No. 22-CV-595

IN THE

DISTRICT OF COLUMBIA COURT OF APPEALS

FRENNIEJO NIXON,

Appellant,

v.

GIOVANNI IPPOLITO, et al.

Appellees.

APPEAL FROM THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

(Hon. Hiram E. Puig-Lugo)

BRIEF OF APPELLEE ABRON W. DEER

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D.C. COURT OF APPEALS RULE 28(a)(2)(A) STATEMENT

Pursuant to D.C. Ct. App. Rule 28(a)(2)(A), below is a list of the parties and their counsel in the trial court and in this appellate proceeding:

Parties

Frenniejo D. Nixon, Plaintiff/Appellant
Giovanni Ippolito, Defendant/Appellee
Anna Chayka, Defendant/dismissed Appellee
Abron W. Deer, Defendant/Appellee
Gustave K. Etile, Defendant/Appellee
National General Assurance Company, Defendant/Appellee
GEICO Casualty Insurance Company, Defendant//Third Party Plaintiff/Appellee
Tyrese White, Third Party Defendant
Donnita Bennett, Third Party Defendant

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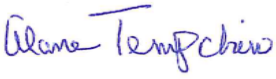

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I. Jurisdiction.

This case is an appeal from Superior Court of the District of Columbia Judge Hiram Puig-Lugo's final Order entered on July 22, 2022 denying Appellant Frenniejo Nixon's Motion for Reconsideration and Alter or Amend a Judgment. In that Motion, Appellant asked the trial court to reconsider its June 13, 2022 Order granting summary judgment to all of the defendants, resulting in the dismissal of the case.[1] *See* App. 102-108, 160-163, 724-733.[2]

Pursuant to D.C. Code §11-721(a)(1) and (b), this Court has jurisdiction to hear this appeal as to the June 13, 2022 Order and/or the final Order denying the request to alter and amend the Order granting summary judgment to the extent Appellant's motion was filed pursuant to D.C. Super. Ct. R. Civ. P. 59(e). *See* App. at 102-108, 160-163.

[1] In Ms. Nixon's jurisdictional statement, Appellant erroneously stated that she appeals from a final order in which the trial court granted the Appellees' Motions to Dismiss. The dispositive motions at issue were motions for summary judgment filed pursuant to D.C. Super. Ct. R. Civ. P. 56. No parties filed a Motion to Dismiss pursuant to Super. Ct. R. Civ. P. Rule 12. See Appellant's Brief, at 1 and App. at 17-51.

[2] On January 13, 2023, the Court struck the Appellant's original Brief and Appendix filed on 12/22/22 and deemed the Supplemental Brief and Supplemental Appendix filed on 1/13/23 as replacements filings for the Appellant. For ease of reference, the replacement filings shall be simply referred to as the Appellant's Brief and Appendix ["App."]. The Supplemental Appendix filed by Appellee Geico is referred to as "Supp. App."

However, "[a] motion for reconsideration, by that designation, is unknown to the Superior Court's Civil Rules." *Fleming v. District of Columbia*, 633 A.2d 846, 848 (D.C. 1993). To the extent Ms. Nixon sought reconsideration under D.C. Super. Ct. R. Civ. P. 60(b) [on information and belief, erroneously referred to as D.C. Super. Ct. R. Civ. P.7(j)], this Court has no jurisdiction to review the June 13, 2022 Summary Judgment Order as the Notice of Appeal filed on August 9, 2022 was untimely. *See* App. at 113-114. This is because "[a] timely motion pursuant to Rule 59(e) tolls the 30-day period for filing an appeal from the court's original order; a Rule 60(b) motion does not. *See* D.C. App. R. 4 (a)(2) . . ." *Id.* at 848-849.

II. The Issues Presented for Review.

1. Did the trial court err in granting summary judgment to the defendants?

2. Did the trial court err in denying the Motion to Reconsider and Alter or Amend the June 13, 2022 Order granting summary judgment?[3]

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[3] Ms. Nixon's Notice of Appeal only references the Order entered on July 22, 2022 as the final appealable Order or judgment. App. at 724.Thus, it is unclear what Order is being appealed. Her jurisdictional statement references both the summary judgment order and the order denying reconsideration. Appellant's Brief, at 1. In preparing the Notice of Appeal, Appellant used Form 1. Question A(1) of that standard form and Appellant's response state:

> 1. Date of entry of judgment or order appealed from **(if more than one judgment or order appealed, list all):**
>
> 7/22/22

III. Statement of the Case.

This case arises from Appellant Frenniejo Nixon's claim of personal injuries allegedly caused by a July 4, 2018 motor vehicle accident on I-295 in the District of Columbia. App. at 1-12. Defendants below, Gustave Etile, Abron Deer, Giovanni Ippolito, Anna Chayka and GEICO,[4] moved for summary judgment on the ground that Plaintiff had failed to present a triable genuine issue of material fact in dispute, and that as a matter of law the Defendants were entitled to summary judgment pursuant to Super. Ct. R. Civ. P. 56. App. at 17-51, The trial court agreed, and in a detailed seven-page decision the court set forth its legal and factual bases for granting the appellees' Motions.[5] App. at 102-108. In this Order, the trial court cites

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Id.(emphasis added). The form also states: **"ATTACH A COPY OF THE ORDER, JUDGMENT OR DOCKET ENTRY FROM WHICH THIS APPEAL IS TAKEN."** *Id.* at 725. (emphasis in the original). The only Order attached to the form Notice was the July 22, 2022 Order. *App.* at 727-730. "An appellant should take pains to be precise in this regard [*i.e.*, noting an appeal]. . . . [I]t may be that in litigation two or more potentially appealable orders will be entered. In such a case, the notice of appeal serves to indicate the one in fact appealed." *Perry v. Sera*, 623 A.2d 1210, 1215 (D.C. 1993) (citation omitted).

[4] Although technically Defendant National General Assurance Company did not actually move for summary judgement, in its Opposition, National General Assurance adopted GEICO's Motion and argued that if GEICO is granted summary judgment, National General Assurance should also be granted summary judgement on the same grounds. Thus, in substance, the "Opposition" was the functional equivalent of a motion for summary judgment.

[5] Only Mr. Ippolito and Ms. Chayka requested a hearing on their motion. App. at 25. GEICO, Mr. Deer and Mr. Etile did not request a hearing on their motions for summary judgment. App. at 27-48.

to the parties' deposition testimony by page and line number in support of its conclusions. The court also carefully reviewed the Appellees' Motions and the Oppositions filed by the Ms. Nixon, often citing portions of the Appellant's pleadings and specifically analyzing Appellant's claim that numerous material facts were in dispute. *See* App. at 105-106.

