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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

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

Supreme Court Appellate Case No. 2023-000805
Court of Appeals Appellate Case No. 2021-000561
Civil Action No. 2021-CP-20-00026

Robin Allen,.. Petitioner,

v.

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

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COUNTER-STATEMENT OF QUESTIONS PRESENTED FOR REVIEW[1]

I. DID THE COURT OF APPEALS CORRECTLY AFFIRM DISMISSAL OF PETITIONER'S CAUSES OF ACTION FOR TORTIOUS INTEFERENCE WITH PARENTAL RIGHTS?

II. DID THE COURT OF APPEALS CORRECTLY AFFIRM DISMISSAL OF PETITIONER'S CAUSES OF ACTION FOR BREACH OF FIDUCIARY DUTY?

COUNTER-STATEMENT OF THE CASE[2]

On January 16, 2021, Petitioner 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, Petitioner 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 (R. p. 11, ¶¶ 5-6); (b) on or about September 26, 2020, Zoe ran away from Petitioner's home to the home of Mr. Ryan (R. p. 12, ¶ 16); (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 (R. p. 11, ¶¶ 8-9; R. p. 12, ¶ 18); and (d) Ms. Chaisson,

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1 Petitioner's questions presented go beyond those raised in the Court of Appeals and in the petition for rehearing. See Rule 242(d)(2), SCACR. They also include subheadings containing argument, which is inappropriate with respect to questions presented.

2 The Petition for Writ of Certiorari (the "Petition") contains both a "Statement of the Case" and a "Statement of the Facts." The former describes the procedural history of this matter, while the latter contains a factual narrative. However, that factual narrative—which notably includes no references to the Record on Appeal—contains allegations beyond those alleged in the Complaint, which is all that matters in this appeal from a dismissal pursuant to Rule 12(b)(6), SCRCP.

together with Richard Winn's board and Mr. Ryan, assisted, encouraged, and supported Zoe in running away from Petitioner's home to live instead with Mr. Ryan (R. p. 12, ¶ 18). Respondents have denied any wrongdoing. (R. pp. 24, 53).

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 (R. pp. 13-16); the fifth through eighth causes of action asserted negligent tortious interference with parental rights against the same parties (R. pp. 16-18); the ninth and tenth causes of action asserted intentional breach of fiduciary duty against Richard Winn and Ms. Chaisson (R. pp. 18-20); the eleventh cause of action asserted breach of contract (presumably against Richard Winn) (R. p. 20); the twelfth cause of action asserted intentional tortious interference with contracts (presumably against Richard Winn and Ms. Chaisson) (R. pp. 20-21); the thirteenth cause of action asserted negligent tortious interference with contracts (presumably against Richard Winn and Ms. Chaisson) (R. p. 21); the fourteenth cause of action asserted quantum meruit (presumably against Richard Winn) (R. pp. 21-22); and the fifteenth cause of action asserted attorney fees (R. p. 22).

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) Petitioner 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) Petitioner 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. (R. p. 90). 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.

Petitioner timely filed and served a Notice of Appeal on May 25, 2021. She appealed only the dismissal of the Complaint's causes of action for tortious interference with parental rights and breach of fiduciary duty. She did not challenge the dismissal of the Complaint's causes of action for negligent tortious interference with contracts or attorney fees. Following submission of briefs by the parties, the Court of Appeals issued its opinion affirming the Order. Allen v. Richard Winn Academy, Op. No. 2023-UP-129 (S.C. Ct. App. filed March 29, 2023). Petitioner filed a Petition for Rehearing on April 6, 2023, which the Court of Appeals denied in an order entered April 20, 2023. Petitioner subsequently filed the Petition on May 19, 2023.

ARGUMENTS

I. THE COURT OF APPEALS CORRECTLY AFFIRMED DISMISSAL OF PETITIONER'S CAUSES OF ACTION FOR TORTIOUS INTERFERENCE WITH PARENTAL RIGHTS.

A. South Carolina does not recognize a cause of action for tortious interference with parental rights.

South Carolina 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 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. The causes of action asserted by Petitioner did not exist at common law.

