

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

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

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

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 theRespondents.

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ISSUE ON APPEAL

1. Should the Court reverse the special damages requirement on civil conspiracy claims arising from Todd v. S.C. Farm Bureau Mut. Ins. Co.?

INTRODUCTION

Petitioner did not preserve the issue of whether the special damages requirement on civil conspiracy claims arising from Todd v. S.C. Farm Bureau Mut. Ins. Co. should be reversed for review. However, even if the issue were preserved, the Court should not reverse the requirement special damages must be pled to state a cause of action for civil conspiracy. Removing the special damages requirement would lead to an absurd result and would effectively merge the tort of civil conspiracy with the underlying tort on which a civil conspiracy claim is based. Therefore, the tort of civil conspiracy should either: 1) remain consistent with the Court's ruling in Todd, requiring special damages be pled and proved; or, 2) civil conspiracy should no longer be recognized as an independent cause of action in South Carolina. Further, should the Court allow civil conspiracy to remain a viable cause of action but no longer require special damages be pled and proved, the Court's modification of Todd should only apply prospectively.

STATEMENT OF THE CASE

Petitioner filed her Complaint on September 17, 2015, in the Charleston County Court of Common Pleas alleging causes of action for defamation against James Island Charter School (the "Charter School") and the Charleston County School District (the "District"). (J.A. 20-27). The Complaint further alleged a cause of action for civil conspiracy against Robert Bohnstengel ("Bohnstengel") and Stephanie Spann ("Spann"). (J.A. 20-27).

On November 30, 2015, all Respondents filed a Motion to Dismiss Petitioner's Complaint (J.A. 59-66). 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. (J.A. 66-74). The issues were fully briefed by all parties, and a hearing was held on the Motions to Dismiss on March 30, 2016. (J.A. 28-58).

After considering the written and oral arguments of counsel, the Circuit Court issued its Order dated April 15, 2016, granting Respondents' Motions to Dismiss. (J.A. 6-16). Petitioner filed a Motion to Reconsider on April 29, 2016, and Respondents filed a joint Response to Petitioner's Motion to Reconsider on May 12, 2016. (J.A. 128-132). The Circuit Court denied Petitioner's Motion to Reconsider by Order of May 19, 2016. (J.A. 04).

Petitioner filed a Notice of Appeal on June 22, 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). (J.A. 197-205). The Court of Appeals denied Petitioner's Petition for Rehearing by Order filed October 18, 2018. (J.A. 235-236).

STATEMENT OF THE PLEADINGS

Petitioner was an employee of the District and taught English at the Charter School. (J.A. 21). Bohnstengel is the former principal of the Charter School, and Spann is an Assistant Principal at the Charter School. (J.A. 21). Petitioner alleges Bohnstengel became angry with her, after Petitioner informed Bohnstengel 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. (J.A. 21). 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. (J.A. 22). Petitioner was shocked by this notification because she had not previously met with Bohnstengel, and she had met all her goals in her Goals Based Evaluation ("GBE") for the 2012-13 school year. (J.A. 22).

Despite her efforts to reverse Bohnstengel's decision, Petitioner was subject to evaluation for the 2013-14 school year. (J.A. 22). Bohnstengel was one of three evaluators for Petitioner;

however, he was terminated before Petitioner's evaluation was complete. (J.A. 23). Bohnstengel was then replaced by Maureen Jessup for the remainder of the evaluation period. (J.A. 23). Petitioner failed the evaluation for the 2013-14 and was again placed on evaluation for the 2014-15 school year. (J.A. 23).

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. (J.A. 23). According to Petitioner, during the second year of evaluation, Spann changed the requirements of her evaluation, causing Petitioner to be confused. (J.A. 23).

Petitioner met with her mentor, Charity Scruggs ("Scruggs"), almost daily. (J.A. 23). Scruggs noted Petitioner was under strain, but Scruggs also noted Petitioner was doing all she could to please the evaluators. (J.A. 23-24). 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. (J.A. 24). All Petitioner's peers and colleagues were aware she was being evaluated and saw the physical and emotional toll it took on Petitioner. (J.A. 24).