After the exhaustive review of the Motions, Oppositions and the supporting deposition testimony, the trial court reached the conclusion that the "Plaintiff failed to present sufficient evidence upon which a jury could reasonably rely to find that Defendant Etile, Deer, or Ippolito caused the accident. At most, Plaintiff has only provided speculative testimony of the possibility of number and order of impacts." App. at 106. Further, the court found that the number of impacts which may or may not have occurred provided the court no information as to the negligence of any Defendant. App. at 107. In essence, the court found that Plaintiff's various theories of liability amounted to nothing more than pure speculation and that she failed to meet her burden of proving that a reasonable jury could find that any of Defendants' acts or omissions proximately caused an injury to the Plaintiff. App. at 106-107.

Ms. Nixon then requested that the trial court reconsider its June 13, 2022 Order granting summary judgment and alter or amend that Order. She argued that the trial erroneously granted summary judgment as a matter of law and that the court

should have accept her cited factual disputes, should have made numerous factual inferences in her favor, and that any proof of negligence, no matter how scant, was sufficient to defeat summary judgment. App. at 114-123. Moreover, for the first time Plaintiff argued that her case should proceed to trial under a theory of *res ipsa loquitur*. App. at 118. Finally, without any factual basis, Ms. Nixon accused the trial court of ignoring the submitted deposition testimony of the parties and a witness when it decided the Motions. App. at 120 (stating "the Court here chose to overlook deposition transcript citations and specifically the testimony of the eyewitness").

On July 22, 2022, the trial court denied Ms. Nixon's Motion to Reconsider and Alter or Amend a Judgment finding that Ms. Nixon essentially merely restated the arguments that the court had previously rejected. App. at 162. Moreover, the trial court found that:

> Plaintiff still does not point to any specific evidence of responsibility or the cause, order, and number of impacts that occurred. Instead, Plaintiff argues different theories of liability and states that the jury could choose an interpretation of *any* theory to hold *any* Defendant liable. What Plaintiff characterizes as an inference of negligence is nothing more than speculation. As previously found by the Court, such speculative testimony is insufficient to support a finding of negligence. Therefore, the Court sees no reason to disturb its prior ruling granting summary judgment in Defendants' favor.

Id.

On August 9, 2022, Ms. Nixon filed a Notice of Appeal appealing the July 22, 2022 Order denying her Motion to Reconsider and Alter or Amend a Judgment. App. at 724-730. The Notice did not specify an intent to appeal the June 13, 2022 Summary Judgment Order. *Id.*

As discussed below, the trial court's decision to grant summary judgment to Appellee Abron Deer, as well as the other appellees, was legally correct. The court's reasoning was sound and based on the undisputed material facts in the record. The court made no credibility determinations of the witnesses and took the evidence at face value. In so doing, the court found that even in drawing all factual inferences in the favor of Ms. Nixon, she simply failed to present sufficient evidence that Mr. Deer was negligent that would entitle her to a jury trial. Accordingly, there was no reversible legal error, and the judgments of the trial court should be affirmed.

IV. Statement of the Facts.

Per the Complaint, this action arises out of multi-vehicle accident occurring on July 4, 2018 on I-295 in the District of Columbia. Appellant Frenniejo Nixon contends that Appellee Tyrese White[6] was operating the vehicle directly behind the vehicle in which she was a passenger. She further alleges that the vehicle operated

[6] Tyrese White was operating a 2000 Pontiac Bonneville. App. at 584.

by Mr. White struck the vehicle she was in and that as result of the impact she sustained injuries and damages. App. at 1-12 and specifically paras. 13, 16 and 89.

At the time of the motor vehicle accident, Ms. Nixon was a passenger in the vehicle operated by Appellee Gustave Etile.[7] App. at 187-188. There was one impact to the rear of the vehicle in which Ms. Nixon was a passenger. App. at 195, 348-349, 353, 401. Ms. Nixon has no knowledge of other collisions involved in the accident other than the single boom she felt to the vehicle she was occupying, and Ms. Nixon also has no knowledge of the sequence of impacts behind her. App. at 300-301. Defendant Etile did not hear any see or hear any impacts prior to his vehicle being struck in the rear. App. at 355-356.

There is no evidence that Appellee Abron Deer's vehicle[8] or that Appellee Giovanni Ippolito's vehicle made contact with Mr. Etile's vehicle[9] where Plaintiff was a passenger. There was one impact between the car ahead of Mr. Deer's vehicle and one impact to the rear of Mr. Deer's vehicle. App. at 508, 510-511. Mr. Deer has no knowledge of the vehicle ahead of him being pushed into anything else. App. at 528.

[7] A dark gray Infiniti M35x. App. at 345.
[8] A black Jeep Grand Cherokee. App. at 505.
[9]A black Volkswagon Tiguan SUV. App. at 420.

Appellee Ippolito was the last vehicle in the line of vehicles involved in the accident. App. at 423. Appellee Ippolito had no recollection if after he struck the vehicle ahead of him, whether that vehicle moved into any other vehicle. App. at 437. Anna Chayka, a passenger in the vehicle operated by Mr. Ippolito, does not know if the SUV ahead of Appellee Ippolito's vehicle was knocked forward as a result of Appellee Ippolito striking it in the rear or whether the SUV hit any other vehicle. Supp. App. at 7, 10-12.

The undisputed testimony is that not a single witness supplied any evidence that Deer's vehicle pushed Mr. White's vehicle into the rear of the vehicle in which Ms. Nixon was a passenger. Ms. Nixon has no knowledge of other collisions involved in the accident other than the single boom she felt to the vehicle she was occupying App. at 194 (lines10-22), 195 (lines 1-14), 300 (lines 7-22), 301 (lines 1-4), and she also has no knowledge of the sequence of impacts behind her. App. 300 (lines 18-22)-301 (lines 1-4)). Defendant Etile did not hear any see or hear any impacts prior to his vehicle being struck in the rear. App. at 355-356. Mr. Deer has no knowledge of the vehicle ahead of him being pushed into anything else. App. at 528. Giovanni Ippolito had no recollection if after he struck the vehicle ahead of him, whether that vehicle was pushed or moved into any other vehicle. App. at 437. Ms. Chayka did not see any accidents ahead of her vehicle either before or after her vehicle struck the vehicle directly in front of her. Ms. Chayka does not know if the

SUV ahead of their vehicle was knocked forward at all as a result of Giovanni Ippolito striking it in the rear or whether the SUV hit any other vehicle. See App. at 129 and Supp. App. at 1 (lines 15-19); 11(lines 21-22)- 12 (lines 1-6).

Moreover, witness Salvatore Ippolito's deposition testimony does not create a dispute of fact, and once again, Ms. Nixon's Brief blatantly misrepresents Salvatore Ippolito's testimony to this Court. Appellant argues that Deer's vehicle was behind the White vehicle; White's vehicle that was directly behind the vehicle she was in; that Giovanni Ippolito was operating the vehicle directly behind Mr. Deer; and that Giovanni Ippolito's and Mr. Deer's vehicles collided. Appellant's Brief at 9. However, then she argues that Mr. Deer's vehicle was the "first SUV in the chain of vehicles involved initiated the collision" citing to Salvatore Ippolito's testimony. Appellant's Brief at 9 and App. at 665-666.

