IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

ASHLEY ADAMS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 07C-11-177 (MJB)
	)	
YAW AIDOO and	)	
NINETTE AIDOO,	)	
	)	
Defendants.	)	

Submitted: December 19, 2011
Decided: March 29, 2012

Upon Plaintiff's Motion for New Trial, **DENIED**.
Upon Plaintiff's Motion for New Trial on Damages, **DENIED**.
Upon Plaintiff's Motion for Remittitur, **DENIED**.

OPINION AND ORDER

Leo John Ramunno, Esquire, Ramunno & Ramunno, P.A., Wilmington, Delaware, Attorney for Plaintiff.

Donald L. Gouge, Jr., Esquire, Wilmington, Delaware, Attorney for Defendants.

BRADY, J.

I. INTRODUCTION

A. Facts and Procedural History

Plaintiff and Counterclaim Defendant, Ashley Adams ("Adams") initiated this matter on December 22, 2007 when she served a Complaint upon Defendants and Counterclaim Plaintiffs, Yaw and Ninette Aidoo ("Yaw" and "Ninette," individually; the "Aidoos," collectively), alleging 31 claims in tort and seeking $3.1 million in damages.[1] Adams served an Amended Complaint on June 4, 2008, which alleged 20 counts in tort and amended the damages Adams sought to $21 million.[2]

The Aidoos filed served their Answer and Counterclaims on January 28, 2008, alleging multiple claims in tort against Adams, including invasion of privacy, malicious prosecution, abuse of process, and intentional infliction of emotional distress.[3]

The cause of action underlying Adams' claims arises from a text message the Aidoos received on Yaw Aidoo's cell phone at 11:16 p.m. on October 1, 2007. The message read "After Ninette goes to sleep, you can sneak over and give me what I really need. It has been a long time."[4] The text message was from "(Ashlee)," at callback number "302-393-3525."[5] Not knowing who "Ashlee" was, the Aidoos called the phone number back three times, and no one answered the calls.[6] When the Aidoos did not recognize the voice of the woman on the number's voice mail message, they became

[1] *See* Compl.
[2] *See* Am. Compl.
[3] *See* Answer and Countercls.
[4] Pl.'s Ex. 1.
[5] *Id.*; Tr. (June 22, 2010) at 100-03.
[6] Tr. (June 22, 2010) at 13-14, 104-05.

concerned that someone was watching them, as Ninette had gone to bed shortly before Yaw received the text message, and, therefore, they called the police.[7]

Officer Eric Selhorst ("Selhorst") responded to the Aidoos' call and arrived at their home at 412 Oregano Court, in the development Calvarese Farms, in Bear, Delaware shortly after midnight on October 2, 2007.[8] Upon investigation, Selhorst learned the number was assigned to Ashley Adams, who lived two doors down from the Aidoos at 408 Oregano Court. The Aidoos told Selhorst about their relationship with Adams, which will be detailed further in this Opinion, and as necessary in the Court's analysis of the issues.[9]

On the evening of October 2, 2007, Selhorst and one other officer visited Adams at her home to investigate the incident the Aidoos reported.[10] Adams provided her cell phone number, 302-393-3525, to Selhorst and indicated she received three missed phone calls the night before.[11] However, she denied having sent Yaw a text message.[12] After speaking with Adams, Selhorst determined probable cause existed to arrest Adams on charges of harassment and filed for a warrant.[13]

When Selhorst returned to Adams' home to execute the warrant, Adams met Selhorst and his partner in her garage.[14] Selhorst secured Adams in handcuffs for officer safety, because she had been uncooperative during his previous visit to her home.[15]

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[7] Tr. (June 16, 2010) at 76-77; Tr. (June 22, 2010) at 105.
[8] Tr. (June 16, 2010) at 51.
[9] Tr. (June 14, 2010) at 14.
[10] *Id.* at 53.
[11] *Id.* at 53, 73.
[12] *Id.* at 53.
[13] *Id.* at 54.
[14] *Id.*
[15] *Id.*

Adams informed Selhost she had already turned herself in.[16] Selhorst confirmed the truth of Adams' statement by checking the CJIS system in his car.[17] Once he saw the warrant had already been executed, he returned to Adams' garage and uncuffed her.[18] He attempted to ask Adams some questions, which she refused to answer, claiming she wanted an attorney.[19] Selhorst then left Adams' residence.[20] Among the claims included in Adams' Complaint is one for false arrest.

The parties became friendly during the contemporaneous construction of their respective homes. They would often see each after work hours to view the progress of theirs, and other neighbors' houses. They shared tips and advice about décor, furnishings, and appliances, from October 2006 until early 2007, when the parties moved into their homes.[21] By the time of the text message incident on October 1, 2007, the relationship had changed.

In February 2007, Adams abruptly stopped allowing her neighbors, including the Aidoos, to enter and look around her home.[22] In April 2007, the Aidoos daughters, Megan and Shantelle, told their parents Adams moved the sprinkler in her front yard so it would wet them as they walked by her house on their way home from their school bus stop.[23] On September 11, 2007, the Aidoo's neighbors, the Umoetes, who were told by their friend, Anthony Squirrel, a witness to the incident, that Adams nearly struck Megan

[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Id.* at 56-57.
[20] *Id.*
[21] *See* Tr. (June 16, 2010) at 56-60.
[22] Tr. (June 23, 2010) at 180.
[23] Tr. (June 16, 2010) at 65-66.

and Shantelle, who were walking home from their bus stop, when she pulled into her drive way at a high speed.[24] The Umoetes informed Ninette Aidoo.

The Aidoos testified that they had a number of confrontations with Adams, including an incident where Adams accused the Aidoos of sending a little girl over to her house to run her bike through Adams' front yard.[25] During the same incident, the Aidoos claimed Adams told the Aidoos, who are African-American,[26] that her property value dropped $100,000 since black people moved into the neighborhood,[27] as well as that she was going to get a pit bull and set it on the Aidoo family.[28] Adams also filed a complaint with the Calvarese Farms homeowners' association that the Aidoos' back deck was obstructing her view.[29]

Adams' case-in-chief was dismissed at a hearing on May 15, 2009, with prejudice, because Adams failed to comply with the trial scheduling order and repeatedly failed to respond to discovery.[30] That ruling was affirmed by the Delaware Supreme Court in an interlocutory appeal on the issue of the dismissal.[31] By the time of trial, only the Aidoos' claims for invasion of privacy, defamation, abuse of process, and intentional infliction of emotional distress remained.[32] The Court granted Adams' motion for directed verdict as to the defamation claim at the close of evidence at trial.[33]

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[24] *Id.* at 67-68.
[25] *Id.* at 70-72.
[26] *See* Am. and Countercls. at 127.
[27] Tr. (June 16, 2010) at 72.
[28] *Id.* at 73.
[29] *Id.* at 84.
[30] *See* Hr'ing Tr. (May 15, 2009).
[31] That ruling was affirmed by the Delaware Supreme Court after an interlocutory appeal on this issue. *See Adams v. Aidoo*, No. 341 (Del. June 29, 2009).
[32] *See* Hr'ing Tr. (Apr. 29, 2010).
[33] Tr. (June 23, 2010) at 148.

A seven-day trial took place between June 14, 2010 and June 24, 2010, during which Adams represented herself *pro se*, as she did throughout the litigation, except for four days during May 2009 when she retained counsel. The jury returned a verdict in favor of the Aidoos on the claims of abuse of process and intentional infliction of emotional distress.[34] The jury awarded the Aidoos $250,000 in damages.[35]

On July 2, 2010, Adams filed Motions for Mistrial, Renewed Judgment as a Matter of Law, New Trial, Remittitur, and to Strike.[36] On July 13, 2010, the Court issued a letter notifying the parties it would take no action on Adams' Motions until trial transcripts were prepared.[37] On July 16, 2010, Adams retained counsel. The Aidoos filed a Response to Adams' Motions on July 20, 2010. Transcripts of the trial were filed between November 17, 2010 and December 16, 2010. On January 10, 2011, the Court set oral argument for the Motions for March 10, 2011. Oral argument was ultimately held on April 14, 2011, at which time the Court requested additional briefing from the parties. At the same hearing, the parties explicitly waived a majority of the issues Adams raised in her initial Motions, leaving the issues addressed herein.[38]

Adams filed her Post Trial Brief on May 18, 2011. The Aidoos filed their Answering Post Trial Brief on June 20, 2011. Adams filed a Reply Brief on July 15, 2011. On October 12, 2011, the Court issued a letter to the parties ordering them to submit post-trial briefs that included specific citations to the trial record, exhibits, and filings in the case. The Aidoos filed their Supplemental Brief on November 14, 2011. On December 6, 2011, the Court granted Adams a two week extension to file the

[34] Tr. (June 24, 2010).
[35] *Id.*
[36] *See* Mot. (July 2, 2010).
[37] Letter to the Parties, from Hon. M. Jane Brady (July 16, 2010).
[38] Hr'g Tr. (Apr. 14, 2011) at 58-72.

supplemental brief. Adams submitted her Supplemental Post Trial Brief on December 19, 2011. The following is the Court's decision.[39]

B. Parties' Contentions

Adams

Adams contends that the evidence in this case preponderated so heavily against the verdict that a reasonable jury cannot have reached the verdict. Adams also contends the Court should not have allowed the jury to consider the Aidoos' intentional infliction of emotional distress claim, because the claim was based in part upon Adams' asserting legal action against the Aidoos.

