

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

S.C. SUPREME COURT

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

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

Robin Allen,..... Petitioner,

v.

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

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QUESTION PRESENTED

The Petition for Writ of Certiorari was granted with respect to the following question: Did the courts below err in failing to provide a parent with a remedy for tortious interference with constitutionally protected parental rights?

STATEMENT OF THE CASE

On January 16, 2021, Petitioner Robin Allen filed a Complaint in the Fairfield County Court of Common Pleas against Respondents Richard Winn Academy (“Richard Winn”), Kristen Chaisson (“Ms. Chaisson”), and John Ryan II (“Mr. Ryan”). (App. p. 62). In the Complaint, Petitioner generally alleged that: (a) she entered into a contract with Richard Winn on or about March 13, 2020 for the provision of educational services to her then 17-year-old daughter, Zoe Mitsakos (“Zoe”), for the 2020-2021 academic year (App. p. 63, ¶¶ 5-6); (b) on or about September 26, 2020, Zoe ran away from Petitioner’s home to the home of Mr. Ryan (App. p. 64, ¶ 16); (c) on or about November 13, 2020, and after Zoe had turned 18, Richard Winn, by and through Ms. Chaisson (Richard Winn’s Head of School), entered into a separate contract with Zoe pursuant to which she would continue her education at Richard Winn (App. p. 63, ¶¶ 8-9; App. p. 64, ¶ 18); and (d) Ms. Chaisson, together with Richard Winn’s board and Mr. Ryan, assisted, encouraged, and supported Zoe in running away from Petitioner’s home to live instead with Mr. Ryan (App. p. 64, ¶ 18). Respondents have denied any wrongdoing. (App. pp. 76, 105).

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 (App. pp. 65-68); the fifth through eighth causes of action asserted negligent tortious interference with parental rights against the same parties (App. pp. 68-70); the ninth and tenth causes of action asserted intentional breach of fiduciary duty against Richard Winn and Ms. Chaisson (App. pp. 70-72); the eleventh cause of action asserted breach of contract (presumably against Richard Winn) (App. p. 72); the twelfth cause of action asserted intentional tortious interference with contracts (presumably against Richard Winn and Ms. Chaisson) (App. pp. 72-73); the thirteenth cause of action asserted negligent tortious interference with contracts (presumably against Richard Winn and Ms. Chaisson) (App. p. 73); the fourteenth cause of action asserted quantum meruit (presumably against Richard Winn) (App. pp. 73-74); and the fifteenth cause of action asserted attorney fees (App. p. 74).

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. (App. p. 98). 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). (App. p. 108). Respondents asserted that the referenced causes of action should be dismissed because: (a) South Carolina does not recognize a cause of action for tortious interference with parental rights; (b) Petitioner did not have a fiduciary relationship with Richard Winn or Ms. Chaisson; (c) tortious interference with contractual relations is an exclusively intentional tort; and (d) Petitioner did not cite any contractual or statutory provision entitling her to an award of attorneys' fees.

A hearing on Respondents' motions was held on March 19, 2021 before the Honorable Eugene C. Griffith, Jr. (App. p. 142).¹ 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"). (App. p. 53). 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.

¹ Footnote 2 of Petitioner's Brief suggests, with reference to the Circuit Court hearing on Respondents' motions, that it was improper for Judge Griffith to address a novel question at the motion to dismiss stage. It is true, and the Order (defined below) 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). (App. p. 55). 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. (App. p. 55). 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 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").

Petitioner timely filed and served a Notice of Appeal on May 25, 2021. (App. p. 126). She appealed only the dismissal of the Complaint’s causes of action for tortious interference with parental rights and breach of fiduciary duty. She did not challenge the dismissal of the Complaint’s causes of action for negligent tortious interference with contracts or attorney fees. Following submission of briefs by the parties, the Court of Appeals issued its opinion affirming the Order on March 29, 2023. (App. p. 1). Petitioner filed a Petition for Rehearing on April 6, 2023 (App. p. 6), which the Court of Appeals denied in an order entered April 20, 2023 (App. p. 4). On May 19, 2023, Petitioner filed a Petition for Writ of Certiorari—which Respondents opposed—presenting two questions for review. On February 7, 2024, this Court entered an order granting review of the first question but denying review of the second question.

STANDARD OF REVIEW

“Under Rule 12(b)(6), SCRPC, 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. THE MODERN CAUSE OF ACTION FOR TORTIOUS INTERFERENCE WITH PARENTAL RIGHTS DID NOT EXIST UNDER ENGLISH COMMON LAW.