Salvatore Ippolito clearly testified that the large SUV that may have initiated the collisions at issue **was not** the vehicle involved in the collision between his brother, Giovanni Ippolito, and Mr. Deer. Salvatore testified as follows:

> Q. Okay. Do you know if that car had -- if the car your brother hit had been involved in another accident or had hit anything else or been hit by anything else before your brother hit it?
> A. As I said, my eyes and my focus was just on my brother.

> Q. Okay. The SUV that you saw, the initial SUV, do you know -- was that the same car your brother hit or was that somewhere farther up the road?
> A. That was far from my brother. That was probably the first car, then that make the whole accident I believe.

App. at 675.

Giovanni Ippolito was three or four cars ahead of Salvatore at the time of the accident. Salvatore did not know how far ahead the large SUV was that he described above – Salvatore only said that he and his brother's vehicle were "far away" from the SUV. App. at 668, 669, 675. In contrast, he did see the vehicle that Giovanni hit, which was directly in front of Giovanni's vehicle. App. at 669, 674. However, Salvatore did not recall whether the car ahead of Giovanni's vehicle hit any vehicles either before or after Giovanni struck it. App. at 675, 681. In fact, Salvatore could not even recall if the vehicle Giovanni hit was a car, SUV or truck or give any other description of that vehicle. App. at 674. Salvatore clearly was testifying about **two different vehicles** – one was the large SUV far ahead of Salvatore and the other was the vehicle directly ahead of Giovanni with which Giovanni collided that was operated by Mr. Deer. There is zero factual basis for the Appellant's contention that Mr. Deer was operating the large SUV which caused the chain of collisions described by Salvatore Ippolito.

V. Summary of Argument.

Appellant has failed to show that there any genuine issues of material fact in dispute and that she is entitled to the denial of summary judgment as a matter of law. Her arguments are based on pure speculation regarding the happening of the accident and possible theories of liability, none of which she has proven. Even drawing all factual inferences in her favor, she still has not presented a prima facie case of negligence. Therefore, the decision to grant summary judgment to Mr. Deer, as well as the other appellees, was not legally erroneous and the denial of the Motion to Reconsider and Alter or Amend a Judgment was not in err or an abuse of discretion.

VI. Legal Argument.

A. Standard of Review.

On appeal, this court reviews *de novo* the trial court's grant of summary judgment. *E.g., Clampitt v. American University*, 957 A.2d 23, 28 (D.C. 2008). "Our standard of review is the same as the trial court's standard for initially considering a party's motion for summary judgment; that is, summary judgment is proper if there is no issue of material fact and the record shows that the moving party is entitled to judgment as a matter of law." *Id*. (citing Super. Ct. Civ. R. 56 (c))

"'In reviewing a trial court order granting a summary judgment motion, [the Court of Appeals] conduct[s] an independent review of the record, and

[its] standard of review is the same as the trial court's standard in considering the motion for summary judgment.'" *Bruno v. Western Union Fin. Servs., Inc.*, 973 A.2d 713, 717 (D.C. 2009) (quoting *Critchell v. Critchell*, 746 A.2d 282, 284 (D.C. 2000)). Summary judgment is properly granted where "'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.'" *Bruno*, 973 A.2d at 717 (quoting Super. Ct. Civ. R. 56 (c)). The party moving for summary judgment has the "burden of demonstrating clearly the absence of any genuine issue of fact . . . ." *Bruno*, 973 A.2d at 717 (quotation marks omitted). Once that showing is made, "the burden shifts to non-moving party to show the existence of an issue of material fact," *id*. (quotation marks omitted), which requires her to "'produce at least enough evidence to make out a prima facie case in support of [her] position.'" *Id*. (quoting *Joeckel v. Disabled Am. Veterans*, 793 A.2d 1279, 1281-82 (D.C. 2002)). Thus, in opposing the appellees' motions for summary judgment, Ms. Nixon must "'show that [she has] a plausible ground for the maintenance of the cause of action.'" *Bruno*, 973 A.2d at 717 (quoting *Nader v. De Toledano*, 408 A.2d 31, 48 (D.C. 1979)); *see also Young v. U-Haul Co.*, 11 A.3d 247, 249 (D.C. 2011). The moving party's factual allegations must be countered by the non-moving party with specificity, Super. Ct. Civ. R. 56(e), and conclusory allegations, theoretical speculations and unsupported assumptions

are insufficient to raise a genuine issue of fact and not entitled to any weight. *Ferguson v. District of Columbia*, 629 A.2d 15, 19, 20 (D.C. 1993) (citation omitted).

Additionally, "Rule 59 motions that claim an error of law are reviewed *de novo*, *see e.g. Joeckel v. Disabled Am. Veterans*, 793 A.2d 1279, 1281 (D.C. 2002)." *Callahan v. 4200 Cathedral Condo.*, 934 A.2d 348, 353 (D.C. 2007) (citing *Puckrein v. Jenkins*, 884 A.2d 46, 60 (D.C. 2005) and *Nichols v. First Union Nat'l Bank*, 905 A.2d 268, 272 n.2 (D.C. 2006)). Although ordinarily review of denial of a Rule 59 (e) motion is for abuse of discretion, *Associated Estates LLC. v. BankAtlantic*, 164 A.3d 932, 936 (D.C. 2017), this Court's "'review is *de novo* when the [trial] court considers and rejects a legal argument.'" *M.D. v. R.W.*, 194 A.3d 374, 379-380 (D.C. 2018) (quoting *Zuza v. Office of the High Representative*, 857 F.3d 935, 938 n.3 (D.C. Cir. 2017). Where the trial court's ruling on a motion under Rule 59 involves a question of law, appellate review is *de novo*, while to the extent the ruling is based on questions of fact, it is ordinarily reviewed for abuse of discretion." *HSBC Bank USA, N.A. v. Mendoza*, 11 A.3d 229, 233-34 (D.C. 2010) (internal quotation marks and alterations omitted).

However, Rule 59(e) is not designed "to enable a party to complete presenting [its] case after the court has ruled against [it]." *Dist. No. 1 -- Pac. Coast Dist., Marine Eng'rs' Ben. Ass'n v. Travelers Cas. & Sur. Co.*, 782 A.2d 269, 278 (D.C. 2001)

(citations and internal quotations omitted)."The Rule 59 (e) motion may not be used to . . . raise arguments or present evidence that could have been raised prior to the entry of judgment." *id*. (citations and internal quotations omitted). The trial judge was not required to consider a new argument and new facts that Ms. Nixon could not justify failing to present to the court earlier.

B. Appellant Has Not Shown that the Trial Court's Grant of Summary Judgment was Legally Erroneous.

1. Appellant Has Failed to Establish that Genuine Issue of Material Fact Was In Dispute Requiring the Trial Court to Deny Summary Judgment as a Matter of Law.

Ms. Nixon asserts that the trial court erred as a matter of law in granting summary judgment on the ground that there were genuine disputes of material fact which precluded judgment for the Appellees. However, Ms. Nixon merely attempts to transform a lack of evidence into a dispute of fact based on various conclusory and speculative arguments about the accident.

