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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

S.C. SUPREME COURT

Unpublished Opinion No. 2023-UP-129 (S.C. Ct.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

APPENDIX

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THE STATE OF SOUTH CAROLINA
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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Robin Allen, Appellant,

v.

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

Appellate Case No. 2021-000561

Appeal From Fairfield County
Eugene C. Griffith, Jr., Circuit Court Judge

Unpublished Opinion No. 2023-UP-129
Submitted March 1, 2023 – Filed March 29, 2023

AFFIRMED

Larry Conrad Marchant, Jr., of Columbia; and David
Douglas Hawkins, of The Hawkins Law Offices, LLC, of
Columbia, all for Appellant.

Curtis W. Dowling and Matthew G. Gerrald, of Barnes
Alford Stork & Johnson, LLP, of Columbia; and
Creighton B. Coleman, of Coleman & Tolen, LLC, of
Winnsboro, all for Respondents Richard Winn Academy
and Kristin Chaisson.

Paul L. Reeves, of Reeves and Lyle, LLC, of Columbia,
for Respondent John Ryan II.

PER CURIAM: Robin Allen (Mother) appeals a circuit court order granting motions to dismiss filed by Richard Winn Academy, Kristin Chaisson (in her individual capacity and as Head of School), and John Ryan II. On appeal, Mother argues the circuit court erred by (1) concluding that South Carolina does not recognize the common law doctrine of tortious interference with parental rights and (2) failing to find that her complaint alleged facts sufficient to constitute a cause of action for breach of fiduciary duty against Winn Academy and Chaisson. We affirm.

1. Because South Carolina has never recognized a cause of action for either intentional or negligent tortious interference with parental rights, we find the circuit court properly dismissed those claims pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. *See Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006) ("Under Rule 12(b)(6), SCRCP, a defendant may move to dismiss a [claim against it] based on a failure to state facts sufficient to constitute a cause of action."); *id.* ("In deciding whether the [circuit] 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.").

2. Because South Carolina has never recognized the existence of a fiduciary relationship between a school and a student's parent, we find the circuit court properly dismissed Mother's claims for breach of fiduciary duty pursuant to Rule 12(b)(6). *See Spence*, 368 S.C. at 116, 628 S.E.2d at 874 ("Under Rule 12(b)(6), SCRCP, a defendant may move to dismiss a [claim against it] based on a failure to state facts sufficient to constitute a cause of action."); *Hendricks v. Clemson Univ.*, 353 S.C. 449, 459, 578 S.E.2d 711, 715 (2003) ("[W]hether [a fiduciary relationship] should be imposed between two classes of people is a question for the court."); *id.* at 459, 578 S.E.2d at 716 (declining to recognize "the relationship between [an academic] advisor and student as a fiduciary one" because our supreme court "has reserved imposition of fiduciary duties to legal or business settings, often in which one person entrusts money to another"); *Spence*, 368 S.C. at 116, 628 S.E.2d at 874 ("In deciding whether the [circuit] 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.").

AFFIRMED.¹

THOMAS, MCDONALD, and HEWITT, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

The South Carolina Court of Appeals

Robin Allen, Appellant,

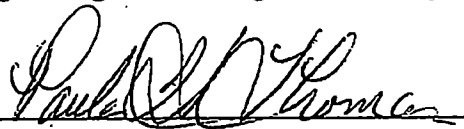
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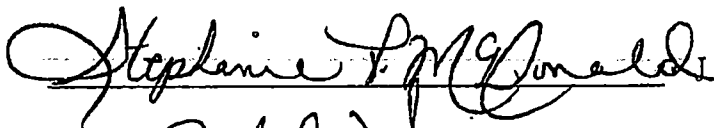
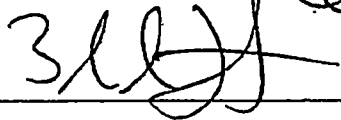
Richard Winn Academy, Kristen Chaisson (in her individual capacity and as Head of School), and John Ryan II, Respondents.

Appellate Case No. 2021-000561

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 J.


 J.

Columbia, South Carolina

cc:

Larry Conrad Marchant, Jr., Esquire
Paul L. Reeves, Esquire
Creighton B. Coleman, Esquire

FILED
Apr 20 2023

Curtis W. Dowling, Esquire
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David Douglas Hawkins, Esquire
The Honorable Eugene C. Griffith, Jr.

Apr 06 2023

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

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

Appellate Case No.: 2021-000561

Robin Allen,..... Appellant,

v.

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

Unpublished Opinion No. 2023-UP-129

PETITION FOR REHEARING

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

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

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

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

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

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

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

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

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

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

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

III. CONCLUSION

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

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April 6, 2023
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APR 06 2023

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

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

Appellate Case No.: 2021-000561

Robin Allen,..... Appellant,

v.

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

PROOF OF SERVICE

I certify that I served **PETITION FOR REHEARING** by email and by depositing
a copy of it in the United States Mail, postage prepaid, on April 6, 2023, addressed as
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THE STATE OF SOUTH CAROLINA
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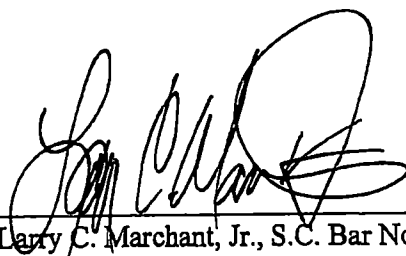
Robin Allen,..... Appellant,

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FINAL BRIEF OF APPELLANT

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February 7, 2022

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STATEMENT OF ISSUES ON APPEAL

- I. Did the trial court err by granting Defendants' Rule 12(b)(6) motion to dismiss Plaintiff's numerous causes of action for tortious interference with the parent-child relationship under the holding that South Carolina does not recognize the common law doctrine of tortious interference with the parent-child relationship?

- II. Did the trial court err in failing to find that the Complaint sufficiently alleged a breach of fiduciary duty between Plaintiff and Defendants Richard Winn Academy and Kristen Chaisson?

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 breached her parental rights of her then-minor daughter Zoe Mitsakos through interferences with the parent-child relationship, breach of contract and quantum meruit, breach of fiduciary duty, and attorney's fees. (R. p.-10-) Defendants answered and denied all wrongdoing, (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 Defendant's 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 Motion to Dismiss on behalf of John Ryan, II. (R. p. -1-) The Court 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 and held that such dismissal disposed of Ryan as a Defendant. Order Granting Mot. To Dismiss. (R. p. -1-)

STANDARD OF REVIEW

Generally, important questions of novel impression should not be decided on a Rule 12(b)(6), SCRPC, motion to dismiss. Instead, a novel issue is best decided with further development of the facts. *Evans v. State*, 344 S.C. 60 (S.C. 2001); *Tyler v. Macks Stores of*

South Carolina, Inc., 273 SC 456 (SC 1980). However, where the dispute is not as to the underlying facts but as to 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 for failure to state a claim. *Brown v. Theos*, 338 S.C. 305 (Ct.App.1999).

On appeal, the same standard of review mirrors the discretion the trial court used on a Rule 12(b)(6) dismissal of a cause of action. *Palmer v. State*, 427 S.C. 36, 42, (Ct. App. 2019) (quoting *Rydde v. Morris*, 381 S.C. 643, 646 (2009)). A trial court has abused its discretion when the court's ruling is based on an error of law or a factual conclusion without evidentiary support. *Conner v. City of Forest Acres*, 363 S.C. 460, 467 (2005) (citing *Carlyle v. Tuomey Hosp.*, 305 S.C. 187, 193 (1991); *Fontaine v. Peitz*, 291 S.C. 536, 538 (1987)). An abuse of discretion occurs:

- 1) when the trial court's ruling is based upon an error of law;
- 2) when based upon factual conclusions, the ruling is without evidentiary support;
- 3) when the circuit court is vested with discretion, but the ruling reveals no discretion was exercised; or
- 4) when the ruling does not fall within the range of permissible decisions applicable in a particular case, such that it may be deemed arbitrary and capricious. *State v. McClinton*, 369 S.C. 167, 169, 631 S.E.2d 895, 896 (2006) (citing *Fontaine v. Peitz*, 291 S.C. 536, 539 (1987); *S.E.C. v. TheStreet.Com*, 273 F.3d 222, 229 n.6 (2nd Cir. 2001)).

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

FACTS

Plaintiff-Appellant Robin Allen is the mother of Zoe Mitsakos, ("Zoe") a former minor child. On or about March 13, 2020, Allen entered a contract with Richard Winn Academy ("Winn") to provide educational services to Zoe. Allen was also employed as a teacher with Richard Winn for approximately four (4) years until her resignation as a result of this matter. Allen learned that Respondent-Defendant Chaisson, Head Mistress of Richard Winn, and Respondent-Defendant Ryan, were playing a significant role in supporting and advising Zoe. 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 Ryan. Shortly thereafter, Zoe turned eighteen (18) and immediately left home and began residing with Ryan. Moreover, without any knowledge, and despite an existing contract, Chaisson facilitated the issuance on a new enrollment contract with Zoe and Ricard Winn to finish her senior year. Defendants/Respondents' interference and resulting alienation has resulted in Plaintiff/Appellant mother having no further opportunity to see or speak with her daughter Zoe.

ARGUMENT

I. THE TRIAL COURT ERRED BY GRANTING DEFENDANTS' RULE 12(B)(6) MOTION TO DISMISS PLAINTIFF'S NUMEROUS CAUSES OF ACTION FOR TORTUOUS INTERFERENCE WITH THE PARENTAL RIGHTS UNDER THE HOLDING THAT SOUTH CAROLINA DOES NOT RECOGNIZE THE COMMON LAW DOCTRINE OF TORTUOUS INTERFERENCE WITH THE PARENT-CHILD RELATIONSHIP

A. Important Questions of Novel Impression

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.* When a trial court does dismiss a novel issue of law, if the only dispute is one of interpretation of the law and not the underlying facts, the development of which "will not aid in the resolution of the issues," this is a proper use of the trial court's discretion. *Id.* (citing *Brown v. Theos*, 338 S.C. 305 (Ct.App.1999)).

The crux of Defendants' argument in this case is that South Carolina does not recognize tortious interference with parental rights, under either an intentional or negligent standard. Tr. of Oral Argument for Mot. To Dismiss, p. 4 at 13-14.

The trial court agreed with this argument, holding

[w]hile South Carolina courts have recognized that parents have a right under the Fourteenth Amendment to the United States Constitution to be free from State interference with the parent-child relationship, they have not recognized a common law claim for tortious interference with parental rights (whether intentional, negligent, or otherwise) against private parties like the Defendants. Order Granting Mot. To Dismiss.

Further, the trial court noted that "[t]he Plaintiff acknowledges as much." *Id.*

These statements contain both a legal and a factual error.

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

The Virginia Supreme Court found precedent in common law of tortious interference with parental rights stating, "Prior to 1607, a comparable cause of action did lie in England,

providing a father with recourse for the abduction of his heir or sons rendering services."

Wyatt v. McDermott, 283 Va. 685, 725 S.E.2d 555, 559 (2012).

Plaintiff/Appellant's action has evolved in our modern era to permit either parent a remedy, not just for loss of service, but for loss of companionship, the inherent value of relationship between parents and children, and the emotional harm as a result of the loss of the relationship. The Restatement (Second) of Torts § 700 recites a more modern version:

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

Further, as noted in Plaintiff's Return to the Defendant's Motion for Partial Dismissal, the Defendants' reliance on *Cole Vision Corp. v. Hobbs*, 394 S.C. 144 (S.C. 2011), bolstered the Plaintiff's argument that the trial court should have denied the Defendants' Rule 12(b)(6) motion. As noted in the Plaintiff's Return, *Cole Vision's* refusal to adopt the stand-alone tort of spoliation of evidence due to four (4) factors:

- 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.

B. The *Cole Vision Corp. v. Hobbs* ("Cole Vision") Factors

i. The Availability of Existing Remedies

With respect to the availability of existing remedies, the *Cole Vision* court noted the availability of jury instructions or striking a party's pleadings in cases where evidence has been lost. *Id.* at 152. In this case, disturbingly neither South Carolina's courts nor statutory scheme

provide a civil remedy for inducing a minor child into leaving home and staying with a non-custodial, non-guardian third party.

While a parent can presumably report to the police a potential kidnapping in a case like Allen's, further factual development including discovery methods, deposition and potential trial testimony is necessary regarding the circumstances of the inducement of the minor to leave home. Such development of the record in a truly puzzling, troubling case where a school and other third parties allegedly induced a child to stay with a third party, bypassing any legal method of obtaining custody, that cries for factual development due to the potential for delineating the bounds of tortuous interference with the parent-child relationship by a private school and third-party individual.

ii. The Public Policy of the Adoption of the Tort

With respect to the public policy of the adoption of the tort, the United States Supreme Court has consistently protected parents' liberty issues of parents with respect to the care, custody, and control of their children. *Troxel v. Granville*, 530 U.S. 57, 65 (2000). *Troxel* summarized the importance of parents' liberty interest:

The liberty interest at issue in this case -- the interest of parents in the care, custody, and control of their children -- is perhaps the oldest of the fundamental liberty interests recognized by this Court. More than 75 years ago, in *Meyer v. Nebraska*, 262 U.S. 390, 399, 401.... (1923), we 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 the education of their own." Two years later, in *Pierce v. Society of Sisters*, 268 U.S. 510, 534-535.... (1925), we again held that the "liberty of parents and guardians" includes the right "to direct the upbringing and education of children under their control." We explained in *Pierce* that "the child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." 268 U.S. at 535. We returned to the subject in *Prince v. Massachusetts*, 321 U.S. 158, 88 L. Ed. 645, 64 S. Ct. 438 (1944), and again confirmed that there is a

constitutional dimension to the right of parents to direct the upbringing of their children. " It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." 321 U.S. at 166. *Id.* at 65-66.

In the above-cited case *Meyer v. Nebraska*, the U.S. Supreme Court's finding a state statute that prohibited schools (both public and private) from teaching certain students a language other than English arbitrary and not reasonably relation to any relevant end is in fact salient for Allen's case at hand. 262 U.S. 390, 403 (1923). South Carolina common law has the same force as statutory law when not in conflict, and by ignoring the opportunity to hear on the merits a case where a private school and others, induces a minor to leave home and violate the sanctity of the parent's liberty interest in protecting her child and directing the child's education, the trial court foreclosed development of the record on a troublesome situation by its very dismissal opens the floodgates to truancy and improper motives, including criminal, of suspicious third parties and those who abuse power in school settings.

Further, as noted in *Meyer*, "[t]he American people have always regarded education and acquisition of knowledge as matters of supreme importance which should be diligently promoted.....Corresponding to the right of control, it is the natural duty of the parent to give his children education suitable to their station in life; and nearly all the States, including Nebraska, enforce this obligation by compulsory laws." 262 U.S. 390, 400 (1923).

This holding applies to *both* public and private schools. While the case dealt with statutory prohibition, in this case the trial court's essential holding is that South Carolina common law does not in fact prevent private schools and other third parties from interfering with the rights of parents. This is contrary to the law of the land.

Additionally, *Pierce v. Society of Sisters* dealt with a state statute that required parents to send students of a certain age to public school. 268 U.S. 510 (1925). First, the U.S. Supreme Court held:

[n]o question is raised concerning the power of the State reasonably to regulate *all schools*, to inspect, supervise and examine them, their teachers and pupils; to require that all children of proper age attend some school, *that teachers shall be of good moral character and patriotic disposition*, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare. *Id.* at 268 U.S. 510, 534 (1925) (emphasis added).

Further, the Court held that under *Meyer v. Nebraska*, the rights of parents and guardians to control the upbringing and education of their children could not be abrogated by unreasonable legislation, noting “[t]he child is not the mere creature of the State; those who nurture him and direct his destiny have the right, *coupled with the high duty*, to recognize and prepare him for additional obligations.” *Id.* at 534-35 (1925) (emphasis added). In Allen’s case, the trial court’s granting the Defendants’ Motion to Dismiss any claims of tortious interference with parental rights is effectively an unreasonable, common-law abrogation of the parental rights to control the *upbringing and education* of their children. The trial court shut the door on allowing development of the record regarding the special duties that public *and private* schools have to children:

[w]hile South Carolina courts have recognized that parents have a right under the Fourteenth Amendment to the United States Constitution to be free from State interference with the parent-child relationship, they have not recognized a common law claim for tortious interference with parental rights (whether intentional, negligent, or otherwise) against *private parties* like the Defendants. (emphasis added).

iii. The Speculative Degree of Damages

As noted in the Plaintiff's Return, "[t]he Supreme Courts of Virginia and Florida citing its similar statute found [the tort of interference with parental rights] within the public policy stating:

In sum, it is clearly the case that this ancient writ—today labeled tortious interference with parental rights—did exist in English common law in 1607, that it can be construed in a manner not repugnant to the Bill of Rights and the Constitution of the Commonwealth, and that no affirmative steps have been taken by the legislature to renounce the tort. We therefore answer the first certified question of law in the affirmative."

Wyatt v. McDermott, 283 Va. 685, 725 S.E.2d 555 (2012).

Further, with respect to damages, the *Wyatt* court was easily able to delineate intentional and negligent remedies:

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." *Id.* (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)).

iv. Duplicate and Inconsistent Litigation

Remanding this case for further factual development on the potential tortious interference with the Plaintiff's relationship with her child cannot create this problem, as the trial court itself noted that this potential tort was not currently recognized as a tort in South Carolina.

C. The Need for Factual Development of the Record

The factual error misconstruing Plaintiff's counsel position is evident. Plaintiff's counsel specifically disagreed with the trial court's statement that South Carolina does not recognize a common law claim for tortious interference with parental rights:

As far as the negligent interference of parent rights, your Honor, it probably may well be recognized in South Carolina law, and again, I'm going refer to the case law that was cited in *Wyatt v. McDermott* and it is also said within the response to the motion to dismiss. In 1607, they looked at the English Common Law that did find that there was common law back then that would prevail on the tortious interference of parental rights. South Carolina had that same Common Law language that Virginia does. So we do believe it may be there; it's just not necessaril [sic] worded as "tortious interference of parental rights." Back then, it was interference of the father's right to the child as far as labor and the benefit of the child to the house. So we do believe it's probably there, it's just never officially recognized within the State of South Carolina. Tr. pp. 8-9, at 10-25, 1-2.

In Plaintiff Counsel's Return to Defendants' Motion to Dismiss, Plaintiff argues:

While South Carolina and Federal Courts have recognized that parents have a right under the Fourteenth Amendment to the United States Constitution to be free from State interference with the parent-child relationship, they, as of yet, have not recognized a common law claim for tortious interference with parental rights against third parties like Richard Winn, Ms. Chaisson, or Mr. Ryan. Accordingly, nor has it, to the Plaintiffs knowledge been argued in South Carolina.

Plaintiff's Return to Defendant's Motion for Partial Dismissal at 2.

Truly, the novel issue of the specific tort of a third parties' interference with parental rights may not have been argued in South Carolina, but South Carolina's intent to keep this common law tort intact is evident in *Russo v. Sutton*¹, where the South Carolina Supreme Court

¹ At one time, criminal conversation was based on the premise that one who interfered with the husband's right of exclusive possession of his wife's body was liable in trespass to the husband for injury done by seducing the wife. *Haney v. Townsend*, 12 S.C.L. (1 McCord) 207 (1821) The basis for the common law regarding criminal conversation evolved, so that the law regarded the purpose of criminal conversation to be the protection of the marriage relationship against those who might wrongfully intrude, even when the possibility of reconciliation is

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)).

