THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHESTER COUNTY
Court of Common Pleas
Brian M. Gibbons, Circuit Court Judge

Unpublished Opinion No. 2021-UP-272
(S.C. Ct. App. Filed July 14, 2021)

SC Court of Appeals No. 2018-001991

Angela H. Bain,

Appellant,

v.

Denise C. Lawson and Kenneth L. Childs,

Petitioners.

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for Petitioners certify that the Petition for Rehearing was made and finally ruled on by the South Carolina Court of Appeals on October 7, 2021.

QUESTIONS PRESENTED

1. Did the Court of Appeals err when it reversed the Circuit Court and found that Ms. Bain's self-serving letter with a direction in excess of her legal authority created a question of fact about Mr. Childs' attorney-client relationship with Ms. Lawson and the Chester County School District?

2. Did the Court of Appeals err in failing to address whether Ms. Lawson had formed an attorney-client relationship with Mr. Childs aside from Mr. Child's status as an attorney for the School Board or District?

3. With Leave of this Court, Respondents intend to argue against precedent and in favor of Justice Few's dissent in *Paradis* that the Tort of Civil Conspiracy should be abolished[1].

STATEMENT OF THE CASE

On July 23, 2018, Appellant Angela Bain ("Bain"), then Superintendent of Schools of Chester County, filed a civil complaint against Respondents Kenneth Childs ("Childs"), an outside attorney representing the Chester County School District and Denise Lawson individually ("Lawson") then the Chair of the Chester County School Board. The complaint, alleged causes of action for defamation and civil conspiracy against both defendants.

At all times relevant to this case, Childs was a member of the Duff & Childs law firm. Lawson filed her Motion to Dismiss pursuant to Rule 12(b)(6), SCRCP on August 8, 2018. Childs filed his Motion to Dismiss pursuant to Rule 12(b)(6), SCRCP, and in the alternative, a motion for

[1] Petitioners understand that they must file a motion under Rule 217, SCACR, for leave to engage in oral argument against precedent at least fifteen (15) days before oral argument.

Judgment on the Pleadings under Rule 12(c), SCRCP on August 17, 2018. On that same date, Childs also filed a separate Motion to Strike and Memorandum in support of his Motions. On September 18, 2018, Bain filed three memoranda in opposition to each of the motions filed by Respondents.

The Honorable Brian M. Gibbons held a motion hearing and heard argument on the motions in the Chester County Courthouse on September 26, 2018. After oral arguments, Judge Gibbons asked the parties for additional briefing on the Attorney-Client privilege issues argued during the hearing. The parties submitted supplemental memoranda in support of their positions. Both the Complaint and Memoranda submitted by the parties included additional materials relevant to the question of whether Childs was acting as attorney for Lawson and/or the District, including policies, correspondence, and e-mails from Bain to Childs and others. Judge Gibbons considered these documents as they were submitted without objection by either party.

Judge Gibbons issued his Order granting Childs' Motion and dismissing Bain's Claims against Childs on October 26, 2018. Judge Gibbons' denied Lawson's Motion to Dismiss the Defamation action but granted Lawson's Motion to Dismiss the Conspiracy Action. The Court further determined that because of the dismissal, Child's motion to strike was Moot.

Bain moved for reconsideration on November 2, 2018. Judge Gibbons denied her Motion for Reconsideration in an Order dated November 5, 2018. Bain timely filed a Notice of Appeal on November 8, 2018.

Bain appealed Judge Gibbons' decision to the Court of Appeals. The Court of Appeals issued its Order Reversing and Remanding Judge Gibbons decision on July 14, 2021.

In that decision, the Court agreed that the acquiescence of the parties to the materials attached to the Complaint and filed with their memoranda and determined that in accord with *Higgins v. Med. Univ. of S. C.*, 329 S.C. 592, 598, 486 S.E. 2d 269, 272 (Ct. App. 1997) that the

parties were "fairly apprised that the court would look beyond the pleadings," and agreed that the motions were properly determined under Rule 56, SCRCP.

