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Jul 07 2021

S.C. SUPREME COURT

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.: 2018-02025
Published Opinion No. 28030 (S.C. Sup. Ct. Filed May 19, 2021)

Leisel Paradis .....Petitioner

v.

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

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PETITIONER'S RETURN TO PETITION FOR REHEARING

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INTRODUCTION

The Court's opinion in this case overruled the "*Todd Rule*" "requiring the pleading of special damages for civil conspiracy claims." *Paradis v. Charleston Cty. Sch. Dist.*, Op. No. 28030 (S.C. Sup. Ct. filed May 19, 2021) (Shearhouse Adv. Sh. No. 17 at 20), 2021 WL 1992245, at *1 (S.C. May 19, 2021).

The Court, in so doing, returned to "long-standing precedent pre-*Todd*" and "to the traditional elements of civil conspiracy [ ] as they have been similarly defined by the majority of jurisdictions:"

> (1) the combination or agreement of two or more persons,
> (2) to commit an unlawful act or a lawful act by unlawful means,
> (3) together with the commission of an overt act in furtherance of the agreement, and
> (4) damages proximately resulting to the plaintiff.

Paradis, (Shearhouse Adv. Sh. No. 17 at 28), 2021 WL 1992245, at *6 (S.C. May 19, 2021).

The Respondent does not challenge the Court's decision head-on. Instead, the Respondent argues that this return to "long-standing precedent pre-*Todd*" may have also abrogated a litigant's need to prove purposeful intent.

Respondent does not argue that the omission of a specific "intent to harm" element is dispositive to this case; but instead, asks the Court to (1) clarify the question that it poses about intent to harm "for the bench, bar and public" and (2) to find that if intent to harm is not required then the Court's opinion should only apply prospectively. (See Respondent Petition pp. 4-7).

DISCUSSION

Purposeful intent is naturally implied by the elements of civil conspiracy as stated by the Court and retrospective application is warranted by this Court's order which restored an existing right by "returning to our long-standing precedent." *Paradis*, (Shearhouse Adv. Sh. No. 17 at 28), 2021 WL 1992245, at *6 (S.C. May 19, 2021).

1. A REQUIREMENT FOR INTENT TO HARM IS SELF-EVIDENT IN THE COURT'S STATEMENT OF THE ELEMENTS IN ITS DECISION.

The Court's Opinion does not abolish the need to establish purposeful intent. The elements as stated by the Court naturally require purposeful intent. *Id.* ("(1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff."). It is difficult, if not impossible, to conjure up a scenario where these elements could be established without an intent to harm the plaintiff.

Indeed, the two South Carolina cases relied on by the Court in stating these elements acknowledge the need to prove intent to harm. *Charles v. Texas Co.*, 199 S.C. 156, 18 S.E.2d 719, 727 (1942) ("*Charles 2*") (Approving jury charge which included: "Ordinarily a conspiracy is where two or more persons combine or agree to do something to the detriment or hurt of another . . . If they went about this in a legitimate way to forward their business without any intention of hurting anyone else that would not be a conspiracy and therefore, if it were not a conspiracy why this cause of action would fail.") *Charles v. Texas Co.,* 192 S.C. 82, 5 S.E.2d 464, 472 (1939) ("The defendants may have had a right to sell to anyone their products at such prices as they saw fit, but if this was done in furtherance of a conspiracy to injure and damage the plaintiff the allegation would be pertinent and relevant on that issue.").

The secondary authority cited by the Court in re-establishing these elements is even more specific. 16 Am. Jur. 2d Conspiracy § 53 ("Since one cannot agree, expressly or tacitly, to commit a wrong about which they have no knowledge, in order for civil conspiracy to arise, the parties must be aware of the harm or wrongful conduct at the beginning of the combination or agreement. Thus, civil conspiracy is an intentional tort requiring a specific intent to accomplish the contemplated wrong."); 15A C.J.S. Conspiracy § 4 ("Civil conspiracy is a common-law intentional tort.").

The authority relied on by this Court in stating the elements for conspiracy shows that there has been no substantive change to the requirement that a plaintiff establish intent to harm. Respondent's argument focuses on a superficial, non-substantive, distinction in how the elements of civil conspiracy were stated before and after this decision. A tort can require "intent to harm" without listing purposeful intent as an element. *See e.g.*, *Gathers v. Harris Teeter Supermarket, Inc.*, 282 S.C. 220, 230, 317 S.E.2d 748, 754–55 (Ct. App. 1984) ("A battery is the actual infliction of any unlawful, unauthorized violence on the person of another, irrespective of its degree; [ ] an assault occurs when a person has been placed in reasonable fear of bodily harm by the conduct of the defendant."). The requirement to prove some purposeful intent underlying a conspiracy claim was not abrogated by the Court's decision in this case.

2. THE COURT'S RETROSPECTIVE APPLICATION OF THIS CASE TO PRE-TRIAL CONSPIRACY CLAIMS WAS APPROPRIATE.

This Court's post-*Todd* statement of the elements corrected an error of law on a preexisting right; therefore, the Court's retrospective application to this case and other pre-trial matters was appropriate. *Toth v. Square D Co.*, 298 S.C. 6, 8, 377 S.E.2d 584, 585 (1989) ("[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.") This Court, in rolling back the *Todd* rule, did not create a "new right or cause of action"; instead, it "vindicate[ed] [an] existing right" such that retrospective application was appropriate. *Carolina Chloride, Inc. v. S.C. Dep't of Transp.*, 391 S.C. 429, 434, 706 S.E.2d 501, 503 (2011); *McCaskey v. Shaw*, 295 S.C. 372, 368 S.E.2d 672, 673 (Ct. App. 1988).

The Respondents' Petition turns on the prerequisite question of whether the Court "remove[d] intent to harm/purposeful injury as a necessary element" of civil conspiracy. (Respondent Petition p. 4). The Petitioner's position is that the law was not changed by this Court with respect to intent. Therefore, Respondent's question about whether or not prospective or retrospective application

applies based on this asserted change in the law is a non-issue, because the only substantive changes to conspiracy law in this case was the removal of special damages as an element and the recitation of the elements of conspiracy law in light of that correction.

The Court returned to "long-standing precedent pre-*Todd*" and "to the traditional elements of civil conspiracy [ ] as they have been similarly defined by the majority of jurisdictions" in this case. *Paradis*, (Shearhouse Adv. Sh. No. 17 at 20), 2021 WL 1992245, at *6 (S.C. May 19, 2021). The Court's action, naturally then, was to restore an existing right. Therefore, this Court appropriately applied its decision in this case retrospectively to this case and other pre-trial matters.

CONCLUSION

The Court's statement of the elements of civil conspiracy in this case is clear and is consistent with South Carolina law pre-*Todd*. The Court's ruling does not effect a litigant's need to prove intent. Therefore, Respondent's petition for a new hearing should be denied.

Respectfully Submitted,

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