The cornerstone of Petitioner’s argument is that, prior to the founding of the United States, a cause of action for tortious interference with parental rights existed under the common law of England. While it is true that English common law allowed fathers to sue for deprivation of services provided by abducted heirs, it is not accurate to claim that the modern cause of action for tortious interference with parental rights—as expressed in Restatement (Second) of Torts § 700—existed under English common law. See, e.g., Wyatt v. McDermott, 725 S.E.2d 555, 565 (Va. 2012) (“English common law prior to 1607 did not recognize a cause of action in tort for interference with parental rights. . . . [A] father could only seek the pecuniary loss of his heir’s marriage prospects under an action of trespass for the taking of his heir. Such action was not based on the protection of a parental relationship but on the protection of a property interest.”) (McClanahan, J., dissenting).

Petitioner’s entire argument to the contrary is based on the majority opinion in Wyatt, a 4-3 decision of the Virginia Supreme Court that involved an extraordinarily exceptional and unique set of facts that the court itself described as “astonishing and profoundly disturbing.” 725 S.E.2d at 564. As summarized by the court:

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

Id. Against the backdrop of these incredibly egregious allegations, the court felt compelled to provide a remedy for the biological father.² To accomplish that goal, it adopted Restatement (Second) of Torts § 700. With all due respect to the majority justices in Wyatt, their finding that Section 700 is equivalent to the ancient English common law writ of abduction is dubious and appears to have been an attempt to avoid the appearance that they were “changing” the law or usurping the role of the Virginia legislature. In any event, Wyatt—which involved the conspiratorial adoption³ of a newborn infant—is factually distinguishable from this case—which involves a then 17-year-old (she is now 21) who was mere weeks away from emancipation,⁴ and thus does not present the same urgency.

II. SOUTH CAROLINA DOES NOT CURRENTLY RECOGNIZE THE CAUSE OF ACTION ASSERTED BY PETITIONER.

A. The Reception Statute is irrelevant.

S.C. Code Ann. § 14-1-50, 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

² The court later noted, in an opinion clarifying Wyatt, that “[w]ithout the tort of interference with parental rights, the father would have had no remedy for the wrong done to him.” Padula-Wilson v. Landry, 841 S.E.2d 864, 869 (Va. 2020).

³ The Virginia Court of Appeals recently noted that “to date, adoption provides the only context in which the Supreme Court has recognized that the tort [of interference with parental rights] is available in Virginia.” Qiu v. Huang, 885 S.E.2d 503, 509 (Va. Ct. App. 2023).

⁴ 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[.]”). See also S.C. Code Ann. § 15-1-320(a) (“All references to minors in the law of this State shall after February 6, 1975, be deemed to mean persons under the age of eighteen years except in laws relating to the sale of alcoholic beverages[.]”).

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.”). The Reception Statute is irrelevant to this dispute because, as set forth in Section I, *infra*, the modern cause of action for tortious interference with parental rights did not exist under English common law.

B. The cause of action asserted by Petitioner is not currently recognized in South Carolina.

None of Petitioner’s eight causes of action for tortious interference with parental rights are based on purported common law rights. Rather, they are based on rights ostensibly arising under the United States Constitution and the South Carolina Constitution. Paragraphs 24, 29, 33, 37, 41, 45, 49, and 53 of the Complaint allege that Respondents “interfered with [Petitioner’s] State and Federal Constitutional rights to raise her child.” (App. pp. 65, 66, 67, 68, 69 & 70). In other words, Petitioner is essentially seeking to assert the equivalent of a 42 U.S.C. § 1983 claim against private, non-governmental parties who are not alleged to have acted under color of law. Needless to say, no such claim has ever been recognized in South Carolina or elsewhere because “constitutional rights are protected from infringement by governments, not private parties[.]” Tinsley v. Bundy, No. 8:92-cv-00980-HMH-WMC, 1992 U.S. Dist. LEXIS 23103, at *4 (D.S.C. Sep. 30, 1992). See also, e.g., White Coat Waste Project v. Greater Richmond Transit Co., 35 F.4th 179, 189-90 (4th Cir. 2022) (noting that “§ 1983 contains a distinct color-of-law requirement” and “applies, by its terms, only to a person who, under