In Count III of her Complaint, Ms. Nixon alleges that Appellee "Deer's choices in this matter constitute negligent operation of a motor vehicle justifying an allowance of monetary damages against him." App. at 11. This however is not the standard for proving a claim of negligence.

To prove a *prima facie* case of negligence, the plaintiff must prove that the defendant owed a duty, and the breach of that duty proximately caused the plaintiff's injuries. *Wash. Metro. Area Transit Auth. v. Barksdale-Showell*, 965 A.2d 16, 24

(D.C. 2009). At all times it is the Appellant's burden to prove a causal relationship between the deviation in the standard of care and the alleged injury. *Wash. Metro Transit Authority v. Jeanty*, 718 A.2d 172, 174 (D.C. 1998). "A simple breach of duty having no causal connection with the injury cannot produce legal responsibility. A plaintiff must prove both negligence and causation." *Twyman v. Johnson*, 655 A.2d 850, 852 (D.C. 1995) (citations and internal quotations omitted). Where there is no logical way to determine from the evidence the proximate cause of the accident, the lack of evidence as to negligence and proximate cause leaves one to speculate as to what happened. However, the trier of fact is not permitted to guess. *S. Kann's Sons Corp. v. Hayes*, 320 A.2d 593, 595 (D.C. 1974). "In order to maintain a successful action in tort there must be proof of something more than the mere happening of an accident causing injury." *Id.* Yet, that is all that Ms. Nixon has presented.

The key factor that Ms. Nixon failed to establish is proximate cause. Ms. Nixon concedes as undisputed there was one impact to the vehicle she was occupying. *Compare* App. at 18 (paragraph (a)) *and* App. at 55 (paragraph (a)). Nixon admits she has no knowledge of the order or sequence of impacts behind her. App. at 301. Appellant further admits as undisputed that Mr. Etile has no knowledge of any impacts **prior** to the impact to the rear of his vehicle. App. at 28 (paragraph 3), 68 (paragraph 3), 356-67. Mr. Etile only heard or saw impacts involving the

vehicles behind him **after** his vehicle was struck in the rear. Thus, any collision after the single impact to Mr. Etile's vehicle are irrelevant to Ms. Nixon's claims of injury.

Mr. Deer only has knowledge of an impact to the rear of his vehicle and the impact with vehicle ahead of him. App. 548-549. Mr. Deer has no knowledge that vehicle ahead of him was pushed into anything else. App. at 28, 525, 528, 548-49. The vehicle operated by Appellee Giovanni Ippolito was the last vehicle in the line of vehicles involved in the accident. Appellee Ippolito admits he struck the vehicle ahead of him, but did not know whether the vehicle he contacted moved forward into any other vehicle, and he did not see or hear any collisions ahead of him. App. 29, 432, 449, 450. Anna Chayka, a passenger in the vehicle operated by Appellee Ippolito, did not see or hear any collisions before or after Giovanni Ippolito struck the vehicle ahead of him. Ms. Chayka does not know whether the SUV in front of Appellee Ippolito was knocked forward or whether it struck any other vehicle. App. at 129 and Supp. App. 10-12. Mr. White, who was allegedly operating the vehicle behind the Appellant, blacked out and does not know what happened. See Appellant's Brief, at 3. Therefore, no inferences can be drawn from Mr. White's testimony.

Further, as discussed above, Salvatore Ippolito witnessed the his brother, Giovanni strike the rear of Mr. Deer's vehicle, but Salvatore did not know the type of vehicle that his brother struck. As Salvatore testified, the large SUV that he saw

in the distance, far away from his brother's vehicle, was not the vehicle Giovanni Ippolito struck, which was operated by Mr. Deer. App. 131-132, 665, 674, 675. Moreover, Salvatore has no knowledge of whether Mr. Deer's vehicle hit any other vehicle either **before or after** Giovanni Ippolito struck Mr. Deer's vehicle. App. at 681. Thus, Salvatore Ippolito's testimony does not create a material fact in dispute.

It is undisputed that Giovanni struck the rear of the vehicle ahead of him, which Salvatore merely confirmed. However, no witness testified that any impact by a vehicle behind Ms. Nixon caused a collision with the vehicle in which she was a passenger. No favorable inferences can be drawn from Salvatore Ippolito's testimony to establish that Mr. Deer was a proximate cause of any injury claimed by Ms. Nixon.

Ms. Nixon's contention that Salvatore testified that Deer's vehicle was the large SUV described by Salvatore is a total misrepresentation of Salvatore Ippolito's testimony that is only intended to mislead the court. Nothing in Salvatore's testimony creates a material factual dispute requiring the court to reverse the summary judgment ruling in favor of Deer. Appellant's theory of liability against Mr. Deer is totally unsupported by Salvatore Ippolito's testimony, as Salvatore did not see Mr. Deer's vehicle collide with any vehicle before or after Giovanni Ippolito struck Deer's vehicle. Therefore, Ms. Nixon's argument that Salvatore's testimony creates a genuine issue of material fact for trial must be rejected.

Simply put, Ms. Nixon has not presented evidence that supports an inference that Mr. Deer's negligence cause injuries to Ms. Nixon. Appellant offers no evidence that Mr. White's vehicle was pushed forward by a rear impact. She merely offers speculative theories on how the accident happened and who caused the accident. Mere speculation is no sufficient to defeat summary judgment. *Boulton v. Inst. of Int'l Educ.*, 808 A.2d 499, 504 (D.C. 2002) (holding that where "there was no evidence of a 'causal link' other than 'speculation' [t]hat speculation was not enough to forestall summary judgment"); *Musa v. Continental Ins. Co.*, 644 A.2d 999, 1002 (D.C. 1994) (holding conclusory allegations on the part of the non-moving party are insufficient to stave off the entry of summary judgment). Further. "'[t]he mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient'" to defeat a motion for summary judgment. *Graff v. Malawer*, 592 A.2d 1038, 1041 (D.C. 1991) (citations omitted).

Although in its de novo review, the Court must draw all favorable inferences from the evidence, even under this lenient standard Ms. Nixon has failed to demonstrate any genuine issue of material fact. Therefore, this Court must affirm the trial court's decision to grant summary judgment to the Appellees.

2. Appellant May Not Proceed on a Theory *of Res Ipsa Loquitur*.

Appellant may not proceed on a theory of *res ipsa loquitur* against Mr. Deer. In her Complaint, Ms. Nixon alleges that Mr. Etile, Mr. White, Mr. Deer and Mr.

Ippolito's were negligent in the operation of their vehicles, and she seeks joint and several liability against multiple parties for damages. See App. 1-12.

Under the theory of *res ipsa loquitur*, three conditions must be established to make a prima facie case, which have been described by Professor Prosser as follows:

> "[the] conditions . . . necessary for the application of the principle . . . are as follows: (1) the event must be of a kind which ordinarily does not occur in the absence of someone's negligence; (2) it must be caused by an agency or instrumentality within the exclusive control of the defendant; (3) *it must not have been due to any voluntary action or contribution on the part of the plaintiff*." W. PROSSER, HANDBOOK OF THE LAW OF TORTS § 39, at 214 (4th ed. 1971). [Emphasis added.]

