

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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98346

RECEIVED

MAR 09 2023

Appeal from Greenville County  
Greenville County Family Court  
Hon. Judge Rochelle Conits, Family Court Judge, Presiding **SC Court of Appeals**

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2021-DR-23-0394

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Sarah Huet de Guerville.....Respondent,

Versus

Brice Huet de Guerville.....Petitioner.

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**MOTION TO SUPPRESS RECORDED COMMUNICATIONS**

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Scarlet B. Moore, #72534  
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March 6, 2023

**NOW INTO COURT**, comes the Petitioner Brice Huet de Guerville (“Father”), who moves this Honorable Court for an Order suppressing recordings admittedly made by the Respondent (“Mother”) during the course of the above titled matter, which recordings are of the Father and his minor child, A.H., engaged in what the Father believed were private telephone conversations pursuant to prevailing court orders in this matter. The Father invokes the jurisdiction of this court pursuant to S.C. Code Ann. § 17-30-110, which requires that the legality of the recordings be determined by this Appellate Court by motion. Additionally, the Father asserts that the legality of the recordings in this case are governed by S.C. Code Ann. § 17-30-10, et seq, the South Carolina Homeland Security Act, which prohibits the “interception of wire, electronic, or oral communications” except “in the manner permitted by this chapter.” This matter is also governed by Title III of the Omnibus Crime Control and Safe Streets Act of 1968 at U.S. Code Ann. 18 U.S.C.A. § 2511. The federal law prohibits the interception of oral conversations between the Father and his minor child, A.H., and the disclosure and/or transmission of the contents of conversations pursuant to 18 U.S.C.A. § 2515, subjects one who violates the law to criminal and civil sanctions. Similarly, S.C. Code Ann. § 17-30-65 prohibits the admissibility or use of the contents of the intercepted communication. Pursuant to S.C. Code Ann. § 17-30-30(C), it is lawful for a person not acting under color of law to intercept a wire, oral or electronic communication where the person is a party to the communication or where one of the parties to the communication has given prior consent to the interception. The undisputed fact in this case is that the Father did not consent to the interception, but rather the Mother has relied upon the doctrine of “vicarious consent” to justify her recording the Father and son. For the reasons set forth below, her argument has no merit and the recordings should be suppressed.

This matter was initially filed by the Mother alleging a substantial change in

circumstances since the entry of the Final Divorce Decree on or about February 20, 2020, requesting a modification of custody, visitation and other ancillary relief. The Mother petitioned the family court to be permitted to move the child from his residence in Greenville, S.C. to Tennessee due to her pending nuptials with the minor child's now stepfather. During the course of the litigation at the trial level, the Petitioner received an interim report on or about January, 2022, of the Guardian *ad Litem*, Megan Burke, Esq., who referenced in her report details of audio recordings taken by the Mother of the private conversations between the Father and the child. (See Exhibit A – Interim Report of Guardian, January 2022, page 10 of 28, paragraph 30.) Of course, this surprised the Father due to the fact that the parties had operated under Honorable Judge Marsh Robertson's standard restraining orders since the entry of the divorce decree in 2020, which specifically permitted the Father to have reasonable private phone conversations with his child. (See Exhibit B – Parenting Duties, Rights and Restrictions, provision II.C) The Guardian attached the mother's recording to the interim report and disseminated it to the parties via email. The Father at no time gave his authorization, permission nor consent for the Mother to tape private telephone communications between him and his son. Upon learning of these recordings, the Father through counsel filed a motion to relieve the Guardian *ad Litem* based on the fact that the Guardian had listened to the recordings and incorporated the information in the recordings in her report. (See Exhibit C – Notice of Motion and Motion to Remove the Guardian *ad Litem* and Transfer Custody.) Of note is that the motion to relieve the Guardian urged by the Father was based on multiple grounds other than just the issue of the recordings. At the motion hearing before Honorable Judge Rochelle Conits, however, the court ordered that prior to the court being able to rule upon the totality of the Father's motion to remove the Guardian, that the issue of the legality of the recordings must be determined by the S.C. Court of Appeals. (See

Exhibit D – Order as to Defendant’s Motions to Remove Guardian *ad Litem* and Transfer Custody) Judge Conits ordered the Father to petition the S.C. Court of Appeals within thirty (30) days of the date the order was filed, which was February 3, 2023.

At the motion to relieve the Guardian, the Guardian *ad Litem* submitted to the Court a Return to the motion denying any improper or illegal action taken by her in listening to the recordings made by the Mother of the Father and child’s communications. (See Exhibit E – Return to Motion.) The Mother acknowledged in her discovery answers the existence of at least three (3) recordings that she made of Father and son’s private communications without the Father’s express permission. (See Exhibit F – Discovery Responses) The Mother submitted a Return to the Father’s motion to remove the Guardian, which was substantially based on the affidavit and memorandum of law of Attorney Richard Whiting, a Columbia-area attorney who has had previous involvement in the appellate courts of South Carolina and elsewhere regarding the issue of “wiretapping.” (See Exhibit G – Return to Defendant’s Motion to Remove the Guardian *ad Litem* and to Transfer Custody.) Although Mr. Whiting wrote a memorandum of law for Mother detailing his opinion about the legality of the recordings taken by Mother, he had also allegedly consulted with Father prior to the execution of the affidavit and memorandum of law for Mother regarding this exact issue with a different conclusion about the legality of the recordings. The Father recounts the conversation with Mr. Whiting in his affidavit submitted in support of his motion to relieve the guardian. (See Exhibit H – Affidavit of Brice Huet de Guerville, pp. 2 and 13.) As stated, the Father submitted a detailed affidavit regarding the multiple grounds that justified removal of the Guardian, which included the Guardian’s exposure to and dissemination of the objectionable recordings taken by the Mother. Judge Conits deferred ruling on the merits of the motion until resolution in this Court of the issue presented.

The seminal South Carolina Supreme Court case regarding the interception and use of communications between a child and a third party (which includes communication with the “other” parent) in a circumstance in which the child has not consented or could not legally consent, but in a circumstance in which the “other” parent has knowledge of and consents to the recording, is the case of State v. Whitner, 399 S.C. 547, 732 S.E.2d 861 (S.C. 2012). In Whitner, the South Carolina Supreme Court in the context of a criminal prosecution for criminal sexual conduct of the five-or-six-year-old daughter of the Appellant Whitner, held that this Honorable Court did not err in denying a motion to suppress a tape recording of the Appellant’s telephone conversation with the victim (at age eleven [11]) wherein he admitted the abuse. The doctrine of “vicarious consent” emerged from Whitner in the courts of South Carolina, which holds that as long as the guardian has a good faith, objectively reasonable basis for believing that it is necessary and in the best interest of the child to consent on behalf of his or her minor child to the taping of telephone conversations, the guardian may vicariously consent on behalf of the child to the recording. (*emphasis added.*) See also Pollock v. Pollock, 154 F.3d 601 (6<sup>th</sup> Cir. 1998). The requirement of necessity is compelling and it begs the question what efforts must a litigant go through before it is “necessary” to record the type of communications at issue in this case between Father and son. As an initial matter, there is perhaps no more compelling court matter in this state than that of a criminal prosecution of an offender for sexual abuse of a child. There are strong policy considerations in the court adopting the “vicarious consent” doctrine under the facts and circumstances of Whitner. In the case at bar, there are no such compelling interests nor necessity in the Mother choosing to not only disregard the requirements of Honorable Judge Marsh Robertson’s standard restraining orders for the parties to have reasonable private telephone access to the child while physical child placement is with the other parent, but to

record the Father and child's communications in violation of Federal and South Carolina wiretapping statutes referenced above. In fact, this Honorable Court granted a motion to suppress in the case of McMaster v. McMaster, Appellate Case No. 2021-000278, which was urged by Mr. Whiting on behalf of a Mother who was aggrieved due to the Father's use of a "Spy Camera" left by the Father in the marital residence to record the Mother's private conversations with the child. The alleged justification for the recordings was the Father's desire to "protect himself against the possibility of false accusations" by Mother and Child and because he was concerned Mother and Grandparents were alienating the child from him. In granting the motion to suppress, this Court found that the Mother had custody of the child and exclusive possession of the marital home at the time the communications were intercepted (distinguishable from the facts at bar due to the fact that the parties share joint custody with primary placement with Mother.). Further, the device implemented in McMaster was overly invasive in that the device recorded communication in multiple rooms of the residence and recorded the Mother, child and whomever was invited into their home physically or via telephone for a period between November 2020 through March 2021. Although the court in McMaster found that the alleged justification for the recordings – parental alienation – was concerning, that was not sufficient justification for such a level of invasiveness.

