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IN THE

# COURT OF APPEALS OF INDIANA

Charles T. Ramey, III and Jordan McHenry,

*Appellants-Defendants,*

v.

Ashley D. Ping,

*Appellee-Plaintiff.*

June 13, 2022

Court of Appeals Case No. 21A-CT-2103

Appeal from the Johnson Superior Court

The Honorable Kevin M. Barton, Judge

Trial Court Cause No. 41D01-1908-CT-122

**Najam, Judge.**

## Statement of the Case

[1] Following the dissolution of her marriage to Charles T. Ramey, III, Ashley Ping (f/k/a Ashley Day) retained sole legal and physical custody of the parties' minor child ("Child"), with Ramey exercising parenting time. On August 20, 2017, following Ramey's parenting time, Ping noticed a blister on Child's

genitals. Ping notified the Indiana Department of Child Services ("DCS") of the blister and sought medical treatment for Child. Then, on August 28, Ramey and his girlfriend, Jordan McHenry, observed a blister on Child's genitals. McHenry took a picture of the blister and texted it to a DCS family case manager. McHenry reported that the blister was new. The following day, McHenry called the DCS child abuse and neglect hotline and reported the injury. As a result, two DCS employees removed Child from Ping's care and filed a petition alleging Child to be a Child in Need of Services. Following a CHINS hearing, the court denied the DCS petition and ordered that Child be returned to Ping's care. In total, Child was removed from Ping's care for forty-four days.

[2] Thereafter, Ping filed a complaint in federal court against the two DCS employees who had removed Child from her care. Ping alleged that the DCS employees had violated her constitutional rights when they removed Child. The employees and DCS settled the case with Ping, and, in exchange, Ping signed a release and agreed to forgo her right to a trial on the issues raised in her complaint. Ping then filed a complaint against Ramey and McHenry in the Johnson Superior Court. Ping alleged, in relevant part, that Ramey and McHenry had made a false report of child abuse in violation of Indiana Code Section 31-33-22-3 (2021) (the "False Reporting Statute").

[3] Ramey and McHenry filed a motion for summary judgment in which they alleged that Ping's complaint was barred under the doctrine of res judicata and the prohibition against double recoveries. The trial court denied that motion,

and the case proceeded to trial. At the conclusion of the trial, Ramey and McHenry filed their first motion for judgment on the evidence, in which they alleged that the release agreement Ping had signed to settle the federal complaint precluded her from bringing the instant lawsuit. The trial court denied that motion. The jury found in favor of Ping and against Ramey, McHenry, and DCS, which was named as a nonparty, and awarded Ping damages. Ramey and McHenry then filed a joint motion for judgment on the evidence and motion to correct error, which motions the court denied.

[4] Ramey and McHenry now appeal and present the following revised issues for our review:

1. Whether the trial court misinterpreted the False Reporting Statute and, thus, erred when it instructed the jury.

2. Whether Ping presented sufficient evidence to overcome the statutory presumption of good faith and qualified immunity.

3. Whether Ping presented sufficient evidence to support the award of punitive damages.

4. Whether the trial court erred when it denied their motion for summary judgment and motion for judgment on the evidence based on Ping's settlement of the federal case.

[5] We affirm.

## Facts and Procedural History[1]

[6] Ping and Ramey were married, and they have one child together, Child, who was born on November 13, 2014. On January 17, 2017, the dissolution court dissolved the parties' marriage. Pursuant to a settlement agreement adopted by the court, Ping retained "sole legal and physical custody" of Child. Ex. at 11.[2] And Ramey was entitled to parenting time "during a phase[-]in period." Tr. Vol. 2 at 159. Thereafter, Ramey began a relationship with McHenry.

[7] On August 5, Ramey had a ten-hour visit with Child. Following that visit, Ping observed "what appeared to be a tear" around Child's rectum. Tr. Vol. 4 at 69. Ping's husband called 9-1-1. Paramedics arrived at Ping's home, and an officer called DCS and reported concerns that Ramey had abused Child. A DCS worker called Ping and advised Ping to take Child to the hospital. Ping took Child to Riley Hospital for Children ("Riley") for treatment the next morning. There, Child was diagnosed with an "anal fissure." *Id*. at 72. DCS Family Case Manager ("FCM") Demi Eckles was assigned to assess the family. FCM Eckles spoke with a social worker at Riley and learned that the fissure had an "equal chance" of being caused by constipation or sexual abuse. Tr. Vol. 2 at 224. FCM Eckles determined that the claim against Ramey was unsubstantiated.

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[1] We held oral argument in this case on May 2 in the Court of Appeals Courtroom in Indianapolis. We thank counsel for their excellent advocacy.

[2] Our pagination of the Exhibits volume and any other document in the record refers to the .pdf pagination.

[8] Ramey again had two ten-hour visits with Child on August 19 and 20. After the visit on August 20, Ping noticed a "blister" on Child's scrotum. *Id*. at 226. Ping took a photograph of the blister and emailed FCM Erica Oakes about it.[3] FCM Oakes replied and recommended that Ping take Child to Riley. FCM Oakes then forwarded the email exchange to FCM Eckles. The next morning, Ping took Child to Riley, and FCM Eckles met them there. A physician examined Child and determined that Child's blister did not require any treatment. Then, on August 22, FCM Eckles "informed [Ramey] of the new report." *Id*. at 230.

[9] Ramey and McHenry had another visit with Child on August 24, which FCM Eckles attended. That morning, prior to the visit, FCM Eckles asked Ping about Child. Ping informed FCM Eckles that the "mark" on Child was healing but was "still visible." Tr. Vol. 4 at 87. Ping also took a picture of the blister that morning.

[10] On August 27, Ramey and McHenry attended a custody evaluation. During that visit, Ramey changed Child's diaper, and Ramey and McHenry saw a "popped blister" on Child's scrotum. Tr. Vol. 3 at 146. McHenry took a photograph of the blister and texted it to FCM Eckles. McHenry reported to FCM Eckles that the blister was a "new injury." *Id*. 154.

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[3] FCM Oakes had been previously assigned to the family after Child's counselor made a report to DCS regarding her observations of Child during a therapy session that followed two visits with Ramey.

