

May 25 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA  
COUNTY OF FAIRFIELD

IN THE COURT OF COMMON PLEAS

Robin Allen,  
  
Plaintiff,  
  
v.  
  
Richard Winn Academy, Kristen Chaisson (in  
her individual capacity and as Head of  
School), and John Ryan II,  
  
Defendants.

Civil Action No. 2021-CP-20-00026

**ORDER GRANTING MOTION  
FOR PARTIAL DISMISSAL OF  
DEFENDANTS RICHARD WINN  
ACADEMY AND KRISTEN  
CHAISSON AND MOTION  
TO DISMISS ON BEHALF OF  
JOHN RYAN, II**

This matter came before the Court on March 19, 2021 for a hearing on two motions: (1) a Motion for Partial Dismissal of Defendants Richard Winn Academy and Kristen Chaisson (filed February 12, 2021); and (2) a Motion to Dismiss on Behalf of John Ryan, II (filed February 19, 2021) (collectively, the “Motions”). Appearing at the hearing were David D. Hawkins, Esquire on behalf of the Plaintiff; Curtis W. Dowling, Esquire, Matthew G. Gerrald, Esquire, and Creighton B. Coleman, Esquire on behalf of Defendants Richard Winn Academy (“Richard Winn”) and Kristen Chaisson (“Ms. Chaisson”); and Paul L. Reeves, Esquire on behalf of Defendant John Ryan, II (“Mr. Ryan”).

After carefully reviewing the pleadings, the Motions, the briefs submitted by the parties, and the court’s file, and after considering the arguments of counsel and the governing law, I hereby GRANT the Motions and DISMISS 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 disposes of all claims against Mr. Ryan, I also DISMISS Mr. Ryan as a Defendant in this case.

## INTRODUCTION

This action arises out of a dispute over the education of a formerly minor child, Zoe Mitsakos (“Zoe”). The Complaint alleges that the Plaintiff, Robin Allen, entered into a contract with Richard Winn on or about March 13, 2020 for the provision of educational services to Zoe for the 2020-2021 academic year and that, after Zoe turned 18 years old, Richard Winn, by and through Ms. Chaisson, entered into a separate contract with Zoe pursuant to which she would continue her education at Richard Winn. The Complaint further alleges that Ms. Chaisson, together with Richard Winn’s board and Mr. Ryan, assisted, encouraged, and supported Zoe in running away from the Plaintiff’s home to live instead with Mr. Ryan. All three Defendants deny any wrongdoing.

Based on the aforementioned allegations, the Complaint asserts fifteen causes of action. The first through fourth causes of action assert intentional tortious interference with parental rights against Richard Winn, Ms. Chaisson as Head of School, Ms. Chaisson in her individual capacity, and Mr. Ryan; the fifth through eighth causes of action assert negligent tortious interference with parental rights against the same parties; the ninth and tenth causes of action assert intentional breach of fiduciary duty against Ms. Chaisson and Richard Winn; the eleventh cause of action asserts breach of contract; the twelfth cause of action asserts intentional tortious interference with contracts; the thirteenth cause of action asserts negligent tortious interference with contracts<sup>1</sup>; the fourteenth cause of action asserts quantum meruit; and the fifteenth cause of action asserts attorney fees. For the reasons set forth herein, the Defendants are entitled to dismissal of the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, thirteenth, and fifteenth causes of action.

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<sup>1</sup> The eleventh, twelfth, thirteenth, and fourteenth causes of action do not explicitly specify against whom they are asserted, but it appears from a review of their allegations that they are directed at Richard Winn and/or Ms. Chaisson and not at Mr. Ryan.

## ANALYSIS

### I. **SOUTH CAROLINA DOES NOT RECOGNIZE A CAUSE OF ACTION FOR TORTIOUS INTERFERENCE WITH PARENTAL RIGHTS.**

As previously stated, the Complaint's first through eighth causes of action assert tortious interference with parental rights. The first, second, third, and fourth causes of action assert that the alleged interference was intentional and the fifth, sixth, seventh, and eighth causes of action assert that the alleged interference was negligent. While South Carolina courts have recognized that parents have a right under the Fourteenth Amendment to the United States Constitution to be free from State interference with the parent-child relationship,<sup>2</sup> they have not recognized a common law claim for tortious interference with parental rights (whether intentional, negligent, or otherwise) against private parties like the Defendants. The Plaintiff acknowledges as much. However, relying on the principle that novel questions of law should not ordinarily be resolved on a Rule 12(b)(6) motion, she asserts that this court should change the common law and recognize a new cause of action.