Therefore, this Court has instructed litigants that something "more" is needed than just a concern about behaviors such as parental alienation and false accusations of the other parent. In this case, the Mother in her Return to the Father's motion to remove the Guardian uses Mr. Whiting's affidavit and memorandum of law to support her position that the recordings were obtained legally. The justification that the Mother uses to record private telephone communications between the Father and the child are that her actions were "reasonably

necessary” to protect her child from harm as the Father would certainly not have admitted to his behavior (which behavior is not otherwise described), the recordings were necessary for the Mother’s protection of the emotional and mental well-being of her child, that the recordings are evidence that Father is intentionally and willfully violating the court’s restraining orders that are in place to protect the best interests of the child, and that the Father is intentionally and deliberately harming and manipulating the child to his detriment. (See Exhibit G – Return to Defendant’s Motion to Remove the Guardian *ad Litem* and to Transfer Custody.) Again – there are no specific details and facts cited to substantiate the Mother’s claims against Father’s alleged detrimental behaviors, as the Mother did not file an affidavit in support of her Return.

Regarding the affidavit and memorandum of law submitted by Mr. Whiting, the affidavit details his credentials and experience which qualifies him to be considered an expert in this field of “wiretapping” and the admissibility of intercepted communications. In the memorandum of law, Mr. Whiting asserts that the Mother admitted to recording three or perhaps four conversations between the child and the Father – which conversations usually took place with the child being in a separate room in the residence that the child shared with his Mother. (See Exhibit G – Return to Defendant’s Motion to Remove the Guardian *ad Litem* and to Transfer Custody p. 2 of 6.) Mr. Whiting asserts that at the conclusion of the conversations, the child appeared to the Mother to be extremely upset, sometimes even crying, and in an emotional state telling his mother that he had to talk to her about the conversation that had just taken place between him and Father. (See Exhibit G – Return to Defendant’s Motion to Remove the Guardian *ad Litem* and to Transfer Custody p. 2 of 6 – *emphasis added*.) Seemingly, Mr. Whiting indicates that the Mother was unilaterally taping the child’s conversation with the Father and subsequently being alerted to the child being upset. However, pursuant to Mr. Whiting’s

clear writing, the child indicated to the Mother after the conversations that he “had” to talk to her about the conversation that had just taken place. It is difficult for the Mother to justify recording the Father under these circumstances – particularly when *Whitner* requires “necessity” for the recordings. Of course, although Mother’s counsel in her Return details concerns of the Mother, there is no affidavit of Mother attached to the Return from which this Court could glean the Mother’s sworn concerns in her own words with her own details. What does seem clear is that the child was prepared to discuss with his Mother why he was allegedly upset after the conversation with Father, thus negating any alleged “necessity” of the Mother violating the federal and state wiretapping laws, detailed supra. The interests at play in these laws are compelling – the interests of privacy and integrity in recorded conversations, which this Court clearly recognizes in *McMaster*. Further, Mr. Whiting gives no specific details such as dates and times to substantiate the generalized allegation that the recordings support the conclusion that the Father was coaching the child on how to talk to the mother and how to talk to the Guardian *ad Litem*, but also allegedly “continuing” to demean the Mother during the conversations. Mr. Whiting purports to use *Whitner* to justify the recordings taken by Mother in this case, but for the reasons discussed above, the argument and comparison fails.

Mr. Whiting is incorrect on one crucial point of his memorandum of law: he asserts that because the Mother had primary placement of the child that she had the ability to not only listen to but record the conversations between the child and other individuals. Not only have the standards from *Whitner* and progeny not been met in this case to justify the Mother’s actions of recording the private communications between Father and son, this assertion overlooks the fact that the Father was permitted to have reasonable private telephone communications with his son by court order. (See Exhibit B – Parenting Duties, Rights and Restrictions, provision II.C)

Therefore, not only are Mother's actions in this case a violation of state and federal law, they are a violation of court order, in which case the Mother was not acting in objective good faith in believing she had a privilege to record the private communications that were protected by court order between a Father and son.

The Mother's assertions are erroneous as there was no necessity to record the Father and child under the circumstances presented in this case. In *Whitner*, the litigants did not have traditional vehicles of discovery at their disposal due to the fact that it was a criminal prosecution. In a family court proceeding, the litigants have numerous discovery and other tools to obtain the information sought by the Mother such as a forensic interview of the child by a trained interviewer, discovery requests such as requests to admit or interrogatories submitted to the opposing party, the Guardian *ad Litem* is charged with the ability to speak directly and privately with a child to gather information for the litigation, and children are deposed in South Carolina -- although the latter technique is not favored. Additionally, children in contested family court matters are typically under the care of counselors, who can also speak to the child about a parent's concerns. In fact, in this case the Father requested that the child engage with a counselor, to which the Mother replied that the child did not need counseling. However, the Mother agreed to counseling for the child over a year following the Father's recommendation only after the Guardian recommended therapy. (See Exhibit H - Affidavit of Brice Huet de Guerville, p. 7.) In fact, the Father has a favorable view of the child's therapy sessions, and the Father supports the child continuing in therapy. (See Exhibit H - Affidavit of Brice Huet de Guerville, p. 10.) The South Carolina Supreme Court in adopting the federal jurisprudence has drawn the line at "necessary," which is simply not met in this case. Of note is that on the issue of the recordings being provided to the Guardian and the Guardian's review and dissemination of

the recordings, the Guardian's report submitted in January, 2023 (a year subsequent to the report which led to the Father's motion to remove the Guardian) merely indicates that the Mother stated she has recordings of the conversations of Father and child -- not that the Guardian has reviewed and/or disseminated the recordings. (See Exhibit I – Guardian Interim Report 2023 paragraph 30.)

Lastly, there are very strong policy considerations at issue in this case. If the justifications of the Mother to tape private and protected telephone communications between a Father and son prevail in this Court, the floodgates of taping in family court actions across South Carolina will be fully opened. All a parent has to do is have "concerns" about a child (which is prevalent between litigants in highly-contested custody matters such as the one at bar) to justify intrusion into state and federal law which otherwise protects such communications. The Father implores this Court not to follow this path, but rather to suppress any and all recordings made by the Mother and prohibit the use of the recordings at the trial of this matter.

Counsel certifies that pursuant to Rule 11 of the SCRPC, consultation with opposing counsel would serve no useful purpose given the issues involved with this matter and the positions of the parties at the trial court.

Respectfully Submitted,



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Greenville, South Carolina  
March 6, 2023

# EXHIBIT A

29. Mother turned in text messages from her and Father to show the difficulties that the Parties have coparenting. Mother stated that Father simply refuses to work with her at all and would rather just keep pushing on the situation and attempt to deflect and manipulate than to talk and coparent with her. The text messages are hereto attached as EXHIBIT E.

\* 30. Mother stated that Father is only worried about how he looks and is always trying to spin the narrative to his view. Mother stated that Father emotionally manipulates the minor child. Mother stated that the minor child is kind hearted and just wants to make everyone happy. Mother stated that Father coaches the child and that the minor child's actions are often a reflection of his fear to hurt Father's feelings. Mother stated that Step Father and the minor child have a close relationship, but that the minor child is afraid to hug Step Father or to spend time with him because of his fear to hurt Father's feelings for wanting to do so. Mother stated that the minor child is also worried that if he tells Father that he likes to live in Tennessee, likes Step Father, likes his Step Siblings, that Father will be mad at him. Mother stated that she has recordings of the conversations that Father has had with the minor child and that these show the manipulation that Father uses. These recordings are hereto attached as EXHIBIT F.

31. Mother stated that, when it comes to the school app, she did add Step Father. Mother stated that Step Father is highly involved in the minor child's life and that he is a parental figure to him as well. Mother stated that Step Father should be and has a right to be on the school app. Mother stated that, in addition, in case of an emergency, the school needs to be able to contact Step Father. Mother stated that Father is just trying to create issues where there are none.