Lawson and Childs timely filed separate Motions for Reconsideration and Rehearing *en banc* on July 29, 2021. The Court separately denied their motions by Orders dated October 7, 2021. They now jointly file this Petition for a Writ of Certiorari to the South Carolina Supreme Court.

STANDARD OF REVIEW

An appellate court reviews the granting of summary judgment under the same standard applied by the trial court pursuant to Rule 56, SCRCP. *Progressive Max Ins. Co. v. Floating Caps, Inc.*, 405 S.C. 35, 42, 747 S.E.2d 178, 182 (2013). Determining the proper interpretation of a statute is a question of law, which this Court reviews *de novo*. *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 662 S.E.2d 40 (2008).

ARGUMENT

A. RELEVANT FACTS

As Superintendent of the Chester County School District, Angela Bain was an employee of the Board of Trustees. *S.C. Code Ann.* § 59-19-10 (2020). Board policy BDG dictates how attorneys are approved and selected. Under that policy, the Board, not the Superintendent, selects and approves attorneys for the school district. The Board of Trustees approved the Duff & Childs firm and its lawyers to be utilized as attorneys for the district at all relevant times. Administrative Regulation BDG-R allows the Board Chair to seek representation for the Board. The Superintendent's consent is not required for the Chair to consult with counsel. Further, it is self-

evident that the Board would not select the Superintendent's preferred lawyer to represent it in dealing with questions about the Superintendent's contract.

In essence, Bain's Complaint alleges that she suffered damage because Lawson consulted with Childs about her contract, and that they discussed Bain's outside consulting activities in executive session with the Board. Notably, there is neither allegation nor evidence that the Board took any adverse action against Bain. The record establishes that Bain requested that Childs perform work for the district, but she also alleges that Childs did not represent the district. It is incontrovertible that she recognized the attorney-client relationship between Childs and the School District that she denies in the Complaint.

The record reflects that Childs – formerly a partner in the Childs and Halligan firm that ceased working with the district in 2015 – was subsequently employed with Duff & Childs, which was one of the successor firms resulting from the breakup of Duff White & Turner. Bain admits that Duff & Childs was an approved firm. Compl. ¶14. (R.O.A. p 004).

Notably, while the Plaintiff wishes to assert that a single attorney – Andrea White – was appointed by the Superintendent, the entire firm of Duff White & Turner was hired.[2] Allegations that Duff & Childs firm did not represent the district are contradicted by Bain's own Complaint and the attachments submitted by the parties in their respective pleadings. For instance, on June 2, 2017, Bain e-mailed Mr. Childs and his partner David Lyon[3] and said:

> *Good morning, David and Ken!*
> *Thanks for the memo! Yes, this is fine to go ahead and send to the board with a cc to me. Would you be able to do this today?*
> *Thanks!*
> *Angela.*

---

[2] Paragraph 17 of the Complaint alleges that the Superintendent chose to use Andrea White "to conduct the district's legal business." This allegation is inconsistent with the record and with the Superintendent's legal authority set forth above.

[3] David Lyon, an attorney, was a member of the Duff & Childs firm.

(R.O.A. p. 160)

The record further reflects that on June 6, 2017, Bain sent an e-mail to the School Board – including Mrs. Lawson. That e-mail read:

> *Hi All,*
> *Here is something I am getting ready to send to our media outlets at the advice of* **Ken Childs, one of our attorneys.** *I wanted to be sure we were in compliance with Board meeting announcements and FOIA.*
> *Having not sent out an agenda for a meeting., it cannot be viewed as a board meeting. Wanted to be sure we were all clear on that.*
> *See attached.*
> *Thanks.*
> *Angela.*

(ROA p. 163) [emphasis added].

