No. _____ DISTRICT 26

SUPREME COURT OF NORTH CAROLINA

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DOUG TURPIN and NICOLE TURPIN, Plaintiffs–Appellants,	)	From the Court of Appeals No. COA23-252
v.	)	From Mecklenburg County No. 22-CVS-6643
CHARLOTTE LATIN SCHOOLS, INC., ET AL., Defendants–Appellees.	)	

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Notice of Appeal
Based on Dissent in the Court of Appeals

and

Petition for Discretionary Review
On Additional Issues

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To the Honorable Supreme Court of North Carolina:

Plaintiffs Doug and Nicole Turpin file this consolidated notice of appeal based on a dissent in the Court of Appeals and petition for discretionary review on additional issues under N.C.G.S. §§ 7A-30(2) and 7A-31(c) and Appellate Rules 14 and 15.

Notice of Appeal Based on Dissent in the Court of Appeals Under N.C.G.S. § 7A-30(2) and N.C. R. App. P. 14

Doug and Nicole Turpin appeal to the Supreme Court of North Carolina from the opinion of the Court of Appeals entered on 2 April 2024 in *Turpin v. Charlotte Latin Schools, Inc.*, No. COA23-252, which was entered with a dissent by Judge Julee Flood.[1] The majority, concurring, and dissenting opinions of the Court of Appeals are attached in the Addendum. *See* Add. 1–45.

The dissenting opinion, Add. 40–45, was based on the following issue, which Mr. and Mrs. Turpin will present to the Supreme Court of North Carolina for review: Whether Mr. and Mrs. Turpin stated a claim for breach of contract based on Charlotte Latin School's expulsion of the Turpins' children, O.T. and L.T.

Petition For Discretionary Review on Additional Issues Under N.C.G.S. § 7A-31 (c) and N.C. R. App. P. 15

Along with reviewing the Turpins' contract claim on appeal, this Court should allow review of the Turpins' additional claims.

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[1] In October 2023, the General Assembly amended § 7A-30(2). *See An Act to Make Base Budget Appropriations for Current Operations of State Agencies, Departments, and Institutions*, 2023 N.C. Sess. L. 134, § 16.21(d). Even so, the repeal applies only to "appellate cases filed with the Court of Appeals on or after" the repeal's effective date, 3 October 2023. *id.* § 16.21(e). Here, the Turpins filed the record on appeal in March 2023, more than six months before the repeal of dissent-based appeals became effective.

To begin, this case raises questions of significance to our State. In its published opinion, the Court of Appeals insulated Latin—and other private schools—from ordinary civil liability. Along with other parents, the Turpins questioned Latin's changing culture, which, over two years, veered away from a neutral, apolitical education and toward an intense focus on diversity, equity, and inclusion.

What rights do parents retain? Because they dared question Latin's agenda, Latin retaliated against the Turpins. Rather than treat Latin like any other private market participant, the Court of Appeals essentially determined that Latin was beyond reproach, and it faulted the Turpins for questioning Latin's new culture. But the Turpins have been clear that they are not challenging Latin's power to adopt DEI-focused policies, arguing instead that parents shouldn't be defamed or have their children expelled for simply asking about what their child is learning in class. The court thus deprived the Turpins of their legal rights, preventing thousands of parents from asking questions about their own children's wellbeing in the process.

What's more, the Court of Appeals' decision conflicts with decisions from this Court. Nominally, this case is about the standard of review.

Does the Turpins' complaint state a claim under the no set of facts pleading standard? But here the Court of Appeals relied on motivated reasoning to view the facts in the light least favorable to the Turpins. Because that court read the complaint in an unnatural way to deprive the Turpins of their rights, the Court of Appeals' failure to abide by the standard of review also warrants review.

Finally, this case merits review because it raises two significant legal questions. First, the Court of Appeals muddied the waters about the requirements for successfully pleading a negligent infliction of emotional distress claim. Both our State's law and law from other states suggest that the negligent effects of intentional conduct may suffice. But the Court of Appeals held otherwise. The court concluded that the Turpins had failed to state a claim for negligent misrepresentation. But it did so just because it determined that the Turpins' relationship with Latin was non-commercial. This issue separately merits review because it makes unclear whether private schools are, or are not, commercial actors.

