish that: (1) the defendant's conduct was extreme and outrageous; (2) the defendant either intended that his conduct should inflict severe emotional distress, or knew that there was a high probability that his conduct would cause severe emotional distress; (3) the defendant's conduct in fact caused severe emotional distress.
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> *Doe v. Calumet City*, 161 Ill.2d 374, 392, 641 N.E.2d 498, 204 Ill. Dec. 274 (1994).

Plaintiffs' Fifth Amended Complaint, among others, met all of these requisites. It not

only pled extreme and outrageous conduct, (R. 190, ¶ 42; R. 191 ¶ 43); it laid out the factual basis for it, by noting that Defendant essentially sabotaged Plaintiffs' plans for adoption, surreptitiously and by intentionally making false statements, (R. 183, ¶ 27,[5] R. 185, ¶ 41 and R. 208-21 (Ex. 3)), while *knowing* that Plaintiffs were extremely vulnerable to emotional injury due to their inability to bear children, Plaintiff Paula Smith-Cade's history of miscarriages, her recent hysterectomy and both Plaintiffs' heightened sense of loss and anxiety caused by the failed adoption that occurred on May 2, 2002. (R. 183, ¶¶ 27-28, R. 189 ¶ 41, R. 190 ¶ 43, and R. 191-192, ¶¶ 42, 44.)

The latter point is of considerable importance, since

> [one] factor relevant in determining whether conduct is extreme or outrageous is defendant's awareness that the plaintiff is particularly susceptible to emotional distress because of a physical or mental condition or peculiarity. Conduct which might otherwise be considered merely rude or abusive may be deemed outrageous where the defendant knows that the plaintiff is particularly susceptible to emotional distress.
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> *Doe*, 161 Ill. 2d at 393.

Indeed, this Court applied that principle in, among other cases, *Smith v. Cohen*, 269 Ill. App. 3d 1087, 648 N.E.2d 329 (5th Dist. 1995), where it reversed a lower court's dismissal of a claim of intentional infliction of emotional distress arising from a single incident of a male nurse seeing and touching a female patient's naked body during a ceasarean section. 269 Ill. App. 3d at 1089. The claim was predicated on the defendant's knowledge that the plaintiff couple's religious beliefs prohibited the female plaintiff from being seen unclothed by a male. *Id.* This court acknowledged that

> The allegation that both Nurse Smith and the Hospital were informed in advance

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[5] This refers to the *second* paragraph numbered "27" on that page.

> of plaintiffs' religious beliefs is important in this case, because the religious convictions of plaintiffs might not be those of most people who enter the hospital to give birth. . . .
>
> Although most people in modern society have come to accept the necessity of being seen unclothed and being touched by members of the opposite sex during medical treatment, the plaintiffs had not accepted these procedures and, according to their complaint, had informed defendants of their convictions.
>
> *Id.* at 335.

This Court held that, on that basis, plaintiffs had adequately pled extreme and outrageous conduct and the other requirements for stating a claim of emotional distress, *id.* at 336, even as it recognized that most other plaintiffs would not have a claim even if they had been subjected to the same conduct. If a single touching of a person during a medical procedure can rise to the level of extreme and outrageous misconduct, due to the context of a defendant *knowing* the particular vulnerabilities of the plaintiffs, then surely a deliberate sabotaging of a couple's aspirations for parenthood – due to the context of a defendant *knowing* the particular vulnerabilities of plaintiffs who had been on an emotional roller-coaster of shattered expectations for *years*, (R. 204) – also rises to the level of extreme and outrageous misconduct.

More generally, if there is any doubt regarding whether this rises to the level of extreme and outrageous misconduct, it should be resolved in favor of the non-moving party on a motion to dismiss, so that the court can consider the full *factual* basis of the claim. In other words, it was error for the court below to determine that Plaintiffs did not allege extreme and outrageous misconduct *as a matter of law*. "Whether conduct is extreme and outrageous is judged on an objective standard based on all the facts and circumstances of a particular case." *Doe*, 161 Ill. 2d at 393. This strongly suggests that courts should defer any doubts regarding whether extreme and outrageous conduct has occurred to the finder of fact, rather than remove that question from the

province of the jury – particularly since the court is under an obligation to interpret all pleadings and supporting documents in the light most favorable to the nonmoving party. *Stinnes Corp. v. Kerr-McGee Coal Corp.*, 309 Ill. App. 3d 707, 712, 722 N.E.2d 1167 (5th Dist. 2000). *See also Green v. Chicago Tribune Co.*, 286 Ill. App. 3d 1, 12, 675 N.E.2d 249 (1st Dist. 1996) (stating that dismissal of an intentional infliction claim was improper if a reasonable jury "could find" that the acts in question "constituted extreme and outrageous conduct.")

