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CLERK OF WISCONSIN
COURT OF APPEALS

STATE OF WISCONSIN
COURT OF APPEALS DISTRICT II

Lori Kuehn,

Plaintiff-Appellant,

v.

Appeal No. 2024AP002185

Circuit Court Case No. 2024CV000765

Nicholas Phillip Gordon and

Now Outdoors, LLC,

Defendants-Respondents.

REPLY BRIEF OF PLAINTIFF-APPELLANT

ON APPEAL FROM THE DECISION AND JUDGMENT OF
THE HONORABLE HEATHER IVERSON, CIRCUIT COURT
JUDGE PRESIDING CIRCUIT COURT OF KENOSHA COUNTY,
BRANCH III

Submitted by:
Attorney Lori A. Kuehn
SBN 1045460
1661 N. Water Street, Suite 401
Milwaukee, WI 53202-2086
(414) 554-1526 (cell)
attorneylorikuehn@yahoo.com

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Wis. Stat. 768.01 -	3, 4, 7, 9
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Statement of the Issue

Did plaintiff-appellant's Amended brief state a claim upon which relief can be granted.

The Court answered: No.

At the outset, I want to emphasize that this is not a court that deals with remedies for a **broken heart** or the emotional fallout from the end of a **romantic relationship**. (R. 29 at p. 14, lines 22-24)

More broadly, to the entirety of the plaintiff's action itself, it appears the plaintiff is attempting to shoehorn what is essentially a **claim for heart fall**, an emotional injury from the **termination of a romantic relationship** into various legal theories. (R. 29 at p. 16, lines 16-20)

Such claims are expressly barred by Wisconsin statute and public policy. Specifically, Wisconsin Statute 768.01 abolished causes of action based on the termination of **romantic** relationships, and Wisconsin Statute 768.03 made it unlawful to even file such claims. (R. 29 at p. 16, lines 20-24)

Kuehn, then immediately alerts the Court that this was not a **romantic relationship**, it was a **tour guide** and **client** relationship.

MS. KUEHN: Judge, I just like to put for the record, I've never said a romantic relation existed. I phrased it as tour guide and client. I will respect your decision. I do intend to appeal. Thank you. (R. 29 at p. 17, lines 10-13)

Statement on Oral Argument and Publication

Oral Argument is not requested because it is anticipated that the briefs will fully present the legal arguments on appeal.

Publication is warranted because this appeal involves the application Chapter 768 to a tour guide / client relationship, which is inappropriate; but more importantly involves **intentional deception, fraud upon the Court, and sexual exploitation**—all of which raise severe professional misconduct concerns, and would definitely be relevant, impactful and of substantial and continuing public interest for the legal community and especially for first-year law students to consider in their required ethics course. Wis. Stat. § 809.23(1)(a)5.

Statement of the Case

Kuehn and Padway are both Attorneys and Officers of the Court.

(R 29, P. 4, L 3)

After Padway's failed attempt to intimidate Kuehn through a letter that bore the hallmarks of extortion, (R. 8 at p. 1) Padway subsequently misapplied the law and introduced what he called the "Romantic Relationship Defense." This defense was wholly without merit and appeared to be fabricated with improper motives, to harass, humiliate, and sexually exploit Kuehn; while shielding his client, Gordon, from responsibility for the three causes of action asserted against Gordon by Kuehn.

1. **Breach of Contract**
2. **Defamation, and**
3. **Negligent Infliction of Emotional Distress**

This case was never about **heartbreak**—it was about **money**.

I. Kuehn's Financial Loss (\$16,151.08 + \$9,000 atty. fees = \$25,151.08)

Trip Costs (flight and tour fee): \$7081.78 (R. 3 at p. 8-9) (R. 19 at p. 6 ¶35)

Wage Loss: \$7,730.00 (R. 3 at p. 10) (R. 19 at p. 6 ¶35)

Special Damages (required gear) \$1,339.30 (R. 19 at p. 6 ¶35)

Trip Expenses: \$16,151.08

II. Relationship: Tour Guide / Client – not Romantic Relationship

Prior to Peru, Kuehn and Gordon had only met **three times** in their lives.

Gordon initiated **five acts** of sexual intercourse - all connected to **three paid trips**, as meticulously plead.