Adams contends the Court erred in several respects regarding the jury instructions. She contends the Court should have provided the jury instructions as to both abuse of process and malicious prosecution, so as to allow the jury to determine the difference between the two torts in considering the verdict. She further contends the Court improperly commented on the evidence by stating that Adams' case was dismissed, without explanation, and by omitting a paragraph in the jury instructions to define damages for emotional distress. Adams additionally contends the Court erred in accidentally including the word "disregard" in the written jury instructions for intentional infliction of emotional distress.

Adams contends the Court abused its discretion in allowing the Aidoos to present evidence of her prior litigation at trial, and that the evidence had a prejudicial effect that inflamed the jury to believe the abuse of process claim was linked to Adams' prior litigation.

[39] The parties provided little more information about where those portions of the trial record in this case could be found to support their respective positions. The Court spent a great deal of time locating that information.

Finally, Adams contends she is entitled to a new trial on damages, because the jury's verdict of $250,000 in favor of the Aidoos is against the great weight of the evidence and lacks a basis such that it was the result of passion, prejudice, partiality, or corruption.

The Aidoos

The Aidoos contend the jury's verdict is supported by overwhelming evidence, and primarily by the extensive testimony of trial witnesses. They further contend the Court did not err in allowing the jury to consider the intentional infliction of emotional distress claim, because the jury was aware that Adams' Complaint was dismissed through admission of her Complaint into evidence, Adams mentioned and explained her complaint during trial, and the parties read that their joint stipulation the Complaint was dismissed for Adams' failure to respond to discovery aloud to the jury. The Aidoos contend inclusion of the single word "disregard" in the jury instructions for intentional infliction of emotional distress did not undermine the instructions as a whole, and that abundant evidence supported damages for intentional infliction of emotional distress.

The Aidoos contend that their use of Adams' prior litigation history for impeachment was proper, because Adams answered her deposition questions dishonestly and the evidence was admissible to impeach her credibility.

The Aidoos contend Adams is not entitled to a new trial or remittitur because the jury's award is justified by the Aidoos' cost in defending the case, the verdict likely reflects the jury's disapproval of Adams' conduct, and that Adams failed to meet her burden to show the verdict shocks the Court's sense of conscience and justice, especially in view of Adams' claims for $21 million in her Amended Complaint.

II. DISCUSSION

A. Motion for New Trial

1. Standard of Review

The Court may grant a new trial where the jury verdict is against the great weight of the evidence[40] or where a verdict is excessive.[41] A verdict is against the great weight of the evidence where the evidence presented preponderates so heavily against it that a reasonable jury could not have reached the result.[42] "On a motion to grant a new trial the verdict must be manifestly and palpably against the weight of the evidence or for some reason, or a combination of reasons, justice would miscarry if it were allowed to stand.[43]

A new trial may also be granted upon a finding that the trial court committed legal error in applying the law in its rulings at trial.[44] A court commits reversible legal error if it instructs the jury in a manner that undermines its ability to "intelligently perform its duty to return a verdict,"[45] improperly comments about matters of fact in charging the jury, so as to convey an estimation of truth, falsity, or weight of evidence to the jury,[46] or abuses its discretion in deciding whether to admit or deny evidence.[47]

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[40] *Storey v. Camper*, 401 A.2d 458, 459, 465 (Del. 1979); *Smith v. Lawson*, 2006 WL 258310, at *3 (Del. Super. 2006).
[41] *Riegel v. Aastad*, 272 A.2d 715, 718 (Del. 1970).
[42] *Storey*, 401 A.2d at 459, 465.
[43] *McCloskey v. McKelvey*, 174 A.2d 691, 693 (Del. Super. 1961); *Freedman v. Chrysler Corp.*, 564 A.2d 691, 695 (Del. Super. 1989); *Rodas v. Davis*, S10C-04-028 (Del. Super. January 31, 2012) (order granting remittitur and prejudgment interests and costs).
[44] *See Sammons v. Doctors for Emergency Services, P.A.*, 913 A.2d 519, 539 (Del. 2006); *Saudi Basic Indus. Corp. v. Mobil Yanbu Petrochemical Co., Inc.*, 866 A.2d 1, 24 (Del. 2005).
[45] *Bullock v. State*, 775 A.2d 1043, 1047 (Del. 2002); *Alexander v. Riga*, 208 F.3d 417, 426 (3d Cir. 2000).
[46] *Capital Mgmt. Co. v. Brown*, 813 A.2d 1094, 1100 (Del. 2002).
[47] *Capano v. State*, 781 A.2d 556, 586 (Del. 2001).

2. The Jury's Verdict is supported by the evidence on record.

a. Abuse of Process

As to the tort of abuse of process,[48] at the trial for this matter, the Court instructed the jury as follows:

> One who willfully uses the legal system whether through a criminal or civil action in the courts or in a regulatory agency, against another, primarily to accomplish a purpose for which the system is not designed, is responsible to the person against whom the legal process was used for any harm caused by such a use.
>
> I have determined as a matter of law that Ashley Adams caused legal process to issue against Yaw and Ninette Aidoo in the nature of a civil lawsuit. The purpose of a civil lawsuit is to seek compensation for injury resulting from someone else's wrongful conduct.
>
> The elements that Yaw and Ninette Aidoo must prove are: An improper or wrongful purpose in using the legal process, that is, an ulterior purpose; and two, a willful act in the use of the system not proper in the regular conduct of legal proceedings.[49]

The Court modeled the instructions after the Delaware Pattern Jury Instructions, which are modeled after the elements set forth in *Nix v. Sawyer*.[50] The court instructed that the Aidoos had to prove the elements of their claims against Adams by a preponderance of the evidence.[51] The Court explained that proof by a preponderance of the evidence means "proof that something is more likely true than not true."[52]

Adams argues the Aidoos failed to allege facts that Adams engaged in a perversion of process after she filed her Complaint and before the Aidoos filed their

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[48] The Court discusses the nature and background of this tort in further detail in Part II.A.3.a.
[49] Tr. (June 23, 2010) 280-81; DEL. P.J.I. CIV. § 12.1; *Nix v. Sawyer*, 466 A.2d 407, 411 (Del. Super. 1983); *see infra* Part II.A.3.a.
[50] *See* DEL. P.J.I. CIV. § 12.1; *Nix*, 466 A.2d at 41.
[51] Tr. (June 23, 2010) 279.
[52] *Id.* at 278.

Counterclaims.[53] In *Rhinehardt v. Bright*,[54] two neighbors were embroiled in an ongoing boundary dispute when one, Bright, complained to the police, causing the other, Rhinehardt, to be arrested for trespassing and criminal mischief, charges which were ultimately dropped.[55] Rhinehardt was arrested once more, for harassment, after subsequent owners of Bright's property, the Merkels, similarly complained to the police.[56] Rhinehardt sued Bright and the Merkels alleging several claims in tort, including willful and malicious use of criminal process, which the parties and the Court analogized to abuse of process.[57] The Court considered Bright's and the Merkels' reasons for calling the police — claims that Rhinehardt entered Bright's property and threatened him and that Rhinehardt put nails in the Merkels' driveway, which was the subject of the parties' boundary dispute.[58] The Court also considered Rhinehardt's argument that Bright and the Merkels attempted to intimidate Rhinehardt into surrendering his property.[59] The Court denied summary judgment because a dispute of material fact existed as to whether "Defendants intended to gain a tactical advantage by involving the police in this dispute."[60]

Rhinehardt demonstrates that actions leading up to a defendant's initiation of legal proceedings against a plaintiff suing or countersuing the defendant for abuse of process in a separate legal action are relevant to an abuse of process analysis. Therefore, the jury's consideration of any evidence presented at the hearing as to Adams' purpose in suing the Aidoos was proper.

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[53] Pl.'s Supp. Post Trial Br. 3.
[54] 03C-05-005, 2006 WL 2220972 (Del. Super. July 20, 2006).
[55] *Id.* at *1.
[56] *Id.* at *2.
[57] *Id.* at *3-*4 (citing the *Stevens* test for an abuse of process claim).
[58] *Id.* at *4.
[59] *Id.*
[60] *Id.*

The Aidoos presented sufficient evidence to the jury for a reasonable jury to conclude Adams abused process in using the legal system to accomplish a purpose for which the system is not designed.[61] Based on the evidence, the jury could easily have concluded Adams used process to pursue her claims against the Aidoos for several reasons other than redress, which will be detailed in the following paragraphs.

