In The

Supreme Court of Virginia

RECORD NO. 190107

AMANDA C. PADULA-WILSON,

***Appellant*,**

v.

SCOTT DAVID LANDRY, MICHELE KILLOUGH NELSON, FORENSIC PSYCHOLOGY ASSOCIATES PC, JILL A. FERRANTE GASPER, LAURA E. WERT, THE WESTWOOD GROUP LLC, and CARA B. CAMPANELLA,

Appellees.

BRIEF OF APPELLEE JILL A. FERRANTE GASPER

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SCV: Submitted on 11-18-2019 11:15:43 EST for filing on 11-18-2019

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HONORABLE CHIEF JUSTICE AND
JUSTICES OF THE SUPREME COURT OF VIRGINIA

Appellee, Dr. Jill Gasper, by counsel, pursuant to Rule 5:28 of the Rules of the Supreme Court of Virginia, in opposition to the Appellant, Amanda C. Padula-Wilson, states that the Circuit Court for the City of Richmond properly sustained Appellee's Demurrer to the Complaint and properly dismissed this case. Therefore, the Circuit Court decision should be sustained.

STATEMENT OF THE CASE

This case arises out of a custody dispute that occurred between Plaintiff and her husband, Michael Gregory Wilson, regarding their three children – A.W., C.W., and A.W. *See* Compl. *passim*.

At one of the custody hearings, Judge Herbert C. Gill of the Circuit Court for the Chesterfield County ordered that Plaintiff and her husband undergo a psychological evaluation. *Id.* at ¶ 14. Defendant, Dr. Michele Nelson, was appointed by the Court to conduct the evaluation. *Id*.

After performing the evaluation, Dr. Nelson recommended that a psychologist be designated to provide reunification therapy between C.W. and Mr. Wilson. *Id.* at ¶ 7. Dr. Nelson recommended Dr. Jill Gasper for this purpose, and Dr. Gasper was engaged to do reunification therapy. *Id.* In furtherance of this therapy, Dr. Gasper met with Plaintiff and Mr. Wilson, individually, as well as separately interviewed A.W. and C.W. *See id.* at Ex. E ("I understand that you

have met with the parties and interviewed the boys separately."). In addition to meeting with the Wilsons and their minor sons, Dr. Gasper reviewed material provided by Plaintiff, as well as assessments completed by Dr. Nelson and Dr. Simpson.[1] *Id.* As Plaintiff admits, she was not Dr. Gasper's patient. *Id.* at ¶ 163.

Based on her interviews and review of the relevant material, it was Dr. Gasper's clinical recommendation on April 18, 2013, that: (1) Mr. Wilson's visitation schedule be expanded; (2) C.W. and his father should immediately begin joint reunification therapy sessions; (3) the Wilsons not involve their children in the divorce/custody proceedings, including a prohibition on recording their children for litigation purposes; and (4) Dr. Gasper speak with Dr. Dwyer, who had been retained to provide Plaintiff with court-ordered mental health counseling, so that Dr. Gasper could address with Dr. Dwyer the needs of C.W. and A.W. *Id.* at Exhibit E.

At some time prior to April 24, 2013, the date on which the next custody hearing was to take place, Plaintiff created a website called "Victims First; Abusers Last," where she published information regarding the ongoing custody dispute, including information about Dr. Gasper's involvement. *Id.* at ¶ 43. The website included videos of Plaintiff's children and purportedly captured the children's response to the divorce and ongoing custody battle. *Id.* at Exhibit F.

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[1] Dr. Simpson is a clinical psychologist who was appointed by the Chesterfield Circuit Court to conduct a psychological examination of A.W. and C.W.

During the April 24th custody hearing, the website was brought to Judge Gill's attention and was discussed during the direct examination of Dr. Gasper. *See id.* at Exhibit F. At the hearing, Dr. Gasper opined that Plaintiff's website was problematic and increased her previously held concern regarding Plaintiff's ability to keep her children out of the middle of the custody proceedings and to prevent alienation. *Id.* at 23:7-11. Dr. Gasper further opined that she was concerned about Plaintiff's ability to foster a relationship between her husband and their children, and also had some apprehension regarding Plaintiff's reaction should Ms. Wilson be granted expanded visitation. *Id.* at 23:13-19. The Court ultimately ruled that custody would remain the same, but ordered that the Wilson children see Dr. Gasper before May 31, 2013. *See id.* at Exhibit C.

