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

Case No. 2016-001337
Appellate Case No.: 2016-001337

Leisel Paradis ..... Appellant

v.

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

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APPELLANT'S REPLY TO RESPONDENTS' RETURN TO APPELLANT'S PETITION FOR REHEARING

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This Court affirmed the grant of a motion to dismiss on August 1, 2018 on Petitioner/Appellant Leisel Paradis' claims of defamation against Respondents Charleston County School District and James Island Charter High School and civil conspiracy against Respondents Robert Bohnstengel and Stephanie Spann. Specifically, the Court determined that Paradis' defamation claim, related to her placement on a performance improvement program, was foreclosed by the S.C. Code Ann. § 15-78-60(5) (discretionary immunity) because the entity respondents had the explicit statutory authority to place her on that program and that Paradis' conspiracy claim against the individual respondents failed for want of special damages. Paradis filed a Petition for Rehearing on August 16, 2018. Paradis only challenges the conspiracy ruling and has proffered the following specific arguments:

1. Special damages are not or should not be required to plead a conspiracy claim.
2. Now, having conceded her sole other claim, Paradis' conspiracy damages are sufficient.
3. Paradis' damages were special damages because they were the only damages sought against the Individual Respondents.
4. This Court's finding that Paradis did not plead special damages misapplied the standard of review.
5. Paradis should have been given leave to amend [the conspiracy claim].

(Petition for Rehearing p. 1). Respondents filed a Return to that petition on September 17, 2018. Paradis, as directed by Rule 240(f), SCACR, briefly replies to that return and would respectfully show the Court that the above grounds for rehearing are appropriate and merit rehearing.

1. This Petition is Proper.

The Respondents, before addressing the grounds for Paradis' petition, initially argue that her petition does not comply with Rule 221(a), SCACR. Rule 221(a) requires that a petition "state with particularity the points supposed to have been overlooked or misapprehended by the court." Paradis'

petition does so. Paradis makes five specific arguments, of those arguments: four arguments[1] were all raised and, from her perspective, overlooked or misapprehended by the Court and a fifth argument (argument 2 in the petition–that special damages are no longer an issue because Paradis does not challenge the Court's defamation determination) became apparent based on the procedural posture of this case.

Respondents, though they present this introductory, technical argument as broadly dispositive, are primarily concerned with the latter argument. Respondents attempt use the Court's admonition against raising arguments that "losing parties have overlooked or misapprehended" to foreclose Paradis' petition. (Return p. 1); *citing, Arnold v. Carolina Power & Light Co.*, 168 S.C. 163, 167 S.E. 234, 238 (1933). Respondents proffer a false analogy. Paradis, in arguing that her decision not to challenge this Court's defamation ruling renders the special damages problem irrelevant, is not positing an argument she overlooked or misapprehended; rather, she is making an argument that arises now because she did not challenge the Court's ruling on her defamation claim. Contrary to the Respondents' suggestion, neither the *Arnold* decision nor Rule 12, SCRCP dictate that the Court or a litigant must ignore the changing legal landscapes of a case.

The difference between why Paradis challenged the Circuit Court's defamation decision but does not challenge this Court's ruling on the same claim informs the present procedural posture and supports Paradis' ability to raise the argument at issue. The proposed order signed by the Lower Court relied on the demurrer standard of review, based its defamation ruling on inapplicable pre-tort claims act case law, and did not cite to a specific S.C. Code Ann. § 15-78-60 exception to the South Carolina Tort Claims Act's waiver of immunity in its determination that the entity respondents were immune

[1] Those four arguments, as ordered in the Petition, being: (1) her challenge to the *Todd* rule; (3) her argument that the special damages requirement is met against Respondents Bohnstengel and Spann because conspiracy is the only action against those Respondents; (4) her Standard of Review argument; and (5) her Leave to Amend argument)

from suit. This Court's defamation decision was based on a specific tort claims act exception, was supported by governing case law, and did not incorporate the demurrer standard of review. Thus, this Court essentially fixed the Lower Court's defamation ruling and rendered Paradis' earlier justifiable defamation arguments moot. The Respondents' argument that Paradis' Petition did not comply with Rule 221(a), SCACR, within the above context, is unsupported, fosters an inequity, and should be disregarded.

2. Respondents' Specific Arguments are Unpersuasive.

Paradis, having addressed Respondents' attempt to thwart her Petition on a technicality, now replies to the Respondents' specific response to her arguments.

2.1. The vulnerability of *Todd* as applied to special damages is readily ascertainable.

Paradis, though she maintained she pled special damages, challenged the applicability of the *Todd* rule on brief. (Initial Brief pp. 13-14), (Reply Brief pp. 8-9, fn. 5); *citing, Allegro v. Inc.. v. Scully*, 418 S.C. 24, 791 S.E.2d 140 (2016); *see also, Todd v. S.C. Farm Bureau Mut. Ins.* Co., 276 S.C. 284, 292, 278 S.E.2d 607, 611 (1981); *citing* 15A C.J.S. Conspiracy § 33, at 178. Thus, this is not a new argument as Respondents suggest. (Return p. 2). Moreover, when the merits of Paradis' argument on *Todd* are considered they warrant rehearing and reversal. *Todd* relied on 15A C.J.S. Conspiracy § 33 to instill special damages as a pleading requirement; however, that authority plainly dealt with damages and election of remedies as opposed to pleading:

> Where the particular acts charged as a conspiracy are the same as those relied on as the tortious act or actionable wrong, plaintiff cannot recover damages for such act or wrong, and recover likewise on the conspiracy to do the act or wrong.