When Adams testified at trial, she confirmed many aspects of her use of process in this case which the Aidoos claim were abusive. The jury was able to review Adams' initial thirty-one-count Complaint and her twenty-count Amended Complaint.[62] She testified that she asserted multiple causes of action against the Aidoos, including lewdness, stalking, misuse of a computer system, trespass and peeping into Adams' windows or intending to peep into Adams' windows, menacing, criminal nuisance, terroristic threatening, and causing Adams to suffer physical pain and suffering.[63] In relation to those claims, Adams testified she never called the police or sought medical treatment.[64] Adams confirmed that she sought $21 million in her amended complaint against the Aidoos.[65] She also confirmed that she sent four sets of interrogatories to the Aidoos, with over 100 questions, many of which included sub-parts, and over 50 document requests.[66] Yaw testified that the copies of motions and documents that his attorney sent to him in relation to this case would easily create a four-foot stack of paper.[67] By the time of Yaw's testimony, the Aidoos' legal bills amounted to

[61] *See infra* text accompanying notes 111-114.
[62] Pl.'s Exs. 4 & 5.
[63] Tr. (June 23, 2010) at 60-63.
[64] *Id.* Such information might have been shown to have provided an evidentiary basis for her alleged injuries or harm.
[65] Tr. (June 23, 2010) at 64; Pl.'s Exs. 4 & 5 (Compl. & Am. Compl.).
[66] *Id.* at 67.
[67] Tr. (June 22, 2010) at 120.

$79,206.07, with only $21,819.44 of that balance having been paid by that point.[68] The trial for this matter spanned six days, with a seventh day for the return of the jury's verdict.

At trial, the Aidoos presented abundant evidence of Adams' lack of proper purpose or alternative purposes in carrying out this litigation against them. Adams confirmed that in her Complaint for this action, she alleged the Aidoos caused ten written police complaints to be written against her from September, 2007 to November, 2007.[69] When the Aidoos' counsel asked if she had proof of that, she responded she did not have ten, she had six that she was able to obtain, and they were produced in this case.[70] When counsel asked if she would go get those complaints from the materials she brought to Court, Adams returned to the witness stand with two reports – one relating to the driveway incident from September 11, 2007, and the other from the text message incident from October 1, 2007.[71] What is perhaps most notable is the evidence that Officer Selhorst decided independently and without input or request from the Aidoos to attain a warrant for Adams' arrest after he spoke to Adams about the text message incident.[72] Ninette testified on cross-examination, "We did not want you arrested. We did not ask Officer Selhorst to arrest you. . . . I just wanted you to stop harassing us. I just wanted someone else to come over and talk to you because I had pleaded, pleaded with you to leave us alone; leave us alone."[73]

[68] *Id.* at 116.
[69] Tr. (June 23, 2010) at 53.
[70] *Id.*
[71] *Id.* at 54.
[72] Tr. (June 14, 2010) at 55.
[73] Tr. (June 21, 2010) at 42-43.

The Aidoos' counsel asked Adams what proof she has of allegations in her Complaint that the Aidoos called Adams' employer more than ten times, speaking with eight different people, threatening to sue the company and demanding immediate termination of Adams' employment.[74] She responded that Theodore Brower's testimony was such evidence.[75] Brower is the lead human resources business consultant for PHI, Pepco Holdings, the parent company of Delmarva Power, where Adams was employed at the time of the incidents at issue.[76] Brower testified as to a total of four phone conversations between Ninette or Yaw and himself and others on behalf of Delmarva Power, the purpose of which was to establish that Adams did not have access to customer data and that the Aidoos' cell phone numbers were not in Delmarva Power's database.[77]

Adams asked the jury to accept that the Aidoos fabricated the text message because they do not like her and were envious of her home.[78] She called the Aidoos "imaginative liars" and their allegations of her actions "fantasies."[79] However, Adams presented very little evidence to rebut the Aidoos' claims. She testified on her own behalf and called just one witness, a custodian of records for Verizon Wireless, who verified the authenticity of Verizon documents.[80] Adams' cross-examination of the Aidoos' witnesses encompassed a majority of the trial.

[74] Tr. (June 23, 2010) at 55-57.
[75] *Id.* at 58-60.
[76] Tr. (June 22, 2010) at 23.
[77] *Id.* at 29-33.
[78] Tr. (June 23, 2010) at 199-200.
[79] *Id.* at 201.
[80] *See* Tr. (June 15, 2010) at 119.

Inconsistencies in Adams' presentation of her case and her demonstrated lack of credibility may have led the jury to conclude Adams did not honestly pursue redress for reasonable damages in instituting this action.

The Aidoos impeached Adams' credibility by asking her questions relating to sworn statements she made in depositions and documents relating to prior litigation.[81] Adams was highly evasive and frequently asked the Aidoos' counsel to repeat himself or lodged objections from the witness stand.[82] Through the line of questioning, the Aidoos were able to show several inconsistencies between Adams' testimony for this matter, both at trial and from depositions, and her prior sworn statements. For example, Adams initially denied having a middle name, having used or been known by other names before, having been married, having children, and having been involved in litigation before.[83] The Aidoos presented evidence that Adams has been known by several names, has been married twice, has two adult children, and has been involved several, up to 24 lawsuits, over the past 15 years.[84] The jury could reasonably have concluded Adams was less than forthright in her purported reasons for pursuing and carrying out litigation against the Aidoos.

Adams told Officer Selhorst she did not know the names of her neighbors two doors down, the Aidoos.[85] Several witnesses testified that the parties and other neighbors knew each other and would go through their homes together while they were still under construction.[86] In fact, Ninette Aidoo testified she and Adams met in October 2006, and after work nearly every day for five months, they would see each other at the construction

[81] *See infra* Part II.A.4.
[82] *See* Tr. (June 23, 2010) at 55, 58, 65-66, 73, 77-79, 93-95, 102-103.
[83] *See id.* at 73-100.
[84] *See id.*
[85] Tr. (June 14, 2010) at 112.
[86] *See* Tr. (June 16, 2010) at 56-59; Tr. (June 21, 2010) at 175, 192; Tr. (June 22, 2010) at 94.

sites of their homes.[87] They would walk inside and around their own and other neighbors' future homes to examine their progress.[88]

Adams depicted a scene of Officer Selhorst's second visit to her home that was markedly different from how Selhorst described the event in his testimony. Adams stated in her presentation that "carloads" of police "ambushed" her house, threatened her pets, did damage to her front door, and shined lights all over her house, and that she could hear someone saying the door was "'coming down.'"[89] She proceeded to state that she called her attorney before answering the door, and he advised her to look out her window, but she did not see any cars.[90] She stated that when she opened her garage door to respond, she told the police she had her attorney on the phone, and they threw the phone on the cement floor.[91]

Selhorst testified he and one other officer parked their car at the foot of Adams' driveway, and knocked on the door. When there was no response, they walked around the residence and could see into a rear room where Adams was sitting and watching television.[92] Selhorst said he illuminated himself with a flashlight, to show her who it was, and told her to go outside.[93] Adams met the officers in her garage.[94] Selhorst handcuffed her, because she was uncooperative the last time he contacted her.[95] When Adams told him she had already turned herself in, he checked the CJIS system to confirm

[87] Tr. (June 16, 2010) at 60.
[88] *Id.* at 56-59.
[89] Tr. (June 23, 2010) at 189.
[90] *Id.* at 190.
[91] *Id.* at 191.
[92] Tr. (June 14, 2010) at 55.
[93] *Id.*
[94] *Id.*
[95] *Id.* at 56.

the warrant was executed, and then uncuffed her.[96] When Selhorst attempted to speak further to her, she said she had no statement and wanted counsel.[97] He testified he "shut down at that point, and that was the end of it."[98]

Ninette testified that Adams "twisted" the facts when Adams asked if Ninette ever called the SPCA on Adams.[99] Ninette testified she called the SPCA to inquire whether Adams has or ever had a dog, after Adams threatened to get a pit bull and have it attack the Aidoos, and Adams posted "beware of dog" signs on her property. She then testified Adams did not have a dog at all.[100]

The jury could reasonably have concluded from Adams' methods of litigating that Adams pursued litigation for the purpose of addressing various grievances, other than the cause of action, with the Aidoos and other neighbors.

Adams stated at trial, "It's obvious the Aidoos and Adams don't like each other."[101] Adams' dislike of other neighbors manifested over the course of the trial. Adams attempted to characterize the Aidoos' advancement of their claims as a community effort to attack her. Despite the Aidoos' witnesses testifying that they were testifying because they received subpoenas to do so and that the Aidoos or their counsel did not prepare them to testify, Adams stated during the presentation of her case that the witnesses did not like her and were all there to lie, because they had a vested interest as buddies to look out for each other.[102]

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[96] *Id.*
[97] *Id.*at 57.
[98] *Id.*.
[99] Tr. (June 16, 2010) at 107-08.
[100] *Id.* at 109.
[101] Tr. (June 14, 2010) at 41.
[102] *See id.* at 128 (Officer Selhorst); Tr. (June 15, 2010) at 60-63 (Delores McLamb); Tr. (June 16, 2010) at 29, 30, 35 (Chuks Umoete); Tr. (June 16, 2010) at 40-53 (Gerard Mahotiere); Tr. (June 21, 2010) at 184-87 (Selvyn Brown); Tr. (June 23, 2010) at 199-200.

