THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

Appellate Case No. 2021-000561
Civil Action No. 2021-CP-20-00026

Robin Allen,.....Appellant,

v.

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

RESPONDENTS' FINAL BRIEF

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STATEMENT OF THE CASE

On January 16, 2021, Appellant Robin Allen filed a Complaint in the Fairfield County Court of Common Pleas against Respondents Richard Winn Academy ("Richard Winn"), Kristen Chaisson ("Ms. Chaisson"), and John Ryan II ("Mr. Ryan"). (R. p. 10). In the Complaint, Appellant generally alleged that: (a) she entered into a contract with Richard Winn on or about March 13, 2020 for the provision of educational services to her then 17-year-old daughter, Zoe Mitsakos ("Zoe"), for the 2020-2021 academic year; (b) on

or about September 26, 2020, Zoe ran away from Appellant's home to the home of Mr. Ryan; (c) on or about November 13, 2020, and after Zoe had turned 18, Richard Winn, by and through Ms. Chaisson (Richard Winn's Head of School), entered into a separate contract with Zoe pursuant to which she would continue her education at Richard Winn; and (d) Ms. Chaisson, together with Richard Winn's board and Mr. Ryan, assisted, encouraged, and supported Zoe in running away from Appellant's home to live instead with Mr. Ryan. Respondents have denied any wrongdoing.

Based on the aforementioned allegations, the Complaint asserted fifteen causes of action. The first through fourth causes of action asserted intentional tortious interference with parental rights against Richard Winn, Ms. Chaisson as Head of School, Ms. Chaisson in her individual capacity, and Mr. Ryan; the fifth through eighth causes of action asserted negligent tortious interference with parental rights against the same parties; the ninth and tenth causes of action asserted intentional breach of fiduciary duty against Richard Winn and Ms. Chaisson; the eleventh cause of action asserted breach of contract (presumably against Richard Winn); the twelfth cause of action asserted intentional tortious interference with contracts (presumably against Richard Winn and Ms. Chaisson); the thirteenth cause of action asserted negligent tortious interference with contracts (presumably against Richard Winn and Ms. Chaisson); the fourteenth cause of action asserted quantum meruit (presumably against Richard Winn); and the fifteenth cause of action asserted attorney fees.

On February 12, 2021, Richard Winn and Ms. Chaisson filed a Motion for Partial Dismissal requesting that the Circuit Court dismiss the Complaint's first, second, third, fifth, sixth, seventh, ninth, tenth, thirteenth, and fifteenth causes of action. (R. p. 46). On February 19, 2021, Mr. Ryan filed a Motion to Dismiss all causes of action against him

(believed to be the fourth, eighth, and fifteenth causes of action). (R. p. 56). Respondents asserted that the referenced causes of action should be dismissed because: (a) South Carolina does not recognize a cause of action for tortious interference with parental rights; (b) Appellant did not have a fiduciary relationship with Richard Winn or Ms. Chaisson; (c) tortious interference with contractual relations is an exclusively intentional tort; and (d) Appellant did not cite any contractual or statutory provision entitling her to an award of attorneys' fees.

A hearing on Respondents' motions was held on March 19, 2021 before the Honorable Eugene C. Griffith, Jr. After carefully reviewing the pleadings, the motions, and the briefs submitted by the parties, and after considering the arguments of counsel and the governing law, Judge Griffith granted the motions. On April 28, 2021, he entered an Order Granting Motion for Partial Dismissal of Defendants Richard Winn Academy and Kristen Chaisson and Motion to Dismiss on Behalf of John Ryan II (the "Order"). (R. p. 1). The Order dismissed the Complaint's causes of action for 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. Because the dismissal of these causes of action disposed of all claims against Mr. Ryan, the Order also dismissed Mr. Ryan as a Defendant in this case.

Appellant timely filed and served a Notice of Appeal on May 25, 2021. Upon information and belief, Appellant: (a) has only appealed the dismissal of the Complaint's causes of action for tortious interference with parental rights and breach of fiduciary duty; and (b) does not challenge the dismissal of the Complaint's causes of action for negligent tortious interference with contracts or attorney fees.