And the appellate courts have had other opportunities to abolish the tortious interference of parental rights, reminding trial courts that common law can age like a fine wine or a rank piece of meat- its age only relevant to whether an appellate court decided to carve it out like the bad cut of meat, throwing into the trash- or ignore it like a bottle of wine in a basement cellar, sitting there with its potency intact and unencumbered by the dust of nonuse.

In *Taylor v. Medenica*, the South Carolina Supreme Court's refusal to amend a statute to include loss of filial consortium (that of a parent's child) in tortious damages was a direct acknowledgement that the Legislature's inaction with respect to enactment of a statute could be tantamount to denying the loss through the failure to include it in the statutory provision: [b]y enacting S.C. Code Ann. § 15-75-20 (1977), the legislature provided for loss of consortium actions for spouses. The statute has not been amended to provide a similar cause of action for children. Whether South Carolina should recognize a cause of action for loss of parental consortium is a matter best left to the discretion of the General Assembly. *Taylor v. Medenica*, 324 S.C. 200, 222, 479 S.E.2d 35, 47 (1996).

In this case, the Legislature has taken no such action with respect to the essential rights of parents with respect to the children in matters besides loss of consortium relevant for this case.

II. THE TRIAL COURT ERRED IN FAILING TO FIND THAT THE COMPLAINT SUFFICIENTLY ALLEGED A BREACH OF FIDUCIARY DUTY BETWEEN PLAINTIFF AND DEFENDANTS WINN ACADEMY AND CHAISSON.

remote. *Fennell v. Littlejohn*, 240 S.C. 189 at 197, 125 S.E.2d at 412 (1962). Under this theory, a wife also possessed the legal right to bring a corresponding action when her husband engaged in adultery.

Within the four corners of the Complaint, the Plaintiff's allegations that Defendants Winn Academy and Chaisson breached their fiduciary duty "with the Plaintiff to protect their contractual and parental interest in safeguarding the minor child while the child was in their care and control."

As noted above, in *Pierce v. Society of Sisters*, the United States Supreme Court dealt with a state statute that required parents to send students of a certain age to public school.

268 U.S. 510 (1925). The U.S. Supreme Court held:

[n]o question is raised concerning the power of the State reasonably to regulate *all schools*, to inspect, supervise and examine them, their teachers and pupils; to require that all children of proper age attend some school, *that teachers shall be of good moral character and patriotic disposition*, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare. *Id.* at 268 U.S. 510, 534 (1925) (emphasis added).

In this case, Defendants Winn Academy and Chaisson attempt to evade liability in part through their status as a private school. Yet, this creates a much higher likelihood of a fiduciary duty than a public school would have to a parent, because Plaintiff paid the tuition for her daughter in this case.

The trial judge's refusal to recognize a fiduciary duty is a clearly arbitrary, unreasonable error of law:

[w]here the legislative action is arbitrary and has no reasonable relation to a purpose which it is competent for the Government to effect, the legislature transcends the limits of its power in interfering with the liberty of contract. *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 529 (1925) (citing *C. B. & Q. R. R. Co. v. McGuire*, 219 U.S. 549; *Atlantic Coast Line v. Goldboro*, 232 U.S. 559; *House v. Mayes*, 219 U.S. 270; *Reduction Company v. Sanitary Works*, 199 U.S. 306; *C. B. & Q. R. R. Co. v. Drainage Commissioners*, 200 U.S. 561; *Lochner v. New York*, 198 U.S. 45.)

Further, *Pierce* found that private schools "have business and property for which they claim protection." These are threatened with destruction through the unwarranted compulsion which appellants are exercising over present and prospective patrons of their schools. And this court has gone very far to protect against loss threatened by such action. *Id.*, 268 U.S. 510, 535. (1925) (citing *Truax v. Raich*, 239 U.S.33; *Truax v. Corrigan*, 257U.S. 312; *Terrace v. Thompson*, 263 U.S. 197.

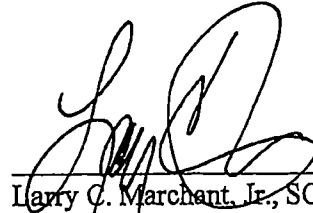
Moreover, the fact that the trial court allowed the breach of contract claim to go forth is further evidence that the trial court spun the wheel and then stuck its finger on the convenient spot of when the Defendant Winn School was afforded the protection of a private school and when it was treated just as a public school.

CONCLUSION

Because the Trial Court failed to allow the development of a factual record and allow Plaintiff/Appellant the opportunity to present evidence as to the important novel issue of Tortuous Interference with Parental Rights, his Order granting Defendants'/Respondents' Motion to Dismiss must be reversed. Further, the Trial Court refused to recognize a fiduciary duty owed to Plaintiff/Appellant to protect their contractual and parental interest in safeguarding their minor child while in Defendants'/Respondents' care and control and therefore his Order granting Defendants'/Respondents' Motion to Dismiss must be reversed. Appellant respectfully ask this Court to reverse the Order of the Trial Court and for all other relief as the Court deems just and proper.

Respectfully submitted,

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February 7, 2022
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Feb 07 2022

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

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

Appellate Case No.: 2021-000561

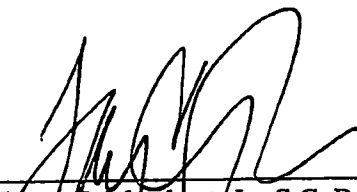
Robin Allen,..... Appellant,

v.

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

CERTIFICATE OF COUNSEL

The Undersigned Counsel certified that the attached Final Brief is in compliance with
SCACR 211(b).



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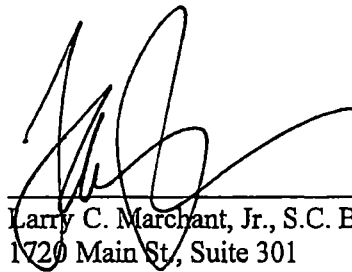
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and John Ryan, II,..... Respondents.

CERTIFICATE OF COMPLIANCE

The Undersigned Counsel certifies that the attached Final Brief is in compliance with The
Supreme Court Order (*Reduced Number of Copies Required in Appellate Matters*) dated August
25, 2021.



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THE STATE OF SOUTH CAROLINA
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The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

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Civil Action No. 2021-CP-20-00026

Robin Allen,.....Appellant,

v.

Richard Winn Academy, Kristen Chaisson
(in her individual capacity and as Head of
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STATEMENT OF ISSUES ON APPEAL

- I. MAY NOVEL ISSUES BE RESOLVED ON A MOTION TO DISMISS WHERE THE DISPUTE IS SOLELY AS TO THE INTERPRETATION OF THE LAW?
- II. DID THE CIRCUIT COURT CORRECTLY DISMISS APPELLANT'S CAUSES OF ACTION FOR TORTIOUS INTEFERENCE WITH PARENTAL RIGHTS?
- III. DID THE CIRCUIT COURT CORRECTLY DISMISS APPELLANT'S CAUSES OF ACTION FOR BREACH OF FIDUCIARY DUTY?

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 INTERFERENCE 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 law² and is thus part of South Carolina law pursuant to

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

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

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

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 309-10⁸; Hendricks v. Clemson Univ., 353 S.C. 449, 458-59, 578 S.E.2d 711,

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).

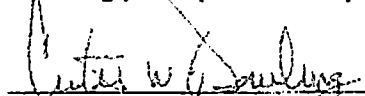
715-16 (2003). See also Green v. Richland Cty. Sch. Dist. Two, 2019-CP-40-00213, 2019 S.C. C.P. LEXIS 3029, *3-4 (S.C. Com. Pl. filed Jun. 20, 2019) (dismissing a breach of fiduciary duty cause of action against a school district because the district did not have a fiduciary relationship with its students).

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.

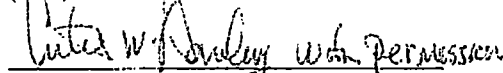
CONCLUSION

For the reasons set forth herein, the Order contains no reversible error.

Accordingly, Respondents respectfully request that this court affirm the Order.

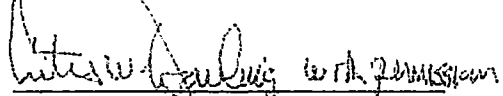


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February 21, 2022

Feb 24 2022

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

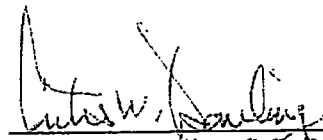
Robin Allen,.....Appellant,

v.

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

CERTIFICATE OF COUNSEL

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



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February 24, 2022

STATE OF SOUTH CAROLINA
COUNTY OF FAIRFIELD

IN THE COURT OF COMMON PLEAS

Robin Allen,

Civil Action No. 2021-CP-20-00026

Plaintiff,

v.

**ORDER GRANTING MOTION
FOR PARTIAL DISMISSAL OF
DEFENDANTS RICHARD WINN
ACADEMY AND KRISTEN
CHAISSON AND MOTION
TO DISMISS ON BEHALF OF
JOHN RYAN, II**

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

Defendants.

This matter came before the Court on March 19, 2021 for a hearing on two motions: (1) a Motion for Partial Dismissal of Defendants Richard Winn Academy and Kristen Chaisson (filed February 12, 2021); and (2) a Motion to Dismiss on Behalf of John Ryan, II (filed February 19, 2021) (collectively, the "Motions"). Appearing at the hearing were David D. Hawkins, Esquire on behalf of the Plaintiff; Curtis W. Dowling, Esquire, Matthew G. Gerrald, Esquire, and Creighton B. Coleman, Esquire on behalf of Defendants Richard Winn Academy ("Richard Winn") and Kristen Chaisson ("Ms. Chaisson"); and Paul L. Reeves, Esquire on behalf of Defendant John Ryan, II ("Mr. Ryan").

After carefully reviewing the pleadings, the Motions, the briefs submitted by the parties, and the court's file, and after considering the arguments of counsel and the governing law, I hereby GRANT the Motions and DISMISS 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 disposes of all claims against Mr. Ryan, I also DISMISS Mr. Ryan as a Defendant in this case.

INTRODUCTION

This action arises out of a dispute over the education of a formerly minor child, Zoe Mitsakos ("Zoe"). The Complaint alleges that the Plaintiff, Robin Allen, entered into a contract with Richard Winn on or about March 13, 2020 for the provision of educational services to Zoe for the 2020-2021 academic year and that, after Zoe turned 18 years old, Richard Winn, by and through Ms. Chaisson, entered into a separate contract with Zoe pursuant to which she would continue her education at Richard Winn. The Complaint further alleges that Ms. Chaisson, together with Richard Winn's board and Mr. Ryan, assisted, encouraged, and supported Zoe in running away from the Plaintiff's home to live instead with Mr. Ryan. All three Defendants deny any wrongdoing.

Based on the aforementioned allegations, the Complaint asserts fifteen causes of action. The first through fourth causes of action assert 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 assert negligent tortious interference with parental rights against the same parties; the ninth and tenth causes of action assert intentional breach of fiduciary duty against Ms. Chaisson and Richard Winn; the eleventh cause of action asserts breach of contract; the twelfth cause of action asserts intentional tortious interference with contracts; the thirteenth cause of action asserts negligent tortious interference with contracts¹; the fourteenth cause of action asserts quantum meruit; and the fifteenth cause of action asserts attorney fees. For the reasons set forth herein, the Defendants are entitled to dismissal of the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, thirteenth, and fifteenth causes of action.

¹ The eleventh, twelfth, thirteenth, and fourteenth causes of action do not explicitly specify against whom they are asserted, but it appears from a review of their allegations that they are directed at Richard Winn and/or Ms. Chaisson and not at Mr. Ryan.

ANALYSIS

I. SOUTH CAROLINA DOES NOT RECOGNIZE A CAUSE OF ACTION FOR TORTIOUS INTERFERENCE WITH PARENTAL RIGHTS.

As previously stated, the Complaint's first through eighth causes of action assert tortious interference with parental rights. The first, second, third, and fourth causes of action assert that the alleged interference was intentional and the fifth, sixth, seventh, and eighth causes of action assert that the alleged interference was negligent. While South Carolina courts have recognized that parents have a right under the Fourteenth Amendment to the United States Constitution to be free from State interference with the parent-child relationship,² they have not recognized a common law claim for tortious interference with parental rights (whether intentional, negligent, or otherwise) against private parties like the Defendants. The Plaintiff acknowledges as much. However, relying on the principle that novel questions of law should not ordinarily be resolved on a Rule 12(b)(6) motion, she asserts that this court should change the common law and recognize a new cause of action.

It is true 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). "Where, however, 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." Id. See also Palmer v. State, 427 S.C. 36, 43, 829 S.E.2d 255, 259 (Ct. App. 2019) (same); Unisys Corp. v. S.C. Budget &

² See, e.g., S.C. Dep't of Soc. Servs. v. Wilson, 352 S.C. 445, 453, 574 S.E.2d 730, 734 (2002) ("The Fourteenth Amendment guarantees Wilson a fundamental right to freedom from State interference with his relationship with his daughter."). See also, e.g., S.C. Dep't of Soc. Servs. v. Evangelica H., , Op. No. 2012-UP-539, 2012 S.C. App. Unpub. LEXIS 666, at *6 (Ct. App. filed Sep. 25, 2012) ("The Fourteenth Amendment guarantees a fundamental right to freedom from State interference with a parent's relationship with his child.").

Control Bd. Div. of Gen. Servs. Info. Tech. Mgmt. Office, 346 S.C. 158, 165, 551 S.E.2d 263, 267 (2001) (same); Brown v. Theos, 338 S.C. 305, 313, 526 S.E.2d 232, 237 (Ct. App. 1999) (same). Cf. Kubic v. MERSCORP Holdings, Inc., 416 S.C. 161, 168, 785 S.E.2d 595, 598 (2016) (“Where, as here, the question is one of simple statutory construction, a trial court should not deny a meritorious motion merely because the question is one of first impression.”).

In this case, the court is presented with a purely legal question: “Does South Carolina recognize a common law claim for tortious interference with parental rights against private parties?” The answer, as the Plaintiff acknowledges, is “no.” Accordingly, the Defendants are entitled to dismissal of the Complaint’s first, second, third, fourth, fifth, sixth, seventh, and eighth causes of action. 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). 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).

II. THE PLAINTIFF DID NOT HAVE A FIDUCIARY RELATIONSHIP WITH RICHARD WINN OR MS. CHAISSON.

“A fiduciary relationship is founded on the trust and confidence reposed by one person in the integrity and fidelity of another. A fiduciary relationship exists when one reposes special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one reposing confidence.” Regions Bank v.

Schmauch, 354 S.C. 648, 670, 582 S.E.2d 432, 444 (Ct. App. 2003) (citations and quotation marks omitted). “Although whether a fiduciary relationship has been breached can be a question for the jury, the question of whether one should be imposed between two classes of people is a question for the court.” Hendricks v. Clemson Univ., 353 S.C. 449, 459, 578 S.E.2d 711, 715 (2003). “Historically, [the Supreme Court] has reserved imposition of fiduciary duties to legal or business settings, often in which one person entrusts money to another, such as with lawyers, brokers, corporate directors, and corporate promoters.” Id. at 459, 578 S.E.2d at 716.

The Complaint alleges that Richard Winn and Ms. Chaisson “had a fiduciary duty of loyalty with the Plaintiff to protect their contractual and parental interest in safeguarding the minor child while the child was in their care and control.” Compl. ¶¶ 57, 62. However, it appears that the Supreme Court has never recognized the existence of a fiduciary relationship in an academic or educational setting, and when given the chance to do so it has declined. In Hendricks, the Supreme Court “decline[d] to recognize the relationship between [a collegiate academic] advisor and student as a fiduciary one.” 353 S.C. 449, 459, 578 S.E.2d 711, 716. And in Doe v. Greenville County School District, 375 S.C. 63, 651 S.E.2d 305 (2007), the Supreme Court affirmed a trial court’s dismissal of a cause of action for breach of fiduciary duty against a school district. Id. at 72, 651 S.E.2d at 309-10. 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).

In an attempt to distinguish the aforementioned cases, the Plaintiff argues that a material distinction exists between private schools and public schools. Yet public schools are constitutionally required to provide a free, minimally adequate education to every child in South Carolina. See, e.g., S.C. Const. art. XI, § 3 (“The General Assembly shall provide for the

maintenance and support of a system of free public schools open to all children in the State and shall establish, organize and support such other public institutions of learning, as may be desirable.”); Abbeville Cty. Sch. Dist. v. State, 335 S.C. 58, 68, 515 S.E.2d 535, 540 (1999) (“[T]he South Carolina Constitution’s education clause requires the General Assembly to provide the opportunity for each child to receive a minimally adequate education.”). The Plaintiff offers no explanation as to why the duties owed by public schools are less significant than those owed by private schools other than to note that private schools enter into contracts with parents. She asserted in her brief that “a fiduciary relationship may very well exist in contractual relationships if the party has standing to enforce the agreement,” citing Beverly v. Grand Strand Regional Medical Center, LLC, 429 S.C. 502, 839 S.E.2d 468 (Ct. App. 2020). But rather than supporting her position, Beverly undercuts it by finding that even though the plaintiff in that case had standing to enforce a contract, she nevertheless could not pursue a breach of fiduciary duty claim. See id. at 513, 839 S.E.2d at 473 (“[T]he circuit court erred in dismissing Beverly’s breach of contract claim.”). See also id. at 515, 839 S.E.2d at 474 (“[W]e affirm the circuit court’s dismissal of Beverly’s claim for breach of fiduciary duty.”). Accordingly, Richard Winn and Ms. Chaisson are entitled to dismissal of the Complaint’s ninth and tenth causes of action.

III. TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS IS AN EXCLUSIVELY INTENTIONAL TORT.

The Complaint alleges that Richard Winn, by and through Ms. Chaisson, negligently interfered with the contract between the Plaintiff and Richard Winn “by allowing a subsequent contract violating its contractual interest” and “by entering a second contract for the education of Zoe” and that, as a result, the Plaintiff “has suffered an economic injury.” Compl. ¶¶ 76, 77, 78. However, there is no recognized cause of action in South Carolina for “negligent tortious interference with contracts” because tortious interference with contractual relations is an

exclusively intentional tort. See, e.g., Eldeco, Inc. v. Charleston Cty. Sch. Dist., 372 S.C. 470, 480, 642 S.E.2d 726, 731 (2007) (“To establish a cause of action for tortious interference with contractual relations, a plaintiff must show: 1) the existence of a contract; 2) knowledge of the contract [by the defendant]; 3) *intentional* procurement of its breach [by the defendant]; 4) the absence of justification; and 5) resulting damages [to the plaintiff].”) (emphasis added); Edens & Avant Inv. Props. v. Amerada Hess Corp., 318 S.C. 134, 137, 456 S.E.2d 406, 407 (Ct. App. 1995) (“South Carolina, like the majority of states, has not recognized a cause of action for the recovery of pure pecuniary harm resulting from a tortfeasor’s negligent interference with the plaintiff’s contractual relationships[.]”). The Plaintiff concedes this issue. Accordingly, Richard Winn and Ms. Chaisson are entitled to dismissal of the Complaint’s thirteenth cause of action.