Statement of Relevant Facts and Procedure

In 2021, Latin expelled the Turpins' two young children, O.T. and L.T. (R p 23). It says it did so because the Turpins, concerned about the

direction of the school's culture and about how their children were being treated by faculty, dared to ask questions about what their children were learning and how they were being treated. The Turpins sued to hold Latin accountable, not only for its decision to expel O.T. and L.T. but also for Latin's extra-contractual conduct—false statements, impugning the Turpins' character, and causing Mrs. Turpin severe emotional distress.

A. In 2021, the Turpins noticed a drastic shift in Latin's previously apolitical curriculum.

O.T. and L.T. attended Latin for years. (R pp 3–4). For the children's elementary years, Doug and Nicole Turpin had little issue with the school's curriculum and culture, which they considered to be "classical"—a neutral, apolitical environment. (R p 4).

During the 2020–21 school year, the Turpins and many other Latin families noticed a change in the way their children were being taught. (R p 16). What had been a neutral, apolitical curriculum moved rapidly in a direction that the Turpins were not comfortable with—new curriculum that would require O.T. and L.T. to read inappropriate things and deal with age-inappropriate issues. (R p 16).

B. The Turpins followed Latin's explicit instructions while presenting their questions and concerns about Latin's new, political culture to the school's board of trustees.

After receiving Latin's explicit promise that the school would not retaliate against them or their children, the Turpins—and many other parents—respectfully voiced their concerns about the shift in Latin's culture to the school's board of trustees. (R p 17). In July 2021, the board invited a group of concerned parents—calling themselves "Refocus Latin"—to present their questions and concerns to the board's executive committee. (R p 17). The board told the parents to make their presentation "very detailed" and "precise[ ]." (R p 17). So the group put together a thorough PowerPoint. (R p 17; *see also* Doc. Ex. 23–48).

Though the board promised a dialogue, the meeting was, at best, performative. At the board's invitation, the parents, including Mr. Turpin, spoke frankly about their concerns with Latin's cultural shift. (R p 18). The board thanked the parents but refused further dialogue. (R p 18). The chair told the group that the board would neither respond to the presentation nor answer any questions about the changes that Latin had made or intended to make. (R p 18). She instead instructed the parents to take "any [future] concerns" to Latin's administration. (R p 18).

A few days later, Mr. Turpin sent a single email to Latin's board hoping to spur a response. In his August 29 email, Mr. Turpin politely asked the board to reassess its decision not to respond to the parents' questions. (R pp 18–19). As Mr. Turpin explained, so many parents had brought up Latin's curriculum that, without an open dialogue, Latin's administrators might receive "numerous individual inquiries" about Refocus Latin's concerns. (R p 19). Mr. Turpin never received a response. (Doc. Ex. 50–52). Mr. Turpin had no further contact with Latin's board. (*See* Doc. Ex. 50).

C. Following Latin's instructions, Mr. Turpin reached out to the school's administration to address a new concern.

Shortly after the school year started, Mr. Turpin, following the board's command, reached out to Latin's administration about a related, but new issue, which his son, L.T., had brought to his attention. (Doc. Ex. 72–73).

L.T.'s humanities teacher told L.T.'s sixth-grade class that "Republicans are white supremacists trying to prevent [B]lack people from voting" and that "Joe Biden has it right in calling out Republicans for 'their attempts at racial suppression.'" (Doc. Ex. 73). As a result, L.T. explained that his teacher had made him feel "like there is something

wrong with him being white[.]" (Doc. Ex. 73). At the behest of his middle-school-aged son, Mr. Turpin questioned whether those statements were proper. (Doc. Ex. 73).

L.T. had also told his dad that the same teacher would not allow him to "pull down his mask" for "long enough to drink water" and had forbidden L.T. from going to the restroom. (Doc. Ex. 73).