STANDARD OF REVIEW

"Under Rule 12(b)(6), SCRCP, a defendant may move to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action." Spence v. Spence, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). "In considering such a motion, the trial court must base its ruling solely on allegations set forth in the complaint." Id. "In deciding whether the trial court properly granted the motion to dismiss, the appellate court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief." Id. (citation omitted).

ARGUMENTS

I. NOVEL ISSUES MAY BE RESOLVED ON A MOTION TO DISMISS WHERE THE DISPUTE IS SOLELY AS TO THE INTERPRETATION OF THE LAW.

Appellant's initial argument is that it was improper for the Circuit Court to address an issue of (purportedly) novel impression at the motion to dismiss stage. It is true, and the Order noted, that "[a]s a general rule, important questions of novel impression should not be decided on a motion to dismiss." Madison v. Am. Home Prods. Corp., 358 S.C. 449, 451, 595 S.E.2d 493, 494 (2004). (R. p. 3). However, the Order also noted that "[w]here . . . the dispute is not as to the underlying facts but as to the interpretation of the law, and development of the record will not aid in the resolution of the issues, it is proper to decide even novel issues on a motion to dismiss." Madison, 358 S.C. at 451, 595 S.E.2d at 494. (R. p. 3). Cf. Kubic v. MERSCORP Holdings, Inc., 416 S.C. 161, 168, 785 S.E.2d 595, 598 (2016) ("[A] trial court should not deny a meritorious motion merely because the question is one of first impression.").

The supposedly novel question presented by Respondents' motions—whether South Carolina law recognizes a cause of action for tortious interference with parental rights—involved a dispute solely as to the interpretation of the law. Development of a factual record would not have changed the answer, and thus it was proper for the Circuit Court to address the issue. See, e.g., Palmer v. State, 427 S.C. 36, 43, 829 S.E.2d 255, 259 (Ct. App. 2019) ("[B]ecause the issue concerns the interpretation of the law, we find the circuit court did not err in dismissing the case pursuant to Rule 12(b)(6) in spite of it being a novel issue."); Unisys Corp. v. S.C. Budget & Control Bd. Div. of Gen. Servs. Info. Tech. Mgmt. Office, 346 S.C. 158, 165, 551 S.E.2d 263, 267 (2001) (affirming a Rule 12(b)(6) dismissal despite the existence of "novel and complex issues" because "the questions involved [were] questions of law" and there were "no factual issues that require[d] further development").

II. THE CIRCUIT COURT CORRECTLY DISMISSED APPELLANT'S CAUSES OF ACTION FOR TORTIOUS INTEFERENCE WITH PARENTAL RIGHTS.

A. South Carolina does not recognize such a cause of action.

The Order acknowledged that South Carolina recognizes the constitutional right of parents to be free from state interference with the parent-child relationship. (R. p. 3). However, as Appellant has admitted,[1] our courts have never recognized a cause of action against private parties (such as Respondents) for tortious interference with parental rights. See, e.g., South Carolina Damages § VI.29.B.14 (2009) ("Tortious Interference with

[1] Appellant seems to dispute this admission in her brief, yet she wrote in her Return to the Defendant's Motion for Partial Dismissal that South Carolina courts "have not recognized a common law claim for tortious interference with parental rights against third parties like Richard Winn, Ms. Chaisson, or Mr. Ryan." (R. p. 62).

Parental Rights is a cause of action that is not yet recognized in South Carolina."). Accordingly, the Complaint's first through eighth causes of action were properly dismissed. See, e.g., Cole Vision Corp. v. Hobbs, 394 S.C. 144, 154, 714 S.E.2d 537, 542 (2011) (approving the circuit court's dismissal of a counterclaim cause of action for spoliation of evidence because South Carolina does not recognize such a claim); Gaskins v. S. Farm Bureau Cas. Ins. Co., 343 S.C. 666, 672, 541 S.E.2d 269, 272 (Ct. App. 2000) (affirming dismissal of the plaintiff's bad faith claim because South Carolina does not recognize third party bad faith claims). See also Kent v. Hennelly, No. 9:19-cv-01383-DCN, 2019 U.S. Dist. LEXIS 195563, at *34-35 (D.S.C. Nov. 12, 2019) (dismissing a cause of action for false light invasion of privacy because such a cause of action does not exist under South Carolina law); Awkard v. Rammelsberg, No. 4:17-cv-01542-RBH-KDW, 2018 U.S. Dist. LEXIS 168067, at *32 n.13 (D.S.C. Mar. 13, 2018) (recommending dismissal of a claim for reckless infliction of emotional distress because South Carolina does not recognize such a cause of action); Grayson v. Anderson, 816 F.3d 262, 271-72 (4th Cir. 2016) (affirming dismissal of the plaintiff's claim for aiding and abetting fraud because no such cause of action exists in South Carolina).