IV. THE PLAINTIFF HAS CITED NO CONTRACTUAL OR STATUTORY PROVISION ENTITLING HER TO AN AWARD OF ATTORNEYS’ FEES.

“Attorney’s fees are not recoverable unless authorized by contract or statute.” Historic Charleston Holdings, LLC v. Mallon, 381 S.C. 417, 436, 673 S.E.2d 448, 458 (2009). The Plaintiff has not cited any contractual or statutory provision entitling her to an award of attorneys’ fees in this action, and the court has not been made aware of any basis for such an award. Accordingly, the Defendants are entitled to dismissal of the Complaint’s fifteenth cause of action.

IT IS, THEREFORE, ORDERED that the Motions are **GRANTED**.

IT IS FURTHER ORDERED that the Complaint’s first, second, third, fourth fifth, sixth, seventh, eighth, ninth, tenth, thirteenth, and fifteenth causes of action are **DISMISSED**.

IT IS FURTHER ORDERED that, because the dismissal of the aforementioned causes of action disposes of all claims against Mr. Ryan, he is **DISMISSED** as a Defendant in this case.

AND IT IS SO ORDERED.



Fairfield Common Pleas

Case Caption: Robin Allen VS Richard Winn Academy , defendant, et al

Case Number: 2021CP2000026

Type: Order/Other

It is so ordered

Eugene C. Griffith, Jr. 2154

Electronically signed on 2021-04-28 12:10:57 page 8 of 8

STATE OF SOUTH CAROLINA,

COUNTY OF FAIRFIELD

ROBIN ALLEN,

Plaintiff,

vs.

RICHARD WINN ACADEMY,
KRISTEN CHAISSON (in her individual
capacity and as Head of School), and John
Ryan II

Defendant.

IN THE COURT OF COMMON PLEAS

SUMMONS

DOCKET NO.

TO THE DEFENDANT(S) ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Columbia, South Carolina

Dated: January 14, 2021

Address:

s/ David Hawkins, Esq.

Attorney for Plaintiff

David D. Hawkins, Esq. (SC Bar#104470)

The Hawkins Law Office, LLC

Po Box 290095

Columbia, SC 29229

STATE OF SOUTH CAROLINA
COUNTY OF FAIRFIELD

ROBIN ALLEN,

Plaintiff,

vs.

RICHARD WINN ACADEMY,
KRISTEN CHAISSON
(in her individual capacity and her
capacity as Head of School),
JOHN RYAN II

Defendant.

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

COMPLAINT
(Jury Trial Requested)

DOCKET NO.:

The Plaintiff would respectfully show unto the Court that:

BACKGROUND AND JURISDICTION

1. The Plaintiff, Robin Allen, is a citizen and resident of Fairfield County, South Carolina.
2. The Plaintiff is the Natural Biological mother of Zoe Mitsakos and is awarded custody of the minor child by Court Order 2006-0288-FR-01, as recorded and filed with the Clerk of Court for Indian River County, Florida.
3. The Plaintiff, based on information and belief, alleges and states, the Defendant, Richard Winn Academy (Richard Winn), is a private school located at in Fairfield County, South Carolina, organized as a non-profit organization under the laws of the State of South Carolina and does business in South Carolina, County of Fairfield, by and through its agents, servants, and employees.

4. The Plaintiff, based on information and belief, alleges and states, the Defendant, through their agents, servants and employees, conducts business by engaging in contracts with families for private educational services.

5. The Plaintiff, alleges and states, on or about March 13, 2020, she entered into a Contract with Richard Winn to provide educational services for the education of Zoe Mitsakos.

6. The Plaintiff alleges and states Zoe Mitsakos was a minor, when the contract was signed by the Plaintiff and accepted by the Defendant and covered the full school term for 2020 to 2021.

7. The Plaintiff alleges and states she has paid all installments when due as required by the contract.

8. The Plaintiff alleges and states that Zoe Mitsakos turned 18 years old on DOB1.

9. The Plaintiff, based on information and belief, alleges and states, on or about November 13, 2020, Richard Winn, by and through its agent Kristen Chassion as Head of School, contracted with Zoe Mitsakos to continue her education at Richard Winn.

10. The Plaintiff, based on information and belief, alleges and states, the Defendant, Kristen Chassion (Ms. Chaisson), is a citizen and resident of Fairfield County, South Carolina and has been since the initiation of this proceeding.

11. The Plaintiff, based on information and belief, alleges and states, the Defendant, Kristen Chaisson, is the Head of School for Richard Winn Academy and has been at the initiation of this proceeding and is an agent, servant, or employee for Richard Winn Academy.

12. The Plaintiff, based on information and belief, alleges and states, the Defendant, John Ryan II, is a citizen and resident of Fairfield County, South Carolina, and has been since the initiation of this proceeding.

13. The Plaintiff, based on information and belief, alleges and states that as Head of School, the Defendant, Kristen Chaisson, is a duly a authorized representative/agent of the school and board with the ability and authority to act on behalf of the school in her official capacity and vicariously for both the school and school board.

14. The Plaintiff, based on information and belief, alleges and states that Ms. Chaisson, both in her individual and/or capacity as Head of School, on or about November 1, 2020, while the child was still 17, engaged, supported, coordinated, and discussed with the Board of Richard Winn Academy and John Ryan to assist, encourage, and support the efforts of the minor child to run away from the Plaintiff to intentionally interfere with her custodial and parental rights.

15. The Plaintiff, based on information and belief, alleges and states Ms. Chaisson, both in her individual capacity and/or as Head of School, had a duty to report the intent of the child to run away and failed to do so and intentionally, willfully and knowingly, hid the information from the Plaintiff.

16. The Plaintiff, based on information and belief, alleges and states, that on or about September 26, 2020, the minor child, without permission, consent or knowledge, ran away to the home of John Ryan II and did so again on November 13, 2020.

17. The Plaintiff, based on information and belief, alleges and states, that as a result of the conduct of all Defendants, she has had to resign her position as a teacher at Richard Winn.

18. The Plaintiff, based on information and belief, alleges and states, the Defendants, Richard Winn Academy, by and through their representative, Ms. Chaisson as Head of School, Ms. Chaisson, in her individual capacity, and John Ryan II, on or about November 13, 2020, have facilitated, encouraged, and support the child, Zoe Mitsakos to engage into a contractual

relationship with Richard Winn for her education, contrary to the existing contract of the parent and intentionally interfering with her contractual rights and protections.

19. The Plaintiff, based on information and belief, alleges and states, the Defendant, John Ryan II, has knowingly, willfully, and intentionally, interfered with the parental rights of the Plaintiff by supporting and encouraging the child to defy the parent, and intentionally interfering with her custodial and parental rights.

20. The Plaintiff, based on information and belief, alleges and states, the Defendants, Richard Winn, Kristen Chaisson, in both her individual capacity and capacity as Head of School, and John Ryan II, conduct is the Direct and Proximate cause of the harm to the Plaintiff.

21. The Plaintiff, based on information and belief, alleges and states, because of the Defendants, Richard Winn, John Ryan II, and Ms. Chaisson, in her individual capacity and as Head of School, have engaged in intentional and reckless tortious conduct resulting in actual and punitive damages to the Plaintiff.

22. Based on the foregoing, the Plaintiff believes the Court has Personal and Subject Matter Jurisdiction over parties and venue is proper.

FOR A FIRST CAUSE OF ACTION
(Intentional Tortious Interference with Parental Rights – Richard Winn Academy)

23. The Plaintiff reiterates all allegations above as if restated verbatim herein.

24. The Plaintiff, based on information and belief, alleges and states, prior to the minor child turning 18 years old, the Defendant, Richard Winn Academy, by a through their agent, Kristen Chaisson, intentionally, knowingly and willfully, interfered with the Plaintiffs State and Federal Constitutional rights to raise her child by encouraging the child to not follow the directions of the parent in the education, raising, and influence of the minor child and interfered with the parents ability to raise her child.

25. The Plaintiff, based on information and belief, alleges and states, as a direct and proximate result of the conduct of the Defendant Richard Winn Academy, by and through their agent Kristen Chaisson, the Plaintiff has suffered injury resulting in the inability to raise her child and guide, educate, influence, and develop the child.

26. The Plaintiff, based on information and belief, alleges and states, as a direct and proximate result of the conduct of the Defendant Richard Winn Academy, by and through their agent Kristen Chaisson, the Plaintiff has suffered economic and mental injury.

27. The Plaintiff, based on information and belief, alleges and states, based on the Defendant, Richard Winn Academy, intentional, knowing, and willful, conduct, by and through its agent Kristen Chaisson, is entitled actual and punitive damages.

FOR A SECOND CAUSE OF ACTION
(Intentional Tortious Interference with Parental Rights – Kristen Chaisson – as Head of School)

28. The Plaintiff reiterates all allegations above as if restated verbatim herein.

29. The Plaintiff, based on information and belief, alleges and states, prior to the minor child turning 18 years old, the Defendant, Kristen Chaisson, as Head of School, intentional, knowingly and willfully, interfered with the Plaintiffs State and Federal Constitutional rights to raise her child by encouraging the child to not follow the directions of the parent in the education, raising, and influence of the minor child.

30. The Plaintiff, based on information and belief, alleges and states, as a direct and proximate result of the conduct of Kristen Chaisson, as Head of School, the Plaintiff has suffered economic and emotional injury.

31. The Plaintiff, based on information and belief, alleges and states, based on the Defendant, Kristen Chaisson, as Head of School, intentional, knowingly, and willful, conduct, is entitled actual and punitive damages.

FOR A THIRD CAUSE OF ACTION
(Intentional Tortious Interference with Parental Rights – Kristen Chaisson – in her individual capacity)

32. The Plaintiff reiterates all allegations above as if restated verbatim herein.

33. The Plaintiff, based on information and belief, alleges and states, prior to the minor child turning 18 years old, the Defendant, Kristen Chaisson, in her individual capacity, intentional, knowingly and willfully, interfered with the Plaintiffs State and Federal Constitutional rights to raise her child by encouraging the child to not follow the directions of the parent in the education, raising, and influence of the minor child.

34. The Plaintiff, based on information and belief, alleges and states, as a direct and proximate result of the conduct of Kristen Chaisson, in her individual capacity, the Plaintiff has suffered economic and mental injury.

35. The Plaintiff, based on information and belief, alleges and states, based on the Defendant, Kristen Chaisson, in her individual capacity, intentional, knowingly, and willful, conduct, is entitled actual and punitive damages.

FOR A FOURTH CAUSE OF ACTION
(Intentional Tortious Interference with Parental Rights – John Ryan II)

36. The Plaintiff reiterates all allegations above as if restated verbatim herein.

37. The Plaintiff, based on information and belief, alleges and states, prior to the minor child turning 18 years old, the Defendant, John Ryan II, intentional, knowingly and willfully, interfered with the Plaintiffs State and Federal Constitutional rights to raise her child by encouraging the child to not follow the directions of the parent in the education, raising, and influence of the minor child.

38. The Plaintiff, based on information and belief, alleges and states, as a direct and proximate result of the conduct of John Ryan II, the Plaintiff has suffered economic and mental injury.

39. The Plaintiff, based on information and belief, alleges and states, based on the Defendant, John Ryan II, intentional, knowingly, and willful, conduct, is entitled actual and punitive damages.

FOR A FIFTH CAUSE OF ACTION
(Negligent Tortious Interference with Parental Rights – Richard Winn Academy)

40. The Plaintiff reiterates all allegations above as if restated verbatim herein.

41. The Plaintiff, based on information and belief, alleges and states, prior to the minor child turning 18 years old, the Defendant, Richard Winn Academy, by a through their agent, Kristen Chaisson, negligently, interfered with the Plaintiffs State and Federal Constitutional rights to raise her child by encouraging the child to not follow the directions of the parent in the education, raising, and influence of the minor child.

42. The Plaintiff, based on information and belief, alleges and states, as a direct and proximate result of the conduct of the Defendant Richard Winn Academy, by and through their agent Kristen Chaisson, the Plaintiff has suffered economic and mental injury.

43. The Plaintiff, based on information and belief, alleges and states, based on the Defendant, Richard Winn Academy, negligent conduct, by and through its agent Kristen Chaisson, is entitled actual damages.

FOR A SIXTH CAUSE OF ACTION
(Negligent Tortious Interference with Parental Rights – Kristen Chaisson – as Head of School)

44. The Plaintiff reiterates all allegations above as if restated verbatim herein.

45. The Plaintiff, based on information and belief, alleges and states, prior to the minor child turning 18 years old, the Defendant, Kristen Chaisson, as Head of School, negligently, interfered with the Plaintiffs State and Federal Constitutional rights to raise her child by encouraging and supporting the child to not follow the directions of the parent in the education, raising, and influence of the minor child.

46. The Plaintiff, based on information and belief, alleges and states, as a direct and proximate result of the conduct of Kristen Chaisson, as Head of School, the Plaintiff has suffered economic and mental injury.

47. The Plaintiff, based on information and belief, alleges and states, based on the Defendant, Kristen Chaisson, as Head of School, negligent, conduct, is entitled actual damages.

FOR A SEVENTH CAUSE OF ACTION
(Negligent Tortious Interference with Parental Rights – Kristen Chaisson – in her individual capacity)

48. The Plaintiff reiterates all allegations above as if restated verbatim herein.

49. The Plaintiff, based on information and belief, alleges and states, prior to the minor child turning 18 years old, the Defendant, Kristen Chaisson, negligently interfered with the Plaintiffs State and Federal Constitutional rights to raise her child by encouraging and supporting the child to not follow the directions of the parent in the education, raising, and influence of the minor child.

50. The Plaintiff, based on information and belief, alleges and states, as a direct and proximate result of the conduct of Kristen Chaisson, the Plaintiff has suffered economic and mental injury.

51. The Plaintiff, based on information and belief, alleges and states, based on the Defendant, Kristen Chaisson, negligent conduct, is entitled actual damages.

FOR A EIGHTH CAUSE OF ACTION

(Negligent Tortious Interference with Parental Rights – John Ryan II)

52. The Plaintiff reiterates all allegations above as if restated verbatim herein.

53. The Plaintiff, based on information and belief, alleges and states, prior to the minor child turning 18 years old, the Defendant, John Ryan II, negligently interfered with the Plaintiffs State and Federal Constitutional rights to raise her child by encouraging and supporting the child to not follow the directions of the parent in the education; raising, and influence of the minor child.

54. The Plaintiff, based on information and belief, alleges and states, as a direct and proximate result of the conduct of John Ryan II, the Plaintiff has suffered economic and mental injury.

55. The Plaintiff, based on information and belief, alleges and states, based on the Defendant, John Ryan II, negligent conduct, is entitled actual.

**FOR A NINTH CAUSE OF ACTION
(Intentional Breach of Fiduciary Duty – Kristen Chassion)**

56. The Plaintiff reiterates all allegations above as if restated verbatim herein.

57. The Plaintiff, based on information and belief, alleges and states, prior to the minor child turning 18 years old, the Defendant, Kristen Chaisson, as head of school, had a fiduciary duty of loyalty with the Plaintiff to protect their contractual and parental interest in safeguarding the minor child while the child was in their care and control.

58. The Plaintiff, based on information and belief, alleges and states, prior to the minor child turning 18 years old, the Defendant, Kristen Chaisson as Head of School, intentionally, knowingly, and willfully, breached their Fiduciary Duty with the Plaintiff by failing to inform the Plaintiff of the child's intent to run away and contract to remain at Richard Winn, contrary to their contractual and parental interests.

59. The Plaintiff, based on information and belief, alleges and states, as a direct and proximate cause of the Defendant, Kristen Chassion as Head of Schools, conduct, she has suffered economic injury.

60. The Plaintiff, based on information and belief, alleges and states, based on the Defendant, Kristen Chaisson, as Head of School, intentional, knowingly, and willful, conduct, by and through its agent, is entitled actual and punitive damages.

**FOR A TENTH CAUSE OF ACTION
(Intentional Breach of Fiduciary Duty – Richard Winn)**

61. The Plaintiff reiterates all allegations above as if restated verbatim herein.

62. The Plaintiff, based on information and belief, alleges and states, prior to the minor child turning 18 years old, the Defendant, Richard Winn Academy, by and through their agent Kristen Chaisson, had a fiduciary duty of loyalty with the Plaintiff to protect their contractual and parental interest in safeguarding the minor child while the child was in their care and control.

63. The Plaintiff, based on information and belief, alleges and states, prior to the minor child turning 18 years old, the Defendant, Richard Winn Academy, by and through their agent, Kristen Chaisson, intentional, knowingly and willfully, breached their Fiduciary Duty with the Plaintiff by failing to inform the Plaintiff of the child's intent to run away and contract to remain at Richard Winn, contrary to their contractual and parental interests.

64. The Plaintiff, based on information and belief, alleges and states, as a direct and proximate cause of the Defendant, Richard Winn, by and through its agent, Kristen Chassion, as Head of School, the Plaintiff has suffered economic and mental harm.

65. The Plaintiff, based on information and belief, alleges and states, based on the Defendant, Richard Winn Academy, intentional, knowingly, and willful, conduct, by and through its agent Kristen Chaisson, is entitled actual and punitive damages.

**FOR AN ELEVENTH CAUSE OF ACTION
(Breach of Contract)**

66. The Plaintiff reiterates all allegations above as if restated verbatim herein.

67. The Plaintiff, based on information and belief, alleges and states, Richard Winn Academy, by and through its agent, Kristen Chaisson as Head of School, intentional, knowingly and willfully, breached its contract with the Plaintiff by not providing all relevant documents to the Contract that are referenced in the contract for compliance.

68. The Plaintiff, based on information and belief, alleges and states, they have asked for the documents without success and were forced to initiate these proceedings.

69. The Plaintiff, based on information and belief, alleges and states, based on the Defendant, Richard Winn breach she is entitled actual damages.

**FOR A TWELFTH CAUSE OF ACTION
(Intentional Tortious Interference with Contracts)**

70. The Plaintiff reiterates all allegations above as if restated verbatim herein.

71. The Plaintiff, based on information and belief, alleges and states, the Defendant, Richard Winn, by and through its agent Kristen Chaisson as Head of School, intentional, knowingly and willfully, interfered with the contract by allowing a subsequent contract violating her contractual interest.

72. The Plaintiff, based on information and belief, alleges and states, Richard Winn, by and through its agent Kristen Chaisson as Head of School, intentionally, knowingly, and willfully, interfered with their contract by entering a second contract for the education of Zoe Mitsakos.

73. The Plaintiff based on information and belief, alleges and states, as a direct and proximate cause of the Defendant, Richard Winn, conduct, she has suffered an economic injury.

74. The Plaintiff, based on information and belief, alleges and states, based on the Defendant, Richard Winn, intentional, knowingly, and willful, conduct, is entitled actual and punitive damages.

**FOR A THIRTEENTH CAUSE OF ACTION
(Negligent Tortious Interference with Contracts)**

75. The Plaintiff reiterates all allegations above as if restated verbatim herein.

76. The Plaintiff, based on information and belief, alleges and states, the Defendant, Richard Winn, by and through its agent Kristen Chaisson as Head of School negligently, interfered with the contract by allowing a subsequent contract violating its contractual interest.

77. The Plaintiff, based on information and belief, alleges and states, Richard Winn, by and through its agent Kristen Chaisson as Head of School, negligently, interfered with their contract by entering a second contract for the education of Zoe Mitsakos.

78. The Plaintiff based on information and belief, alleges and states, as a direct and proximate cause of the Defendant, Richard Winn, conduct, she has suffered an economic injury.

79. The Plaintiff, based on information and belief, alleges and states, based on the Defendant, Richard Winn, negligent, conduct, is entitled actual damages.

