

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

On Certiorari from the Court of Appeals

Unpublished Opinion No. 2023-UP-129 (S.C. Ct.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.

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QUESTION PRESENTED

Did the Courts below err in failing to provide a parent with a remedy for tortious interference with the parent's Constitutionally protected right?

STATEMENT OF THE CASE

On January 16, 2021, Plaintiff Robin Allen brought this action against Richard Winn Academy, a private school in Fairfield County, South Carolina; its headmaster, Kristen Chaisson; and John Ryan II, a Fairfield County resident. (App. p. 61). Allen alleged that the Defendants tortuously interfered with her parental rights by causing her 17-year-old daughter to leave their family home and take up residence with Ryan.¹ (App. pp. 65-73). The Defendants generally denied the material allegations and asserted that a cause of action for tortious interference of parental rights does not exist in South Carolina. (App. p. 76 and p. 108). The Defendants filed concurrent Motions to Dismiss pursuant to SCRCF, Rule 12(b)(6). (App. P. 98 and App. P.108). The Plaintiff issued general Replies to Defendants' Answers and Counterclaims and filed a Return to Defendants' Motion for Partial Dismissal. (App. p. 113)

On March 19, 2021, Judge Eugene C. Griffith, Jr., held a non-evidentiary hearing² on the Defendants' Motions to Dismiss. (App. p.142). On April 28, 2021, he issued an order dismissing the causes of action for tortious interference of parental rights. (App p.

¹ She also alleged causes of action pursuant to breach of contract and breach of fiduciary duty.

² 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.*

53).³ In his Dismissal, Judge Griffith 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. (App. pp. 145-146).

On May 25, 2021, the petitioner served and filed her notice of appeal with the South Carolina Court of Appeals. (App. p. 126). Without oral argument, the Court of Appeals filed an unpublished opinion affirming the decision of the trial court that dismissal was appropriate “because South Carolina has never recognized a cause of action for either intentional or negligent tortious interference with parental rights.” (App. p. 2).⁴

Allen petitioned for certiorari on May 19, 2023, and the petition was granted on February 7, 2024, to consider the following question:

Did the Courts below err in failing to provide a parent with a remedy for tortious interference with the parent’s Constitutionally protected right?

STATEMENT OF FACTS

The complaint alleged that Robin Allen was the natural mother of Zoe, a minor child for whom she had been awarded custody by order of a Florida court. On or about March 13, 2020, Allen enrolled Zoe into Richard Winn Academy under a contract to provide Zoe educational services. At the time Allen was employed as a teacher at Richard Winn Academy. *See* Complaint.

³ The order dismissed the causes of action for intentional breach of fiduciary duty; negligent tortious interference with contracts; and attorney fees resulting in partial dismissal of the claims against Winn Academy and Chaisson and complete dismissal of the claims against Reynolds. Order Granting Mot. To Dismiss. (App. P. 53).

⁴ The Court of Appeals also held that South Carolina also does not recognize the existence of a fiduciary duty between a school and a parent, however, that question is not before the Court.

Allen alleged that Zoe left Allen's home on September 26, 2020, to take up residence with Ryan. Then on November 1, 2020, Chaisson coordinated with the board of Richard Winn Academy and John Ryan "to assist, encourage, and support the efforts" of Zoe to leave Allen's home again to reside with Ryan, which Zoe did on November 13, 2020. Allen alleged that Chaisson additionally concealed information from Allen about Zoe's plans. *See* Complaint.

Allen alleged that the interference with her parental rights caused her mental anguish and economic harm. She alleged that the actions of the defendants caused her to leave her teaching position at the school. *See* Complaint.

STANDARD OF REVIEW

In reviewing the dismissal of a claim for failure to state facts sufficient to constitute a cause of action under Rule 12(b)(6), SCRCP, the appellate court applies the same standard of review as the trial court. *Sloan Const. Co. v. Southco Grassing, Inc.*, 377 S.C. 108, 112, 659 S.E.2d 158, 161 (2008), holding modified by *Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 743 S.E.2d 778 (2013). The court must resolve every doubt in a light most favorable to the nonmovant to determine whether the facts alleged on the face of the complaint state "any valid claim for relief." *Id.* at 112-13, 659 S.E.2d at 161(citing *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007)). Dismissal based on Rule 12(b)(6) is improper when "facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case." *Id.* at 113, 659 S.E.2d at 161 (quoting *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 603 (1995)).

