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The legal arguments in the brief do not necessarily represent the views of any division of the Court of Appeals, and the brief may not be cited as precedent.

Colorado Court of Appeals 2 East 14 th Avenue, Denver, CO 80203	
² Plaintiff Petitioner: <u>Mama and Papa Brown Bear</u> , <input type="checkbox"/> Appellant or <input checked="" type="checkbox"/> Appellee & Defendant Respondent: <u>Goldilocks</u> <input checked="" type="checkbox"/> Appellant or <input type="checkbox"/> Appellee	▲ FOR COURT USE ▲
My Name ³ : <u>Goldilocks</u> Address: <u>123 Homesweethome Way, Fort Collins CO 80526</u> Phone: <u>970-555-1234</u> E-Mail: <u>Goldirules@gmail.com</u>	Court of Appeals Case Number: <u>2017CA77123</u> ¹ District Court Case ¹ Number: <u>2015CV70501</u> County: <u>Larimer</u>
{Sample} Opening Brief	

1. Certificate of Compliance

I certify that this brief complies with the requirements of Colorado Appellate Rules (C.A.R.) 28 and 32. Including:

Word Limits: My brief has 4,046 words, which is not more than the 9,500 word limit.

Standard of Review:

¹ This section has the Court of Appeals case number.

² This section has the District Court case number and the name of the county where it was heard.

³ This section has your name and contact information.

I discuss which Standard of Review should be used to evaluate that issue.

Preservation:

I discuss if that issue was preserved for appeal. I cite to the page in the Record on Appeal where I raised this issue before the District Court and I cite to where the District Court decided that issue.

I understand that my brief may be rejected if I fail to comply with these rules.

*Goldilocks*⁴

Signature of the Appellant

⁴ Make sure to sign this page.

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⁵ Fill in the Tables of Contents and Authorities when you are finished with your brief so that you can put in the correct page numbers where each section is located in the brief.

⁶ The Cases section is for all of the court cases you mentioned (cited) in your brief, listed in alphabetical order. Include the page number(s) where each case is cited in the brief.

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⁷ Statutes and Rules are listed in numerical order.

⁸ You may have other sources cited in your brief such as constitutional law, agency regulations, or legal articles or books.

4. Issues on Appeal⁹

1. Did the District Court err (make a mistake) in finding that Goldilocks had trespassed in the Brown-Bears' cabin?
2. Did the District Court err in finding outrageous conduct by Goldilocks and therefore intentional infliction of emotional distress?
3. Were the damages awarded by the District Court too much (excessive)?

5. Statement of the Case¹⁰

Mama Brown-Bear, Papa Brown-Bear, and Baby Brown-Bear live in a large log cabin near Estes Park, Colorado. CF, p 7.¹¹ One day, the three Brown-Bears left their home to hike in Rocky Mountain National Park. CF, p 13.¹² After they left, the Brown-Bears' neighbor, Ida Eagle, saw a young woman with blond hair walk down their driveway. TR (June 15, 2015), p 7:12. Later that

⁹ These are the questions you want the Court of Appeals to answer for you.

¹⁰ This section is where you state the nature of the case, relevant facts, and explain the procedural history, which means what happened in the District Court.

¹¹ Notice that after every sentence that states a fact, there is a reference (citation), to the Record on Appeal. The Court of Appeals may only consider facts that are in the record. Citing to the record for each fact is necessary to be sure the Court of Appeals can find and consider that fact when ruling on your case.

¹² In your copy of the record (the CD sent to you in the mail), there are likely several different PDF documents. One of those documents is the Case File (CF). This citation is letting the Court of Appeals know that this fact is on Page 13 of the Case File.

day, Ms. Eagle saw the Brown-Bears return home with a heavy cooler. TR (June 15, 2015), p 7:15.¹³

The Brown-Bears entered their cabin and saw a bowl of half-eaten blueberries on the kitchen table. TR (June 15, 2015), p 9:4. When Baby Brown-Bear found Goldilocks sleeping on the couch in the den, she screamed and then quickly climbed up the wood stove pipe. TR (June 15, 2015), p 11:7. Goldilocks woke up and ran from the Brown-Bears' cabin. TR (June 15, 2015), p 13:3. The Brown-Bears gave a list of the damages to the police. EX (trial), p 4-5.¹⁴

Since that day, the Colorado Department of Parks and Wildlife has treated Baby Brown-Bear. TR (June 15, 2015), p 32:3. Department doctors diagnosed Baby Brown-Bear with post-traumatic stress disorder. TR (June 15, 2015), p 32:17-25.