[11] On August 28, McHenry called the DCS child abuse and neglect hotline and indicated that she "need[ed] to make a 310."[4] Ex. at 83. McHenry reported that she and Ramey had observed what "look[ed] like a popped blister" on Child's scrotum the day prior. *Id*. at 85. McHenry further stated that Child had "no injuries" when she and Ramey had seen him on August 24. *Id*. When asked if she knew what caused the injury, McHenry reported that she did not know. *See id*. at 86. And when asked if it could have been caused by "diaper rash," McHenry responded: "To be honest, . . . I'm not sure. We've just never seen one, seen that before. I, I couldn't tell you what could have been the causation of it." *Id*. She then stated that Child has eczema and that he gets diaper rashes but that this "wasn't in the typical area of a diaper rash." *Id*. Following that report, FCM Eckles and FCM Oakes removed Child from Ping's care on an emergency basis and placed him with Ramey. FCM Eckles informed Ping that the "new mark" was the "basis [for] the removal[.]" Tr. Vol. 4 at 94.

[12] On August 30, DCS filed a petition alleging Child to be a Child in Need of Services ("CHINS"). In the petition, DCS alleged that Child was a CHINS because Ping "routinely delays" seeking medical care for injuries she sees on Child following Child's visits with Ramey and that Child's "injuries are suspicious for inflicted injuries at the hands of" Ping. Ex. at 73. That same

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[4] A 310 report is "the physical copy that gets made after someone calls in a concern to" the hotline. Tr. 2 at 247.

day, the CHINS court held a detention hearing, and the court authorized the continued removal of Child from Ping's care.

[13] In October, the CHINS court held a fact-finding hearing on the DCS CHINS petition. At the conclusion of the hearing, the court determined that Child was not a CHINS and ordered that Child be returned to Ping's care. Child was returned to Ping's care that day, which was forty-four days after he was first removed. Shortly thereafter, Ramey filed a motion for modification of custody in which he sought custody of Child.[5]

[14] Ping, individually and on behalf of Child, filed a lawsuit against FCM Eckles and FCM Oakes in the United States District Court for the Southern District of Indiana. Ping alleged that they had seized Child "without probable cause, without a court order, and when he was in no imminent danger," in violation of Child's Fourth Amendment Rights and Ping's rights under the Fourteenth Amendment. Appellants' App. Vol. 2 at 104. Ping also alleged that FCM Eckles and FCM Oakes had "mispreresent[ed] material facts" at the detention hearing and that they had made those misrepresentations "knowingly or

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[5] The court transferred sole legal and primary physical custody of Child to Ramey. *See Day-Ping v. Ramey*, 175 N.E.3d 844, 850 (Ind. Ct. App. 2021). Ping appealed, and this Court reversed the lower court's decision and remanded "for reconsideration of the evidence based on the entirety of the circumstances concerning these parties." *Id*. at 854. On remand, the trial court again granted Ramey sole legal and physical custody of Child. Ping appealed, and this Court recently affirmed the trial court in a memorandum decision issued on April 27, 2022. *See Day-Ping v. Ramey*, No. 21A-DR-2353, 2022 WL 1233654 (Ind. Ct. App. Apr. 27, 2022).

recklessly." *Id*. at 105. As a result, Ping sought compensatory and punitive damages.

[15] Thereafter, Ping entered into a "Release and Settlement Agreement" (the "Release Agreement"), in which she agreed to settle the federal case. *Id*. at 161. The parties to the Release Agreement were Ping, individually and on Child's behalf (the "Releasors"), and Eckles, Oakes, and DCS (the "Releasees"). The Release Agreement provided in relevant part:

> 2. This Release and Settlement Agreement is entered into by and between Releasors and the Releasees in full settlement and satisfaction of any and all of Releasors['] claims that Releasor[s] brought or could have brought against Releasees related to the events alleged in the amended complaint. . . .
>
> 3. The parties agree to forgo their right to a trial in the court systems of the United States and the State of Indiana on the issues raised by Releasors['] complaint.

*Id*. In addition, the Releasees agreed to pay $988,000 "in full satisfaction of any and all claims against Releasees that Releasors brought or could have brought related to the events alleged in the amended complaint[.]" *Id*. Pursuant to the terms of the Release, the parties filed a joint stipulation of dismissal with the federal court with prejudice.

[16] Thereafter, Ping filed a revised amended complaint in the Johnson Superior Court in which she alleged that Ramey and McHenry had made a false claim of

child abuse in violation of the False Reporting Statute.[6] Ramey and McHenry filed their answer and affirmative defenses. They then filed a motion for summary judgment in which they asserted that the doctrine of res judicata and the prohibition against double recoveries precluded Ping's current claim. Ramey and McHenry alleged that "there can be no legitimate question that [Ping's] federal lawsuit, its settlement and dismissal with prejudice precludes her action" here. *Id*. at 80. Thus, they maintained that "the 2019 dismissal with prejudice of that federal action precludes [Ping] from pursing this action, based on the same core facts and seeking a second recovery for the same alleged injury." *Id*. at 81.

[17] Following a hearing, the court entered its order denying Ramey and McHenry's motion for summary judgment. As to their res judicata claim, the court found that, "[b]ased on the absence of identi[t]y of the parties, claim preclusion does not apply." *Id*. at 37. The court also found that, "insofar as defensive collateral estoppel is based upon a claim that [Ping] has asserted and has lost, that is not the situation presented." *Id*. at 38. The case then proceeded to a jury trial.

[18] During the trial, Ramey testified that he had had a visitation with Child on August 24 and that Child "did not" have a blister at that time. Tr. Vol. 2 at 164. McHenry also testified that Child had "no injuries" on August 24. Tr.

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[6] Ping also filed claims for malicious prosecution and intentional infliction of emotional distress. But the parties entered into a stipulation in which they agreed that "only Count III: False Reporting of Child Abuse or Neglect remains at issue for trial by jury." Appellants' App. Vol. 2 at 226.

Vol. 3 at 136. And FCM Eckles testified that the blister she had observed in the picture from McHenry on August 27 was not present when she saw Child on August 24. However, Ping admitted as evidence the photographs she had taken of the blister on August 20 and August 24. Further, Dr. Ralph Hicks, the physician who had examined Child on August 21, testified that the picture of the blister taken on August 27 depicted a "lesion" that was "consistent with" the lesion he had examined on August 21. *Id*. at 193. And Ping testified that Child was with her "every day" between August 20 and August 27 and that the mark on Child on the 27th was the "exact same blister" as the one she had first seen on the 20th. Tr. Vol. 4 at 90.