color of any statute, ordinance, regulation, custom, or usage, of any State or Territory deprives a person of a constitutional or statutory right, privilege, or immunity”) (citations and quotation marks omitted); Peirce v. Bryant, No. 4:14-cv-02927-BHH, 2015 U.S. Dist. LEXIS 124050, at *3-4 (D.S.C. Sep. 17, 2015) (“Because the United States Constitution regulates only the government, not private parties, a litigant claiming that his constitutional rights have been violated must first establish that the challenged conduct constitutes ‘state action.’”); Richardson v. FBI, No. 4:11-cv-00010-RBH-SVH, 2011 U.S. Dist. LEXIS 40337, at *14 (D.S.C. Mar. 8, 2011) (“Purely private conduct . . . , no matter how wrongful, injurious, fraudulent, or discriminatory, is not actionable under 42 U.S.C. § 1983[.]”). Cf. Justice v. Meares, No. 3:19-cv-00185, 2021 U.S. Dist. LEXIS 145968, at *36-37 (E.D. Tenn. Aug. 4, 2021) (“Both the United States and Tennessee Constitutions encompass a fundamental right for parents to the care, custody, and control of their children. This right, however, is protected only from unwarranted *state* intervention. As a result, to state a claim for tortious interference with parental rights, a plaintiff must allege state action.”) (italics in original) (citations and quotation marks omitted).

Even if Petitioner had based her causes of action for tortious interference with parental rights on purported common law rights, it would still be the case that no such cause of action is recognized in South Carolina. See, e.g., South Carolina Damages § VI.29.B.14 (2009) (“Tortious Interference with Parental Rights is a cause of action that is not yet recognized in South Carolina.”). Petitioner initially admitted as much, writing in her return to Respondents’ motions to dismiss 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.” (App. p. 114). Now, however, she appears to

assert that such a cause of action was recognized in Kirkpatrick v. Lockhart, 4 S.C.L. (2 Brev.) 276 (1809). However, that case merely modified the common law writ of abduction to eliminate loss of services as an essential element, thus allowing a father to sue for “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[.]” Id. In other words, it allowed a father in an abduction action to sue for loss of filial consortium, a holding inconsistent with—and that was effectively overruled by—Doe v. Greenville County School District, 375 S.C. 63, 69, 651 S.E.2d 305, 308 (2007) (“Today, we . . . [hold] that South Carolina law does not recognize claims for loss of filial consortium.”). 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.”).

Like the plaintiff in Doe, Petitioner seeks to recover 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.” Pet. Br. at 16. These are precisely the types of losses rejected in Doe as characterizing a filial consortium claim. See 375 S.C. at 68-70, 651 S.E.2d at 308 (noting that “the intangible losses of aid, companionship, and society . . . have traditionally defined loss of consortium claims”). Accordingly, the Plaintiff’s causes of action for tortious interference with parental rights are simply filial consortium claims—which are not recognized in South Carolina—by another name. See, e.g., 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.”). The Order and the decision of the Court of Appeals should be affirmed for this reason.

III. SUCH A CAUSE OF ACTION SHOULD NOT BE JUDICIALLY ADOPTED.

A. Whether to recognize such a cause of action is a legislative decision.

When it comes to recognition of consortium claims—which is effectively what Petitioner is asserting—this Court has long deferred to the legislature. For example, in Taylor v. Medenica, 324 S.C. 200, 479 S.E.2d 35 (1996), the Court took note of the legislature’s enactment of S.C. Code Ann. § 15-75-20⁵ and held: “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.” 324 S.C. at 222, 479 S.E.2d at 47. See also Long v. Wray Auto., Inc., No. 3:06-cv-01199-JFA, 2006 U.S. Dist. LEXIS 88920, at *11 (D.S.C. Dec. 8, 2006) (“[T]he [South Carolina Supreme] Court held [in Taylor] as a policy matter that any extension of a cause of action for loss of consortium should be delegated to the South Carolina General Assembly.”). In Doe v. Greenville County School District, 375 S.C. 63, 651 S.E.2d 305 (2007), this Court referenced Taylor, writing: “In Taylor v. Medenica, this Court held that the determination of which relationships may give rise to a loss of consortium claim in South Carolina is one best left to the discretion of the legislature.” Id. at 69, 651 S.E.2d at 308. The Doe court ultimately concluded that, “in absence of some action from the legislature, this Court has no authority upon which it could rely in finding that South Carolina law recognizes claims for loss of filial consortium.” 375 S.C. at 70, 651 S.E.2d at 308. See also Long, 2006 U.S. Dist. LEXIS 88920, at *12 (D.S.C.