Over the course of a few days, Mr. Turpin sent Todd Ballaban, Latin's Head of Middle School, three emails about these issues. (Doc. Ex. 71–73). Two of the three were about Ballaban's request for an in-person meeting with himself and Latin's chief administrator, Head of School Charles Baldecchi. (Doc. Ex. 71–73). As with the Refocus Latin presentation, Ballban assured Mr. Turpin that Latin would not retaliate against the Turpins for raising their concerns. (Doc. Ex. 72).

D. Latin summarily expelled the Turpins' children.

At that in-person meeting, Latin expelled O.T. and L.T. (R p 36). Relying on a provision in the "parent–school partnership," an attachment to the school's enrollment agreement, Latin claimed that the Turpins had made a "positive, collaborative working relationship" between the school

and themselves "impossible" and that the Turpins had "seriously interfere[d]" with its mission. (Doc. Ex. 16).

The Turpins were blindsided. They thought that their communications followed the parent–school partnership. That document advocated for "open communication" and "mutual respect," which Latin claimed were necessary for an "effective partnership." (Doc. Ex. 15). Likewise, it instructed parents to communicate with the school promptly to "register[ ] comments and concerns" about "religious, cultural, medical[,] or personal information[.]" (Doc. Ex. 15). And Latin told parents that it valued "direct person-to-person communication," instructing parents to "address comments[or]concerns directly to the appropriate person[.]" (Doc. Ex. 15).

The Turpins, following Latin's instructions, had three isolated contacts with Latin before it expelled O.T. and L.T.:

- the August 24 presentation, by Latin's request;
- an August 29 email following-up on the presentation, asking the Board to reconsider its decision not to provide feedback to the parents' group; and
- a September 7 email raising new concerns first brought to Mr. Turpin's attention by his son, L.T.

Based only on those contacts, Latin's administrators determined that the Turpins had ruined their relationship with the school.

E. After the expulsion, Latin defamed the Turpins and impugned their beliefs.

Making matters worse, both during and after the September 10 expulsion meeting, Latin's agents said untrue things about the Turpins. For example, during the meeting, Baldecchi falsely claimed the Turpins believed the school "accepts students and hires faculty because of their color" and that students and faculty of color are "not up to the merit of the school[.]" (R p 53). Similarly, after Latin expelled O.T. and L.T., its board sent an email falsely stating that the Turpins believed that "diverse students and faculty have not earned their positions and honors at Latin[.]" (R p 56).

F. The trial court allowed Latin's motion to dismiss.

In April 2022, the Turpins sued Latin. They asserted nine claims: fraud; unfair and deceptive trade practices, under N.C.G.S. § 75-1.1 ("UDTPA"); fraud; negligent misrepresentation; negligent infliction of emotional distress ("NIED"); negligent supervision and retention; slander; libel; breach of contract; and breach of the implied covenant of good faith and fair dealing. (R pp 3–65).

Latin moved to dismiss under Rule 12 (b)(6). (R pp 70–75).

In October 2022, the trial court allowed Latin's motion in part. (R pp 78–79). It dismissed the claims for fraud, unfair and deceptive trade practices, negligent misrepresentation, negligent infliction of emotional distress, negligent supervision, slander, libel, and breach of contract, leaving only their claim for breach of the implied covenant of good faith and fair dealing. (R pp 78–79). The Turpins later dismissed their remaining claim and appealed. (R pp 80–83).

G. The Court of Appeals affirms the trial court's ruling.

In January 2024, the Court of Appeals affirmed the trial court in an unpublished opinion. *See* Add. 46–81.

The court rejected each of the Turpins' claims in the strongest terms possible. For example, it characterized the Turpins' questions and concerns negatively, saying that the family had "*continuously* assail[ed] [Latin's] culture and curriculum." Add. 60 (emphasis in original). Elsewhere, the court critiqued the Turpins' complaint, suggesting that they had pleaded themselves out of court because they devoted two "pages of their complaint to assail Latin's political agenda[.]" Add. 58. (cleaned up).

The court made known its view that allowing the Turpins' claims to proceed would chill speech in private schools.

The Turpins timely moved for rehearing en banc and to temporarily stay the Court of Appeals' mandate. *See* N.C. R. App. P. 31.1. In their motion for en banc rehearing, the Turpins explained that, by concluding that their isolated, respectful contacts with Latin were an "assault" on the school, the opinion placed difficult or sensitive topics, like parents' input about their child's instructional material, off limits. And they warned that the unpublished panel opinion would "become a model for silencing concerned parents to avoid risk of expulsion."

