

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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**RECEIVED**

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

DEC 19 2018

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

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**S.C. SUPREME COURT**

Appellate Case No. 2018-002025  
Published Opinion No. 5583 (S.C. Ct. App. Filed Aug. 1, 2018)

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Leisel Paradis, ..... Petitioner

vs.

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

Of whom Robert Bohnstengel, and Stephanie Spann are the ..... Respondents.

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**RESPONDENTS' RETURN TO PETITION FOR WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

1. Should the Court reverse the special damages requirement on civil conspiracy claims arising from Todd v. S.C. Farm Bureau Mut. Ins. Co.?
2. If the Court preserves the Todd Rule, did the Court of Appeals err in ruling that special damages were not sufficiently pled?

## STATEMENT OF THE CASE

The within action was filed by Petitioner on September 17, 2015, in the Charleston County Court of Common Pleas alleging causes of action for defamation against James Island Charter School (Charter School) and Charleston County School District (District) and for civil conspiracy against Robert Bohnstengel (Bohnstengel) and Stephanie Spann (Spann).

On November 30, 2015, all Respondents filed a Motion to Dismiss Plaintiff's Complaint. The Charter School and Spann filed an Amended Motion to Dismiss on March 18, 2016, and the District and Bohnstengel filed an Amended Motion to Dismiss on March 21, 2016. The issues were fully briefed by all parties, and a hearing was held on the Motions to Dismiss on March 30, 2016.

After considering the written and oral arguments of counsel, Judge Nicholson issued his Order dated April 15, 2016, granting Respondents' Motions. Petitioner filed a Motion to Reconsider on April 29, 2016, and Respondents filed a joint Response to Plaintiff's Motion to Reconsider on May 12, 2016. Judge Nicholson denied Petitioner's Motion to Reconsider by Order of May 19, 2016.

After the issues were fully briefed and argued, the South Carolina Court of Appeals affirmed the decision of the circuit court in Paradis v. Charleston County School District, 424 S.C. 603, 819 S.E.2d 147 (Ct. App. 2018). The Court of Appeals also denied Petitioner's Petition for Rehearing by Order filed October 18, 2018.

## STATEMENT OF FACTS<sup>1</sup>

Petitioner was an employee of the District and taught English at the Charter School. (R. p. 17, ¶ 1). Bohnstengel is the former principal of the Charter School, and Spann is an Assistant

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<sup>1</sup> The facts recited herein are taken from Petitioner's Complaint for purposes of this appeal.

Principal at the Charter School. (R. p. 18, ¶¶ 4, 5). Petitioner alleges Bohnstengel became angry with her, after she informed him she wanted to file a police report regarding a violent and harassing assault she suffered from a student in her classroom during the 2012-13 school year. (R. p. 18, ¶¶ 8, 9). Shortly thereafter, Bohnstengel notified Petitioner she was being placed on SAFE-T/ADEPT evaluation for the following school year in accordance with a prior meeting between them. (R. p. 19, ¶ 12). Petitioner was shocked by this notification because she had not previously met with Bohnstengel, and she had met all her goals in her GBE (Goals Based Evaluation) for the 2012-13 school year. (R. p. 19, ¶¶ 11, 13).

Despite her efforts to reverse Bohnstengel's decision, Petitioner was subject to evaluation for the 2013-14 school year. (R. p. 19, ¶ 14). Bohnstengel was one of three evaluators for Petitioner; however, he was terminated before Petitioner's evaluation was complete. (R. pp. 19-20, ¶¶ 14, 15). Bohnstengel was then replaced by Maureen Jessup for the remainder of the evaluation period. (R. p. 20, ¶ 16). Petitioner failed the evaluation for the 2013-14 and was again placed on evaluation for the 2014-15 school year. (R. p. 20, ¶ 17).

Petitioner was concerned she would not be treated fairly in the second evaluation because Spann, who had been on the prior evaluation team, would again serve as one of her three evaluators. (R. pp. 19-20, ¶ 19). According to Petitioner, during the second year of evaluation, Spann changed the requirements of her evaluation, causing Petitioner to be confused. (R. pp. 19-20, ¶ 19).

Petitioner met with her mentor, Charity Scruggs (Scruggs), almost daily. (R. pp. 19-20, ¶¶ 18, 19). Scruggs noted Petitioner was under strain, but Scruggs also noted Petitioner was doing all she could to please the evaluators. (R. pp. 19-20, ¶ 19). Despite her efforts, Petitioner failed the evaluation during the second year, scoring lower at the end of the year than she had at the

beginning. (R. p. 20, ¶ 20). All Petitioner’s peers and colleagues were aware she was being evaluated and saw the physical and emotional toll it took on Petitioner. (R. p. 20, ¶ 21).