Doe also held that, "The extreme and outrageous character of the conduct can arise from the abuse of a position of power." 161 Ill. 2d at 392. The more power and control that a defendant has over a plaintiff, the more likely the defendant's conduct will be deemed outrageous. *McGrath v. Fahey*, 126 Ill.2d 78, 88-87, 533 N.E.2d 806, 127 Ill. Dec. 724 (1988). In the instant matter, Defendants were plainly in a position of considerable power and control over Plaintiffs, inasmuch as their opinion carried great weight in determining whether Plaintiffs would successfully consummate an adoption – and, indeed, their very acts derailed prospective adoptions. (R. 184-185, ¶¶ 38-40.)

As to the remaining elements of a claim for intentional infliction of emotional distress, Plaintiffs have adequately pled that Defendant Holder "either intended that [her] conduct should inflict severe emotional distress, or knew that there was a high probability that [her] conduct would cause severe emotional distress." *Doe*, 161 Ill.2d at392. The Fifth Amended Complaint alleged specific facts supporting this element, noting Defendant Holder's ongoing relationship with Plaintiffs as an adoption counselor, the Plaintiffs' emotional sensitivity regarding issues of infertility and specific knowledge of their emotional state, (R. 190 ¶ 43, R. 191, ¶ 42) – not to mention her obvious, albeit implied, knowledge of her own power over Plaintiffs' prospects to

successfully adopt a child.

The intentionality element is also supported by the allegations indicating a retaliatory motive on the part of Defendant Holder. The Fifth Amended Complaint alleged that the damaging Addendum was prepared only days after Plaintiffs filed a grievance against Defendant Holder and terminated their relationship with Defendant LSSI. (R. 183, ¶¶ 28-27.)[6] The Addendum itself indicated Defendant Holder's awareness of Plaintiffs' complaints against her at the time it was prepared. (R. 211, Ex. 3.) The Complaint also alleged that Defendant Holder deceptively lured Plaintiff Paula Cade-Smith into signing a release, without informing her that it would be used to obtain confidential information from her attorney, (R. 182-183, ¶¶ 22-23, 25-26), then used damaging information obtained from the same attorney in the Addendum. (R. 208.)

Finally, Plaintiffs clearly pled that Defendant Holder's "conduct in fact caused severe emotional distress." *Doe*, 161 Ill.2d at 392, as they alleged that it caused them to suffer from depression, chronic insomnia and anxiety, requiring them to seek psychiatric counseling. (R.190, ¶ 44, R. 192, ¶ 45.) It can also surely be inferred from the other allegations and a modest application of common sense that the intentional shattering of a couple's dreams of bringing a child into their lives is likely to cause severe emotional distress. Indeed, "[w]e also bear in mind that 'the extreme and outrageous character of the defendant's conduct is in itself important evidence that the distress has existed.'" *Doe*, 161 Ill.2d at 396, *citing Restatement (Second) of*

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[6] This again refers to the second paragraph numbered "27" on that page. We will refrain from using additional footnotes to identify each such error in this brief, as the Fifth Amended Complaint contained numerous unfortunate errors in enumeration of paragraphs.

Torts § 46, Comment *J*, at 78 (1965).

Therefore, the lower court erred in dismissing Plaintiffs' claims for intentional infliction of emotional distress.

VI. THE COURT BELOW ERRED IN DISMISSING PLAINTIFFS' CLAIMS FOR NEGLIGENCE.

The basic elements of a claim for negligence is the black-letter law that is hammered into the mind of every first-year of law school student: the existence of a duty, a breach of the duty, and an injury to the plaintiff proximately caused by the breach. *See, e.g., Doe v. McKay*, 183 Ill.2d 272, 700 N.E.2d 1018, 1021 (1998). In the case at bar, however, the lower court – to the extent that anyone can divine its reasoning from the sparse record – apparently acted on the basis of Defendants' argument that they were under no identifiable legal duty to Plaintiffs. (R. 130.)[7]