The Court of Appeals allowed the Turpins' motion to stay the mandate. The court later withdrew its opinion. After vacating its unpublished opinion, the court dismissed the Turpins' motion for en banc rehearing as moot.

On 2 April 2024, the Court of Appeals entered a new, published opinion. Add. 1–45. The court's published opinion ultimately reached the same result on each of the Turpins' claims, but Judge Julee Flood dissented on the court's disposition of the Turpins' contract claim. Add. 40–

45. Judge John Arrowood filed a concurring opinion that also addressed the Turpins' contract claim. Add. 37–39.

In sum, the Court of Appeals' published opinion affirmed the trial court's dismissal of the Turpins':

- contract claim because the Turpins had made a positive, collaborative working relationship with Latin "impossible";
- defamation claim because the "gist" or "sting" of both Baldecchi's and Latin's defamatory statements were substantially true;
- fraud and deceptive practices claims because the Turpins' had failed to allege that Latin made a false statement;
- negligent misrepresentation claim because the Turpins' relationship with Latin was not "commercial" in nature; and
- negligent infliction of emotional distress claim because the Turpins had not alleged that Baldecchi engaged in negligent, rather than intentional, conduct.

The Turpins have timely petitioned this Court for review.

Reasons Why Discretionary Review Should be Allowed

This Court should allow review on all issues embraced in the Court of Appeals' decision.

I. The Court of Appeals' opinion places sensitive topics beyond debate and insulates bad actors who try to stifle the free exchange of ideas.

This Court should allow discretionary review because the Court of Appeals' decision raises questions of significant public interest. N.C.G.S. § 7A-31(c)(1).

Are private schools in our State beyond reproach? The Court of Appeals' decision suggests they are. The court, echoing a narrative from Latin's amici, the North Carolina and Southern Associations of Independent Schools, concluded that allowing *any* claim to proceed against Latin would "chill[ ]" speech in private schools. Add. 15; accord Amicus Curiae Br. on Behalf of Proposed Amici Curiae the N. Carolina Ass'n of Indep. Schs. & the S. Ass'n of Indep. Schs. at 4 (claiming the Turpins' suit would "encourage litigation of disputes between independent schools and parents on socially divisive issues").

The Court of Appeals and Latin blindly followed the Southern Association of Independent Schools' policy preferences. Those preferences are set by SAIS's parent organization, the National Association of Independent Schools. *See Approved Accreditors for NAIS Membership*, Nat'l Ass'n of Independent Schs., https://www.nais.org/membership/interna-

tional-council-advancing-independent-school-accreditation/approved-accreditors-for-nais-membership/ (last visited May 3, 2024). And the *Wall Street Journal* has called *that* organization a "woke indoctrination machine." Andrew Gutman & Paul Rossi, *Inside the Woke Indoctrination Machine*, Wall Street Journal, https:// www.wsj.com/amp/articles/inside-the-woke-indoctrination-machine-diversity-equity-inclusion-bipoc-schools-conference-11644613908 (last visited May 6, 2024).

Perhaps it's no wonder that the Court of Appeals, at the behest of industry insiders, went beyond protecting speech. That court's opinion grants private schools a special immunity. The Turpins' suit does not challenge Latin's curriculum; it challenges how Latin treated the Turpins, including their children, after they raised questions and concerns about Latin's evolving culture.

That creates a dangerous precedent that stifles parents' rights and defies basic principles of our law. "[P]rivate institutions are still legally obligated to provide what they promise." *Research & Learn: Private Univs.*, Found. for Individual Rights & Expression ("FIRE"), https://www.thefire.org/research-learn/private-universities (last visited

Apr. 30, 2024). And they "may not engage in fraud" or other tortious conduct. *See id.*

Contrary to the Court of Appeals' conclusion, the Business Court has recognized that when private schools commit torts, they cannot use their mission as a shield. In *Herrera v. Charlotte School of Law*, that court denied the school's motion to dismiss a student group's fraud and negligent misrepresentation claims. 2018 WL 1902556, at *13–17 (N.C. Super. Apr. 20, 2018).