Petitioner was terminated because she failed the evaluation for two consecutive years. (R. p. 20, ¶22). Petitioner, thereafter, exhausted her administrative remedies. (R. p. 20, ¶22).<sup>2</sup>

Petitioner’s Complaint alleged a cause of action for defamation of character against the District and the Charter School, as well as a cause of action against Bohnstengel and Spann for civil conspiracy. Petitioner’s civil conspiracy claim is based on the following allegations: 1) “[t]he Individual Defendants Bohnstengel and Spann met, conspired, schemed and planned with others to rebuke Plaintiff and to cause her special damages in an evil and personal agenda motivated from a personal dislike of Plaintiff and her valid complaints of discipline issues, which was offensive to the Defendants, who had previously experienced issues with discipline and its negative effect upon JICHS and the District for reporting purposes[;]” and 2) “[b]ecause of the position of the Individual Defendants in JICHS administration, they were able to specially inflict their evil agenda upon the Plaintiff and did so outside the course and scope of their own employment in an intentional and malicious manner, including targeting the Plaintiff for an unwarranted and invasive evaluation.” (R. p. 23, ¶¶34-35) Petitioner’s civil conspiracy claim, as pled in her Complaint, is the pillar upon which Petitioner’s Petition hinges.

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<sup>2</sup> The administrative remedies available to a teacher are governed by the South Carolina Teacher Dismissal Act. Specifically, a teacher who has been terminated exhausts her administrative remedies when she requests a hearing before the District Board of Trustees and receives a determination from the Board as to “whether the evidence showed good and just cause” for the dismissal. S.C. Code Ann. § 59-25-470. Furthermore, the “teacher has the privilege of being present at the hearing with counsel and of cross-examining witnesses and may offer evidence and witnesses and present *any and all* defenses to the charges.” *Id.* § 59–25–470 (emphasis added). After considering the evidence, both the Board of the Charter School and the Board of the District upheld the termination of Petitioner.

## ARGUMENT

### **I. PETITIONER DID NOT PROPERLY PRESERVE HER ISSUE FOR REVIEW.**

Appellant's question as to whether Todd should be reversed is not proper for review by this Court. As the Court of Appeals aptly recognized: "Paradis has, for the first time on appeal, alleged damages she claims for civil conspiracy and defamation are for different parties, and are thus different damages. *We decline to address this issue as it was never raised to the circuit court.*" Paradis, 424 S.C. at 616, 819 S.E.2d at 154 (citing Pye, 369 S.C. at 56, 633 S.E.2d at 510) (emphasis added).

### **II. THE SOUTH CAROLINA SUPREME COURT SHOULD NOT REVERSE THE RULE LAID DOWN IN TODD.**

Even if Petitioner had properly preserved her issue and argument, Petitioner's request for review should be denied because the only argument Petitioner made to the circuit court, and attempted to make to the Court of Appeals, is that she adequately pled special damages. In other words, Petitioner's position in the circuit court acknowledged, rather than contested, she was required to plead and prove special damages. Accordingly, the issue Petitioner asks the Court review is not preserved for review, and this case is not an appropriate vehicle to overturn the long accepted rule set forth in Todd.

In Todd, the plaintiff alleged five causes of action against the defendant arising out of the termination of his employment: "(1) intentional interference with contractual relations, (2) extreme and outrageous conduct, (3) bad faith termination of the employment contract, (4) invasion of privacy, and (5) conspiracy to so damage the plaintiff." Todd v. S.C. Farm Bureau Mut. Ins. Co., 276 S.C. 284, 287, 278 S.E.2d 607, 608 (1981). The Todd court noted the plaintiff's claim for conspiracy was based solely on the allegations which gave rise to the remaining cause of action, with an additional request for damages resulting from the alleged conspiracy. Id. at 292-93, 278

S.E.2d at 611. Because the plaintiff failed to plead additional acts to support the claim of conspiracy, he had already sought damages for all the wrongful acts he pled. Id. In holding the plaintiff's civil conspiracy claim failed the Rule 12(b)(6) test, the Todd court relied on the rule set forth in 15A C.J.S. Conspiracy § 33:

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.

The Todd court correctly applied the rule, almost verbatim, to the allegations in the plaintiff's amended complaint and held because the plaintiff "seeks damages in his first four causes of action for the same acts incorporated by the fifth cause, [h]e is therefore precluded from seeking damages for the same acts yet again." Todd, 276 at 293, 278 S.E.2d at 611. Therefore, according to the Todd court, and as recognized consistently by the appellate courts in South Carolina during the almost four decades since Todd was decided, in order to plead a sustainable action for civil conspiracy, a plaintiff must allege additional acts in furtherance of the conspiracy and additional, or special, damages resulting from the conspiracy.