**FOR A FOURTEENTH CAUSE OF ACTION
(QUANTUM MERUIT)**

80. The Plaintiff reiterates all allegations above as if restated verbatim herein.

81. The Plaintiff, based on information and belief, alleges and states, the Defendant, Richard Winn, is being unjustly enriched by the benefit of two contracts.

82. The Plaintiff, based on information and belief, alleges and states, the Defendant, Richard Winn, is engaged in two contracts for the education of the same person.

83. The Plaintiff based on information and belief, alleges and states, the contract is based on the full cost of the scholastic term to include associated fess.

84. The Plaintiff, based on information and belief, alleges and states, based on the Defendant, Richard Winn being engaged in the two contracts, is unjustly being enriched by the two contracts and should not be paid twice for the education of the same person.

85. The Plaintiff based on information and belief, alleges and states, she is entitled to a refund of the full balance of her contract.

**FOR A FIFTEENTH CAUSE OF ACTION
(Attorney Fees)**

86. The Plaintiff reiterates all allegations above as if restated verbatim herein.

87. The Plaintiff, based on information and belief, alleges and states, the Defendants, either individually or collectively, should be required to pay her attorney fees as allowed by statute, common law, or contract.

WHEREFORE, the Plaintiff prays that this Court inquire into the facts and circumstances as set forth herein and grant the following relief:

a. A judgement for the Plaintiff protecting her right to raise her child without the interference of the third parties awarding actual and punitive damages for the First through the Fourth Causes of Actions;

b. A judgement for the Plaintiff protecting her right to raise her child without the interference of the third parties awarding actual damages for the Fifth through the Eighth Causes of Actions;

c. A judgement for the Plaintiff protecting her Fiduciary Rights under her contract awarding actual and punitive damages for the Seventh and Eighth Causes of Actions;

d. A judgement for the Plaintiff for the Defendants willful breach of her Contract and awarding actual damages for the Eleventh Cause of Action;

e. A judgement for the Plaintiff for the Defendants Intentional Tortious Interference with her Contract and awarding actual and punitive damages for the Twelfth Cause of Action;

f. A judgement for the Plaintiff for the Defendants Negligent Tortious Interference with her Contract and awarding actual damages for the Thirteenth Cause of Action;

g. A judgement for the Plaintiff under *Quantum Meruit* and awarding actual damages for the Fourteenth Cause of Action;

h. A judgement for the Plaintiff awarding attorney fees, costs and suit monies as allowed by statue, common law, or contract for the Fifteenth Cause of Action; and.

i. For such other and further relief, as to the Court may deem just and proper.

The Hawkins Law Office, LLC

s/ David Hawkins

David Hawkins, Esq. (SC Bar#104470)

Attorney for the Plaintiff

Po Box 290095

Columbia, South Carolina 29229

(803)603-4539

January 14, 2021
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

IN THE COURT OF COMMON PLEAS

Robin Allen,

Plaintiff,

v.

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

Defendants.

Civil Action No. 2021-CP-20-00026

**ANSWER OF DEFENDANTS
RICHARD WINN ACADEMY
AND KRISTEN CHAISSON
(Jury Trial Demanded)**

Defendants Richard Winn Academy and Kristen Chaisson (hereinafter "these Defendants"), through their undersigned counsel and reserving all rights under motions separately filed or asserted herein, hereby answer the Complaint as set forth herein and will respectfully show unto the court as follows^{1,2,3}:

FOR A FIRST DEFENSE

(Responses to Factual Allegations of the Complaint)

1. These Defendants deny each and every allegation of the Complaint except for those things specifically admitted, qualified, or explained below.

¹ Any and all inconsistent material is pled in the alternative pursuant to Rule 8(d), SCRPC, and such other law as is applicable. Such inconsistent material may or may not be specifically designated as such.

² To the extent material appearing herein is inconsistent with existing law, these Defendants respectfully request to argue in good faith for a change in the law. Nothing pled in any portion of this Answer is to be deemed a waiver of any defense available to these Defendants.

³ To the extent material appearing in one defense is applicable to another defense and not inconsistent with the other defense, the material is to be deemed incorporated into the other defense.

AS TO BACKGROUND AND JURISDICTION

2. Paragraph 1 is admitted upon information and belief.

3. As to paragraph 2, these Defendants lack sufficient information or knowledge upon which to form a belief as to the truth of the allegations asserted therein and, therefore, deny the allegations and demand strict proof thereof.

4. Paragraphs 3, 4, 5, and 6 are admitted.

5. As to paragraph 7 it is admitted only that the Plaintiff has now paid all installments due under the contract.

6. As to paragraph 8, it is admitted only that Zoe Mitsakos is 18 years old and turned 18 years old during the 2020-2021 school year.

7. Paragraph 9 is denied as stated.

8. Paragraph 10 is denied.

9. Paragraph 11 is admitted.

10. As to paragraph 12, these Defendants lack sufficient information or knowledge upon which to form a belief as to the truth of the allegations asserted therein and, therefore, deny the allegations and demand strict proof thereof.

11. As to paragraph 13, these Defendants admit only that in her capacity as Head of School, Kristen Chaisson is authorized to perform certain day-to-day operations and act with approval of the school Board of Directors on other matters.

12. Paragraph 14 is denied.

13. Paragraph 15 is denied. These Defendants specifically deny that Kristen Chaisson knew in any capacity of the intent of Zoe Mitsakos to "run away."

14. As to paragraph 16, these Defendants lack sufficient information or knowledge upon which to form a belief as to the truth of the allegations asserted therein and, therefore, deny the allegations and demand strict proof thereof.

15. Paragraphs 17 and 18 are denied.

16. As to paragraph 19, these Defendants lack sufficient information or knowledge upon which to form a belief as to the truth of the allegations asserted therein and, therefore, deny the allegations and demand strict proof thereof.

17. Paragraphs 20 and 21 are denied as to these Defendants.

18. The allegations of paragraph 22 constitute conclusions of law that these Defendants neither admit nor deny. To the extent these allegations are deemed to be allegations of fact or a response is required for any other reason, the allegations are denied.

AS TO THE FIRST CAUSE OF ACTION
(Intentional Tortious Interference with Parental Rights - Richard Winn Academy)

19. As to paragraph 23, these Defendants hereby reallege and incorporate herein each and every response contained above as though set forth herein verbatim.

20. Paragraphs 24, 25, 26, and 27 are denied.

AS TO THE SECOND CAUSE OF ACTION
(Intentional Tortious Interference with Parental Rights - Kristen Chaisson – as Head of School)

21. As to paragraph 28, these Defendants hereby reallege and incorporate herein each and every response contained above as though set forth herein verbatim.

22. Paragraphs 29, 30, and 31 are denied.

AS TO THE THIRD CAUSE OF ACTION
(Intentional Tortious Interference with Parental Rights - Kristen Chaisson – in her individual capacity)

23. As to paragraph 32, these Defendants hereby reallege and incorporate herein each and every response contained above as though set forth herein verbatim.

24. Paragraphs 33, 34, and 35 are denied.

AS TO THE FOURTH CAUSE OF ACTION
(Intentional Tortious Interference with Parental Rights – John Ryan II)

25. As to paragraph 36, these Defendants hereby reallege and incorporate herein each and every response contained above as though set forth herein verbatim.

26. Paragraphs 37, 38, and 39 are not directed at these Defendants and, therefore, no response is required from these Defendants. However, to the extent these paragraphs attempt to allege or do allege any cause of action, claim, act, error, or omission as to these Defendants, those allegations are denied. These Defendants further deny they have engaged in any wrongful conduct or are liable for any conduct of any other party.

AS TO THE FIFTH CAUSE OF ACTION
(Negligent Tortious Interference with Parental Rights – Richard Winn Academy)

27. As to paragraph 40, these Defendants hereby reallege and incorporate herein each and every response contained above as though set forth herein verbatim.

28. Paragraphs 41, 42, and 43 are denied.

AS TO THE SIXTH CAUSE OF ACTION
(Negligent Tortious Interference with Parental Rights – Kristen Chaisson – as Head of School)

29. As to paragraph 44, these Defendants hereby reallege and incorporate herein each and every response contained above as though set forth herein verbatim.

30. Paragraphs 45, 46, and 47 are denied.

AS TO THE SEVENTH CAUSE OF ACTION
(Negligent Tortious Interference with Parental Rights –Kristen Chaisson – in her individual capacity)

31. As to paragraph 48, these Defendants hereby reallege and incorporate herein each and every response contained above as though set forth herein verbatim.

32. Paragraphs 49, 50, and 51 are denied.

AS TO THE EIGHTH CAUSE OF ACTION
(Negligent Tortious Interference with Parental Rights – John Ryan II)

33. As to paragraph 52, these Defendants hereby reallege and incorporate herein each and every response contained above as though set forth herein verbatim.

34. Paragraphs 53, 54, and 55 are not directed at these Defendants and, therefore, no response is required from these Defendants. However, to the extent these paragraphs attempt to allege or do allege any cause of action, claim, act, error, or omission as to these Defendants, those allegations are denied. These Defendants further deny they have engaged in any wrongful conduct or are liable for any conduct of any other party.

AS TO THE NINTH CAUSE OF ACTION
(Intentional Breach of Fiduciary Duty – Kristen Chaisson)

35. As to paragraph 56, these Defendants hereby reallege and incorporate herein each and every response contained above as though set forth herein verbatim.

36. Paragraphs 57, 58, 59, and 60 are denied.

AS TO THE TENTH CAUSE OF ACTION
(Intentional Breach of Fiduciary Duty – Richard Winn)

37. As to paragraph 61, these Defendants hereby reallege and incorporate herein each and every response contained above as though set forth herein verbatim.

38. Paragraphs 62, 63, 64, and 65 are denied.

*AS TO THE ELEVENTH CAUSE OF ACTION
(Breach of Contract)*

39. As to paragraph 66, these Defendants hereby reallege and incorporate herein each and every response contained above as though set forth herein verbatim.

40. Paragraphs 67, 68, and 69 are denied.

*AS TO THE TWELFTH CAUSE OF ACTION
(Intentional Tortious Interference with Contracts)*

41. As to paragraph 70, these Defendants hereby reallege and incorporate herein each and every response contained above as though set forth herein verbatim.

42. Paragraphs 71, 72, 73, and 74 are denied.

*AS TO THE THIRTEENTH CAUSE OF ACTION
(Negligent Tortious Interference with Contracts)*

43. As to paragraph 75, these Defendants hereby reallege and incorporate herein each and every response contained above as though set forth herein verbatim.

44. Paragraphs 76, 77, 78, and 79 are denied.

*AS TO THE FOURTEENTH CAUSE OF ACTION
(Quantum Meruit)*

45. As to paragraph 80, these Defendants hereby reallege and incorporate herein each and every response contained above as though set forth herein verbatim.

46. Paragraphs 81 and 82 are denied.

47. As to paragraph 83, it is admitted only that the contracts entered into by Richard Winn for a full academic year are based on the full cost of the scholastic term to include associated fees.

48. Paragraphs 84 and 85 are denied.

*AS TO THE FIFTEENTH CAUSE OF ACTION
(Attorney Fees)*

49. As to paragraph 86, these Defendants hereby reallege and incorporate herein each and every response contained above as though set forth herein verbatim.

50. Paragraph 87 is denied.

AS TO THE PRAYER FOR RELIEF

51. These Defendants deny that the Plaintiff is entitled to any relief from these Defendants, including but not limited to the relief requested in the prayer of the Complaint.

FOR A SECOND DEFENSE
(Rule 12(b)(6), SCRCP—Failure to State Facts)

52. These Defendants hereby reallege and incorporate herein each and every allegation contained above as though set forth herein verbatim.

53. These Defendants would further show, upon information and belief, that some or all of the causes of action appearing in the Complaint fail to state facts sufficient to constitute a cause of action upon which relief may be granted and should, therefore, be dismissed.

FOR A THIRD DEFENSE
(Tort Claims Act/Charitable Immunity/Limitations on Liability)

54. These Defendants hereby reallege and incorporate herein each and every allegation contained above as though set forth herein verbatim.

55. These Defendants would further show, upon information and belief, that they are entitled to the statutory protections and limitations of liability afforded governmental entities, schools, charitable entities, and similar organizations by South Carolina statutory and decisional law, including but not limited to the protections and immunities of the South Carolina Tort Claims Act, codified at Title 15 Chapter 58, including but not limited to those set forth in Sections 15-78-40, -60, -70, -120, -200, including any and all other applicable sub-parts and

sections contained therein, including but not limited to Sections 15-78-60 (5) and 15-78-60(25), and as set forth in S.C. Code Ann. § 33-56-180.

FOR A FOURTH DEFENSE
(Private School Immunity/Limitations on Liability)

56. These Defendants hereby reallege and incorporate herein each and every allegation contained above as though set forth herein verbatim.

57. These Defendants would further show, upon information and belief, that they are entitled to the statutory protections and limitations of liability afforded all public schools, boards, districts, etc., and similar organizations by South Carolina statutory and decisional law, including but not limited to the protections and immunities of the South Carolina Tort Claims Act, codified at Title 15 Chapter 58, including but not limited to those set forth in Section 15-78-40, -60, -70, -120, and -200, including any and all other applicable sub-parts and sections contained therein, including but not limited Sections 15-78-60 (5) and 15-78-60(25), and as set forth in S.C. Code Ann. § 59-40-10, et seq, including all relevant subparts, specifically Section 59-40-50(B)(4).

FOR A FIFTH DEFENSE
(Charitable Immunity)

58. These Defendants hereby reallege and incorporate herein each and every allegation contained above as though set forth herein verbatim.

59. These Defendants would further show, upon information and belief, that they are entitled to the statutory protections and limitations of liability afforded charitable entities and similar organizations by South Carolina statutory and decisional law, including but not limited to Chapter 56 of Title 33.

FOR A SIXTH DEFENSE

(Coverdell Act)

60. These Defendants hereby reallege and incorporate herein each and every allegation contained above as though set forth herein verbatim.

61. These Defendants would further show, upon information and belief, that the Plaintiff's claims may invoke the statutory protections and limitations of liability afforded by the Paul D. Coverdell Teacher Protection Act of 2001, 20 U.S.C. §§ 7941 et seq.

FOR A SEVENTH DEFENSE

(Intervening Causes)

62. These Defendants hereby reallege and incorporate herein each and every allegation contained above as though set forth herein verbatim.

63. These Defendants would further show, upon information and belief, that some or all damages allegedly sustained by the Plaintiff (the existence of such damages being denied) were a proximate result of one or more independent, efficient, intervening causes which these Defendants plead as a bar to this action.

FOR AN EIGHTH DEFENSE

(Proximate Cause)

64. These Defendants hereby reallege and incorporate herein each and every allegation contained above as though set forth herein verbatim.

65. These Defendants would further show, upon information and belief, that no acts or omissions on the part of these Defendants were the proximate cause or cause in fact of some or all damages allegedly suffered by the Plaintiff (the existence of such damages being denied); therefore, the Plaintiff's action is barred in whole or in part.

FOR A NINTH DEFENSE
(Economic Loss Rule)

66. These Defendants hereby reallege and incorporate herein each and every allegation contained above as though set forth herein verbatim.

67. These Defendants would further show, upon information and belief, the Plaintiff cannot recover pursuant to the economic loss rule.

FOR A TENTH DEFENSE
(Alleged Damages Caused by Third Party)

68. These Defendants hereby reallege and incorporate herein each and every allegation contained above as though set forth herein verbatim.

69. These Defendants would further show, upon information and belief, that some or all damages allegedly sustained by the Plaintiff (the existence of such damages being denied) were a direct or proximate result of the acts or omissions of another party or parties over whom these Defendants had no control or duty to control. These Defendants plead the acts of another party or parties as a complete defense to all claims.

FOR AN ELEVENTH DEFENSE
(Assumption of Risk)

70. These Defendants hereby reallege and incorporate herein each and every allegation contained above as though set forth herein verbatim.

71. These Defendants would further show, upon information and belief, that the Plaintiff assumed the risk of loss which assumption of risk would constitute a complete bar to this action.

FOR A TWELFTH DEFENSE
(Sole Negligence of Plaintiff)

72. These Defendants hereby reallege and incorporate herein each and every allegation contained above as though set forth herein verbatim.

73. These Defendants would further show, upon information and belief, that any losses, injuries and/or damages sustained by the Plaintiff, without admitting the Plaintiff was injured and/or damaged, were directly and proximately caused by the sole negligence, willfulness, carelessness, and/or recklessness of the Plaintiff and were not caused by these Defendants, which sole negligence of the Plaintiff is a complete bar to the Plaintiff's attempt to recover from these Defendants.

FOR A THIRTEENTH DEFENSE
(Comparative Negligence)

74. These Defendants hereby reallege and incorporate herein each and every allegation contained above as though set forth herein verbatim.

75. These Defendants would further show, upon information and belief, that any losses, injuries, and/or damages sustained by the Plaintiff, without admitting the Plaintiff was injured and/or damaged, were directly and proximately caused by the negligence, willfulness, carelessness, and/or recklessness of the Plaintiff, alone or combining with and contributing to any such acts on the part of these Defendants, which are denied. Such conduct on the part of the Plaintiff was the direct and proximate cause of any alleged loss, damage and/or injuries suffered by the Plaintiff. This negligence of the Plaintiff exceeds any negligence on the part of these Defendants, which negligence is denied. These Defendants plead the Plaintiff's greater degree of comparative fault as a complete bar to any recovery under the Complaint. Further, if it is determined that the negligence and recklessness of the Plaintiff is equal to or less than the

negligence and recklessness alleged against these Defendants, then any recovery by the Plaintiff should be decreased by that percentage of Plaintiff's own negligence and recklessness which directly and proximately caused the accident, pursuant to the doctrine of comparative negligence.

FOR A FOURTEENTH DEFENSE
(Compliance with Standard of Care)

76. These Defendants hereby reallege and incorporate herein each and every allegation contained above as though set forth herein verbatim.

77. These Defendants would further show, upon information and belief, that at all times relevant to the allegations of the Complaint, the conduct of these Defendants conformed to, and was in full compliance with, the standard of care expected of similar individuals and institutions in South Carolina. All of the conduct of these Defendants was within the acceptable standards and methods and at no time did these Defendants deviate from the standard of care with respect to the Plaintiff.

FOR A FIFTEENTH DEFENSE
(Good Faith)

78. These Defendants hereby reallege and incorporate herein each and every allegation contained above as though set forth herein verbatim.

79. These Defendants would further show, upon information and belief, that at all times relevant to the allegations of the Complaint, these Defendants acted in good faith and in a reasonable manner.

FOR A SIXTEENTH DEFENSE
(No Fiduciary Relationship)

80. These Defendants hereby reallege and incorporate herein each and every allegation contained above as though set forth herein verbatim.

81. These Defendants would further show, upon information and belief, that they did not have a fiduciary relationship with the Plaintiff and, therefore, the causes of action for breach of fiduciary duty should be dismissed.

FOR A SEVENTEENTH DEFENSE
(Attorneys' Fees Not Recoverable)

82. These Defendants hereby reallege and incorporate herein each and every allegation contained above as though set forth herein verbatim.

83. These Defendants would further show, upon information and belief, that the Complaint fails to state a claim for which attorneys' fees are recoverable.

FOR AN EIGHTEENTH DEFENSE
(In Pari Delicto)

84. These Defendants hereby reallege and incorporate herein each and every allegation contained above as though set forth herein verbatim.

85. These Defendants would further show, upon information and belief, that with regard to some or all causes of action appearing in the Complaint, if this Defendant is found to be at fault (the fault of these Defendants being denied), the Plaintiffs' claims are barred by the doctrine of *in pari delicto*.