The record also includes another e-mail was sent regarding use of both successor firms to Duff White & Turner:

> *Hi all, please deliver all electronic and hard copy files form the old firm to Andrea White at 3614 Landmark Drive, Suite EF. We hope to be able to use both firms going forward.*
> *Thank you.*
> *Angela.*

(R.O.A. p. 162)

Indeed, on August 22, 2017 Bain wrote a letter to David Lyon, Esquire at Duff & Childs, LLC complaining and asking for clarification about three items on the July 2017 invoice from the law firm[4]. She states *inter alia*,

> *"After a review of your August 8, 2018 memo and attached bill received in my office on August 14, 2017, I have concerns about the charges listed on the bill for the month of July 2017. I will outline those below.*

After raising three questions, she states,

> *I do not believe our district should be billed for these items as they were not authorized by me . Please review and get back with me on this. Going forward,*

[4] The fact that the School District was receiving regular invoices from the firm augers against the idea that there could be a material question of fact about the attorney-client relationships

please notify me prior to taking any action on behalf of Chester County School District so that I have a chance to authorize expenses.

(R.O. A. p. 148).

Here once more, Bain acknowledges that Duff & Childs, and its attorneys are approved attorneys for the district, are performing work and have an attorney-client relationship with the school district. Moreover, as approved attorneys, they are available for consultation with the Board through the Board chair pursuant to District Policy. Also, while Plaintiff introduced this letter, it is also notable for the fact that it proves the very attorney client relationship the existence of which the Appellate Panel found to be a question of fact. Non-clients neither receive invoices from lawyers nor ask questions about them. Bain did not write that "you're not our lawyers, what are you doing sending us bills," although Bain baselessly argues that is the case.

On June 26, 2018, Childs met with the Board during a Special Called Meeting of the board of School Trustees to discuss the superintendent contract and related matters. According to the Complaint the meeting was called on June 16, 2018 by the Board Chair. ¶47 Compl. (R.O.A. p. 9).

Chester County School Board Policy provides that the Board, not the Superintendent, selects and approves attorneys. Bain's communications demonstrate that Childs was an approved attorney for the District that the Board Chair could choose to use pursuant to Policy BDG-R.

The only facts in the record support a finding that Childs was an attorney and was acting in that capacity when both Lawson and the Board sought legal advice about Bain's contract. These facts demonstrate that the Appellate Panel erred in finding that his representation was a question of fact, the finding that led to the Trial Judge's decision being reversed and remanded.

It is also an admission that the Court of Appeals should have found dispositive[5].

B. DISCUSSION

1. THERE IS NO EVIDENCE TO SUPPORT THE CLAIM THAT CHILDS WAS NOT ACTING AS ATTORNEY FOR THE SCHOOL DISTRICT IN THE REVIEW OF BAINS' CONTRACT

Bain wishes to ignore the well settled law that "An attorney is immune from liability to third persons arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client." *Gaar v. N. Myrtle Beach Realty Co., Inc.*, 287 S.C. 525,528, 339 S.E.2d 87, 889 (Ct. App. 1986). In *Couram v. S.C. DMV*, 2016 US Dist. LEXIS 105312 the U.S. District Court discussed the exception created by *Stiles v. Onorato*, 318 S.C. 297,300. 457 S.E.2d 601,602 (1995), the Court noted that *Stiles v. Onorato, supra* required that an independent duty to a third person be established. Neither the pleadings nor the holding of the Court of Appeals establishes any duty that Childs owed Bain. Instead, the Court of Appeals focused on the finding a question of fact that would survive summary judgment to reverse the Circuit Judge.

