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CASE NO. 24-CI-004645

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JEFFERSON CIRCUIT COURT  
DIVISION EIGHT (8)  
JUDGE JENNIFER BRYANT WILCOX  
MEDIA 2022

*Electronically Filed*

JON DAVID WALKER, M.D.,

PLAINTIFF

v.

**MEMORANDUM IN SUPPORT OF  
DEFENDANT LYNN WALKER'S MOTION  
FOR SUMMARY JUDGMENT**

LYNN LEMMON WALKER

DEFENDANT

\*\* \*\* \*\* \*\* \*\*

Comes the Defendant, Lynn Walker, by counsel, and submits this Memorandum in Support of her Motion for Summary Judgment pursuant to Ky. R. Civ. P. 56.03, KRS 413.140, and Kentucky Statutes of Limitations and states that there are no genuine issues of material fact, and she is entitled to judgment as a matter of law.

**STATEMENT OF FACTS**

On July 3<sup>rd</sup>, 2024, Plaintiff Jon David Walker, M.D. ("David") filed a Verified Complaint against Defendant Lynn Walker ("Lynn") alleging claims of fraud and misrepresentation, and outrage.

On July 27<sup>th</sup>, 1968, at the young age of seventeen, Lynn got married to twenty-year-old David Walker, at a small church wedding. (Complaint pg. 2; See also Affidavit of Lynn Walker, attached hereto as Exhibit 1, par. 2). In 1969, David began medical school at the University of Kentucky and soon after, he started his residency in 1973 at the University of Louisville. (Complaint pg. 3). At the same time, Lynn began her teaching career in Lexington to support David as he pursued medicine. *Id.* Once the school year was over, Lynn moved

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to Louisville to continue her teaching career and support her then-husband, David. *Id.* Lynn and David decided they were ready to have children but soon discovered Lynn's endometriosis would place this on halt. *Id.* After seeking multiple opinions, Lynn found the right surgeon to ultimately remove any cysts and adhesions that prevented her from getting pregnant. (Complaint, pg. 4).

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In 1977, David informed Lynn they would once again be moving, but this time to Houston, Texas where he would begin his fellowship in oncologic surgery. (Complaint pg. 4). Leaving her successful teaching career and life in Kentucky behind, Lynn reluctantly moved to Houston so David could begin his fellowship. (*Id.*; Affidavit of Lynn Walker, par. 3). Soon thereafter Lynn and David found out she was pregnant, and they were expecting their first child. (Complaint, pg. 5). Plaintiff alleges that this whole time, Lynn was having an extramarital affair and knew that David was not the father of their son, Jesse Walker. (Complaint, pg. 5). Ms. Walker acknowledges that she had an affair with a man who lived in another state but only saw him on a few occasions during the marriage. (Affidavit of Lynn Walker, par. 5). Lynn never once imagined that their son Jesse Walker was not David's child as he looked very similar to Lynn and David's two other children. (Affidavit of Lynn Walker, par. 6).

In February of 2010 the parties separated due to David's continued insecurities surrounding their relationship and to his drug and alcohol addiction. (Complaint, pg. 6; See also Affidavit of Lynn Walker, par. 4). Lynn and David were unable to resolve their marital issues and Lynn filed for divorce against David on July 20<sup>th</sup>, 2010. (Complaint, pg. 6). As elucidated above, Lynn gave up her career as a teacher and successful store owner to support

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David's career and stay at home with their children. The family court awarded her monthly maintenance and a division of their marital assets accordingly (Affidavit of Lynn Walker, par. 7). Now, 13 years after the Final Decree was entered on January 4<sup>th</sup>, 2011, David contends their divorce settlements were based upon Lynn's fraud and material misrepresentations to the court and seeks a return of maintenance and child-support payments and other damages. (Complaint pg. 7).

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Regarding both counts, David fails to allege any facts that support essential elements of the claims. As further explained below, the minimal, unsupported allegations raised by the Plaintiff are insufficient to survive a motion for summary judgment, as his complaint is both factually deficient and barred by the statutes of limitations pursuant to KRS 413.120, KRS 413.130, and KRS 413.140, and must be dismissed as a matter of law.