Adams used her cross-examination of the Aidoos' witnesses as an opportunity ask questions about her disputes with them, in addition to the causes of action. While she likely intended for such questions to demonstrate the neighbors' dislike for Adams and willingness to cooperate with the Aidoos by testifying against her, her cross-examination of her neighbors worked in a twofold fashion, as it also demonstrated a determination on her part to hold the neighbor witnesses accountable for her grievances against them. For example, Adams questioned Gerard Mahotiere, who lives in the home in between the parties, at 410 Oregano Court, at length about a property border dispute they had, the need for a drainage hill on Mahotiere's property, and an incident when Mahotiere trimmed a patch of grass on the borderline of their properties.[103] She questioned Delores McLamb about an incident where, McLamb testified, Adams sent the community's landscaper to McLamb's residence because her lawn was "a mess."[104] Adams questioned Chuks Umoete and Jennifer Grace-Umoete about a complaint Adams filed to the homeowner's association claiming his children spit on her car.[105] She also questioned Jennifer Grace-Umoete about whether her mother ever advised children to enter Adams' property and whether she and her husband received kickbacks from Gemcraft for showing their home and recommending the builder.[106]

Adams asked Ninette multiple questions about the flooring, siding, garage doors of their homes, as well as neighbors' homes.[107] She also asked Ninette whether she stood up at a community meeting, in front of fifty people, and stated that Adams had threatened

[103] Tr. (June 16, 2010) at 40-53.
[104] Tr. (June 14, 2010) at 48, 63-64.
[105] Tr. (June 16, 2010) at 25, 27.
[106] Tr. (June 22, 2010) at 66.
[107] Tr. (June 21, 2010) at 25-27.

her children.[108] Ninette responded that Adams was the one who stood up at the meeting, to accuse the treasurer of impropriety.[109] Ninette testified she never made allegations against Adams at community meetings.[110]

That the jury could reasonably have concluded Adams sued the Aidoos for a purpose other than to seek redress for her damages is bolstered by the fact that the jury could reasonably have concluded that Adams actually sent the text message that was the initial cause of action of this litigation and therefore had no damages for which to seek redress. Officer Selhorst was able to confirm that the phone number on the text message belonged to Adams.[111] Ninette and Yaw Aidoo each testified they never gave Adams their cell phone numbers and never had hers before the incident.[112] Calvarese Farms's neighborhood directory does not include phone numbers.[113] The only person who had Adams' cell phone number, Delores McLamb, testified she did not distribute it.[114]

The Court need not ascertain what the jury believed to be Adams' precise purpose in carrying out this litigation. It is sufficient only that the jury believed, by a preponderance of the evidence, that Adams used the legal system to carry out her lawsuit against the Aidoos for a purpose other than to seek compensation for some injury resulting from wrongful conduct.[115] Since the Aidoos presented evidence of several conceivable improper purposes which might underlie Adams' intentions, the Court finds

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[108] Tr. (June 16, 2010) at 104-05.
[109] *Id.*
[110] *Id.*
[111] Tr. (June 14, 2010) at 53, 73; Tr. (June 22, 2010) at 95.
[112] Tr. (June 16, 2010) at 62, 81; Tr. (June 23, 2010) at 33-34.
[113] Tr. (June 16, 2010) at 83.
[114] Tr. (June 15, 2010) at 49.
[115] *See Nix v. Sawyer*, 466 A.2d 407, 411 (Del. Super. 1983); *Stevens v. Indep. Newspapers, Inc.*, 1988 WL 25377, at *8 (Del. Super. Mar. 10, 1988).

the jury's verdict that Adams abused process is not against the great weight of the evidence, and therefore it shall not be disturbed.

The jury's verdict that Adams abused process in asserting this action against the Aidoos is supported by the evidence on record. Therefore, Adam's motion for new trial on this basis is **DENIED**.

b. Intentional Infliction of Emotional Distress

Delaware courts apply the Restatement (Second) of Torts definition for intentional infliction of emotional distress.[116] The Restatement provides that someone who intentionally or recklessly causes another severe or emotional distress by extreme and outrageous conduct is subject to liability.[117] Delaware courts have determined that conduct outrageous in character and extreme in degree goes beyond all possible bounds of decency and is regarded as atrocious and utterly intolerable in a civilized community.[118] "Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, 'Outrageous!'"[119] The Court determines whether a defendant's conduct is extreme and outrageous so as to *permit* liability, and the jury determines whether the defendant's conduct is sufficiently extreme and outrageous as to *result* in liability.[120] A plaintiff need not show that the emotional distress he suffers as a result of

[116] *Cummings v. Pinder*, 574 A.2d 843, 845 (Del. 1990); *Mattern v. Hudson*, 532 A.2d 85, 85 (Del. Super. 1987); RESTATMENT (SECOND) OF TORTS § 46 (2011)
[117] RESTATMENT (SECOND) OF TORTS § 46.
[118] *Mattern*, 532 A.2d at 86; *Tekstrom, Inc. v. Savla*, 2006 WL 2338050, at *13 (Del. Super. July 31, 2006) *aff'd*, 918 A.2d 1171 (Del. 2007).
[119] *Mattern*, 532 A.2d at 86.
[120] *Id.*; *Ham v. Brandywine Chrysler-Plymouth, Inc.* 1985 WL 189010, at *2-3 (Del. Super. 1985).

a defendant's actions caused accompanying bodily harm where the defendant's actions are outrageous.[121]

As to intentional infliction of emotional distress, the Court instructed the jury as follows:

> If a person intentionally or recklessly causes severe emotional distress to another by extreme and outrageous conduct, that person is liable for the emotional distress and for any bodily harm that results from the distress.
>
> The extreme and outrageous conduct goes beyond all possible bounds of decency and would be regarded as atrocious and utterly intolerable in a civilized community. Emotional distress includes all highly unpleasant mental reactions, including fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment and worry. Severe emotional distress is so extreme that no reasonable person could be expected to endure it.
>
> Liability for severe emotional distress, however, does not extend to mere insults, indignities, threats, annoyances, petty oppressions or other trivialities. The law cannot intervene in every case where someone's feelings are hurt. There must still be freedom to express unflattering opinions. The law will intervene only where the distress is so severe that no reasonable person could be expected to endure it. In this regard, the intensity and the duration of the distress are factors to be considered in determining its severity.
>
> If you find that Ashley Adams' conduct was outrageous and extreme and that this conduct caused Yaw and Ninette Aidoo to suffer severe emotional distress, then you must find Ashley Adams liable for damages.[122]

Adams argues that the Aidoos are not entitled to recover for severe emotional distress because they do not claim to suffer shock, illness, or bodily harm accompanying

[121] *Cummings*, 574 A.2d at 845.
[122] Tr. (June 23, 2010) at 281-82; *see* DEL. P.J.I. CIV. § 14.1 (2000).

emotional distress.[123] However, in Delaware, a showing of bodily harm is not necessary to establish a valid claim for intentional infliction of emotional distress where the conduct alleged is outrageous. [124]

Adams cites to an illustration from a provision of the Restatement of Torts setting forth that an actor is not liable for infliction of emotional distress where he has only insisted upon his legal rights in a permissible way, despite awareness that such insistence will cause emotional distress.[125] The Supreme Court has recognized that an actor is liable for infliction of emotional distress where there is substantial evidence for the trial court to find that the actions were motivated "not by a desire to exercise [] legal rights, but to scare" the claiming party.[126] In *Tekstrom v. Savla*, the Court declined to give weight to Tekstrom's argument that it was permissibly pursuing its legal rights in asserting a breach of contract claim against Savla because Tekstrom coerced and intimidated Savla before filing its legal action for breach of an employment contract.[127] The Court stated, "The law protects individuals who are pursuing their rights in a permissible manner. Here, Tekstrom and Minhas were using scare tactics and intimidation in an outrageous manner."[128] Since the Aidoos presented substantial evidence, which will be detailed in proceeding paragraphs, of Adams' potential impermissible manner of conducting her litigation against the Aidoos, the Court did not err in denying Adams' motion for directed verdict at the close of evidence at trial and

[123] Pl.'s Reply Br. 4.
[124] *Cummings*, 574 A.2d at 845; *Tekstrom*, 2006 WL 2338050, at *13.
[125] RESTATMENT (SECOND) OF TORTS § 46 illus. g.
[126] *Tekstrom*, 2006 WL 2338050, at *13.
[127] *Id.*
[128] *Id.* The Court affirmed trial court's finding of intentional infliction of emotional distress. *Id.*

allowing the jury to consider the Aidoos' intentional infliction of emotional distress claim.