The Court of Appeals found "We find that a genuine issue of fact exists as to whether Childs acted outside his role as the District's or Lawson's attorney", *Bain v. Lawson and Childs*, Opinion No. 2021-UP-272, p.8. The Court went on to find that "we find her (Bain's) August 22, 2017 letter provides enough ambiguity regarding the attorney-client relationship between the District and Childs (and his firm) that judgment as a matter of law is inappropriate. In the letter, Appellant

[5] The Circuit Court found the Attorney-Client Relationship as a matter of law. The Court of Appeals interjected the idea that there was a question of fact. In doing so it relied on Bain's August 22, 2017 letter wherein she states that Childs was not authorized to do legal work on behalf of the District without her prior approval. This was ultra vires. The Superintendent does not under the Board Policy or State Law, preclude the Board from using an approved attorney. Her admissions establish that Childs was an approved Attorney.

explicitly states that the firm was not authorized to do legal work on behalf of the District without her prior approval. The fault in this analysis is that the letter itself was ultra vires because School Superintendent in Chester County does not have the legal authority to hire and fire Counsel for the School District.

In finding a question of fact existed because of Bain's self-serving, ultra vires letter, the court misapprehended the law and held that a School Superintendent, not a school board, has the authority to dictate what attorneys represent a school district. This Court should not let that error stand as such a determination undermines the very foundation of school district governance in the state. The Board hires the Superintendent. *S.C. Code Ann.* §59-19-90(3) (2020) provides that the board of trustees shall also "promulgate rules and regulations. . . ."

S.C. Code Ann. §59-19-110 (2020) provides that

> *The boards of trustees of the several school districts may prescribe such rules and regulations not inconsistent with the statute law of this State as they may deem necessary or advisable to the proper disposition of matters brought before them. This rule-making power shall specifically include the right, at the discretion of the board, to designate one or more of its members to conduct any hearing in connection with any responsibility of the board and to make a report on this hearing to the board for its determination.*

The Chester County School Board exercised that authority. It adopted Policy BDG and the administrative rule to that policy. Policy BDG, referred to in the Plaintiffs' Complaint (R.O.A. p. 016), provides

> *The increasing complexity of school board operations requires the frequent procurement of legal services.*
>
> *Consequently, the board, by majority vote, may designate an attorney to counsel the board and administration on legal matters involving the district's welfare.* ***The attorney will serve at the pleasure of the board and will be paid for services rendered.***
>
> *The board may ask the attorney to attend such board meetings or other meetings as may be needed. A decision to seek legal advice or assistance on behalf of the school system will normally be made by the superintendent. Such action will be*

taken as consistent with board policy and as it meets an obvious need of the board. It may take place as a consequence of formal board direction.

Except in unusual circumstances, ***the board will make all communications to the school attorney through the*** *superintendent or* ***board chairman****. [Exhibit B to the Complaint]*

[emphasis added]

The Administrative Rule for the Policy, AR BDG-R further clarifies the Board Chair's ability to consult with District Counsel on her own (and/or the Board's) initiative. It requires District employees to make a request for legal services with the superintendent's express consent. Unlike District employees, Board members' access to legal services are not controlled by the Superintendent. Board members may make request for "legal advice from the district's appointed attorney without the knowledge of the superintendent" by making a request to the board chair.

The record establishes without any material question of fact that Mr. Childs was an attorney for the district. There is no evidence that he acted except in that capacity when he consulted with the Board and Board Chair. The instruction relied upon to create the question of fact was a legal nullity as it was and instruction without authority. Since there is no evidence to support a claim that Mr. Childs was acting other than as counsel for the District and there is neither evidence nor allegation that he owed any separate duty to Bain, he is immune from suit and as a matter of law cannot have conspired with Board Chair Lawson. Surely, the Court does not wish to establish or allow a precedent that an attorney engages in a conspiracy in giving a client legal advice about a potential breach of a contract. That is the logical extension and actual effect of the Court of Appeal's reversal in this case.

The Plaintiff complains that "a special board Meeting was called by Lawson for June 18, 2018 Comp. ¶47 (R.O.A. p. 009) and that "Childs presented to the entire School board and to individual board members the alleged violations of contract and law made against the plaintiff for

her consulting work." Comp. ¶48. (R.O.A. p. 009). This meeting was properly called and held because the Board Chair and School Board have the legal authority and right – without the consent of the Superintendent, to consult District counsel about the Superintendent's contract without her knowledge – although the public meeting agenda and minutes reflect that this meeting was anything if not public and the Superintendent had notice of the meeting.