ARGUMENT

The essential question before this Court is whether South Carolina recognizes a common law cause of action holding private third parties liable for tortious interference with a custodial parents' rights to their children. There are four main reasons why this Court should reverse the holding of the lower courts and recognize the common law doctrine relating to third party tortious interference with the parent-child relationship.

1. South Carolina has expressly preserved the common law of England by statute

In ruling that a common law cause of action for tortious interference of parental rights has not been recognized by South Carolina, both of the lower courts failed to consider S.C. Code Ann § 14-1-50, which states:

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.

2. Since before the founding of the United States, a cause of action for tortious interference with parental rights has existed in England's common law

In *Wyatt v. McDermott*, 283 Va. 685 (2012), the Virginia Supreme Court showed that a cause of action for tortious interference with parental rights “has indeed existed at common law and continues to exist today.” Further, “rejecting tortious interference with parental rights as a legitimate cause of action would leave a substantial gap in the legal protection afforded to the parent-child relationship.” *Wyatt v. McDermott*, at 692.

The Virginia Court found that the law of tortious interference is derived from English common law providing remedies to parents of abducted children and seduced daughters, as explored by the New York Court of Appeals in *Pickle v. Page*, 252 N.Y. 474

(N.Y. 1930). See also W. Page Keeton et al., Prosser and Keeton on the Law of Torts § 124, at 924 (5th ed. 1984); *Murphy v. I.S.K. Con. of New England, Inc.*, 571 N.E.2d 340, 351 (Mass. 1991).

An action of trespass for the abduction of a child was originally maintainable by a father where the child abducted was the son and heir; and not otherwise. (Barham v. Dennis, 2 Cro. Eliz. 770.) . . . Later it was held that an action of trespass was maintainable by a father per quod servitium amisit where a child old enough to do him service, other than the heir, was abducted. For the abduction of any other child the action did not lie. (Gray v. Jefferies, 1 Cro. Eliz. 55; Hall v. Hollander, 4 Barn. Cress. 660.) . . . The principle that the abduction of a child, not the heir, or not capable of rendering service, was a wrong for which the law furnished no civil remedy, was not adopted without protest, nor has it received unqualified approval. Thus in Barham v. Dennis (supra) GLANVILLE uttered a strong dissent, saying: "For the father hath an interest in every of his children to educate them, and to provide for them; and he hath his comfort by them; wherefore it is not reasonable that any should take them from him, and to do him such an injury, but that he should have his remedy to punish it." Blackstone was of the opinion that for the abduction of a child, other than the heir, a father might maintain an action, stating that such a wrong was "remediable by writ of ravishment or action of trespass vi et armis, de filio, vel filia, raptio vel abducto; in the same manner as the husband may have it, on account of the abduction of his wife." (Bl. Comm. 140.) . . . It is to be noted, also, that Sir Frederick Pollock, without qualification, makes the broad statement: "The common law provided a remedy by writ of trespass for the actual taking away of a wife, servant, or heir, and perhaps younger child also;" and follows the statement by the further assertion that an action of trespass also lies for wrongs done to a plaintiff's wife, or servant or child, regarded as a servant, whereby the society of the former or the services of the latter are lost, the language of the pleading being per quod consortium, or servitium amisit. (Pollock, The Law of Torts, p. 226.).

Pickle v. Page, 252 N.Y. 474, 476-81 (N.Y. 1930).

Significantly, the New York Court of Appeals found that South Carolina in *Kirkpatrick v. Lockhart*, 2 Bre. Law, 4 S.C.L. 276 (S.C. 1809), recognized a cause of action for abduction of a child and did not require the parent to prove loss of service.