The Aidoos presented sufficient evidence for a reasonable jury to conclude that Adams intentionally inflicted emotional distress upon the Aidoos, stemming from both the litigation of this matter and events leading up to the litigation. Even if no one event meets the standard of causing distress so severe that no reasonable person can endure it, multiple events may be considered together.[129]

As to events stemming from the litigation, the Aidoos presented evidence that Adams asserted a number of claims against the Aidoos,[130] and that Adams sought $21 million in damages for those claims. Discovery and pre-trial procedures for this matter spanned two years leading up to trial. As stated above, the Aidoos have expended a substantial sum of money for legal assistance. Ninette testified that the legal bills in this matter caused her financial hardship, stress, and anxiety.[131] She testified her "heart sunk" when she heard her attorney state in his opening statement that her legal bills exceeded $60,000.[132] She said, "That's my daughter's college fund right there."[133]

The Aidoos presented evidence of a number of events leading up to the litigation that a jury could reasonably find caused the Aidoos severe emotional distress. Yaw, Ninette, Megan, and Shantelle Aidoo, and Anthony Squirrel, testified that Adams cut off Megan and Shantelle at a high rate of speed when pulling into her driveway, driving her SUV, when the Aidoo children were walking home from the school bus stop.[134] Megan

[129] *See Collins v. African Methodist Episcopal Zion Church*, CIV.A. 04C-02-121, 2006 WL 1579718, *3 (Del. Super. Mar. 31, 2006).
[130] *See* Am. Compl.
[131] Tr. (June 16, 2010) at 87.
[132] *Id.*
[133] *Id.*
[134] *Id.*; Tr. (June 15, 2010) at 69, 85, 97.

and Shantelle each testified they were within a few feet of Adams' vehicle when she pulled into the driveway.[135] Their brother, Yaw Jr., was walking farther behind them and witnessed the incident.[136] Ninette testified that, following the event, Yaw Jr. became afraid that Adams would hurt his family and had trouble sleeping.[137] Ninette began to cry while testifying about the incident, and Shantelle was visibly nervous while testifying.[138] Squirrel testified he observed the incident from his truck parked nearby and that he told Jennifer Grace-Umoete about it when he visited her the same day.[139] Grace-Umoete testified she called Ninette that night to let her know about it.[140] Ninette was concerned enough to call the police to see how to address Adams,[141] ask the bus driver to drop her children off right in front of their home,[142] and advise her children to avoid walking in front of Adams house anymore.[143]

The Aidoos additionally presented evidence regarding the text message that was the cause of action of this case,[144] moved a sprinkler on her front lawn so it would wet Megan and Shantelle when they walked by her home one day,[145] approached the Aidoos in their front yard and accused them of sending a "black kid" to mess up her yard because it looked better than the Aidoos' yard,[146] told the Aidoos that ever since "you black

[135] Tr. (June 21, 2010) at 211, 238.
[136] *See* Tr. (June 16, 2010) at 67; Tr. (June 21, 2010) at 210, 239.
[137] Tr. (June 16, 2010) at 83.
[138] *See* Tr. (June 21, 2010) at 237; Hr'g Tr. (Apr. 14, 2011) at 54-55.
[139] Tr. (June 15, 2010) at 69-70.
[140] Tr. (June 22, 2010) at 62-63,
[141] Tr. (June 16, 2010) at 68.
[142] *Id.* at 70.
[143] *Id.* at 69.
[144] *See* Tr. (June 14, 2010) at 53, 73; Tr. (June 22, 2010) at 99.
[145] Tr. (June 16, 2010) at 65-66; Tr. (June 21, 2010) at 209, 238.
[146] Tr. (June 16, 2010) at 71-72.

people" moved into the neighborhood, her property value dropped $100,000,[147] and that she threatened to get a pit bull and sic it on the Aidoo family.[148]

The jury's verdict that Adams intentionally inflicted emotional distress upon the Aidoos is supported by the evidence in the record. Therefore, Adam's motion for new trial on this basis is **DENIED**.

3. The Court did not commit legal error with regard to the jury instructions.

Under Article IV, Section 19 of the Delaware Constitution, "[j]udges shall not charge juries with respect to matters of fact, but may state the questions of fact in issue and declare the law."[149] This provision is meant to ensure that judges confine themselves to making determinations of law and leave juries to determine the facts.[150] "In jury trials, the court may not determine issues of fact from the evidence . . . ."[151] The jury is the "exclusive judge of the evidence."[152] A judge may explain the legal significance the law attaches to a particular finding.[153] A verdict will be set aside if a deficiency in jury instructions undermines "the jury's ability to intelligently perform in its duty to return a verdict."[154]

While the trial judge is responsible for instructing the jury, the parties are responsible for bringing to the judge's attention instructions they consider appropriate.[155] Where a party claiming error in jury instructions did not timely object to the

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[147] *Id.*
[148] *Id.* at 73.
[149] DEL. CONST. ART. IV, § 19.
[150] *Herring v. State*, 805 A.2d 872, 875 (Del. 2002).
[151] *Storey v. Camper*, 401 A.2d 458, 462 (1979).
[152] *Id.* at 463.
[153] *Herring*, 805 A.2d at 876.
[154] *Bullock v. State*, 775 A.2d 1043, 1047 (Del. 2002).
[155] *Beebe Med. Ctr., Inc. v. Bailey*, 913 A.2d 543, 556 (Del. 2006).

instructions,[156] courts review for plain error and will only reverse if the trial court committed an error that was "fundamental and highly prejudicial, such that the instructions failed to provide the jury with adequate guidance" and resulted in the miscarriage of justice.[157] In providing instructions, judges must avoid confusing the jury.[158] Jury instructions will not serve as grounds for reversible error if they are "reasonably informative and not misleading, judged by the common practices and standards of verbal communication."[159] "In evaluating the propriety of a jury charge, the instructions must be viewed as a whole."[160]

a. Difference between abuse of process and malicious prosecution.

Adams contends that the jury was required to determine the difference between the torts of abuse of process and malicious prosecution,[161] and that failure to so instruct the jury was clear error.[162] Adams did not object to the jury instructions on this basis at trial, and she raises the issue for the first time in her Motion. Therefore, the Court must review the issue under a clear error standard.[163]

The tort of abuse of process derives from the tort of malicious prosecution.[164] At common law, malicious prosecution was a remedy for unjustifiable criminal proceedings, and the action evolved into a cause of action for wrongful civil proceedings, initially

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[156] Super. Ct. Civ. R. 51. "No party may assign as error the giving or the failure to give an instruction unless a party objects thereto before or at the time set by the Court immediately after the jury retires to consider its verdict, stating distinctly the matter to which the party objects and the grounds of the party's objection." *Id.*
[157] *Alexander v. Riga*, 208 F.3d 419, 426 (3d Cir. 2000) (citing *Cooper Distrib'g v. Amana Refrig.*, 180 F.3d 542, 549-550 (3d Cir.1999)).
[158] *See Probst v. State*, 547 A.2d 114, 119 (Del. 1988).
[159] *Beebe*, 913 A.2d at 556 (quoting *Flamer v. State*, 490 A.2d 104, 128 (Del. 1984)); *Sammons v. Doctors for Emergency Services, P.A.*, 913 A.2d 519, 540 (Del. 2006).
[160] *Corbitt v. Tatagari*, 804 A.2d 1057, 1062 (Del. 2002).
[161] Pl.'s Post Trial Br. at 3,
[162] *Id.* at 9.
[163] *Alexander v. Riga*, 208 F.3d 419, 426 (3d Cir. 2000).
[164] *Toll Bros., Inc. v. General Acc. Ins. Co.*, 1999 WL 744426, at *4 (Del. Super. Aug. 4, 1999).

called "malicious use of civil process."[165] The Pennsylvania Supreme Court has observed, "[m]alicious use of civil process has to do with the wrongful initiation of such process, while abuse of civil process is concerned with a perversion of a process after it is issued."[166] However, this Court has regarded Pennsylvania's distinction of the two as "somewhat confusing" and finds the two address the same general wrong of abusive litigation.[167] The two actions are often confused, and overlap where an abusive litigant uses the legal system to oppress others.[168] "[O]nce either tort is proven, damages are generally the same."[169] The distinction between the malicious prosecution and abuse of process is "at best, unclear," to both laypersons and legal scholars.[170]

The elements a plaintiff must prove in an abuse of process claim in Delaware are: "(1) an improper or wrongful purpose in using legal process; and (2) a willful act in the use of the system not proper in the regular conduct of legal proceedings."[171] The mere carrying out of process to an authorized conclusion does not result in liability, even if the process is carried out with bad intentions.[172] A party alleging abuse of process must show "some definite act or threat not authorized by the process, or aimed at an objective not legitimate in the use of the process."[173]

In comparison, the requirements for malicious prosecution are: (1) the institution of civil or criminal proceedings; (2) without probable cause; (3) with malice; (4) termination of the proceedings in the aggrieved party's favor; and (5) damages were

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[165] *Id.*
[166] *Id.* at *5 (citing *McGee v. Feege*, 551 A.2d 1020, 1023 (Pa. 1987)).
[167] *Id.*
[168] *Id.* at *6 (citing to cases from multiple jurisdictions which observe the confusion between the two torts).
[169] *Id.*
[170] *Id.* at *6-7.
[171] DEL. P.J.I. CIV. § 12.6; *Nix v. Sawyer*, 466 A.2d 407, 412 (Del. Super. 1983).
[172] DEL. P.J.I. CIV. § 12.6; *Nix*, 466 A.2d at 412 (citing PROSSER, LAW OF TORTS § 121 (4th ed. 1971)).
[173] *Stevens v. Indep. Newspapers, Inc.*, 1988 WL 25377, at *8 (Del. Super. Mar. 10, 1988).

inflicted upon the aggrieved party by seizure of property or other special injury.[174] Delaware courts disfavor malicious prosecution claims and approach them with careful scrutiny.[175]

Despite the similarity of the two, malicious prosecution and abuse of process are separate torts that a party may assert hand-in-hand. Recently, this Court relied upon the precedent set forth by *Nix* in *Pfeiffer v. State Farm*,[176] stating, "Abuse of process is concerned with 'perversion of the process after it has been issued,' in comparison to malicious prosecution which focuses on the initiation of that process."[177] It only makes sense that malicious prosecution addresses a litigant's intent in initiating a legal action against an individual, while abuse of process addresses a litigant's use of the legal system to perpetuate an improper purpose to sue by using, or abusing, the imposition of proceedings that accompany litigation upon an individual.