The Business Court's analysis of the *Herrera* plaintiffs' negligent misrepresentation claim is especially telling. There, the court allowed the plaintiffs' claim alleging that Charlotte School of Law kept accreditation data from its students to proceed. *Id.* at *16–17. But below, the Court of Appeals determined that the Turpins could not proceed because the Turpins' relationship with Latin was not "commercial." Add. 24. Which is it?

In the name of protecting the free exchange of ideas, the Court of Appeals told the Turpins—and parents across the state—that their rights don't matter. That should be concerning to this Court. Review is all the more important here because the Court of Appeals' opinion fore-

closes any chance that a parent may have to sue a private school for its unlawful actions. If left undisturbed, the decision below will immunize private schools. This case thus raises a question of significant public interest, and it warrants this Court's review. N.C.G.S. § 7A-31(c)(1).

II. The Court of Appeals' opinion ignores decades of precedent adhering to the "no set of facts" pleading standard.

This Court should allow discretionary review because the Court of Appeals' decision directly conflicts with this Court's precedent. N.C.G.S. § 7A-31(c)(3).

This Court has been clear that most complaints should survive a motion to dismiss for failure to state a claim. Indeed, a trial tribunal should not dismiss a complaint "unless it appears beyond doubt" that the plaintiffs "can prove no set of facts" to support their claims. *Intersal, Inc. v. Hamilton*, 373 N.C. 89, 98 (2019). Yet the Court of Appeals held that the Turpins had failed to state any claim for relief. And it did so by viewing the Turpins' allegations in the light *least favorable* to the Turpins.

The court appeared to allow policy concerns to cloud its judgment. When analyzing the Turpins' contract claim, for example, the court went well beyond the complaint's allegations. It concluded that allowing the Turpins' "*suit* to proceed" would "chill[ ]" speech at private schools. Add.

15 (emphasis added). That analysis has nothing to do with whether the Turpins stated a claim for breach of contract. But it does reveal reticence to follow the pleading standard for fear that it may lead to an "undesirable" outcome.

A. The Court of Appeals read ambiguous statements in the light least favorable to the Turpins.

The Court of Appeals' opinion places all diversity, equity and inclusion programs beyond debate, even at the expense of a plaintiff's injury and the law itself. The Turpins have been clear that they do not challenge Latin's power to adopt DEI-focused policies. Even so, the Court of Appeals misconstrued their case as one attacking Latin's DEI programs. That court determined that any claim that mentions these sacrosanct programs presents a risk of an undesirable outcome, leaving the Turpins without recourse.

The court's aversion to an "undesirable" outcome infected the way it approached each of the Turpins' claims. Consider the Turpins' misrepresentation-based claims, like fraud, negligent misrepresentation, and deceptive practices. When analyzing those claims, the court determined that Latin made no false or misleading statement. But on at least three occasions, the school promised that it would not retaliate against Mr.

Turpin, Mrs. Turpin, or their children. At one point, Ballaban specifically assured Mr. Turpin that L.T. would face "no blowback." (Doc. Ex. 72). But Latin expelled L.T. just days after Ballaban's comment. Expulsion is the ultimate form of blowback.

To close the door on the Turpins' misrepresentation-based claims, the court read ambiguous (and some clear) statements in an unnatural way. Consider again the "blowback" statement. The court concluded that Ballaban had merely promised that L.T. would face no retaliation *from his teacher* and that the statement had nothing to do with Latin. Add. 20. But in context the statement is—at best—ambiguous. Mr. Turpin asked Ballaban about L.T.'s health and safety. In response to that inquiry, Ballaban promised L.T. would face "no blowback," regardless of source. To conclude that Ballaban promised only that L.T. would not suffer retaliation *from his teacher*, the Court of Appeals read Mr. Turpin and Ballaban's ambiguous email exchange in a way that disadvantaged the Turpins.

Ballaban's "blowback" statement is but one example. When analyzing the Turpins' deceptive practices claim, the Court of Appeals inter-

preted a handful of emails between Mr. Turpin and Ballaban in an unnatural way—all to the Turpins' detriment.