Petitioner urges this court find that a cause of action for tortious interference with parental rights existed under the English common law and is thus part of South Carolina law pursuant to S.C. Code Ann. § 14-1-50 (often referred to as the Reception Statute). In support of her argument, Petitioner relies almost exclusively on Wyatt v. McDermott, 725 S.E.2d 555 (Va. 2012). However, Wyatt involved an extraordinarily exceptional and unique set of facts. As summarized by the court:

> [A] biological mother and her parents, with the aid of two licensed attorneys and an adoption agency, . . . intentionally act[ed] to prevent a biological father—who is in no way alleged to be an unfit parent—from legally establishing his parental rights and gaining custody of a child whom the mother did not want to keep[.] . . . The facts as pled indicate that the Defendants went to great lengths to disguise their agenda from the biological father, including preventing notice of his daughter's birth and hiding their intent to have an immediate out-of-state adoption, in order to prevent the legal establishment of his own parental rights.

Against the backdrop of these incredibly egregious allegations, the Virginia Supreme Court adopted Restatement (Second) of Torts § 700 to provide a remedy for the biological father, dubiously finding it to be the modern equivalent of an ancient English common law writ that provided a father with recourse for the abduction of an heir.[3] Wyatt is both: (a) distinguishable based on its vastly different fact pattern[4]; and (b) incorrect in its conclusion that the tort theory summarized in Restatement (Second) of Torts § 700 existed in 17th century English common law.

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[3] As noted by the dissent, "English common law as it existed in 1607 did not protect the parental relationship but only protected the property rights of a father in his heir's marriage." Wyatt, 725 S.E.2d at 565 (McClanahan, J., dissenting).

[4] The Virginia Court of Appeals recently noted that "to date, adoption provides the only context in which the Supreme Court has recognized that the tort [of interference with parental rights] is available in Virginia." Qiu v. Huang, 885 S.E.2d 503, 509 (Va. Ct. App. 2023).

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." S.C. Code Ann. § 14-1-50. 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 Petitioner'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.[5] In other words, Petitioner 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. Obviously, 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 Petitioner 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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[5] Paragraphs 24, 29, 33, 37, 41, 45, 49, and 53 of the Complaint allege that Respondents "interfered with [Petitioner'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 Petitioner 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 would require drawing 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 this 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).[6]

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[6] 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. A cause of action for tortious interference with parental rights should not be adopted under the facts alleged in this case.

Petitioner asserts that a four-factor analysis for determining whether new causes of action should be adopted was delineated in Cole Vision Corp. v. Hobbs, 394 S.C. 144, 714 S.E.2d 537 (2011). 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 Petitioner dictates that South Carolina should not recognize a cause of action for tortious interference with parental rights under the facts alleged in this case.

i. Other remedies are already available.

Petitioner points out that the United States Supreme Court has 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." Troxel v. Granville, 530 U.S. 57, 65 (2000). Respondents do not dispute that parents have a liberty interest in rearing their children. However, the sanctity of the parent-child relationship does not require that parents have a filial consortium claim for money damages against third parties who allegedly interfere with the 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. Petitioner's damages would be speculative.

According to the Complaint, Zoe first ran away from Petitioner's home to Mr. Ryan's home on or about September 26, 2020. (R. p. 12, ¶ 16). Though it is not alleged in the Complaint, Petitioner asserts that "Zoe was later found, with the assistance of the police, at the home of Respondent-Defendant Ryan[.]" Petition at 5. She further asserts that Zoe subsequently ran away again, this time after turning 18. See id. ("Shortly thereafter, Zoe turned eighteen (18) and immediately left home again and began residing with Respondent-Defendant Ryan[.]"). 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, Petitioner is seeking damages for the brief period of time between September 26, 2020 and the unspecified date when Zoe was found by the police and returned to Petitioner's home. Respondents submit that any attempt to quantify the relational/companionship damages allegedly sustained by Petitioner during that brief period 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 causes of action asserted by Petitioner are primarily concerned with the custodian's financial remuneration 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[.]").