⁵ Section 15-75-20 provides, in part: “Any person may maintain an action for damages arising from an intentional or tortious violation of the right to the companionship, aid, society and services of his or her spouse.” The recoverable damages—loss of companionship, aid, and society—are the same types sought by Petitioner.

Dec. 8, 2006) (“[A]ny decision whether to create a cause of action for loss of filial consortium should . . . be left exclusively to the South Carolina General Assembly.”).

A review of the claims at issue in Doe and Kirkland v. Sam’s East, Inc., 411 F. Supp. 2d 639 (D.S.C. 2005)—in comparison to the Petitioner’s claim in this case—illustrates why this Court has deferred to legislative judgment when it comes to consortium claims. In Doe, this Court rejected a claim by a father and mother for relational/companionship damages arising out of the alleged sexual abuse of their 14-year-old daughter by a public school teacher. In Kirkland, Judge Duffy rejected a claim by a father and mother for relational/companionship damages arising out of bodily injuries allegedly suffered by their daughter in a motor vehicle accident involving an alleged tire failure. In this case, Petitioner seeks to recover relational/companionship damages arising out of alleged interference with her constitutional rights as a parent. Should she be allowed to seek such damages when the parents in Doe and Kirkland were not? If so, why? What is the basis for drawing a distinction between filial consortium claims based on sexual abuse (Doe) or bodily injury (Kirkland) and filial consortium claims based on alleged interference with parental rights? The answers involve balancing competing public policy considerations, and this Court has wisely found that such questions are “best left to the discretion of the General Assembly.” Taylor, 324 S.C. at 222, 479 S.E.2d at 47. See also Garren v. Cummings & McCrady, Inc., 289 S.C. 348, 350-51, 345 S.E.2d 508, 510 (Ct. App. 1986) (“A change in the law which has the power to so deeply affect social and business relationships should only be made after a thorough analysis of all the relevant considerations. The type of analysis required is best conducted by the legislature using all of the methods it has available to it to invite public participation.”) (citation and quotation marks omitted).

B. The judicial recognition of such a cause of action by other states is no reason for South Carolina to follow suit.

Petitioner’s brief notes that a number of states have judicially recognized a cause of action for tortious interference with parental rights. This Court should reject her *argumentum ad populum* and refuse to abandon its deference to the legislature on an important matter of public policy for the sake of trendiness. This is so even if it means that, for the time being (i.e. until the legislature acts), South Carolina may find itself—as it is on several other issues—in the so-called “minority” position. See, e.g., James v. Kelly Trucking Co., 377 S.C. 628, 634, 661 S.E.2d 329, 332 (2008) (adopting the minority rule that a plaintiff is not prohibited from pursuing a negligent hiring, training, supervision, or entrustment claim once respondeat superior liability has been admitted); Goodwin v. Johnson, 357 S.C. 49, 58, 591 S.E.2d 34, 39 (Ct. App. 2003) (“We adopt the minority rule that a court of equity possesses the plenary power to relocate an easement by necessity when the evidence supports such a move.”); Calhoun v. Calhoun, 339 S.C. 96, 100, 529 S.E.2d 14, 17 (2000) (adopting the minority rule that pro se attorney litigants may not recover attorneys’ fees); S.C. Dep’t of Highways & Pub. Transp. v. E.S.I. Investments, 332 S.C. 490, 494, 505 S.E.2d 593, 596 (1998) (adopting the minority rule that trial judges in condemnation actions may exercise discretion in determining whether to admit or exclude evidence that an expert witness was initially employed by the opposing party); Perry v. Heirs at Law & Distributees of Gadsden, 316 S.C. 224, 226, 449 S.E.2d 250, 251 (1994) (recognizing that South Carolina follows the minority rule in boundary dispute cases that “possession under a mistaken belief that property is one’s own and with no intent to claim against the property’s true owner cannot constitute hostile possession”); Jones v. City of Columbia, 301 S.C. 62, 65, 389 S.E.2d 662, 663 (1990) (“South Carolina follows the

minority rule that the issue of probable cause is a question of fact and ordinarily one for the jury.”); Vickers v. Vickers, 255 S.C. 25, 31, 176 S.E.2d 561, 563 (1970) (reaffirming South Carolina’s adherence to the minority rule that constructive desertion is grounds for divorce only where the leaving spouse left because of the other spouse’s conduct which amounted to a fault ground for divorce); Jacobson v. Yaschik, 249 S.C. 577, 584-85, 155 S.E.2d 601, 605 (1967) (adopting the minority rule that “officers and directors of a corporation stand in a fiduciary relationship to the individual stockholders and in every instance must make a full disclosure of all relevant facts when purchasing shares of stock from a stockholder”).