FOR A NINETEENTH DEFENSE
(Punitive Damages Unavailable)

86. These Defendants hereby reallege and incorporate herein each and every allegation contained above as though set forth herein verbatim.

87. These Defendants would further show, upon information and belief, that punitive damages are unavailable in this action.

FOR A TWENTIETH DEFENSE
(Prohibition of Punitive Damages)

88. These Defendants hereby reallege and incorporate herein each and every allegation contained above as though set forth herein verbatim.

89. These Defendants would further show that they are entitled to the protection and prohibition of punitive damages as set forth in S.C. Code Ann. § 15-78-120(b).

FOR A TWENTY-FIRST DEFENSE
(Punitive Damages)

90. These Defendants hereby reallege and incorporate herein each and every allegation contained above as though set forth herein verbatim.

91. These Defendants would further show, upon information and belief, that the Plaintiff's claims for punitive damages are barred because punitive damages are a form of punishment and any such award under the laws of the State of South Carolina would violate these Defendants' procedural and substantive Due Process rights, and Equal Protection rights, guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and by Article I, Section 3, of the Constitution of the State of South Carolina, in that:

- a. The judiciary will be allowed to consider evidence of these Defendants' wealth in assessing punitive damages;
- b. There are no standards of sufficient clarity, objectivity, and uniformity whereby the judiciary may determine the propriety of punitive damages or the amount of any such award;
- c. The guidelines, standards procedures, and instructions for the imposition of punitive damages are ambiguous, indefinite, unreasonable, vague, uncertain, conflicting, purely subjective, and fundamentally unfair;
- d. The vague and inconsistent legal standards for the imposition of punitive damages deprives these Defendants of sufficient notice of the type of conduct and mental state upon which an award of punitive damages could be based; and

- e. No objective limitations or standards have been established concerning the amount or severity of any punitive damages award.

FOR A TWENTY-SECOND DEFENSE
(Punitive Damages)

92. These Defendants hereby reallege and incorporate herein each and every allegation contained above as though set forth herein verbatim.

93. These Defendants would further show, upon information and belief, that the Plaintiff's claims for punitive damages are barred because punitive damages are a form of punishment and any such award under the laws of the State of South Carolina would violate these Defendants' procedural and substantive Due Process rights, and Equal Protection rights, guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and by Article I, Section 3, of the Constitution of the State of South Carolina in that:

- a. A jury is not provided with standards of sufficient clarity, objectivity and uniformity for determining the appropriateness of awarding, or the appropriate size of any punitive damages;
- b. A jury is not instructed on the limits of punitive damages awards imposed by the applicable principles of punishment and deterrence;
- c. A jury is not expressly prohibited from awarding punitive damages, or determining the amount of an award of punitive damages, in whole or in part, on the basis of invidiously discriminatory characteristics;
- d. A jury is permitted to award punitive damages under standards for determining liability for, and amount of, punitive damages that are vague and arbitrary and do not define with sufficient clarity the culpable conduct or mental state that makes an award of punitive damages permissible;
- e. A jury is allowed to consider evidence of these Defendants' wealth in assessing punitive damages; and
- f. A jury is not subject to judicial review on the basis of objective and uniform standards.

FOR A TWENTY-THIRD DEFENSE
(Punitive Damages)

94. These Defendants hereby reallege and incorporate herein each and every allegation contained above as though set forth herein verbatim.

95. These Defendants would further show, upon information and belief, that the Plaintiff's claims for punitive damages are barred because they are essentially criminal in nature and a form of punishment, and they seek to deny these Defendants rights guaranteed to defendants in criminal proceedings under the Fourth, Fifth, Sixth, and Fourteenth Amendments of the United States Constitution:

- a. A requirement that the basis for the imposition of punitive damages be proven beyond a reasonable doubt by plaintiff;
- b. The right to separate trials for compensatory and punitive damages; and
- c. The right to a separate hearing for the determination of the amount of punitive damages under applicable provisions of state law.

FOR A TWENTY-FOURTH DEFENSE
(Punitive Damages)

96. These Defendants hereby reallege and incorporate herein each and every allegation contained above as though set forth herein verbatim.

97. These Defendants would further show, upon information and belief, that the Plaintiff's claims for punitive damages are barred because they seek to impose punishment that is excessive and grossly disproportionate to the misconduct alleged, in violation of Section 15, Article I of the Constitution of the State of South Carolina, which prohibits excessive fines and cruel and unusual punishment.

FOR A TWENTY-FIFTH DEFENSE
(Punitive Damages)

98. These Defendants hereby reallege and incorporate herein each and every allegation contained above as though set forth herein verbatim.

99. These Defendants would further show, upon information and belief, that the Plaintiff's claims for punitive damages are barred to the extent they seek the admission of evidence of these Defendants' net worth or wealth in determining whether punitive damages are to be awarded and/or in what amount, because punitive damages are a form of punishment, and punishment that is grounded in a defendant's status, rather than in specific misconduct, has the effect of treating classes of citizens unequally in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States and Section 15, Article I of the Constitution of the State of South Carolina.

FOR A TWENTY-SIXTH DEFENSE
(Bifurcation / Clear and Convincing Evidence)

100. These Defendants hereby reallege and incorporate herein each and every allegation contained above as though set forth herein verbatim.

101. These Defendants would further show, upon information and belief, that the Plaintiff's request for punitive damages is subject to the provisions of S.C. Code Ann. § 15-32-520, including but not limited to the requirement for a bifurcated trial and the clear and convincing evidence standard of proof.

FOR A TWENTY-SEVENTH DEFENSE
(Limitations on Punitive Damages)

102. These Defendants hereby reallege and incorporate herein each and every allegation contained above as though set forth herein verbatim.

103. These Defendants would further show, upon information and belief, that any award of punitive damages is subject to the limitations set forth in S.C. Code Ann. § 15-32-530.

FOR A TWENTY-EIGHTH DEFENSE
(Apportionment)

104. These Defendants hereby reallege and incorporate herein each and every allegation contained above as though set forth herein verbatim.

105. These Defendants reserve and assert all rights under S.C. Code Ann. § 15-38-15 to the extent it bars, limits, or apportions any fault or recovery herein.

FOR A TWENTY-NINTH DEFENSE
(Contribution and Indemnity)

106. These Defendants hereby reallege and incorporate herein each and every allegation contained above as though set forth herein verbatim.

107. These Defendants would show that, if they are liable to the Plaintiff (which is specifically denied), then other potentially responsible parties would be liable to it in contribution or indemnity. These Defendants plead the doctrines of contribution and indemnity as a defense in this action.

FOR A THIRTIETH DEFENSE
(Setoff / Recoupment)

108. These Defendants hereby reallege and incorporate herein each and every allegation contained above as though set forth herein verbatim.

109. These Defendants would further show, upon information and belief, that if they are liable to the Plaintiff (which is specifically denied), then they are entitled to a setoff or recoupment for all sums of money recovered from any other potentially liable party or monies obtained from any other collateral source obtained by or on behalf of the Plaintiff by way of any

settlement, judgment, or otherwise which the Plaintiff has entered or recovered from any other potentially responsible party.

FOR A THIRTY-FIRST DEFENSE
(Election of Remedies)

110. These Defendants hereby reallege and incorporate herein each and every allegation contained above as though set forth herein verbatim.

111. These Defendants would further show, upon information and belief, that the Plaintiff will be subject to an election of remedies should she prevail on some or all of her causes of action.

FOR A THIRTY-SECOND DEFENSE
(Limitations on Liability / Statutory Cap)

112. These Defendants hereby reallege and incorporate herein each and every allegation contained above as though set forth herein verbatim.

113. These Defendants would further show, upon information and belief, that any damages sought against these Defendants are statutorily capped. These Defendants plead no recovery can exceed the statutory cap(s).

FOR A THIRTY-THIRD DEFENSE
(Estoppel)

114. These Defendants hereby reallege and incorporate herein each and every allegation contained above as though set forth herein verbatim.

115. These Defendants would further show, upon information and belief, that with regard to some or all causes of action appearing in the Complaint, the Plaintiff's claims are barred by the doctrine of estoppel.

FOR A THIRTY-FOURTH DEFENSE
(Waiver)

116. These Defendants hereby reallege and incorporate herein each and every allegation contained above as though set forth herein verbatim.

117. These Defendants would further show, upon information and belief, that with regard to some or all causes of action appearing in the Complaint, the Plaintiff's claims are barred by the doctrine of waiver.

FOR A THIRTY-FIFTH DEFENSE
(Unclean Hands)

118. These Defendants hereby reallege and incorporate herein each and every allegation contained above as though set forth herein verbatim.

119. These Defendants would further show, upon information and belief, that the Plaintiff, by her representations, actions, and/or inactions are precluded from any recovery under the equitable doctrine of unclean hands.

FOR A THIRTY-SIXTH DEFENSE
(Failure to Mitigate)

120. These Defendants hereby reallege and incorporate herein each and every allegation contained above as though set forth herein verbatim.

121. These Defendants would further show, upon information and belief, that with regard to some or all causes of action appearing in the Complaint, the Plaintiff's claims are barred in whole or in part because of the Plaintiff's failure to mitigate damages.

FOR A THIRTY-SEVENTH DEFENSE
(Parol Evidence Rule)

122. These Defendants hereby reallege and incorporate herein each and every allegation contained above as though set forth herein verbatim.

123. This Defendant would further show, upon information and belief, that with regard to some or all causes of action appearing in the Complaint, the Plaintiffs' claims are barred, in whole or in part, by the parol evidence rule.

FOR A THIRTY-EIGHTH DEFENSE
(Rule 8(c), SCRCP)

124. These Defendants hereby reallege and incorporate herein each and every allegation contained above as though set forth herein verbatim.

125. These Defendants affirmatively plead all defenses referenced in Rule 8(c) of the South Carolina Rules of Civil Procedure, to the extent applicable.

FOR A THIRTY-NINTH DEFENSE
(Incorporation of Defenses)

126. These Defendants hereby reallege and incorporate herein each and every allegation contained above as though set forth herein verbatim.

127. These Defendants incorporate by reference any and all additional defenses asserted in any Answers to the Complaint which have been filed or may be filed by other defendants.

AS TO FURTHER DEFENSES

128. These Defendants place the Plaintiff on notice that they will subsequently move to amend this Answer to assert other defenses should it appear through discovery or continued fact investigation that any additional defenses are available.

WHEREFORE, having fully answered the Complaint, Defendants Richard Winn Academy and Kristen Chaisson pray that the court dismiss the Complaint with prejudice and award, to the extent available under the law, costs, expenses, and attorneys' fees, and such other relief as the court deems to be just, equitable, and proper under the circumstances.

s/Curtis W. Dowling

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Attorneys for Defendants Richard Winn Academy
and Kristen Chaisson

February 12, 2021

STATE OF SOUTH CAROLINA
COUNTY OF FAIRFIELD

IN THE COURT OF COMMON PLEAS

Robin Allen,

Civil Action No. 2021-CP-20-00026

Plaintiff,

v.

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

**MOTION FOR PARTIAL
DISMISSAL OF DEFENDANTS
RICHARD WINN ACADEMY
AND KRISTEN CHAISSON**

Defendants.

TO: THE PLAINTIFF AND HER ATTORNEY, DAVID D. HAWKINS, ESQ.

YOU WILL PLEASE TAKE NOTICE that Defendants Richard Winn Academy ("Richard Winn") and Kristen Chaisson ("Ms. Chaisson"), through their undersigned counsel, hereby move to dismiss the Complaint's first cause of action (intentional tortious interference with parental rights), second cause of action (intentional tortious interference with parental rights), third cause of action (intentional tortious interference with parental rights), fifth cause of action (negligent tortious interference with parental rights), sixth cause of action (negligent tortious interference with parental rights), seventh cause of action (negligent tortious interference with parental rights), ninth cause of action (intentional breach of fiduciary duty), tenth cause of action (intentional breach of fiduciary duty), thirteenth cause of action (negligent tortious interference with contracts), and fifteenth cause of action (attorney fees). This motion is made pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, as well as other applicable law, and on the basis that the aforementioned causes of action fail to state facts sufficient to constitute a cause of action.

INTRODUCTION

This action arises out of a dispute over the education of a formerly minor child, Zoe Mitsakos ("Zoe"). The Complaint alleges that the Plaintiff, Robin Allen, entered into a contract with Richard Winn on or about March 13, 2020 for the provision of educational services to Zoe for the 2020-2021 academic year and that, after Zoe turned 18 years old, Richard Winn, by and through Ms. Chaisson, entered into a separate contract with Zoe pursuant to which she would continue her education at Richard Winn. The Complaint further alleges that Ms. Chaisson, together with Richard Winn's board and Defendant John Ryan II ("Mr. Ryan"), assisted, encouraged, and supported Zoe in running away from the Plaintiff's home to live instead with Mr. Ryan. Richard Winn and Ms. Chaisson deny any wrongdoing.

Based on the aforementioned allegations, the Complaint asserts fifteen causes of action. The first through fourth causes of action assert 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 assert negligent tortious interference with parental rights against the same parties; the ninth and tenth causes of action assert intentional breach of fiduciary duty against Ms. Chaisson and Richard Winn; the eleventh cause of action asserts breach of contract¹; the twelfth cause of action asserts intentional tortious interference with contracts; the thirteenth cause of action asserts negligent tortious interference with contracts; the fourteenth cause of action asserts quantum meruit; and the fifteenth cause of action asserts attorney fees. For the reasons set forth herein, the first, second, third, fifth, sixth, seventh, ninth, tenth, thirteenth, and fifteenth causes of action should be dismissed.

¹ The Complaint does not specify against whom this cause of action is asserted, but upon information and belief, the Plaintiff only had a contractual relationship with Richard Winn and not any of the other Defendants.

ARGUMENT

I. SOUTH CAROLINA DOES NOT RECOGNIZE A CAUSE OF ACTION FOR TORTIOUS INTERFERENCE WITH PARENTAL RIGHTS.

As previously stated, the Complaint's first through eighth causes of action assert tortious interference with parental rights. The first, second, third, and fourth causes of action assert that the alleged interference was intentional and the fifth, sixth, seventh, and eighth causes of action assert that the alleged interference was negligent. While South Carolina courts have recognized that parents have a right under the Fourteenth Amendment to the United States Constitution to be free from State interference with the parent-child relationship,² they have not recognized a common law claim for tortious interference with parental rights (whether intentional, negligent, or otherwise) against private parties like Richard Winn or Ms. Chaisson. Accordingly, Richard Winn and Ms. Chaisson are entitled to dismissal of the Complaint's first, second, third, fifth, sixth, and seventh causes of action. 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). 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).

² See, e.g., S.C. Dep't of Soc. Servs. v. Wilson, 352 S.C. 445, 453, 574 S.E.2d 730, 734 (2002) ("The Fourteenth Amendment guarantees Wilson a fundamental right to freedom from State interference with his relationship with his daughter."). See also, e.g., S.C. Dep't of Soc. Servs. v. Evangelica H., Op. No. 2012-UP-539, 2012 S.C. App. Unpub. LEXIS 666, at *6 (Ct. App. filed Sep. 25, 2012) ("The Fourteenth Amendment guarantees a fundamental right to freedom from State interference with a parent's relationship with his child.").

II. THE PLAINTIFF DID NOT HAVE A FIDUCIARY RELATIONSHIP WITH RICHARD WINN OR MS. CHAISSON.

“A fiduciary relationship is founded on the trust and confidence reposed by one person in the integrity and fidelity of another. A fiduciary relationship exists when one reposes special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one reposing confidence.” Regions Bank v. Schmauch, 354 S.C. 648, 670, 582 S.E.2d 432, 444 (Ct. App. 2003) (citations and quotation marks omitted). “Although whether a fiduciary relationship has been breached can be a question for the jury, the question of whether one should be imposed between two classes of people is a question for the court.” Hendricks v. Clemson Univ., 353 S.C. 449, 459, 578 S.E.2d 711, 715 (2003). “Historically, this Court has reserved imposition of fiduciary duties to legal or business settings, often in which one person entrusts money to another, such as with lawyers, brokers, corporate directors, and corporate promoters.” Id. at 459, 578 S.E.2d at 716.

The Plaintiff alleges that Richard Winn and Ms. Chaisson “had a fiduciary duty of loyalty with the Plaintiff to protect their contractual and parental interest in safeguarding the minor child while the child was in their care and control.” Compl. ¶¶ 57, 62. However, Richard Winn and Ms. Chaisson are informed and believe that a fiduciary relationship has never been recognized in South Carolina under facts similar to those of this case. Indeed, in the only remotely similar cases, South Carolina courts have rejected breach of fiduciary duty claims. For example, in Hendricks, the Supreme Court “decline[d] to recognize the relationship between [a collegiate academic] advisor and student as a fiduciary one.” 353 S.C. 449, 459, 578 S.E.2d 711, 716. And in Doe v. Greenville County School District, 375 S.C. 63, 651 S.E.2d 305 (2007), the Supreme Court affirmed a trial court’s dismissal of a cause of action for breach of fiduciary duty against a school district. Id. at 72, 651 S.E.2d at 309-10. 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). Accordingly, Richard Winn and Ms. Chaisson are entitled to dismissal of the Complaint's ninth and tenth causes of action.

III. TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS IS AN EXCLUSIVELY INTENTIONAL TORT.

The Plaintiff alleges that Richard Winn, by and through Ms. Chaisson, negligently interfered with the contract between the Plaintiff and Richard Winn "by allowing a subsequent contract violating its contractual interest" and "by entering a second contract for the education of Zoe" and that, as a result, the Plaintiff "has suffered an economic injury." Compl. ¶¶ 76, 77, 78. However, there is no recognized cause of action in South Carolina for "negligent tortious interference with contracts" because tortious interference with contractual relations is an exclusively intentional tort. See, e.g., Eldeco, Inc. v. Charleston Cty. Sch. Dist., 372 S.C. 470, 480, 642 S.E.2d 726, 731 (2007) ("To establish a cause of action for tortious interference with contractual relations, a plaintiff must show: 1) the existence of a contract; 2) knowledge of the contract [by the defendant]; 3) *intentional* procurement of its breach [by the defendant]; 4) the absence of justification; and 5) resulting damages [to the plaintiff].") (emphasis added); Edens & Avant Inv. Props. v. Amerada Hess Corp., 318 S.C. 134, 137, 456 S.E.2d 406, 407 (Ct. App. 1995) ("South Carolina, like the majority of states, has not recognized a cause of action for the recovery of pure pecuniary harm resulting from a tortfeasor's negligent interference with the plaintiff's contractual relationships[.]"). Accordingly, Richard Winn and Ms. Chaisson are entitled to dismissal of the Complaint's thirteenth cause of action.

IV. THE PLAINTIFF HAS CITED NO CONTRACTUAL OR STATUTORY PROVISION ENTITLING HER TO AN AWARD OF ATTORNEYS' FEES.

"Attorney's fees are not recoverable unless authorized by contract or statute." Historic Charleston Holdings, LLC v. Mallon, 381 S.C. 417, 436, 673 S.E.2d 448, 458 (2009). The Plaintiff has not cited any contractual or statutory provision entitling her to an award of attorneys' fees in this action, and Richard Winn and Ms. Chaisson are not aware of any contractual or statutory basis for such an award. Furthermore, attorneys' fees is not an independent cause of action but rather a type of remedy available under other causes of action if allowed by contract or statute. See Lawton v. N.Y. Life Ins. Co., 181 S.C. 230, 234, 186 S.E. 909, 911 (1936). Accordingly, Richard Winn and Ms. Chaisson are entitled to dismissal of the Complaint's fifteenth cause of action.