In this case, the Aidoos asserted a malicious prosecution claim against Adams, but that claim was dismissed before trial.[178] The standard of guilt for a civil case is that a jury must find by a preponderance of the evidence that a defendant committed all the necessary elements of a tort. The standard is not that a jury must find a plaintiff has demonstrated that a defendant has committed a tort by a preponderance of the evidence, and not some other tort. Providing instructions as to both malicious prosecution and abuse of process, while only abuse of process was in issue, in this case would likely have misled or confused the jury as to both the issues it was to decide and the applicable standards of law. Contrary to Adams' contention, to provide instructions as to both torts

[174] DEL. P.J.I. CIV. § 12.1; *Nix*, 466 A.2d at 411.
[175] *Ferguson v. Wesley Coll., Inc.*, 2000 WL 706833 (Del. Super. Mar. 23, 2000); *Nix*, 466 A.2d at 411.
[176] N10A-12-006, 2011 WL 7062498, (Del. Super. Dec. 20, 2011).
[177] *Id.* at *5.
[178] *See* Hr'ing Tr. (May 15, 2009).

would have jeopardized the fairness and integrity of the trial process.[179] Therefore, the Court did not err in not instructing the jury to determine the difference between malicious prosecution and abuse of process.

b. Lack of explanation for dismissal of Adams' case.

Adams claims that she was prejudiced in the Court's comment that Adams' case was dismissed, because the Court failed to inform the jury that three of the Aidoos' counterclaims were dismissed, and because the Court did not explain that Adams' case was dismissed on a procedural ground.[180] Adams contends the Court's comment "gave the jury the impression that the action was without merit or frivolous."[181] Adams argues that the Court's lack of comment on the basis for the dismissal of Adams' claims amounts to an improper comment.[182] She objected to the jury instructions on this ground at trial.[183]

The Court must review this claim under an abuse of discretion standard.[184] A trial judge may not comment on the facts of a case while charging the jury, because any such statement directly or indirectly conveys the court's estimation of truth of the evidence.[185] Whether a trial judge provides curative instructions in a case is a matter of discretion.[186]

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[179] *See Riggins v. Mauriello*, 603 A.2d 827, 830 (Del. 1992) (stating that the plain error standard of review requires the error complained of to be "'so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process'" before the court will set aside a verdict).
[180] Pl.'s Post Trial Br. 6.
[181] *Id.*
[182] *See id.*
[183] Tr. (June 23, 2010) at 216.
[184] *Sammons v. Doctors for Emergency Services, P.A.*, 913 A.2d 519, 539 (Del. 2006); *DeAngelis v. Harrison*, 628 A.2d 77, 80 (Del. 1993).
[185] *Capital Mgmt. Co. v. Brown*, 813 A.2d 1094, 1100 (Del. 2002).
[186] *Sammons*, 913 A.2d at 539.

A trial judge abuses that discretion if a curative instruction so inaccurately represents the record that it unfairly prejudices a party, so as to deny a fair trial.[187]

In *Sammons v. Doctors for Emergency Medical Services, P.A.*,[188] the Supreme Court held that a trial judge did not err in denying the plaintiff's request for a curative jury instruction as to the bases of defendants' cross claims, because the trial judge reasoned doing so "would unnecessarily confuse the jury because the jury did not need to know the specific details about the cross claims."[189] The judge's statement that the defendants asserted cross claims against settling defendants sufficed for the jury to make a "reasoned and informed decision . . . without confusing the jury or overburdening them with unnecessary information."[190]

As to the disposition of Adams' claims, the Court instructed the jury:

> Now Ashley Adams initially filed suit against the defendants, Yaw and Ninette Aidoo, making allegations in multiple counts. The defendant filed a counterclaim alleging invasion of privacy, emotional distress, and abuse of process, as the plaintiff's complaint was dismissed.[191]

When Adams objected to the instructions stating her case was dismissed,[192] the Court explained to Adams, "It doesn't say that. It says that's all that's before you because, – they don't have both sides of the case because your case was dismissed. That's the nature of the case."[193] The Court further explained that it "did not include anything about

[187] *Id.*; *DeAngelis*, 628 A.2d at 80.
[188] 913 A.2d 519 (Del. 2006).
[189] *Id.* at 540-41.
[190] *Id.* at 541.
[191] Tr. (June 23, 2010) at 277.
[192] *See id.*
[193] Tr. (June 23, 2010) at 216.

favorable termination of the charges against the plaintiff. . . . that is commenting on the evidence. You are allowed to argue on that."[194]

The Court's decision not to explain why Adams claims were dismissed did not cause Adams prejudice, as the parties stipulated and read aloud to the jury, "The plaintiff's case was dismissed because there was a significant and persistent pattern of disregard for [t]he Court's directive to file proper responses to outstanding discovery."[195] Additionally, Adams stated during her opening statements that her claims were dismissed because she wanted to protect her personal information during discovery[196] and testified on direct examination and in the presentation of her case that her case was dismissed on a procedural basis and not due to the merits.[197]

As in *Sammons*, the Court provided the jury background information that allowed it to make a reasoned decision without being burdened by extraneous information. The Court's decision not to issue an explanatory instruction as to the disposed claims in the case did not amount to an improper comment because the Court avoided conveying an estimation of the truth or falsity of the evidence presented by discussing the facts of the case. Furthermore, Adams was not prejudiced by the lack of an explanatory instruction because the parties stipulated the information she sought to include in the instructions to the jury, and Adams had ample opportunity to argue the same. Therefore, the Court did not err on the basis that it failed to explain the dismissal of Adams' claims and three of the Aidoos' counterclaims.

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[194] *Id.* at 220.
[195] *Id.* at 227.
[196] Tr. (June 14, 2010) at 43-44.
[197] Tr. (June 23, 2010) at 67, 195.

c. Defining damages for intentional infliction of emotional distress.

Adams argues that the Court improperly commented on the instructions to the jury for emotional distress by leaving out a defining damages paragraph.[198] Adams argues the jury instructions on damages for emotional distress "omitted critical guiding principles, resulting in the Jury unable [sic] to exercise their fact-finding function, reaching an unsound decision, causing fundamental errors and was [sic] prejudicial because the Jury would have reached a different result, resulting in a miscarriage of justice."[199] Adams additionally contends the Court used the abuse of process jury instruction incorrectly.[200] Adams claims that the Court's omission of a "Damages – General" paragraph and a damages paragraph from the jury instructions for the emotional distress claim was plain error that affected Adams' substantial rights.[201] Since Adams did not raise this objection at trial, it is subject to review for plain error.[202]

Delaware follows the Restatement (Second) of Torts provision on damages, that "[t]he intentional infliction of severe emotional distress may provide the legal predicate for an award of damages, even in the absence of accompanying bodily harm, if such conduct is viewed as outrageous."[203] In *Cummings v. Pinder*,[204] the Supreme Court found that since a trier of fact determined a defendant's conduct was outrageous, the trial court did not commit error in awarding a plaintiff compensatory damages.[205] Delaware courts do not provide specific jury instructions or require a jury to designate damages for

[198] Pl.'s Post Trial Br. 9.
[199] *Id.* 8-9.
[200] *Id.* 9.
[201] *Id.*
[202] *See supra* Part III.
[203] *Restatement (Second) of Torts* § 46(1) (1965); *Cummings v. Pinder*, 574 A.2d 843, 845 (Del. 1990); *Collins v. African Methodist Episocopal Zion Church*, CIV.A. 04C-02-121, 2006 WL 1579718, *3 (Del. Super. Mar. 31, 2006).
[204] 574 A.2d 843 (Del. 1990).
[205] *Id.* at 845.

intentional infliction of emotional distress claims.[206] Special jury instructions are required where a complainant seeks punitive damages.[207] While the Aidoos sought punitive damages in their Amended Answer and Counterclaims against Adams,[208] they did not seek to instruct the jury that it may award punitive damages for intentional infliction of emotional distress.