On or about August 18, 2013, Scott Landry, the court-appointed *guardian ad litem*, conducted a home visit of Plaintiff's primary residence, which prompted him to contact Dr. Gasper to express his concerns regarding the observations he made during that visit. *See id.* at ¶¶ 48-49. As a result of Mr. Landry's home visit, the Court held an emergency hearing on August 20, 2013. At that time, Dr. Gasper was called to testify. *See id.* at ¶ 62. At that hearing, Dr. Gasper testified that she believed Plaintiff to be a flight risk and that, in her professional opinion, Plaintiff's thinking was delusional with regard to Plaintiff's perceptions of Mr. Wilson. *Id.* at Exhibit F-G.

After the August 20, 2013 hearing, Dr. Gasper decided to no longer provide reunification counseling services to Plaintiff's minor sons, and recommended Dr. Laura Wert to provide individual counseling services consistent with the Court's August 12, 2013 Order. *See id.* at ¶¶ 68, 72. Dr. Gasper then ceased having any involvement in the evaluation of Plaintiff's children or any subsequent custody hearing. *See id. passim.*

On August 19, 2015, Plaintiff filed a Complaint in the Circuit Court for the City of Richmond, but took a non-suit prior to any hearing on Defendants' demurrers. Plaintiff re-filed on August 7, 2017 and served the Complaint in July of 2018. The Honorable Charles J. Maxfield was assigned to the case. Defendants, including Dr. Gasper, filed demurrers as to all counts and the Judge Maxfield granted the demurrers dismissing the Complaint in its entirety, with prejudice. Plaintiff perfected her appeal to this Court and said appeal was subsequently accepted.

STANDARD OF REVIEW

The Circuit Court's decision to sustain Defendants' demurrers presents a question of law which this Court reviews de novo. *Glazebrook v. Board of Supervisors*, 266 Va. 550, 554 (2003). As a general rule, the Court should accept all factual allegations pleaded in the Complaint and interpret those allegations in the light most favorable to the Plaintiff. *Coutlakis v. CSX Transp., Inc.*, 293 Va.

212, 215 (2017). Two notable exceptions to this general rule are relevant to this proceeding.

First, the Court should only accept unstated inferences as true if those inferences are reasonable and give them no weight if they are unreasonable. *County of Chesterfield v. Windy Hill, Ltd.*, 263 Va. 197, 200 (2002). "The difference between the two turns on whether 'the inferences are strained, forced, or contrary to reason, and thus properly disregarded as arbitrary inferences.'" *Id.* Second, conclusions of law or conclusory allegations "camouflaged as factual allegations or inferences" should not be accepted as true. *AGCS Marine Ins.v. Arlington City*, 293 Va. 469, 473 (2017). Similarly, factual allegations contradicted by authentic, unambiguous documents that are part of the pleading may be disregarded by a court when considering a demurrer. *Smith v. Chesterfield Meadows Shopping Center Associates*, 259 Va. 82, 85 (2000).

ARGUMENT

A. Plaintiff's Complaint Has Failed to Allege Sufficient Facts to Support a Claim for Tortious Interference of Parental Rights.

The cause of action for tortious interference with parental rights is not statutorily based, but rather, derived from common law. The first time this Court addressed the tort of tortious interference with parental rights was in *Wyatt v. McDermott*, 238 Va. 685 (2012). The issue came before the Court per certified

questions of law from the United States District Court for the Eastern District of Virginia. The two certified questions were: (1) whether Virginia recognizes tortious interference with parental rights as a cause of action; and (2) if so, what are the elements of the cause of action.

This Court answered the first question in the affirmative. The Court held that tortious interference with parental rights is a recognized cause of action under the common law of Virginia. Moreover, the Court found that the plaintiff in *Wyatt* had stated a cause of action for it in his complaint.