[19] In regard to the text to FCM Eckles on August 27, Ramey acknowledged that he had previously testified in a deposition: "I t[ook] a photo of [the blister] to protect myself basically from any new allegations, and we sent it to" FCM Eckles. Tr. Vol. 2 at 168. However, at trial, he testified that the words "I" and "we" were "false" and that McHenry "took the photo and sent it from her phone." *Id*. He also confirmed that he had previously testified that: "we discussed whether or not it was the right thing to do[.]" *Id*. at 174. McHenry testified that she "wouldn't say" whether the decision to report the blister to FCM Eckles was "a joint or a singular decision." Tr. Vol. 3 at 156. However, she conceded that she had previously testified in a deposition that it was a "joint decision." *Id*. at 157. She further stated that she had previously testified that Ramey told her to take the picture and send it to DCS. She also testified that she had previously stated that Ramey "supported" her decision to call the

hotline. *Id*. at 169. And FCM Eckles described that call as "a report of physical abuse against the alleged perpetrator, [Ping], mother of [Child], in regards to [Child]." Tr. Vol. 2 at 245.

[20] Ping then presented evidence that Child's removal had caused her emotional harm. Ping's grandfather testified that, following Child's removal, Ping "never slept a whole lot" and that she was unable to work. Tr. Vol. 4 at 13. Ping's Husband similarly testified that Ping did not work and that she had "persistent nightmares" and "body[-]crippling panic attacks" while Child was removed from her care. *Id*. at 228, 229. And Ping testified that, in addition to emotional harm, Child's removal had "[c]ertainly" affected her reputation. *Id*. at 102.

[21] After the parties had presented their evidence, Ramey and McHenry moved for a judgment on the evidence for the first time. In relevant part, they alleged that Ping had not presented any evidence "of reputational harm." Tr. Vol. 5 at 111. They also asserted that, pursuant to the Release Agreement, Ping "agree[d] to forgo [her] right to trial" on "the issues raised" by the federal complaint. *Id*. at 114. And they maintained that Ping sought recovery in this case "for the same injury" that was raised in the federal case such that her current claim was barred by the terms of the Release. *Id*. at 115. The court denied the motion.

[22] The parties then discussed jury instructions. Ramey and McHenry requested a jury instruction that Ping was required to prove that Ramey and McHenry had intentionally communicated to DCS "a report accusing Ms. Ping of abusing or neglecting" Child. Appellants' App. Vol. 3 at 149. The court declined to give

that proffered instruction. Instead, the court instructed the jury that, in order to prevail on her claim, Ping was required to prove that Ramey and/or McHenry had "intentionally communicated" to DCS a report of child abuse or neglect "knowing the report to be false" and that the "intentional act of a Defendant was a responsible cause of the injuries claimed by" Ping. Tr. Vol. 5 at 189. The court also instructed the jury over Ramey and McHenry's objection that, "[f]or purposes of Indiana Code [Section] 31-33-22-3, communication may be direct or indirect." *Id*. at 191.

[23] The parties then discussed damages. The court agreed with Ramey and McHenry that "no evidence was presented [that] would support an award of damages for defamation *per quod*." *Id*. at 136. However, the court instructed the jury, over Ramey and McHenry's objection, that, if it decided that Ramey and/or McHenry were liable, it "must decide the amount of money that will fairly compensate" Ping. *Id*. at 194. The court then stated that, to reach that determination, the jury may consider Ping's mental suffering and "the damage to her reputation." *Id*. The court further instructed the jury that Ping "does not have to present evidence of the dollar value of her mental suffering or damage to her reputation. This type of damage need not be proved to a mathematical certainty." *Id*.

[24] The jury found in favor of Ping and against Ramey, McHenry, and DCS as a nonparty and assigned fault as follows: 33% to Ramey, 33% to McHenry, and 34% to DCS. The jury then awarded $275,000 in damages to Ping, with Ramey and McHenry each to pay $90,750. And the jury determined that

Ramey and McHenry were each liable to Ping for $10,000 in punitive damages. The court entered judgment accordingly.

[25] Ramey and McHenry then filed a joint motion for judgment on the evidence and motion to correct error. In that motion, Ramey and McHenry asserted that the jury's verdict "cannot be supported by the evidence presented at trial." Appellants' App. Vol. 4 at 55. In particular, they alleged that the "facts are clear that Defendant Ramey never communicated any report to" DCS. *Id*. They also asserted that, while McHenry texted FCM Eckles and called the hotline, she did not "accuse [Ping] of child abuse or neglect." *Id*. at 56. And they asserted that the award of punitive damages was clearly erroneous because McHenry's communications to DCS did not constitute "outrageous behavior." *Id*. at 59. The court denied that motion. This appeal ensued.

# Discussion and Decision

## *Relevant Statutes*

[26] This appeal asks us to consider when a person can be held liable for filing a false report of child abuse to DCS. The main statute at issue is the False Reporting Statute, found at Indiana Code Section 31-33-22-3. That statute provides, in relevant part, that a "person who intentionally communicates" to DCS "a report of child abuse or neglect knowing the report to be false is liable to the person accused of child abuse or neglect for actual damages." Ind. Code § 31-33-22-3(b).

[27] However, Indiana Code Section 31-33-6-1 states that, except as otherwise provided, a person who "makes or causes to be made a report of a child who may be a victim of child abuse or neglect" is "immune from any civil or criminal liability that might otherwise be imposed because of such actions, even if the reported child abuse or neglect is classified by [DCS] as unsubstantiated." Immunity does not attach for a person who has acted with "gross negligence" or "willful or wanton misconduct." I.C. § 31-33-6-2. In addition, a person making a report that a child may be a victim of child abuse or neglect "is presumed to have acted in good faith." I.C. § 31-33-6-3. With those statutes in mind, we turn to the parties' arguments on appeal.

### ***Issue One: Jury Instructions***

[28] Ramey and McHenry first contend that the trial court erred when it instructed the jury. Ramey and McHenry challenge two instructions that the court gave over their objection as well as the court's decision to not give one of their proffered instructions. "In reviewing challenges to jury instructions, we afford great deference to the trial court." *R.T. v. State*, 848 N.E.2d 326, 331 (Ind. Ct. App. 2006). In reviewing a trial court's decision to give or refuse a tendered instruction, this Court considers "whether the instruction (1) correctly states the law, (2) is supported by the evidence in the record, and (3) is covered in substance by other instructions." *Wal-Mart Stores, Inc. v. Wright*, 774 N.E.2d 891, 893 (Ind. 2002).