Petitioner was terminated because she failed the evaluation for two consecutive years. (J.A. 24). Petitioner, thereafter, exhausted her administrative remedies. (J.A. 24).¹

Petitioner's Complaint alleged a cause of action for defamation against the District and the Charter School, as well as a cause of action against Bohnstengel and Spann for civil conspiracy.

¹ 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's employment.

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."² (J.A. 25-27). Petitioner's civil conspiracy claim, as pled in her Complaint, is the pillar upon which Petitioner's Petition hinges.

ARGUMENT

I. Petitioner Did Not Properly Preserve the Issue for Review.

The issue on appeal, whether Todd should be modified or reversed, is not proper for review by this Court. As the Court of Appeals 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).

The only argument Petitioner made to the Circuit Court, and attempted to make to the Court of Appeals, is she adequately pled special damages in compliance with Todd v. S.C. Farm Bureau Mut. Ins. Co., 276 S.C. 284, 278 S.E.2d 607 (1981). In other words, Petitioner's position in the

² The facts recited are taken from Petitioner's Complaint.

Circuit Court acknowledged, *rather than contested*, she was required to plead and prove special damages pursuant to Todd. Accordingly, the issue the Court is now asked to review has not preserved for review. For this reason alone, Petitioner's case is not an appropriate platform to overturn the long-accepted rule established in Todd regarding pleading and proving special damages.

II. The Court Should Not Reverse the Rule Laid Down in Todd Regarding Special Damages.

Civil conspiracy is a unique cause of action requiring evidence of damages beyond those caused by the underlying tort. The Court in Todd recognized the special damages requirement serves as a bar to duplicative recovery for the same injury claimed under two separate causes of action. If a plaintiff is not required to plead and prove special damages under a cause of action for civil conspiracy, she may be awarded compensation for the identical injury claimed under the cause of action for which the conspiracy was alleged to be formed. Therefore, if special damages are no longer required to state a claim, prove, and recover under a cause of action for civil conspiracy, then it is merely a restatement of the underlying tort and should no longer be recognized as an independent cause of action.

A. The Rule Laid Down in Todd Should Not Be Disturbed.

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 at 287, 278 S.E.2d at 608. The Todd court noted the plaintiff's claim for civil conspiracy was based solely on the allegations that gave rise to the remaining cause of action, with an additional request for damages resulting from the alleged civil conspiracy. Id. at 292-93, 278 S.E.2d at 611.

Because the plaintiff in Todd failed to plead additional acts to support the claim of civil conspiracy, the plaintiff 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 [civil conspiracy], [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 and prove a sustainable action for civil conspiracy, a plaintiff must allege and prove 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 in Todd that became 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 and prove special damages should remain undisturbed.

B. The Doctrine of *Stare Decisis* Requires the Rule Laid Down in Todd Stand.

The rule this Court laid down in Todd in 1981 as to civil conspiracy has stood, been affirmed and followed with regularity for almost forty years. Petitioner’s case neither presents nor interjects anything new or novel as to the long-standing law regarding civil conspiracy in South Carolina. "A decision which is to overrule all former precedents and to establish a principle never before recognized should either contain some internal evidence that the prevailing law is to be overthrown, or else be founded upon reasoning far stronger than that comprehended in the previous decisions which by implication it would set aside." Coleman v. Page's Estate, 202 S.C. 486, 491, 25 S.E.2d 559, 560 (1943). Petitioner provides no support meeting the mandates in Coleman.

In Proctor v. Whitlark & Whitlark, Inc., 414 S.C. 318, 331-32, 778 S.E.2d 888, 895 (2015), this Court held a departure from *stare decisis* was necessitated by clear intent expressed by the General Assembly and for public policy reasons. As to Petitioner, however, she provides no evidence of intent by the General Assembly nor identifies any public policy consideration warranting a change in the long-standing law regarding civil conspiracy nor does any exist.