1. **Pictured Rock Backpacking Trip** (September 2023)
 - a. Hammock (R. 19 at p. 2, ¶10)
 - b. Hotel (R. 19 at p. 2, ¶10)
2. **Winter Work Shop** (December 2023)
 - a. Hot Tent (R. 19 at p. 3, ¶12)
3. **Ice Age Trail Backpacking Trip** (June 13 & 14 2024) (6 months later)
 - a. Hotel: Bedtime and next morning (R. 19 at p. 3, ¶17)

III. Power Imbalance in Professional Relationship.

When someone like Gordon—who holds authority, influence, or control—engages in a sexual intercourse with someone under their power (like Kuehn in this case), it's not a level playing field.

Examples of professional relationship governed by strict ethical or legal standards:

- **Attorney/Client:** Violates professional ethics and can lead to disbarment.
- **Police Officer/Arrestee:** Considered coercive by nature.
- **Teacher/Student:** Even if both are adults, most institutions prohibit.
- **Pastor/Student:** Spiritual authority can be profoundly influential
- **Jail Guard/Inmate:** statutory or coercive rape, because inmates legally cannot consent.

In this case, the court protected the person in power, who breached the contract.

IV. Peru Hotel Lobby (The Scene)

On June 25, 2024, Kuehn (the participant) was accused of making a false sexual allegation by another participant, Charles Morand.

In the hotel lobby, Morand confronted Kuehn and stated: “I’ve known Nick a long time, and we go way back, and I am appalled by your allegation of having a sexual relationship with Nick. Nick would never cheat on his wife – he’s happily married.” (R. 3 at p. 8, ¶ 32).

Shortly after the confrontation, a taxi arrived and the driver announced she was there to take Kuehn to the airport. This prompted Kuehn to send a message to the group chat, which included the other 17 clients “Why is this lady here to take me home Nick?” (R. 3 at p. 7, ¶ 28), (R. 19 at p. 4, ¶ 22)

In response to Kuehn confronting Gordon, in front of witnesses, Gordon promptly removed Kuehn from the trip, in an attempt to conceal his infidelity from the other 17 clients. (R. 29 at p. 11, line 11–12)

Kuehn demanded a **refund**, but Gordon refused, stating that because Kuehn had signed a waiver, she was not entitled to a refund. (R. 19 at p. 3, ¶¶ 28–29). Gordon further informed Kuehn that he could remove her from the trip for any reason he chose. (R. 3 at p. 8, ¶ 39).

It apparently slipped Gordon’s mind, however, that Kuehn had not yet signed the waiver. (R. 29 at p. 9, line 24–25)

V. Pinned Facebook Post – “Dear Facebook Friends”

After Kuehn’s was promptly removed, Gordon began posting defamatory statements on social media, denying that he had engaged in sexual intercourse with his client.

Pinned Post by Nick Gordon:

“Attention Facebook Friends: A disgruntled participant who has been promptly removed from a NOW Outdoors International Trip today is actively harassing me, my family and friends, other participants, and NOW Outdoors with threats, defamatory comments, and false statements.” (R. 3 at p. 8, ¶ 43) (R. 19 at p. 7, ¶ 42)

In response to Gordon’s public denial, Kuehn challenged his statement with corroborating witnesses, incriminating text messages, and other supporting evidence.

Kuehn refused to tolerate being publicly labeled a liar in the outdoor enthusiast community to which she also belongs.

VI. Intimidation – Attorney Padway falsely accused Attorney Kuehn of multiple felonies in an attempt to dissuade a lawsuit.

Gordon next retained Attorneys Nick Padway and Ethan Padway.

The first tactic employed by the firm was intimidation.

Padway sent Kuehn a letter formally accusing her of committing **multiple felonies**. (R. 8, at p. 1) Padway has never attempted to substantiate these allegations—neither in his threatening letter, pleadings, litigation, nor in the Court of Appeals brief.

The letter asserted that Kuehn’s **conduct** was **illegal and criminal**, constituting **multiple felony offenses**. It further threatened Kuehn with the possibility of **criminal charges** being referred to the State of Wisconsin should Kuehn fail to comply. (R. 8, at p. 1)

Falsely accusing Kuehn of committing **multiple criminal offenses** — is not only baseless but disgraceful. Such conduct is shameful and reflects a lack of professionalism and decorum.

VII. Chapter 768 – Misapplication of the Law

When intimidation failed, Padway proceeded to misapply the law.