[29] As detailed above, the False Reporting Statute provides that a "person who intentionally communicates" to DCS "a report of child abuse or neglect

knowing the report to be false is liable to the person accused of child abuse or neglect for actual damages." I.C. § 31-33-22-2(b). On appeal Ramey and McHenry specifically contend that the court erred when it interpreted the statute and: (1) instructed the jury that a communication to DCS can be direct or indirect, (2) declined to instruct the jury that Ramey and/or McHenry could only be liable if they had explicitly accused Ping of child abuse, and (3) instructed the jury on reputational damages. Ramey and McHenry maintain that the court's decisions were in error because the court misinterpreted the False Reporting Statute. As such, to resolve this issue on appeal, we must interpret the statute.

[30] "Matters of statutory interpretation, which inherently present pure questions of law, are reviewed *de novo*." *Paquette v. State*, 101 N.E.3d 234, 237 (Ind. 2018). As this Court has stated, "[t]he primary purpose of statutory interpretation is to ascertain and give effect to the intent of our legislature. The best evidence of legislative intent is the statutory language itself, and we strive to give the words in a statute their plain and ordinary meaning." *21st Amendment, Inc. v. Ind. Alcohol & Tobacco Comm'n*, 84 N.E.3d 691, 696 (Ind. Ct. App. 2017) (citations and quotation marks omitted). We now address each argument in turn.

Whether Communication Can be Direct or Indirect Under the Statute

[31] On this issue, Ramey and McHenry first contend that the court erred when it interpreted the False Reporting Statute and instructed the jury, over their objection, that, "[f]or purposes of Indiana Code [Section] 31-33-22-3,

communication may be direct or indirect." Tr. Vol. 5 at 191. Ramey and McHenry assert that that "blanket instruction" "expanded the concept of 'communicating a report' to encompass any communication with DCS despite the plain language of the statute." Appellants' Br. at 28. As such, they contend that the instruction "was in error and constituted a misinterpretation of the statute." *Id*. In other words, they contend that the jury instruction was an incorrect statement of the law. And Ramey and McHenry assert that, under the statute, only a person who directly communicates to DCS can be held liable under the statute and that Ramey should not be held liable because he "did not communicate" with DCS. *Id*. at 32. We cannot agree.

[32] First, we note that the False Reporting Statute provides, simply, that a person can be liable for making a false report if that person communicates a report to DCS knowing the report to be false. *See* I.C. § 31-33-22-3(b). The statute does not require that the communication be direct. Under Ramey and McHenry's interpretation, we would be required to add words to the statute that do not exist. But it is well settled that we may not add new words to a statute which are not the expressed intent of the legislature. *Bergman v. Big Cicero Creek Joint Drainage Bd.*, 137 N.E.3d 955, 963 (Ind. Ct. App. 2019). Had the legislature intended that communication only be direct, it would have said so. But it did not, and we cannot read that limitation into the statute.

[33] In addition, this Court has previously considered whether a person who did not directly contact DCS can be held liable under the False Reporting Statute. In *Thomas v. Carlson (In re V.C.)*, the child reported to her therapist that the father

had sexually abused her. 867 N.E.2d 167, 170 (Ind. Ct. App. 2007). The therapist then reported the concerns to DCS, and DCS filed a petition alleging that the child was a child in need of services. However, it was later determined that the mother had "coached" the child to "fabricate the allegations" against the father. *Id*. at 181. As a result, the trial court ordered the mother to pay compensatory and punitive damages to the father pursuant to the False Reporting Statute. *Id*. at 182.

[34] On appeal, the mother asserted that she could not be held liable under the statute because it was Child's therapist, not her, who had reported the false abuse to DCS. *Id*. This Court disagreed and held that the False Reporting Statute "imposes liability on one who intentionally communicates an abuse report knowing the report to be false" and that "[c]ommunication can be direct or indirect." *Id*. We then held that the mother had "indirectly communicated an abuse allegation to DCS" through the therapist and affirmed the trial court's order. *Id*.

[35] Ramey and McHenry acknowledge our holding but assert that that case is "distinguishable factually" and that the holding should be limited to only those cases where the reporter "served as a pawn in an elaborate and plainly bad-faith scheme of false reporting[.]" Appellants' Br. at 31, 32. While *In re V.C.* represents an extreme example of an indirect communication to DCS, that holding is not limited only to those situations in which one person coaches another into making a false report. Rather, reading *In re V.C.* in conjunction with the False Reporting Statute itself, we conclude that any false report of

child abuse, whether direct or indirect, can subject a person to liability. We therefore hold that the trial court's instruction was a correct statement of the law.

[36] Further, although Ramey did not text or call DCS, there is ample evidence that he and McHenry acted together to make the false report and, as such, Ramey communicated a report to DCS indirectly. In particular, at trial, Ramey acknowledged that he had previously testified in a deposition: "*I* t[ook] a photo of [the blister] to protect myself basically from any new allegations, and *we* sent it to" FCM Eckles. Tr. Vol. 2 at 168 (emphases added). He also confirmed that he had previously testified that "*we* discussed whether or not it was the right thing to do[.]" *Id*. at 174 (emphasis added). McHenry then conceded that she had previously testified in a deposition that it was a "joint decision" between her and Ramey to report the blister to FCM Eckles. Tr. Vol. 3 at 157. She further acknowledged that she had previously testified that Ramey told her to take the picture and send it to DCS. And she testified that she had previously stated that Ramey "supported" the decision to call the hotline. *Id*. at 169.

[37] In other words, while McHenry was the person who actually reported the blister to DCS, the evidence demonstrates that Ramey and McHenry collaborated to make the report. The fact that Ramey did not send the text or place the call does not negate the fact that he participated in the discussion and decision to report the blister. In other words, Ramey was not a passive bystander, but he actively discussed whether to make the report with McHenry and supported McHenry's actions. And while Ramey and McHenry both

recanted their deposition testimony at trial, it is clear that the jury believed their depositions and not their trial testimony. The evidence supported giving the jury instruction. Because the jury instruction was a correct statement of the law, and because it was supported by the evidence, the court did not err when it instructed the jury that a communication may be direct or indirect.

Whether the Statute Requires the Reporter to Accuse a Specific Person

[38] Ramey and McHenry next contend that the court erred when it declined to instruct the jury that Ping was required to prove that Ramey and McHenry had specifically identified her as the person accused when they made their report with DCS. But while Ramey and McHenry contend that they requested a jury instruction to that effect, they have not provided us with a copy of the requested instruction or directed us to that part of the Record where they requested the instruction. They have therefore failed to comply with Indiana Appellate Rule 46(A)(8)(e) ("When error is predicated on the giving or refusing of any instruction, the instruction shall be set out verbatim in the argument section of the brief with the verbatim objections, if any, made thereto."). And by failing to comply with this appellate rule, they have "waive[d] the issue[.]" *Watson v. State*, 972 N.E.2d 378, 382 n.2 (Ind. Ct. App. 2012). However, because we were able to locate the requested instruction in the Appendix, we will consider the merits of the issue.