The potential lack of remedy for the Plaintiff in *Wyatt* was critical to the Court's determination to recognize a claim of tortious interference with parental rights. The Court noted that "the essential value of protecting a parent's rights to form a relationship with her child" has been recognized by the English common law and by various courts throughout the United States. *Id.* at 692. Moreover, the Court recognized "that the common law right to establish and maintain a relationship with one's child necessarily implies a cause of action for interference with that right." *Id.* To hold otherwise "would be to recognize a right without a remedy." *Id.* Put another way, "rejecting tortious interference with parental rights as a legitimate cause of action would leave a substantial gap in the legal protection afforded to the parent-child relationship." *Id.*

At the same time, the *Wyatt* Court recognized that there already existed some remedies for wrongs involving custody of a child. The Court cited to the criminal offense of violating a custody order. (Va. Code § 18.2-49.1). It further noted: "Virginia also has well-developed custody laws to manage intra-familial disputes, but custody disputes do not implicate rights or duties of third parties, such as are at issue here." *Id.* at 693. Indeed, in discussing the harms for which there might be recovery under this tort, the Court said it was for a situation where a parent has been separated from a child "without due process of law." *Id.*

In order to state a claim for tortious interference of parental rights, a plaintiff must plead sufficient facts to show that:

> *(1) the complaining parent has a right to establish or maintain a parental or custodial relationship with his/her minor child; (2) a party outside of the relationship between the complaining parent and his/her child intentionally interfered with the complaining parent's parental or custodial relationship with his/her child by removing or detaining the child from returning to the complaining parent, with the parent's consent, or by otherwise preventing the complaining parent from exercising his/her parental or custodial rights; (3) the outside party's intentional inferences caused harm to the complaining parent's parental or custodial relationship with his/her child; and (4) damages resulted from such inference.*

Wyatt v. McDermott, 283 Va. 685, 699 (2012). As this Court determined, the above elements "presuppose not merely any interference of any kind, but rather, a tortious interference . . ." *Coward v. Wellmont Health System*, 295 Va. 351, 360 (2018). The Court may impose liability on a third party for tortious interference

with parental rights only when the actor interferes with parental rights "with knowledge that the parent does not consent." *Id.* at 361 (quoting *Restatement (Second) of Torts § 700*). There can be no tort unless "the actor has knowledge that the parent has not consented and knowledge that the child is away from home against the will of the parent." *Id.* The against-the-will-of-the-parent requirement serves as an overarching limitation on the tort. *Id.*

1. Plaintiff Has Failed to Allege Sufficient Facts to Support Her Claim That Dr. Gasper's Allegedly Tortious Conduct was Egregious.

Similar to a claim for defamation that requires pleading facts that carry the "requisite sting" to one's reputation, to sufficiently plead a cause of action for tortious interference of parental rights, the alleged conduct must be truly egregious. *Coward* at 360. In *Wyatt*, this Court found the origins of civil liability for this cause of action in English common law. *Coward* at 359. Six years later, in *Coward*, this Court was again faced with the dilemma of fleshing out this uncharted cause of action. In doing so, this Court said, "Adapting that common law tradition to modern times[2], we adopted the reasoning of the Supreme Court of Appeals for West Virginia in *Kessel v. Leavitt*, 204 W.Va. 95, 511 S.E.2d 720 (W.Va. 1998), which in turn adopted and applied the *Restatement (Second) of Torts* § 700 (1997). The facts in *Kessel* involved 'egregious conduct that barely fell

[2] Referring to the common law origins for the cause of action for tortious interference with parental rights. *Coward* at 359.

short of outright kidnapping and abduction.'" (quoting *Wilson v. Bernet*, 218 W.Va. 628, 625 S.E. 2d 706, 714 (W.Va. 2005)).

Restatement (Second) of Torts § 700 (1997) states:

> *One who, with knowledge that the parent does not consent, abducts or otherwise compels or induces a minor child to leave a parent legally entitled to its custody or not to return to the parent after it has been left him, is subject to liability to the parent.*

Dating back to its common law origins, this cause of action has been reserved for truly egregious conduct. Put another way, only conduct that is in the same class or proximity to the egregiousness of abducting a child without consent of a parent, is legally entitled to protection under the tort. The *Wyatt* Court recognized that there already existed some remedies for wrongs involving the custody of a child. The Court cited to the criminal offense of violating a custody order (Va. Code § 18.2-49.1). It further noted: "Virginia also has well-developed custody laws to manage intra-familial disputes, but custody disputes do not implicate rights or duties of third parties, such as are at issue here." *Wyatt* at 693. In discussing the harms for which there might be recovery under this tort, the Court said it was for a situation when a parent has been separated from a child "without due process of law." *Id.* at 693.