Sullivan v. Snyder, 374 A.2d 866, 867-868 (D.C. 1977). Thus, to invoke *res ipsa loquitur* it must be shown that the defendant had exclusive control or management of the thing causing the injury. *Hutchins v. Rock Creek Ginger Ale Co.*, 194 A.2d 305, 306 (D.C.1963). If multiple defendants are involved, the plaintiff must show "joint control" of the instrumentality causing injury. *See Greet v. Otis Elevator Co.*, 187 A.2d 896, 898 (D.C. 1963). It is thus well-settled that:

> To satisfy the exclusive-control requirement, the evidence adduced must demonstrate that no third-party or other intervening force contributed more probably than not to the accident. *Holzhauer*, 346 Md. at 337, 697 A.2d at 93; *Johnson*, 245 Md. at 593, 226 A.2d at 885. We iterated in *Holzhauer* that a res ipsa inference of the defendant's

> negligence is not permissible where an intervening force may have precipitated the accident. *Holzhauer*, 346 Md. at 337, 697 A.2d at 93.

District of Columbia v. Singleton, 425 Md. 398, 408, 41 A.3d 717, 723 (2012).[10]

Therefore it follows that "[t]he doctrine of res ipsa loquitur is not available to fix responsibility when any one of multiple defendants, wholly independent of each other, might have been responsible for the injury." *Esco Oil & Gas v. Sooner Pipe & Supply Corp.*, 962 S.W.2d 193, 195 (Tex. 1998) (citations omitted). "[G]enerally it has been held that *res ipsa* is not applicable against multiple defendants where it is not shown that their liability was joint or that they were in joint or exclusive control of the injury producing factor, or where the wrongdoer, among several possible, was not identified." *Joffre v. Canada Dry Ginger Ale, Inc*., 158 A.2d 631, 637 (Md. 1960); *Eannottie v. Carriage Inn*, 799 N.E.2d 189, 196 (Ohio 2003) (holding even though the doctrine of *res ipsa loquitur* can be applied to multiple defendants, all defendants collectively must have exclusive control of the instrumentality that caused the injury for *res ipsa loquitur* to apply.)

Here, Ms. Nixon alleges that four operators of independent vehicles may have or did cause her injuries. Therefore, she may not proceed under the theory of *res ipsa*

[10] D.C. courts may rely on Maryland common law on the point because the District of Columbia derives its common law from the state of Maryland. *See Hill v. Maryland Casualty Co.*, 620 A.2d 1336, 1337 n.3 (D.C. 1989); *Walker v. Independence Federal Sav. & Loan Ass'n*, 555 A.2d 1019, 1022 (D.C. 1989).

loquitor as she cannot establish the exclusive control element of that doctrine. She in fact alleges multiple theories of liability against the various defendants/appellees. Thus, Ms. Nixon cannot show that the decision to grant summary judgment if she were to proceed under the doctrine of *res ipsa loquitur* was legally erroneous.[11]

C. Appellant Has Not Shown that the Trial Court Erred in Denying the Motion to Reconsider and Alter or Amend a Judgment.[12]

The trial court's decision to deny Ms. Nixon's Motion to Reconsider and Alter or Amend a Judgment was not legally erroneous. The trial court had broad discretion when considering whether to grant or deny this Motion. *Wolff v. Wash. Hosp. Ctr*., 938 A.2d 691, 694 (D.C. 2007) (holding motions under Rule 59 (e) are committed to the trial court's broad discretion). In her Motion to Reconsider, Ms. Nixon essentially repeated her previous unpersuasive arguments and present no facts or law to show that the trial court's committed legal error in granting summary judgment. Further, Appellant points to no legal error by the trial court in denying her Motion to Reconsider nor does she seem to dispute the specific findings in the July 22, 2022. She merely argues that summary judgment should not have been granted .

[11] Notably, Appellant did not argue that she could proceed under a theory of *res ipsa* until she sought reconsideration of the summary judgment order. App. 118.
[12] Although Appellant's Notice of Appeal indicates she is appealing the July 22, 2022 denial of her Motion to Reconsider, her brief seems to only address the June 13, 2022 Summary Judgment Order. In abundance of caution, the July 22, 2022 Order is also address herein.

However, it is well known that Rule 59(e) is not designed "to enable a party to complete presenting [its] case after the court has ruled against [it]." *Dist. No. 1 -- Pac. Coast Dist., Marine Eng'rs' Ben. Ass'n v. Travelers Cas. & Sur. Co.*, 782 A.2d 269, 278 (D.C. 2001) (citations and internal quotations omitted). In addition, a motion based on Rule 59(e) cannot be utilized for the purpose of raising arguments or presenting evidence that could have been raised prior to the entry of judgment. *Id.* Rather, Rule 59(e) is intended "to correct manifest errors of law or fact" or to prevent "manifest injustice" *Id*. at 278-279 (citations and internal quotations omitted).

Ms. Nixon failed to point out any manifest errors of law or fact nor did she point out any miscarriage of justice. She simply repeated her speculative arguments about how the accident may have occurred. Her “new” arguments did not include any law or facts that could not have been submitted in her Oppositions to the Motions for Summary Judgment. That they were omitted in the prior Oppositions is not a basis to alter or amend the summary judgment Order entered on June 13, 2022. Thus, new arguments and/or new facts that Ms. Nixon could not justify failing to present to the court earlier did not need to be considered and therefore, any failure to consider that new information did not constitute legal error. *Id.* at 279.

Accordingly, the July 22, 2022 Order denying the request to alter or amend the June 13, 2022 judgment was not legally erroneous and must be affirmed.

VII. Conclusion.

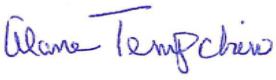
Appellant has failed to establish that there are any genuine issues of material fact in dispute and that that the Appellees were not entitled to summary judgment as a matter of law or that the decisions by the trial court were legally erroneous. Therefore, the June 13, 2022 and July 22, 2022 Orders must be AFFIRMED.

WHEREFORE, the Appellee Abron Deer respectfully requests that the June 13, 2022 and July 22, 2022 Orders be AFFIRMED, and that Appellant be assessed any cost of this appeal.

Respectfully submitted,

BUDOW AND NOBLE, P.C.

Anne K. Howard, Esq., D.C. Bar # 415690



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Text of Statutes and Rules

D.C. Code §11-721:

(a) The District of Columbia Court of Appeals has jurisdiction of appeals from —

(1) all final orders and judgments of the Superior Court of the District of Columbia;

(2) interlocutory orders of the Superior Court of the District of Columbia —

(A) granting, continuing, modifying, refusing, or dissolving or refusing to dissolve or modify injunctions;

(B) appointing receivers, guardians, or conservators or refusing to wind up receiverships, guardianships, or the administration of conservators or to take steps to accomplish the purpose thereof; or

(C) changing or affecting the possession of property; and

(3) orders or rulings of the Superior Court of the District of Columbia appealed by the United States or the District of Columbia pursuant to section 23-104 or 23-111(d)(2).