After the Refocus Latin presentation concluded, the Refocus Latin parents were instructed to take future concerns to Latin's administration, not the board. When L.T. told Mr. Turpin that he was uncomfortable in his sixth-grade humanities class, Mr. Turpin took those concerns to Latin's administration. L.T. told Mr. Turpin that his humanities teacher had told his sixth-grade class that "Republicans are white supremacists trying to prevent [B]lack people from voting" and that "Joe Biden has it right in calling out Republicans for 'their attempts at racial suppression.'" (Doc. Ex. 73). Likewise, L.T. reported to Mr. Turpin that some discussions made him feel "like there is something wrong with him being white[.]" (Doc. Ex. 73). At the behest of his middle-school-aged son, Mr. Turpin questioned whether those statements were proper. (Doc. Ex. 73).

The Court of Appeals brushed off Mr. Turpins' inquiry, concluding he was rehashing a settled issue. Even though Latin asked the Turpins to take future questions to its administrators and promised them that they would face no reprisal for doing so, the court concluded that Latin's retaliatory conduct was not deceptive even though Latin expelled O.T.

and L.T. after Mr. Turpin followed the board's instruction and relied on Latin's assurances. The Court of Appeals concluded that Mr. Turpin's contact with Ballaban raised "the same concerns" addressed in Refocus Latin's presentation, attempting to tie it back to the perceived assault on Latin's DEI program despite the obvious separation between the issues. Add. 28.

The court's "same concerns" rationale cannot be true. The Refocus Latin PowerPoint focused on the group's high-level questions and concerns. The group, for example, questioned why Latin had stopped prayer before sporting events, stopped decorating for Christmas, and allowed students to cyberbully one another. (Doc. Ex. 31–32). The concerns that led Mr. Turpin to request a meeting with Ballaban were more concrete. Mr. Turpin addressed specific comments that L.T. had heard from a Latin faculty member. (Doc. Ex. 73). Mr. Turpin also raised health and safety concerns; L.T.'s humanities teacher would not allow him to pull down his mask to drink water or to go to the bathroom. (Doc. Ex. 73). Despite these specific concerns—all of which arose more than a week after the Refocus Latin presentation—the Court of Appeals concluded that Mr. Turpin was trying to reopen a settled dispute from the presentation. On these facts,

there's no way a faithful application of the legal standard yields that conclusion.

B. The court cherry-picked statements from a 25-page PowerPoint to mischaracterize the Turpins' views.

The Court of Appeals did not confine its skewed analysis to the Turpins' misrepresentation-based claims. The problem is also evident in the court's treatment of the Turpins' defamation claim. In front of others, Baldecchi claimed that the Turpins believed that Latin's students and faculty of color are "not up to the merit of the school[.]" (R p 53). Similarly, after Latin expelled O.T. and L.T., its board sent an email claiming that the Turpins believed that "diverse students and faculty have not earned their positions and honors at Latin[.]" (R p 56).

Those statements contradicted the substance of Refocus Latin's detailed, professional PowerPoint. There, the Turpins—and every other Refocus Latin parent—set out their concerns with Latin's shift toward a political, non-traditional curriculum. (Doc. Ex. 23–48). Much of Refocus Latin's message—indeed the great majority of that message—had nothing to do with Latin's diversity, equity, and inclusion efforts. For instance, Refocus Latin questioned age-inappropriate summer reading assignments, (Doc. Ex. 34); the administration's divisive announcements,

(Doc. Ex. 41); and a breakdown in communication between Latin's stakeholders, (Doc. Ex. 42). Yet the Court of Appeals ignored most of Refocus Latin's message and characterized Refocus Latin and the Turpins' views as a full-scale assault on all DEI initiatives, suggesting that the Turpins must be racists.

This mischaracterization of the Turpins' claims as being singularly focused on racial issues, instead of rightly questioning their children's school's conduct and curriculum, taints the Court of Appeals' analysis. True, the PowerPoint offered a cautionary message about Latin's DEI initiatives: If Latin promoted diversity at merit's expense, the quality of Latin's faculty, staff, and students might decline. That shouldn't be controversial. Elevating any metric above merit carries that risk.