In *Wyatt*, the alleged facts were "astonishing and profoundly disturbing." *Id.* at 703. A biological mother and her parents, with the aid of two licensed attorneys and an adoption agency, had conspired to prevent the biological father "from

legally establishing his parental rights and gaining custody of a child whom the mother did not want to keep." *Id.* (emphasis supplied). The mother repeatedly assured the father that they were going to raise the child, lied on adoption forms regarding the father's address, and did not inform the father of the adoption proceedings. *Id.* at 690. In other words, the biological mother, her parents, and two licensed attorneys, deceptively caused the child to be adopted by a family in Utah without the consent or knowledge of the biological father. The Court noted that unless there existed a cause of action for tortious interference with parental rights "this father would have no recourse in the law."

In *Coward*, shortly after Plaintiff gave birth to her child, she explored the possibility of putting her child up for adoption. She met with a prospective mother (Defendant) the same day she gave birth to discuss the potential adoption. The Defendant told the biological mother that the hospital had found marijuana in Plaintiff's urine and if she did not agree to an adoptive placement, social services would put the child in foster care. Plaintiff agreed to the adoption and the parties signed an agreement that would give full legal custody to Defendant. However, the hospital would not release the child to Defendant without a court order. Defendant urged Plaintiff to call the hospital and inform them of her decision, because if not, the hospital would refer the child to the Department of Social Services. Defendant stated that this outcome would spell trouble for Plaintiff. Plaintiff informed the

hospital of the adoption agreement and subsequently signed legal documentation to finalize the adoption to Defendant. A week later, Plaintiff changed her mind and wanted to retain custody of the child. Defendant refused and instructed her to direct all future communication to her attorney. The Court found that the Complaint contained sufficient allegations of undue influence and deception to negate the consent from the biological mother and met the required level of egregious conduct to proceed with the claim.

The West Virginia Supreme Court has also found that a cause of action for tortious interference with parental rights existed and was sufficiently plead when a child was adopted by another family without the biological father's knowledge. *Kessel v. Leavitt*, 204 W.Va. 95, 110 (1998). Similar to *Wyatt*, the biological mother desired to place the child up for adoption. Prior to giving birth, the mother left town and lived with various family members across the country for short periods of time. The father did not consent to an adoption and had his attorney write a letter to the mother's attorney stating as such. The father also initiated an inverse paternity action in West Virginia, asking for an injunction order to prohibit the mother from placing the child up for adoption. A copy of the pleading was faxed to the mother's attorney. The court issued an *ex parte* temporary injunction order prohibiting the mother from placing the child up for adoption.

While these proceedings were ongoing in West Virginia, the mother and her attorney located a couple in Oregon who expressed interest in adopting the child. The mother signed all of the necessary legal paperwork to finalize the adoption, but the Oregon couple were made aware of the inverse paternity action in West Virginia and declined to go through with the adoption.

The mother's attorney then located a couple in Canada who were willing to adopt the child, despite the pending litigation in West Virginia. The mother gave birth to the child shortly thereafter and the Canadian couple promptly came to California, finalized the adoption, and returned to Canada with the newborn baby. The court concluded that the combination of the mother's intentional acts to proceed with the adoption despite the pending paternity action and the father's lack of consent, were egregious enough to proceed with the cause of action for tortious interference with parental rights.

All of these cases show that to state a cause of action for tortious interference with parental rights, the alleged conduct involved has to be egregious with no other remedy available. Plaintiff's Complaint in this case simply does not allege conduct that rises to that level.

In the present action, Plaintiff's asserts a myriad of allegations against Dr. Gasper and the other Defendants. Primarily, Plaintiff claims that in April 2013, Dr. Gasper initially recommended that plaintiff be awarded custody of her children,

but changed her mind after Plaintiff named Dr. Gasper on a website. Compl. ¶ 59. Further, she claims that after the discovery of the website, Dr. Gasper conspired with Scott Landry to falsely call Plaintiff delusional, psychotic and a flight risk. Compl ¶ 62. Finally, Plaintiff claims that Dr. Gasper told (outside of court) Cara Campanella, Laura Wert, and Michele Nelson that Plaintiff was totally delusional, psychotic and a flight risk even though she knew it was false. Compl. ¶ 136.

