THE STATE OF SOUTH CAROLINA

In the Supreme Court

Appellate Case No.: 2021-000561

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May 19 2023
SC Court of Appeals

Appeal from Fairfield County

Eugene C. Griffith, Jr., Circuit Court Judge

Unpublished Opinion No. 2023-UP-129 (S.C. Ct. App. March 29, 2023)

Robin Allen ..... Petitioner,

v.

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

PETITION FOR WRIT OF CERTIORARI

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INDEX

Pursuant to Rule 242, SCACR, Petitioner Robin Allen respectfully files this Petition for a Writ of Certiorari to review the Court of Appeal's decision in *Robin Allen v. Richard Winn Academy, Kristen Chasson (in her individual capacity and as Head of School), and John Ryan II*, 2023-UP-129 (S.C. Ct App. filed March 29, 2023).

CERTIFICATE OF COUNSEL

Counsel certifies that the petition for rehearing was made and denied by the Court of Appeals on April 20, 2023.

QUESTIONS PRESENTED FOR REVIEW

I. Did the Courts below err in failing to provide a parent with a remedy for tortious interference with Constitutionally protected parental rights?

   a. The Court of Appeals and the Trial Court refused to recognize the common law tort of tortious interference with parent-child relationship, leaving a parent without a remedy for a violation of the fundamental right protected under the Fourteenth Amendment to the Constitution, which is contrary to the long-standing tradition and strong public policy.

   b. Allowing a third party to interfere with a parent-child relationship with impunity leaves a parent without a remedy for the encroachment on their fundamental right and encourages such interference, turning a protected right into a nullity.

II. Did the Courts below err in failing to recognize the enhanced duties owed by a private secondary school as opposed to a public one, which stem from the contract between a parent and a private school?

   a. In finding lack of fiduciary relationship between a parent and a private school based on the contract between them, the Courts below relied on cases materially distinguishable from the case at hand, to the extent the cases cited addressed a

relationship between a student and a school, and a third-party beneficiary and a college.

b. This decision fails to recognize that a relationship between a parent and a private school is commercial in nature, and thus, under existing precedent, warrants imposition of enhanced duties in light of the fact that in addition to paying for services, a parent entrusts their minor child into care and custody of the school.

STATEMENT OF THE CASE

On January 16, 2021, Plaintiff Robin Allen ("Allen") brought this action against the private school Richard Winn Academy ("Winn Academy"), Kristen Chaisson (individually and as head of Winn Academy), and John Ryan, II ("Ryan"), individually. (R. p. -9-) Allen alleges that the Defendants encroached on her fundamental parental rights by interfering with her relationship with her then-minor daughter Zoe Mitsakos. She also asserted causes of action for breach of contract, quantum meruit, breach of fiduciary duty, and attorney's fees. (R. p.-10-) Defendants answered and denied the allegations, (R. p. -24- and R. p. -53-) filing concurrent Rule 12(b)(6) Motions to Dismiss. (R. p. -46- and R. p.-56-) Plaintiff issued general Replies to Defendants' Answers and Counterclaims (R. p. -58-) and filed a Return to Defendants' Motion for Partial Dismissal. (R. p. -61-)

On March 19, 2021, Judge Eugene C. Griffith, Jr., presided over a Virtual Motions Hearing for the Defendants' Motions to Dismiss. (R. p. -1-) On April 28, 2021, Judge Griffith issued an Order Granting Motion for Partial Dismissal of Defendants Richard Winn Academy and Kristen Chaisson and dismissed John Ryan, II as a party. (R. p. -1-) The Court also dismissed the following causes of action: intentional tortious interference with parental rights, negligent tortious interference with parental rights, intentional breach of fiduciary duty, negligent tortious interference with contracts, and attorney fees. (R. p. -1-).