CONCLUSION

For the reasons set forth herein, Defendants Richard Winn Academy and Kristen Chaisson respectfully request that the court enter an order dismissing the Complaint's first, second, third, fifth, sixth, seventh, ninth, tenth, thirteenth, and fifteenth causes of action.

This motion is supported by the pleadings in this action, any affidavits which may be subsequently submitted, any memoranda of law which may be subsequently submitted, all applicable statutes and case authority, all completed discovery, the applicable Rules of Civil Procedure, and such other evidence and authority as the court may find acceptable.

The undersigned counsel states that, pursuant to Rule 11 of the South Carolina Rules of Civil Procedure, there is no duty of consultation on a motion to dismiss.

s/Curtis W. Dowling

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Attorneys for Defendants Richard Winn Academy
and Kristen Chaisson

February 12, 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTH JUDICIAL CIRCUIT
COUNTY OF FAIRFIELD	)	
	)	CA #:2021-CP-20-00026
Robin Allen	)	
	)	ANSWER
Plaintiff	)	(JURY TRIAL REQUESTED)
v.	)	
	)	
Richard Winn Academy, Kristen	)	
Chaisson in her individual capacity	)	
And as Head of School, and	)	
John Ryan II,	)	
	)	
Defendants	)	
_____	)	

TO: DAVID HAWKINS ATTORNEY FOR THE PLAINTIFF:

The Defendant would respond to the allegations of the Plaintiff's Complaint as follows:

For a First Defense

1. Each and every allegation not hereinafter admitted or qualified is deemed denied and strict proof demanded therein.

For a Second Defense

2. The Plaintiff has failed to state facts sufficient to constitute a cause of action, and therefore, pursuant to SCRCP 12(b)(6); therefore, Defendant would move this Court to dismiss the Complaint of the Plaintiff.

For a Third Defense

3. The Defendant is without sufficient information to admit or deny Paragraph 2, and therefore denies same.
4. The Defendant, on information or belief, admits the allegations of Paragraph 3.
5. The Defendant is without sufficient information to admit or deny Paragraph 4;

therefore, Paragraph 4 is denied.

6. The Defendant denies the allegations of Paragraphs 5, 6, and 7.

7. The Defendant admits so much of Paragraph 8 as to the date of birth of Ms. Mitsakos. Any remaining allegations are denied.

8. The Defendant denies the allegations of Paragraphs 9, 10, and 11.

9. The Defendant admits the allegation of Paragraph 12.

10. The Defendant would deny the allegations of Paragraphs 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 29, 30, 31, 33, 34, 35, 37, 38, 39, 41, 42, 43, 45, 46, 47, 49, 50, 51, 53, 54, 55, 57, 58, 59, 60, 62, 63, 64, 65, 67, 68, 69, 71, 72, 73, 74, 76, 77, 78, 79, 81, 82, 83, 84, 85, 87, and all of the allegations, if any, contained in the prayer.

For a Fourth Defense

11. The Defendant would plead and allege laches, waiver, and estoppel as affirmative defenses against the allegations of the Plaintiff.

For a Fifth Defense

12. Defendant would allege that if he were deemed to be negligent in any manner by any act or omission, all of which is denied, then the negligence of the Plaintiff is greater than that of any alleged negligence on the part of Defendant, thereby barring and/or mitigating the claims of the Plaintiff under the law of comparative negligence.

For a Sixth Defense

13. The Defendant reserves the right to plead any affirmative defenses as allowed by SCRCP (8)(c) that may become known to Defendant during discovery.

For a Seventh Defense

14. The Defendant would plead that the award of punitive damages is governed by

the caselaw and statutory law of South Carolina and would plead any of these as a limitation and/or bar to Plaintiff's claims for punitive damages.

WHEREFORE, having denied the allegations of the Plaintiff, Defendant would pray this Court dismiss the Complaint of the Plaintiff and grant judgment to the Defendant and grant to Defendant attorney's fees, reasonable costs and expenses, and for such other and further relief as this Court may deem just and proper.

RESPECTFULLY SUBMITTED,

Reeves and Lyle, LLC

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Attorney for Plaintiff

Columbia, South Carolina
February 19, 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTH JUDICIAL CIRCUIT
COUNTY OF FAIRFIELD	)	
ROBIN ALLEN,	)	C/A #: 2021-CP-20-00026
	)	
Plaintiff,	)	
	)	
v.	)	MOTION TO DISMISS ON
	)	BEHALF OF JOHN RYAN, II
RICHARD WYNN ACADEMY,	)	
KRISTEN CHAISSLEN (IN HER	)	
INDIVIDUAL CAPACITY AND	)	
AS HEAD OF SCHOOL), AND	)	
JOHN RYAN, II	)	
	)	
Defendants.	)	

TO: PLAINTIFF AND HER ATTORNEY, DAVID D. HAWKINS:

YOU WILL PLEASE TAKE NOTICE that on the tenth day after service or at a time and date convenient to the Court at the Fairfield County Courthouse, 101 South Congress Street, Winnsboro, South Carolina, Defendant, John Ryan, II, through his undersigned counsel, hereby moves this Court for an Order dismissing the Causes of Action against John Ryan including the Complaint's Fourth Cause of Action alleging the intentional tortuous interference with parental rights (Complaint Paragraph 37), The eighth cause of action, negligent tortuous interference with parental rights (Complaint Paragraph 53) and the Fifteenth cause of action (Complaint Paragraph 87).

The Complaint alleges generally that John Ryan "intentionally, knowingly and willfully interfered with the Plaintiff's State and Federal Constitutional rights to raise her child, by encouraging the child to not follow the directions of the parent in the education of raising, and influence of the minor child." (Complaint Paragraph 37). The eighth cause of action alleges that

John Ryan "negligently interfered with the plaintiff's State and Federal constitutional rights to raise her child, by encouraging and supporting the child not to follow the direction of the parent in the education, raising and influence of the minor child." (Complaint Paragraph 53).

These causes of action assert an intentional and/or negligent tortuous interference with parental rights against John Ryan. The State of South Carolina has not recognized a common any of these claims (negligent tortuous interference with parental rights or intentional interference with parental rights).

For the reasons set forth herein, Defendant, John Ryan, respectfully requests this Court enter an Order dismissing the client's fourth, eighth and fifteenth causes of action and any other allegations that might implicate him for any alleged acts or omissions pursuant to SCRCF 12(b)(6) and awarding to Defendant attorney's fees, expenses and cost and for such other and further relief as this Court deems necessary.

The Defendant through his undersigned Counsel would certify that Defendant attempted to consult with Plaintiff's attorney about this motion and such consultations were unsuccessful.

RESPECTFULLY SUBMITTED,

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Attorney for Plaintiff

Columbia, South Carolina
February 19, 2021

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

ROBIN ALLEN,

Plaintiff,

vs.

RICHARD WINN ACADEMY,
 KRISTEN CHASSION in her individual
 capacity and as Head of School, and
 JOHN RYAN II

Defendant.

IN THE COURT OF COMMMON PLEAS
 SIXTH JUDICIAL CIRCUIT

REPLY

(RICHARD WINN ACADEMY, KRISTEN
 CHASSION in her individual capacity and as
 Head of School)

DOCKET NO.: 2021-CP-20-00026

The Plaintiff, by and through her undersigned attorney, answering the Answer and Counterclaim of the Defendant, Richard Winn Academy and Kristen Chassion, in her individual capacity and as Head of School, ("Defendants") would respectfully show unto the Court:

1. Each and every allegation of the Answer and Counterclaim not hereinafter specifically admitted, qualified, or explained is denied, and strict proof is demanded thereof.

2. In responding to the allegations set forth in paragraphs 1, 3, 7, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91a-e, 92, 93a-f, 94, 95a-c, 96, 97, 98, 99, 100, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 126 of

the Answer and Counterclaim, the Plaintiff reiterates the allegations set forth in her Complaint, and she denies the Defendant's allegations contained in the above-referenced paragraphs that are inconsistent therewith, while demanding strict proof thereof.

3. The Plaintiff admits the allegations contained in paragraphs 2, 4, 5, 6, 9, 47 of the Answer and Counterclaim.

4. Answering the allegations set forth in paragraphs 26, and 34, of the Answer and Counterclaim of the Defendants, the Plaintiff, based on information and belief, admits and qualifies, the Defendants are not required to answer that paragraph of the Complaint.

5. The Plaintiff admits the allegations contained in paragraphs 53 only as it applies to the Thirteenth Cause of Action and denies the paragraph as it relates to all other Causes of Action and reiterates all other causes of action and she demands strict proof thereof.

6. The Plaintiff admits the allegations set forth in paragraph 101 of the Answer and Counterclaim as it relates to a Bifurcation and qualifies, as to the remaining standard of proof that other Jurisdictions require only preponderance of the evidence.

7. The Plaintiff can neither admit or deny the allegations contained in paragraphs 125, 127, and 128, of the Answer and Counterclaim, as it lacks sufficient information to which can be admitted or denied.

WHEREFORE, the Plaintiff, fully answering the Defendants Answer and Counterclaim, prays that the Defendant be granted no relief and the Plaintiff be granted the relief request in her Complaint.

S/David Hawkins, Esq.
David Hawkins, Esq. SCBAR 104470
Attorney for the Plaintiff
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March 10, 2021
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

IN THE COURT OF COMMON PLEAS

Robin Allen,

Plaintiff,

v.

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

Defendants.

Civil Action No. 2021-CP-20-00026

**PLAINTIFF'S RETURN TO
THE DEFENDANT'S MOTION
FOR PARTIAL DISMISSAL****TO: THE DEFENDANTS AND THEIR ATTORNEYS, CURTIS W. DOWLING, ESQ.,
CREIGHTON B. COLEMAN, ESQ, AND PAUL L. REEVES, ESQ.:**

YOU WILL PLEASE TAKE NOTICE that Plaintiff, Robin Allen ("Ms. Allen") through her undersigned counsel, hereby files a Return to the Defendants, Richard Winn Academy ("RWA"), Ms. Kristen Chassion ("Ms. Chassion"), and Mr. John Ryan II, Motion to Dismiss the Complaint made pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, as well as other applicable law.

INTRODUCTION

This action arises out of a dispute over the education of a former minor child, Zoe Mitsakos ("Zoe"). The Complaint alleges that the Plaintiff, Robin Allen, entered into a contract with Richard Winn on or about March 13, 2020 for the provision of educational services to Zoe for the 2020-2021 academic year and that, prior to Zoe turning 18 years old, Richard Winn, by and through Ms. Chaisson, interfered with the Constitutionally protected right of the parent to raise their children by encouraging the child to run away from the parents. The Defendants entered into a separate contract with Zoe pursuant to which she would continue her education at Richard Winn. The Complaint further alleges that Ms. Chaisson, together with Richard Winn's board and Defendant John Ryan II ("Mr. Ryan"), assisted, encouraged, and supported Zoe in running away from the Plaintiff's home to live instead with Mr. Ryan to which Mr. Ryan is now acting as the parent of

Zoë Mitsakos.

ARGUMENT

I. RECOGNITION FOR TORTIOUS INTERFERENCE WITH PARENTAL RIGHTS.

The common law changes when necessary to serve the needs of the people. *Russo v. Sutton*, 310 S.C. 200, 204, 422 S.E.2d 750, 753 (1992). We will act when it has become apparent that the public policy of the State is offended by outdated rules of law. *Id.* (abolishing the "heart balm" tort of alienation of affections); see also *Nelson v. Concrete Supply Co.*, 303 S.C. 243, 399 S.E.2d 783 (1991) (abolishing contributory negligence); *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985) (abolishing sovereign immunity).

While South Carolina and Federal Courts have recognized that parents have a right under the Fourteenth Amendment to the United States Constitution to be free from State interference with the parent-child relationship, they, as of yet, have not recognized a common law claim for tortious interference with parental rights against third parties like Richard Winn, Ms. Chaisson, or Mr. Ryan. Accordingly, nor has it, to the Plaintiffs knowledge been argued in South Carolina.

This presents a novel issue before the court to which "novel questions of law should not ordinarily be resolved on a Rule 12(b)(6) motion." *Chestnut v. AVX Corp.*, 413 S.C. 224, 227, 776 S.E.2d 82, 84 (2015)" *Palmer v. State*, 427 S.C. 36, 829 S.E.2d 255 (S.C. App. 2019) and "not comply with the rule that novel issues should be decided with a full and complete record." *Chastain v. Hiltabidle*, 673 S.E.2d 826, 381 S.C. 508 (S.C. App. 2009). The Defendants reliance on *Kent v. Hannelly* and *Awkard v. Rammelsberg* is misplaced as those were federal cases that had no guidance nor asked the State Supreme Court, by certified question, if such actions would be recognized by the State and it would be inappropriate for the Federal Court to create new State case law.

There are jurisdictions that do recognize Torts for interfering with parental/custodial

rights, as should South Carolina. The Supreme Court of Virginia, in answering a certified question to the United States District Court for the Eastern District of Virginia as to if Virginia would recognize Tortious Interference of Parental Rights as a cause of action, best summarizes why this action should be recognized in South Carolina stating:

We recognize the essential value of protecting a parent's right to form a relationship with his or her child. . . . Indeed, the Supreme Court of the United States has characterized a parent's right to raise his or her child as "perhaps the oldest of the fundamental liberty interests recognized by this Court." Troxel v. Granville, 530 U.S. 57, 65, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000). It follows, then, that a parent has a cause of action against third parties who seek to interfere with this right. ". . . [R]ecognizing that the common law right to establish and maintain a relationship with one's child necessarily implies a cause of action for interference with that right. To hold otherwise in this case would be to recognize "a right without a remedy—a thing unknown to the law." Norfolk City v. Cooke, 68 Va. (27 Gratt.) 430, 439 (1876).

Wyatt v. McDermott, 283 Va. 685, 725 S.E.2d 555 (2012)

The Florida Supreme Court in answering a certified question from the federal Eleventh Circuit Court of Appeals stated: "We find that 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)

However, The Defense reference to Cole Vision Corp. v. Hobbs, 394 S.C. 144, 154, 714 S.E.2d 537, 542 (2011) does provide guidance and factors on determining if a new cause of action will be available and should be considered: (1) Are there existing remedies; (2) Does it comport with public policy; (3) Speculative Nature of Damages; (4) Duplicative and Inconsistent Litigation.

In answering those factors, it weighs heavily in favor of recognizing the new cause of action.

1. **Existing Remedies:** There are no civil remedies available in South

Carolina against third party interference with a parent's rights. Allowing any third party to do as they wish with the child of another with no civil liability. There are criminal statutes for kidnapping, contributing to the delinquency, custodial interference, but no civil causes of action.

2. **Public Policy:** South Carolina Code of Law § 14-1-50 states the Common law of England continues in effect 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. The Supreme Courts of Virginia and Florida citing its similar statute found it within the public policy stating:

In sum, it is clearly the case that this ancient writ—today labeled tortious interference with parental rights—did exist in English common law in 1607, that it can be construed in a manner not repugnant to the Bill of Rights and the Constitution of the Commonwealth, and that no affirmative steps have been taken by the legislature to renounce the tort. We therefore answer the first certified question of law in the affirmative.

Wyatt v. McDermott, 283 Va. 685, 725 S.E.2d 555 (2012)

South Carolina "[t]he public policy of this state 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). The Defense acknowledged the states interest and its restrictions in a states ability to interfere with parental rights. In Troxel v. Granville, the Supreme Court recognized the burdens of any third party being able to contest custody would place on a parent child relationship and declared the law unconstitutional. The public policy of the State supports having civil causes of action to protect parents' interest in their relationship with their child and this is reflected better than in South Carolina Code of Laws § 20-1-710 **Family Respect Act -Purpose:**

The General Assembly finds that the family is the fundamental building block of society. Within healthy families children are instilled with values essential to the vitality of our State. These values include personal responsibility, honesty, duty, commitment to others, a work ethic, respect for authority, and sound educational habits. Because the family plays such a crucial role in developing these and other civic virtues essential to self-government, parents have a duty to themselves, their children, and society at large to instill these virtues in their children. 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 turn depends upon healthy families. The purpose of this act is to emphasize the importance of families to the success and well-being of our State.

3. **Speculative Nature of Damages:** In McDermott, the Supreme Court of Virginia set both intentional and a negligent remedies stating “the 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.” 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).’ Wyatt v. McDermott, 283 Va. 685, 725 S.E.2d 555 (2012)

Duplicative and Inconsistent Litigation: Unlike the spoliation issue in Cole Vision Corp. v. Hobbs, 394 S.C. 144, 714 S.E.2d 537, (2011), here, it is unlikely to create, litigation within the litigation, as other remedies are available for spoliation, such as jury instructions and removal of the evidence. Also, as there is no existing civil actions, the likelihood of inconsistent litigation is limited as it follows traditional tort claims and has no conflict with any other available actions.

Based on the foregoing, the Defense request to dismiss the first thru eighth causes of

action should be denied.

II. THE PLAINTIFF DID HAVE A FIDUCIARY RELATIONSHIP WITH RICHARD WINN AND MS. CHAISSON.

"A fiduciary relationship is founded on the trust and confidence reposed by one person in the integrity and fidelity of another. A fiduciary relationship exists when one reposes special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one reposing confidence." Regions Bank v. Schmauch, 354 S.C. 648, 670, 582 S.E.2d 432, 444 (Ct. App. 2003) (citations and quotation marks omitted). "To constitute a fiduciary relationship, the relationship must be more than a casual relationship." Steele v. Victory Sav. Bank, 295 S.C. 290, 368 S.E.2d 91 (S.C. App. 1988) "Although whether a fiduciary relationship has been breached can be a question for the jury, the question of whether one should be imposed between two classes of people is a question for the court." Hendricks v. Clemson Univ., 353 S.C. 449, 459, 578 S.E.2d 711, 715 (2003). "Historically, this Court has reserved imposition of fiduciary duties to legal or business settings, often in which one person entrusts money to another, such as with lawyers, brokers, corporate directors, and corporate promoters." Id. at 459, 578 S.E.2d at 716. "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)

The Defense is misled in the reliance the case law cited as it involves Public Schools that are protected by the South Carolina Tort Claims Act and had no contractual relationship between the parties. The parties here are distinguished as they are in a contractual business relationship. South Carolina Code of Laws § 59-1-110 defines a Private school as "a school established by an

agency other than the State or its subdivisions which is primarily supported by other than public funds, and the operation of whose program rests with other than publicly elected or appointed officials." Richard Winn is in the private education business. In Beverly v. Grand Strand Reg'l Med. Ctr., LLC, "The circuit court dismissed Beverly's breach of fiduciary duty claims against Grand Strand as based on duties arising from a contract Beverly lacked standing to enforce." Beverly v. Grand Strand Reg'l Med. Ctr., LLC, 429 S.C. 502, 839 S.E.2d 468 (S.C. App. 2020) It would seem from the Appellate Court ruling in Beverly, a fiduciary relationship may very well exist in contractual relationships if the party has standing to enforce the agreement to which the Plaintiff, in this present action, does have standing to enforce the contract.

Furthermore, "it is a well-settled equitable rule that anyone acting in a fiduciary relationship shall not be permitted to make use of that relationship to benefit his own personal interests." Island Car Wash, Inc. v. Norris, 358 S.E.2d 150, 292 S.C. 595 (S.C. App. 1986)

Based on the foregoing, the Defense Motion to Dismiss the ninth and tenth Causes of action should be denied.

