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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 <sup>th</sup> Avenue, Denver, CO 80203	
<sup>2</sup> 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 <sup>3</sup> : <u>Mama and Papa Brown Bear</u> Address: <u>456 Homestead Rd, Estes Park, CO 80511</u> Phone: <u>970-555-9876</u> E-Mail: <u>whoatemyporridge@icloud.com</u>	Court of Appeals Case Number: <u>2017CA77123</u> <sup>1</sup>  District Court Case <sup>1</sup> Number: <u>2015CV70501</u> County: <u>Larimer</u>
<b>{Sample} Answer Brief</b>	

## 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 2,794 words, which is not more than the 9,500 word limit.

### Standard of Review:

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<sup>1</sup> This section has the Court of Appeals case number.

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

<sup>3</sup> This section has your name and contact information.

For each issue on appeal, I state whether I agree with the Appellant's choice of which Standard of Review to use. If I disagree with the proposed Standard of Review, I explain why.

**Preservation:**

For each issue on appeal, I state whether I believe the issue has been preserved for appeal. If I believe it was not preserved, I explain why.

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

*Mama Brown-Bear* Papa Brown-Bear<sup>4</sup>  
Signature of Appellees

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<sup>4</sup> Make sure to sign this page.

## 2. **Table of Contents**<sup>5</sup>

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Response to Request for Attorney Fees<sup>6</sup>: N/A

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<sup>5</sup> 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.

<sup>6</sup> You should include this section only if the Appellant requested attorney fees in the Opening Brief:

### 3. Table of Authorities<sup>7</sup>

#### Cases<sup>8</sup>

*Betterview Investments, LLC v. Public Service Co.*, 198 P.3d 1258 (Colo. App. 2008): Pg. 9

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*Corder v. Folds*, 292 P.3d 1177 (Colo. App. 2012): Pg. 9

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*Destefano v. Grabrian*, 763 P.2d 275 (Colo. 1988): Pg. 13

*Hoery v. United States*, 64 P.3d 214 (Colo. 2003): Pg. 9

*Rugg v. McCarty*, 173 Colo. 170, 476 P.2d 753 (1970): Pg. 13

#### Statutes<sup>9</sup>

§ 13-21-115, C.R.S. 2015: pg. 9<sup>10</sup>

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<sup>7</sup> The Table of Authorities contains a list of all the sources you cited in your brief.

<sup>8</sup> The Cases section is for all of the court cases you cited (mentioned) in your brief, listed in alphabetical order. Include the page number(s) where each case is cited in the brief.

<sup>9</sup> Statutes and Rules are listed in numerical order.

<sup>10</sup> You may have cited other sources in your brief such as constitutional law, agency regulations, or legal articles or books.

### **3. Issues on Appeal<sup>11</sup>**

1. The District Court did not err in finding that Goldilocks trespassed.
2. The District Court did not err in finding outrageous behavior.
3. The damages awarded were not excessive.<sup>12</sup>

### **4. Statement of the Case<sup>13</sup>**

We include the following additional facts to the Statement of the Case found in the Opening Brief:

Mama Brown-Bear testified that their home was located several miles outside of town on a dirt road and that she never met Goldilocks before this case. R. Tr. (June 16, 2015), p. 6, line 25.<sup>14</sup> Goldilocks testified that she saw no signs advertising the home as a bed and breakfast. R. Tr. (June 15, 2015), p. 39, line 10.

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<sup>11</sup> This section contains the legal questions the Court of Appeals will answer in deciding the appeal.

<sup>12</sup> You may not include additional Issues on Appeal.

<sup>13</sup> This section contains the facts and procedural history of the case. You only need to include information in this section if you are dissatisfied with the Statement of the Case found in the Opening Brief.

<sup>14</sup> Notice that after every sentence that states a fact, there is a reference (citation), to the Record on Appeal (R.). The Court of Appeals may only consider facts that are in the Record. Citing to the Record for each fact will make sure the Court of Appeals can find and consider that fact when deciding the appeal.

Papa Brown-Bear testified that he was sure they had made the beds before leaving on their hike. R. Tr. (June 15, 2015), p. 21, line 7.<sup>15</sup> However, Officer J. Hopps testified that both Mama’s and Papa Brown-Bear’s beds were “unmade and it looked like someone had been sleeping in them”. R. Tr. (June 15, 2015), p. 20 – 21; R. Ex. Z, p. 2.<sup>16</sup>

The Brown-Bears also gave Officer Hopps a list of the home’s missing items, including half of the Brown-Bears’ blueberries. R. Ex. Z, p. 3.<sup>17</sup> Papa Brown-Bear testified that he was outraged to find that half of their blueberries had been stolen. R. Tr. (June 15, 2015), p. 22 - 23. Judge Fhair wrote in her final orders that she found Papa Brown-Bear’s testimony on making the beds and the missing blueberries to be credible. R. CF, p. 353.<sup>18</sup>

## 6. **Argument Summary**<sup>19</sup>

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<sup>15</sup> In your copy of the Record on Appeal (the CD sent to you in the mail) there are likely several different PDF documents. One of those documents may be a transcript (Tr.). This citation is saying that the June 15<sup>th</sup> transcript, on Page 7, line 15, is where the Court of Appeals can find the testimony about this fact.