### ARGUMENT

#### **I. Standard for Motion for Summary Judgment**

Under Ky. R. Civ. P. 56.03, summary judgment is appropriate where the moving party has established that there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Any argument that summary judgment is premature is unwarranted as a party may at "anytime, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof." Ky. R. Civ. P. 56.02. The Court must view the record "in a light most favorable to the party opposing the motion, and all doubts are to be resolved in his favor." *Steelvest, Inc. v. Scansteel Serv. Ctr., Inc.*, 807 S.W.2d 476, 480 (Ky. 1991).

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On a motion for summary judgment, the Court must determine “whether the evidence presents a sufficient disagreement to require submission to [the fact finder] or whether it is so one-sided that one party must prevail as a matter of law. *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242 (1986). A fact is material if “it might affect the outcome of the suit under governing law”. *Id.* at 248. “Factual disputes that are irrelevant or unnecessary will not be counted. *Id.*”

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Summary judgment is designed to expedite the disposition of a case when it is clear that a trial is unnecessary, meaning that a rational trier of fact could not return a verdict for the non-moving party. *Steelvest, Inc.*, 807 S.W.2d 476, 480. When a party does not have a cause of action under state law, Kentucky courts have granted summary judgment for the Defendant when such motion is filed in lieu of filing an answer. *Harrison Mem'l Hosp., Inc. v. Wellcare Health Ins. Co. of Ky.*, 509 S.W.3d 69, 71 (2016). The party opposing summary judgment cannot rely on their own claims or arguments without significant evidence in order to prevent a summary judgment." *Hallahan v. The Courier-Journal*, 138 S.W.3d 699, 705 (Ky. App. 2004).

As will extensively be established below, there is no genuine issue as to any material fact and David’s claims fail as a matter of law. David has not and cannot produce evidence regarding a time-barred claim that allegedly perpetrated for over 40 years. More specifically, both Count I for fraud and misrepresentation and Count II for outrage are not supported by Kentucky law and are related to issues pertaining to, and better suited to be adjudicated in the family court. Ergo Lynn is entitled to summary judgment for all claims against her as a matter of law.

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**II. David's Claims Against Lynn for Fraud, Misrepresentation and Outrage Are Barred by The Statute of Limitations.**

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**A. Count I for Fraud and Misrepresentation is Barred by the Kentucky Statute of Limitations**

David's claims for fraud and outrage are barred by the statute of limitations. Under KRS 413.120(11), "an action for relief of damages on the ground of fraud or mistake", "shall be commenced within five (5) years after the cause of action accrued". KRS 413.130(3) provides that "the cause of action shall not be deemed to have accrued until the discovery of the fraud or mistake". Yet, "the action shall be commenced within ten years after ... the perpetration of the fraud or mistake." KRS 413.130(3); *Hernandez v. Daniel*, 471 S.W.2d 25, 26 (1971).

David asserts inconsistent time frames as to when the alleged fraud and misrepresentation could have occurred:

"This was the beginning of an affair lasting approximately fourteen (14) years and a fraud perpetrated for over 40 years." (Complaint, pg. 4);

"The state of Texas issues a Birth Certificate listing the Plaintiff as the father based entirely upon Lynn's fraudulent representation of the certainty that he was the biological father." (Complaint, pg.5);

"This continued until at least 1991, approximately fourteen (14) years. Lynn kept her fraud a secret for over forty years." (Complaint, pg. 6);

"David agreed to settle their divorce ..... This settlement is based on fraud upon the family and the Court. It was unconscionable as a matter of law and based on Lynn's material misrepresentations. The Final Decree was entered January 4, 2011." (Complaint, pg. 7).

One possible time frame is that the alleged fraud began according to the Complaint was on an unknown date near 1977. (Complaint, pg. 4). Another possible time frame that the alleged fraud began was on January 4<sup>th</sup>, 2011, when the final decree was entered by the family court.