However, in *Roe v. Catholic Charities of the Diocese of Springfield*, 225 Ill. App.3d 519, 588 N.E.2d 354 (5th Dist. 1992), this Court explicitly recognized a cause of action for "social worker malpractice," 225 Ill. App.3d at 533, and "the tort of adoption agency negligence" and the existence of a legal duty – in that case, to provide an "honest and complete response to plaintiffs' specific request concerning the characteristics of the potentially adoptable child." *Id.* at 537. It is

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[7] The court below initially *rejected* this reasoning, as it denied Defendants' motion in its entry of July 1, 2005. (R. 13.) When Defendants responded with another motion to dismiss the same complaint, (R. 145), they sought only to dismiss counts I-IV of the Third Amended Complaint and made no mention of Plaintiffs' claims for negligence. (R. 147.) Yet the court *granted* that motion and ordered the filing of another complaint, making no mention of the negligence counts. (R. 14.) When Plaintiffs included negligence counts in their Fourth and Fifth Amended Complaints, Defendants' motions attacking these complaints simply asserted a one-sentence argument that "there were no facts pleaded to raise a duty," and that the negligence counts should, therefore, be dismissed. (R. 130 ¶ 14, R. 214 ¶ 4.) Yet the court evidently accepted this threadbare argument that it had previously rejected when it dismissed the Fourth and Fifth Amended Complaints.

hardly stretching the boundaries of this Court's rationale to recognize that an adoption agency also has a legal duty to provide "honest and complete responses" to the inquiries of its own clients, (R.184-186, ¶¶ 31-33, 41, 43), to provide "honest and complete" information to other adoption agencies and prospective birth mothers, (R.184-186, ¶¶ 30-31, 38-41, 43) to keep its clients' timely informed of its findings, (R.184, ¶¶ 31-33), and, of course, to respect their clients' confidentiality and adhere to statutory law. (See section II, *supra.*) With respect to the latter, it is well settled that statutory requirements can create a legal duty for purposes of establishing negligence. *See, e.g., Abbasi ex rel. Abbasi v. Paraskevoulakos*, 187 Ill. 2d 386, 394-396, 718 N.E.2d 181 (Ill. 1999) (discussing rule that, in a common law negligence action, a statutory violation is *prima facie* evidence of negligence).)

The underlying rationale in *Catholic Charities* also supports the conclusion that Defendant Holder had such legal duties. One important consideration in imposing a legal duty of ordinary care is "whether the harm reasonably was foreseeable." *Id.* at 535. Surely it should be reasonably foreseeable to a licensed social worker, who holds herself out as a professional, that harm is likely to ensue when she enters false and misleading statements into a report, without discussing same with her client, and shares this information with third-party adoption agencies but fails to timely disclose it to her own client.

This Court also observed that, "[t]]he question of duty in a negligence action should take into account the likelihood of injury, the magnitude of the burden of guarding against it and the consequences of placing that burden upon the defendant." *Id.* The likelihood of injury from violating the duty of ordinary care in providing adoption services is glaringly obvious. The magnitude of the burden of guarding against it, on the other hand, is small, considering that such

services are provided by trained professionals who can presumably adhere to a elementary norms of ethical conduct, such as being "honest and complete," and protecting confidentiality. And the consequences of placing the burden upon defendants such as Defendant Holder are very appropriate: The imposition of such a legal duty on licensed social workers such as Defendant Holder signifies nothing more or less than holding them to the very norms and standards for which they are trained, and for which they are paid.

By the rule of law and the underlying rationale of *Catholic Charities*, therefore, as well as the cases cited therein, *see Horak v. Biris*, 130 Ill. App.3d 140, 474 N.E.2d 13 (2nd Dist. 1985), *Corgan v. Muehling*, 143 Ill. 2d 296, 574 N.E.2d 602 (1991), Defendant Holder had a legal duty to use ordinary care in carrying out her professional duties as a licensed social worker and adoption case worker according to the norms and standards of the profession.

Relatedly, and additionally, both Defendants arguably owed a fiduciary duty to Plaintiffs, arising from the nature of the relationship between an adoption agency and its clients. *See Dahlin v. Evangelical Child & Family Agency*, 252 F. Supp. 2d 666, 668-669 (N.D. Ill. 2002) (denying motion to dismiss breach of fiduciary duty claim after surveying Illinois case law, after noting it would parallel negligence claim, where adoption agency had allegedly concealed information regarding child's violent family background).