Even taking these allegations as true, the allegations in the Complaint do not rise to the level of egregious conduct necessary to state a cause of action of tortious interference with parental rights. Dating back to its common law origins, this cause of action was designed to provide a remedy to a parent whose child was wrongfully taken without consent. In the present case the Plaintiff actively participated in the custody case and any alleged separation from her children was caused by a competent court of law. Further, many of Plaintiff's allegations against Dr. Gasper are contradicted by undisputed documents that are part of the pleading. Those facts should be discarded. *Smith v. Chesterfield Meadows Shopping Center Associates*, 259 Va. 82, 85 (2000).

Dr. Gasper was recommended by Dr. Nelson to conduct reunification therapy between C.W. and Mr. Wilson. Compl. at ¶ 7. The Complaint does not allege that Plaintiff objected to facilitating such therapy and, in fact, Plaintiff willingly met with Dr. Gasper on or before April 18, 2013 (*See id.* at Ex. E). On

April 24, 2013, Dr. Gasper testified at a custody hearing and provided her professional opinion based on her interviews with Plaintiff, Mr. Wilson, their sons, and her review of assessments provided by Dr. Nelson and Simpson. *Id.* at Exs. E, F. Dr. Gasper indicated she had obtained new information – the website created by Plaintiff – and testified that this website confirmed her prior reservations about Plaintiff's ability to foster a relationship between Mr. Wilson and Plaintiff's children. *Id.* at Ex. F.

Specifically, before discovery of Plaintiff's website, Dr. Gasper expressed concerns about the children being videotaped for litigation purposes, discussing litigation related matters with the children and relocation plans. *Id.* at Ex. E. Then, upon discovery of Plaintiff's website, which contained videos of the children, Dr. Gasper adjusted her conclusions. *Id* at Ex. F. These adjustments were made because in Dr. Gasper's professional opinion, the videos of the children on Plaintiff's website (titled "Victims First; Abusers Last") demonstrated the children were very aware they were being videotaped and Plaintiff was discussing the ongoing litigation with them. *Id.* These were some of the very concerns that Dr. Gasper expressed previously.

Dr. Gasper was then ordered by the court to conduct two more reunification therapy sessions, which she did. *Id.* at Ex. C. At the emergency hearing on August 20, 2013, Dr. Gasper was again called to provide her professional opinion, at

which time she stated she believed Plaintiff to be a flight risk and that Plaintiff's "thinking" was delusional. *Id.* at Ex. G. The "conspired" opinions that Plaintiff claims form the basis of her claim for tortious interference of parental rights were presented in open court, subject to cross-examination, rebuttal, and assigned the appropriate weight by the trial judge.

To compare this alleged conduct to anything remotely close to the egregiousness of kidnapping or abduction is a significant stretch. Dr. Gasper relied on all information available to her in rendering her opinions and was forthright regarding the basis for her opinions. Ultimately, the court weighed the evidence presented to it and arrived at a conclusion. Plaintiff is upset by the court's conclusion and is attempting to fit a "square peg in a round hole" through the use of this cause of action. If Plaintiff is permitted to proceed with this cause of action on this set of alleged facts, any medical professional who renders an opinion in a custody dispute that is adverse to one of the parties, would subject themselves to this cause of action. The alleged conduct, even when taken as true, is not egregious enough to properly plead a cause of action for tortious interference with parental rights.

2. Plaintiff Has Failed to Allege Sufficient Facts to Support Her Cause of Action for Tortious Interference with Parental Rights Because Lack of Consent is Missing

A party cannot be liable for tortious interference with parental rights unless "the actor has knowledge that the parent has not consented and knowledge that the child is away from home against the will of the parent." *Coward* at 360. The against-the-will of the parent requirement serves as an overarching limitation on the tort. *Id.* A Plaintiff can satisfy the against-the-will-of-the parent requirement by asserting the absence of consent directly, or can acknowledge giving consent but seek to vitiate it by a showing of incapacity, undue influence, or duress. *Id.* Similarly, tortious interference with parental rights is an appropriate cause of action when a parent has been separated from a child "without due process of law." *Wyatt v. McDermott*, 238 Va. 685, 692 (2012).

In *Wyatt* and *Kessel*, the Courts permitted this cause of action to proceed, in part, because it was plead that a child was adopted without the knowledge or consent of a biological parent. Likewise, in *Coward*, although the biological mother consented to the adoption of her child, the alleged facts showed that consent was achieved through undue influence.