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(Complaint, pg. 7). Nevertheless, even if the court were to accept the latter date, Kentucky's 10-year statute of limitations bars David's fraud and misrepresentation claim. KRS 413.130(3); *Daniel*, 471 S.W.2d 25, 26. David's claim for fraud is time-barred and should he even have a viable action, must have been filed at the latest by January 4<sup>th</sup>, 2021.

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### **B. Count II for Outrage is Barred by Kentucky Statute of Limitations**

Plaintiff is precluded from asserting the tort of outrage against the Defendant under Kentucky law because he failed to properly commence the instant action within the applicable five-year statute of limitations. KRS 413.140. "There is a right to be free of emotional distress arising from conduct by another. Because the essence of the tort is the interference with this right and not whether any bodily harm results, the five-year statute of limitations applies." KRS 413.140; *Craft v. Rice*, 671 S.W.2d 247, 251.

Due to Plaintiff's failure to even address any contention of outrage, or emotional distress, in his Complaint, it is difficult, if not impossible for this Court or the Defendant to determine when such claim of outrage allegedly occurred. Plaintiff merely restates the elements of outrage and lacks any argument thereof in the facts of his Complaint. (Complaint pg. 11). However, assuming his alleged "severe emotional distress" began on the date the decree was entered in 2011, his claim is barred by the 5-year statute of limitations under KRS 413.140; *Craft v. Rice*, 671 S.W.2d 247, 251.

Ultimately, Plaintiff's Complaint was filed in an untimely manner on July 3<sup>rd</sup>, 2024, after the statute of limitations had passed on all claims alleged by Plaintiffs. Accordingly, David's claims must be dismissed as a matter of law because they are barred by Kentucky's statute of limitations.

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III. David's Claims for Fraud and Misrepresentation and Outrage Against Lynn Are Not Supported by Kentucky Law

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A. David's Claim for Fraud and Misrepresentation Fail as a Matter of Law

Even if the statute of limitations does not bar Plaintiff's claim for fraud and misrepresentation, this claim must be dismissed as Plaintiff's claim for fraud is not supported by Kentucky law. In Kentucky, an action for fraud requires the party claiming harm to establish six elements "by clear and convincing evidence as follows: a) material representation b) which is false c) known to be false or made recklessly d) made with inducement to be acted upon e) acted in reliance thereon and f) causing injury." *Pezzarossi v. Nutt*, 392 S.W.3d 417, 420 (2012). "Fraud is very difficult to prove and juries only award it when they find the evidence to be overwhelmingly in favor of the plaintiff." *Denzik v. Denzik*, 197 S.W.3d 108, 113 (2006).

David's complaint fails to meet the elements required for fraud. David seemingly bases his claim for fraud on Lynn's alleged fraudulent misrepresentation to her certainty that he was not Jesse's biological father. (Complaint, pg. 6). As established below, no such relief is available under Kentucky law. *Whittington v. Whittington*, 766 S.W.2d 73, 74 (1989). Firstly, David has failed to provide any proof that Lynn made a material misrepresentation she knew to be false. Not once throughout their marriage did David, nor Lynn ever question the paternity of Jesse Walker. There is no evidence that Lynn had any knowledge that Jesse's paternity could be in dispute. Furthermore, David makes no contention that he was induced or injured by Lynn's alleged actions. David seeks to recover maintenance payments and child support payments he made to Lynn pursuant to the parties' agreement which was entered

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in family court. These payments were not the result of Lynn's alleged representation that Jesse was David's son as she was not aware of this until a paternity test was performed in 2024. As Plaintiffs' complaint fails to meet the high burden and allege any facts that establish Lynn committed fraud against him, David's claim for fraud and misrepresentation should be dismissed as a matter of law in its entirety.