32. Mother stated that Father will try to spin any situation and manipulate the children any way that he can for his own interest. Mother stated that she has always had a strong relationship with C.W., that she helped raise her for many years when she and Father were married, has always encouraged C.W.'s relationship with her brother, the minor child of this action, and has always loved her as her own. Mother stated that she takes any opportunity to see her when she can because she loves the minor child, but that Father is trying to turn her against her because he simply wants to exile Mother from C.W.'s life.

33. Mother stated that when it comes to the gun situation, Step Father has always had a tradition to take his children into the backyard and to shoot pumpkins. Mother stated that Step Father was trying to spend time with the minor child and that the minor child was never in an unsafe situation. Mother stated that Father just tries to use all situations as an attempt to cause problems and drama. Mother stated that Father is just difficult to work with and would rather make trouble and drama than to work

# EXHIBIT B

2. **Thanksgiving:** The visiting parent shall have child placement on odd-numbered years for the extended Thanksgiving weekend from 6:00 PM Wednesday until 6 PM Sunday. The custodial parent shall have this placement on even-numbered years.
3. **Easter Weekend / Spring Break:** The visiting parent shall have child placement on even-numbered years for the entire Spring Break vacation and the weekend that includes Easter Sunday, from 6:00 PM on the day school lets out until 6:00 PM on the day prior to school recommencing. The custodial parent shall have this placement on odd-numbered years. Spring Break vacation shall be as defined by the school that the child/children attend; or if the child/children do not yet attend school, then by the public school district of the child/children's residence.
4. **Mother's Day / Father's Day / Parent Birthdays:** If the child/children are scheduled to be with the other parent, child placement shall nevertheless be with the mother on Mother's Day and with the father on Father's Day from 9:00 AM to 9:00 PM; and with the mother on her birthday and the father on his birthday from 5:30 PM to 8:30 PM.

## II. PARENTING DUTIES, RIGHTS AND RESTRICTIONS

- A. **Placement Exchanges:** Absent other arrangements mutually agreed upon by the parents, the visiting parent will pick the child/children up from the home of the custodial parent at the beginning of scheduled visitation, and the custodial parent will pick the child/children up from the home of the visiting parent at the end of scheduled visitation. Both parents will have a duty to ensure that the child/children are available at their respective homes for timely exchanges.
- B. **Notice of Unavailability:** The visiting parent shall provide reasonable advance notice to the custodial parent of his or her intention for any reason not to exercise any placement rights available under this schedule.
- \* C. **Telephone Access:** Each parent shall have reasonable, private access to the child/children by telephone while physical child placement is with the other parent.
- D. **Access to Records and Activities:** Each parent, whether the custodial or noncustodial parent, has equal access and the same right to obtain all educational records and medical records of their minor children and the right to participate in their children's school activities.
- E. **Restraining Order:** While exercising physical child custody or placement, the parents shall be mutually restrained from willfully or negligently (a) engaging in any illegal conduct or activity; (b) subjecting or exposing the child/children to any acts of abuse or neglect; (c) engaging in conduct that endangers the physical or emotional wellbeing of the child/children; and (d) violating any additional restraining orders that may be specified in the court order to which this Plan is attached.

# EXHIBIT C

STATE OF SOUTH CAROLINA  
GREENVILLE, SC

COUNTY OF GREENVILLE

Sarah Huet de Guerville,

Plaintiff,

-vs-

Brice Huet de Guerville,

Defendant.

FILED CLERK OF COURT  
GREENVILLE, SC

2022 OCT 31 AM 11:17

FAMILY COURT

IN THE FAMILY COURT

**NOTICE OF MOTION AND  
MOTION TO REMOVE THE  
GUARDIAN *AD LITEM* AND  
TRANSFER OF CUSTODY**

C.A. No.: 2021-DR-23-394

**TO THE PLAINTIFF ABOVE NAMED BY AND THROUGH HER ATTORNEY,  
ANGELA E. FRAZIER AND THE GUARDIAN *AD LITEM*, MEGAN BURKE:**

Please take notice that the undersigned attorney for the Defendant will move before the Honorable Judge Conits of the Greenville County Family Court on the 5<sup>th</sup> day of January, 2022 at 4:30 P.M, or as soon thereafter as counsel may be heard for an Order addressing the following issues:

1. **Removal of the Guardian *ad Litem*.**
2. **Transfer of custody of the minor child to the Defendant based on the child's therapist recommendations; and**
3. **Attorney fees.**

The basis for the Motion of the Defendant is as follows:

1. The Guardian *ad Litem* was provided illegally obtained recordings by the Plaintiff of the minor child and the Defendant. Upon being provided this information, the Guardian *ad Litem* shared these recordings with the parties and further utilized the recordings in her Interim report issued in January 2022 despite a contempt action being filed concerning the same issue in September 2021.
2. The Defendant filed a contempt action on September 22, 2021 addressing the issues of Plaintiff's recording of conversations illegally. Even though this contempt action existed with illegally obtained recordings, the Guardian *ad Litem* still included those in her Interim report issued in January 2022.

3. The Guardian *ad Litem*, in her January 2022 report, failed to include the information in her report that the child's principal in Tennessee reported that the child leaving school on Fridays was not a concern for the school which was a direct position opposite of the Guardian.
4. The Guardian *ad Litem* prejudices the Defendant in that she relies heavily on his conversations with the minor child while utilizing illegally obtained information by the Plaintiff in her report.
5. The Defendant continued to inform the Guardian's office that the Plaintiff was illegally recording his conversations with the minor child. Despite this knowledge, the Guardian utilized the recordings, thereby influencing her report.
6. The Defendant has a current complaint pending as to the Guardian thereby prejudicing her opinion in this matter.
7. The Guardian failed to investigate the minor child's absence from school for exchanges being allowed by his school leaving the Defendant to investigate resulting in the child's school approving of such early dismissals for exchanges.
8. The Defendant and the Guardian have had a significant breakdown in communication.
9. The Guardian requested another PETH test of the Plaintiff but alerted her to allow her time to prepare in her report thereby negating the surprise to the Plaintiff and a possible failure of the test.
10. The minor child reported to his therapist concerns of the Plaintiff's husband continuing to hug him despite the child's assertions not to do so resulting in the child's desire to not live with the Plaintiff and her husband.
11. The Guardian, as having been involved in a prior action with this child, does not believe the sibling relationship to be as important as it was during the last action involving this child.
12. Based on the report of the minor child, the time spent alone with the Guardian and the child was inaccurately reported by the Guardian.

13. Based on the report of the minor child, he was only allowed to fully voice his concerns once his meeting with the Guardian was recorded.

Pursuant to Rule 11, Defendant's counsel has addressed this issue with opposing counsel and the Guardian *ad Litem*. The issue cannot be decided without the necessity of a hearing being held.

**HOWARD LAW FIRM, P.A.**

MILFORD O. HOWARD, III  
Attorney for Defendant  
P.O. Box 9754  
Greenville, South Carolina 29604  
Phone: (864) 233.5672  
Fax: (864) 642-6822

October 20, 2022

# EXHIBIT D

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Sarah Huet de Guerville,

vs.

Brice Huet de Guerville,

FILED CLERK OF COURT  
GREENVILLE, S.C.

2023 FEB 23 A 8:42  
Defendant

FAMILY COURT

IN THE FAMILY COURT  
THIRTEENTH JUDICIAL CIRCUIT

COPY

JUDGMENT IN A  
FAMILY COURT CASE

Docket No. 2021-DR-23-0394

Cross Ref. No.: 2018-DR-23-4502

Submitted by:  Elliott Frazier Law Firm, LLC 601 E. McBee Avenue, Suite 107 Greenville, SC 29601	Attorney for <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant <input type="checkbox"/> GAL
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**DECISION BY COURT** (check all that apply)

- This action came to trial, hearing or was resolved by consent and an order was rendered.
- This action has been dismissed pursuant to  Rule 12(b), SCRPC  Rule 41(a), SCRPC  
 Rule 43(k), SCRPC  Family Court Benchmark  
 Other: \_\_\_\_\_

**IT IS ORDERED AND ADJUDGED:**  See attached order;  Statement of Judgment by the Court:

Additional information for Clerk: \_\_\_\_\_

**ORDER INFORMATION**

- This is a  Temporary  Final order. If Final, does this order end the case?  Yes  No
- Support  is not ordered  is ordered, and it is to be paid  through the court.  directly to the CP.
- Case number under which support is paid if different from this one: \_\_\_\_\_
- This order involves the immediate  issuance  dismissal of a bench warrant, or  does not apply.
- The following motions are ended by this order (include motion filing date): \_\_\_\_\_
- This order adds or dismisses the following parties to this case:  
 dismiss  add: \_\_\_\_\_  dismiss  add: \_\_\_\_\_

INFORMATION FOR THE PUBLIC INDEX/TRANSCRIPT OF JUDGMENT (§ 20-3-670(B)(1))		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information to enroll, indicate "N/A" in one of the boxes below.		
Judgment In Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount to be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the South Carolina Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: title abstractors and researchers should refer to the official court order for judgment details.