Mama and Papa Brown-Bear filed a complaint in Larimer County District Court against Goldilocks. CF, p 1. They claim she trespassed on their property, ate their blueberries, and slept in their den. CF, p 2-3. They also

¹³ The Transcript (TR) is another part of the record. This citation is saying that the June 15, 2015 transcript, on Page 7, line 15, is where the Court of Appeals can find the testimony about this fact.

¹⁴ The Exhibits (EX) are another part of the record. This citation is saying that pages 4 and 5 of the trial exhibits, contains the list of damages.

claimed that Baby Bear suffered \$40,000 in physical and mental damages because she is unable to help the family fish, hunt, and gather berries. CF, p 2-3.

Judge I. M. Fhair presided over a two-day trial without a jury. TR (June 15, 2015), p 1:5. Papa Brown-Bear testified that the family left their cabin in the morning to go hiking and then returned home for lunch. TR (June 15, 2015), p 23-31.

Goldilocks said she was in Estes Park on vacation and was looking for a rustic bed and breakfast to stay the night. TR (June 15, 2015), p 37:11. She thought the Brown-Bears' cabin was a business because it was very large, didn't have a fence or private property sign, and had a "WELCOME" mat. TR (June 15, 2015), p 37:13. She also stated that she thought they provided food to guests because there was a huge garden with vegetables, large amounts of jarred berries and salmon, and several moose were stacked up on all of the shelves in the kitchen. TR (June 15, 2015), p 37:14. She testified that she looked for someone to ask about spending the night but couldn't find anyone. TR (June 15, 2015), p 36:7-37. She fell asleep while waiting in the den for someone to check her into a room. TR (June 15, 2015), p 37:17.

Mama Brown-Bear testified about Baby Brown-Bear's recent behavior. TR (June 16, 2015), p 7:3. Expert bear behavior biologist, Dr. Bunny Hugger, testified about the effects of a bear cub coming into contact with a human. TR (June 16, 2015), p 31:13. She stated that Baby Brown-Bear had blackouts due to her encounter with Goldilocks. TR (June 16, 2015), p 31-33. This prevented her from participating in family activities. TR (June 16, 2015), p 33:9.¹⁵

Judge Fhair entered a final order and judgment in favor of the Brown-Bears. CF, p 352. She found that Goldilocks had committed trespass and had intentionally inflicted emotional distress on Baby Brown-Bear. CF, p 355. She awarded the Brown-Bears \$40,000 in damages. CF, p 357.

On July 16, 2015, Goldilocks filed this appeal.

6. **Argument Summary**¹⁶

The District Court made three errors in the case. First, it found that Goldilocks was trespassing. However, Goldilocks had implied consent to enter the Brown-Bears' cabin. Therefore, she was not trespassing.

¹⁵ This paragraph has facts that may not help Goldilocks, but that are important to the issues on appeal. The Court of Appeals may not trust your arguments if you ignore relevant facts just because they don't work in your favor.

¹⁶ The Argument Summary is a short overview of the arguments you are about to make. It mentions only the key point(s) for each issue and is usually not longer than one page.

The District Court also erred in determining that Goldilocks’s actions were outrageous. Outrageous conduct is needed for her to be liable¹⁷ for intentional infliction of emotional distress. Colorado Courts have ruled that actions much worse than those involved in this case did not meet the definition of outrageous conduct.

Finally, the District Court was wrong to award damages when Goldilocks was not liable for trespass or intentional infliction of emotional distress.