B. Such a cause of action did not exist at common law.

Appellant argues that a cause of action for tortious interference with parental rights existed under the English common law[2] and is thus part of South Carolina law pursuant to

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[2] In support of this argument, Appellant relies entirely on Wyatt v. McDermott, 725 S.E.2d 555 (Va. 2012), in which an extraordinarily egregious set of facts—a baby's biological mother went to great lengths to prevent the father from asserting his parental rights even though she did not want to keep the baby—prompted the Virginia Supreme Court to fashion a remedy. Wyatt is both: (a) distinguishable based on its vastly different fact pattern; and (b) incorrect in its conclusion that the modern tort theory summarized in Restatement (Second) of Torts § 700 existed in 17th century English common law.

S.C. Code Ann. § 14-1-50. That statute, often referred to as the Reception Statute, provides: "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." It was originally enacted by the General Assembly of the Colony of South Carolina in 1712. See State v. Simms, 412 S.C. 590, 601, 774 S.E.2d 445, 450 (2015) (Pleicones, J., dissenting). See also Huff v. Jennings, 319 S.C. 142, 148, 459 S.E.2d 886, 890 (Ct. App. 1995) ("Since its enactment in 1712, this reception statute incorporated the body of English common law into the jurisprudence of South Carolina.").

This state's continuation of the English common law "in the same manner as before the adoption of" the Reception Statute in 1712 does not support Appellant's position. All eight of her causes of action for tortious interference with parental rights are based, not on supposed common law rights, but on rights ostensibly arising under the United States Constitution and the South Carolina Constitution.[3] In other words, Appellant is seeking to assert the equivalent of a 42 U.S.C. § 1983 claim against private, non-governmental parties who do not act under color of law. It goes without saying that no such claim existed under the English common law of 1712.

There is also a major distinction between what the common law allowed—a father could sue for deprivation of services provided by his heirs or sons—and what Appellant has attempted—to sue for "loss of companionship, the inherent value of the relationship between parents and children, and the emotional harm as a result of the loss of the

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[3] Paragraphs 24, 29, 33, 37, 41, 45, 49, and 53 of the Complaint allege that Respondents "interfered with [Appellant's] State and Federal Constitutional rights to raise her child." (R. pp. 13, 14, 15, 16, 17 & 18).

relationship." (App. Brief at 5). The Complaint does not allege that Appellant lost the provision of services by Zoe, and thus it essentially asserts claims for loss of filial consortium. See, e.g., Doe v. Greenville Cty. Sch. Dist., 375 S.C. 63, 69-70, 651 S.E.2d 305, 308 (2007) (noting that "the intangible losses of aid, companionship, and society . . . have traditionally defined loss of consortium claims"). See also Murphy v. I.S.K.Con. of New England, Inc., 571 N.E.2d 340, 352 (Mass. 1991) ("[T]he actual basis of recovery for intentional tortious acts which interfere with a parent-child relationship is the loss of filial consortium."). However, "South Carolina law does not recognize claims for loss of filial consortium." Doe, 375 S.C. at 69, 651 S.E.2d at 308. See also Kirkland v. Sam's East, Inc., 411 F. Supp. 2d 639, 641 (D.S.C. 2005) ("South Carolina does not recognize a cause of action for filial loss of consortium.").