Family Court Judge

*Docubly Courts*

Judge Code

4141

Date

1-31-2023

**FOR CLERK OF COURT OFFICE USE ONLY**

This judgment was entered on the \_\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on \_\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

Angela E. Frazier, Esq.  
601 E. McBee Avenue, Suite 107  
Greenville, South Carolina 29601

Milford (Chip) O. Howard, III, Esq.  
Post Office Box 9754  
Greenville, South Carolina 29604

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

**ATTORNEY(S) FOR THE DEFENDANT(S)**

Megan Goodwin Burke, Esq.  
217 E. Park Avenue  
Greenville, South Carolina 29601

**Guardian *ad Litem***

\_\_\_\_\_  
**CLERK OF COURT**

Court Reporter: \_\_\_\_\_

Custodial Parent (if applicable): \_\_\_\_\_

STATE OF SOUTH CAROLINA )

COUNTY OF GREENVILLE )

IN THE FAMILY COURT  
THIRTEENTH JUDICIAL CIRCUIT

FILED CLERK OF COURT  
GREENVILLE, S.C.

Sarah Huet de Guerville,

Plaintiff, )

vs. )

Brice Huet de Guerville,

Defendant. )

2023 FEB -3 A 8:42  
MOTION AND ORDER INFORMATION  
FORM AND COVERSHEET

FAMILY COURT

Docket No. 2021-DR-23-0394

Cross Ref. No.: 2018-DR-23-4502

Plaintiff's Attorney:  
Elliott Frazier Law Firm, LLC  
Angela E. Frazier, Esq. Bar. No. 71099  
Address:  
601 E. McBee Avenue, Suite 107  
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Phone: 864-214-3621 Fax: 864-729-2203  
E-mail: afrazier@elliottfrazierlaw.com

Guardian *ad Litem*:  
Megan Goodwin Burke, Esq. Bar No.: 100095  
Address:  
217 E. Park Avenue  
Greenville, South Carolina 29601  
Phone: 864-233-4566 Fax: 864-751-1649  
Email: meg@upstategal.com

Defendant's Attorney:  
Milford (Chip) O. Howard, III, Esq., Bar No. 73855  
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Phone: 864-233-5672 Fax: 864-642-6822  
E-mail: howardlawgvilee@gmail.com

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

**SECTION I: Hearing Information**

Nature of Motion:

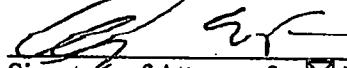
Estimated Time Needed:

Court Reporter Needed:  YES/ NO

**SECTION II: Motion/Order Type**

- Written motion attached
- Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.



Signature of Attorney for  Plaintiff /  Defendant

January 27, 2023  
Date submitted

**SECTION III: Motion Fee**

PAID - AMOUNT: \$

EXEMPT:

(check reason)

- Rule to Show Cause in Child or Spousal Support
- Domestic Abuse or Abuse and Neglect
- Indigent Status  State Agency v. Indigent Party
- Sexually Violent Predator Act  Post-Conviction Relief
- Motion for Stay in Bankruptcy
- Motion for Publication  Motion for Execution (Rule 69, SCRPC)
- Proposed order submitted at request of the court; or,  
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: \_\_\_\_\_

Other: \_\_\_\_\_

**JUDGE'S SECTION**

Motion Fee to be paid upon filing of the attached order.

Other:

JUDGE CODE \_\_\_\_\_ Date: \_\_\_\_\_

Judge Signature: \_\_\_\_\_

**CLERK'S VERIFICATION**

Collected by: \_\_\_\_\_ Date Filed: \_\_\_\_\_

MOTION FEE COLLECTED: \$ \_\_\_\_\_

CONTESTED - AMOUNT DUE: \$ \_\_\_\_\_

COPY

STATE OF SOUTH CAROLINA )

IN THE FAMILY COURT OF THE

COUNTY OF GREENVILLE )

FILED CLERK OF COURT THIRTEENTH JUDICIAL CIRCUIT  
GREENVILLE, S.C.

Sarah Huet de Guerville, )

2023 FEB -3 ) A 8:12

Case No.: 2021-DR-23-0394  
Cross Ref. No.: 2018-DR-23-4502

v.

FAMILY COURT  
Plaintiff, )

ORDER AS TO DEFENDANT'S MOTIONS  
TO REMOVE GUARDIAN AD LITEM  
AND TRANSFER CUSTODY

Brice Huet de Guerville, )

Defendant. )

<b>DATE OF HEARING:</b>	January 5, 2023
<b>TRIAL JUDGE:</b>	The Honorable Rochelle Y. Conits
<b>PLAINTIFF'S ATTORNEY:</b>	Angela E. Frazier, Esq.
<b>DEFENDANT'S ATTORNEY:</b>	Milford (Chip) O. Howard, III
<b>GUARDIAN AD LITEM:</b>	Megan G. Burke, Esq.
<b>COURT REPORTER:</b>	

This matter came before the Court for a hearing on two of Defendant, Brice Huet de Guerville's, ("Father") motions: (1) Motion to Remove Guardian *ad Litem*, ("GAL"), and (2) Transfer of Custody. Both motions were filed by Father, on October 31, 2022. Plaintiff, Sarah Huet de Guerville, ("Mother"), filed her Returns to both motions on January 4, 2023. The GAL filed a Return to Father's Motion to Remove her on January 4, 2023. The GAL filed an Interim Report on January 5, 2023.

Present for the hearing were the Mother, Mother's attorney, Angela E. Frazier, Father, Father's attorney, Milford (Chip) O. Howard, III, and the GAL, Megan G. Burke.

Prior to hearing the arguments of counsel and comments from the GAL, Father's attorney requested the Court allow Father to withdraw his Motion for a Transfer of Custody. Mother's attorney did not object except as to her request for legal fees and costs required to prepare their defense.

Father's attorney then proceeded with his Motion to Remove the GAL. Father believed that he is entitled to an Order of this Court removing the GAL because she had become unfairly biased against Father. Specifically, Father alleged that the GAL listened to recordings between Father and the minor child that he alleged were illegally recorded by Mother. Father's position was that the GAL

not only listened to these recordings and formed certain opinions about Father, but she also shared the alleged illegal recordings with the parties' mediator.

While Father was not asking this Court to determine the legality or illegality of how these recordings were obtained, he desired the Court to make its determination based upon Father's affidavit and his attorney's arguments.

Mother's attorney presented an affidavit of her expert, attorney, Richard G. Whiting, which affidavit alleged that the recordings were not illegally obtained. The GAL referenced her Return, and Interim Report for the Court to review.

No one provided copies of the alleged recordings for the Court's review.

Based upon the motions, affidavits, exhibits, representations of counsel, and the laws of this State, the Court finds the following as to the relief sought by both parties:

1. This Court finds Father's request to withdraw his Motion to Transfer Custody is not objected to by Mother, except as to her request for legal fees and costs incurred to defend against the Father's motion; and

2. This Court finds that the Final Order for Divorce filed on February 20, 2020, ordered that the "parties agree to share joint legal custody of their Minor Child with primary placement with [Mother]. On all major parenting decisions, the parties will consult and use good faith efforts to resolve differences, but if the parties are unable to agree on the major parenting decision, [Mother] will have the right to make the final decision"; and

3. This Court also finds that it cannot rule upon Father's Motion to Remove the GAL until there is a finding that the recordings are were either lawfully obtained or not; and

4. This Court finds that it does not have subject matter jurisdiction to determine the alleged lawful or unlawful obtaining or use of the referenced recordings; and

5. This Court is further informed and believes that the South Carolina Court of Appeals has original jurisdiction to determine whether recordings of phone conversations are obtained legally or not pursuant to S.C. Code Ann. § 17-30-110 et seq.