(b) Except as provided in subsection (c) of this section, a party aggrieved by an order or judgment specified in subsection (a) of this section, may appeal therefrom as of right to the District of Columbia Court of Appeals.

(c) Review of judgments of the Small Claims and Conciliation Branch of the Superior Court of the District of Columbia and of judgments in the Criminal Division of that court where the penalty imposed is a fine of less than $50 for an offense punishable by imprisonment of one year or less, or by fine of not more than $1,000, or both, shall be by application for the allowance of an appeal, filed in the District of Columbia Court of Appeals.

(d) When a judge of the Superior Court of the District of Columbia in making in a civil case (other than a case in which a child, as defined in section 16-2301, is alleged to be delinquent, neglected, or in need of supervision) a ruling or order not otherwise appealable under this section, shall be of the opinion that the ruling or order involves a controlling question of law as to which there is substantial ground

for a difference of opinion and that an immediate appeal from the ruling or order may materially advance the ultimate termination of the litigation or case, the judge shall so state in writing in the ruling or order. The District of Columbia Court of Appeals may thereupon, in its discretion, permit an appeal to be taken from that ruling or order, if application is made to it within ten days after the issuance or entry of the ruling or order. An application for an appeal under this subsection shall not stay proceedings in the Superior Court of the District of Columbia unless the judge of that court who made such ruling or order or the District of Columbia Court of Appeals or a judge thereof shall so order.

(e) On the hearing of any appeal in any case, the District of Columbia Court of Appeals shall give judgment after an examination of the record without regard to errors or defects which do not affect the substantial rights of the parties.

(f) The District of Columbia Court of Appeals shall hear an appeal from an order of the Superior Court of the District of Columbia holding an individual in contempt and imposing the sanction of imprisonment on such individual in the course of a case for custody of a minor child not later than 60 days after such individual requests that an appeal be taken from that order.

(g) Any appeal from an order of the Family Court of the District of Columbia terminating parental rights or granting or denying a petition to adopt shall receive expedited review by the District of Columbia Court of Appeals.

D.C. Super. Ct. R. Civ. P. 12:
(a) Time to serve a responsive pleading.

(1) ***In General.*** Unless another time is specified by this rule or an applicable statute, the time for serving a responsive pleading is as follows:

(A) A defendant must serve an answer within 21 days after being served with the summons and complaint.

(B) A party must serve an answer to a counterclaim or crossclaim within 21 days after being served with the pleading that states the counterclaim or crossclaim.

(C) A party must serve a reply to an answer within 21 days after being served with an order to reply, unless the order specifies a different time.

(2) ***The United States or the District of Columbia and the Agencies, Officers, or Employees of Either Sued in an Official Capacity.*** The United States or the District of Columbia or an agency, officer, or employee of either sued only in an official capacity must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the United States attorney (in suits involving the United States) or the Attorney General for the District of Columbia (in suits involving the District of Columbia).

(3) ***United States or District of Columbia Officers or Employees Sued in an Individual Capacity.*** A United States or District of Columbia officer or employee sued in an individual capacity for an act or omission occurring in connection with the duties performed on the United States' or the District of Columbia's behalf must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the officer or employee or service on the United States attorney (in suits involving the United States) or the Attorney General for the District of Columbia (in suits involving the District of Columbia), whichever is later.

(4) ***Effect of a Motion.*** Unless the court sets a different time, serving a motion under this rule alters these periods as follows:

(A) if the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 14 days after notice of the court's action; or

(B) if the court grants a motion for a more definite statement, the responsive pleading must be served within 14 days after the more definite statement is served.

(5) ***Entry of Default.*** Unless the time to respond to the complaint has been extended as provided in Rule 55(a)(3) or the court orders otherwise, failure to comply with the requirements of this rule will result in the entry of a default by the clerk or the court sua sponte.

(b) How to present defenses. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

(1) lack of subject-matter jurisdiction;

(2) lack of personal jurisdiction;

(3) [Omitted];

(4) insufficient process;

(5) insufficient service of process;

(6) failure to state a claim upon which relief can be granted;

(7)

failure to join a party under Rule 19.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion

(c) Motion for judgment on the pleadings. After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings

(d) Results of presenting matters outside the pleadings. If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

(e) Motion for a more definite statement. A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired. If the court orders a more definite statement and the order is not obeyed within 14 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.

(f) Motion to strike. The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:

(1) on its own; or

(2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading.

(g) Joining motions.

(1) ***Right to Join.*** A motion under this rule may be joined with any other motion allowed by this rule.

(2) ***Limitations on Further Motions.*** Except as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.

(h) Waiving and preservation certain defenses.

(1) ***When Some Are Waived.*** A party waives any defense listed in Rule 12(b)(2)-(5) by:

(A) omitting it from a motion in the circumstances described in Rule 12(g)(2); or

(B) failing to either:

(i) make it by motion under this rule; or

(ii) include it in a responsive pleading or in an amendment allowed by Rule 15(a)(1) as a matter of course.

(2) ***When to Raise Others.*** Failure to state a claim upon which relief can be granted, to join a person required by Rule 19(b), or to state a legal defense to a claim may be raised:

(A) in any pleading allowed or ordered under Rule 7(a);

(B) by a motion under Rule 12(c); or

(C) at trial.

(3) ***Lack of Subject-Matter Jurisdiction.*** If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.

(i) Hearing before trial. If a party so moves, any defense listed in Rule 12(b)(1)-(7)—whether made in a pleading or by motion—and a motion under Rule 12(c) must be heard and decided before trial unless the court orders a deferral until trial.

D.C. Super. Ct. R. Civ. P. 56:
(a) Motion for summary judgment or partial summary judgment.

(1) ***In General.*** A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

(2) ***Consumer Debt Collection Actions.*** In an action initiated by a debt collector to collect a consumer debt as defined in D.C. Code § 28-3814, the plaintiff must provide all documentation and information required by D.C. Code § 28-3814 prior to entry of summary judgment.

(b) Time to file a motion; format.

(1) ***Time to file.*** Unless the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery.

(2) ***Format: Parties' statements of fact.***

(A) *Movant's statement.* The movant must file a statement of the material facts that the movant contends are not genuinely disputed. Each material fact must be stated in a separate numbered paragraph.

(B) *Opponent's statement.* A party opposing the motion must file a statement of the material facts that the opponent contends are genuinely disputed. The disputed material facts must be stated in separate numbered paragraphs that correspond to

the extent possible with the numbering of the paragraphs in the movant's statement.

(c) Procedures.

(1) ***Supporting factual positions.*** A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(2) ***Objection that a fact is not supported by admissible evidence.*** A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(3) ***Materials not cited.*** The court need consider only the cited materials, but it may consider other materials in the record.

(4) ***Affidavits or declarations.*** An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

(d) When facts are unavailable to the nonmovant. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

(1) defer considering the motion or deny it;

(2) allow time to obtain affidavits or declarations or to take discovery; or

(3) issue any other appropriate order.