STATEMENT OF THE FACTS

Petitioner Robin Allen ("Petitioner") is the mother of Zoe Mitsakos, ("Zoe"), who was a minor at the time relevant to Petitioner's Complaint. On or about March 13, 2020, Petitioner entered a contract with Richard Winn Academy ("Winn Academy") to provide educational services to Zoe. In placing her child with a private school, as opposed to a public one, Petitioner relied on enhanced quality of the educational services as well as the school's promise of individualized approach and added safety, while in school's custody, which served as an inducement. Petitioner was also employed as a teacher with Richard Winn Academy for approximately four (4) years until her resignation as a result of this matter. When her relationship with her daughter began to deteriorate[1], Petitioner learned that Respondent-Defendant Chaisson, Head Mistress of Winn Academy, and Respondent-Defendant Ryan, were playing a significant role in supporting and advising Zoe to rebel against Petitioner's parental control. Acting pursuant to Defendants' advice, on or about September 26, 2020, Zoe, at seventeen (17) years old, left home without permission. Zoe was later found, with the assistance of the police, at the home of Respondent-Defendant Ryan, who unilaterally assumed parental responsibilities over Zoe without Petitioner's consent. Shortly thereafter, Zoe turned eighteen (18) and immediately left home again, and began residing with Respondent-Defendant Ryan, which broke Petitioner's heart, causing an enormous amount of mental anguish. Moreover, without any knowledge of Petitioner, and despite an existing contract with the school, Respondent-Defendant Chaisson rescinded Petitioner's contract with the school and entered into another contract with Zoe, who just turned 18, which enabled her to finish her senior year at Richard Winn Academy. Defendants-Respondents'

[1] Petitioner is a religious person and in placing her child with a private school, she hoped to place herself in a better position to encourage her Zoe to follow her religious teachings.

intentional interference, and resulting alienation, has resulted in Petitioner-mother having no further opportunity to see or speak with her daughter Zoe.

ARGUMENT

I. THE SUPREME COURT IS A PROPER TRIBUNAL TO ADDRESS THE VIABILITY OF THE COMMON LAW DOCTRINE OF TORTIOUS INTERFERENCE WITH PARENTAL RIGHTS AND IT SHOULD FIND IT ENFORCEABLE BECAUSE OUR LEGISLATURE NEVER ABOLISHED IT.

S.C. Code Ann § 14-1-50 which codifies South Carolina's adherence to the Common Law of England in the absence of Statutory, Constitutional, or Common Law alterations states "[a]ll, 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 (emphasis added). (R. p. -64-)

While our courts have not addressed this precise issue, the Virginia Supreme Court found precedent in common law of tortious interference with parental rights stating, "...this ancient writ—today labeled tortious interference with parental rights—did exist in English common law in 1607... and no affirmative steps have been taken by the legislature to renounce the tort[2]." *Wyatt v. McDermott*, 283 Va. 685, 725 S.E.2d 555. (2012). (R. p. -64-) Moreover, the Florida Supreme Court in answering a certified question form the Federal Eleventh Circuit Court of Appeals stated: "We find that the present day conceptions of right and justice compel us to join the overwhelming majority of jurisdictions that have, through decisional law, recognized this common law tort". *Stone v. Wall*, 734 So.2d 1038 (Fla. 1999) (R. p. -63-)

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[2] The Supreme Court of South Carolina abolished the torts of criminal conversation and alienation of affections. 310 S.C. 200, 204 (1992). Russo sagely noted, "[t]he common law changes when necessary to serve the needs of the people." Id. at 204 (citing *Dupuis v. Hand*, 814 S.W.2d 340, 346 (Tenn. 1991)).

