

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge
Charleston County

Case No. 2015-CP-10-05093
Appellate Case No. 2016-001337

RECEIVED
SEP 19 2018
SC Court of Appeals

Leisel ParadisAppellant,

v.

Charleston County School District, James Island Charter High School, Robert Bohnstengel, and
Stephanie Spann, in their individual capacities Respondents.

RESPONDENTS' RETURN TO APPELLANT'S PETITION FOR REHEARING

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As an initial matter, Appellant's Petition for Rehearing should be dismissed because it fails to comply with Rule 221(a), SCACR, which requires a petition for rehearing to state "with particularity the points supposed to have been overlooked or misapprehended by the court." Rather than clearly highlight any errors in the court's decision, Appellant instead alleges that, by declining to request a rehearing on her defamation claim, the damages she pled for civil conspiracy cannot be duplicative and, thus, the civil conspiracy claim must survive.

Appellant clearly ignores the fact a dismissal of an action under Rule 12(b)(6), SCRCP, is based on the Complaint and *not* on the Appellant's Petition for Rehearing. Appellant has, in large part, used this procedural rule to do exactly what the South Carolina Supreme Court cautioned litigants not to do:

We regard this as an opportune time to say some things regarding petitions for rehearings, which, perhaps, we should have said a long time ago. The purpose of a petition for rehearing seems not to be fully understood by some members of the bar. Petitions of that character are allowed by the terms of rule 17 of this court. The purpose of such a petition is to aid the court in deciding correctly a case heard by it. The petition must show, according to the rule, 'the points supposed to have been overlooked or misapprehended by the Court.' The purpose of a petition for rehearing is not to have presented points which lawyers for the losing parties have overlooked or misapprehended, and the purpose of a petition for rehearing is not just to have the case tried in this court a second time.

Petitions for rehearing are filed in at least three-fourths of the cases decided by this court. Many of them, we fear, some time, are filed just for delay. It is a rare thing when the court grants such a petition. Usually, they are dismissed with a simple order to that effect, for the reason that they contain nothing but a "rehash" of what the losing party has said before, matters which the court has already considered well and disposed of.

Arnold v. Carolina Power & Light Co., 167 S.E. 234, 238 (1933)

However, should the court entertain Appellant's argument, Respondents assert that the Petition should nonetheless be denied because the court did not overlook any points raised by Appellant and correctly applied the law to the allegations in the Complaint.

I. A CLAIM FOR CIVIL CONSPIRACY DOES REQUIRE A PLEA FOR SPECIAL DAMAGES, AND APPELLANT FAILED TO PLEAD THEM.

The basis of the court's affirmance of the circuit court's dismissal of Appellant's civil conspiracy claim is that she "failed to plead any damages other than the general damages which arise from alleged defamatory acts." Paradis v. Charleston Cty. Sch. Dist., Op. No. 5583, No 2016-001337, 2018 WL 3636581, at *5 (Ct. App. Aug. 1, 2018) Rather than demonstrating any legal error, Appellant now maintains that, because she is not requesting a rehearing on her defamation claim, she need not plead special damages.

In her Petition, Appellant relies on Todd v. S.C. Farm Bureau Mut. Ins. Co., 276 S.C. 284, 278 S.E.2d 607 (1981), Vaught v. Waites, 300 S.C. 201, 387 S.E.2d 91 (Ct. App. 1989), and 15A C.J.S. Conspiracy §3, which, Appellant concedes, all clearly state that special damages must be plead to sustain an action for civil conspiracy. However, Appellant goes on to argue that the reason for pleading damages in a civil conspiracy claim is to prevent double recovery, a concern which she suggests is eliminated by the dismissal of her defamation claim. This argument which again misapprehends the basis of a 12(b)(6) dismissal. Appellant goes on to urge this court, for the first time, to overrule Todd, 276 S.C. 284, 278 S.E.2d 607. This argument is too late and must be disregarded. Kennedy v. South Carolina Retirement System, 564 S.E.2d 322, 322, 349 S.C. 531, 532 (2001) ("Court cannot consider new argument in a petition for rehearing that was not previously raised.")¹

Because Appellant failed to plead special damages *in her complaint* and has not demonstrated any error in the court's decision, Appellant's Petition for Rehearing must be denied.

II. THE DISMISSAL OF APPELLANT'S CAUSE OF ACTION FOR DEFAMATION DOES NOT RENDER HER CLAIM FOR CIVIL CONSPIRACY ACTIONABLE.

¹ Appellant cites Rule 217, SCACR, to support the propriety of her argument against precedent. However, this Rule applies to briefs and not to motions.

Again, Appellant completely overlooks the procedural posture of this case. She initiated an action against Respondents for defamation and civil conspiracy. The circuit court dismissed both claims and, in particular, found that Appellant had failed to *plead* special damages *in her complaint* with regard to the cause of action for civil conspiracy. Despite Appellant's statement in her Petition for Rehearing, she *did* appeal the dismissal of both claims. The court of appeals upheld the decision of the lower court, but did not rewrite the complaint. The complaint remains as pled, and the civil conspiracy claim did not and cannot survive because no interceding action by the court has changed the fact that Appellant failed to plead special damages.