As this Court consistently recognized for decades, the doctrine of *stare decisis* “exists to insure a quality of justice which results from certainty and stability.” State v. One Coin-Operated

Video Game Mach., 321 S.C. 176, 181, 467 S.E.2d 443, 446 (1996) (quoting McCall v. Batson, 285 S.C. 243, 256, 329 S.E.2d 741, 747 (1985) (Chandler, J., concurring)); *see also* McLeod v. Starnes, 396 S.C. 647, 654, 723 S.E.2d 198, 203 (2012) (noting the doctrine of *stare decisis* "is far more a respect for a body of decisions as opposed to a single case standing alone."). Notably, this Court long recognized "how important is the doctrine of *stare decisis* in the administration of justice, and how ruinous also is uncertainty and vacillation. And unless in such review the error is apparent, manifest, and dangerous in its tendencies, it is better to yield than to overrule." Chamblee v. Tribble, 23 S.C. 70, 79, 1885 WL 3635 (1885) (emphasis added); *see also* State ex rel. George v. City Council of Aiken, 42 S.C. 222, 229, 20 S.E. 221, 223 (1894) (recognizing *stare decisis* and stating it is rarely prudent to overrule a decision, except where it conflicts with other decisions or proceeded upon a plain mistake in the law).

Petitioner appears to characterize her request as only overruling the Todd case. However, in overruling the rule laid down on Todd as to civil conspiracy and special damages, this Court would overrule almost four decades of precedent. For instance, this Court itself has held special damages are an essential requirement for civil conspiracy in numerous cases since Todd. LaMotte v. Punch Line of Columbia, Inc., 296 S.C. 66, 69, 370 S.E.2d 711, 713 (1988) ("A-civil conspiracy is a combination of two or more persons joining for the purpose of injuring the plaintiff and causing special damage to the plaintiff."); *see also* City of Hartsville v. S.C Mun. Ins. & Risk Fin. Fund, 382 S.C. 535, 546, 677 S.E.2d 574, 580 (2009) (holding "[t]he gravamen of the tort of civil conspiracy is the damage resulting to the plaintiff.. " and "[b]ecause the quiddity of a civil conspiracy claim is the damage resulting to the plaintiff, the damages alleged must go beyond the damages alleged in other causes of action."); Pye v. Estate of Fox, 369 S.C. 555, 568, 633 S.E.2d 505, 511 (2006) (holding "[b]ecause the quiddity of a civil conspiracy claim is the damage

resulting to the plaintiff, the damages alleged must go beyond the damages alleged in other causes of action."); Angus v. Burroughs & Chapin, Co., 368 S.C. 167, 628 S.E.2d 261 (2006) (recognizing special damages are an element of civil conspiracy); McMillan v. Oconee Mem'l Hosp., Inc., 367 S.C. 559; 626 S.E.2d 884 (2006) (same); Peoples Fed. Sav. & Loan Ass'n of SC v. Res. Planning Corp., 358 S.C. 460, 470, 596 S.E.2d 51, 56-57 (2004) (same); Lawson v. SC Dep't of Corrections, 340 S.C. 346, 532 S.E.2d 259 (2000) (same); Future Group v. Nationsbank, 324 S.C. 89, 478 S.E.2d 45 (1996) (same); Hammond v. Butler, Means, Evins & Brown, 300 S.C. 458, 388 S.E.2d 796 (1990) (same).

For these reasons, the Court should follow the doctrine of *stare decisis* and deny Petitioner's request that the Court reverse the rule laid down in Todd as to special damages.

III. If the Court Desires to Reverse the Ruling in Todd as to Special Damages, It Should Either Apply the Modification of the Law Prospectively Only or Eliminate Civil Conspiracy as Recognized Cause of Action.

Petitioner requests this Court reverse the comprehensive body of law cited above and eliminate the quintessential element of civil conspiracy claim; that is, the resulting special damages to the plaintiff. For almost four decades, South Carolina law required a plaintiff to plead and prove special damages to maintain a civil conspiracy claim. Consequently, individuals were on notice that actions otherwise meeting the elements of civil conspiracy could subject them to liability if their actions resulted in special damages to another person. However, individuals were never put on notice they could be subject to liability where no special damages to the plaintiff resulted from their actions. It is for this reason such changes in the law must be instituted and applied prospectively not retrospectively. Any other result infringes upon the Due Process Clauses of the state and federal constitutions, as well as upon notions of fundamental fairness.