In addition to the Confidentiality Act, there are other statutory bases for a legal duty applicable to this case. For example, the Child Care Act of 1969, 225 ILCS 10/1 et seq., gives the Department of Children and Family Services ("DCFS") the authority to regulate child welfare agencies such as Defendant LSSI. 225 ILCS 10/5. Pursuant to that regulatory authority, DCFS in

turn requires that:

> The agency's code of ethics which has been adopted by the governing body which must be at least as stringent as the Code of Ethics for Child Welfare Professionals (published by the Office of Communications, Department of Children and Family Services, 406 East Monroe, Station #65, Springfield, Illinois 62701 (May 1996) or found on the Department's website at www.state.il.us/dcfs).
>
> 89 Ill. Admin. Code 401.100 c. 6

That Code of Ethics, in turn, (found at www.state.il.us/dcfs/docs/CodeEthics.pdf), contains a number of provisions that create legal duties applicable to the case at bar, such as §§ 1.01 (Integrity), 1.04 (Avoiding Harm), 1.07 (Conflict of Interest), 1.09 (Documentation of Professional Work) 2.01 (Integrity to Clients), 2.02 (Client Self-Determination), 2.03 (Informed Consent), 2.04 (Confidentiality), and 5 (Responsibilities to Foster Parents). In order to adopt a child, the prospective adoptive parents must be foster home licensees, *see* Child Care Act of 1969, 225 ILCS 10/4; Adoption Act, 750 ILCS 50/0.01 et seq., at § 50/4.1 (c) (3). Plaintiffs were both foster home licensees and prospective adoptive parents during all relevant times. (R. 180, ¶ 9.)

A licensed child welfare agency is required to be fully accredited by the Counsel of Accreditation for Children and Family Services, ("COA"), which sets standards for provision of adoption services to the public. 89 Ill. Admin. Code 401.150. The COA standards, found at www.coastandards.org/standards.php, in turn, also set forth duties applicable to both Defendants in the case at bar. For example, section CR 2 provides that, "[t]he organization protects the confidentiality of information about clients and assumes a protective role regarding the disclosure of confidential information," and proceeds to delineate principles of confidentiality that were violated by these Defendants.

Private agencies also must comply with the Illinois Foster Parent Law, which forbids retaliation in response to a client grievance. 20 ILCS 520/1-15 (13). The Fifth Amended Complaint implies a retaliatory motive on the part of Defendants in preparing the Addendum. (R. 183-184). Additionally, if Defendants genuinely suspected Plaintiffs of illicit drug or alcohol use, such that it should have triggered an investigation, pursuant to Child Care Act of 1969, at 225 ILCS 10/7 (c), this should have implicated their right to "be provided a fair, timely, and impartial investigation of complaints concerning the foster parent's licensure, to be provided the opportunity to have a person of the foster parent's choosing present during the investigation, and to be provided due process during the investigation." 20 ILCS 520/1-15 (6). The requirement of due process, in turn, implicates a number of rules, ignored by Defendants, regarding notice of alleged transgressions and rights of appeal, e.g., 89 Ill. Admin. Code 337.50, 337.60, 337.90.

As pled, Defendant Holder prepared the Addendum on May 13, 2002 and did not reveal the nature of Holder's untrue and defamatory allegations until June 17, 2002. (R. 183, ¶ 27, R. 184, ¶ 33.) To comply with DCFS procedural due process, the Defendants were required to provide to the Plaintiffs notice "*at least* ten calendar days *before* an action to reduce, suspend or terminate services, or *before* implementing a critical decision in situations where the Department does not consider the child in imminent risk of harm." 89 Ill. Admin. Code 337.90.

The above examples by no means exhaust the statutory bases for finding that Defendants owed legal duties to Plaintiffs that are implicated by their pleadings but they should suffice. By virtue of those authorities, as well as the mandatory authority provided by this Court in *Catholic Charities*, there is no question that Defendants owed a duty of ordinary care toward Plaintiffs. It is also beyond peradventure that Plaintiffs adequately pled a breach of that duty, (R. 193, ¶ 42, R.

194, ¶ 42), and damages proximately caused by the breach. (R. 193, ¶ 43, R. 194, ¶ 43.) Accordingly, the court below erred in dismissing Plaintiffs' claims for negligence.