7. Arguments

Issue 1 - Finding of Trespass¹⁸

A. Standard of Review:¹⁹

Determining if a party had consent to be on someone else’s property is factual question. *Corder v. Folds*, 292 P.3d 1177, 1181 (Colo. App. 2012). This issue on appeal asks whether or not Goldilocks had

¹⁷ Liable is a civil term meaning responsible.

¹⁸ Each issue on appeal gets its own separate section. This makes each issue easy for the Court of Appeals to find.

¹⁹ Each issue must have a Standard of Review section. The standard of review is the measuring tool that the Court of Appeals uses to determine whether the District Court made an error that must be reversed. Different types of errors may have different standards of review.

consent to be on the Brown-Bear's property, and is therefore a factual finding. An appellate court may set aside a trial court's findings of fact only if they are clearly erroneous. C.R.C.P. 52. Therefore, this issue should be reviewed under a clearly erroneous standard of review.²⁰

B. Preservation:²¹

Goldilocks raised the defense of implied consent in her Answer to the Complaint and during the trial. CF, p 7 and TR (June 16, 2015), p 41-47. The District Court ruled on this issue in its Final Order. CF, p 353.

C. Discussion:

²⁰ "Clearly Erroneous" is a standard of review that requires the Court of Appeals to accept the District Court's findings of fact unless they are clearly wrong (erroneous). Facts are clearly erroneous if there is no evidence in the record to support them.

²¹ Usually issues must have been raised in the District Court, first, before they can be raised on appeal. For example, here, Goldilocks argued during the trial that she had implied consent to enter the Brown-Bears' cabin. Therefore, the District Court had an opportunity to consider this argument before the appeal. In civil cases, the Court of Appeals may not review an issue if the District Court never had an opportunity to consider and rule on it.

The District Court erred in finding that Goldilocks trespassed on the Brown-Bears' property. Goldilocks was not trespassing because she had implied consent to enter the Brown-Bears' cabin.²²

A person is trespassing if they enter someone's land without permission.²³ § 13-21-115 (5)(c), C.R.S. 2015; *Hoery v. United States*, 64 P.3d 214, 217 (Colo. 2003); *Betterview Investments, LLC v. Public Service Co.*, 198 P.3d 1258, 1262 (Colo. App. 2008).²⁴ However, landowners may give express or implied consent for someone to be on their property by request, expectation, or intent. *Corder v. Folds*, 292 P.3d 1177, 1181 (Colo. App. 2012) (holding that a neighbor did not need express consent to

²² The Discussion section begins with an introductory sentence that explains what will be discussed in the other paragraphs of the section.

²³ This paragraph informs the Court of Appeals of what the law is on this issue. In this case, it is Colorado law regarding trespass and implied consent.

²⁴ Note that after every statement of law, there is a citation to a case, statute, or other law that supports the statement.

enter the property).²⁵ A landowner may consent to entry by his or her course of conduct without words of consent spoken. *Id.*²⁶

Goldilocks thought that the Brown Bears' cabin was a bed and breakfast.²⁷ TR (June 15, 2015), p 37:11. Although her assumptions are not a legal defense, they reinforce her argument that she had implied consent to enter the cabin. The "WELCOME" mat was out in front of the door, the door was open, there was food on the table, and there were many beds and chairs in the cabin. TR (June 15, 2015), p 37:11-13.

These facts indicated that the Brown-Bears were prepared for the arrival of several people.²⁸ In addition, the facts support Goldilocks's belief that this was a boarding house and there was no reason for her not to enter. At least, the Brown-Bears made it appear ready for an "open house." The Brown-Bears' welcoming decorations and accommodations

²⁵ One way to support your legal argument is to include a short sentence after a case citation that explains what that case is about. This may be especially helpful if the facts or the legal issues of the case are similar to your own case.

²⁶ "*Id.*" is short for *idem*, which is Latin for "same." You may use *Id.* if the citation for that sentence is exactly the same as the previous citation in your brief. If the source is the same, but you are referring to a different page, cite it as "*Id.* at 4."