Additionally, and as an alternative, if the Court entertains removing the requirement a

plaintiff plead and prove special damages in regard to a civil conspiracy claim, the Court should consider eliminating civil conspiracy as a cause of action in South Carolina. The elimination of civil conspiracy as a separate cause of action is consistent with other jurisdictions.

A. A Reversal of Todd Should Be Applied Prospectively Only.

"[T]he general rule regarding retroactive application of judicial decisions is that decisions creating new substantive rights have prospective effect only, whereas decisions creating new remedies to vindicate existing rights are applied retrospectively." McCaskey v. Shaw, 295 S.C. 372, 368 S.E.2d 672, 673 (Ct. App. 1988) (citing Bartlett v. Nationwide Mutual Fire Ins. Co., 290 S.C. 154, 157, 348 S.E.2d 530, 532 (Ct. App. 1986)). "Prospective application is required when liability is created where formerly none existed." Hupman v. Erskine College, 281 S.C. 43, 44, 314 S.E.2d 314, 315 (1984) (emphasis added); *see also* Marcum v. Bowden, 372 S.C. 452, 458 n.5 643 S.E.2d 85, 88 n.5 (2006) (holding "[i]t would offend notions of fairness ... to retroactively impose tort liability where previously there had been none...").

The removal of the element of special damages from civil conspiracy is not the mere creation of a new remedy. Special damages are an element of the claim and, therefore, are an essential prerequisite to there being any liability for this claim. Such a change creates a new substantive right - a cause of action for civil conspiracy based on general damages. Moreover, if special damages are no longer required to maintain an action for civil conspiracy Respondents would be subject to liability where none previously existed, including when Respondents allegedly engaged in the conspiracy and when Petitioner initiated this action. A retroactive application of a change in the law as to civil conspiracy violates fundamental due process and fairness as to Respondents and all others who may be subjected to liability where none existed at the time the alleged unlawful actions occurred.

Similar to the United States Constitution, South Carolina's Constitution requires no person be deprived of property without due process of law. *See* U.S. Const. amend. XIV, § 1; S.C. Const. art. I, § 3. As recognized by this Court, constitutional guarantees of due process are "violated when a party is denied fundamental fairness." Hipp v. SC Dept. of Motor Vehicles, 381 S.C. 323, 325, 673 S.E.2d 416,417 (2009); *see also* JRS Builders, Inc. v. Neunsinger, 364 S.C. 596,602,614 S.E.2d 629, 633 (2005) ("Whether a statutory amendment applies retroactively is ordinarily a matter of statutory construction and interpretation, not of constitutional law.")

The constitutional guarantees of due process require judicial rulemaking be prospective in application only. Notably, the United States Supreme Court acknowledged limitations on the retroactive application of a judicial decision "are inherent in the notion of due process." Rogers v. Tennessee, 532 U.S. 451,456 (2001); *see also* Bowie v. City of Columbia, 378 U.S. 347, 353 (1964) (retroactive application of unforeseeable judicial enlargement of criminal statute violates due process).

Consistent with the United States Supreme Court, this Court recognized judicial decisions applied retroactively can violate the Due Process Clause. State v. Collins, 329 S.C. 23, 28 n.4, 495 S.E.2d 202, 205 n.4 (1998) (discussing judicial decision applied retroactively can violate the Due Process Clause); Muldrow v. Caldwell, 173 S.C. 243, 175 S.E. 501, 504 (1934) (discussing the retroactive feature of legislation may "deprive any citizen of this State of his 'property without due process of law.'"); *see also* 628 Am. Jur. 2d Constitutional Law § 693. Applying this principle, due process requires the individual to be punished receive fair notice of the type or severity of penalty that could be imposed on him for his conduct. *See* Mitchell, Jr. v. Fortis Ins. Co., 385 S.C. 570, 585, 686 S.E.2d 176, 184 (2009) ("The Supreme Court expounded upon *Haslip's* due process standard in *Gore*, where it held that '[e]lementary notions of fairness enshrined in our

constitutional jurisprudence dictate that a person receive fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a state may impose.") (quoting BMW of N. Am. v. Gore, 517 U.S. 559, 575 (1996)); *see also* Atkinson v. Orkin Exterminating Co., Inc., 361 S.C. 156, 164-65, 604 S.E.2d 385, 389 (2004) (same).