Therefore, this Court orders that Father's Motion to Transfer Custody is withdrawn subject to Mother's request for legal fees and costs;

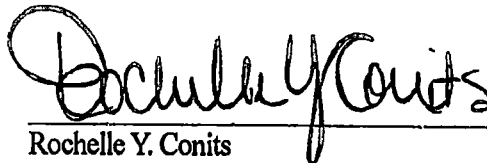
This Court further orders Father, as the alleged aggrieved party, to file a Motion to Suppress to the South Carolina Court of Appeals as set forth in S.C. Code Ann. § 17-30-110.

This Court further finds that if Father does not timely avail himself of the remedy set forth in S.C. Code Ann. § 17-30-110 et seq. within thirty (30) days of the date this Order is filed with the Court, Mother may seek clarification of the alleged propriety of the recordings by filing her own application or motion to the South Carolina Court of Appeals. Upon receipt of a ruling from the South Carolina Court of Appeals, this Court will determine if this hearing needs to be reopened or if the Court has sufficient information upon which to rule on all motions, matters, and issues.

Finally, this Court orders that both parties' requests for legal fees and costs as to both motions shall be held in abeyance until further order of this Court.

**AND, IT IS SO ORDERED.**

February 1-31-23, 2023  
Greenville, South Carolina

  
Rochelle Y. Conits  
Family Court Judge

STATE OF SOUTH CAROLINA )

COUNTY OF GREENVILLE )

Sarah Huet de Guerville, )

Plaintiff, )

vs. )

Brice Huet de Guerville, )

Defendant. )

IN THE FAMILY COURT  
THIRTEENTH JUDICIAL CIRCUIT

**SUPPORT INFORMATION SHEET**

Docket No. 2021-DR-23-0394

Cross Ref. No.: 2018-DR-23-4502

Check appropriate box:

- No spousal or child support ordered. (No other items should be completed.)
- If support is ordered to be paid directly or through the Court, you must complete **BOTH** pages (as applicable).

**\*\*\* CHILD SUPPORT SHALL BE PURSUANT TO THE FINAL ORDER UNTIL FURTHER ORDER OF THIS COURT\*\***

Obligation Type	Child Support	Spousal Support	Other
Amount	\$	\$	\$
Collection Costs (5%)	\$	\$	\$
Payment Frequency			
Payment Start Date			
Weekly	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bi-weekly	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monthly	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Semi-monthly (1st & 16th)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Semi-monthly (15th & 30th)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Total Arrearage Amount	\$	\$	\$
Wage Withholding			
Required by S.C. Code Ann. §63-17-1420	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ordered	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Not Ordered	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Name of Custodial Parent (if applicable): \_\_\_\_\_

**\*\*\*\*\*OBLIGOR'S DESIGNATION STATEMENT; PAYMENT OF COURT COSTS\*\*\*\*\***

I acknowledge that S.C. Code Ann. § 63-3-370 requires that I pay and the Family Court has ordered that I pay court costs in an amount equal to five (5) percent of any support payment made through the Clerk of Court or the centralized wage withholding system. I owe and will pay these costs in addition to my support obligation.

To meet my duty to pay court costs, I designate an amount equal to five (5) percent of the support payment I make to be applied and distributed in payment of court costs, not support.

I acknowledge the Clerk of Court or, if payments are withheld from my income, the centralized wage withholding system to deduct the fee from every payment made by me or on my behalf.

I acknowledge that should I not pay the full amount due, that an arrearage will accrue and that the Clerk of Court may take enforcement action against me for failure to pay all amounts ordered by the Court.

If an amendment to the law changes the amount of court costs, this designation authorizes deduction of court collection costs in the amount established by law.

Date: \_\_\_\_\_, 20\_\_\_\_\_

**\*\*NOTE TO CLERK: FILE AND PROCESS THIS FORM EVEN IF SIGNATURE OF PERSON PAYING SUPPORT IS NOT PROVIDED.\*\***

**IDENTIFYING INFORMATION ON THIS PAGE**

**A. OBLIGEE/PAID TO:**

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Email Address: \_\_\_\_\_ Phone: \_\_\_\_\_  
 SSN: \_\_\_\_\_ Gender: \_\_\_\_\_ Race: \_\_\_\_\_ Height: \_\_\_\_\_ Weight: \_\_\_\_\_  
 Date of Birth: \_\_\_\_\_ Scars: \_\_\_\_\_  
 Driver's License Number: \_\_\_\_\_ Driver's License Issuing State: \_\_\_\_\_  
 Employer: \_\_\_\_\_  
 Employer Address: \_\_\_\_\_

**B. OBLIGOR/PAID BY:**

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Email Address: \_\_\_\_\_ Phone: \_\_\_\_\_  
 SSN: \_\_\_\_\_ Gender: \_\_\_\_\_ Race: \_\_\_\_\_ Height: \_\_\_\_\_ Weight: \_\_\_\_\_  
 Date of Birth: \_\_\_\_\_ Scars: \_\_\_\_\_  
 Driver's License Number: \_\_\_\_\_ Driver's License Issuing State: \_\_\_\_\_  
 Employer: \_\_\_\_\_  
 Employer Address: \_\_\_\_\_

**C. CHILDREN**

CHILDREN'S NAMES	DATE OF BIRTH	SSN
1.		
2.		
3.		
4.		
5.		
6.		

Jessica F. Oillard  
PREPARED BY

Paralegal  
TITLE

1-27-23  
DATE

**VERIFICATION OF CONSULTATION WITH OPPOSING COUNSEL**

**TRANSMITTAL TO COUNSEL**

Date: January 19, 2023

Re: Order as to Defendant's Motions to Remove the Guardian *ad Litem* and Transfer Custody

Date Order to be sent to opposing counsel, GAL and or pro se party: January 19, 2023

Date Order to be sent to Judge: January 27, 2023

Please review the following proposed Order as to Defendant's Motions to Remove the Guardian *ad Litem* and Transfer Custody, ("Order"), and notify my office of your suggested changes, if any, before the presentation of the date set forth above. In the event there are no changes to be requested, please advise, and I will submit the Order to the Judge prior to the presentation date.



Angela E. Frazier, Esq.  
Attorney for Sarah Huet de Guerville

**PRESENTATION TO JUDGE FOR SIGNATURE**

To: Honorable Rochelle Y. Conits

Date: January 27, 2023

The attached Order was presented to opposing counsel, GAL, (and/or pro se party), on January 19, 2023. It is now being presented to you for your consideration and signature. Please note the following:

Counsel, GAL, (and/or pro se party), responded and approved the Order.

Changes were requested and have been incorporated into the Order, and this final draft has been approved by Counsel, GAL, (and/or pro se party),.

Counsel, GAL, (and/or pro se party), cannot agree to the final form, and this proposed Order is submitted for your consideration.

Counsel, GAL, (and/or pro se party), has not responded, and this proposed Order is submitted for your consideration.



Angela E. Frazier, Esq.  
Attorney for Sarah Huet de Guerville

# EXHIBIT E

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Sarah Huet de Guerville,

Plaintiff,

vs.

Brice Huet de Guerville,

Defendant

FILED CLERK OF COURT  
GREENVILLE, SC

2023 JAN - 4 A 8:41

FAMILY COURT

IN THE FAMILY COURT  
THIRTEENTH JUDICIAL CIRCUIT

2021-DR-23-0394

RETURN TO MOTION

**TO: PLAINTIFF SARAH WALKER (FORMERLY SARAH HUET DE GUERVILLE), BY AND THROUGH HER ATTORNEY OF RECORD, ANGELA FRAZIER ESQ. AND DEFENDANT BRICE HUET DE GUERVILLE, BY AND THROUGH HIS ATTORNEY OF RECORD, CHIP HOWARD, ESQ.;**

The Guardian hereby returns/replies to the Motion for Temporary Relief filed by the Plaintiff as follows:

1. As to the issue of Removal of the Guardian, the Guardian *ad Litem* states that she has not acted with any impropriety or bias necessitating or justifying removal;
2. As to Transfer of Custody of the minor child to the Defendant based on child's therapist recommendations; the Guardian cannot speak to the issue as the Guardian has been blocked from contact with the therapist at the request of Father. The Guardian has confirmed with the therapist and Father's attorney that Father will not allow the therapist to speak to the Guardian until after this hearing;
3. The Guardian has no position as to Attorney's Fees, but does request a raise in the Fee Cap of the Guardian as specified further in the motion.