To reverse the Order in spite of Doe and Kirkland, the court would have to draw a distinction between relational/companionship damages in tortious interference with parental rights cases and relational/companionship damages in sexual abuse cases (such as Doe) and bodily injury cases (such as Kirkland). But why should such damages be recoverable against an actor who allegedly interferes with the parent-child relationship when they are not recoverable if that same actor sexually abuses, injures, or even kills the child? As the Supreme Court has previously found with respect to parental consortium claims, such questions are "best left to the discretion of the General Assembly." Taylor v. Medenica, 324 S.C. 200, 222, 479 S.E.2d 35, 47 (1996).[4]

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[4] In Taylor, the Supreme Court found that, in the absence of a statute such as S.C. Code Ann. § 15-75-20, there is no right to recover for loss of consortium. 324 S.C. at 222, 479 S.E.2d at 47.

C. Such a cause of action should not be adopted.

Appellant devotes a significant portion of her brief to a four-factor analysis supposedly prescribed in Cole Vision Corp. v. Hobbs, 394 S.C. 144, 714 S.E.2d 537 (2011), for determining whether new causes of action should be adopted. Respondents submit that Cole did actually not prescribe such an analysis, but simply opined that public policy considerations weighed against adoption of a new tort claim (spoliation of evidence) and gave several reasons why: (1) other remedies were available; (2) damages would have been speculative; and (3) the new tort could have given rise to duplicative and inconsistent litigation. In any event, the analysis suggested by Appellant dictates that South Carolina should not recognize a new claim for tortious interference with parental rights.

i. Other remedies are already available.

Appellant points out that, in Troxel v. Granville, 530 U.S. 57 (2000), the United States Supreme Court described "the interest of parents in the care, custody, and control of their children" as "perhaps the oldest of the fundamental liberty interests recognized by this Court." Id. at 65. That is undoubtedly true, and Respondents do not dispute that parents have a liberty interest in rearing their children. Indeed, Respondents recognized in their motions, and the Circuit Court recognized in the Order, that parents have a constitutional right to be free from state interference with the parent-child relationship. However, Troxel involved a review of whether a state's visitation statute violated the federal Constitution, not a claim for money damages. The Court's acknowledgement of the fundamental importance of the parent-child relationship does not mean that parents should have a filial consortium claim against third parties that allegedly interfere with that relationship, especially given the other available remedies.

Kidnapping is a criminal offense in every state, including South Carolina, where it is a felony. See S.C. Code Ann. § 16-3-910. Conspiracy to kidnap is likewise a felony. See S.C. Code Ann. § 16-3-920. In addition to other penalties, a kidnapper (or conspirator) may be required to pay restitution to the victims of his or her crimes. See S.C. Code Ann. § 17-25-322. Furthermore, custodial rights may be enforced under the Uniform Child Custody Jurisdiction and Enforcement Act and possibly habeas corpus proceedings. See S.C. Code Ann. § 63-15-364; Watson v. Watson, 134 S.C. 147, 132 S.E. 39 (1926). There is simply no need to adopt a new civil cause of action when several avenues for vindication of parental or custodial rights already exist. See, e.g., Zaharias v. Gammill, 844 P.2d 137, 140 (Okla. 1992) (disapproving of the tort of interference with custodial relations and noting that "[o]ther avenues of recourse are of course available" such as habeas corpus, criminal penalties, the Uniform Child Custody Jurisdiction Act, and contempt of court); Politte v. Politte, 727 S.W.2d 198, 200-01 (Mo. Ct. App. 1987) (questioning the need for a civil cause of action for tortious interference with parental rights given that the ultimate goal—prompt return of the child to its rightful custodian—can be accomplished by other means including habeas corpus, contempt, the Uniform Child Custody Jurisdiction Acts, and criminal sanctions).

ii. Appellant's damages would be speculative.

According to the Complaint, Zoe first ran away from Appellant's home to Mr. Ryan's home on or about September 26, 2020. (R. p. 12, ¶ 16). The Complaint redacts the date that Zoe turned 18 (R. p. 11, ¶ 8), but it was plainly before November 13, 2020, when Zoe allegedly entered into a contract with Richard Winn. (R. p. 11, ¶ 9). Upon turning 18, Zoe was constitutionally emancipated and free to live wherever and with whomever she

chose. See, e.g., S.C. Const. Ann. Art. XVII, § 14 ("Every citizen who is eighteen years of age or older, not laboring under disabilities prescribed in this Constitution or otherwise established by law, shall be deemed sui juris and endowed with full legal rights and responsibilities[.]"). Thus, Appellant is seeking damages for—at most—the 48-day period between September 26, 2020 and November 13, 2020. Respondents submit that any attempt to quantify the relational/companionship damages allegedly sustained by Appellant during the final seven weeks of Zoe's minority would be wholly speculative.

iii. There is a risk of duplicative and inconsistent litigation.