Petitioner's situation does not present one where the law is silent. To the contrary, since Todd, at the time of Respondents' alleged conduct, and during the course of this lawsuit, this Court and the Court of Appeals held special damages are an essential element necessary to establish a cause of action for civil conspiracy. *See* Murphy v. Richland Lexington Sch. Dist. 5 Bd. of Trustees, 2018 WL 5733638, at *5 (S.C. Ct. App. Oct. 31, 2018) (unpublished) (appellant did not present any evidence of damages from the alleged civil conspiracy that were distinct from the damages she alleged arose from her defamation claim); City of Hartsville v. SC Mun. Ins. & Risk Fin. Fund, 382 S.C. 535, 546, 677 S.E.2d 574, 580 (2009) (identifying elements of the tort of civil conspiracy, including the element of special damages); Pye v. Estate of Fox, 369 S.C. 555, 568, 633 S.E.2d 505, 511 (2006) (holding "[b]ecause the quiddity of a civil conspiracy claim is the damage resulting to the plaintiff, the damages alleged must go beyond the damages alleged in other causes of action."). In the absence of notice a "civil conspiracy" could be supported merely by general damages rather than requiring the establishment of special damages beyond damages claimed in other causes of action, the Due Process Clauses of the state and federal Constitutions prohibits retrospective relief. Therefore, this Court should decline making a fundamental change to the elements of civil conspiracy apply retrospectively.

B. In the Alternative, the Court Should Eliminate Civil Conspiracy as a Cause of Action if the Rule in Todd is Reversed.

At this time, civil conspiracy is a cognizable claim in South Carolina. Jackson v. Bi Lo Stores, 313 S.C. 272,274,437 S.E.2d 168, 169 (Ct. App. 1993) (recognizing civil conspiracy as a

common law tort). However, as an alternative to modifying the law of civil conspiracy, the Court should consider whether the more appropriate action is to eliminate civil conspiracy as an independent cause of action.

Petitioner's assertion "all states and the District of Columbia recognize civil conspiracy as a tort" is neither complete nor correct. Notably, other jurisdictions refuse to recognize an independent claim of civil conspiracy. Tejera v. Lincoln Lending Servs., LLC, 271 So. 3d 97, 103 (Fla. Dist. Ct. App. 2019) ("Florida does not recognize civil conspiracy as a freestanding tort."); Alexander & Alexander of New York, Inc. v. Fritzen, 503 N.E.2d 102, 102 (N.Y. 1986) ("a mere conspiracy to commit a [tort] is never of itself a cause of action"); Bender v. Logan, 76 N.E.3d 336, 360 (Ohio Ct. App. 2016) ("Ohio law does not recognize civil conspiracy as an independent cause of action."); Hamilton Partners, L.P. v. England, 11 A.3d 1180, 1211 (Del. Ch. 2010) ("Like Delaware, 'New York does not recognize civil conspiracy to commit a tort as an independent cause of action.'"); Stone v. Pattis, 2010 WL 2108226, at *4 (Conn. Super. Ct. Apr. 21, 2010) ("Although the plaintiffs may replead to include their conspiracy allegations in another count, a claim of conspiracy cannot stand on its own."); Stoldt v. City of Toronto, 678 P.2d 153 (Kan. 1984) ("...an action for civil conspiracy must be supported, as one of its elements, by one or more unlawful, overt acts which produce an unlawful result. ("There can be no civil conspiracy without a commission of a wrong independent of the conspiracy."); Maurer v. SlickEdit, Inc., 2005 WL 1412496, at *12 (N.C. Super. May 16, 2005) ("North Carolina does not recognize civil conspiracy as an independent cause of action."); Funliner of Alabama, L.L.C. v. Pickard, 873 So. 2d 198, 211 (Ala. 2003) ("A civil conspiracy is not an independent cause of action."); Berg & Berg Enterprises, LLC v. Sherwood Partners, Inc., 32 Cal. Rptr. 3d 325, 339 (Cal. 2005), *as modified on denial of reh'g* (Aug. 25, 2005) ("Civil conspiracy is not an independent tort [...]. Rather, it is a 'legal doctrine that imposes liability on persons who, although not actually committing a tort themselves, share with the immediate tortfeasors a common plan or design in its perpetration.'");