[39] Ramey and McHenry requested that the court instruct the jury that Ping was required to prove that they had made "a report accusing Ms. Ping of abusing or

neglecting" Child. Appellant's App. Vol. 3 at 149. The court declined to give that instruction and instead instructed the jury that

> Ashley D. Ping must prove by the greater weight of the evidence that, A, Defendant Charles T. Ramey, III and/or Defendant Jordan McHenry, intentionally communicated to the Department of Child Services, B, a report of child abuse or neglect, C, knowing the report to be false, D, the intentional act of a Defendant was a responsible cause of the injuries claimed by Ashley D. Ping, and four, Ashley D. Ping suffered actual damages as a result of the injuries.

Tr. Vol. 5 at 189.

[40] On appeal, Ramey and McHenry contend that, under the statute, "only the **person accused** of child abuse or neglect is entitled to damages." Appellants' Br. at 34 (emphasis in original). And they maintain that, because they "made no effort to blame or identify Ping as the perpetrator," Ping "should not be considered a 'person accused[.]'" *Id.* Thus, Ramey and McHenry contend that their proffered instruction requiring Ping to prove that Ramey and McHenry had named her as the accused was a correct statement of the law and that the court erred when it declined to give that instruction and instructed the jury as it did. We cannot agree.

[41] The False Reporting Statute provides that a person who intentionally makes a report of child abuse to DCS knowing the report to be false "is liable to the person accused of child abuse" for actual damages. I.C. § 31-33-22-3(b). Based on the plain language of the statute, a person who is falsely accused of child

abuse can hold the reporter liable. Notably, though, the statute does not describe how or by whom the person is accused. Instead, the statute simply refers to the "person accused" in the passive voice. When we interpret a statute, "we are mindful of both what it does say and what it does not say." *ESPN, Inc. v. Univ. of Notre Dame Police Dep't*, 62 N.E.3d 1192, 1195 (Ind. 2016) (quotation marks removed). In order to interpret the statute as Ramey and McHenry suggest, we would again be required to add words to the statute, which we cannot do.

[42] Rather, in order for the reporter to be liable for damages, the reporter must have acted intentionally to make a false report of child abuse and that report must have caused a person's damages. Here, the facts demonstrate that Ramey and McHenry acted intentionally when they made a false claim of child abuse. And that false report resulted in damages to Ping when DCS accused Ping of Child abuse and removed Child from her care based on Ramey and McHenry's false report. As such, under the facts of this case, the trial court properly instructed the jury that, in order to hold Ramey and McHenry liable, the jury must determine that the report was a responsible cause of Ping's injuries.

[43] Still, Ramey and McHenry contend that the court's instruction added a "foreseeability test to the element of accusation," which "widens the net and exposes reporters to potential liability from individuals identified by DCS independently of statements made by the reporter." Appellants' Br. at 37-38. During the oral argument, Ramey and McHenry equated the False Reporting Statute to an intentional tort but asserted that the court's use of the phrase

"responsible cause" in the jury instruction misappropriated the concept of foreseeability from the law of negligence. However, the instruction does not include a foreseeability test. The court instead instructed the jury that Ping was required to show that "the intentional act of a Defendant was a responsible cause of the injuries claimed by" Ping and that Ping "suffered actual damages as a result." Tr. Vol. 5 at 189. Under that instruction, Ping was only required to prove that Ramey and McHenry had acted intentionally in making the report to DCS and that their intentional act caused Ping harm. The term "responsible cause" does not indicate that Ramey and McHenry had to foresee that Ping would be harmed. Rather, it simply instructed the jury to determine whether Ramey and McHenry's report had caused Ping's injuries. And that instruction follows the statute.

[44] Nevertheless, foreseeability is relevant to the intent element of the False Reporting Statute. Because intent is a mental function and a reporter is unlikely to declare their intent, the reporter's intent may be proved by circumstantial evidence, which includes the reporter's conduct and its natural consequences. An intent can be inferred when it is foreseeable that a reporter's false report is likely to damage another person. While the reporter need not identify the person accused, the facts must demonstrate a nexus between the false report and the person accused.

[45] Here, it is clear that there is a nexus between the false report and Ping because Ping was, in fact, the person accused. Even though Ramey and McHenry did not expressly accuse Ping in their report, there is no dispute that DCS accused

Ping of abuse as a direct result of the false report. Indeed, FCM Eckles described McHenry's call to the hotline as "a report of physical abuse against the alleged perpetrator, [Ping], mother of [Child], in regards to [Child]." Tr. Vol. 2 at 245. As such, the trial court did not err when it declined to give Ramey and McHenry's proffered instruction.

Reputational Damages

[46] Lastly, Ramey and McHenry assert that the court erred when it instructed the jury that Ping did "not have to present evidence of the dollar value of her mental suffering or the damage to her reputation." Tr. Vol. 5 at 194. Specifically, Ramey and McHenry contend that the False Reporting Statute only allows for the recovery of actual damages and that the court's instruction allowed the jury to award Ping for "presumed damages," which "expand[ed] a reporter's potential civil liability beyond actual damages." Appellants' Br. at 41. In essence, they maintain that the court's instruction excused the jury from having to find evidence of actual damages to her reputation.

[47] However, we do not read the trial court's instruction to allow for an award of presumed damages or to otherwise excuse the jury from requiring evidence of actual harm to her reputation. Rather, the court instructed the jury that, in deciding how much to award Ping, it "may consider, one, the mental suffering Plaintiff Ashley D. Ping has experienced, and two, the damage to her reputation." Tr. Vol. 5 at 194. The court continued that Ping "does not have to present evidence of the dollar value of her mental suffering or damage to her

reputation." *Id*. It appears that Ramey and McHenry contend that the instruction should be read to mean that Ping did not have to present *any* evidence of damage to her reputation. We do not read the instruction that way. The court's instruction did not relieve Ping of the burden to present evidence that her reputation was damaged. It simply instructed the jury that she was not required to prove the *amount* by which her reputation was damaged.

[48] Still, Ramey and McHenry assert that Ping "presented no evidence to show how her reputation was damaged." Reply Br. at 16. And they contend that, despite the "absence of evidence, the trial court allowed the jury to 'presume' damages as would be done for a defamation claim." *Id*. They further contend that, while Ping may not need to provide a specific dollar amount of reputational damages, she "must provide proof that her reputation was injured even if she cannot quantify it[.]" *Id*. at 17.