<sup>16</sup> Another part of the Record on Appeal may contain the exhibits from the trial or hearing. This citation is saying that Exhibit Z, page 2 is where you will find this information.

<sup>18</sup> The case file (CF) is also a part of the Record on Appeal. The case file contains the documents that were filed in your case in the District Court by the parties or their attorneys.

<sup>19</sup> 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 did not make the three mistakes alleged in the Opening Brief. First, the District Court correctly found that Goldilocks was trespassing. And because Goldilocks did not preserve this issue, it may not be reviewed on appeal. Even if the issue was preserved, Goldilocks did not have implied consent to enter the home because a prior relationship between her and the Brown-Bears never existed. Therefore, she was trespassing on their private property.

Additionally, the District Court did not err in finding that Goldilocks's actions were outrageous, which is the first element needed to show she was liable for Intentional Infliction of Emotional Distress. The facts in the record reasonably lead to the conclusion of outrageous conduct. Because Goldilocks's behavior was outrageous, she is liable for emotional distress.

Finally, the District Court did not award excessive damages because Goldilocks is liable for Trespass and Intentional Infliction of Emotional Distress.

## **7. Arguments**

## Issue 1 – Finding of Trespass<sup>20</sup>

### A. Response to Standard of Review:<sup>21</sup>

We agree with the Opening Brief. Clearly erroneous should be the Standard of Review for this issue.<sup>22</sup>

### B. Preservation:<sup>23</sup>

We do not agree with the Opening Brief that this issue was preserved for review on appeal. Arguments raised in the pleadings, but not presented at trial, are not preserved for review on appeal. *Blood v. Qwest Servs. Corp.*, 224 P.3d 301, 328 (Colo. App. 2009).

The argument of implied consent was raised in Goldilocks's Answer to the Complaint. R. CF, p. 7. Because Goldilocks only raised

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<sup>20</sup> Each issue on appeal gets its own separate section. This makes each issue easy for the Court of Appeals to find.

<sup>21</sup> 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.

<sup>22</sup> State whether you agree with the Standard of Review proposed in the Opening Brief. If not, state your arguments why a different Standard of Review should be used and cite to legal authority that supports your argument.

<sup>23</sup> Usually issues must have been raised in the District Court, first, before they can be raised on appeal. The Court of Appeals may not review an issue if the District Court never had an opportunity to consider and rule on it.

this argument in her Answer and did not argue it again at trial, she has not properly preserved the argument for review on appeal. Therefore, the Court of Appeals should not review this issue.

C Discussion:

The District Court did not make a mistake in finding that Goldilocks had trespassed on the Brown-Bears' property because implied consent was never given by the Brown-Bears.<sup>24</sup>

A person is liable to another for trespass if they intentionally enter land in the possession of the other without proper permission.<sup>25</sup> § 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).<sup>26</sup> However, representation that the public is requested, expected, or intended to enter or remain on a property may be given by express or implied consent. *Corder v. Folds*, 292 P.3d 1177,

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<sup>24</sup> The Discussion section starts off with an introductory sentence that states the issue found in the Opening Brief.

<sup>25</sup> This paragraph informs the Court of Appeals of what the law is on this issue. In this case, it is the law regarding trespass and implied consent.

<sup>26</sup> Note that after every statement of the law, there is a citation to a case, statute, or other law that supports the statement.

1181 (Colo. App. 2012). A landowner may consent to entry, absent express words, by his or her course of conduct. *Id.*<sup>27</sup>

However, the *Corder* case is different from this case. In *Corder*, the landowner and accused trespassers were neighbors. *Id.* at 1178.<sup>28</sup> The neighbor was returning a propane tank that he had borrowed from the landowner. *Id.* The landowner and the neighbor had been in each other's houses many times, and the neighbor even had a key to the landowner's home. *Id.* at 1179.<sup>29</sup>

In this case, Goldilocks and the Brown-Bears never met before the lawsuit. R. Tr. (June 16, 2015), P. 6, Line 25. There was no longstanding relationship between Goldilocks and the Brown-Bears like there was in *Corder*. Because the facts in this case, where the parties were strangers, are very different from the *Corder* case, where the parties were

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<sup>27</sup> “*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.

<sup>28</sup> If the source is the same as the previous citation, but you are referring to a different page, use “*Id.* at (page number).”

<sup>29</sup> One argument style is to compare your case, with another case that has similar facts or law. Then you make arguments that:

1. Your case is different and should have a different result.
2. Your case is the same and should have the same result.
3. The other case is much worse/better/more complicated than your case. Therefore, reaching the same result is much easier in your case.

close neighbors, implied consent cannot be found in this case. The District Court was right to find a trespass had occurred.<sup>30</sup>

In addition, Goldilocks claims that implied consent was given because the Brown-Bears' home could have been confused with a Bed & Breakfast. However, the facts do not support this argument. The home was located far from the commercial center of town, off a dirt road. *Id.* No signs advertised the property as a business. R. Tr. (June 15, 2015), P. 39, Line 10. Goldilocks points to a welcome mat, the size of the property, and the amount of food in the home. However, these are all common items also with private houses. They alone do not equal implied consent.