The Court instructed the jury at length about compensatory damages,[209] including specific instructions as to damages for intentional infliction of emotional distress.[210] The Court stated:

> The law does not prescribe any definite standard by which to compensate an injured person for mental pain and suffering and other aspects of severe emotional distress, nor does it require that any witness express an opinion as to he amount of damages that would compensate for that injury.[211] . . .
>
> Your award must be based on the evidence and not mere speculation. As I said, the law does not furnish any fixed standard by which to measure damages for invasion of privacy or for any mental suffering, and counsel are not permitted to argue that a specific sum would be reasonable.[212] . . .
>
> If you find Yaw and Ninette Aidoo have proven the liability of Ashley Adams for the intentional infliction of severe emotional distress, then you may consider the amount of damages that the Aidoos may recover.
>
> If you find for Yaw and Ninette Aidoo, you should award them such sum of money as in your judgment will fairly

[206] *See Tekstrom, Inc. v. Savla,* CIV.A. 05A-12-006J, 2006 WL 2338050 (Del. Super. July 31, 2006); *Mattern v. Hudson*, 532 A.2d 85, 85 (Del. Super. 1987); *see Jordan v. Delaware*, 433 F. Supp. 2d 433, 444 (D. Del. 2006).
[207] *See Rhinehardt v. Bright*, CIV.A. 03C-05-005, 2006 WL 2220972 (Del. Super. July 20, 2006) ("Punitive damages may be awarded if 'defendant's conduct is 'outrageous,' because of 'evil motive' or 'reckless indifference to the rights of others.'").
[208] *See* Am. Answer 10.
[209] Tr. (June 23, 2010) at 283-88.
[210] *Id.* at 284, 287-88.
[211] *Id.* at 284; DEL. P.J.I. CIV. § 22.10 (2000).
[212] Tr. (June 23, 2010) at 285.

> and reasonably compensate them for the elements of damages which you find to exist by a preponderance of the evidence; any monetary expenses, mental pain and suffering, fright, nervousness, indignity, humiliation, embarrassment and insult that Yaw and Ninette Aidoo was subjected to or in the future that are a direct result of Ashley Adams' conduct.[213]

The Court additionally instructed the jury as to proof of elements by a preponderance of the evidence,[214] proximate causation,[215] and basing its award upon evidence and not speculation or sentiment.[216] By instructing the jury in accordance with case law and the Delaware Pattern Jury Instructions on Measure of Damages for Intentional Infliction of Emotional Distress,[217] the Court provided adequate guidance for the jury to fairly and reasonably determine damages for intentional infliction of emotional distress. Therefore, the Court did not err in its provision of jury instructions on damages for the claim.

d. Use of the word "disregard" in the instructions for intentional infliction of emotional distress.

The written instructions the Court provided the jury, as to damages for intentional infliction of emotional distress read:

> If you find that Yaw and Ninette Aidoo have proven the liability of Ashley Adams for the intentional infliction of severe emotional distress, then you may consider the amount of damages that the Aidoos may recover.
>
> If you find for Yaw and Ninette Aidoo, you should award them such sum of money as in your judgment will fairly and reasonably compensate them for the elements of damages which you find to exist **disregard** by a preponderance of the evidence: any monetary expenses, mental pain and suffering, fright, nervousness, indignity,

[213] *Id.* at 287-88 DEL. P.J.I. CIV. § 22.10 (2000).
[214] Tr. (June 23, 2010) at 278-80; DEL. P.J.I. CIV. § 22.10 (2000).
[215] Tr. (June 23, 2010) at 279-80; DEL. P.J.I. CIV. § 22.10 (2000).
[216] Tr. (June 23, 2010) at 283-85; DEL. P.J.I. CIV. § 22.10 (2000).
[217] DEL. P.J.I. CIV. § 22.10 (2000).

> humiliation, embarrassment, and insult that Yaw and Ninette Aidoo was subjected to or will be subjected to in the future that are a direct result of Ashley Adams' conduct.[218]

Adams contends that since the written jury instructions included the word "disregard," plain error exists.[219] Since Adams did not object on this basis at trial, the issue is subject to plain error review.

The record reflects that the word "disregard" was crossed out on the jury's copies of the written instructions. The Court instructed the jury:

> There was a word that was left in the instructions, a typographical version [sic] that I didn't catch, **so you will see that word crossed out**, and the word is "disregarded," I wrote to my assistant, and she typed it in . . . . So I wanted to let you know I just noticed that was still in there.[220]

In *Hall v. State*, the Supreme Court held that two minor typographical errors in the jury instructions that were noted and corrected by the judge were not reversible error.[221] The Court held, "Clearly, the jury was put on notice of the error by the trial judge's corrections, and Hall suffered no prejudice. The corrected jury instructions cannot constitute reversible error."[222]

As in *Hall*, the Court promptly noted and corrected the error at trial. The instruction was reasonably informative. Therefore Adams suffered no prejudice, and the inclusion of the word "disregard" in the jury instructions is not a ground to set aside the jury's verdict due to plain error.

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[218] Jury Instructions at 16 (emphasis supplied).
[219] Pl.'s Reply Br. 4.
[220] Tr. (June 23, 2010) at 288. (Emphasis added.)
[221] *Hall v. State*, 560 A.2d 490 (Del. 1989).
[222] *Id.* (citing *Flamer v. State*, 490 A.2d 104, 128 (Del. 1983)).

4. The Court did not abuse its discretion in allowing the Aidoos to admit evidence of Adams' prior litigation for impeachment purposes.

Adams argues that she was clearly prejudiced by the Aidoos' introduction of cases in which Adams was previously involved.[223] She contends such evidence was irrelevant and inflamed the jury to believe the Aidoos' abuse of process cause of action was in some way related to prior litigation.[224] The decision of whether to admit or exclude evidence can only be reversed for abuse of discretion.[225] Where a party does not object to admission of the evidence, the plain error standard of review applies.[226]

Where a witness was the only eyewitness to a cause of action, besides the opposing party, and the parties' versions of events at issue are at odds, a case turns on a credibility assessment.[227] In such a case, that witness's testimony is crucial to the disposition of the case.[228] This Court has observed, "Where a witness' credibility is an important aspect of a case, a party has broad discretion to cross-examine a witness."[229]

The Rules of Evidence permit the admission of evidence to impeach a person's credibility.[230] A party may impeach a witness by showing the existence of a prior inconsistent statement, untruthful or dishonest character, or defective ability to remember.[231] A witness may also be impeached by evidence contradicting the witness as to a material matter.[232] Extrinsic evidence of a witness's inconsistent statement is admissible if the witness does not clearly admit or deny the prior inconsistent

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[223] Pl.'s Post Trial Br. 9.
[224] *Id.*
[225] *Capano v. State*, 781 A.2d 556, 586 (Del. 2001).
[226] *Id.*
[227] *See Garden v. Sutton*, 683 A.2d 1041, 1044 (Del. 1996).
[228] *Id.*
[229] *Payne v. Home Depot, Inc.*, 2007 WL 4577624, at *2 (Del. Super. Dec. 14, 2007).
[230] D.R.E. 404; D.R.E. 607; D.R.E. 608.
[231] D.R.E. 613; *Payne*, 2007 WL 4577624, at *1.
[232] *Payne*, 2007 WL 4577624, at *1.

statement.[233] However, evidence of a witness's prior acts are not admissible to prove a person acted in conformity with a character trait.[234] The Court must exclude evidence that is irrelevant[235] and may exclude evidence if its probative value is substantially outweighed by the danger of unfair prejudice.[236]

In *Barbee v. Southeastern Pennsylvania Transit Authority*,[237] a former bus driver sued his employer claiming age discrimination.[238] The plaintiff argued on appeal from judgment in favor of the employer that the Court's admission of evidence of his involvement in prior lawsuits was propensity evidence that permitted the jury to infer he was litigious. The Third Circuit held:

> This argument is meritless. The evidence of prior lawsuits was not introduced as character evidence. Rather, SEPTA introduced evidence of Barbee's involvement in at least 24 prior civil suits for impeachment purposes because Barbee was evasive about prior lawsuits in his deposition (e.g., Barbee testified that he could not recall if he had been deposed in the past).[239]

Although Adams does not cite the case of *Outley v. City of New York*,[240] it is a case with similar facts, and the Court considered the opinion for relevance in this matter. In *Outley*, an arrestee alleged four police officers violated his constitutional rights.[241] The Second Circuit reversed and remanded a jury's verdict in favor of the defendants, in part because the district court abused its discretion in admitting evidence of plaintiff's

[233] D.R.E. 613(C).
[234] D.R.E. 404(b).
[235] D.R.E. 402.
[236] D.R.E. 403; *Payne*, 2007 WL 4577624, at *1.
[237] 323 F. App'x 159, 162 (3d Cir. 2009).
[238] *Id.* at 160-61.
[239] *Id.* at 162.
[240] 837 F.2d 587 (2d Cir. 1988).
[241] *Id.* at 587.