Vickery v. Evelyn V. Trumble Living Tr., 277 P.3d 864, 871 (Colo. App. 2011) (a conspiracy claim fails in the absence of a legal wrong to support it.”); Exec. Sandwich Shoppe, Inc. v. Carr Realty Corp., 749 A.2d 724, 738 (D.C. 2000) (“[t]here is no recognized independent tort action for civil conspiracy in the District of Columbia.”); McManus v. Taylor, 756 S.E.2d 709, 715 (Ga. 2014) (“Georgia law does not recognize an independent tort of ‘conspiracy.’”); Lee Ching v. Loo Dung, 2019 WL 3822327, at *22 (Haw. Ct. App. 2019) (“...courts have observed that a conspiracy claim is not an independent cause of action, but is only the mechanism for subjecting co-conspirators to liability when one of their members committed a tortious act.”); Wesco Autobody Supply, Inc. v. Ernest, 243 P.3d 1069, 1086 (Idaho 2010) (“Civil conspiracy is not an independent claim for relief because ‘[t]he essence of a cause of action for civil conspiracy is the civil wrong committed as the objective of the conspiracy, not the conspiracy itself.’”); Indeck N. Am. Power Fund. L.P. v. Norweb PLC, 735 N.E.2d 649, 662 (Ill. 2000) (“a conspiracy is not an independent tort.”); Birge v. Town of Linden, 57 N.E.3d 839, 846 (Ind. Ct. App. 2016) (“Civil conspiracy is not an independent cause of action.”); Anderson v. Anderson Tooling, Inc., 928 N.W.2d 821, 826 (Iowa 2019) (“Because civil conspiracy cannot support an independent cause of action, it cannot have its own measure of damages. Instead, damages are assessed based on the harm caused by the underlying tortious activity [...] Thus, the joint and several liability shared by coconspirators is only for the damage caused by the underlying tort.”); Stonestreet Farm, LLC v. Buckram Oak Holdings, N.V., 2010 WL 2696278, at *13 (Ky. Ct. App. 2010) (“Importantly, however, civil conspiracy is not a free-standing claim; rather, it merely provides a theory under which a plaintiff may recover from multiple defendants for an underlying tort.”); Hardy v. Easterling, 113 So. 3d 1178, 1184 (La. Ct. App. 2013) (“An independent cause of action for civil conspiracy does not exist in Louisiana”); Speedway Holdings Assocs., LP v. Bahre, 2001 WL 1710952, at *1 (Me. Super. 2001) (“Civil conspiracy is not an independent tort.”); Alleco