[49] But as in many jury trials, the jury was instructed to consider their own "knowledge, experience, and common sense" in deciding the case. Tr. Vol. 2 at 135. And common sense supports an inference that a mother wrongly accused of child abuse will suffer reputational harm. Stated differently, a false report of child abuse, alone, is sufficient to support an award of actual damages. Here, Ping presented evidence that Ramey and McHenry had made a false report, which caused DCS to accuse her of child abuse. Thus, the actual harm to Ping was the damage to her reputation caused by the false report of child abuse. The jury was free to infer from that evidence, together with the fact that Child was removed from Ping's care for forty-four days, that Ping had suffered

reputational harm. Ping also testified that her reputation was "[c]ertainly" damaged as a result of Ramey and McHenry's false report. Tr. Vol. 4 at 102. Thus, Ping presented evidence from which the jury could conclude that her reputation was damaged. The trial court did not err when it instructed the jury.

### ***Issue Two: Good Faith and Qualified Immunity***

[50] Ramey and McHenry next contend that the evidence at trial was insufficient to rebut the statutory presumptions of good faith and qualified immunity. As this Court has recently stated:

> Our standard of review on a challenge to the sufficiency of the evidence supporting a jury verdict is the same in civil as in criminal cases. Thus, we consider only the evidence most favorable to the verdict and the reasonable inferences to be drawn therefrom. We will neither reweigh the evidence nor assess witness credibility, and we will affirm unless we conclude that the verdict is against the greater ?? weight of the evidence.

*Bergal v. Bergal*, 153 N.E.3d 243, 252 (Ind. Ct. App. 2020).

[51] As stated above, a person who makes a report of child abuse or neglect "is presumed to have acted in good faith." I.C. § 31-33-6-3. Further, a person who makes a report of child abuse "is immune from civil liability" even if the report is classified as unsubstantiated by DCS. I.C. § 31-33-6-1. However, immunity does not attach for a person who has acted with "gross negligence" or "willful or wanton misconduct." I.C. § 31-33-6-2.

[52] On appeal, Ramey and McHenry contend that, "based on the facts before the trial court," neither Ramey nor McHenry "should have been denied the protection of the Indiana reporting laws' good faith presumption and statutory immunity." Appellants' Br. at 42. Specifically, they allege that the evidence at trial "did not demonstrate, affirmatively, gross negligence or willful and wanton misconduct." *Id*. at 43. Rather, they contend that the "undisputed facts" show that McHenry "followed the instructions and advice of DCS officials with respect to [Child's] care, and specifically with respect to the identification and reporting of the mark they observed" on August 27. *Id*. And they maintain that that behavior suggests "good faith compliance with the law" such that the verdicts against Ramey and McHenry "should be reversed given the lack of evidence to rebut the presumption of good faith and qualified immunity" under the statutes. *Id*. at 44, 46. We cannot agree.

[53] The evidence most favorable to the judgment demonstrates that the blister first appeared on Child on August 20. At that point, Ping emailed FCM Oakes about the blister, who forwarded the email to FCM Eckles. On August 22, FCM Eckles "informed [Ramey] of the new report." Tr. Vol. 2 at 230. And on August 24, prior to a visit between Ramey and Child that Eckles attended, Ping again told FCM Eckles that the mark on Child was "still visible." Tr. Vol. 4 at 87. In addition, Dr. Hicks testified that the picture of the blister taken on August 27 depicted a lesion that was "consistent with" the lesion he had examined on August 21. Tr. Vol. 3 at 193. And Ping testified that the blister on August 27 was the "exact same blister" as the one she had first seen and

reported on August 20. Tr. Vol. 4 at 90. And she corroborated that testimony with pictures she had taken on August 20 and August 24.

[54] However, Ramey and McHenry reported the blister as a "new" injury to FCM Eckles on August 27, and, when they called the child abuse and neglect hotline, they stated that Child had had "no injuries" on August 24. Tr. Vol. 3 at 154, Ex. at 85. Thus, while Ramey and McHenry denied knowledge of the blister prior to August 27, the evidence demonstrates that Child had the blister prior to August 27 and that Ramey and McHenry knew about it as early as August 22 but nonetheless reported it as a new injury.

[55] Still, Ramey and McHenry assert that they had simply followed the advice of FCM Eckles when they made the report with the hotline. And they contend that a person cannot "act in **bad faith** by doing what DCS advises for the care of children." Reply Br. at 20 (emphasis in original). However, as discussed above, Ramey and McHenry texted FCM Eckles a picture of the allegedly "new" blister on August 27, despite the fact that Ramey and McHenry were aware of the blister as early as August 22. Further, FCM Eckles advised Ramey and McHenry to make the report through the hotline only "if [they] truly believed that it was another injury." Tr. Vol. 3 at 147. In other words, Ramey and McHenry made the decision to report the blister as "new" to FCM Eckles even though they had known about the blister since August 22. And FCM Eckles' instruction was qualified. She advised Ramey and McHenry to call the hotline only if they believed the blister to be new. Based on that evidence, a reasonable jury could conclude that Ramey and McHenry had acted with gross

negligence or willful or wanton misconduct. As such, we hold that Ping presented sufficient evidence to rebut the statutory presumptions of good faith and qualified immunity.

### *Issue Three: Punitive Damages*

[56] Ramey and McHenry also contend that Ping presented insufficient evidence to support the award of punitive damages. Our Court has previously stated:

> Punitive damages may be awarded only if there is clear and convincing evidence that the defendant acted with malice, fraud, gross negligence, or oppressiveness which was not the result of mistake of fact or law, honest error or judgment, overzealousness, mere negligence, or other human failing. In determining whether sufficient evidence warrants the imposition of punitive damages, we do not reweigh the evidence or assess witness credibility and consider only the probative evidence and the reasonable inferences supporting the verdict.

*Hi-Tec Properties, LLC v. Murphy*, 14 N.E.2d 767, 778 (Ind. Ct. App. 2014) (quotation marks and citations omitted).

[57] Ramey and McHenry contend that the evidence presented by Ping in support of her claim for punitive damages was "circumstantial in nature and, at most, suggests a motive, rather than actually demonstrating that Ramey or McHenry made a report in bad faith." Appellants' Br. at 47. They further assert that it was Ping's "burden to show actual bad faith and that the misrepresentation was not attributable to a mistake of law or fact." *Id*. (emphasis removed). And they maintain that the "evidence martialed at trial was insufficient to establish such

bad faith and misconduct," such that the award of punitive damages must be reversed. *Id*.