The Court of Appeals found the Turpins' support for merit-based programs objectionable and thus viewed the Turpin's entire lawsuit as a referendum on the merits of all DEI initiatives. Once there, the Court of Appeals majority functioned as a jury, not an appellate court, characterizing the substance of the PowerPoint against the Turpins and reaching conclusions on its intentions and goals, which far exceed the scope of analysis on a Rule 12(b)(6) motion. The claims and actual

allegations no longer mattered—the lawsuit had to be dismissed to protect Latin's DEI program. The "no set of facts" standard of review was wrongfully ignored.

C. The Court of Appeals' opinion displays animus toward the Turpins.

The Court of Appeals' apparent effort to avoid an "undesirable" outcome warrants review on its own. But there may be something more at play—motivated reasoning to reach a certain outcome. In its since-withdrawn January 2024 opinion, the Court of Appeals displayed open hostility toward the Turpins' claims.

In its earlier opinion, the court took shots at the Turpins and questioned their motives. For example, the Court of Appeals characterized the Turpins' questions and concerns negatively, saying that they were "*continuously* assail[ing] [Latin's] culture and curriculum." Add. 60 (emphasis in original). Elsewhere, the court mentioned that the Turpins' devoted two "pages of their complaint to assail Latin's political agenda[.]" Add. 58 (cleaned up). These comments—although removed in the Court of Appeals' April 2024 opinion, Add. 93–103—suggest more than mere policy disagreements. The Court of Appeals removed these inflammatory

conclusions from its April 2024 opinion to prevent this Court from seeing through its flawed reasoning, but the outcome did not change.

Indeed, in the original opinion, the court used the Turpins' frustration that their children had been expelled against them, concluding that frustration alone prevented relief. The opinion concludes that "the allegations in the complaint make clear" that the Turpins had made a working relationship with Latin "impossible" because the Turpins alleged that Latin had engaged in "cancel culture." Add. 58. A plaintiff's opposition with a defendant at the time of filing a complaint is never the lens through which any claim based on prior events is viewed. Using the Turpins' after-the-fact characterization of events against them suggests, once again, that the court ignored the standard of review to reach its preferred outcome.

* * *

At bottom, the Court of Appeals defied this Court's precedent, and it did so to disadvantage the Turpins. Because the Court of Appeals flouted this Court's authority, this case merits review under N.C.G.S. § 7A-31(c)(3).

III. The Court of Appeals' decision raises important legal questions that require this Court's attention.

This Court should allow discretionary review because the Court of Appeals' decision involves two significant legal issues that merit this Court's attention. N.C.G.S. § 7A-31(c)(3).

A. The Court should allow discretionary review to clarify whether negligent infliction of emotional distress requires negligent acts or can be based on an act's negligent effects.

The Court of Appeals concluded that the Turpins had failed to state a negligent infliction of emotional distress claim. The Turpins based that claim on the distress that Mrs. Turpin suffered after Baldecchi expelled O.T. and L.T. The court concluded that allegation was not sufficient, explaining that "the relevant inquiry" is "whether the defendant engaged in *negligent conduct*." Add. 30. But the Court of Appeals' certainty was unwarranted. Cases from this Court and other courts call that conclusion into question.

Our State's law on the distinction between negligent acts and negligent effects is unclear and merits review. Consider social host liability, a claim that sounds in negligence. *E.g.*, *Camalier v. Jeffries*, 113 N.C. App. 303, 307 (1994). In *Hart v. Ivey*, this Court recognized a claim for social host liability, which allows a driver to sue a party host for the neg-

ligent effects of his intentional acts. 332 N.C. 299, 304–05 (1992). In social host cases, a plaintiff gets to sue a party host for the effects of the host's intentional act—serving alcohol. And as other courts have observed, a "negligence claim may be based on intentional rude pranks and horseplay that cause unintended injury." *Vetter v. Morgan*, 913 P.2d 1200, 1204 (Kan. Ct. App. 1995) (Briscoe, J.).