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### **B. David's Claim for Outrage Fails as a Matter of Law**

Without any explanation for this contention, David asserts Lynn committed the tort of outrage against him. This claim is frivolous and fails as a matter of law. Under Kentucky law, to maintain a claim for outrage or more commonly referred to as intentional infliction of emotional distress (IIED), a plaintiff must demonstrate "(1) that defendant's conduct was intentional or reckless, (2) that the conduct was so outrageous and intolerable so as to offend generally accepted standards of morality and decency, (3) that a causal connection exists between the conduct complained of and the distress suffered, (4) and that the resulting emotional stress was severe." *Brewer v. Hillard*, 15 S.W.3d 1, 6 (1999); *Humana of Kentucky, Inc. v. Seitz, Ky.*, 796 S.W.2d 1, 2-3 (1990).

The tort of outrage is not intended to compensate behavior that is "cold, callous and lacking sensitivity." *Humana of Ky., Inc. v. Seitz, Ky.*, 796 S.W.2d 1 (1990). Rather, it is intended to redress behavior that is truly outrageous, intolerable and which results in bringing one to his knees, none of which is present in this case. *Kroger Co. v. Willgruber*, 920 S.W.2d 61, 65 (1996). As the court ruled in *Whittington v. Whittington*, "the most offensive conduct complained of is fraud and adultery, two of the most routine causes of divorce litigation." 766 S.W.2d 73, 74 (1989). "Ordinary fraud and adultery can never reach the status of



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outrageous conduct" and are not sufficient as a matter of law to support a claim for outrage.

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*Id.* Even in a case involving an "allegation that [a] priest used special relationship[s] with [a] couple to carry on [an] affair with, and impregnate, the wife did not rise to the level of outrage required for intentional infliction of emotional distress" *Banks v. Fritsch*, 39 S.W.3d 474, 480-81 (Ky. Ct. App. 2001).

Although it is established above that David's claim for fraud also fails as a matter of law, Plaintiff's complaint includes only contentions of emotional and financial distress caused by Lynn's alleged fraud and alleged adultery. *Id.*;

"Had David known about her ongoing affair and continued deceit about their eldest son, he would not have trusted her with the marital funds, much less remained married" (Complaint, pg. 6);

"Further, the Plaintiff paid additional bills including insurance, health insurance, and telephone bills." (Complaint, pg. 7).

No suitable relief is available under Kentucky law for such distress as these difficulties "do not necessarily implicate the tort of outrage." *Whittington*, 766 S.W.2d 73, 74. "Suitable relief is available under Kentucky's domestic relations laws." *Id.* Furthermore, in *Hoye v. Hoye*, 824 S.W.2d 422 (Ky. 1992), the Kentucky Supreme Court abolished a legal cause of action for adultery. Consensual sex does not provide grounds for a civil action. *Arlinghaus v. Gallenstein*, 115 S.W.3d 351, 352 (2003).

Here, David does not allege any conduct by Lynn that meets the standard required for outrage. Defendant is unable to even cite to portions of Plaintiff's Complaint that may allege such conduct as Plaintiff has no factual proof to uphold his claim. This allegation fails to describe with specificity any actions taken by Lynn that were directed at David with the

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intent to cause severe emotional distress, nor does David allege how or why Lynn owed a duty of care to him. (Complaint pg. 11). Just as occurred in *Whittington*, there is no suitable relief for David's claims for fraud and outrage in this court. *Whittington*, 766 S.W.2d 73, 74. If David seeks relief on the matters alleged in his complaint, such claims should be brought under Kentucky domestic relations law. *Id.*

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As a matter of Kentucky law, the facts alleged in the complaint do not and cannot constitute outrage. Plaintiffs' complaint fails to allege any facts that establish he experienced any emotional distress and Davids' outrage claim fails as a matter of law.

### CONCLUSION

Based on the foregoing reasons and Affidavit of Lynn Walker attached hereto, Defendant Lynn Walker respectfully requests the Court dismiss Plaintiff David's claims against her and grant this motion for summary judgment as she is entitled to judgment as a matter of law.

Respectfully submitted,

/s/ Jan M. West

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CERTIFICATE OF SERVICE

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I hereby certify that, on this 24<sup>th</sup> day of July, 2024, I electronically filed this document through the e-Filing system, which will send a notice of electronic filing to all counsel of record.

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