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Apr 06 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Judge for Sixth Judicial Circuit

Appellate Case No.: 2021-000561

Robin Allen,..... Appellant,

v.

Richard Winn Academy, Kristen Chaisson (in
her individual capacity and as Head of School),
and John Ryan, II,..... Respondents.

Unpublished Opinion No. 2023-UP-129

PETITION FOR REHEARING

s/Larry C. Marchant, Jr.
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Pursuant to Rules 221 and 240, SCACR, the Appellant Robin Allen respectfully moves the Court for a rehearing and/or to alter its opinion no. 2023-UP-129 of March 29, 2023, which affirmed the Circuit Court's granting motions to dismiss filed by Respondents Richard Winn Academy, Kristen Chaisson (in her individual capacity and as Head of School), and John Ryan, II. Because the Court's opinion overlooks evidence and fails to address the underlying facts in the record to support the reversal or remand to the Circuit Court, Appellant Robin Allen respectfully requests that the Court rehear this matter and alter its opinion to reverse or remand to the Circuit Court. In support of his petition, Appellant states as follows:

I. THE COURT OVERLOOKED EVIDENCE SUPPORTING SOUTH CAROLINA'S ADHERENCE TO THE COMMON LAW OF ENGLAND AND THE COMMON LAW TORT OF THE INTERFERENCE WITH PARENTAL RIGHTS.

Legally, South Carolina codifies our adherence to the common law of England in absence of statutory, Constitutional, or common law alterations: "All, and every part, of the common law of England, where it is not altered by the Code or inconsistent with the Constitution or laws of this State, is hereby continued in full force and effect in the same manner as before the adoption of this section." S.C. Code Ann. § 14-1-50.

Contrary to the position of the Respondents' Final Brief (P. 10) that no such claim existed under the English Common Law, the Virginia Supreme Court found precedent in common law of tortious interference with parental rights stating, "Prior to 1607, a comparable cause of action did lie in England, providing a father with recourse for the abduction of his heir or sons rendering services." Wyatt v. McDermott, 283 Va. 685, 725

S.E.2d 555, 559 (2012). This common law tort has evolved in our modern era to permit either parent a remedy, not just for loss of service, but for loss of companionship, the inherent value of relationship between parents and children, and the emotional harm as a result of the loss of the relationship. The Restatement (Second) of Torts § 700 recites a more modern version:

“One who, with knowledge that the parent does not consent, abducts or otherwise compels or induces a minor child to leave a parent legally entitled to its custody or not return to the parent after it has been left him, is subjected to liability to the parent.”

The Court’s opinion to affirm the granting of the Defendants’ Motion to Dismiss claims of tortuous interference with parental rights is effectively an unreasonable, common-law abrogation of the parental rights to control the *upbringing and education* of their children. Furthermore, the Court’s opinion denies Appellant the opportunity of factual development including discovery methods, deposition and potential trial testimony regarding the circumstances of the inducement of her minor child to leave home to stay with a third party, bypassing any legal method of obtaining custody, that cries for factual development due to the potential for delineating the bounds of tortuous interference with the parent-child relationship by a private school and third-party individuals.

II. THE COURT FAILED TO ADDRESS THE NOVEL QUESTION AND PUBLIC POLICY IMPLICATIONS.

Generally, “important questions of novel impression should not be decided on a Rule 12(b)(6) motion to dismiss.” *Evans v. State*, 543 S.E.2d 547, 551 (S.C. 2001) (quoting *Tyler v. Macks Stores of South Carolina, Inc.*, 275 S.C. 456 (1980) (emphasis added). Rather, a novel issue is best decided with evidence presented at trial. *Id.* Furthermore, the

Court has also held, if a trial court commits an error of law regarding a novel question, the appellate court is free to decide the question with no particular deference to the lower court. *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 411 (2000).

This novel issue of the specific tort of a third parties' interference with parental rights, with origins in common law tort for deprivation of services of father's heirs, and the adoption of more modern version as recited the Restatement (Second) of Torts § 700 should not be dismissed on a 12(b)6 motion. This third party interference strikes at the heart of one of the most fundamental and sacred rights of parents. The United States Supreme Court has consistently protected parents' liberty issues of parents with respect to the care, custody, and control of their children. *Troxel v. Granville*, 530 U.S. 57, 65 (2000). In *Troxel*, the United States Supreme Court describes "the interest of parents in the care, custody, and control of their children" as "perhaps the oldest of the fundamental liberty interest recognized by the Court." *Id* at 65.

III. CONCLUSION

This Opinion fails to recognize the important and novel issue of tortuous interference with parental rights and further denies Appellant the development of a factual record and the opportunity to present evidence as to this novel issue with serious public policy concerns. Further, the Trial Court refused to recognize a fiduciary duty owed to Appellant to protect her contractual and parental interest in her minor child while in Respondents' care and control. Appellant respectfully ask this Court to rehear this matter and reverse the Order of the Trial Court and for all other relief as the Court deems just and proper.

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PROOF OF SERVICE

I certify that I served **PETITION FOR REHEARING** by email and by depositing
a copy of it in the United States Mail, postage prepaid, on April 6, 2023, addressed as
follows:

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RE: *Robin Allen v. Richard Winn Academy Kristen Chaisson (in her individual capacity and as Head of School), and John Ryan, II,*
Appellate Case No. 2021-000561
Petition for Rehearing Unpublished Opinion No. 2023-UP-129

Dear Clerk of the Court of Appeals:

Please find attached scanned PDF of Appellant's Petition for Rehearing Unpublished Opinion No. 2023-UP-129, and a scanned PDF of Certificate of Service. Please file these documents and return a "clocked" copy to me via email at larry@larrycmarchant.com. I will forward via US mail, postage prepaid, check # 2124 from my account and made payable to the SC Court of Appeal in the amount of Fifty (\$50.00) Dollars, for the associated filing fee.

Please contact me if you have any questions or need additional information.

Sincerely, I am



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