III. THE PLAINTIFF HAS CITED NO CONTRACTUAL OR STATUTORY PROVISION ENTITLING HER TO AN AWARD OF ATTORNEYS' FEES.

The Legislature has yet to establish the cause of action for Tortious Interference of Parental Rights, as it is novel to the Court, The Court may, considering remedies allowed by other jurisdictions, award fees to which the legislature can then establish a statute if it feels the award is inappropriate. Likewise, if the Court recognizes the availability of attorney fees, and it does become recognized by statute, it would be an independent cause of action.

CONCLUSION

For the reasons set forth herein, the Plaintiff Robin Allen, respectfully request that the court enter an order denying the Defendants, Richard Winn, Kristen Chaisson, and John Ryan's Motion to dismiss for all Causes of actions except the Thirteenth Cause of action for Negligent Tortious

Interference of Contracts.

This motion is supported by the pleadings in this action, any affidavits which may be subsequently submitted, any memoranda of law which may be subsequently submitted, all applicable statutes and case authority, all completed discovery, the applicable Rules of Civil Procedure, and such other evidence and authority as the court may find acceptable.

The undersigned counsel states that, pursuant to Rule 11 of the South Carolina Rules of Civil Procedure, there is no duty of consultation on a motion to dismiss.

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March 10, 2021
Columbia, SC

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

IN THE COURT OF COMMON PLEAS

Robin Allen,

Plaintiff,

v.

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

Defendants.

Civil Action No. 2021-CP-20-00026

**REPLY IN SUPPORT OF
MOTION FOR PARTIAL
DISMISSAL OF DEFENDANTS
RICHARD WINN ACADEMY
AND KRISTEN CHAISSON**

Defendants Richard Winn Academy ("Richard Winn") and Kristen Chaisson ("Ms. Chaisson"), through their undersigned counsel, submit the following reply in support of their Motion for Partial Dismissal (the "Motion").

ARGUMENT

I. THE COMPLAINT'S CAUSES OF ACTION FOR TORTIOUS INTERFERENCE WITH PARENTAL RIGHTS SHOULD BE DISMISSED.

The Plaintiff acknowledges that South Carolina courts have not recognized a common law claim for tortious interference with parental rights against private parties like Richard Winn or Ms. Chaisson. Nevertheless, relying on the principle that novel questions of law should not ordinarily be resolved on a Rule 12(b)(6) motion, she asserts that this court should take it upon itself to change the common law and recognize a new cause of action.

It is true 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). "Where, however, 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." Id. See also Palmer v.

State, 427 S.C. 36, 43; 829 S.E.2d 255, 259 (Ct. App. 2019) (same); 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) (same); Brown v. Theos, 338 S.C. 305, 313, 526 S.E.2d 232, 237 (Ct. App. 1999) (same). Cf. Kubic v. MERSCORP Holdings, Inc., 416 S.C. 161, 168, 785 S.E.2d 595, 598 (2016) (“Where, as here, the question is one of simple statutory construction, a trial court should not deny a meritorious motion merely because the question is one of first impression.”).

In this case, the court is presented with a purely legal question: “Does South Carolina recognize a common law claim for tortious interference with parental rights against private parties?” The answer, as the Plaintiff acknowledges, is “no.” Accordingly, the court can and should dismiss the Complaint’s first, second, third, fifth, sixth, and seventh causes of action and leave it to the Supreme Court to decide whether a new cause of action should be recognized. See, e.g., Cole Vision Corp. v. Hobbs, 394 S.C. 144, 147, 714 S.E.2d 537, 539 (2011) (“Cole Vision filed a motion to dismiss pursuant to Rule 12(b)(6), SCRCP, on the ground that South Carolina does not recognize a cause of action for spoliation of evidence. The circuit court agreed and granted the motion to dismiss.”).

II. THE COMPLAINT’S CAUSES OF ACTION FOR BREACH OF FIDUCIARY DUTY SHOULD BE DISMISSED.

As stated in the Motion, the Supreme Court has 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). It has never recognized the existence of a fiduciary relationship in an academic or educational setting, and when given the chance to do so it has declined. See Doe v. Greenville Cty. Sch. Dist., 375 S.C. 63, 72, 651 S.E.2d 305, 309-10 (2007); Hendricks, 353 S.C. at 459, 578 S.E.2d at 716. 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).

In an attempt to distinguish the aforementioned cases, the Plaintiff argues that a material distinction exists between private schools and public schools. Yet public schools are constitutionally required to provide a free, minimally adequate education to every child in South Carolina. See, e.g., S.C. Const. art. XI, § 3 (“The General Assembly shall provide for the maintenance and support of a system of free public schools open to all children in the State and shall establish, organize and support such other public institutions of learning, as may be desirable.”); Abbeville Cty. Sch. Dist. v. State, 335 S.C. 58, 68, 515 S.E.2d 535, 540 (1999) (“[T]he South Carolina Constitution’s education clause requires the General Assembly to provide the opportunity for each child to receive a minimally adequate education.”). The Plaintiff offers no explanation as to why the duties owed by public schools are less significant than those owed by private schools other than to note that private schools enter into contracts with parents. She asserts that “a fiduciary relationship may very well exist in contractual relationships if the party has standing to enforce the agreement,” citing Beverly v. Grand Strand Regional Medical Center, LLC, 429 S.C. 502, 839 S.E.2d 468 (Ct. App. 2020). But rather than supporting her position, Beverly undercuts it by finding that even though the plaintiff in that case had standing to enforce a contract, she nevertheless could not pursue a breach of fiduciary duty claim. See id. at 513, 839 S.E.2d at 473 (“[T]he circuit court erred in dismissing Beverly’s breach of contract claim.”). See also id. at 515, 839 S.E.2d at 474 (“[W]e affirm the circuit court’s dismissal of Beverly’s claim for breach of fiduciary duty.”). Accordingly, the court should dismiss the Complaint’s ninth and tenth causes of action.

III. THE COMPLAINT'S CAUSE OF ACTION FOR NEGLIGENT TORTIOUS INTERFERENCE WITH CONTRACTS SHOULD BE DISMISSED.

The Plaintiff appears to consent to dismissal of her claim for negligent tortious interference with contracts. Accordingly, the court should dismiss the Complaint's thirteenth cause of action.

IV. THE COMPLAINT'S CAUSE OF ACTION FOR ATTORNEY FEES SHOULD BE DISMISSED.

The Plaintiff acknowledges that she has not cited any contractual or statutory provision entitling her to an award of attorneys' fees in this action. And in lieu of doing so, she speculates that the General Assembly may, at some indeterminate point in the future, enact a statute providing for such an award if a cause of action for tortious interference with parental rights is recognized in South Carolina. Such speculation requires no response other than to reiterate that "[a]ttorney's fees are not recoverable unless authorized by contract or statute." Historic Charleston Holdings, LLC v. Mallon, 381 S.C. 417, 436, 673 S.E.2d 448, 458 (2009). Because no such contract or statute presently exists, the court should dismiss the Complaint's fifteenth cause of action.

CONCLUSION

For the reasons set forth herein and in their Motion for Partial Dismissal, Defendants Richard Winn Academy and Kristen Chaisson respectfully request that the court enter an order dismissing the Complaint's first, second, third, fifth, sixth, seventh, ninth, tenth, thirteenth, and fifteenth causes of action.

s/Curtis W. Dowling

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Attorneys for Defendants Richard Winn Academy
and Kristen Chaisson

March 17, 2021

RECEIVED

May 25 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

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

Case No.: 2021-CP-20-00026

Robin Allen,..... Appellant,

v.

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

NOTICE OF APPEAL

Appellant files this Notice of Appeal in regard to the attached Order filed with the Fairfield County Clerk of Court on April 28, 2021, and in which Appellant received from the Court on April 28, 2021. The attached Order is the ruling of Judge Eugene C. Griffith, Jr., Presiding Judge of the Court of Common Pleas, granting partial dismissal of Defendants Richard Winn Academy and Kristen Chaisson as to the 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, and granting motion to dismiss John Ryan, II, as a Defendant in the case as all dismissed actions disposes all claims against Mr. Ryan.

s/Larry C. Marchant, Jr., SC Bar 102071
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ATTORNEY FOR APPELLANT

May 25, 2021
Columbia, South Carolina

RECEIVED

Jun 15 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

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

Appellate Case No.: 2021-000561

Robin Allen, ... Appellant,

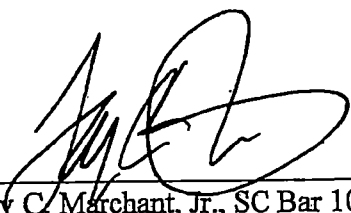
v.

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

MOTION REQUESTING PERMISSION TO ORDER TRANSCRIPT OUTSIDE THE
FILING DEADLINE SET BY RULE 207, SCACR.

The undersigned would respectfully request this Honorable Court to grant permission to order transcripts outside the filing deadline set forth under Rule 207, SCACR.

Appellant filed the notice of Appeal on May 25, 2021. Undersigned attorney was out of the office for several days for a personal matter and has experienced an unusually heavy court workload. Undersigned attorney sent transcript request on June 15, 2021, (*see attached* cover letter and Transcript Request Form). Undersigned attorney accepts full responsibility and prays the Court will allow the order of transcripts outside the filing deadline under Rule 207, SCACR. This request is not intended to delay the case proceedings but is due to an unexpected personal matter, and an unusually heavy workload of the undersigned attorney.



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ATTORNEY FOR APPELLANT

June 15, 2021
Columbia, South Carolina

RECEIVED

Jun 15 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

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

Appellate Case No.: 2021-000561

Robin Allen, ... Appellant,

v.

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

PROOF OF SERVICE

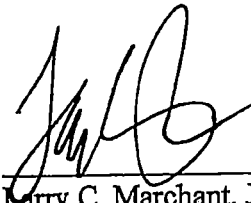
I certify that I served the motion requesting permission to order transcript outside
the filing deadline set by Rule 207, SCACR by email and by depositing a copy of it in the
United States Mail, postage prepaid, on June 15, 2021, addressed as follows:

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ATTORNEY FOR APPELLANT

June 15, 2021
Columbia, South Carolina

The South Carolina Court of Appeals

Robin Allen, Appellant,

v.

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

Appellate Case No. 2021-000561

The Honorable Eugene C. Griffith, Jr.
Fairfield County
Trial Court Case No. 2021CP2000026

ORDER

Appellant has filed a motion requesting permission to order the transcript outside the filing deadlines. The transcript has been ordered. This motion is Granted.

FOR THE COURT

BY V. Claire Allen
CLERK

Columbia, South Carolina

cc:

Larry Conrad Marchant, Jr., Esquire
Paul L. Reeves, Esquire
Creighton B. Coleman, Esquire
Curtis W. Dowling, Esquire
Matthew G. Gerrald, Esquire
David Douglas Hawkins, Esquire

FILED
Jun 16 2021

RECEIVED

Sep 28 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

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

Appellate Case No.: 2021-000561

Robin Allen,..... Appellant,

v.

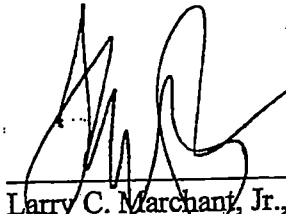
Richard Winn Academy, Kristen Chaisson (in
her individual capacity and a Head of School),
and John Ryan, II,..... Respondents.

**MOTION REQUESTING EXTENTION TO FILE INITIAL BRIEF AND
DESIGNATION OF MATTER**

PLEASE TAKE NOTICE that pursuant to Rules 208, 209, 240 and 263(b) of the South Carolina Appellate Court Rules, the Appellant Robin Allen, by and through her undersigned attorney, moves for an Order granting a thirty (30) day extension of time within which to file the Initial Brief of Appellant and Designation of Matter- through November 1, 2021.

This motion is made on the grounds that the undersigned attorney has experienced unanticipated issues, coupled with other unanticipated hearings and court appearances, and other case deadlines that have arisen over the past several weeks that have precluded counsel's ability to devote the requisite time to the research and drafting of the Initial Brief

of Appellant. Counsel needs the requested extension to properly present focused and cogent arguments.



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ATTORNEY FOR APPELLANT

September 27, 2021
Columbia, South Carolina

RECEIVED

Sep 28 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

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

Appellate Case No.: 2021-000561

Robin Allen,..... Appellant,

v.

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PROOF OF SERVICE

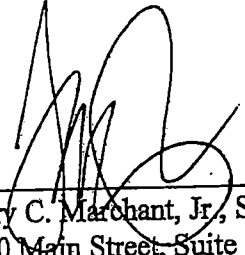
I certify that I served appellant's motion requesting extension to file initial brief
and designation of matter by email and by depositing a copy of it in the United States Mail,
postage prepaid, on September 27, 2021, addressed as follows:

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ATTORNEY FOR APPELLANT

June 27, 2021
Columbia, South Carolina

The South Carolina Court of Appeals

Robin Allen, Appellant,

v.

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Appellate Case No. 2021-000561

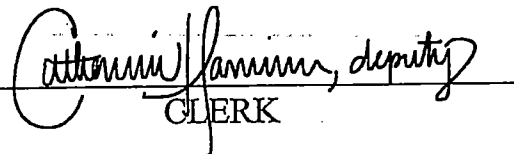
The Honorable Eugene C. Griffith, Jr.
Fairfield County
Trial Court Case No. 2021CP2000026

ORDER

The time for serving and filing the appellant's initial brief and designation of matter is hereby extended until October 29, 2021.

FOR THE COURT

BY


CLERK

Columbia, South Carolina

cc:

Larry Conrad Marchant, Jr., Esquire
Paul L. Reeves, Esquire
Creighton B. Coleman, Esquire
Curtis W. Dowling, Esquire
Matthew G. Gerrald, Esquire
David Douglas Hawkins, Esquire

FILED
Sep 28 2021

RECEIVED

Oct 25 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

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

Appellate Case No.: 2021-000561

Robin Allen,..... Appellant,

v.

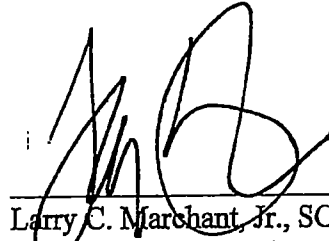
Richard Winn Academy, Kristen Chaisson (in
her individual capacity and a Head of School),
and John Ryan, II,..... Respondents.

**MOTION REQUESTING AN ADDITIONAL EXTENTION TO FILE
APPELLANT'S INITIAL BRIEF AND DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL**

The Appellant, by and through her undersigned counsel, would respectfully request an additional thirty (30) days to file Appellant's Initial Brief and Designation of Matter to be included in the Record on Appeal in this matter. This request for an additional thirty (30) days will make Appellant's Initial Brief and Designation of Matter to be included in the Record on Appeal due on or about November 29, 2021. Respondents, copied below, have been notified, and consent to this request.

This request is made on the grounds that undersigned counsel has experienced an unanticipated personal matter, coupled with other recently scheduled hearings and court appearances, and other case deadlines that have precluded counsel's ability to devote the

requisite time to the research and drafting of the Initial Brief of Appellant. Undersigned counsel needs the requested extension to properly present focused and cogent arguments.



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October 25, 2021
Columbia, South Carolina

cc. Curtis W. Dowling, Esq.
Matthew G. Gerrald, Esq.
Creighton B. Coleman, Esq.
Paul L. Reeves, Esq.

RECEIVED

Oct 25 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

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

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PROOF OF SERVICE

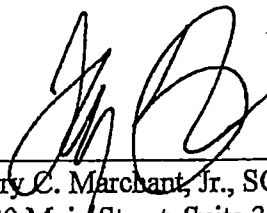
I certify that I served appellant's motion requesting additional extension to file Initial Brief and Designation of Matter to be included in the Record on Appeal by email and by depositing a copy of it in the United States Mail, postage prepaid, on October 25, 2021, addressed as follows:

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ATTORNEY FOR APPELLANT

October 25, 2021
Columbia, South Carolina

The South Carolina Court of Appeals

Robin Allen, Appellant,

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

Appellate Case No. 2021-000561

The Honorable Eugene C. Griffith, Jr.
Fairfield County
Trial Court Case No. 2021CP2000026

ORDER

The time for serving and filing the appellant's initial brief and designation of matter is hereby extended until November 29, 2021. No further extensions will be granted absent extraordinary circumstances.

FOR THE COURT

BY *Catherine J. Jamison, deputy*
CLERK

Columbia, South Carolina

cc:

Larry Conrad Marchant, Jr., Esquire
Paul L. Reeves, Esquire
Creighton B. Coleman, Esquire
Curtis W. Dowling, Esquire
Matthew G. Gerrald, Esquire
David Douglas Hawkins, Esquire

FILED
Oct 29 2021

STATE OF SOUTH CAROLINA - COUNTY OF FAIRFIELD
CIVIL PROCEEDINGS - 6TH JUDICIAL CIRCUIT

ROBIN ALLEN,)
) Docket No.
 PLAINTIFF,) 2021-CP-20-00026
)
)
 V.)
)
) MOTIONS (Virtual)
 RICHARD WINN ACADEMY,)
 KRISTEN CHAISSON, AND)
 JOHN RYAN, II)
)
)
 DEFENDANT(S),)

March 19, 2021
Fairfield, South Carolina

B-E-F-O-R-E:

HONORABLE EUGENE C. GRIFFITH, JR.

A-P-P-E-A-R-A-N-C-E-S:

DAVID HAWKINS, ESQ.
Attorney for the Plaintiff

CREIGHTON COLEMAN, ESQ.
CURTIS DOWLING, ESQ.
MATHEW GERRALD, ESQ.
PAUL REEVES, ESQ.
Attorney(s) for the Defendant(s)

Maria DiScioscia, RPR
Official Court Reporter

1 THE COURT: We're ready in the matter that was
2 continued from March 18, 2021. Motions ready on the
3 calendar.

4 There is multiple motions to dismiss. Who's
5 going to argue for the defense or are multiple people
6 going to argue?

7 MR. REEVES: I'm Paul Reeves arguing on behalf
8 of the individual, John Ryan, defendant.

9 MR. GERRALD: This is Matthew Gerrald and I
10 will be taking the lead for Richard Winn Academy and
11 individual defendant, Kristen Chaisson.

12 THE COURT: Okay. All right. Well, then, do
13 y'all have any preference to who goes first? Richard
14 Winn and Kristen go first?

15 MR. REEVES: I will defer to Mr. Gerrald.

16 THE COURT: Okay. Fair enough.

17 MR. COLEMAN: And just for the record, your
18 Honor, I represent Richard Winn, too, and we would defer
19 to Matthew to argue this matter.

20 THE COURT: Okay. We'll start with
21 Mr. Gerrald. Mr. Gerrald, the record is open. Glad to
22 hear from you.

23 MR. GERRALD: All right. Thank you, your
24 Honor.

25 We're here this morning on a motion for

1 partial dismissal filed by my client's who are also
2 represented by Curtis Dowling, my partner, and also
3 Mr. Coleman and they are Richard Winn Academy, which is
4 private school in Fairfield County and Kristen Chaisson
5 in her individual capacity. And she's also the head of
6 the school.

7 This case was brought against our clients and
8 Mr. Ryan, who's represented by Mr. Reeves by Robin
9 Allen, who actually used to be a teacher at Richard Winn
10 Academy until she resigned within the last year or so
11 having to do I think with some of the events that
12 transpired.