Notably, the public record minutes of that meeting reflect that "the board voted unanimously to approve the agenda as presented" which was to "discuss the superintendent contract and related matter." Those minutes available at https://www.chester.k12.sc.us/cms/lib/SC50000477/Centricity/Domain/39/JUNE%2026%202018%20MINUTES.pdf reflect that Mr. Childs and Mr. Lyon, attorneys from Duff & Childs, LLC were present. The public record clearly demonstrates that Mr. Childs was the Board's attorney during the meeting. This is consistent with the allegation that a Board meeting took place, and he was called upon to report to the Board on a matter of the Superintendent's contract.

Every bit of this claim is consistent with Childs being properly consulted by the Board Chair about concerns relating to the Superintendent's contract. The letter submitted by the Superintendent confirms that he and his firm were approved attorneys for the district. Note that while she questioned charges in the bill, she certainly didn't say "your firm does not represent our district" Her other communications during that same summer reflect a continued relationship between Childs' firm and the school district.

It was error for the Court of Appeals to hold that there was a material question of fact as to whether or not Childs was the District's Attorney. As an attorney approved by the Board, the Board chair had every right to consult with him about the Superintendent's contract and the Superintendent's efforts to change the fact with an ultra vires instruction provides no basis for the

Court of Appeals to reverse the Circuit Judge. This Court should grant Certiorari and reverse the Court of Appeals on this issue.

2. CHILDS HAD AN ATTORNEY CLIENT RELATIONSHIP WITH THE SCHOOL DISTRICT, BUT IF HE DID NOT, HE HAD AN ATTORNEY-CLIENT RELATIONSHIP WITH LAWSON

The Court of Appeals reversed the trial court's holding that the civil conspiracy claim against Bain and Childs should be dismissed. The trial court based its decision on its finding that Childs was acting within an attorney-client relationship, and a would-be plaintiff cannot maintain a civil conspiracy claim against two parties based on acts that occur within the scope of an attorney-client relationship. Specifically, in its order, the trial court noted that the communications alleged by Appellant in support of its civil conspiracy claim were firmly within the scope of the attorney-client privilege, and for that reason, "no actionable conspiracy exists as a matter of law." (Rec. on App. p. 240, Order). The Court of Appeals cursorily noted, without analyzing any aspect of an attorney-client relationship between Childs and Lawson "We find that a genuine issue of fact exists as to whether Childs acted outside his role as the District's or Lawson's attorney." (cite omitted)

The record reflects that Lawson also had an attorney-client relationship with Childs regardless of whether Childs was the District's attorney. Importantly, the record is bereft of any allegation, assertion or claim to the contrary.

Under South Carolina law, a person is deemed a client when she (1) seeks legal advice, (2) discusses those matters with a lawyer, and (3) does so in confidence for the purpose of obtaining such advice. *In re Carter*, 400 S.C. 170, 176, 733 S.E.2d 897, 900 (2012); *Marshall v. Marshall,* 282 S.C. 534, 539, 320 S.E.2d 44, 47 (S.C. App. 1984) (a person attains the status of "client" when that person seeks legal advice by communicating in confidence with an attorney for the purpose

of obtaining such advice, and a signed retainer agreement is not essential to create such a relationship).

Therefore, under South Carolina law, where a person consults in confidence with a lawyer for the purpose of obtaining legal advice, those consultations are protected by the attorney-client privilege. Such is the case in this matter. As Bain alleged, Respondent Lawson clearly knew and understood that Childs was an attorney, and according to Bain's own Complaint, often met with him to seek his counsel. (Rec. on App. p. 13, Complaint, ¶ 70).