As set forth above, disputes involving child custody already have the potential to give rise to possible criminal proceedings, restitution hearings, custody enforcement actions, and habeas corpus petitions. Adding another item to this menu of remedies would increase the potential for duplicative and inconsistent litigation.

iv. Other considerations weigh against adoption of such a cause of action.

In any child custody dispute, the primary concern is the best interests of the child. But the new cause of action proposed by Appellant is primarily concerned with the custodian's vindication rather than the child's best interests (which, as set forth above, can already be vindicated by other methods). In the words of the late Judge Barksdale:

> The welfare of the child is the prime consideration in any controversy affecting the custody of a child. Controversies such as this most assuredly do not promote the welfare of the child. To treat an infant child as an article of property, the enjoyment of the possession of which is to be given a monetary valuation, cannot be conducive to its welfare. In my opinion, any possible effect which suits of this kind may have upon children must of necessity be deleterious.

Simmons v. Simmons, 41 F. Supp. 545, 548 (D.S.C. 1941). See also Larson v. Dunn, 460 N.W.2d 39, 46 (Minn. 1990) ("Creating this new tort would *create* a new wrong. It would

place innocent children in the middle of a vigorous, probably vicious, lawsuit[.]") (italics in original).

Additionally, exposing third parties to potential tort liability would contravene public policy by disincentivizing family members, private shelters, and social welfare organizations from providing assistance to troubled youth who are—or at least claim they are—escaping harmful or abusive situations.[5] South Carolina is home to several nonprofits that exist to provide such assistance,[6] but they may be forced to rethink their methods if their provision of aid to troubled youth could expose them to tort claims for interference with parental rights. Cf. Larson, 460 N.W.2d at 46-47 ("If a parent or grandparent believes a child is in danger, that parent or grandparent will probably not stop to consider tort liability before acting to protect the child. It will not add to the dignity of the law if grandparents are sued for providing shelter to their grandchildren in such situations.").

Finally, even if the court were inclined to adopt a new cause of action for tortious interference with parental rights, this case presents a poor vehicle for doing so. Zoe was less than seven weeks from turning 18—and becoming emancipated—when she allegedly ran away to Mr. Ryan's home for the first time. She turned 18 several months before this lawsuit was filed. And because she is now 18, there is no custody issue presented. All that

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[5] This public policy is notably embodied in the Runaway and Homeless Youth Protection Act, in which Congress sought to address a crisis of "youth who have become homeless or who leave and remain away from home without parental permission" and "are at risk of developing, and have a disproportionate share of, serious health, behavioral, and emotional problems[.]" 34 U.S.C. § 11201(1).

[6] A Google search revealed the following organizations whose missions appear to include providing assistance to troubled youth: Carolina Youth Development Center, Hope Center for Children, Palmetto Place, Sea Haven for Youth, and United Way. Of course, this is not an exhaustive list.

is potentially at stake in this action is Appellant's ability to recover speculative relational/companionship damages for loss of filial consortium in the 48-day (or less) period between September 26, 2020 and Zoe's 18th birthday.

D. If such a cause of action is adopted, it should only apply prospectively.

"It would offend notions of fairness . . . to retroactively impose tort liability where previously there had been none, as would be the case here if we were to apply our new rule to [this case]." Marcum v. Bowden, 372 S.C. 452, 458, 643 S.E.2d 85, 88 n.5 (2007). Thus, if the court decides to adopt the new cause of action proposed by Appellant, the decision should only apply prospectively. See, e.g., Grooms v. Med. Soc'y of S.C., 298 S.C. 399, 401, 380 S.E.2d 855, 857 (Ct. App. 1989) ("[A] court decision creating a new tort will not be applied to claims that arise before the effective date of the decision.") (citation omitted); Hupman v. Erskine Coll., 281 S.C. 43, 44, 314 S.E.2d 314, 315 (1984) ("Prospective application is required when liability is created where formerly none existed.").