15A C.J.S. *Conspiracy* § 33. Because *Todd* and its progeny mistakenly imposed a pleading requirement with respect to an issue dealing with the election of remedies, the *Todd* rule on special damages should be reversed and Paradis' Petition for Rehearing should be granted.

2.2. The posture of this case renders any asserted deficiency with special damages irrelevant.

The Respondents, with respect to Paradis' argument that special damages is no longer an issue because her sole remaining claim is conspiracy, rehash their introductory argument. Paradis, for the reasons discussed at section 1 above, can appropriately argue that special damages are no longer at issue because she no longer pursues her defamation claim. The Respondents have failed to cite to any applicable authority to the contrary. Therefore, the *Todd* rule cannot foreclose Paradis' conspiracy claim because *Todd* and its progeny were specifically concerned with duplicative damage allegations and the purported problem of duplicity has been eviscerated by this Court's unchallenged defamation holding. *See, Todd,* 278 S.E.2d at 611 (1981) ("Todd seeks damages in his first four causes of action for the same acts incorporated by the fifth cause. He is therefore precluded from seeking damages for the same acts yet again.").

2.3. That the individual respondents were the only conspiracy defendants renders any asserted deficiency with special damages irrelevant.

Respondents argue here that the requirement that special damages be pled applies to an entire action even where conspiracy is the only claim pled against a defendant or defendants. That argument is made without precedential support.[2] This Court in *Hackworth v. Greywood at Hammett* and the Supreme Court's decision in *Todd* both dealt with duplicative damages alleged across multiple claims against the same party or parties. *See, Todd,* 278 S.E.2d 607; *and, Hackworth,* 385 S.C. 110, 682 S.E.2d 871 (Ct. App. 2009). This case is distinct since the only claim brought against Respondents Bohnstengel and Spann is conspiracy.[3]

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[2] Respondents, to the extent they argue *Allegro* supports their argument because it reversed the denial of a JNOV on the conspiracy claim against Petitioner Corbin (who was only sued for conspiracy), overlooks the fact that the *Allegro* majority did not address this issue.

[3] Respondents, in this section, also appear to argue that Paradis' *Todd* argument is not preserved because she did not file a motion to argue against precedent. (Return p. 3). This argument is misplaced as it does not apply to the argument that special damages are not at issue against the conspiracy respondents. Furthermore, Paradis did preserve her argument on this issue on brief and before the

2.4. The Court's special damages ruling naturally required drawing inferences in favor of the Individually Respondents.

Respondents make a strawman argument that Paradis "fail[ed] to state with particularity how the court of appeals misapplied [the standard of review]". (Return p. 4). Paradis specifically argued on this point that the Court's determination that her defamation and conspiracy damages, which are different in substance and form (R. pp. 23-24), were "precisely the damages one would expect from defamatory statements" required an impermissible inference to be drawn in favor of the Respondents. This is a valid and specific argument for rehearing and the Respondents effort to obscure the issue by creating a strawman should be disregarded.

2.5. The Court, at worst, should have given Paradis leave to amend.

Respondents argument on Paradis' Petition for leave to amend simply restates the above argument regarding the standard of review and crafts another strawman conclusively stating that Paradis "fail[ed] to illustrate how the court [erred in denying her leave to amend]". This, like Respondents' prior strawman argument, should be disregarded. Paradis did directly challenge the Court's denial of leave to amend in her Petition by targeting the Court's determination that she did not proffer proposed changes against the specific explanations of her special damages that she provided on oral argument. (Petition pp. 8-9). Paradis has shown the Court that an amendment would cure the asserted deficiencies and she should be given a rehearing on her request for leave to amend.

3. Conclusion

Paradis, based on the above and her initial Petition for Rehearing, respectfully asks this Court to grant her a rehearing and ultimately reverse the Circuit Court's decision as to civil conspiracy.

Lower Court. (R. pp. 82-83), (Appellant Brief pp. 13-14). Moreover, Respondents have failed to cite to any precedent supporting its contention that a Rule 217, SCACR motion to argue against precedent is required for issue preservation where the subject precedent is appropriately challenged on brief.

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September 24, 2018

THE STATE OF SOUTH CAROLINA
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APPEAL FROM CHARLESTON COUNTY
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J.C. Nicholson Jr., Circuit Court Judge

Case No. 2015-CP-10-5093

Leisel Paradis ..... Appellant

v.

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

PROOF OF SERVICE

I certify that I, the undersigned employee of Cromer Babb Porter & Hicks, LLC, caused to have served Appellant's Reply to Respondents' Return to Appellant's Petition for Rehearing on counsel for Respondents by depositing a copy of it in the United States Mail, postage prepaid, on September 24, 2018, addressed to Rene S. Dukes, Esquire of Rosen, Rosen, & Hagood, LLC, PO Box 893, Charleston, SC 29402 and Bob J. Conley of Cleveland & Conley, LLC, 171 Church St., Suite 310, Charleston, SC 29401.

[Signature Block on Next Page]

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September 24, 2018

VIA HAND-DELIVERY
Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: Leisel Paradis v. Charleston County School District, et al.
Case No. 2016-001337

Dear Ms. Kitchings:

Enclosed for filing are the original and six (6) copies of the Appellant's Reply to Respondent's Return to Appellant's Petition for Rehearing in the above-referenced matter, along with the Proof of Service. Please file the original and return a filed copy to our runner.

Please feel free to contact me should you have any questions.

With kindest regards, I am

Sincerely,

Kate M. Ray
Litigation Paralegal

/kmr
Enclosures

cc: Rene S. Dukes, Esquire
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