VI. THE COURT BELOW ERRED IN DISMISSING PLAINTIFFS' CLAIMS FOR FALSE LIGHT

The case of *Poulos v. Lutheran Social Services of Illinois*, 312 Ill. App. 3d 731, 728 N.E.2d 547 (1st Dist. 2000), makes it abundantly clear that Plaintiffs adequately pled a claim for false light:

> In order to recover for false light, a plaintiff must plead and prove (1) that defendant placed him in a false light before the public, (2) that the false light in which he was placed would be highly offensive to a reasonable person, and (3) that defendant acted with actual malice.
>
> 312 Ill. App. 3d at 739.

Plaintiffs' Fifth Amended Complaint pled each of these elements. (R. 194-196.) The statements that placed the Plaintiffs in a false light before the public, were, of course, the various statements implying that they were irresponsible abusers of drugs and alcohol. (R. 185-186, ¶ 41 and R. 208-212, Ex.3.) These were publicized to an adoption attorney and adoption agencies. (R. 184-185, ¶¶ 30, 31, 38-40.) Such statements would obviously be offensive to a real person. *See Myers v. The Telegraph,* 332 Ill. App. 3d 917, 926, 773 N.E. 2d 192 (5th Dist. 2002) (misleading statements about cannabis possession stated claim for false light, and further holding that, "[i]n cases where both defamation and false-light claims are applicable, the plaintiff can proceed under either theory or both."). Malice was not only specifically pled by the Plaintiffs; (R. 195, ¶ 43, R. 196, ¶ 43); it was also supported by the allegations supporting a motive of retaliation by Defendants. (R. 183-184, ¶¶ 27-40.)

If there are any doubts regarding whether Plaintiffs sufficiently met the "before the

public" element, they are resolved by *Poulos*. There, the Court reasoned that the public disclosure requirement for false light "may be satisfied by establishing that false and highly offensive information was disclosed to a person or persons with whom a plaintiff has a special relationship," as in the closely related tort of public disclosure of private facts. 312 Ill. App. 3d at 740. Such a "special relationship" was defined in *Miller v. Motorola, Inc.*, 202 Ill. App. 3d 976, 560 N.E.2d 900 (1990), as disclosure "to a public whose knowledge of those facts would be embarrassing to the plaintiff. Such a public might be the general public, if the person were a public figure, or a particular public such as fellow employees, club members, church members, family, or neighbors, if the person were not a public figure." 202 Ill. App. 3d at 980-81.

In the instant case, the disclosure was made to a "public" consisting of an adoption attorney and adoption agencies with which the Plaintiffs were obviously interested in cultivating a good relationship and casting themselves in the best possible light, not a false one. The disclosures about suspected drug and alcohol abuse to this group could not help but be embarrassing to Plaintiffs.

In cases where a claim of public disclosure of private facts relies on the "special relationship exception," as it is called, courts have excluded from that exception "persons who have a natural and proper interest in learning such true, albeit highly offensive, private facts." *Poulos*, 202 Ill. App. 3d at 740 n.1. Significantly, however, *Poulos* specifically held that such a limitation

> has no relevance in a false light action. Indeed, it defies logic to suggest, as defendants do, that a person with whom a plaintiff has a special relationship may have a natural and proper interest in learning information about the latter which is not only highly offensive but also false. That limitation is not adopted.
>
> *Id.*

Thus, Defendants may not seek refuge under the claim that they "had a natural and proper interest" in disseminating the statements in the Addendum to an adoption attorney or other adoption agencies.

Defendants' Motion Attacking Fifth Amended Complaint did not advance any argument stating why Plaintiffs failed to state a claim for false light; it simply asserted that conclusion. (R. 214. ¶ 5.) Nor does the lower court's July 18 Order provide any clue as to the basis for its ruling on this accord.(R. 247-248.) In light of the foregoing points and authorities, however, its dismissal of these claims was error.

VII. THE COURT'S RELIANCE ON REGULATIONS REGARDING LICENSURE OF FOSTER HOMES IS MISPLACED.

The only nominally substantial rationale advanced by the court below in dismissing Plaintiffs' Fifth Amended Complaint is the following passage from the July 18 Order:

> In addition to the arguments of Defendants, under 89 Ill. Adm. Code 402.28 adoptive homes must be licensed as foster homes. The regulations about the licensure are there to protect the children being placed. There is a confidentiality section in this regulation, however it only mentions protecting the information of the child. 89 Ill. Adm. Code 402.24. Lutheran Social Services of Illinois and Kim Holder were carrying out their duties to provide the state and biological parents with all the information concerning the adoptive parents.
> (R. 247.)