²⁷ This next part of your argument restates the facts that are important for this issue. Note that every fact was also stated with its citation to the record in the Statement of the Case section. A citation to the record must be provided for every new fact.

²⁸ This paragraph applies the facts to the law stated in the previous paragraph.

implied people were expected or intended to enter and remain in their home.²⁹

There were no indications the cabin was closed, off-limits to outsiders, or limited to who could enter. There is no evidence to support a finding that Goldilocks’s entry was wrongful.³⁰

Because the facts support a finding of implied consent and none of the facts support a finding of trespass, the District Court’s finding that Goldilocks had committed trespass was clearly erroneous. The Court of Appeals should reverse this finding.³¹

Issue 2 – Finding of Outrageous Conduct

A. Standard of Review:³²

Outrageous conduct is a determined by the facts. *Culpepper v. Pearl St. Bldg., Inc.*, 877 P.2d 877, 883 (Colo. 1994). The Court of Appeals must

²⁹ This final sentence brings the reader back to the introductory sentence.

³⁰ The Court of Appeals may only reverse a case for error if the standard of review has been met. Because a “clearly erroneous” standard of review applies here, the writer will have to show that the District Court’s finding is not supported by the record.

³¹ Here, the writer ties in the standard of review and concludes the argument with how the Court of Appeals should decide the issue.

³² Again, each issue gets its own Standard of Review section.

accept the District Court's findings of fact in a civil case unless they are clearly erroneous. C.R.C.P. 52.

B. Preservation:

This issue was preserved by Goldilocks at trial. TR (June 16, 2015), p 47-57, and by the District Court's final order.³³ CF, p 357.

C. Discussion:

The District Court erred in finding that Goldilocks's conduct was outrageous. Her actions fall below the standard of outrageous conduct, and therefore the Brown-Bears' claim of intentional infliction of emotional distress fails.³⁴

A person is liable when his or her extreme and outrageous conduct intentionally or recklessly causes severe emotional distress in another. *Culpepper v. Pearl St. Bldg., Inc.*, 877 P.2d 877, 882 (Colo. 1994). There are three elements to establish intentional infliction of emotional distress: (1) the defendant engaged in extreme and outrageous conduct; (2), the defendant engaged in the conduct recklessly or with the intent of

³³ In this case, outrageous conduct was a key element to one of the claims that was resolved by the District Court in the final order.

³⁴ The first paragraph introduces the discussion on this issue.

causing the plaintiff severe emotional distress; and (3), the plaintiff incurred severe emotional distress. *Rugg v. McCarty*, 476 P.2d 753, 756 (Colo. 1970).³⁵

To establish the first element, the conduct must be extreme or outrageous. For conduct to rise to the level of extreme or outrageous, it must be “so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.” *Destefano v. Grabrian*, 763 P.2d 275, 286 (Colo. 1988).³⁶

No facts in this case show that Goldilocks’s conduct meets the definition of extreme or outrageous. Goldilocks entered the Brown-Bears’ cabin believing it was a place to stay for the night. TR (June 15, 2015), p 37:17. She fell asleep on the couch waiting for someone to get her a room for the night. *Id.* These actions do not go beyond all possible bounds of decency. Although her actions were an unfortunate and awkward mistake, they certainly are not atrocious or intolerable.³⁷

³⁵ The next paragraph states the law that applies to this issue.

³⁶ Some claims require that different criteria or elements be proven for a person to be liable. The writer may focus on any one or all of the elements and will explain the law involving each element discussed.

³⁷ This part discusses the facts that are important for the “outrageous conduct” element. The next part will apply those facts to the law stated above.

Goldilocks's actions pale in comparison to other intentional infliction of emotional distress cases. Compare *Destefano* (finding that a priest who was providing marriage counseling to a man while having intimate relations with that man's wife did not engage in outrageous conduct); and *Culpepper* (holding that the accidental partial cremation of a body, such that a cause of death could not be determined, was not outrageous conduct by the morgue).³⁸

No facts on the record show outrageous conduct on the part of Goldilocks. Therefore, the District Court's finding that there was outrageous conduct is clearly erroneous. Goldilocks is not liable under an intentional infliction of emotional distress claim without establishing the first element of outrageous conduct. The Court of Appeals should reverse this finding.