[58] However, Ramey and McHenry's arguments on appeal are simply a request for this Court to reweigh the evidence, which we cannot do. As discussed above, the evidence demonstrates that Ramey and McHenry knew about the blister as early as August 22 and that the same blister was still present on Child on August 24 when Ramey had a visit and again on August 27 during the custody evaluation. But despite the fact that the lesion was pre-existing and previously known to Ramey and McHenry, Ramey and McHenry twice reported the blister as a new injury to DCS, which resulted in DCS removing Child from Ping's care. We decline to reweigh and discount the significance of circumstantial evidence. The jury saw Ramey and McHenry, observed their demeanor, scrutinized their testimony, and made a credibility determination. *See D.C. v. J.A.C.*, 977 N.E.2d 951, 956-57 (Ind. 2012)

[59] Considering only that probative evidence and the reasonable inferences therefrom, a reasonable jury could have found by clear and convincing evidence that Ramey and McHenry's actions were malicious, fraudulent, grossly negligent, or oppressive, and not merely the result of honest error or mistake of fact. Contrary to Ramey and McHenry's contentions on appeal, that evidence does not simply show that they had a motive to make a false report against Ping but that they took steps to make a false report in bad faith. And as a direct result of that false report, Child was removed from Ping's care. We therefore

hold that Ping presented sufficient evidence to support the award of punitive damages.

### *Issue Four: Settlement of the Federal Complaint*

[60] Finally, Ramey and McHenry contend that the court erred when it denied their motion for summary judgment and first motion for judgment on the evidence on the ground that the prior settlement of the federal lawsuit precluded Ping from bringing the claims against them.[7]

#### Res Judicata

[61] Ramey and McHenry first contend that the trial court erred when it denied their motion for summary judgment on the ground that Ping's claims were barred by res judicata. The Indiana Supreme Court has explained that

> [w]e review summary judgment de novo, applying the same standard as the trial court: "Drawing all reasonable inferences in favor of . . . the non-moving parties, summary judgment is appropriate 'if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.'" *Williams v. Tharp*, 914 N.E.2d 756, 761 (Ind. 2009) (quoting T.R. 56(C)). "A fact is 'material' if its resolution would affect the outcome of the

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[7] Ramey and McHenry begin this section of their Argument by asserting that the "principles of res judicata, estoppel, prevention of double recovery, and the terms of Ping's agreed release" all precluded Ping from bringing the instant complaint. Appellants' Br. at 48. To the extent Ramey and McHenry attempt to make a separate claim that the prohibition against double recoveries bars Ping's complaint, they have not made cogent argument to support that argument. In any event, "double recovery does not apply where two separate, distinct claims exist." *Cutter v. Classic Fire & Marine Ins. Co*, 926 N.E.2d 1067, 1074 (Ind. Ct. App. 2010). Here Ping's claim in the federal lawsuit was separate and distinct from her state-law claim such that double recovery does not apply.

> case, and an issue is 'genuine' if a trier of fact is required to resolve the parties' differing accounts of the truth, or if the undisputed material facts support conflicting reasonable inferences." *Id*. (internal citations omitted).

*Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014) (omission original to *Hughley*).

[62] Ramey and McHenry moved for summary judgment on the ground that the principle of res judicata barred Ping's claim.[8] Generally speaking, res judicata operates to prevent repetitious litigation of disputes that are essentially the same, by holding a prior final judgment binding against both the original parties and their privies. *V.B. v. Ind. Dep't of Child Servs. (In re Eq.W.)*, 124 N.E.3d 1201, 1209 (Ind. 2019).

[63] On appeal, Ramey and McHenry assert that Ping was precluded from bringing the instant claim because "it cannot be reasonably disputed that the core facts and injuries in the case against Oakes and Eckles were the same as the suit here." Appellants' Br. at 51. They further contend that both cases "centered on the discovery of [Child's] blister, McHenry's purported false report of that blister to DCS, DCS' alleged mistaken reliance on McHenry's report to

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[8] In their reply in support of their motion for summary judgment, they asserted that the Release Agreement prohibited Ping from bringing the instant lawsuit and, for the first time, designated the Release Agreement as evidence. In its order denying their motion, the court found that Ramey and McHenry's reply was "not responding to an argument" in Ping's response but was, rather, asserting a "new basis" for summary judgment; that it had "not authorize[d]" an amendment to the designated evidence; and that a reply was authorized only "insofar as it was responsive to" Ping's response. Appellant's App. Vol. 2 at 38.

temporarily take custody of [Child] from Ping, and Ping's claimed emotional harm from that loss." *Id*. Thus, Ramey and McHenry maintain that res judicata principles "ought to have barred Ping from proceeding in state court for the same damages against Ramey and McHenry as she pursued against DCS in the federal case." *Id*. at 53.

[64] The principle of res judicata is divided into two branches: claim preclusion and issue preclusion. *Freels v. Koches*, 94 N.E.3d 339, 342 (Ind. Ct. App. 2018). In their brief, Ramey and McHenry do not distinguish between the two branches but make one general argument that res judicata barred Ping's claims. However, we will nonetheless analyze whether either branch barred Ping's present lawsuit.

*Claim Preclusion*

[65] Before a court can find that claim preclusion applies to bar a subsequent action, four essential elements must be met: (1) the former judgment "must have been rendered by a court of competent jurisdiction"; (2) the former judgment "must have been rendered on the merits"; (3) the matter now at issue "was or might have been determined in the former suit"; and (4) the controversy adjudicated in the former suit "must have been between the parties to the present action or their privies." *In re Eq.W.*, 124 N.E.3d at 1209.

[66] Here, there is no dispute that the parties to the federal lawsuit were Ping and Child as plaintiffs and FCM Eckles and FCM Oakes as defendants. And the parties to the current action are Ping as the plaintiff and Ramey and McHenry

as defendants. As such, it is clear that the former suit was not between the same parties to the present action.[9] And Ramey and McHenry have made no argument to suggest or demonstrate that they were in privity with the DCS employees who were subject to the federal action. We therefore hold that claim preclusion does not apply and does not bar Ping's current claim.

*Issue Preclusion*

[67] The second branch of the principle of res judicata is issue preclusion, also known as collateral estoppel. Issue preclusion

> bars the subsequent litigation of a fact or issue that was *necessarily adjudicated* in a former lawsuit if the same fact or issue is presented in the subsequent lawsuit. If issue preclusion applies, the former adjudication is conclusive in the subsequent action, even if the actions are based on different claims. The former adjudication is conclusive only as to those issues that were *actually litigated and determined therein*. Thus, *issue preclusion does not extend to matters that were not expressly adjudicated* and can be inferred only by argument.