13 This case has to do with the education of
14 Ms. Allen's daughter, Zoe Mitsakos. So about a year ago
15 Ms. Allen, the plaintiff, entered into a contract with
16 Richard Winn for Zoe to be educated at the school during
17 the 2020-2021 year which was her senior year. She
18 turned 18 during the year and for various reasons by
19 between her and her mother, the relationship was
20 deteriorating and once she turned 18, she actually moved
21 out of the house and began living with Mr. Ryan. She
22 also at that time entered into a separate contract with
23 Richard Winn having reached the age of majority to
24 continue her schooling at Richard Winn for the duration
25 of her senior year.

1 Ms. Allen, then, brought this lawsuit against
2 Richard Winn, Ms. Chaisson and Mr. Ryan alleging 15
3 causes of action and we're here this morning on a number
4 of those but not all of them. So it's not a motion for
5 total dismissal but for just certain of the causes of
6 action. And one of the -- or actually the first eight
7 causes of action are all captioned as "Interference with
8 parental rights, Tortious interference with parental
9 rights."

10 Now, some of them are labeled as negligent and
11 some of them are labeled as intentional. It is our
12 assertion, your Honor, that regardless of whether they
13 are intentional or negligent, the cause of action for
14 tortious interference with parental rights is not one
15 that is recognized in South Carolina.

16 The plaintiff's response to this is that the
17 common law should be changed and that a novel issue
18 should not be addressed on a motion to dismiss. And in
19 response to that, your Honor, our position is that if
20 the common law is to be changed, it should be done --
21 that should be done by the Supreme Court.

22 And as to the issue of whether the -- a novel
23 issue of law should be decided on a motion to dismiss,
24 that principle does not apply to purely legal issues.
25 It applies when there are -- when there is a need for

1 some sort of development of the facts. But here, we are
2 dealing with a totally and completely legal issue only
3 and that issue is: Does the State of South Carolina
4 right now recognize a cause of action for tortious
5 interference with parental rights? And the plaintiff
6 has recognized the answer to that question is no.

7 So our position is that those causes of action
8 should be dismissed and if the plaintiff would like to
9 take that issue to the Supreme Court and ask for the
10 common law to be changed, she has that right. But the
11 proper procedure at this point would be for those causes
12 of action to be dismissed because they are not
13 recognized in this State at this time.

14 We're also asking for dismissal of the causes
15 of action for breach of fiduciary duty. And the basis
16 for that is that the State of South Carolina again at
17 this point has never recognized a fiduciary relationship
18 between the two classes of people that are at issue in
19 this case which is a parent of a private school student
20 and the school itself and the school's head master or
21 head of school.

22 In all of the cases where the Supreme Court
23 has been confronted with the issue of whether to
24 recognize a fiduciary duty in an educational or academic
25 setting, it has declined to do so.

1 Now the Plaintiff wants to draw a distinction
2 here because this is a private school and a private
3 school of course enters into contracts with parents.
4 But there is no reason that has been cited why that
5 distinction should make a difference, and indeed, public
6 schools are under a constitutional duty to students to
7 provide them with a free and minimally adequate public
8 education. And so arguably, you know, if there's going
9 to be some sort of duty imposed, it would be on a public
10 school that is constitutionally bound.

11 So our position is that a fiduciary
12 relationship has never been recognized in this context
13 and so therefore there cannot be a cause of action at
14 this time for breach of fiduciary duty.

15 And the next cause of action we are seeking to
16 be dismissed is the negligent interference with
17 contractual relations. And based on the plaintiff's
18 response, she appears to concede that that is an
19 intentional tort and cannot be alternatively pled and
20 negligent. And so she appears to concede that that
21 cause of action should be dismissed so I won't go into
22 that one in anymore detail.

23 And then lastly, she's brought a cause of
24 action for attorney fees. And there is some debate
25 about whether that's even a cause of action or just a

1 remedy, but regardless, it's been pled as a cause of
2 action. But as your Honor well knows that attorneys'
3 fees cannot be recovered under the American Rule and in
4 South Carolina unless they are specifically authorized
5 for recovery by contract or statute. And there is no
6 contract or statute that has been cited by the plaintiff
7 in this case that would provide for an award for
8 attorneys' fees. There's only been speculation that
9 eventually if the cause of action for tortious
10 interference with parental rights was adopted that
11 somehow that might come along with -- or along with
12 that, there would be a provision made for award of
13 attorneys' fees. But right now there is no contract or
14 statute that would allow such a recovery and so we
15 assert that that cause of action should be dismissed.

16 So just to summarize, the defendant or two of
17 the defendant's, Richard Winn Academy and Kristen
18 Chaisson are seeking dismissal of the causes of action
19 for tortious interference of parental rights, breach of
20 fiduciary duty, negligent interference with contractual
21 relation and attorneys' fees.

22 THE COURT: All right. Mr. Hawkins, let me
23 hear your response. Was I muted, Lauren?

24 MR. HAWKINS: Okay. Your Honor, I'm sorry, my
25 phone screen timed out and I had to unlock it to take

1 the mute off.

2 THE COURT: Okay. Go ahead.

3 MR. HAWKINS: Thank you, your Honor, May it
4 please the Court.

5 To go ahead and just get one issue off the
6 table and that was the negligence interference of
7 contract. We do concede that point and that is not on
8 the table.

9 THE COURT: Okay.

10 MR. HAWKINS: As far as the negligent
11 interference of parent rights, your Honor, it probably
12 may well be recognized in South Carolina law, and again,
13 I'm going refer to the case law that was cited in *Wyatt*
14 *v. McDermott* and it is also said within the response to
15 the motion to dismiss.

16 In 1607, they looked at the English Common Law
17 that did find that there was common law back then that
18 would prevail on the tortious interference of parental
19 rights. South Carolina had that same Common Law
20 language that Virginia does. So we do believe it may be
21 there; it's just not necessarily worded as "tortious
22 interference of parental rights." Back then, it was
23 interference of the father's right to the child as far
24 as labor and the benefit of the child to the house. So
25 we do believe it's probably there, it's just never

1 officially recognized within the State of South
2 Carolina.

3 However, it is a novel issue before the Court
4 and again, as cited, the novel issue shouldn't
5 necessarily be dismissed unless it's based off the full
6 merits of the record. And in citing what the defense
7 put forward in *Cole Vision*, the State Supreme Court put
8 out four factors to consider for courts whenever it goes
9 forward in considering novel issues if they should be
10 heard. Those are one of their existing remedies for the
11 law that's being argued. Does it comport with public
12 policies, the speculative nature of damages and is there
13 going to be duplicative and inconsistent litigation?

14 And here all four of those factors weigh in
15 favor of this case going forward and moving forward with
16 the pleadings of tortious interference of parental
17 rights.

18 So when you look at those factors, even the
19 defense acknowledges there is no existing remedy against
20 third party for interfering with parental rights. So
21 there's no existing remedies and outside of that, my
22 client would have no remedy in any type of civil
23 proceeding. There are criminal proceedings but even in
24 *Wyatt v. McDermott* they talk about the criminal
25 proceedings. But that's why the other state courts have

1 recognized that this cause of action, because it gives a
2 civil remedy for a third party in interference with
3 parental rights.

4 As it goes to public policy, South Carolina
5 Public Policy is extremely strong in supporting parents.
6 The first one would be the South Carolina Family Respect
7 Act, and the Family Respect Act, the court -- the
8 legislature says parents have the duty to themselves and
9 their children to cite in large to instill the virtues
10 and values of their children. As much as it's able, the
11 State should promote strong families so the family is
12 the cradle of an order in vibrant republic.

13 So again, allowing this type of civil action
14 to proceed gives the family the ability to protect
15 itself against third-party interference.

16 The Federal Courts and the Supreme Court of
17 this state and the Supreme Court of the United States
18 have already recognized the ability of a parent to be
19 protected against state interference. The State has
20 more interest in interfering in the parent-child
21 relationship than a third party.

22 So again, we think that these guides or these
23 factors go and weigh heavily in recognition of this
24 cause of action as well as the common law prior to 1607.

25 Speculative natures of the damages that can be

1 caused, again, if there's no intentional negligent
2 remedies that are available, the McDermott Court in the
3 Supreme Court of Virginia, when they were asked by the
4 court -- by the Eastern District of Virginia and the
5 Federal Court, just apply the common remedies for tort
6 law. If it's intentional, then you can get punitive
7 damages. They even recognized and discussed in that
8 case the difference between punitive damages and just
9 your standard negligent damages and the level of the --
10 evidentiary standard required.

11 And when they looked at punitive damages, just
12 like we would have here and defense points out, is that
13 we would have to look at the clear and convincing
14 evidentiary standard. Well, Virginia said that standard
15 was more associated with things like negligent
16 infliction of emotional distress, things where it would
17 require something different but they defer to
18 preponderance of the evidence in these type of cases
19 when it came evidentiary standard.

20 Duplicative and inconsistent litigation.
21 Well, I don't think there's going to be duplicative and
22 inconsistent litigation. When they were talking about
23 spoliation of evidence in the *Cole Vision* case which the
24 defense cites, they were looking at, you have -- that
25 you have to have hopeful litigation based off the

1 spoliation if you were going to allow a negligence
2 interference of negligence spoliation of evidence as
3 opposed to the remedies available already to the Court
4 whether it's jury -- adverse in jury instructions or
5 removal of the evidence.

6 So, here, if you're following negligent tort
7 standards, I don't think you could come up with
8 duplicative and inconsistent litigation. I think we
9 have enough in robust case law and tort that you're not
10 going to see that. So I don't see how that waives in
11 favor for the defense either.

12 As far as the fiduciary relationship between
13 the two, your Honor, they're trying to establish this as
14 a parent and education -- Richard Winn, by definition,
15 is a public -- is a private school. It's not a public
16 school. Under 59-11-10 defines a private school, "as a
17 school that is established by an agency other than the
18 state or its subdivisions which is primarily -- which is
19 not primarily supported by public funds."

20 Here, this is a contract. This is a
21 contractual relationship per the education of their
22 child. Richard Winn is in the business of education.
23 Without the contract, they have no requirements to my
24 client and my client has no requirements to them.

25 In the case cited by us, *Beverly v. Grand*

1. *Strand Regional Memorial*, the Appellant Court in South
2. Carolina recognized in *Beverly* that a fiduciary
3. relationship may very well exist in contractual
4. relationships and that's exactly what we have here.

5. It's not your standard public school,
6. compulsory education where you're going to Fairfield
7. Central High School or Richland Northeast or anything
8. else. This is an agreement through contract. And the
9. only reason that *Beverly* could not enforce the fiduciary
10. agreement, was she had no standing. Well, my client can
11. enforce the contract and she does have standing. So we
12. do believe there's a fiduciary relationship that exists
13. based off the contract.

14. As to the remedies and to attorney fees. Yes,
15. your Honor, counsel was right. That would probably be
16. within those remedies that are again recognized in other
17. State Courts, whether it's Florida, Virginia, West
18. Virginia, Alabama. Most of -- the majority of the state
19. courts do recognize attorneys' fees as an appropriate
20. remedy when it comes to tortious inference with parental
21. or custodial rights. So that's where that argument
22. comes from. If the Court is not going to recognize
23. that, then yes, defense counsel would be correct at
24. dismissing that action as well too.

25. But, again, I think until the case is fully

1. developed, it would be premature to dismiss that action
2 until we move forward and it's fully heard on the
3 merits.

4 Thank you, your Honor.

5 THE COURT: All right. Thank you.

6 Mr. Gerrald, do you want to respond briefly,
7 then I'm going to hear from Mr. Reeves?

8 MR. GERRALD: Yes, very briefly, your Honor.

9 On the tortious interference with parental
10 rights, pretty much everything that you heard from
11 plaintiff's counsel was with regards to the factors
12 cited by the Supreme court and the *Cole Vision* tort
13 versus *Hobbs* case. Our response to that would simply be
14 that all of those arguments are arguments to be made at
15 the Supreme Court level; not at the Circuit Court level
16 when a cause of action is not currently recognized. It
17 would be for the Supreme Court to go through those
18 factors and determine whether in South Carolina the
19 cause of action should be recognized.

20 As to the fiduciary duty, again, as I
21 mentioned, it's just never been recognized in the
22 education or academic setting. Plaintiffs counsel cites
23 the *Beverly versus Grand Strand* case. With all due
24 respect, I actually think that case hurts them.

25 In that case, that's a case were Grand Strand

1 Regional Medical Center had a preferred provider
2 agreement with BlueCross BlueShield. The plaintiff,
3 Ms. Beverly got into a car accident and was treated at
4 Grand Strand and then she got billed from Grand Strand
5 that was higher than what she anticipated because they
6 had that PPO agreement with BlueCross BlueShield and she
7 sued on the basis of that agreement.

8 Now, at the Circuit Court level, the Circuit
9 Court did find she cannot enforce that contract because
10 it was a contract between two other parties and she
11 wasn't a third-party beneficiary. And based off that
12 finding, the Circuit Court said, because you don't have
13 standing to enforce the contract, you also don't have a
14 fiduciary relationship.

15 Well, when it went to the Court of Appeals,
16 the Court of Appeals actually held differently on the
17 contract and said she could sue on the contract. But
18 here's the key point: Even though she could sue on the
19 contract, she could not sue for breach of fiduciary
20 duty. Even though she could enforce the contract, there
21 was no fiduciary relationship in that case and the same
22 is true here. There is a contractual relationship
23 between Richard Winn and the plaintiff but that doesn't
24 mean she can bring a breach of fiduciary duty claim in
25 an educational academic setting where such a

1 relationship has never been recognized.

2 And then as to attorneys' fees, I'd just
3 reiterate, there is no current contract or statute that
4 is cited that would allow for such a recovery and so
5 that one should be dismissed.

6 Thank you, your Honor.

7 THE COURT: Mr. Reeves, let's hear from you
8 about your client.

9 MR. REEVES: May it please the Court. I
10 represent John Ryan, who is a -- was brought in this
11 case where the plaintiff alleged that he promoted or
12 encouraged the plaintiff's minor child to do certain
13 things and the paragraphs of the complaint that are
14 relevant to Mr. Ryan are paragraphs 37 and paragraph 53.

15 Paragraph 37 reads that, "Allegedly Mr. Ryan
16 intentionally, knowingly, and willfully interfered with
17 plaintiff's state and federal constitutional rights to
18 raise the child by encouraging the child to not follow
19 the direction of the parent in the education of raising
20 and influence of the minor child."

21 Paragraph 53 is the same except it uses the
22 term "negligently."

23 Neither one of those causes of action are
24 recognized in this State. And the plaintiff has not
25 cited any case law that would give this plaintiff the

1 right to bring these causes of action. So relying on
2 the arguments put forth by Richard Winn and by, again,
3 reiterating there's no case law to support her
4 allegations against Mr. Ryan, I'd ask the Court to
5 dismiss this pursuant to 12(b)(6).

6 THE COURT: Mr. Hawkins, I want to hear your
7 response to that.

8 MR. HAWKINS: Yes, your Honor.

9 Again, we would respond pretty much in kind
10 with what we responded to the motion from Richard Winn
11 in the sense that there's no South Carolina case law.
12 There is other case law. There's persuasive case law
13 throughout other jurisdictions in this country that do
14 recognize this cause of action. There's even the tort
15 standards on the first and second torts that recognize
16 this cause of action. It has just not been brought up
17 and raised in South Carolina. And this is the first
18 time the issue is being brought up.

19 Again, we would default back to the arguments
20 with *McDermott v. Wyatt* as the, I guess the most recent
21 prevalent case. That that establishes that the laws of
22 Virginia do mirror those of South Carolina especially
23 that with the 1607 recognition of the English Common Law
24 that, again, we believe under the same interpretation
25 the Supreme Court of Virginia had, that law should also

1 too be recognized in South Carolina.

2 Also, too, we bring up again the stuff that we
3 brought up with the agreement between the parties as far
4 as Mr. Ryan. Mr. Ryan is acting as a parental figure
5 right now to the minor child. He is there providing
6 everything that a parent should provide. So yes, he has
7 crossed over to that realm to interfering with those
8 parental rights and it started before Ms. Chaisson was
9 ever 18. So he is providing the things that they
10 should, so yes, he is interfering with those. And
11 again, just as we've recognized before and what we've
12 stated before, that the State could very well recognize
13 that through the English Common Law prior to 1607, but
14 also, too, as a novel issue before the Court, I believe
15 and my argument and position is that *Colby Hobbs* is a
16 direction or indicator from the Supreme Court as to how
17 the lower court should review these cases of novel
18 questions coming before the Court and making a
19 determination of whether to try to go forward or to
20 dismiss it and then you can argue it up to the Supreme
21 Court.

22 I think it's more instructive and not
23 prescriptive that only the State Supreme Court can
24 determine these issues, otherwise I don't think it puts
25 it out that way.

1 That's my case in chief for this, your Honor,
2 thank you.

3 THE COURT: Mr. Reeves?

4 MR. REEVES: Judge --

5 THE COURT: Yes, sir.

6 MR. REEVES: Judge, I would object to the
7 plaintiff's attorney interjecting any factual
8 information because we are here on the pleadings and
9 again just reiterate there is no recognition of this
10 case law and I would ask the Court to dismiss.

11 Thank you, your Honor.

12 THE COURT: Okay. Mr. Dowling or Mr. Coleman,
13 are y'all want to be heard or are y'all going stand
14 behind Mr. Gerrald's argument, which I think was very
15 sufficient?

16 MR. DOWLING: Creighton may have something,
17 but I'm fine.

18 MR. COLEMAN: Thank you, Judge.

19 I was going to raise this point real quick,
20 that the plaintiff had withdrawn her daughter from
21 Richard Winn, and for whatever reason, I'm not going to
22 get into that. And then on her 18 birthday, Zoe, the
23 senior at Richard Winn then signed a contract herself to
24 enter Richard Winn. She wanted to stay there and
25 complete her senior year, just to give you a little bit

1 of a flavor about what was going on.

2 THE COURT: All right. I want to read -- I
3 think I understand what's going on here and based on
4 y'all's motion so I'll give it a consideration and let
5 you know what I need from you as far as proposed orders
6 go.

7 Anything else?

8 Thank you-all for coming in this morning and
9 doing this. I'm glad we've got this done.

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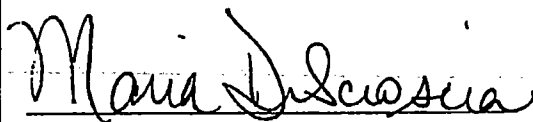
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C E R T I F I C A T E

I, the undersigned Maria DiScioscia, Official Court Reporter for the 6th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the record of all the proceedings in the captioned case, in the Circuit Court for Fairfield, South Carolina, on the 19th day of March, 2021.

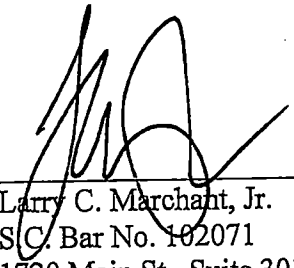
I do further certify that I am not related, either by blood or marriage, to any of the parties in this action; and that I am in no way interested in the outcome of this matter.



Maria DiScioscia
Official Court Reporter

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all materials proposed to be included by any of the parties and not any other material.



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February 4, 2022

THE STATE OF SOUTH CAROLINA
In the 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 SCRCP, 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), SCRCF, 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, rapto 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, rapto 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.CL. 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.CL. 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, 2 D. and E. 4, 5; and other evidence, besides what applies to loss of service, is admissible. 3 Esp. 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.