³⁸ One argument style is to compare your case with another that has similar facts or is based on similar law.

You could then argue that:

1. Your case is different and should be decided differently. Or,
2. Your case is the similar enough that it should have the same result. Or,
3. As in the Brown-Bears' case, other cases that courts have decided are much worse/better/more complicated. And because no outrageous conduct was found in those cases, then this case should have that result.

Issue 3 – Excessive Damages

A. Standard of Review:

Damages may only be reversed if there is a clear abuse of discretion.³⁹ *Leo Payne Pontiac, Inc. v. Ratliff*, 497 P.2d 997, 999 (Colo. 1970).

B. Preservation:

This issue is preserved by the District Court’s final order. CF, p 358.**B. Preservation on Appeal:** This issue is preserved by the District Court’s final order. CF, p 358.

C. Discussion:

The \$40,000 in damages awarded to the Brown-Bears was excessive. As stated above under issues 1 and 2, Goldilocks did not trespass and she did not intentionally inflict emotional distress on Baby Brown-Bear. Because Goldilocks is not liable under any claim, the

³⁹ Abuse of Discretion is another standard of review. This standard applies when the District Court may choose more than one way to make a decision. To meet this standard, you would have to show that the Court’s decision wasn’t among the possible reasonable decisions it could have made.

District Court Judge abused her discretion in awarding damages. The Court of Appeals should reverse the judgment.

However, even assuming Goldilocks is liable for trespass,⁴⁰ the damage award is too high. A plaintiff may recover nominal damages when the trespass is intentional, even if there are no actual damages. *Sanderson v. Heath Mesa Homeowners Ass'n*, 183 P.3d 679, 684 (Colo. App. 2008).

First, there is no evidence that the the Brown-Bears suffered \$40,000 in actual damages to their property. The Brown-Bears claim that Goldilocks may have eaten a half a bowl of blue berries. CF, p 1. Even in that case, no evidence was presented about the blueberries or the value of those blueberries.

Without actual damages, the District Court should have awarded only nominal damages to the Brown-Bears for the trespass. An award of \$40,000 is well beyond nominal, and a clear abuse of discretion. *See Crawford v. French*, 633 P.2d 524, 527 (Colo. App. 1981) (reversing

⁴⁰ This is another argument style. The writer argues that even if the Court of Appeals disagrees with one point of my argument, it should still rule in my favor on this other point.

damages of \$678 for trespass, because damages should only be nominal).⁴¹

The Court of Appeals should reverse the judgment because the District Court abused its discretion in awarding damages if Goldilocks is found liable for trespass.

8. Conclusion⁴²

For the reasons stated above, the Court of Appeals should reverse the District Court’s findings that Goldilocks trespassed on the Brown-Bears’ property and intentionally inflicted emotional distress on Baby Bear. This Court should also reverse the damages award.

9. Copies Delivered

I certify that on *(date)* November 16, 2015⁴³, I *(check one)*

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a copy of this document to:

⁴¹ This is another example of a short sentence after the citation that explains how the case cited is relevant in supporting the writer’s argument. Here, the argument is that if a \$678 award was reversed as not nominal, then the Brown-Bears’ \$40,000 judgment should definitely be reversed.

⁴² The Conclusion section should include a statement of what you want the Court of Appeals to do.

⁴³ Enter the date you mailed or delivered a copy.

1) Party Name: Mama and Papa Brown-Bear⁴⁴

Attorney Name: *(if any)* _____

Full Address: ⁴⁵ 456 Homestead Rd., Estes Park, CO 80511

2) Party Name: _____

Attorney Name: *(if any)* _____

Full Address: _____

10. Signature & Date

Signature: *Goldilocks*⁴⁶ _____ Dated: 11/16/2015

⁴⁴ Enter the name(s) of the other parties or their attorney(s).

⁴⁵ Enter that party's address.

⁴⁶ Make sure to sign your brief.