It is true 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). “Where, however, 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.” Id. See also Palmer v. State, 427 S.C. 36, 43, 829 S.E.2d 255, 259 (Ct. App. 2019) (same); Unisys Corp. v. S.C. Budget &

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<sup>2</sup> See, e.g., S.C. Dep’t of Soc. Servs. v. Wilson, 352 S.C. 445, 453, 574 S.E.2d 730, 734 (2002) (“The Fourteenth Amendment guarantees Wilson a fundamental right to freedom from State interference with his relationship with his daughter.”). See also, e.g., S.C. Dep’t of Soc. Servs. v. Evangelica H., , Op. No. 2012-UP-539, 2012 S.C. App. Unpub. LEXIS 666, at \*6 (Ct. App. filed Sep. 25, 2012) (“The Fourteenth Amendment guarantees a fundamental right to freedom from State interference with a parent’s relationship with his child.”).

Control Bd. Div. of Gen. Servs. Info. Tech. Mgmt. Office, 346 S.C. 158, 165, 551 S.E.2d 263, 267 (2001) (same); Brown v. Theos, 338 S.C. 305, 313, 526 S.E.2d 232, 237 (Ct. App. 1999) (same). Cf. Kubic v. MERSCORP Holdings, Inc., 416 S.C. 161, 168, 785 S.E.2d 595, 598 (2016) (“Where, as here, the question is one of simple statutory construction, a trial court should not deny a meritorious motion merely because the question is one of first impression.”).

In this case, the court is presented with a purely legal question: “Does South Carolina recognize a common law claim for tortious interference with parental rights against private parties?” The answer, as the Plaintiff acknowledges, is “no.” Accordingly, the Defendants are entitled to dismissal of the Complaint’s first, second, third, fourth, fifth, sixth, seventh, and eighth causes of action. See, e.g., Cole Vision Corp. v. Hobbs, 394 S.C. 144, 154, 714 S.E.2d 537, 542 (2011) (approving the circuit court’s dismissal of a counterclaim cause of action for spoliation of evidence because South Carolina does not recognize such a claim). See also Kent v. Hennelly, No. 9:19-cv-01383-DCN, 2019 U.S. Dist. LEXIS 195563, at \*34-35 (D.S.C. Nov. 12, 2019) (dismissing a cause of action for false light invasion of privacy because such a cause of action does not exist under South Carolina law); Awkard v. Rammelsberg, No. 4:17-cv-01542-RBH-KDW, 2018 U.S. Dist. LEXIS 168067, at \*32 n.13 (D.S.C. Mar. 13, 2018) (recommending dismissal of a claim for reckless infliction of emotional distress because South Carolina does not recognize such a cause of action).

## **II. THE PLAINTIFF DID NOT HAVE A FIDUCIARY RELATIONSHIP WITH RICHARD WINN OR MS. CHAISSON.**

“A fiduciary relationship is founded on the trust and confidence reposed by one person in the integrity and fidelity of another. A fiduciary relationship exists when one reposes special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one reposing confidence.” Regions Bank v.

Schmauch, 354 S.C. 648, 670, 582 S.E.2d 432, 444 (Ct. App. 2003) (citations and quotation marks omitted). “Although whether a fiduciary relationship has been breached can be a question for the jury, the question of whether one should be imposed between two classes of people is a question for the court.” Hendricks v. Clemson Univ., 353 S.C. 449, 459, 578 S.E.2d 711, 715 (2003). “Historically, [the Supreme Court] has reserved imposition of fiduciary duties to legal or business settings, often in which one person entrusts money to another, such as with lawyers, brokers, corporate directors, and corporate promoters.” Id. at 459, 578 S.E.2d at 716.

The Complaint alleges that Richard Winn and Ms. Chaisson “had a fiduciary duty of loyalty with the Plaintiff to protect their contractual and parental interest in safeguarding the minor child while the child was in their care and control.” Compl. ¶¶ 57, 62. However, it appears that the Supreme Court has never recognized the existence of a fiduciary relationship in an academic or educational setting, and when given the chance to do so it has declined. In Hendricks, the Supreme Court “decline[d] to recognize the relationship between [a collegiate academic] advisor and student as a fiduciary one.” 353 S.C. 449, 459, 578 S.E.2d 711, 716. And in Doe v. Greenville County School District, 375 S.C. 63, 651 S.E.2d 305 (2007), the Supreme Court affirmed a trial court’s dismissal of a cause of action for breach of fiduciary duty against a school district. Id. at 72, 651 S.E.2d at 309-10. See also Green v. Richland Cty. Sch. Dist. Two, 2019-CP-40-00213, 2019 S.C. C.P. LEXIS 3029, \*3-4 (S.C. Com. Pl. filed Jun. 20, 2019) (dismissing a breach of fiduciary duty cause of action against a school district because the district did not have a fiduciary relationship with its students).