E. Such a cause of action is exclusively intentional.

Respondents note that the tort theory described in Restatement (Second) of Torts § 700 is exclusively intentional. Accordingly, the Complaint's causes of action for negligent tortious interference with parental rights are not viable even under the arguments advanced by Appellant.

III. THE CIRCUIT COURT CORRECTLY DISMISSED APPELLANT'S CAUSES OF ACTION FOR BREACH OF FIDUCIARY DUTY.

In her "Statement of Issues on Appeal," Appellant characterizes the trial court's order as "failing to find that the Complaint sufficiently alleged a breach of fiduciary duty." (App. Brief at iv). Similarly, the title of Section II of her brief asserts that "the trial court erred in failing to find that the Complaint sufficiently alleged a breach of fiduciary duty[.]"

(App. Brief at 11). However, the Order did not dismiss the Complaint's causes of action for breach of fiduciary duty because Appellant failed to allege the existence of a duty, but because the law does not characterize the relationship between Appellant and Richard Winn (or Ms. Chaisson) as a fiduciary one. Put simply, the issue is not whether Appellant alleged a breach of fiduciary duty (she did), but whether such a duty exists as a matter of law (it does not). See, e.g., Beverly v. Grand Strand Reg'l Med. Ctr., LLC, 429 S.C. 502, 513, 839 S.E.2d 468, 474 (Ct. App. 2020) (affirming the circuit court's dismissal of the plaintiff's breach of fiduciary duty claim despite the fact that her complaint alleged "certain required elements" of such a claim because the parties "did not have a relationship from which a fiduciary duty arose").

In Section II of her brief, Appellant cites just one case—Pierce v. Society of Sisters, 268 U.S. 510 (1925)—and it does not even contain the word "fiduciary."[7] She does not cite a single case supporting the existence of a fiduciary duty between any of the parties. Nor could she, as South Carolina has never recognized a fiduciary relationship between a private school and the parent of a student. Indeed, our courts have not recognized the existence of a fiduciary duty owed to parents or students in *any* academic or educational setting, and they have declined every opportunity to do so. See Doe, 375 S.C. at 72, 651 S.E.2d at 309-10[8]; Hendricks v. Clemson Univ., 353 S.C. 449, 458-59, 578 S.E.2d 711,

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[7] This is not surprising given that the case concerned the constitutionality of a compulsory public education statute.

[8] In Doe, even the dissenting justice concurred with and expounded on the court's holding with regard to the fiduciary duty issue. 375 S.C. at 75, 651 S.E.2d at 311 ("The trial judge also dismissed the [plaintiffs'] claims for breach of an assumed duty *In loco parentis* and breach of fiduciary duty, finding no such heightened duties exist in a school-student setting. . . . I can find no error in the trial court's conclusion that these two heightened duties do not exist.") (Pleicones, J., dissenting).

715-16 (2003). See also Green v. Richland Cty. Sch. Dist. Two, 2019-CP-40-00213, 2019 S.C. C.P. LEXIS 3029, *3-4 (S.C. Com. Pl. filed Jun. 20, 2019) (dismissing a breach of fiduciary duty cause of action against a school district because the district did not have a fiduciary relationship with its students).

Aside from her discussion of the wholly inapposite Pierce case, the only argument Appellant offers in support of her breach of fiduciary duty claim is to point out that she paid tuition to Richard Winn. Like the plaintiff in Beverly, Appellant essentially asks the court "to impose a fiduciary duty on a creditor-debtor relationship[.]" 429 S.C. at 514, 839 S.E.2d at 474. However, "South Carolina law does not impose such a duty in the absence of some special trust reposed in the creditor." Id.

CONCLUSION

For the reasons set forth herein, the Order contains no reversible error. Accordingly, Respondents respectfully request that this court affirm the Order.

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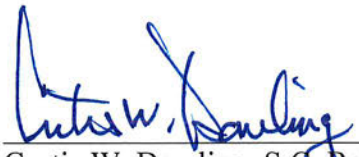
CERTIFICATE OF COUNSEL

The undersigned certifies that the enclosed **RESPONDENTS' FINAL BRIEF** complies with Rule 211(b), SCACR.



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