(e) Failing to properly support or address a fact. If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:

(1) give an opportunity to properly support or address the fact;

(2) consider the fact undisputed for purposes of the motion;

(3) grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it; or

(4) issue any other appropriate order.

(f) Judgment independent of the motion. After giving notice and a reasonable time to respond, the court may:

(1) grant summary judgment for a nonmovant;

(2) grant the motion on grounds not raised by a party; or

(3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

(g) Failing to grant all the requested relief. If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact—including an item of damages or other relief—that is not genuinely in dispute and treating the fact as established in the case.

(h) Affidavit or declaration submitted in bad faith. If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the court—after notice and a reasonable time to respond—may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions.

D.C. Super. Ct. R. Civ. P. 59:
(a) In general.

(1) ***Grounds for new trial.*** The court may, on motion, grant a new trial on all or some of the issues—and to any party—as follows:

(A) after a jury trial, for any reason for which a new trial has heretofore been granted in an action at law in federal court or District of Columbia courts; or

(B) after a nonjury trial, for any reason for which a rehearing has heretofore been granted in a suit in equity in federal court or District of Columbia courts.

(2) ***Further action after a nonjury trial.*** After a nonjury trial, the court may, on motion for a new trial:

(A) open the judgment if one has been entered;

(B) take additional testimony;

(C) amend findings of fact and conclusions of law or make new ones; and

(D) direct the entry of a new judgment.

(b) Time to file a motion for a new trial. A motion for a new trial must be filed no later than 28 days after the entry of judgment.

(c) Time to serve affidavits. When a motion for a new trial is based on affidavits, they must be filed with the motion. The opposing party has 14 days after being served to file opposing affidavits. The court may permit reply affidavits.

(d) New trial on the court's initiative or for reasons not in the motion. No later than 28 days after the entry of judgment, the court, on its own, may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. In either event, the court must specify the reasons in its order.

(e) Motion to alter or amend a judgment. A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.

D.C. Super. Ct. R. Civ. P. 60:
(a) Corrections based on clerical mistakes, oversights and omissions. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has

been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

(b) Grounds for relief from a final judgment, order or proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

(c) Timing and effect of the motion.

(1) ***Timing.*** A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.

(2) ***Effect on finality.*** The motion does not affect the judgment's finality or suspend its operation.

(d) Other powers to grant relief. This rule does not limit a court's power to:

(1) entertain an independent action to relieve a party from a judgment, order, or proceeding; or

(2) set aside a judgment for fraud on the court.

(e) Bills and writs abolished. The following are abolished: bills of review, bills in the nature of bills of review, and writs of coram nobis, coram vobis, and audita querela.

D.C. Ct. App. R. 4:
(a) Appeal in a Civil Case.

(1) Time for Filing a Notice of Appeal. The notice of appeal in a civil case must be filed with the Clerk of the Superior Court within 30 days after entry of the judgment or order from which the appeal is taken unless a different time is specified by these Rules or the provisions of the District of Columbia Code. See, for example, D.C. Code § 17-307(b)(2001) (small claims). An appeal from an order granting or denying an application for a writ of error coram nobis is an appeal in a civil case for purposes of Rule 4(a).

(2) Filing Before Entry of Judgment. A notice of appeal filed after the court announces a decision or order—but before the entry of the judgment or order—is treated as filed on the date of and after the entry.

(3) Multiple Appeals. If one party files a timely notice of appeal, any other party to the proceeding in the Superior Court may file a notice of appeal within 14 days after the date on which the first notice of appeal was filed, or within the time otherwise prescribed by Rule 4(a)(1), whichever period ends later.

(4) Effect of a Motion on a Notice of Appeal.

(A) If a party timely files in the Superior Court any of the following motions under the rules of the Superior Court, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

(i) for judgment as a matter of law;

(ii) to amend or make additional factual findings, whether or not granting the motion would alter the judgment;

(iii) to vacate, alter, or amend the order or judgment;

(iv) for a new trial; or

(v) for relief from a judgment or order if the motion is filed no later than 10 days (computed using Superior Court Rule of Civil Procedure 6(a)) after the judgment is entered.

(B)

(i) The time for filing a notice of appeal fixed by this section runs from the entry on the Superior Court docket of an order fully disposing of any of the foregoing motions, except that if any such order is conditioned on acceptance of a remittitur by any party, the time runs from the date on which a judgment based on acceptance of the remittitur is entered. Any statement accepting or rejecting a remittitur must be filed in the Superior Court and served on all other parties.

(ii) If a party files a notice of appeal after the court announces or enters a judgment—but before it disposes of any motion listed in Rule 4(a)(4)(A)—the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

(iii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment altered or amended upon such a motion, must file a notice of appeal—in compliance with Rule 3(c)—within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.

(5) Extension of Time.

(A) The Superior Court may extend the time for filing the notice of appeal if:

(i) a party files the notice of appeal no later than 30 days after the time prescribed by Rule 4(a) expires; and

(ii) that party shows excusable neglect or good cause.

(B) A request for extension of time made before the expiration of the time prescribed in Rule 4(a)(1) or (3) may be ex parte unless the court requires otherwise. If the request is made after the expiration of the prescribed time, it must be by motion and provide such notice to the other parties as the court deems appropriate.

(6) Entry Defined. A judgment or order is entered for purposes of this rule when it is entered in compliance with the rules of the Superior Court. When a judgment or final order is signed or decided outside the presence of the parties and counsel, such judgment or order will not be considered as having been entered, for the purpose of calculating the time for filing a notice of appeal, until the fifth day after the Clerk of the Superior Court has made an entry on the docket reflecting service of notice by that Clerk.

(7) The Superior Court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied: (A) the court finds that the moving party did not receive notice under Superior Court Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry; (B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Superior Court Rule of Civil Procedure 77(d) of the entry, whichever is earlier; and (C) the court finds that no party would be prejudiced.

(b) Appeal in a Criminal Case.

(1) Time for Filing a Notice of Appeal. A notice of appeal in a criminal case must be filed with the Clerk of the Superior Court within 30 days after entry of the judgment or order from which the appeal is taken, unless a different time is specified by the provisions of the District of Columbia Code.

(2) Filing Before Entry of Judgment. A notice of appeal filed after the announcement of a verdict, decision, sentence, or order—but before the entry of the judgment or order—is treated as filed on the date of and after the entry. If a notice of appeal filed after verdict is not followed by the entry of a judgment, the appeal is subject to dismissal at any time for lack of jurisdiction.

(3) Effect of a Motion on a Notice of Appeal.

(A) If a defendant timely makes any of the following motions under the Superior Court Rules of Criminal Procedure, the notice of appeal from a judgment of conviction must be filed within 30 days after the entry of the order disposing of the

last such remaining motion, or within 30 days after the entry of the judgment of conviction, whichever period ends later. This provision applies to a timely motion:

(i) for judgment of acquittal under Rule 29;

(ii) for a new trial under Rule 33, but if based on newly discovered evidence, only if the motion is made no later than 30 days after the entry of the judgment; or

(iii) for arrest of judgment under Rule 34.