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.[7] South Carolina is home to several nonprofits that exist to provide such assistance,[8] 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.").

v. There are no "special and important reasons" for granting certiorari.

Rule 242(b), SCACR—which is not analyzed or even mentioned in the Petition—states that "[a] writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons." See also S.C. Dep't of Soc. Servs. v. Benjamin, 430 S.C. 235, 236 (2020) ("This Court has held it will grant certiorari to the court of appeals only where special reasons justify the exercise of that discretion."). The rule then lists five non-exclusive reasons for granting certiorari:

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7 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).

8 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.

(1) Where there are novel questions of law.

(2) Where there is a dissent in the decision of the Court of Appeals.

(3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.

(4) Where substantial constitutional issues are directly involved.

(5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

Of the reasons listed in Rule 242(b), only the first is implicated here.[9] However, the fact that this case presents a unique legal question does necessitate this court's intervention, as it is clear from the rulings below that lower courts understand the current state of the law in South Carolina. Moreover, even if this court were favorably inclined to recognize a 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 when she allegedly ran away to Mr. Ryan's home for the first time. According to the Petition, she was returned to Petitioner's home and remained there until after turning 18. She turned 18 (and became emancipated) several months before the Complaint was filed. And because she is now over 18, there is no custody issue presented. Therefore, all that is at stake in this action is Petitioner's ability to recover speculative relational/companionship damages for loss of filial consortium for the brief period of time when Zoe was away from Petitioner's home after running away on September 26, 2020.

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[9] Petitioner may take the position that the fourth reason is also implicated. However, this case does not present true "constitutional issues," but merely the issue of whether a party may obtain money damages for an alleged violation of certain constitutional rights. It bears reemphasizing that Petitioner is essentially seeking to assert the equivalent of a 42 U.S.C. § 1983 claim against private parties not acting under color of law. Cf. Holly v. Scott, 434 F.3d 287, 297 (4th Cir. 2006) ("The strictures of the Constitution generally apply only to public action.") (Motz, J., concurring). See also Footnote 5, *supra*.

II. THE COURT OF APPEALS CORRECTLY AFFIRMED DISMISSAL OF PETITIONER'S CAUSES OF ACTION FOR BREACH OF FIDUCIARY DUTY.

The Circuit Court found, and the Court of Appeals affirmed, that South Carolina law does not characterize the relationship between Petitioner and Richard Winn (or Ms. Chaisson) as a fiduciary one. Those holdings were plainly correct, as the courts of this state have historically "reserved imposition of fiduciary duties to legal or business settings[.]" Hendricks v. Clemson Univ., 353 S.C. 449, 459, 578 S.E.2d 711, 716 (2003). Moreover, 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[10]; Hendricks, 353 S.C. at 458-59, 578 S.E.2d at 715-16. 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).

Nevertheless, Petitioner asserts that a fiduciary relationship exists between a private secondary school (and its headmaster) and parents of its students. Yet she notably fails to cite a single authority from South Carolina or any other jurisdiction supporting her assertion. Thus, with respect to the dismissal of her breach of fiduciary duty causes of action, there is simply nothing justifying this court's review. None of the reasons listed in Rule 242(b), SCACR, are implicated here, nor are there other "special and important reasons" presented. The holdings below should stand.

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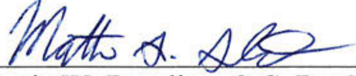
[10] In Doe, even the dissenting justice agreed with and expounded on the court's fiduciary duty holding. 375 S.C. at 75, 651 S.E.2d at 311 ("The trial judge also dismissed the [plaintiffs'] claim[] for . . . breach of fiduciary duty, finding no such heightened duties exist in a school-student setting.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

CONCLUSION

For the reasons set forth herein, Respondents respectfully request that the Petition for Writ of Certiorari be denied.



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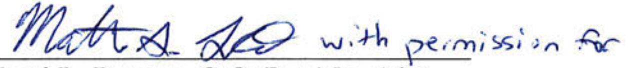

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