Inc. v. Harry & Jeanette Weinberg Found., Inc., 665 A.2d 1038, 1045 (Md. 1995) (...“conspiracy’ is not a separate tort capable of independently sustaining an award of damages in the absence of other tortious injury to the plaintiff.”); Blackward Properties, LLC v. Sower, 2014 WL 5690380, at *2 (Mich. Ct. App. 2014) (“Without an underlying tort, [plaintiff’s] claims of civil conspiracy and concert of action also fail.”); D.A.B. v. Brown, 570 N.W.2d 168, 172 (Minn. Ct. App. 1997) (“...the conspiracy count fails because it is not supported by an underlying tort.”); Sharkey v. Barber, 188 So. 3d 1245, 1247 (Miss. Ct. App. 2016) (“Likewise, the claim of civil conspiracy does not stand alone, but is dependent on conspiring to commit a particular wrong—in this case, the intentional tort of assault.”); Royster v. Baker, 365 S.W.2d 496, 500 (Mo. 1963) (“It is thus evident that an alleged conspiracy by or agreement between the defendants is not of itself actionable. Some wrongful act to the plaintiff’s damage must have been done by one or more of the defendants, and the fact of a conspiracy merely bears on the liability of the various defendants as joint tort-feasors.”); deNourie & Yost Homes, LLC v. Frost, 854 N.W.2d 298, 304 (Neb. 2014) (“a conspiracy is not a separate and independent tort in itself; rather, it depends upon the existence of an underlying tort.”); Cadle Co. v. Woods & Erickson, LLP, 345 P.3d 1049, 1052 (Nev. 2015) (“In Nevada, however, civil conspiracy liability may attach where two or more persons undertake some concerted action with the intent to commit an unlawful objective, not necessarily a tort.”); Nichols v. Gen. Motors Corp., 1999 WL 33292839, at *5 (N.H. Super. 1999) (“Defendant concedes that an action in civil conspiracy cannot lie in the absence of an underlying tort. Since no cause of action survives, the action for Civil Conspiracy must fail as well, as a matter of law.”); Portes v. Tan, 2014 WL 463140, at *10 (N.J. Super. Ct. App. 2014) (“Civil conspiracy is not a cause of action by itself, but rather an additional claim that requires an underlying “overt act” that caused the harm in question.”); Seeds v. Lucero, 113 P.3d 859, 864 (N.M. 2005) (“Unlike a conspiracy in the criminal context, a civil conspiracy by

itself is not actionable, nor does it provide an independent basis for liability unless a civil action in damages would lie against one of the conspirators.”); Gaylord Entm't Co. v. Thompson, 958 P.2d 128, 148 (Okla. 1998) (Conspiracy between two or more persons to injure another is not civil conspiracy; an underlying unlawful act is necessary.); Bonds v. Landers, 566 P.2d 513, 516 (Or. 1977) (“A civil conspiracy is not an independent tort, in the absence of a statute or unusual circumstances.”); Rock v. Rangos, 61 A.3d 239, 249 (Pa. 2013) (“Under both Delaware and Pennsylvania law, that conspiracy claim will not lie without a valid underlying civil claim.”); Babb v. Geisinger Clinic, 2015 WL 7014891, at *15 (Pa. Super. Ct. 2015) (“Indeed, *we are unaware of any jurisdiction* that recognizes civil conspiracy as a cause of action requiring no separate tortious conduct.”) (emphasis added); Fogarty v. Palumbo, 163 A.3d 526, 543 (R.I. 2017) (...“because the intentional tort of civil conspiracy is not an independent basis of liability”); Kirlin v. Halverson, 758 N.W.2d 436, 455 (S.D. 2011) (“[civil conspiracy] is not an independent cause of action, but is ‘sustainable only after an underlying tort claim has been established.’”); PNC Multifamily Capital Institutional Fund XXVI Ltd. P'ship v. Bluff City Cmty. Dev. Corp., 387 S.W.3d 525, 556 (Tenn. Ct. App. 2012) (“Conspiracy, standing alone, is not actionable where the underlying tort is not actionable.”); Cooper v. Trent, 551 S.W.3d 325, 335 (Tex. Ct. App. 2018), *review denied* (Jan. 25, 2019) (“civil conspiracy is not a ‘stand alone’ tort but rather derives from independent, underlying tortious conduct.”); Puttuck v. Gendron, 199 P.3d 971, 978 (Utah Ct. App. 2008) (“The claim of civil conspiracy ‘require[s], as one of [its] essential elements, an underlying tort.’...Thus, in order to ‘sufficiently plead’ a claim for civil conspiracy, a plaintiff is ‘obligated to adequately plead the existence of such a tort.’”); La Bella Dona Skin Care, Inc. v. Belle Femme Enterprises, LLC, 805 S.E.2d 399, 405 (Va. 2017) (“A claim of civil conspiracy is not actionable in its own right.”); Davis v. Vile, 2003 WL 25746021, at *3 (Vt. 2003) (“Because plaintiff failed to allege an illegal means used in furtherance of the claimed conspiracy, the