Notably, and important, 15A C.J.S. Conspiracy § 33 (Dec. 2018) adopted the pleading requirements originated by Todd, which has become the common law standard for a civil conspiracy claim in South Carolina since Todd was decided in 1981. The updated C.J.S. Conspiracy section with regard to damages arising from a civil conspiracy reads:

A general allegation of damages is sufficient unless special damages are sought. Since the essence of a civil-conspiracy claim is the special damage resulting to the plaintiff, the damages alleged must go beyond the damages alleged in other causes of action. If a plaintiff merely repeats in its civil-conspiracy claim the damages from another claim instead of specifically listing special damages as part of the civil conspiracy claim, its conspiracy claim should be dismissed. An allegation of conspiracy to commit a prima facie tort must allege special damages, or it will be insufficient.

15A C.J.S. Conspiracy § 33. The reason special damages must be pled and proved is because “[t]he gravamen of a civil conspiracy claim is the damage resulting to the plaintiff from the acts taken in furtherance of the combination....” Allegro, Inc. v. Scully, 418 S.C. 24, 33, 791 S.E.2d 140, 144 (2016) (citing Pye v. Estate of Fox, 369 S.C. 555, 568, 633 S.E.2d 505, 511 (2006)). For these reasons, Todd and its progeny are a correct application of the common law tort of civil conspiracy, and the requirement a plaintiff plead special damages should remain undisturbed.

For these reasons, Petitioner’s Petition for Writ of Certiorari on Question 1 should be denied.

### **III. PETITIONER FAILED TO PLEAD SPECIAL DAMAGES.**

Petitioner completely overlooks the procedural posture of this case. Petitioner initiated an action against Respondents for defamation and civil conspiracy. The circuit court dismissed both claims and, in doing so, found Petitioner failed to *plead* special damages *in her Complaint* as to the cause of action for civil conspiracy.

Petitioner appealed the dismissal of both claims to the Court of Appeals and, therefore, it is immaterial whether she is requesting review by the Court of the decision of the Court of Appeals with regard to only her defamation claim. The Court of Appeals clearly and concisely upheld the decision of the circuit court; it but did not rewrite Petitioner’s Complaint. Petitioner’s Complaint remains as pled.

Petitioner’s civil conspiracy claim did not and cannot survive standing alone because no interceding action by the Court of Appeals changed its finding Petitioner failed to plead special damages. Likewise, any action by this Court cannot serve to reach back and “amend” Petitioner’s Complaint; the Complaint reviewed by the circuit court and the Court of Appeals.

Moreover, Petitioner's question as to whether the Court of Appeals erred in ruling Petitioner failed to plead special damages is not proper for review by this Court. Rule 242(b) of the South Carolina Appellate Court provides as follows:

A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons. The following, while neither controlling nor fully measuring the Supreme Court's discretion or power to grant review in general, indicate the character of reasons which will be considered:

- (1) Where there are novel questions of law.
- (2) Where there is a dissent in the decision of the Court of Appeals.
- (3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.
- (4) Where substantial constitutional issues are directly involved.
- (5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

Petitioner fails to provide any reason whatsoever as to how or why her request for review of the Court of Appeal's ruling she failed to plead special damages is of the same character of issues expressly listed as subject to consideration by this Court pursuant to Rule 242(b), SCACR. Petitioner's argument in support of this question is merely a rehashing of the arguments she made in her Petition for Rehearing to the Court of Appeals, and this question does not present special and important reasons to otherwise merit the Court's consideration.<sup>3</sup>

### CONCLUSION

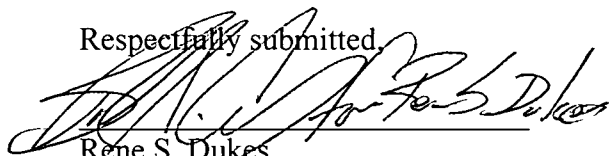
For all these reasons, Respondents respectfully request that this Court deny Petitioner's

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<sup>3</sup> Petitioner's first question asks this Court to overturn a long line of precedent under and applying Todd based on a footnote (i.e. dicta) in a dissenting opinion in Allegro. However, Petitioner's issues are not sufficiently similar to the character of cases considered by this Court to compel or otherwise warrant a grant of certiorari.

Petition for Writ of Certiorari.

Respectfully submitted,



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Charleston, South Carolina  
December 17, 2018

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**PROOF OF SERVICE**

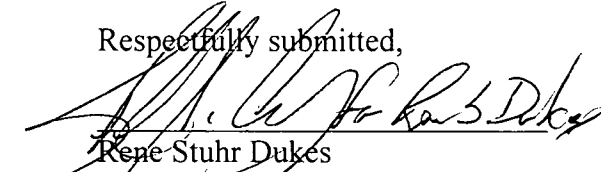
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I do hereby certify that on December 17, 2018 I have served all counsel of record in this  
action with a copy of the documents herein below specified by mailing a copy of the same by  
United States mail, postage prepaid, to the following address:

Documents:           **Respondents' Return to Petition for Writ of Certiorari  
Proof of Service**

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