The policy underlying the principle of applying an absolute privilege to attorney-client communications – and forbidding parties from using them to support tort claims against the attorney and client – is self-evident. As one court recently articulated:

> Subjecting a client to liability, or indeed to the burden of defending against a defamation action, for statements made to his attorney pertinent to and during the course of legal representation would seriously impair the full and frank discussions that the attorney-client privilege is designed to protect.... On balance, the plaintiff's desire for civil damages in defamation is not sufficiently compelling to warrant abrogation of the attorney-client privilege.

Chamberlin v. 101 Realty, Inc., 626 F.Supp. 865, 871 (D.N.H. 1985) (citations omitted). Similarly, communications enjoying absolute privilege cannot be used to support a civil conspiracy claim.

Petitioners respectfully commend to this Court the ruling of Retired Chief Justice Toal, sitting as a trial judge, in *Kovach v. Whitley*, 2015-CP-08-2380, in the Court of Common Pleas for Berkeley County. In that case, the plaintiff brought a civil conspiracy claim against several defendants, which was found defective (and actually worthy of sanction) for several reasons that are relevant here:

- The plaintiff's factual assertions related to the alleged conspiracy were actually actions that the defendants had the right to take. (Rec. on App. p. 175, Kovach Order, pp. 17-18).
- Bringing the plaintiff's alleged criminal activity to the attention of authorities was "not actionable as a matter of law." (Rec. on App. p. 176, Kovach Order, p. 18). The order specifically referenced *Angus v. Burroughs & Chapin Co.*, 368 S.C. 167, 170, 628 S.E.2d 261, 262 (2006), noting that "Defendants had every legal right as citizens to report Ms. Kovach's illegal acts to authorities." (Rec. on App. p. 175, Kovach Order, p. 18).
- Perhaps most relevant to the instant appeal, Justice Toal also noted that the alleged acts of the "conspirators" were actually privileged, and "cannot be the basis for a civil conspiracy claim." (Rec. on App. p. 175-176, Kovach Order, pp. 18-19, quoting *Crowell v. Herring*, 301 S.C. 424, 430, 392 S.E.2d 464, 467 (S.C. App. 1990).

Respectfully, it is not merely a part of a "parade of horribles" to note that, under Appellant's theory of the case as adopted by the Court of Appeals, any party may eviscerate the attorney-client privilege of another party merely by alleging in a complaint – "upon information and belief," no less – that the opposing party's communications with her lawyer were for some purpose other than seeking legal counsel. Under South Carolina law, Respondent Lawson – in either her official or individual capacity – is permitted to seek legal advice from any attorney she wishes, and to act on that advice accordingly, regardless of whether the attorney is also "officially" serving the Board. In the course of seeking and receiving that advice, the communications between attorney and client

are privileged, and as noted in Kovach, privileged communications cannot form the basis of a civil conspiracy claim.[6]

Because the Court of Appeals should not have reversed the Circuit Court and opened the door for allegations of conspiracy by a lawyer and client in every contract case, this Court should grant Petitioner's request for Certiorari, reverse the Court of Appeals' decision and affirm the Circuit Court's dismissal of Bain's civil conspiracy claim.

3. THE TORT OF CIVIL CONSPIRACY SHOULD BE ABOLISHED.[7]

While this matter was pending before the Court of Appeals, in *Paradis v. Charleston Cty. Sch. Dist* 2021 WL 1992245, Op. No. 28030 (S.C. Sup. Ct. filed May 19, 2021) (Shearhouse Adv. Sh. No. 17 at 26–27) this Court held that a plaintiff asserting a civil conspiracy claim need not plead special damages.

In the same opinion, Justice Few wrote persuasively that, in removing the requirement to prove special damages – which heretofore "prevented civil conspiracy from being a significant cause of action in civil litigation" – any plaintiff could now "bring a civil conspiracy action against any defendant—even for lawful, non-tortious conduct—and the law imposes no meaningful standards on courts and juries by which they must judge the defendant's conduct. I disagree with the majority that we should unleash this still-undefined and now-unrestrained menace on the public as an independent tort." 2021 WL 1992245, at *8.