prior lawsuits filed against the City of New York.[242] In the Court's words, "An important part of the City's overall defense was to undermine Outley's credibility by, *inter alia*, portraying him as a chronic litigant."[243] The City claimed it referenced previous lawsuits in order to impeach Outley's credibility on the basis of prior inconsistent statements in six other lawsuits.[244] The record demonstrated that the City referenced Outley's litigiousness in its opening statements and, on examination, asked Outley whether he brought four *in forma pauperis* lawsuits against the City. The Court observed, "Although this questioning might have been proper as a foundation for evidence that Outley had made misleading statements on his prior *in forma pauperis* applications, no such evidence was forthcoming. In effect, the City's failure to complete its second effort at impeachment resulted in an improper commentary on Outley's litigiousness."[245] The Court felt that the City's additional questioning of Outley about whether he filed suits against the Department of Sanitation and two Jersey state troopers contributed to an overall impact that Outley was "'claim-minded.'"[246] The Court considered the trial as a whole in determining whether Outley suffered genuine prejudice.[247] It determined that the City's comments during openings and summation, combined with improper questioning of Outley led the jury to conclude Outley was "first and foremost [] a bringer of nuisance lawsuits."[248]

This case is distinguishable from *Outley* in that the Aidoos' questioned Adams about her prior litigation after laying a proper foundation to impeach Adams about

[242] *Id.*
[243] *Id.* at 591.
[244] *Id.* at 591-92.
[245] *Id.* at 593.
[246] *Id.*
[247] *Id.* at 595.
[248] *Id.*

inconsistencies and contradictions between statements within the prior litigation documents and her statements in this case.[249]

The Aidoos' counsel began its line of questioning to impeach Adams by asking her to state her full name.[250] Her initial answer omitted her middle name.[251] Counsel next asked if Adams had or had gone by other names before, and Adams responded she had not.[252] At that point, counsel asked if Adams recalled providing sworn testimony in cases over the last few years.[253] He proceeded to question Adams about her the contradictions between her testimony and depositions in this case and a deposition taken in 2005 in relation to a federal case in which Adams was involved.[254] Each question regarding Adams name, prior addresses, and personal background was relevant to Adams' credibility.

When Adams denied having been known by the names "Doris E. Vickers" and "Doris E. Adams," counsel presented her with a Maryland court document from 1995 which included the name "Doris E. Vickers" and an address, "136 New Bridge Road, Rising Sun, Maryland."[255] When Adams did not clearly admit or deny being the person whose information was listed on the document, counsel began questioning her as to whether she had been involved in lawsuits over the last 15 years, pursuant to her deposition responses in this case that she had not been a party to or involved in lawsuits

[249] That the Aidoos limited their address of Adams' prior litigation to their direct examination of her additionally distinguishes this case from *Outley*; commentary on Adams' litigation history is absent from their opening statements and summation.
[250] Tr. (June 23, 2010) at 73.
[251] *Id.*
[252] *Id.*
[253] *Id.*
[254] *See id.* at 74-82
[255] *Id.* at 91-92.

over the past 10 and 15 years.[256] When Adams responded she could not respond "yes or no,"[257] counsel asked her to read aloud a portion a transcript of her deposition in this case, wherein her responses to the same questions were "No, not that I can think of," and "Not that I can readily remember."[258] Counsel also confronted Adams with the transcript of a deposition taken in a case she had recently filed against Calvarese Farms, in which her answers to the same questions were also "no."[259]

At that point, counsel asked Adams whether it was true she had been involved in a number of lawsuits, or about 24, over the past 15 years.[260] Adams did not admit or deny the truth of the statement.[261] Counsel returned to the issue of Adams' prior names and addresses and impeached Adams using testimony from her 2005 deposition, to show Adams resided at the New Bridge Road address.[262] He further impeached Adams to show she filed a number of lawsuits while residing at the New Bridge Road address in the 1990's by presenting Adams with documents from multiple lawsuits and asking if they refreshed her recollection.[263] Each time, Adams denied that the document refreshed her recollection. However, Adams did eventually admit she changed her name from "Doris Evelyn Adams" to "Ashley Taylor Adams."[264]

Counsel repeated the process for lawsuits filed in 2004 using an address in Newark, Delaware.[265] Adams admitted she recalled one case.[266] Counsel framed his

[256] *Id.* at 93-94.
[257] *Id.* at 94.
[258] *Id.*
[259] *Id.* at 95-96.
[260] *Id.* at 96.
[261] *Id.*
[262] *Id.* at 97-98.
[263] *Id.* at 98-103.
[264] *Id.* at 102.
[265] *Id.* at 103-06.
[266] *Id.* at 105.

question about a second case by reciting the injuries claimed in its complaint.[267] Adams promptly objected on the basis of relevance, and the Court sustained the objection and advised the jury:

> Ladies and gentlemen of the jury, because I have sustained the objection and because what the attorneys say or the persons testifying themselves when they're acting as counsel, say, is not evidence, you should disregard any of the information that was in that question to which the objection was sustained, as you should to any evidence that I sustain an objection regarding.[268]

Counsel continued to ask Adams whether she recognized various cases in which she was involved.[269] Adams admitted to participating in several of them.[270]

Unlike in *Outley*, where the defense's primary purpose in introducing the plaintiff's prior litigation was to impress upon the jury that the plaintiff was claims-minded,[271] here, the Aidoos' primary purpose in introducing evidence of Adams' prior litigation was to impress upon the jury that Adams was not a credible witness because her statements from her trial testimony and depositions from this case conflicted with depositions from other cases, information contained within documents from other cases, and the existence of documentation of other cases. The Aidoos laid the foundation for impeachment that the City failed to set forth in *Outley*.[272] Similar to the case in *Barbee*,[273] Adams was evasive about prior lawsuits in her deposition, as well as at trial. Having presented only a records keeper and herself as witnesses, Adams was her sole witness to her story of the events that were the subject of the litigation. Therefore, her

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[267] *Id.* at 106.
[268] *Id.* at 108.
[269] *See id.* at 109-119.
[270] *See id.*
[271] *Outley v. City of New York*, 837 F.2d 587, 595 (2d Cir. 1988).
[272] *Id.* at 593.
[273] 323 F. App'x 159 (3d Cir. 2009).

credibility was a crucial aspect of the case, and the Court was compelled provide the Aidoos broad discretion to impeach Adams' credibility.[274] While the Court will not go so far as to call Adams' argument meritless,[275] the Court finds that it did not abuse its discretion in admitting evidence of Adams' prior litigation at trial, because it was offered for the purpose of impeaching Adams and not for character or propensity.

B. Motion for New Trial on Damages or Remittitur

The power of a court to order remittitur or grant a new trial because a verdict is excessive is well established.[276] However, Delaware courts are reluctant to "disturb a jury's verdict on the ground of excessiveness where the damages are unliquidated, as a tort action for personal injuries, and where there is no fixed measure of mathematical certainty."[277] The rationale for such reluctance is that jury's view expresses the view of the community and should not be set aside absent clear error.[278] A jury's verdict is presumed correct and just unless it is "so clearly excessive as to indicate it was the result of passion, prejudice, partiality, or corruption, or it is clear that the jury disregarded the evidence or the rules of law."[279] In other words, the damages awarded by the jury must be "flagrantly outrageous and extravagant"[280] and shock the Court's sense of justice.[281] However, the Court may not substitute its own judgment for that of the jurors.[282]

The jury's award to the Aidoos in this case does not shock the Court's conscience or sense of justice, because it is not clearly excessive in light of the injuries about which

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[274] *See Payne v. Home Depot, Inc.*, 2007 WL 4577624, at *2 (Del. Super. Dec. 14, 2007).
[275] *Barbee v. Se. Pa. Transp. Auth.*, 323 F. App'x 159, 162 (3d Cir. 2009).
[276] *Lacey v. Beck*, 161 A.2d 579, 580 (Del. Super. 1960).
[277] *Id.*
[278] *Id.*
[279] *Id.*; *Novkovic v. Paxon*, 2009 WL 659075, at 81 (Del Super. Mar. 16, 2009).
[280] *Lacey v. Beck*, 161 A.2d 579, 580 (Del. Super. 1960).
[281] *Id.*
[282] *Id.*

the Aidoos provided evidence that they suffered. The jury was aware that, at the time of trial, the Aidoos' legal fees amounted to nearly $80,000.00.[283] The jury was also aware that the events that were the subject of the Aidoos' allegations began to take place early in 2007, and that the Aidoos began defending the claims for which Adams sought $21 million in December, 2007.[284] The Aidoos testified about the stress Adams caused them, both by filing and carrying out the instant action, as well as by her actions toward the Aidoos and their family. Because the Aidoos presented evidence to the jury that they expended money to defend against Adams' claims, and that they suffered emotional distress, mental anguish, nervousness, embarrassment, and insult[285] due to Adams' conduct, the Court cannot conclude the verdict is the result of passion, prejudice, partiality, corruption, or disregard for the evidence or rules of law. Therefore, the Court will not disturb the jury's finding, and Adams' Motions for New Trial on Damages or Remittitur are **DENIED**.

III. CONCLUSION

For all the foregoing reasons, Adams' Motions for New Trial, a New Trial on Damages, or Remittitur are **DENIED**.

IT IS OS ORDERED.

/s/
M. Jane Brady

[283] Tr. (June 22, 2010) at 116.
[284] Tr. (June 16, 2010) at 95.
[285] *See* Tr. (June 23, 2010) at 286-88; DEL. P.J.I. CIV. § 22.12; DEL. P.J.I. CIV. § 22.10.