The errors in this rationale are legion. Plaintiffs do not dispute that adoptive homes must be licensed as foster homes or that the overarching purpose of those regulations is to protect children placed in those homes. However, the very same body of regulatory law also protects the rights of foster – and prospective adoptive – parents, including their rights to due process. Again, if Defendants genuinely suspected Plaintiffs of illicit drug or alcohol use, this should have been

reported to, and triggered an investigation by, the *Department of Children and Family Services,* pursuant to Child Care Act of 1969, at 225 ILCS 10/7 (c); see also 89 Ill. Admin. Code 331.90 (requiring reporting to DCFS) – which, in turn, would have triggered basic due process rights for Plaintiffs for proper notice of the charges, rights to contest the charges, rights of appeal, etc. 20 ILCS 520/1-15 (6); 89 Ill. Admin. Code 337.50, 337.60, 337.90. As pled, Defendants did not even report the charges to DCFS and thereby afford Plaintiffs such rights. They were *not* "carrying out their duties to provide the state . . .with all the information concerning the adoptive parents"; they *ignored* that duty, instead choosing to secretly and irresponsibly blab their suspicions to third parties without informing Plaintiffs. This goes to the very gravamen of all of Plaintiffs' claims.

As pled, Defendant Holder prepared the Addendum on May 13, 2002 and did not reveal the nature of Holder's untrue and defamatory allegations until June 17, 2002. (R. 183, ¶ 27, R. 184, ¶ 33.) To comply with DCFS procedural due process, the Defendants were required to provide to the Plaintiffs notice "*at least* ten calendar days *before* an action to reduce, suspend or terminate services, or *before* implementing a critical decision in situations where the Department does not consider the child in imminent risk of harm." 89 Ill. Admin. Code 337.90.

In essence, the lower court's rationale is tantamount to declaring that the Defendants were protected by the regulations governing foster homes but Plaintiffs are not. It also improperly assumes facts that were never introduced into evidence, insofar as it assumes the propriety of Defendants' motives, which were precisely placed at issue by Plaintiffs' intentional tort claims.

The court's observation regarding the absence of a confidentiality provision in that particular section of the regulations is of no moment because the confidentiality protections arise

elsewhere – in the Confidentiality Act, as well as the Clinical Social Work and Social Work Practice Act, 225 ILCS 20/1 et seq. Thus the court's rationale simply sidesteps and ignores all the authority declaring that the Confidentiality Act and its narrow, specified exceptions are to be strictly construed; *see Cordts v. Chicago Tribune Co.*, No. 1-06-1158, 2006 Ill. App. LEXIS 1129 (1st Dist. Dec. 8, 2006), *Bland v. Department of Children and Family Services*, 141 Ill. App. 3d 818, 490 N.E.2d 1327 (3rd Dist. 1986), *Renzi v. Morrison*, 249 Ill. App. 3d 5, 618 N.E.2d 794 (1st Dist. 1993).

In short, its reliance on the regulations governing the licensure of foster homes is completely misplaced and irrelevant to the question of whether Plaintiffs have adequately pled causes of action in the pleadings.

CONCLUSION

For the foregoing reasons, Plaintiffs Paula Smith-Cade and Floyd Cade respectfully request this Honorable Court to reverse the trial court's Order of July 18, 2006 Order granting Defendants' Motion to Dismiss with prejudice, as well as its prior orders dismissing Plaintiffs' prior claims for violations of the Mental Health and Developmental Disabilities Confidentiality Act, tortious interference with business relationship, defamation, intentional infliction of emotional distress and negligence, and remand this cause back to that court, with instructions to set the matter for trial on the merits, and to grant such other relief as this Court may deem appropriate.

Respectfully Submitted,

Paula Smith-Cade and Floyd Cade,
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CERTIFICATE OF SERVICE

The undersigned doth hereby certify that he did personally place three true copies of the foregoing document into an envelope clearly addressed to the below listed attorneys of record at the address listed, with postage fully prepaid and did then deposit the same into the mailbox at the United States Post Office in Carbondale, Illinois, on this 5th day of March, 2007.

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