Wis. Stats. § 768.01, Wisconsin Statutes, abolishes all causes of action for:

1. Breach of contract to **marry**,
2. Alienation of affections, and
3. Criminal conversation.

This statute has no relevance to the matter at hand. It is not, and has never been, a case involving a **breach of contract to marry**.

The **purpose clause in Section 768.02** further underscores that this statute applies strictly to actions based on **contracts to marry**.

VIII. Fraud upon the Court – The “Romantic Relationship Defense”

Padway fabricated the existence of a romantic relationship between Kuehn and Gordon—a relationship that never occurred – with the intent to deceive.

The parties had sexual intercourse **five times only** in a business setting - this is not a romantic entanglement. The ending thereof involves no heartbreak, and is hardly grounds for retaliation.

This misrepresentation served as the foundation for Mr. Padway’s subsequent argument: that Kuehn was “heartbroken” over the demise of a romantic relationship and therefore acting vindictively—thus attempting to justify or excuse Mr. Gordon’s breach of contract. This narrative was entirely invented and intended to prejudice the court against Ms. Kuehn.

Kuehn was a client of Mr. Gordon on three separate occasions. She was unaware that Mr. Gordon was happily married. The leap made by Mr. Padway—recasting her as a “**10-month mistress**,” emotionally distraught and retaliatory—was not only baseless, but malicious in its intent to discredit and criminalize her.

IX. Intentional Misrepresentations by Attorney Padway

It is important to note that the word “**romantic**” appears **nowhere** in Kuehn’s original or amended complaint.

To suggest that Kuehn was suing for 'heartbreak' is not only misleading but absurd.

The emotional distress at the center of the complaint stemmed from being abandoned in a foreign country—a place where Kuehn knew no one and did not speak the language. This very scenario was a specific fear she had voiced during the trip planning stage. (R. 19 at p. 3, ¶14) (R. 29 at p. 8, L 23-24)

Padway’s **defense** was marked by a lack of candor, and his flagrant dishonesty erodes the integrity of a judicial system that should be rooted in fairness and truth.

The record speaks for itself:

Kuehn **NEVER** made any of the following **14 statements** that Padway, **falsely attributed** to Kuehn.

Rather, Padway made **14 Intentional Misrepresentations** to win by lying, commonly referred to - as cheating.

1. The Plaintiff's complaint alleges a **romantic** relationship that transpired over a **10-month period**, where some of the encounters occurred while on trips planned by Defendant Gordon's Company. (R. 14 at p. 2)
2. Wisconsin does not recognize any theory of recovery for the termination of a **romantic** relationship. (R. 14 at p. 3)
3. As mentioned earlier no such duty exists in the context of a **romantic** relationship or whether to share a hotel room. (R. 14 at p. 6)
4. If her complaint for infliction of emotional distress is predicated on the demise of their **romantic** relationship, it is barred by Wis. Stat. § 768.01. (R. 14 at p. 9)
5. As stated in the summary, actions for damages based on the termination of a **romantic** relationship are barred in Wisconsin. (R. 14 at p. 10)
6. Any emotional damages due to the termination of this alleged **romantic** relationship are not recoverable. (R. 14 at p. 10)
7. To allow the demise of a **romantic** relationship to form the basis for a claim on negligent infliction of emotional distress . . . (R. 14 at p. 12)
8. One cannot recover for the daily emotional distress arising out of the termination of a **romantic** relationship. (R. 14 at p. 12)
9. Plaintiff's amended complaint ruminates about the alleged consensual **romantic** relationship that defendant terminated (R. 21 at p. 3)
10. Plaintiff cannot seek a cause of action based on the termination of a **romantic** relationship. (R. 21 at p. 3)
11. Defendant's conduct and plaintiff's alleged injury amounts to nothing more than the normal trauma of a **romantic** breakup. (R. 21 at p. 5)
12. "Further, if you look at the two complaints its -- plaintiff is clearly upset about the demise of a **romantic** relationship. (R 29 @ p. 5, L 16-18)
13. "The end of a **romantic** relationship, no matter how traumatic, does not arise beyond everyday trauma." (R 29 @ p. 6, L 4-5)
14. They don't want courts being filled and wasting their time with people airing their dirty laundry over the end of a **romantic** relationship. (R 29 @ p. 6, L 12-14)

Padway then alluded that his client “***terminated the romantic relationship***” as the reason Kuehn was sent home, while preserving his client’s right to continue to **deny** that he had sexual intercourse with his client, by using the word “***alleged romantic relationship***.” (R. 14 at p. 10) (R. 21 at p. 3)

These statements are not mere misunderstandings—they reflect a pattern of ***intentional distortion***, which undermines the integrity of the proceedings and misleads the court.