The Restatement (Second) of Torts § 700 recites the 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 public policy of South Carolina in child custody matters is to reunite parents and children..." *Doe v. Roe*, 379 S.C. 291, 665 S.E.2d. 182 (S.C. App. 2008) (R. p. -64-). The public policy of the State is reflected in South Carolina Code of Laws § 20-1-719 Family Respect Act-Purpose:

> *The General Assembly finds that the family is the fundamental building block of society. Within healthy families children are instilled values essential to the vitality of our State.... Therefore, as much as it is able, the State should promote strong families, for the family is the cradle of an ordered and vibrant republic. Self-government depends upon civic virtue, and civic virtue in turns depends upon healthy families. The purpose of the act is to emphasize the importance of families to the success and well-being of our state.* (R. p. -65-)

The Court of Appeal's decision to affirm the Trial Court is in sharp contradiction with the South Carolina's strong public policy concerning parental rights to control the upbringing of their children, as reflected in both common and statutory law. Here, the Courts below declined to enforce the common law doctrine, indicating that it has never been recognized in South Carolina, however, the fact that the doctrine has not been previously addressed at the appellate level does not mean it is not good law, because only the legislature has the power to abolish common law, which it finds outdated and no longer consistent with public policy. The mere fact that our legislature enacted the Family Respect Act is a strong indication that it does not view the common law tort of tortious interference with parental rights as outdated or contrary to public policy. Quite the opposite.

In the case at hand, the legislative silence is an indication that the doctrine is in "full force." Moreover, in dismissing the action and affirming the dismissal on appeal, the Courts below acknowledged that the issue of whether tortious interference with parental rights "is in full force and effect" is better suited for the Supreme Court to address. So did the Respondents (Defendants). (R. p. -94- , 7-10). Therefore, this Court is a proper forum to address this important issue. Lastly, the Court should find the doctrine enforceable because leaving a parent with a naked right without a remedy makes her fundamental rights merely illusory. See *Wyatt v McDermott,* 283 Va. 685, 725 S.E.2d 555 (2012) (to hold otherwise in this case would be to recognize "a right without a remedy – a thing unknown to the law") (quoting *Norfolk City v Cooke*, 68 Va. (27 Gratt.) 430, 439 (1876)).

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, this Court has given trial courts guidance in the form of four factors to be considered in addressing novel issues of first impression in *Cole Vision Corp. v. Hobbs,* 394 S.C. 144 (S.C. 2011), which bolsters Petitioner's argument that the trial court erred and should have denied the Defendants' Rule 12(b)(6) motion to dismiss. (R. p. -63-) *Cole Vision's* four (4) factors are: (1) the availability of existing remedies; (2) the public policy of adoption of the tort; (3) the speculative degree of damages; and (4) the potential for duplicative and inconsistent litigation. *Id.* at 151-154. (R. p. -63-)

With respect to the availability of existing remedies: there are no other statutory remedies, nor has South Carolina's courts addressed a civil remedy for inducing a minor child into leaving home and staying with a non-custodial, non-guardian third party to date. (R. p. -63-). With respect

to the public policy favoring recognition of the common law tort, as was discussed in more detail above, our statutory and case law both suggest that the doctrine should be given full force. Moreover, federal law has repeatedly addressed strong policy behind protecting parental rights. Accordingly, the United States Supreme Court has consistently protected parents' liberty interests with respect to the care, custody, and control of their children. (*See Troxel v. Granville*, 530 U.S. 57, 65 (2000)). (R. p. -64-). With respect to speculative degree of damages, the *Wyatt* court was easily able to delineate intentional and negligent remedies explaining that

> modern iteration of this common law tort encompasses both tangible and intangible damages, including compensatory damages for the expenses incurred in seeking the recovery of the child, lost services, lost companionship, and mental anguish. [I]f a tortfeasor's tort was intentional rather than negligent, i.e., deliberately committed with intent to harm the victim ... and if the evidence is sufficient to support an award of compensatory damages, the victim's right to punitive damages and the quantum thereof are jury questions.