C. Other remedies are already available.

Respondents recognize—and wholeheartedly support—the fundamental interest that parents have in the care, custody, and control of their children. However, the sanctity of the parent-child relationship does not necessarily require that parents have a filial consortium claim against third parties who 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 for 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).

D. Petitioner’s damages are speculative.

According to the Complaint, Zoe first ran away from Petitioner’s home to Mr. Ryan’s home on or about September 26, 2020. (App. p. 64, ¶ 16). The Complaint redacts the date that Zoe turned 18 (App. p. 63, ¶ 8), but it was plainly before November 13, 2020, when Zoe allegedly entered into a contract with Richard Winn.⁶ (App. p. 63, ¶ 9). As previously mentioned, 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. Thus, Petitioner 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 Petitioner during the final seven weeks of Zoe’s minority would be wholly speculative.

⁶ On page 5 of her Petition for Writ of Certiorari, Petitioner asserted that “Zoe was later found, with the assistance of the police, at the home of Respondent-Defendant Ryan,” and that, “[s]hortly thereafter, Zoe turned eighteen (18) and immediately left home again and began residing with Respondent-Defendant Ryan[.]”

E. 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.

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

In any child custody dispute, the primary concern is the best interests of the child. But the causes of action asserted by Petitioner are primarily concerned with the custodian's financial remuneration rather than the child's best interests (which, as set forth above, can already be vindicated by other methods). In the words of the late Judge Barksdale:

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

Simmons v. Simmons, 41 F. Supp. 545, 548 (D.S.C. 1941). See also Larson v. Dunn, 460 N.W.2d 39, 46 (Minn. 1990) (“Creating this new tort would *create* a new wrong. It would place innocent children in the middle of a vigorous, probably vicious, lawsuit[.]”) (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.⁷ South Carolina is home to several nonprofits that exist to provide such assistance,⁸ but they may be forced to rethink their methods if their provision of aid to troubled youth could expose them to tort claims for interference with parental rights. Cf. Larson, 460 N.W.2d at 46-47 (“If a parent or grandparent believes a child is in danger, that parent or grandparent will probably not stop to consider tort liability before acting to protect the child. It will not add to the dignity of the law if grandparents are sued for providing shelter to their grandchildren in such situations.”).

IV. 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 this Court decides to adopt the new cause of action proposed by Petitioner, 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.”).

⁷ This public policy is notably embodied in the Runaway and Homeless Youth Protection Act, in which Congress sought to address a crisis of “youth who have become homeless or who leave and remain away from home without parental permission” and “are at risk of developing, and have a disproportionate share of, serious health, behavioral, and emotional problems[.]” 34 U.S.C. § 11201(1).

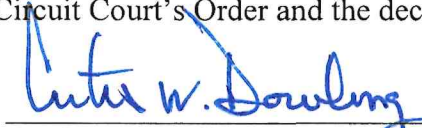
⁸ A Google search revealed the following organizations whose missions appear to include providing assistance to troubled youth: Carolina Youth Development Center, Hope Center for Children, Palmetto Place, Sea Haven for Youth, and United Way. Of course, this is not an exhaustive list.

V. SUCH A CAUSE OF ACTION IS EXCLUSIVELY INTENTIONAL.

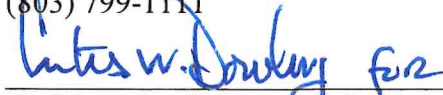
Courts that have adopted the tort theory described in Restatement (Second) of Torts § 700 have noted that it is exclusively intentional. See, e.g., Kessel v. Leavitt, 511 S.E.2d 720, 766 (W. Va. 1998) (“A party . . . cannot be held liable for tortious interference with a parental or custodial relationship if he/she acted negligently, rather than intentionally[.]”). Accordingly, the Complaint’s causes of action for negligent tortious interference with parental rights are not viable—and their dismissal must be affirmed—even under the arguments advanced by Petitioner.

CONCLUSION⁹

For the reasons set forth herein, Respondents respectfully request that both the Circuit Court’s Order and the decision of the Court of Appeals be affirmed.

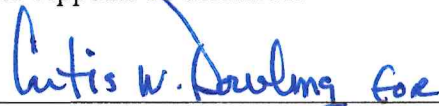


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April 22, 2024

⁹ Respondents deny the conclusory factual allegations contained in the second sentence of the “Conclusion” section of Petitioner’s brief.