X. Evasive Tactics: A Calculated Deflection to Avoid Accountability

Nick Padway submitted an Affidavit accusing Kuehn of defamatory social media postings (R. 15 at p. 2, ¶ 6.)

When Kuehn requested identification of the allegedly threatening, defamatory, or false statements (R. 29 at p. 11, ll. 20–25) as alleged by **both** Nick Padway and Nick Gordon—Padway responded not with evidence, but evasion.

"Discovery is tolled while a motion to dismiss is pending." (R. 29 at p. 13, ll. 13–14.)

It was a move was strategic misdirection.

Had he answered truthfully - - Your Honor, that’s my client denying having sexual intercourse with his client - - the credibility of the so-called "Romantic Relationship Defense" would have imploded.

This deliberate pivot to procedural technicalities rather than substantive truth reveals a troubling pattern: an effort not to defend with facts, but to distract with formalities.

XI. No "Dating Relationship" as Defined by Wis. Stat. § 813.12(1)(ag)

Pursuant to Wis. Stat. § 813.12(1)(ag), a “dating relationship” means a **romantic or intimate social relationship** between two adult individuals. The statute explicitly excludes *casual relationships* and *ordinary fraternization in a business or social context*.

813.12 (1)(ag) - A court **shall** determine if a dating relationship existed by considering three factors.

1. **The length of the relationship**
2. **The type of the relationship**
3. **The frequency of interaction between the parties**

In the present matter, the court made **no findings** or inquiries concerning these statutory factors.

The relationship was **initiated and confined to a professional context**, and does not meet the statutory definition of a dating relationship.

XII. Three Causes of actions:

(1) Breach of Contract

A valid contract exists when there is an offer, acceptance, mutual assent, and consideration. In this case, the facts clearly establish those elements.

Gordon extended an **offer** to Kuehn and 17 other participants: to take them on an adventure tour through Peru. Kuehn and 17 other participants **accepted** this offer. **Mutual assent** was evident when they boarded the plane, demonstrating that performance under the contract had already commenced.

Kuehn suffered a detriment in the form of expenses and preparation, while Gordon received a tangible benefit: payment.

Gordon ultimately failed to uphold his end. This constitutes a clear breach of contract.

(2) Defamation

Kuehn, an attorney with a reputation for honesty to uphold, was the **only** participant promptly removed from the WhatsApp group. The other 17 participants clearly understood who Gordon was referring to, and they fully grasped the implications of Gordon's denial.

KUEHN: The post says I'm a liar and I am threatening people, none of which has happened, and that is defamatory, especially as a lawyer, when I have a duty to be **honest** and a **duty to only have candor** and **not threaten people** and **behave**. (R. 29 at p. 14, L 6-8)

The WhatsApp text chain makes Kuehn's **identity obvious** to all the other tour participants.

17 participants saw: "Nick, why are you kicking me out?" So all 17 of these participants know something. (R. 29 at p. 11, L. 11-17)

Plaintiff further refers to the fact that her complaint in the above captioned matter was made the subject of an article in the ***Kenosha County Eye*** (R. 15 at p. 2, ¶15) and Nick Padway attached the article in his Affidavit. (R. 15 at p. 5, - Exhibit A)

[Kenosha Man And His "Adventure Tourism" Business Being Sued, Salacious Details Alleged - Kenosha County Eye](#) (Ctrl + Click to follow link)

Kuehn has had no contact with Gordon since June 26, 2024, after being disconnected from the group's WhatsApp (R. 7 at p. 1, ¶1),

For **eight months**, Kuehn has been the subject of relentless online defamation attacking her professional integrity and personal character.

Only one person has clear **motive**, **means**, and an evident pattern of **malice**.

The evidence strongly suggests that Gordon is the architect and executor of this sustained defamation effort.

1. “She should have kept her frigging legs shut.”

(130 likes)

2. “***No affair*** – she was just trying to use her ‘**crotch**’ and her position as a Milwaukee defense attorney to vilify and extort money from Gordon.”