As to the specific allegations forming the basis of the motion:

1. Guardian acknowledges she was provided recordings. Guardian acknowledges they were used in her Interim Report. The Interim Report, including the recordings, were provided only to the attorneys, the parties and The Court appointed mediator. The Rule to Show Cause referenced was continued in order for the parties to mediate the underlying action and the Rule to Show Cause. The Rule to Show Cause has not been litigated. Additionally, there is a strong argument the recordings were not illegal. Father stated to the Office of

- Disciplinary Complaint that he reported the issue to the FBI and would be reporting it to local authorities. The Guardian has not been charged with a crime or contacted by any investigating official from either identified legal body to discuss this matter.
2. The Rule to Show Cause has not been litigated. The Guardian has not taken any steps to prevent that hearing from going forward. Father voluntarily continued the Rule to Show Cause.
  3. The Guardian did not issue a subsequent report but will include that information in subsequent Guardian Reports. The Interim Report was substantial in length and content.
  4. The Guardian denies that the "illegal" recordings are heavily relied upon in the Interim Report.
  5. The Guardian acknowledges Father stated his belief that the recordings were taken illegally, and reiterates previous points regarding reliance upon them and legality issues.
  6. The Guardian was unaware of the complaint until receiving a draft of this motion. The Guardian was later contacted by the Office of Disciplinary Counsel. The Guardian has been fully compliant with the Office of Disciplinary Counsel. The Guardian will continue to evaluate information in a neutral and unbiased way regardless of any complaint filed;
  7. The Guardian has not issued a subsequent report regarding this issue. The Interim Report has never been filed with The Court. Father was fully able to read the report prior to mediation and was present for mediation and suffered no prejudice as to this issue with the mediator. The Interim Report has never been reviewed by a Family Court Judge in a hearing.
  8. Father has expressed not wishing to communicate with the Guardian without his attorney and has been difficult in communication with the Guardian's office. The Guardian's office has remained polite and professional with Father and thus any breakdown is not the fault of the Guardian and Father can unilaterally remedy.
  9. The Guardian's recommendations in the Interim Report included being able to ask for further testing. The actual test was not requested for a significant period of time.
  10. The Guardian cannot comment on any conversation with the child's therapist and the child as the Guardian has been intentionally blocked from communication with the child's therapist by Father.
  11. The Guardian denies any change to position regarding the importance of siblings. Guardian values relationships between siblings, half-siblings and step-siblings.
  12. The Guardian denies the allegation regarding misrepresenting statements.

13. The Guardian denies changing any policy, position or practice based on a request to record an interview.

The Guardian requests the following relief:

1. The Court to hold in abeyance all issues of custody and visitation until the motion as to The Removal of Guardian can be addressed. The Guardian has been intentionally blocked from communication with the therapist and therefore cannot adequately inform The Court in this regard.
2. The Court to make a finding that the Guardian has not acted with impropriety or bias that would justify removal.
3. For the Guardian's fee cap to be raised. A multi-day trial has been scheduled in this matter which is a complicated relocation case. The Guardian respectfully requests that the fee cap be raised from \$5,000.00 to \$15,000.00.

Respectfully submitted,



Megan Goodwin Burke (Bar Number #100095)

217 East Park Avenue

Greenville, South Carolina 29601

Phone: 864-233-4566

Fax: 864-751-1649

January 3<sup>rd</sup>, 2023  
Greenville, South Carolina

# EXHIBIT F

a. nature and method of interception and recording;

- My son was talking on my cell phone to his father. I recorded the conversations using another party's cell phone.

b. the name of the person who so intercepted and/or recorded Defendants' communication(s);

- 1625661674039 -
  - . Sarah Walker (Huet de Guerville)
- New Recording 1.amri
  - . Sarah Walker (Huet de Guerville)
- New Recording 8.m4a
  - . Sarah Walker (Huet de Guerville)

c. the dates of said interception and/or recording;

- 1625661674039 –
  - . 7/2/2021
- New Recording 1.amri –
  - . 6/30/2021
- New Recording 8.m4a -
  - . 3/13/2021

d. the custodian of said recordings and/or transcription thereof;

- I am informed and believe the GAL has a copy of the 3 recordings and I maintain a copy of the recordings.

e. the date provided to your attorney or the Guardian *ad Litem*;

- 1625661674039
  - . 7/7/2021
- New Recording 1.amri
  - . - 7/1/2021
- New Recording 8.m4a
  - . - 4/8/2021

f. who was the caller/receiver of each call recorded;

- The calls may have been initiated by the father or by me in return.

g. which room in whose home was the minor child when the recordings were made;

- 1625661674039
  - . Sarah's parent's home, upstairs bedroom.
- New Recording 1.amri
  - . Sarah's parent's home, upstairs bedroom
- New Recording 8.m4a
  - . Sarah's Greenville apartment, Aidan's room

h. what device was utilized to record the communication;

- a cell phone

- i. who owns the recording device;
  - Kevin Walker, Sarah's husband
- j. who installed the recording device; and
  - It was on the phone when purchased.
- k. who specifically made the recording, i.e. who pressed "record".
  - 1625661674039
    - Sarah Walker (Huet de Guerville)
  - New Recording 1.amri
    - Sarah Walker (Huet de Guerville)
  - New Recording 8.m4a
    - Sarah Walker (Huet de Guerville)

# EXHIBIT G

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 Sarah Huet de Guerville, )  
 )  
 Plaintiff, )  
 v. )  
 )  
 Brice Huet de Guerville, )  
 )  
 Defendant. )

IN THE FAMILY COURT FOR THE  
 THIRTEENTH JUDICIAL CIRCUIT  
 Case No.: 2021-DR-23-0394  
 Cross Ref. No.: 2018-DR-23-4502

**RETURN TO DEFENDANT’S MOTION  
 TO REMOVE THE GUARDIAN *AD LITEM*  
 AND TO TRANSFER CUSTODY**

Plaintiff, Sarah Huet de Guerville, (“Mother”), by way of a Return to Defendant Brice Huet de Guerville’s, (“Father”), Motion to Remove the Guardian *ad Litem* and to Transfer Custody would respectfully show unto this Honorable Court the following as set forth in this Return:

**BACKGROUND AND PROCEDURAL HISTORY**

This action to modify visitation and for Mother to relocate was filed on February 1, 2021.<sup>1</sup> A temporary hearing was held on March 11, 2021, via Webex with the Honorable Karen S. Roper, which resulted in a Temporary Order that was filed on April 12, 2021, granting the Mother’s request to relocate to Tennessee, appointing attorney, Megan Goodwin Burke, as the Guardian *ad Litem* (“GAL”), and denying the Father’s request to maintain the status quo. Mother and A.H., (“Minor Child”), moved to Tennessee in June of 2021, where they remain to this date.<sup>2</sup>

Father filed a Motion to Reconsider, Alter, or Amend the Court’s ruling allowing Mother to move to Tennessee. A hearing on the matter was held on May 5, 2021, via Webex with the Honorable Karen S. Roper, which resulted in an Order Denying Defendant’s Motion to Reconsider, Alter, or Amend, which was filed on June 23, 2021.

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<sup>1</sup> A Final Order of Divorce and Order granting Mother primary custody was filed with the Court on February 20, 2020, case number 2018-DR-23-4502.

<sup>2</sup> Prior to the filing of the Final Order of Divorce until after the filing of this relocation action, Defendant had been living in Kansas City, MO.

Father filed a Rule to Show Cause against Mother on September 21, 2021, regarding various recordings. In response, Mother filed a Rule to Show Cause against Father and a Return to Father's Rule to Show Cause. Both Rules to Show Cause were continued by Agreement of both parties, see Consent Order of Continuance, filed November 18, 2021. The GAL filed her Interim Report on January 1, 2022. Given the complexity of the case, the Court issued an Order extending the 365 Day Benchmark on February 24, 2022. Father filed these Motions on or about October 20, 2022, and sent Mother a courtesy copy at the same time.