Justice Few's description of the ill effects of allowing the tort of civil conspiracy is especially relevant to the instant case. Here, Appellant has sought to convert her defamation claim

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[6] Notably, if this Court accepted Appellant's argument, nothing would prevent Respondent Lawson or Childs from suing Appellant and her counsel under the same theory.

[7] The undersigned understands that he must file a motion under Rule 217, SCACR, for leave to engage in oral argument against precedent at least fifteen (15) days prior to oral argument.

into a separate claim for civil conspiracy and to eviscerate the protections of attorney-client privilege with the barest of allegations. Moreover, as earlier argued by Respondent Lawson, Appellant's own allegations established that the Respondents' alleged conspiracy involved meeting with each other to scheme, plan, and conspire with one another and others to terminate her contract with the district, remove her from the position of Superintendent, and prevent her from obtaining any future employment with the District or any other school district by defaming her." 2021 WL 2947804, at *2. Notably, Appellant's claim that "all such communications and actions between Respondents were within the 'crime fraud' exception to the attorney-client privilege" is a legal conclusion that is not considered as a factual allegation under Rule 12(b)(6), SCRCP, and there is not a shred of evidence in the record that could sustain this point under Rule 56, SCRCP. 2021 WL 2947804, at *2.

In the words of Justice Few, "[d]efamation defenses do not apply to civil conspiracy, which – as confirmed by the majority to be an independent tort – permits the court and jury to impose liability for lawful, non-tortious conduct based on a court or juror's sense of fairness or responsibility. In other words, the civil conspiracy claim we remand for trial permits a court and jury to impose liability for defamation despite the fact the law provides valid defenses that prevent liability." 2021 WL 1992245, at *9.

Thus, Appellant seeks to do exactly what Justice Few warned against – using a civil conspiracy claim as an "end-around" of (1) the defenses of a defamation claim and (2) the attorney-client privilege by permitting her to sue the Respondents because they conferred with each other. This Court should not allow this door to be opened. Doing so allows every party to allege that the opposing party acted with his or her attorney outside of the scope of representation. This unregulated type of claim will do irreparable harm to the ability of lawyers and clients to pursue and obtain justice. Policy dictates that this Court grant Certiorari and issue its determination that

the cause of action for civil conspiracy should not be available in South Carolina. As a practical matter it is duplicative of other causes.

CONCLUSION

The Court of Appeals' decision here, coupled with the undefined theory of civil conspiracy creates the potential for myriad claims from opposing parties that their opponent did not have a proper attorney-client relationship with her attorney and that as a result she and the attorney engaged in a civil conspiracy.

This Court can resolve the confounding problems created by the interplay between *Paradis* and a holding that whether or not an attorney-client relationship exists is a question of fact, which can move a case forward with a mere "upon information and belief" allegation by a plaintiff that there is not such a relationship by granting Petitioner's Petition and reaffirming that the issue of the attorney-client relationship is a question of law to be decided by the Court – as the Circuit Court did here and by modifying or reversing its earlier holding in *Paradis* by providing the bench and bar guidance by articulating specific requirements, elements or standards for the Civil Conspiracy claim, or in the alternative, finding that Civil Conspiracy is not a cause of action in South Carolina.

For the reasons stated above, Ms. Lawson and Mr. Childs respectfully request that the Court grant this Petition for a Writ of Certiorari.

Respectfully submitted,

Signature page to follow

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CERTIFICATE OF SERVICE

I certify that I have served the Petition for Writ of Certiorari to the South Carolina Supreme Court on J. Lewis Cromer, Shannon M. Polvi by depositing it in the United States Mail, postage prepaid on November 8, 2021, addressed to them at the following addresses:

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CERTIFICATE OF COUNSEL

The undersigned certify that this Motion for Consideration complies with Rule 242, SCACR.

November 8, 2021.

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