(223 likes)

3. “The lawsuit was baseless.”

(784 likes as of 11/9/24; previously 522 on 10/11/24)

4. “The case was dismissed due to her own incompetence.”

(100 likes, posted 2/18/25)

5. “Kuehn is a cockroach.”

(124 likes, posted 2/21/25)

Gordon has been characterized as someone who takes pleasure in harming others and evading accountability. (R. 29 at p. 9, lines 16–19.)

This conduct illustrates this pattern, particularly through the **falsified ruling**—boasting of personal vindication that Gordon did not cheat on his wife.

(3) Negligent infliction of Emotional Distress -

Showing of **Exceptional Circumstances**:

1. Kuehn was **devastated** after being defrauded of **\$16,151.08** by Gordon. (R. 3 at p. 9) (R. 19, p. 6 ¶ 35)
2. She was **publicly accused** of a false sexual allegation in front of other participants, an experience that was **deeply humiliating**, and experienced **shock and embarrassment** upon learning that Gordon was happily married. (R. 3 at p. 7 ¶ 32) (R. 19 at p. 5 ¶ 26)
3. She suffered **overwhelming anxiety** after being left alone in a foreign country without housing, cell service, or the ability to speak the local language, all while being unable to communicate with her tour guide, who had disconnected her from the designated WhatsApp group chat. (R. 3 at p. 7 ¶ 28-29) (R. 14 at p. 7) (R. 29 at p. 9 L. 6-12)
4. Kuehn faced **immense disappointment** after dedicating six months to planning, training and mental preparation for the trip, along with requesting time off for work. . (R. 3 at p. 7 ¶ 34), (R. 19 at p. 5 ¶ 28)
5. She was **defamed** on social media by Gordon through Facebook posts. (R. 3 at p. 8 ¶ 43), (R. 19 at p. 7 ¶ 42)
6. At the request of Gordon (R. 15 at p. 2) Kuehn was **falsely accused of multiple felonies** and threatened that she would be referred for **criminal charges**. (R. 8 at p. 1), (R. 29 at p. 10 ¶ 16)
7. She was **sexually exploited** by Gordon's attorneys, who falsely characterized her as a mistress of ten months rather than a client on three tours. (R. 14 at p. 1 and 2) (R. 21 at p. 2)
8. Kuehn was **demeaned** by a troubled court, which implied that her expectation of a refund for a trip she paid thousands of dollars for constituted harassment or retaliation, along with an inference of untruthful and criminal behavior. (R. 29 at p. 15, L25 through pg. 16 L. 1-2)
9. **Self-worth devaluation**, caused by a Court allowing multiple males, with the majority of those males - being attorneys - to **abuse** Kuehn.

10. A mental health professional has issued a **PTSD** diagnosis related to these experiences.

XIII. Conclusion

All three claims are plausible. Participants in the court system rightfully expect fair treatment and a decision grounded in evidence and law, not subjective opinion.

Accordingly, Kuehn respectfully requests that the Court:

1. Reverse the decision in its entirety, as all three claims are sufficiently plausible.
2. Order Padway & Padway Law Office to reimburse Kuehn:
 - \$**9,000** in attorney fees - which Kuehn ***paid to other attorneys*** as Attorney Padway acted maliciously toward the plaintiff **and** in an intentional disregard of the right of the plaintiff. ¶895.043(3)
 - A reasonable amount for Attorney Kuehn's own time, and bad experience associated with defending a bad-faith **defense**. ¶895.044(1)(a).

Respectfully submitted,

Lori A. Kuehn (electronically signed)
Attorney at Law
1661 N. Water Street
Milwaukee, WI 53202
(414) 554-1526
State Bar Number: 1045460

RULE 809.19 (8g)(a) & (b) Certifications. FORM AND LENGTH

I hereby certify that this brief conforms to the rules contained in s. 809.19 (8) (b), (bm), and (c) for a brief. The length of this brief is **2,997** words.

Lori A. Kuehn (*Electronically Signed by Lori A. Kuehn*)

APPENDIX CERTIFICATION BY ATTORNEY

I hereby certify that filed with this brief is an appendix that complies with s. 809.19 (2) (a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under s. 809.23 (3) (a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues. I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency. I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using one or more initials or other appropriate pseudonym or designation instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Lori A. Kuehn (*Electronically Signed by Lori A. Kuehn*)