Wyatt v. McDermott, 283 Va. 685, 725 S.E.2d 555 (2012). (citing *Smith v. Litten,* 256 Va. 573, 579, 507 S.E.2d 77, 80 (1998); see also *Giant of Virginia, Inc. v. Pigg*, 207 Va. 679, 685–86, 152 S.E.2d 271, 277 (1967)). (R. p. -65-). As to duplicative and inconsistent litigation, Petitioner is not aware of any other existing civil remedies, and none were named by the Courts below. The Trial Court itself noted that this potential tort was not currently recognized as a tort in South Carolina, and the Court of Appeals affirmed. (R. p. -4-).

II. THE DECISION OF THE TRIAL COURT TO DENY PETITIONER A REMEDY FOR THE ENCROACHMENT ON HER FUNDAMENTAL RIGHT TO CARE, CUSTODY, AND CONTROL OF HER CHILD AND THE APPELLATE COURT'S AFFIRMATION, INTERFERE WITH HER FUNDAMENTAL RIGHT AS A PARENT.

Petitioner contends that the Courts below interfered with her protected parental rights by refusing to provide her with a remedy and that strict scrutiny should apply to this Court's review because a fundamental right is at issue. The protection of liberty interests of parents with respect

to the care, custody, and control of their children is one of the oldest recognized rights recognized by the Supreme Court. *Troxel v. Granville*, 530 U.S. 57, 65 (2000). (R. p. -63-) In *Meyer v. Nebraska*, the Supreme Court held that the "liberty" protected by the Due Process Clause includes the right of parents to "establish a home and bring up children" and "to control their education to their own." *Meyer v. Nebraska* 262 U.S. 390,399,401…(1923). Two years later, the Court again recognized this right in *Pierce v. Society of the Sisters of the Holy Names of Jesus & Mary* as "the liberty of parents and guardians to direct the upbringing and education of children under their control." 268 U.S. 510, 534-35, 45 S. Ct. 571, 69 L. Ed. 1070 (1925). By leaving Petitioner without *any* remedy for the third party's encroachment on her constitutionally protected rights, the Courts below interfered with such right to the extent that a right without a remedy is a nullity.

Moreover, the Court's decision shielded a third party from all civil liability, contrary to well established principle that third parties lack standing in custody proceedings, essentially facilitating third party's interference with parental rights. As a result, Petitioner is left without a civil remedy for Respondents' encouragement and assistance provided to Zoe, which resulted in her running away, as well as their interference with Petitioner's protected right to control education of her child, to the extent they rescinded Petitioner's contract. Moreover, and perhaps most importantly, Petitioner is without any recourse for Respondent Ryan's unilateral assumption of custody and parental control over Zoe. (R. p. 61). Neither precedent nor logic permits this result.

To hold that there is no remedy for tortious interference with this protected right strips away the protection afforded to the fundamental right by the Constitution. The Courts below failed to consider the public policy implications of essentially allowing this interference with the parent-child relationship, thus denying a state remedy of this historically protected liberty interest.

Petitioner is urging the Supreme Court to think of the consequences of putting such a straitjacket on this fundamental Constitutionally protected right.

III. THE COURTS BELOW FAILED TO RECOGNIZE THAT THE RELATIONSHIP BETWEEN A PARENT AND A PRIVATE SCHOOL IS FIDUCIARY IN NATURE BECAUSE IT STEMS FROM A CONTRACT PURSUANT TO WHICH THE SCHOOL ASSUMES ENHANCED DUTIES TO A PARENT AS COMPARED TO A PUBLIC SCHOOL.

The Courts below erred when they found that no fiduciary relationship existed between a parent and a private school entrusted with the custody of her minor child, because the cases relied on were distinguishable. *Beverly v. Grand Strand Regional Medical Center, LLC,* 429 S.C. 502, 839 S.E.2d. 468 (Ct. App. 2020). (R. p. -6-) *Beverly* involved a third-party beneficiary that did not challenge the care she received, but rather the billing practices. *Id* at 515. The court found there was no fiduciary relationship because billing practices was a creditor-debtor relationship. *Id* (citing *Regions Bank v. Schmauch,* 354 S.C. 648, 671, 582 S.E.2d 432, 444 (Ct. App. 2003) (R. p. -4-). Here, the Petitioner was a party to the contract with the school. Petitioner entrusted her minor child to the private school, and she did so because of the private school's promise of individualized attention, partnering with parents, added safety, values, among others, that induced her to do so.