**FATHER'S REQUEST TO TRANSFER CUSTODY IS IMPROPER**

1. Father's request to transfer custody is improperly before this Court. It is improper because Father has not pled for such relief. As the South Carolina Court of Appeals ruled, "[d]ue process requires that litigants be placed on notice of issues which the court is to consider and the rule that family court pleadings are to be liberally construed *may not be stretched* so as to permit the judge to award relief not contemplated by the pleadings". See *Abbott v. Gore*, 304 S.C. 116, 403 S.E.2d 154 (Ct.App. 1991) and *Murdock v. Murdock*, 338 S.C. 322, 526 S.E.2d 241 (Ct.App.1999)(emphasis added).

2. Further, Father alleges in his Counterclaim that no substantial change of circumstances exists in this matter.<sup>3</sup> Without any proof or facts alleging a significant change of circumstances, no Court may grant a parties' request to modify that which the Court has already ordered.

3. In addition, Father's Motion misleads this Court by stating as his header "Transfer of Custody of the Minor Child to the Defendant Based on the Minor Child's Therapist's Recommendation." In fact, the Minor Child's therapist, Brooke Pate, has provided a sworn affidavit that states, "I have not made recommendations on the custody of the minor child", which is attached hereto as "Exhibit A".

4. Thus, Mother is informed and believes that Father's request to transfer custody should be denied, and that she should be granted all legal fees and costs for falsely alleging that the Minor Child's therapist recommended this change.

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<sup>3</sup> Father mentioned a change of circumstances in his Motion to Reconsider the Court's Temporary Order, but Father's change of circumstances only related to his move back to South Carolina. Father's Motion to Reconsider was denied.

**FATHER'S MOTION TO RECUSE GAL IS IMPROPER,  
PREJUDICIAL TO THE COURT, MINOR CHILD AND MOTHER AND  
FATHER'S ACTIONS ARE HARMING THE BEST INTERESTS OF THE MINOR CHILD**

5. Father alleges that the GAL relied upon and shared illegal recordings with the mediator. Father's allegations are improper. No Court, federal or state, has ruled that these recordings are illegal. Instead, this "ruling" that the recordings are illegal is simply Father's alleged position.

6. Father is interfering and obstructing the GAL's investigation of this matter. Specifically, the Minor Child's therapist, Brook Pate, requested both parties sign medical releases. Mother has signed a release, but Mother does not believe Father has signed.

7. Mother is informed and believes that Father and his attorney contacted the Minor Child's therapist and asked her not to speak to the GAL until a later date. A true copy of the e-mail from the therapist to the GAL is attached hereto and incorporated herein by reference as "Exhibit B".

8. Mother is further informed and believes that the GAL's investigation has been intentionally obstructed, interfered with, and impeded and made impossible for the GAL to report to the Court about the important facts necessary for the Court to rule on the issues pled by both parties in their pleadings.

9. In addition, the following facts further support Mother's request for this Court to deny Father's Motion to Recuse the GAL:

- a. Both parties agreed to the appointment of Ms. Burke as the GAL because she previously served as the GAL in the parties' prior divorce and custody matter;
- b. The parties agreed to Ms. Burke because she is very familiar with the facts and circumstances of this entire case. Most importantly, the Minor Child is comfortable with Ms. Burke and relates well to her;
- c. Ms. Burke's removal would result in an unnecessary delay of the present litigation;
- d. Despite Father's insistence that the recordings are illegal, if this Court decides to consider whether or not such recordings are proper or not, Mother requests the following:

- i. For the Court to review the sworn Affidavit of her expert witness, Richard Whiting, regarding the circumstances and substance of the recorded

conversations between the minor child and Father. (See Affidavit of Richard Whiting);

- ii. The Plaintiff has joint legal custody with primary placement of the child, such that she had the lawful ability to record the child and make decisions for the child. See Exhibit C, Affidavit of Dick Whiting;
- iii. Plaintiff's actions were reasonably necessary to protect her child from harm as the Defendant would certainly not have admitted to his behavior, and the recordings were necessary for the Plaintiff's protection of the emotional and mental wellbeing of her child; and
- iv. The Defendant's allegations, that the recordings were obtained illegally, appear motivated by the fact the recordings are hurtful to his case.
- e. Mother is informed and believes these recordings evidence that Father is intentionally and wilfully violating this Court's Restraining Orders that are in place to protect the best interests of the Minor Child and that Father is intentionally and deliberately harming and manipulating the child to his detriment;
- f. Mother's Rule to Show Cause against Father for these alleged wilful violations remains pending.

#### **ATTORNEYS FEES, SANCTIONS, AND COSTS**

10. Mother is informed and believes that Father has wilfully violated this Court's orders, interfered with the GAL's Court Ordered investigation and intentionally attempted to mislead this Court twice in his motions by falsely stating that (1) the Minor Child's therapist recommends a transfer of custody to him and (2) the recorded conversations are determined as illegal. Mother not only requests this Court award her legal fees and costs, but she also requests this Court provide sanctions for filing frivolous pleadings and making false statements to the Court in their Motion.<sup>4</sup>

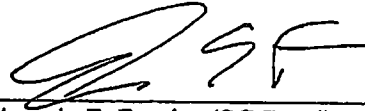
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<sup>4</sup> "Under Rule 11(a), SCRPC, a party and/or the party's attorney may be sanctioned for filing a frivolous pleading, motion, or other paper, or for making frivolous arguments. *Runyon v. Wright*, 322 S.C. 15, 471 S.E.2d 160 (1996).

WHEREFORE, Mother prays:

1. For an Order denying Father's Motion to remove the Guardian *ad Litem*;
2. For an Order denying Father's Motion to transfer custody of the Minor Child to himself;
3. For an Order requiring Father to pay all Mother's attorney's fees and costs related to the defense of this motion;
4. For sanctions; and
5. For such other and further relief, the Court may deem just and proper.

ELLIOTT FRAZIER LAW FIRM, LLC



---

Angela E. Frazier (SC Bar #: 71099)  
601 E. McBee Avenue, Suite 107  
Greenville, South Carolina 29601  
Phone: (864) 214-3621  
Fax: (864) 729-2203  
Email: [afrazier@elliottfrazierlaw.com](mailto:afrazier@elliottfrazierlaw.com)

Attorney for Plaintiff

January 4, 2023  
Greenville, South Carolina

---

The party and/or attorney may also be sanctioned for filing a pleading, motion, or other paper in bad faith whether or not there is good ground to support it. *Id.* The sanction may include an order to pay the reasonable costs and attorney fees incurred by the party or parties defending against the frivolous action or action brought in bad faith, a reasonable fine to be paid to the court, or a directive of a nonmonetary nature *designed to deter the party or the party's attorney from bringing any future frivolous action or action in bad faith. Id.*" *Ex parte Gregory*, 378 S.C. 430, 437-38, 663 S.E.2d 46, 50 (2008)(emphasis added).

<sup>4</sup> See *Pool v. Pool*, 321 S.C. 84, 91, 467 S.E.2d 753, 758 (Ct. App. 1996) *aff'd as modified*, 329 S.C. 324, 494 S.E.2d 820 (1998)("When the family court finds that procurement, initiation, continuation, or defense of any marital litigation is frivolous, attorney's fees may be awarded pursuant to the South Carolina Frivolous Civil Proceedings Sanctions Act. See S.C.Code Ann. § 15-36-10 through -50 (Supp.1994).")

