

The South Carolina Court of Appeals

Justin Shayne Fulmer, Respondent,

v.

Melissa Emery Buckhannon Esq., Frazier Law Firm P.C.,
SC House Calls, Inc., Anna Coggeshall, Bryan
Coggeshall, Katherine Coggeshall, Lauren Trent Fulmer,
and Thomas Buckhannon, Defendants.

Of whom Anna Coggeshall is the Petitioner.

Appellate Case No. 2022-000330

ORDER

This case involves two ongoing family court and circuit court actions: Justin Fulmer (Fulmer) is the plaintiff in an ongoing civil matter (Civil Case)¹ against Anna Coggeshall, Lauren Trent Fulmer (Trent), and Frazier Law Firm, P.C. (Frazier), and a party in a divorce action (Divorce Action) with Trent. Coggeshall filed a motion to suppress the contents of text messages pursuant to section 17-30-110 of the South Carolina Code (2014), a part of the South Carolina Homeland Security Act. *See* S.C. Code Ann. §§ 17-30-10 to -145 (2014). Sections 17-30-110 and 17-30-15 require that this court hear the motion to suppress. *See* § 17-30-110(A) (requiring motions to suppress the contents of intercepted wire or oral communications be made to the "reviewing authority"); § 17-30-15(9) (defining "[r]eviewing authority" as "a panel of three judges of the South Carolina Court of Appeals"). Coggeshall contends Fulmer illegally intercepted text messages sent between her and several individuals utilizing an Apple iWatch that was stolen from her home. Trent and Frazier moved to join the motion because their communications with Fulmer were among those

¹ Justin claims he filed the Civil Case because he believed the communications involved "a scheme to undermine his relationship with his young daughter."

obtained by Fulmer using the iWatch. We grant the motions to join and the motion to suppress.

FACTS

Coggeshall and Fulmer have one child together, a daughter (Daughter). According to Coggeshall, she discovered her Apple iWatch—which was "synched" with her phone and received copies of text messages between herself and others—went missing while she and Fulmer were in the midst of paternity, child support, and custody litigation (Custody Litigation) over Daughter. When that litigation concluded in December 2021, Coggeshall discovered text messages obtained from her missing iWatch were being used by Fulmer as the basis for the Civil Case against Coggeshall, Trent, Frazier, and others.²

Fulmer claims the iWatch in question belongs to him and that he "allowed" Coggeshall to use his iWatch in the past. He asserts Coggeshall later returned the device to him and he noticed her "messages began appearing on the watch." He argues Coggeshall failed to delete her electronic information from the iWatch or take other "precautions to secure the contents of the device." While the parties dispute ownership of the iWatch, they agree Fulmer currently possesses the watch and used it to view text messages that were sent to and from Coggeshall's cell phone.

INTERPRETATION OF THE HOMELAND SECURITY ACT

"The Homeland Security Act is patterned after Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510–22 (2002) (Federal Act)." *State v. Guerrero-Flores*, 402 S.C. 530, 534, 741 S.E.2d 577, 580 (Ct. App. 2013). "[F]ederal cases analyzing comparable provisions of the Federal Act are persuasive in interpreting the provisions of the Homeland Security Act" *Id.*

MOTIONS TO JOIN

"The decision to grant or deny a motion to join an action pursuant to Rule 19, SCRCP, or intervene in an action pursuant to Rule 24, SCRCP, lies within the sound discretion of the trial court." *Ex parte Gov't Emps. Ins. Co. (Ex parte*

² The Civil Case includes other named defendants, but they did not move to join Coggeshall's motion.

GEICO), 373 S.C. 132, 135, 644 S.E.2d 699, 701 (2007). Rule 24(a), SCRCP provides:

Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

"Generally, the rules of intervention should be liberally construed where judicial economy will be promoted by declaring the rights of all affected parties." *Ex parte GEICO*, 373 S.C. at 138, 644 S.E.2d at 702. Accordingly, this court "should consider the practical implications of a decision denying or allowing intervention." *Id.* "A party has standing if the party has a personal stake in the subject matter of a lawsuit and is a 'real party in interest.'" *Id.* (quoting *Bailey v. Bailey*, 312 S.C. 454, 458, 441 S.E.2d 325, 327 (1994)).

Prior to any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority, *any aggrieved person* may move to suppress the contents of any intercepted wire, oral, or electronic communication, or evidence derived therefrom, on the grounds that the: (1) communication was unlawfully intercepted The reviewing authority may, in its discretion, conduct a hearing and require additional testimony or documentary evidence.

§ 17-30-110(A) (emphasis added).