"A fiduciary relationship is founded on the trust and confidence reposed by one person in the integrity and fidelity of another…" *Regions Bank v. Schmauch,* 354 S.C. 648, 671, 582 S.E.2d 432, 444 (Ct. App. 2003). (R. p. -66-) At the very least, the Court should find a heightened duty of good faith and fair dealing, inherent in every contract, due to the delicate nature of the circumstances. Petitioner entrusted *her minor child* (not a pair of shoes to the shoe repair shop) to the private school. "Courts of equity have carefully refrained from defining the particular instances of fiduciary relationship in such a manner that other and perhaps new cases might be excluded and have refused to set any bounds to the circumstances out of which a fiduciary relationship may

spring. 36A C.J.S. Fiduciary at 385 (1983). " *Island Car Wash Inc. v. Norris*, 358 S.E.2d 150, 292 S.C. 595 (S.C. app. 1986) (R. p. -66-).

The Courts below also erred in their reliance on *Hendricks v. Clemson University*, where the court failed to recognize a fiduciary relationship between a collegiate academic advisor and a student athlete as to NCAA course requirements. *Hendricks v. Clemson University*, 353 S.C. 449, 578 S.E.2d 711 (S.C. 2003) (R. p. -5-). College education differs materially from secondary school educational setting to the extent the latter involves impressionable and easy to manipulate audience. And lastly, as recognized in the trial court's order, public schools are only required to meet the *minimum* requirements under South Carolina constitution. (R. pp. -5-, -6-). The circumstances of this case warrant the imposition of a fiduciary relationship and prior precedent permits it. The Court should find that, at a minimum, a private school owes a parent an enhanced duty of good faith and fair dealing based on the underlying contract because but for the contract, a private school owes no duties to a parent, unlike a public school, whose duties stem from the constitution, not a contract.

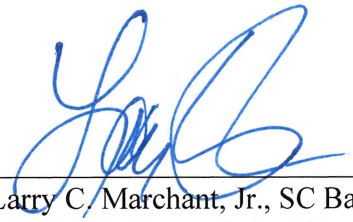
CONCLUSION

Petitioner respectfully askes the Supreme Court to review this matter involving a relationship most certainly worth protecting from third party's interference to the same extent it is protected from interference by the State. To hold otherwise, would simply encourage and invite such interference. Moreover, if the State shields tortfeasors from liability, the State itself would interfere with Petitioner's fundamental rights as a parent protected under the Fourteenth Amendment to the Constitution, potentially opening the State to liability for a civil rights violation. In addition, failure to recognize the common law doctrine of tortious interference is contrary to the State's strong policy favoring families as building blocks of our society. Plainly put, to hold that

there is no remedy for tortious interference with the *protected* right strips all protection afforded to this fundamental right by the Constitution.

Petitioner therefore respectfully asks this Court to grant this Petition and issue a Writ of Certiorari to review the Court of Appeals' decision in this case, order briefing, permit oral argument, and reverse the Court of Appeals' decision.

Respectfully Submitted,



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PROOF OF SERVICE

I hereby certify that I served Petition for Writ of Certiorari by depositing a copy of it in the United States Mail, postage prepaid, on May 19, 2023, addressed to the attorneys for Respondents as follows:

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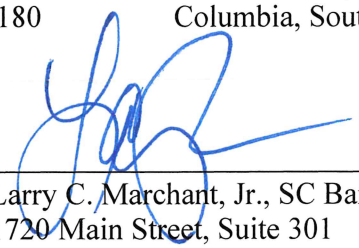

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