In this case, Plaintiff alleges that her children were taken from her because Dr. Gasper conspired with Mr. Wilson to break a court order relating to the custody arrangement. In reality, the only thing Dr. Gasper did without Plaintiff's

consent was conduct the required investigation and reunification therapy between Mr. Wilson and C.W. The only lack of consent present in this case is Plaintiff's disagreement with the court's decision regarding the custody of her children.

This is not the type of consent or lack thereof contemplated by this Court in *Wyatt*. In *Wyatt*, the biological father did not consent to the adoption of his child to a family across the country. By the time the tortious conduct was discovered, the adoption was finalized. That is not analogous to this situation. If Plaintiff felt that any party was violating the court order, she had available recourse. Plaintiff had the ability to enforce the court order and obtain appropriate remedies for said breach. Similarly, in *Kessel*, the father explicitly voiced his lack of consent and then initiated a legal proceeding to stop the tortious conduct. This is the type of "against-the-will-of-the-parent" conduct that this Court contemplated when it acknowledged this cause of action.

It is clear that Plaintiff is not satisfied with the outcome of the custody case. However, this is not equivalent to someone taking her children and putting them up for adoption without her knowledge. Plaintiff actively participated in the custody proceeding, was fully aware of the location of her children at all times, and had the ability to seek court intervention, if necessary. Factually, Plaintiff cannot plead the required facts to establish that the tortious conduct was done without her consent. Otherwise, any court-appointed medical professional that conducts an appropriate

investigation during a custody dispute can be accused of engaging in tortious conduct without a party's consent. This would be a drastic expansion of the precedent and not appropriate given the other available remedies. For these reasons, the Circuit Court decision should be affirmed.

3. Plaintiff Failed to Sufficiently Plead a Claim for Tortious Interference with Parental Rights Because Dr. Gasper is Entitled to Quasi-Judicial Immunity.

Plaintiff has failed to allege sufficient facts to support her claim that Dr. Gasper is liable for tortious interference with parental rights because her testimony and communications with other parties is subject to an absolute immunity. Like the tort of tortious interference with parental relations, the doctrine of witness immunity has its roots in English common law. *See, Briscoe v. LaHue*, 460 U.S. 325, 330-1 S. Ct. 1108, 75 L. Ed. 2d 96 (1983). The doctrine is well recognized in Virginia. *See, Darnell v. Davis*, 190 Va. 701, 707 (1950) ("It is settled law in Virginia that words spoken or written in a judicial proceeding are absolutely privileged."); *Mansfield v. Bernabei*, 284 Va. 116, 121 (2012) ("In the Commonwealth it is well settled that words spoken or written in a judicial proceeding that are relevant and pertinent to the manner under inquiry are absolutely privileged against actions on the basis of defamation."); *Watt v. McKelvie*¸ 219 Va. 645, 649 (1978) ("We believe the public interest is best served

when individuals who participate in lawsuits are allowed to conduct the proceeding with freedom to speak fully on the issues relating to the controversy.")

While Dr. Gasper may not be entitled to judicial immunity, she is entitled to quasi-judicial immunity. Quasi-judicial immunity extends to other public officials acting within their jurisdiction, in good faith and while performing judicial functions. *Harlow v. Clatterbuck*, 230 Va. 490, 493 (1986).

In *Harlow*, a victim who had been robbed and injured by a juvenile released by members of the Department of Corrections from an indefinite term of commitment brought an action against the employees of the Department of Corrections. *Id* at 490. This Court held that defendants were entitled to quasi-judicial immunity because they were "public figures," performing judicial functions, and acting within their jurisdiction, and in good faith. *Id.* at 496. This Court analyzed the judgments made by the defendants and determined they were judicial in nature because they had to examine the pre- and post-commitment records, review recommendations, and decide whether, and under what conditions, juveniles should be released. *Id* at 494.

Dr. Gasper's role in the custody proceeding similarly had judicial aspects. As a court appointed expert to perform reunification therapy between C.W. and Mr. Wilson, Dr. Gasper was required to accumulate evidence, weigh accumulated evidence, conduct interviews, analyze all evidence and ultimately render opinions

for the court. Just like members of the Department of Corrections, Dr. Gasper is entitled to quasi-judicial immunity, which bars Plaintiff's claims. Therefore, the Circuit Court decision should be affirmed.

4. Plaintiff Has Failed to Allege Any Facts to Support Her Claim That Dr. Gasper's Conduct was the Cause of Termination of her Parental Rights.