We find Frazier and Trent are "aggrieved person[s]" pursuant to the Homeland Security Act because their communications with Coggeshall were among those obtained by Fulmer and resolution of Coggeshall's motion inevitably impacts their rights in the Civil Case. *See* § 17-30-110(A) (stating any aggrieved person may move to suppress the contents of intercepted communications); Rule 24(a)(2), SCRCP (stating anyone claiming an interest related to the transaction at issue and "so situated that disposition of the action may . . . impair or impede his ability to

protect that interest" should be permitted to intervene in an action). Accordingly, we grant both motions to join.

MOTION TO SUPPRESS

"The interception of wire, electronic, or oral communications is hereby authorized only in the manner permitted by this chapter." § 17-30-10. The Act is violated when a person "intentionally intercepts . . . any wire, oral, or electronic communication"; "intentionally discloses or attempts to disclose to any other person the contents of any . . . electronic communication, knowing or having reason to know the information was obtained through the interception of a[n] . . . electronic communication"; or when a person "intentionally uses or attempts to use the contents of any . . . electronic communication, knowing or having reason to know that the information was obtained through the interception of a[n] . . . electronic communication." § 17-30-20(1), (3), (4).

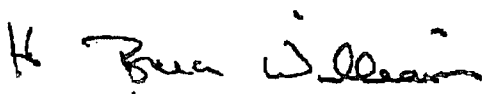
"'Intercept' means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device." § 17-30-15(3). An "[e]lectronic, mechanical, or other device' means any device or apparatus which can be used to intercept a wire, electronic, or oral communication." § 17-30-15(4). An "aggrieved person" is any person "who was a party to any intercepted wire, oral, or electronic communication or a person against whom the interception was directed." § 17-30-15(10). "Whenever any wire, oral, or electronic communication has been intercepted, no part of the contents of the communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court" § 17-30-65(A).

In *United States v. Szymuszkiewicz*, the Seventh Circuit observed an interception must be "contemporaneous" with the sending of the communication, which includes communications obtained while in transit between intended devices and also communications that are received by an intended recipient but then, through programming, automatically forwarded to an unintended recipient. 622 F.3d 701, 705-06 (7th Cir. 2010). In *Epstein v. Epstein*, the Seventh Circuit clarified its reasoning in *Szymuszkiewicz*, noting an interception "need not occur at the time the wrongdoer receives the [communication]" because "'copying [the communication] at the server was the unlawful interception.'" 843 F.3d 1147, 1150 (2016) (quoting *Szymuszkiewicz*, 622 F.3d at 704).

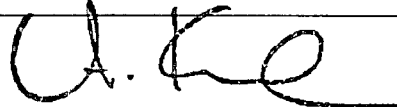
Based on the affidavits provided by the parties, we find the preponderance of the evidence indicates Coggeshall was the rightful owner of the iWatch. Accordingly, Fulmer's repeated use of the device to view her text messages amounted to interceptions under the Homeland Security Act. See § 17-30-15(3) (defining an interception as the acquisition of electronic communications through the use of any electronic device); § 17-30-20 (prohibiting the intentional interception of electronic communications). Further, even if Fulmer was the original owner of the iWatch, we find there is no evidence Coggeshall gave him permission to access her communications on the device. See *Berry v. Funk*, 146 F.3d 1003, 1010-11 (D.C. Cir. 1998) (stating that implicit consent to an interception, absent actual notice, may only be implied "when '[t]he surrounding circumstances [] convincingly show that the party knew about and consented to the interception'" (quoting *United States v. Lanoue*, 71 F.3d 966, 981 (1st Cir. 1995))).

CONCLUSION

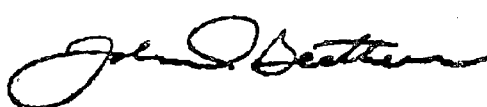
Accordingly, we grant Coggeshall's motion to suppress and prohibit Fulmer from using these communications in the Civil Case and Divorce Action and any potential future litigation. See § 17-30-65(A) ("Whenever any wire, oral, or electronic communication has been *intercepted*, no part of the contents of the communication and no evidence derived therefrom may be received in evidence in *any* trial, hearing, or other proceeding" (emphases added)). Additionally, we deny Coggeshall's request for attorney's fees.³ Any further motions concerning these cases should be addressed to the family and circuit courts.



C.J.



J.



J

³ However, the parties may still pursue attorney's fees and damages in a civil action. See § 17-30-135(A)(4) ("Any person whose wire, oral, or electronic communication is *intercepted* . . . has a civil cause of action . . . and is entitled to recover . . . a reasonable attorney's fee and other litigation costs reasonably incurred." (emphasis added)).

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