*Freels*, 94 N.E.3d at 342 (quoting *Angelopoulos v. Angelopoulos*, 2 N.E.3d 688, 696 (Ind. Ct. App. 2013)) (emphases added). There are two categories of collateral estoppel. As relevant here, defensive collateral estoppel has been used to

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[9] Ramey and McHenry assert that a "prior judgment can be used defensively to prevent subsequent litigation on the same core facts, even if the parties in the second action are not the same as the first action." Appellants' Br. at 49. However, the case they cite in support of that statement clearly applies only to collateral estoppel, not claim preclusion. *See Tofany v. NBS Imaging Sys., Inc.*, 616 N.E.2d 1034, 1037 (Ind. 1993) ("Recently, this Court relaxed the rigid traditional requirements for the defensive use of collateral estoppel . . . by rejecting the requirements of mutuality of estoppel and identity of parties as prerequisites[.]").

describe the situation where a defendant seeks to prevent a plaintiff from asserting an issue that the plaintiff "*has previously litigated*" against another defendant. *Davidson v. State*, ___N.E.3d___, No. 21A-CT-1516, 2022 WL 1153267, at *2 (Ind. Ct. App. April 19, 2022) (emphasis in original) (not yet certified).

[68] Ramey and McHenry focus much of their argument on the fact that both the federal lawsuit and the instant complaint were based on the same "core facts" such that Ping should have been precluded from filing the suit against them in state court. Appellants' Br. at 51. However, issue preclusion applies only to bar the subsequent litigation of an issue that was *actually litigated* in a prior action. *Freels*, 94 N.E.3d at 342; *Davidson*, 2022 WL 1153267, at *2. Here, in the prior action, Ping filed a claim under 42 U.S.C. § 1983 and asserted that the two DCS employees had violated Ping's and Child's constitutional rights, while the issue in the present complaint was whether Ramey and McHenry had made a false claim of child abuse in violation of Indiana Code Section 31-33-22-3(b). In other words, the issue raised in her state law complaint was not "expressly adjudicated" in the federal lawsuit. *Freels*, 94 N.E.3d at 342. As a result, issue preclusion does not preclude Ping's state-law claim.

[69] Neither claim preclusion nor issue preclusion prevented Ping from filing her complaint against Ramey and McHenry in state court. We therefore hold that the trial court did not err when it declined to enter summary judgment in favor of Ramey and McHenry on the ground of res judicata.

The Release Agreement

[70] Finally, Ramey and McHenry contend the court erred when it denied their motion for judgment on the evidence because the Release Agreement barred Ping's instant claim. Usually, in reviewing a trial court's ruling on a motion for judgment on the evidence, we will examine only the evidence and reasonable inferences that may be drawn therefrom that are most favorable to the nonmovant. *See Denman v. St. Vincent Med. Grp., Inc.*, 176 N.E.3d 480, 492 (Ind. Ct. App. 2021). However, to resolve this issue, we must interpret the Release Agreement. It is well settled that the

> [c]onstruction of the terms of a written contract generally is a pure question of law. The goal of contract interpretation is to determine the intent of the parties when they made the agreement. This Court must examine the plain language of the contract, read it in context, and, whenever possible, construe it so as to render every word, phrase, and term meaningful, unambiguous, and harmonious with the whole.

*Layne v. Layne*, 77 N.E.3d 1254, 1265 (Ind. Ct. App. 2017) (citations omitted).

[71] Here, Ramey and McHenry contend that Ping agreed in the Release Agreement that "the settlement fully resolved the damages related to the removal of" Child. Appellants' Br. at 54. And they assert that Ping "unambiguously and expressly agreed" to forgo her right to a trial on the issues raised in her complaint. *Id.* Thus, they maintain that Ping's "alleged harm for [the] temporary loss of custody of" Child was brought "in direct violation of her agreement in the federal settlement." *Id.* at 55.

[72] We first note that Ramey and McHenry were not parties to the Release Agreement. Rather, the Release Agreement explicitly provides that it is an agreement between Ping and Child, as Releasors, and FCM Eckles, FCM Oakes, and DCS as Releasees. And the Release Agreement states that it is entered into by the parties "in full settlement and satisfaction of any and all of Releasor's claims that Releasor brought or could have brought *against Releasees* related to the events alleged in the amended complaint." Appellants' App. Vol. 2 at 161 (emphasis added). Further, Ping accepted the settlement "in full satisfaction of any and all claims *against Releasees*," and she agreed that she was "fully releasing *Releasees*" from liability. *Id*. (emphases added).

[73] The plain language of the agreement is clear. When she entered into the Release, Ping only agreed to settle the claims that she actually brought or could have brought as against FCM Eckles, FCM Oakes, or DCS, and she only released those parties from liability. Ramey and McHenry are not parties to the agreement, and Ping did not agree to release them from any liability.

[74] Further, while Ping "agree[d] to forgo" her right to trial, the agreement was limited to "the issues raised" in her federal complaint. *Id*. The issues Ping raised in her federal complaint were whether two DCS employees had violated both her and Child's constitutional rights when they removed Child "without probable cause, without a court order, and when he was in no imminent danger," and when they "misrepresent[ed] material facts" to the court at the detention hearing. *Id*. at 105. Under the clear and unambiguous terms of the Release Agreement, those are the only issues on which Ping agreed to forgo her

right to trial. And Ping did not attempt to re-litigate those issues in state court. Rather, she simply claimed here that Ramey and McHenry made a false report of child abuse, which was not an issue she had raised in federal court.

[75] While some of the facts overlap, Ping did not attempt to re-assert the issues from her federal complaint in her current complaint. As such, contrary to Ramey and McHenry's contentions on appeal, we hold that the terms of the Release Agreement did not preclude Ping from bringing this state-court action, and the trial court did not err when it denied Ramey and McHenry's motion for judgment on the evidence.

## *Conclusion*

[76] In sum, the trial court did not err when it interpreted the False Reporting Statute and, as such, it did not err when it instructed the jury. Further, Ping presented sufficient evidence to negate the statutory presumption of good faith and qualified immunity and to support the jury's award of punitive damages. And Ping was not precluded from bringing the instant lawsuit under either the principle of res judicata or the terms of the Release Agreement. We therefore affirm the trial court.

[77] Affirmed.

Vaidik, J., and Tavitas, J., concur.