For these reasons, Appellant's Petition for Rehearing should be denied.

III. THE MERE FACT THAT APPELLANT'S CLAIM FOR CIVIL CONSPIRACY WAS AGAINST THE INDIVIDUAL RESPONDENTS DOES NOT TRANSFORM HER CAUSE OF ACTION INTO A SUSTAINABLE ONE.

Even if the court were to consider Appellant's argument that she pled special damages in her cause of action for civil conspiracy, simply because this claim was brought against different defendants, the court should nonetheless deny Appellant's Petition for Rehearing. First, unlike the appellants in Allegro v. Scully, 418 S.C. 24, 791 S.E.2d 140 (2016), Appellant here did not move to argue against the precedent in Todd, and cannot now do so in her Petition. Although Appellant did cite to the Allegro dissent in her Final Brief, she concluded her argument there by stating that "[t]his court need not address the propriety of the special damages element, as Paradis properly and sufficiently plead special damages. (Appellant Final Brief, p. 14).

Despite the Allegro dissent, the elements of an action for civil conspiracy specifically require a plea for special damages, and Appellant failed to plead them in her complaint. Appellant fails to cite any case law that supports her contention that a claim for civil conspiracy, lodged

against entities who are not specifically named in any other tort claims, need to include a claim for special damages. Accordingly, Appellant's Petition should be denied.

IV. THE COURT OF APPEALS EMPLOYED THE PROPER STANDARD OF REVIEW FOR DECIDING A MOTION TO DISMISS UNDER RULE 12(b)(6), SCRCP.

The appellate court correctly reviewed the circuit court's dismissal of Appellant's complaint, giving her all appropriate latitude in bringing her claim for civil conspiracy. Paradis, 2018 WL 3636581, at *1. However, the court of appeals found that Appellant's claim for civil conspiracy was insufficient to entitle to her any relief even under this standard. Id. at *5. Because Appellant fails to state with particularity how the court of appeals misapplied this standard of review, her Petition for Rehearing must be denied.

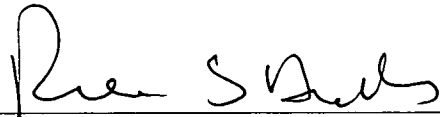
V. THE COURT OF APPEALS CORRECTLY DECLINED TO REVERSE THE CIRCUIT COURT'S REFUSAL TO GRANT APPELLANT LEAVE TO AMEND HER COMPLAINT.

Again, Appellant misapprehends the purpose of a Petition for Rehearing, and fails to illustrate how the court of appeals failed to assign error to the circuit court in denying Appellant's motion for leave to amend her Complaint. Rather, she contends that her damages for "ostracism" and "blacklisting" as a teacher are different from those suffered by other types of employees allegedly subject to a civil conspiracy by their employers. However, in properly pleading a cause of action for civil conspiracy, Appellant had to plead separate special damages as compared to those suffered as a result of her defamation claim, *not* as compared to those sustained by other types of employees. The court of appeals held that these "reputational damages are precisely the damages one would expect from defamatory statements." Id. Appellant fails to specifically demonstrate how the court erred in likening the damages alleged in both the defamation and civil

conspiracy claims. Thus, Appellant's Petition for Rehearing on her motion to amend her complaint should be denied.

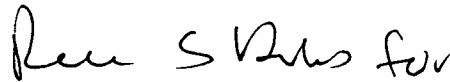
CONCLUSION

For all these reasons, Appellant's Petition for Rehearing should be denied, and the decision of the South Carolina Court of Appeals should stand as issued.



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Charleston, South Carolina
September 17, 2018

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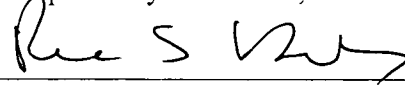
PROOF OF SERVICE

I do hereby certify that on September 17, 2018 I have served all counsel of record in this
action with a copy of the documents herein below specified by mailing a copy of the same by
United States mail, postage prepaid, to the following address:

Documents: **Respondents' Return to Appellant's Petition for Rehearing
Proof of Service**

Counsel Served: J. Lewis Cromer, Esquire
 J. Paul Porter, Esquire
 Cromer Babb Porter & Hicks, LLC
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Respectfully submitted,



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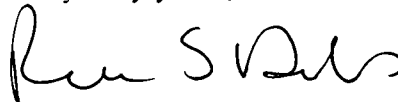
The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

*Re: Leisel Paradis v. Charleston County School District, James Island Charter High School, Robert Bohnstengel and Stephanie Spann, in their individual capacities
Appellate Case Number: 2016-001337*

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of Respondents' Return to Appellant's Petition for Rehearing and Proof of Service for the above-referenced case. Please file the original and return a clocked copy of the Return and Proof of Service in the enclosed self-addressed, stamped envelope.

Very truly yours,



Rene S. Dukes

RSD/dlh
Enclosures

cc: J. Lewis Cromer, Esq. (via U.S. Mail)
J. Paul Porter, Esq. (via U.S. Mail)
Robert Conley, Esq. (via U.S. Mail)
Emmanuel J. Ferguson, Esq. (via U.S. Mail)