In an attempt to distinguish the aforementioned cases, the Plaintiff argues that a material distinction exists between private schools and public schools. Yet public schools are constitutionally required to provide a free, minimally adequate education to every child in South Carolina. See, e.g., S.C. Const. art. XI, § 3 (“The General Assembly shall provide for the

maintenance and support of a system of free public schools open to all children in the State and shall establish, organize and support such other public institutions of learning, as may be desirable.”); Abbeville Cty. Sch. Dist. v. State, 335 S.C. 58, 68, 515 S.E.2d 535, 540 (1999) (“[T]he South Carolina Constitution’s education clause requires the General Assembly to provide the opportunity for each child to receive a minimally adequate education.”). The Plaintiff offers no explanation as to why the duties owed by public schools are less significant than those owed by private schools other than to note that private schools enter into contracts with parents. She asserted in her brief that “a fiduciary relationship may very well exist in contractual relationships if the party has standing to enforce the agreement,” citing Beverly v. Grand Strand Regional Medical Center, LLC, 429 S.C. 502, 839 S.E.2d 468 (Ct. App. 2020). But rather than supporting her position, Beverly undercuts it by finding that even though the plaintiff in that case had standing to enforce a contract, she nevertheless could not pursue a breach of fiduciary duty claim. See id. at 513, 839 S.E.2d at 473 (“[T]he circuit court erred in dismissing Beverly’s breach of contract claim.”). See also id. at 515, 839 S.E.2d at 474 (“[W]e affirm the circuit court’s dismissal of Beverly’s claim for breach of fiduciary duty.”). Accordingly, Richard Winn and Ms. Chaisson are entitled to dismissal of the Complaint’s ninth and tenth causes of action.

### **III. TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS IS AN EXCLUSIVELY INTENTIONAL TORT.**

The Complaint alleges that Richard Winn, by and through Ms. Chaisson, negligently interfered with the contract between the Plaintiff and Richard Winn “by allowing a subsequent contract violating its contractual interest” and “by entering a second contract for the education of Zoe” and that, as a result, the Plaintiff “has suffered an economic injury.” Compl. ¶¶ 76, 77, 78. However, there is no recognized cause of action in South Carolina for “negligent tortious interference with contracts” because tortious interference with contractual relations is an

exclusively intentional tort. See, e.g., Eldeco, Inc. v. Charleston Cty. Sch. Dist., 372 S.C. 470, 480, 642 S.E.2d 726, 731 (2007) (“To establish a cause of action for tortious interference with contractual relations, a plaintiff must show: 1) the existence of a contract; 2) knowledge of the contract [by the defendant]; 3) *intentional* procurement of its breach [by the defendant]; 4) the absence of justification; and 5) resulting damages [to the plaintiff].”) (emphasis added); Edens & Avant Inv. Props. v. Amerada Hess Corp., 318 S.C. 134, 137, 456 S.E.2d 406, 407 (Ct. App. 1995) (“South Carolina, like the majority of states, has not recognized a cause of action for the recovery of pure pecuniary harm resulting from a tortfeasor’s negligent interference with the plaintiff’s contractual relationships[.]”). The Plaintiff concedes this issue. Accordingly, Richard Winn and Ms. Chaisson are entitled to dismissal of the Complaint’s thirteenth cause of action.

**IV. THE PLAINTIFF HAS CITED NO CONTRACTUAL OR STATUTORY PROVISION ENTITLING HER TO AN AWARD OF ATTORNEYS’ FEES.**

“Attorney’s fees are not recoverable unless authorized by contract or statute.” Historic Charleston Holdings, LLC v. Mallon, 381 S.C. 417, 436, 673 S.E.2d 448, 458 (2009). The Plaintiff has not cited any contractual or statutory provision entitling her to an award of attorneys’ fees in this action, and the court has not been made aware of any basis for such an award. Accordingly, the Defendants are entitled to dismissal of the Complaint’s fifteenth cause of action.

**IT IS, THEREFORE, ORDERED** that the Motions are **GRANTED**.

**IT IS FURTHER ORDERED** that the Complaint’s first, second, third, fourth fifth, sixth, seventh, eighth, ninth, tenth, thirteenth, and fifteenth causes of action are **DISMISSED**.

**IT IS FURTHER ORDERED** that, because the dismissal of the aforementioned causes of action disposes of all claims against Mr. Ryan, he is **DISMISSED** as a Defendant in this case.

**AND IT IS SO ORDERED.**



Fairfield Common Pleas

**Case Caption:** Robin Allen VS Richard Winn Academy , defendant, et al

**Case Number:** 2021CP2000026

**Type:** Order/Other

It is so ordered

Eugene C. Griffith, Jr. 2154