The Court of Appeals' opinion draws a clear line, rejecting negligent infliction claims based on intentional acts. That court concluded that Baldecchi's decision to expel O.T. and L.T. was intentional, so the Turpins had no redress. It failed to analyze whether the Turpins could state a claim based on the unintended, but foreseeable, consequences of Baldecchi's behavior.

The issue warrants clarification. People like the Turpins, and Mrs. Turpin specifically, are in no-man's land. They cannot sue for intentional infliction of emotional distress because they cannot allege "extreme" or "outrageous" conduct. *See generally Dickens v. Puryear*, 302 N.C. 437 (1981). Nor, under the Court of Appeals' analysis, can they sue for negligent infliction of emotional distress—despite their foreseeable distress.

The Court should grant review of this significant legal issue to clarify what, if any, rights these individuals have. N.C.G.S. § 7A-31(c)(3).

B. The Court should allow discretionary review to clarify whether private-school contracts are "commercial" transactions and can support a negligent misrepresentation claim.

The Court of Appeals concluded that the Turpins failed to state a negligent misrepresentation claim because their relationship with Latin was "non-commercial." Add. 24. The Court of Appeals has previously determined that a negligent misrepresentation may arise "between adversaries in a commercial transaction." *Rountree v. Chowan Cnty.*, 252 N.C. App. 155, 160–61 (2017). As the *Rountree* court explained, the duty arises when one party "control[s] the information at issue" and the other has "no ability to perform any independent investigation." *Id.* at 161. The Turpins' relationship with Latin fits comfortably in that rule. But the Court of Appeals still concluded that the Turpins negligent misrepresentation claim failed because the parent-school relationship was "non-commercial."

The Court of Appeals' conclusion is at odd with the conclusion that the Business Court reached in a similar circumstance. In *Herrera v. Charlotte School of Law*, the Business Court denied Charlotte School of

Law's motion to dismiss a student group's negligent misrepresentation claim. 2018 WL 1902556, at *13–17. That claim alleged that the school had negligently withheld accreditation data from its students. *Id.* at *16–17. It is unclear how the relationship between Charlotte School of Law and its students is commercial, on the one hand, while, on the other, Latin's relationship with its students' parents is not. Indeed, each Latin student's enrollment contract acknowledges the commercial relationship: parents "agree[ ] to pay [Latin] the required fees" in "consideration of the acceptance of th[e] contract" by Latin. (Doc. Ex. 13).

This Court should allow review here to clarify when a negligent misrepresentation claim is viable. The Court of Appeals provided no guidance that might instruct the Bar on how to determine when a relationship is—or is not—commercial under *Rountree*. That question is significant and merits this Court's review. N.C.G.S. § 7A-31(c)(3).

Additional Issues to be Briefed if the Petition is Allowed

If this Court allows the Turpins' petition for discretionary review on additional issues, the Turpins plan to present the following issues to the Court for review:

1. Did the Turpins allege a false or misleading statement sufficient to support a claim for fraud?

2. Did the Turpins adequately allege an unfair or deceptive practice sufficient to support a claim under N.C.G.S. § 75-1.1?

3. Did the Turpins adequately allege claims for libel and slander per quod?

4. Were the "gist" or "sting" of Latin's and Baldecchi's statements about Mr. and Mrs. Turpin substantially true, even though they misrepresented the central message of the Refocus Latin PowerPoint?

5. Can the unintended effects of intentional acts give rise to a negligent infliction of emotional distress claim?

6. Was the relationship between the Turpins and Latin, a private school, sufficiently commercial to support a negligent misrepresentation claim?

Conclusion

For those reasons, this Court should allow the Turpins' petition for discretionary review on additional issues.

Respectfully submitted, this the 7th of May 2024.

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N.C. R. App. P. 33(b) Certification: I certify that all of the attorneys listed below have authorized me to list their names on this document as if they had personally signed it.

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Certificate of Service

I hereby certify that I have this day electronically filed a copy of foregoing document with the Clerk of the North Carolina Court of Appeals and the Clerk of the Supreme Court of North Carolina and that I have served the foregoing by e-mailing a copy to counsel's correct and current email address as shown below:

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