(B) A notice of appeal filed after the announcement of a verdict, decision, sentence, or order—but before the court disposes of any of the motions referred to in Rule 4(b)(3)(A)—becomes effective upon the later of the following:

(i) the entry of the order disposing of the last such remaining motion; or

(ii) the entry of the judgment of conviction.

(C) A valid notice of appeal is effective—without amendment—to appeal from an order disposing of any of the motions referred to in Rule 4(b)(3)(A).

(4) Motion for Extension of Time. Upon a finding of excusable neglect or good cause, the Superior Court may—before or after the time has expired, with or without motion and notice—extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by Rule 4(b).

(5) Entry Defined. A judgment or order is deemed to be entered within the meaning of this subdivision when it is entered on the criminal docket by the Clerk of the Superior Court. When a judgment or final order is signed or decided out of the presence of the parties and counsel, such judgment or order will not be considered as having been entered, for the purpose of calculating the time for filing a notice of appeal, until the fifth day after the Clerk of the Superior Court has made an entry on the criminal docket reflecting the mailing of notice. Singer v. Singer, 583 A.2d 689 (D.C. 1990).

(c) Expedited and Emergency Appeals.

(1) Expedited Appeals.

(A) These appeals include, but are not limited to: government appeals from pre-trial orders, D.C. Code § 23-104(a)(1) (2001), and appeals from orders of the Family Court either terminating parental rights or granting or denying petitions for adoption, D.C. Code § 11-721(g) (2001). Additionally, any party may file a motion with this court requesting that an appeal be expedited.

(B) The appellant or counsel for appellant must:

(i) Timely file a notice of appeal in the Superior Court and file a stamped copy of the notice with the Clerk of this court.

(ii) Within 10 days, order or file an appropriate motion for preparation of the necessary transcript on an expedited basis, and make arrangements for payment as required by Rule 10(b)(4).

(C) Upon completion of the record, the Clerk will issue a briefing order, and the case will be given priority in calendaring.

(2) Emergency Appeals.

(A) These appeals include, but are not limited to: pre-trial bail or detention appeals, D.C. Code § 23-1324 (2001), juvenile interlocutory appeals, D.C. Code § 16-2328 (2001), government appeals from intra-trial orders, D.C. Code § 23-104(b) & (d) (2001), and extradition appeals, D.C. Code § 23-704 (2001).

(B) The appellant or counsel for appellant must:

(i) Review the applicable statute or rule to assure compliance with the controlling time requirements.

(ii) Timely file a notice of appeal in the Superior Court and notify the Clerk of this court in person or by telephone of: the filing of the notice of appeal, the nature of the emergency appeal, the names and telephone numbers of all parties or their attorneys, and any transcript needed for the appeal.

(iii) Immediately order the necessary transcript or have necessary vouchers prepared and submitted to the trial judge. Any order or voucher for transcript must request overnight preparation. If transcript is ordered, the appellant must pay for it promptly upon completion.

(iv) Submit a written motion setting forth the relief sought and the grounds therefor, and personally serve a copy on the other parties. The motion must be accompanied by a copy of the order being appealed from and any other documents filed in the Superior Court which counsel believes essential for the court's consideration.

(C) Opposing counsel must submit and personally serve a written response or cross-motion in compliance with Rule 4(c)(2)(B)(iv).

(D) The Clerk will advise the assigned division of this court of the pendency of the emergency appeal so that the case may be promptly decided or scheduled for argument where appropriate.

(E) In the case of a juvenile interlocutory appeal, the motion must be filed no later than 4:00 pm on the next calendar day after the filing of the notice of appeal. Any opposition must be filed with the Clerk by noon on the following calendar day, unless these times are shortened by court order.

(d) Appeal by An Inmate Confined in An Institution.

(1) If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule 4(d)(1). If an inmate files a notice of appeal in either a civil or a criminal case, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing and:

(A) it is accompanied by:

(i) a declaration in compliance with 28 U.S.C. § 1746—or a notarized statement—setting out the date of deposit and stating that first-class postage is being prepaid; or

(ii) evidence (such as a postmark or date stamp) showing that the notice was so deposited and that postage was prepaid; or

(B) the court exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies Rule 4(d)(1)(A)(i).

(2) If an inmate files the first notice of appeal under this Rule 4(d), the 14-day period provided in Rule 4(a)(3) for another party to file a notice of appeal runs from the date when the Superior Court dockets the first notice.

(e) Mistaken Filing in the Court of Appeals. If a notice of appeal is submitted to this court, the Clerk must note on the notice the date when it was received and send it to the Clerk of the Superior Court. The notice is then considered filed in the Superior Court on the date so noted.

(f) Remand to the Superior Court. When a case is pending in this court, and the Superior Court has indicated its intention to grant a motion that will alter or amend the order, decision, judgment, or sentence that is the subject of the appeal, the movant must notify the Court of Appeals, and any party may request a remand of the case for that purpose by filing in this court a motion to remand the case stating the trial judge's intention. See Rule 41(e).

District of Columbia Court of Appeals

REDACTION CERTIFICATE DISCLOSURE FORM

Pursuant to Administrative Order No. M-274-21 (filed June 17, 2021), this certificate must be filed in conjunction with all briefs submitted in all cases designated with a "CV" docketing number to include Civil I, Collections, Contracts, General Civil, Landlord and Tenant, Liens, Malpractice, Merit Personnel, Other Civil, Property, Real Property, Torts and Vehicle Cases.

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21 and Super. Ct. Civ. R. 5.2, and removed the following information from my brief:

1. All information listed in Super. Ct. Civ. R. 5.2(a); including:

- An individual's social-security number
- Taxpayer-identification number
- Driver's license or non-driver's' license identification card number
- Birth date
- The name of an individual known to be a minor
- Financial account numbers, except that a party or nonparty making the filing may include the following:

(1) the acronym "SS#" where the individual's social-security number would have been included;
(2) the acronym "TID#" where the individual's taxpayeridentification number would have been included;
(3) the acronym "DL#" or "NDL#" where the individual's driver's license or non-driver's license identification card number would have been included;
(4) the year of the individual's birth;
(5) the minor's initials; and
(6) the last four digits of the financial-account number

2. Any information revealing the identity of an individual receiving mental-health services.

3. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.

4. Information about protection orders, restraining orders, and injunctions that "would be likely to publicly reveal the identity or location of the protected party," 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266(5) (defining "protection order" to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).

5. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.

6. Any other information required by law to be kept confidential or protected from public disclosure.

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Date: March 6, 2023

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of March, 2023, the foregoing Appellee Abron Deer's Brief was e-filed and sent via email or first-class mail postage prepaid to the following counsel and parties:

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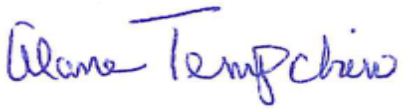

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