As the *Coward* Court held, in order to state a claim for tortious interference with parental rights, Plaintiff must show that the defendant's conduct "caused harm to the complaining parent's parental or custodial relationship" with her child.

In *Wyatt*, the Defendants caused harm to the biological father because they caused the baby to be adopted into another family without the biological father's knowledge or consent. Similarly, in *Kessel*, a nearly identical situation occurred. The biological mother caused harm to the biological father by putting their baby up for adoption without the father's consent and knowing that the father had initiated a paternity action to prohibit the mother from causing the child to be adopted. Finally, in *Coward*, the Defendant, through threats and undue influence, caused the biological mother to put her newborn child up for adoption.

Here, there is no causation. The Complaint contains <u>no</u> facts to support Plaintiff's claim that Dr. Gasper's alleged tortious conduct was the cause of any change to Plaintiff's custodial relationship, physical or legal, with her children. Rather, the Complaint, without any factual support, merely makes the conclusory

allegation that Dr. Gasper's actions were the proximate cause of the change in custody arrangement. (*See* Compl. at ¶¶ 130-32, 274.) In reality, it was Judge Gill who determined the custody arrangement for Plaintiff's children. Plaintiff's Complaint fails to set forth any facts that would demonstrate that Dr. Gasper's testimony was the reason why Judge Gill gave custody of the children to Mr. Wilson. Put another way, the Complaint fails to allege facts that show that the reasons for Judge Gill's decision was something other than Dr. Gasper's testimony. Instead of providing the Court with facts to show how and why Judge Gill reached his decision, Plaintiff makes a bare assertion of law that Gasper's testimony was a proximate cause. Such "conclusions of law camouflaged as factual allegations or inferences" cannot be accepted by the Court as sufficient to support a claim for tortious interference with parental rights.

Plaintiff argues that, "Defendants actions may be the cause in fact of a tortious interference of parental rights claim even when a court order decides custody or visitation." While this has occurred in other cases, the situation in this case is distinguishable. Plaintiff analogizes this situation to *Wyatt* and *Kessel*, which both involve unauthorized adoptions in out of state jurisdictions. In both of those cases, the Plaintiff was not present to challenge the tortious conduct or testimony. Here, the Court heard the testimony from Dr. Gasper, the parties, other professionals, and made its decision based on that in-court evidence. Consistent

with due process and the custody laws of Virginia, the Plaintiff was free to challenge Dr. Gasper's allegedly conspired opinions through cross-examination, use of a rebuttal expert, or use of any other witness. Additionally, it was Judge Gill who determined what weight to give this testimony. Plaintiff's remedy for Gasper's alleged bias and unfounded opinions lies in the crucible of the custody hearing process, not in the ability to file a separate lawsuit against Dr. Gasper for tortious interference with parental rights.

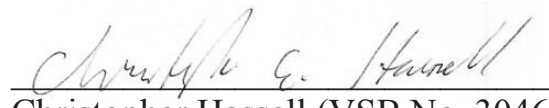
Based on the facts alleged and undisputed documents, Plaintiff has not sufficiently plead causation. Therefore, the Circuit Court decision should be affirmed.

CONCLUSION

The claims against Dr. Gasper do not involve a situation where "a parent has been unduly separated from a child by a third party for a substantial period of time without due process of law." *See, Wyatt* at 693. To the contrary this case involves the workings of Virginia's well-developed custody laws to manage intra-marital disputes and Plaintiff's rights and remedies are wholly contained in that process. Plaintiff is unhappy with the result of the trial court and is now attempting to fit a square peg in a round hole by trying to make her case fall within the parameters of *Wyatt*. Therefore, the Circuit Court decision should be affirmed because: (1) Plaintiff's claim does not fall within the holding of *Wyatt*; Plaintiff did not

sufficiently plead a lack of consent; (3) Plaintiff is entitled to quasi-judicial immunity; and (4) Plaintiff's claim failed to sufficiently plead causation.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of November, 2019, pursuant to Rule 5:26, three paper copies of the Brief of Appellee have hand-filed with the Clerk of the Supreme Court of Virginia and an electronic copy of the Brief was filed, via VACES. On this same day, an electronic copy of the Brief of Appellee was served, via email, upon:

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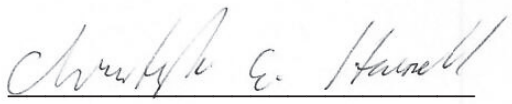

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