Because there are facts that support the District Court's finding of trespass, the Court of Appeals should affirm that finding.<sup>31</sup>

## **Issue 2 – Findings to Support Emotional Distress**

### **A. Response to Standard of Review:**

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<sup>30</sup> This paragraph applies the facts of this case with the law mentioned in the previous paragraph.

<sup>31</sup> The writer is arguing here that the standard of review hasn't been met. That is, the condition needed to have the Court of Appeals correct the case hasn't been met.

I agree with the Opening Brief. Clearly erroneous should be the Standard for review for this issue.

B. Preservation:

I agree with the Opening Brief that this issue was preserved for appeal.

C. Discussion:

The District Court was right in finding that Goldilocks's actions were outrageous and support a claim of Intentional Infliction of Emotional Distress.<sup>32</sup>

Someone 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). The elements to establish intentional infliction of emotional distress are: (1), the defendant engaged in extreme and outrageous conduct; (2), the defendant engaged in the conduct recklessly or with the intent of causing the plaintiff severe emotional distress; and (3), the plaintiff incurred

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<sup>32</sup> Again, this introductory paragraph explains what will be discussed in the following paragraphs.

severe emotional distress. *Rugg v. McCarty*, 476 P.2d 753, 756 (Colo. 1970).<sup>33</sup>

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).<sup>34</sup>

There are enough facts in this case to show that Goldilocks’s behavior reaches that level of extreme or outrageous conduct. First, Goldilocks trespassed into the Brown-Bears’ home. It is clear from the facts that she slept in or jumped on the Brown-Bears’ beds. R. Ex. Z, P. 2 and R. Tr. (June 15, 2015), P. 21, Line 7. In addition, she ate half of their blueberries. R. Ex. Z, P. 3.<sup>35</sup> When a person comes into a stranger’s home unwelcomed and then takes advantage of a the owner’s private space like their bed, this is clearly conduct that is outrageous in

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<sup>33</sup> The next paragraph provides the law regarding this issue.

<sup>34</sup> Some claims require that different criteria or elements be proved 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.

<sup>35</sup> The next paragraph states the facts that are important for the “outrageous conduct” element.

character. The act of eating a family's food supply, so that they may not survive the winter, is beyond the bounds of decency and is atrocious.

The District Court found so, and there are facts in the record to support that finding.<sup>36</sup> The other two elements of Intentional Infliction of Emotional Distress were not covered in the Opening Brief, so we will not cover them here.

Because there were facts in the record that would support a finding of outrageous conduct, the District Court was not clearly wrong in making that finding. Therefore, the Court of Appeals should affirm the District Court's decision.<sup>37</sup>

### **Issue 3 – Excessive Damages**

A. Standard of Review:

We agree with the Opening Brief. Abuse of Discretion should be the Standard the Court of Appeals uses to review this issue.

B. Preservation:

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<sup>36</sup> This sentence applies the facts to the law on this issue.

<sup>37</sup> This paragraph again ends with the writer arguing that the standard of review has not been met. In this case the argument is that the District Court's finding was supported by the facts. The writer concludes by stating what the Court of Appeals should do to resolve the appeal.

We agree that this issue has been preserved for appeal.

C. Discussion:

The District Court was right in finding that Goldilocks's actions were outrageous and support a claim of Intentional Infliction of Emotional Distress.

The \$40,000 in damages awarded to the Brown-Bears is not excessive. As argued above, the District Court was not clearly wrong in finding that Goldilocks trespassed and intentionally inflicted emotional distress on Baby Bear. The amount of damages was supported by the testimony of Baby Brown-Bear's parents and her therapist and the bills for the therapist's services. R. Tr. (June 15, 2015), pp. 6, 15, and 27; R. Ex. S. Because Goldilocks is liable, and there was evidence to support the amount of the Brown-Bears' damages, the District Court did not abuse its discretion in awarding damages. The Court of Appeals should affirm the damages award.

## 8. Conclusion<sup>38</sup>

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<sup>38</sup> This should be a short statement of what you want the Court of Appeals to do.

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

## 9. Copies Delivered<sup>39</sup>

I certify that on (date) 12/21/2015<sup>40</sup>, I (check one)

mailed |  hand delivered

a copy of this document to:

1) Party Name: Goldilocks<sup>41</sup>

Attorney Name: (if any) \_\_\_\_\_

Full Address: 123 Homesweethome Way, Fort Collins, CO. 80526.

2) Party Name: \_\_\_\_\_

Attorney Name: (if any) \_\_\_\_\_

Full Address: \_\_\_\_\_

## 7. Signature & Date

Signature: <sup>42</sup> Mama Brown-Bear

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<sup>39</sup> You must certify that you sent a copy of the Answer Brief to the other parties in the case.

<sup>40</sup> This is the date you mailed or delivered the copy.

<sup>41</sup> List the party’s or attorney(s)’ name and address.

<sup>42</sup> Make sure to sign the document

# Papa Brown-Bear

Dated: 12/21/2015