The true ground of action is the outrage and deprivation; the injury the father sustains in the loss of his child; the insult offered to his feelings; the heart-rending agony he must suffer in the destruction of his dearest hopes, and the irreparable loss of that comfort and society which may be the only solace of his declining age.

Pickle quoting *Kirkpatrick* at 654.

3. South Carolina historically has recognized a right of action for tortious interference with parental rights for more than 200 years

Kirkpatrick v. Lockhart recognized that English common law remedies for violation of parental rights were available in South Carolina to a father by writ of ravishment or action of trespass *vi et armis, de filio, vel filia, raptio vel abducto*. See *Kirkpatrick v. Lockhart*, 4 S.C.L. 276 (S.C. Const. App. 1809). See *Brown v. Ent. Merch. Ass'n*, 564 U.S. 786, 832–34 (2011) (Thomas, J., dissenting) (describing this legal history).

Kirkpatrick went to trial pursuant to the common law action of trespass, *vi et armis*, for forcibly taking away his daughter, under the age of twenty-one years. The trial charged the jury that some degree of force was necessary to be proved, to support the action. The jury returned a verdict for the plaintiff and *Lockhart* appealed. The appellate court upheld the verdict even though the evidence was bereft of the element of force, other than the daughter's "rejoice" in being returned to her father. According to the Court. "This was the only evidence of force." *Kirkpatrick v. Lockhart* 4 S.C.L. at 276.

In upholding the verdict, the Court demonstrated the dynamic nature of the common law. The Court not only allowed the verdict to stand without a showing of force, but the Court allowed a verdict for the taking of a daughter. Under earlier common law decisions, recovery depended on a son. See *Kirkpatrick v. Lockhart* 4 S.C.L. at 276-79. In the same

decision, the *Kirkpatrick* court eviscerated the notion that the cause of action required proving that the parent had lost the service of the child.

[I]t seems just, that a father might sue for the abduction of any of his children, as well as of the heir; upon the suggestion, and proof, that by means thereof, servitium amisit; or, indeed, without that harsher allegation, it is but reasonable that he might bring such action, in respect of the comfort and delight he has in them, his anxiety for their loss, and his interest in their education; which considerations could hardly be recompensed by pecuniary damages." It has been decided, that a father may maintain an action of trespass viet armis, for entering his house, assaulting his daughter, and getting her with child, per quod, 3 Wils. 18. So, an action on the case lies for debauching his daughter, per quod servitium amisit, though she be above the age of twentyone years, where acts of service are proved. 2 D. and E. 166 and seq. It was always held to lie where the daughter is under twenty one, though no acts of service are proved, 2D. and E. 4, 5; and other evidence, besides what applies to loss of service, is admissible. 3Esp. R. 119. 8 D. and E. 534. I mention these cases, to exhibit the true foundation of these kinds of actions, and to show that the allegation of special damage per quod, is founded on a mere fiction, which seems to have been suggested by a narrow, technical mind, or to have originated in a base and sordid principle of pecuniary interest. In truth, and justice, it forms no essential ingredient in the cause of action, and is unworthy of the notice of an enlightened and feeling judicatory.

Kirkpatrick at 278-79.

More than 200 years later, the South Carolina legislature has taken no affirmative steps to renounce the tort. Instead, South Carolina has strongly supported parental rights through both by common and statutory law. "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) (App. p. 116).

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.

S.C. Code Ann. § 20-1-719

4. The modern cause of action is known as tortious interference with parental rights

Today, courts label the ancient writ of trespass that provided a common law right of action to the parent of an abducted child tortious interference with parental rights. *See Wyatt v. McDermott.*

For example, the Florida Supreme Court recognized widespread acceptance of a parent's cause of action against a third party for interference with parental rights:

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.