court properly dismissed his civil conspiracy claim against the State.”); Nw. Laborers-Employers Health & Sec. Tr. Fund v. Philip Morris, Inc., 58 F. Supp. 2d 1211, 1216 (W.D. Wash. 1999) (“A conspiracy claim fails if the underlying act or claim is not actionable.”); Dunn v. Rockwell, 689 S.E.2d 255, 259 (W. Va. 2009) (“A civil conspiracy is not a *per se*, stand-alone cause of action; it is instead a legal doctrine under which liability for a tort may be imposed on people who did not actually commit a tort themselves but who shared a common plan for its commission with the actual perpetrator(s).”); Singer v. Singer, 14 N.W.2d 43, 46 (Wis. 1944) (“It is the established law of this state that there is no such thing as a civil action for conspiracy.”); Action Snowmobile & RV, Inc. v. Most Wanted Performance, LLC, 423 P.3d 317, 324 (Wyo. 2018) (“In order to bring a civil conspiracy claim, a plaintiff must state an underlying cause of action in tort.”).³

If the Court concludes the Todd rule as to pleading and proof of special damages should be made consistent with other jurisdictions, as Petitioner seemingly contends, then the court should eliminate civil conspiracy as an independent cause of action in South Carolina.

CONCLUSION

For all these reasons, Respondents respectfully request the Court deny Petitioner’s request the Court reverse Todd, eliminating the requirement a plaintiff plead and prove special damages in regard to a civil conspiracy claim. However, in the event the Court concludes modification of the Todd rule is required, the modification should only apply prospectively or, as in the alternative,

³ *But see*, Kurker v. Hill, 689 N.E.2d 833, 836 (Mass. Ct. App. 1998) (Massachusetts recognizes two theories of civil conspiracy: the first arises from underlying tortious conduct, and the second constitutes an independent tort.); Schmitt v. MeritCare Health Sys., 834 N.W.2d 627, 635 (N.D. 2013) (discussing an “economic boycott” or “force of numbers” exception to the general rule that the basis for a civil conspiracy must be an independent wrong or tort which would constitute a cause of action if the wrong were done by one person, but by reason of force of numbers or other exceptional circumstances, the defendants possess some peculiar power of coercion, which gives rise to an independent tort of conspiracy, sometimes referred to as an economic boycott.”).

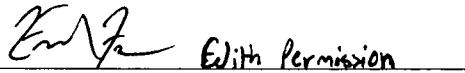
the Court should eliminate civil conspiracy as an independent cause of action.

Respectfully submitted,



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Charleston, South Carolina
August 22, 2019

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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

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

Leisel Paradis, Petitioner

vs.

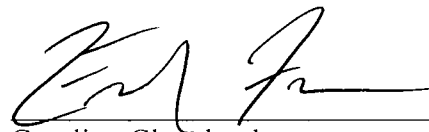
Charleston County School District, James Island Charter High School, Robert Bohnstengel, and
Stephanie Spann, in their individual capacities,

Of whom Robert Bohnstengel and Stephanie Spann are the Respondents.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief of Respondents complies with Rule 211(b),
SCACR.

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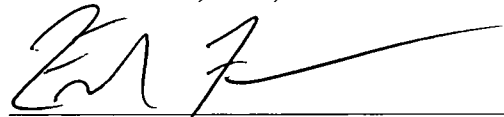
Charleston County School District, James Island Charter High School, Robert Bohnstengel, and
Stephanie Spann, in their individual capacities,

Of whom Robert Bohnstengel and Stephanie Spann are the Respondents.

PROOF OF SERVICE OF FINAL BRIEF OF RESPONDENTS

I certify that I have served the Final Brief of Respondents on Leisel Paradis by depositing a copy of it in the United States Mail, postage prepaid, on August 22, 2019, addressed to her attorney of record, J. J. Paul Porter of CROMER BABB PORTER & HICKS, LLC, Post Office Box 11675, Columbia, South Carolina 29211.

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