See Stone v. Wall, 734 So.2d 1038 (Fla. 1999). The Florida court noted that sixteen state supreme courts have recognized the tort of intentional interference with the custodial relationship of parent and child or the abduction of a child: *Anonymous v. Anonymous*, 672 So.2d 787 (Ala. 1995); *Borer v. American Airlines*, 563 P.2d 858, 865 n. 3 (Cal. 1977); *D Fuller CATV Constr., Inc. v. Pace*, 780 P.2d 520 (Colo. 1989); *Shields v. Martin*, 706 P.2d 21 (Idaho 1985); *Montgomery v. Crum*, 161 N.E. 251 (Ind. 1928); *Wood v. Wood*, 338 N.W.2d 123 (Iowa 1983); *Murphy v. I.S.K. Con. of New England, Inc.*, 571 N.E.2d 340 (Mass. 1991); *Brown v. Brown*, 61 N.W.2d 656 (Mich. 1953); *Plante v. Engel*, 469 A.2d 1299 (N.H. 1983); *Howell v. Howell*, 78 S.E. 222 (N.C. 1913); *Pickle v. Page*, 169 N.E. 650 (N.Y. 1930); *Clark v. Bayer*, 32 Ohio St. 209 (1877); *McBride v. Magnuson*, 578 P.2d 1259 (Or. 1978); *Bedard v. Notre Dame Hosp.*, 151 A.2d 690 (R.I. 1959); *Silcott v. Oglesby*, 721 S.W.2d 290 (Tex. 1986); *Kessel v. Leavitt*, 511 S.E.2d 720 (W.Va. 1998), cert.

denied, 119 S.Ct. 1035 (1999). Both the Connecticut and Maine Supreme Courts have implied that they would have recognized this cause of action if the question were properly before them. See *Marshak v. Marshak*, 628 A.2d 964 (Conn. 1993); *Finn v. Lipman*, 526 A.2d 1380 (Me. 1987). In addition, an intermediate appellate court in at least two other states have approved the tort: *Mathews v. Murray*, 113 S.E.2d 232 (Ga. Ct. App. 1960); *Spencer v. Terebelo*, 373 So.2d 200 (La. Ct. App. 1979); see also Kristin A. Wentzel, Note, *In the Best Interests of the Child? Minnesota's Refusal to Recognize the Tort of Intentional Interference with Custodial Rights*, 14 Hamline L. Rev. 257, 265 n. 83 (1990) (courts in 23 states and the District of Columbia have recognized this tort). Two state supreme courts have refused to recognize a claim for tortious interference with the custodial parent-child relationship based upon their concern that tort recovery and its accompanying litigation would be detrimental to the best interests of the child. See *Larson v. Dunn*, 460 N.W.2d 39 (Minn. 1990); *Zaharias v. Gammill*, 844 P.2d 137 (Okla. 1992); see also *Cosner v. Ridinger*, 882 P.2d 1243 (Wyo. 1994) (implying that it would reject tort if it were properly before the court). In two other states, Illinois and Missouri, there is a split in authority in the intermediate-level appellate courts regarding whether the cause of action should be recognized. Compare *Whitehorse v. Critchfield*, 494 N.E.2d 743 (Ill. App. Ct. 1986) with *Dymek v. Nyquist*, 469 N.E.2d 659 (Ill. App. Ct. 1984); compare *Politte v. Politte*, 727 S.W.2d 198 (Mo. Ct. App. 1987) with *Kramer v. Leineweber*, 642 S.W.2d 364 (Mo. Ct. App. 1982). See *Stone v. Wall* at 1043 n.6.

The Restatement (Second) of Torts § 700 cites South Carolina's *Kirkpatrick v. Lockhart* as authority for its pronouncement of a cause of action for tortious with parental rights. The modern version allows either parent a remedy, not just for loss of services, 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. This common law tort has evolved to reflect parent(s) rights and the inherent value of relationship between parents and children, and the emotional harm as a result of the loss of the relationship.

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.”

Restatement (Second) of Torts § 700.

CONCLUSION

Robin Allen was the custodial parent of Zoe, a minor child. Without the consent of Zoe’s mother, the defendants induced the minor child to leave her mother. South Carolina recognizes a common law cause of action holding private third parties liable for tortious interference with a custodial parents’ rights to their children. The law of South Carolina allows the mother under the facts and circumstances stated by her complaint to seek damages from those defendants.

The orders of the lower courts should be reversed and the motions for dismissal denied.

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