**EXHIBIT A**

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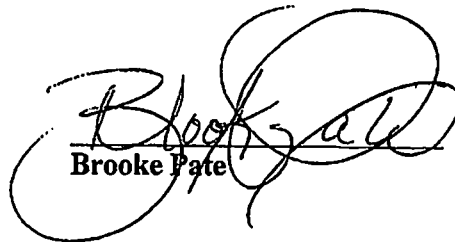
STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT OF THE
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
	)	Case No.: 2021-DR-23-0394
Sarah Huet de Guerville,	)	Cross Ref.: 2018-DR-23-4502
	)	
Plaintiff,	)	<b>AFFIDAVIT OF</b>
v.	)	<b>Brooke Pate</b>
	)	
Brice Huet de Guerville,	)	
	)	
Defendant.	)	
	)	

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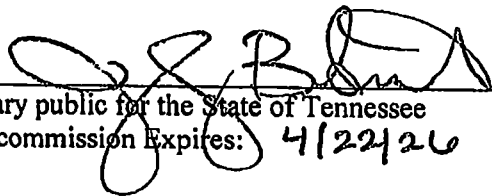
Personally appeared before me the undersigned, **Brooke Pate**, after being duly sworn, hereby states and affirms that:

1. I am competent to testify to the matters set for herein, and testify based on my personal knowledge, education, information, and belief.
2. I am a temporary licensed professional counselor in the state of Tennessee and national certified counselor. I received my Master of Arts degree in clinical mental health counseling from Trevecca Nazarene University in December 2021.
3. I have known Aiden Huet de Guerville since May 2022. I have provided services to him at Nurture House in Franklin, TN since May 2022.
4. I have not made recommendations on the custody of the minor child.

FURTHER AFFIANT SAYETH NOT.

  
Brooke Pate

Sworn before me this 6th day of Dec, 2022

  
Notary public for the State of Tennessee  
My commission Expires: 4/22/26



**EXHIBIT B**

**Subject:** Fwd: cancel appt  
**Date:** Friday, December 16, 2022 at 11:42:46 AM Eastern Standard Time  
**From:** Megan Goodwin Burke  
**To:** Angela Frazier

----- Forwarded message -----

**From:** Chip Howard <[howardlawgville@gmail.com](mailto:howardlawgville@gmail.com)>  
**Date:** Wed, Dec 14, 2022 at 5:32 PM  
**Subject:** Re: cancel appt  
**To:** Megan Goodwin Burke <[meg@upstategal.com](mailto:meg@upstategal.com)>

That is my client's position at this time. Thank you.  
Chip

On Wed, Dec 7, 2022 at 12:54 PM Megan Goodwin Burke <[meg@upstategal.com](mailto:meg@upstategal.com)> wrote:

I received this from Aiden's therapist in response to trying to make a phone appointment to discuss the minor child and her recommendations. The custody and visitation portions of the motion before the court in January appears to be based at least in part on the therapist's recommendations. I cannot investigate the allegations of the motion without being allowed to speak to the therapist. I cannot complete my court ordered investigation if I am restricted from important witnesses.

Please let me know if your position remains that I should be restricted from contact with the child's therapist prior to The Court's determination in January.

----- Forwarded message -----

**From:** Sophie Kelly <[sophie@upstategal.com](mailto:sophie@upstategal.com)>  
**Date:** Mon, Nov 14, 2022 at 1:16 PM  
**Subject:** Fwd: cancel appt  
**To:** Megan Goodwin <[meg@upstategal.com](mailto:meg@upstategal.com)>

----- Forwarded message -----

**From:** Sophie Kelly <[sophie@upstategal.com](mailto:sophie@upstategal.com)>  
**Date:** Mon, Nov 14, 2022 at 1:16 PM  
**Subject:** Re: cancel appt  
**To:** BrookePate <[BrookePate@proton.me](mailto:BrookePate@proton.me)>

Thank you Ms. Pate.

Sophie

On Mon, Nov 14, 2022 at 1:13 PM BrookePate <[BrookePate@proton.me](mailto:BrookePate@proton.me)> wrote:

Sophie,

I apologize, but I am going to have to cancel today's appointment. I have been asked by my client's

father and his attorney to wait to speak to Megan until a later date.

Brooke Pate, MA, NCC  
(615) 830-9221

Sent with Proton Mail secure email.

--

Sincerely;

Sophie Kelly  
Paralegal  
For the Law Office of  
Megan Goodwin Burke  
864-233-4566 EXT. 120  
Sophie@UpstateGAL.com  
<https://sites.google.com/g.clemson.edu/sophie-kelly-eportfolio>

Please note that our hours of operations are:  
Monday - Thursday 9 AM to 5 PM and Friday 9 AM to 12 PM

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Sincerely;

Sophie Kelly  
Paralegal  
For the Law Office of  
Megan Goodwin Burke  
864-233-4566 EXT. 120  
Sophie@UpstateGAL.com  
<https://sites.google.com/g.clemson.edu/sophie-kelly-eportfolio>

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Thanks,

Megan Goodwin Burke  
864-233-4566  
Meg@UpstateGAL.com

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*"Have I not commanded you? Be strong and courageous. Do not be afraid; do not be discouraged, for the Lord your God will be with you wherever you go." - Joshua 1:9*

*"Train up a child in the way he should go and when he is old he will not depart from it." - Proverbs 22:6*

Milford (Chip) O. Howard III

Attorney at Law

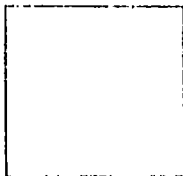
P.O. Box 9754

Greenville, SC 29604

Telephone: (864) 233-5672

Facsimile: (864) 642-6822

Website: [howardfirmcc.com](http://howardfirmcc.com)



--

Thanks,

Megan Goodwin Burke

864-233-4566

Meg@UpstateGAL.com

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EXHIBIT C

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT
	)	OF THE
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
Sarah Huet de Guerville,	)	
	)	
Plaintiff,	)	AFFIDAVIT OF
	)	RICHARD G. WHITING
versus	)	
	)	
Brice Huet de Guerville,	)	Civil Action No. 2021-DR-23-0394
	)	Cross Ref. No. 2018-DR-23-4502
Defendant.	)	
<hr/>		

I graduated from Presbyterian College with a Bachelor of Science Degree in 1972. I received my Master of Business Administration in 1980 from Florida International University. I graduated from the University of South Carolina School of Law in 1982. Upon graduation from law school I was honored with acceptance into The Order of the Coif as well as being awarded the Order of the Wig and Robe. I am admitted to practice in all state and federal courts in the state of South Carolina and the Fourth Circuit Court of Appeals.

I have been involved in electronic communications privacy issues since early in my career, starting in 1983. I have argued numerous issues concerning both the federal and state statutes in various South Carolina Family Courts, South Carolina Civil Courts, and in the Federal District Courts for South Carolina. I have also argued matters involving electronic communications before the Fourth Circuit Court of Appeals.

I have been honored to be selected to be a speaker at numerous Family Law seminars and at the South Carolina Bar Conventions, including being a speaker at the upcoming 2023 South Carolina Bar Convention. At this Convention I will be speaking about the Electronic Communications Privacy Act, the Stored Communications Act, and the Computer Fraud and Abuse Act and the corresponding state statutes. I have also been honored to be selected as a presenter to the New Judges' Orientation School.


I have served as a guest lecturer at the South Carolina School of Law for presentations in Family Law classes concerning electronic communications privacy. I have been a presenter at the South Carolina Private Investigators Association seminar. I served as a presenter at the Missouri Bar Family Law Symposium concerning these same issues. I have been honored to be invited to speak at numerous Bench-Bar seminars, Continuing Legal Education seminars, Judicial Legal Education seminars, and at "Hot Tips for the Coolest Domestic Lawyers" seminars.

I have been published in the South Carolina Lawyer magazine concerning these electronic communication issues. I co-authored an article for the Law Office Management Committee "Hot Tips" concerning wiretapping, electronic surveillance and pictorial evidence.

I have been selected for induction into the American Academy of Matrimonial Lawyers and have also been a speaker at their annual convention concerning these same issues. I have held various offices with the Family Law Section Council of the South Carolina Bar including Past President of this Section. I have also served in the House of Delegates.

I believe that my qualifications and experience in arguing dozens of matters concerning electronic communications privacy issues justifies me being qualified as an expert testifying witness in this matter.

Respectfully submitted,



---

Richard G. Whiting

Sworn to and subscribed before me this

22 day of December, 2022

Meri L. Harrow

Notary Public for South Carolina

My commission expires 03/04/23

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

IN THE FAMILY COURT  
OF THE  
THIRTEENTH JUDICIAL CIRCUIT

Sarah Huet de Guerville, )  
 )  
Plaintiff, )  
 )  
versus )  
 )  
Brice Huet de Guerville, )  
 )  
Defendant. )

---

MEMORANDUM  
OF LAW

Civil Action No. 2021-DR-23-0394  
Cross Ref. No. 2018-DR-23-4502

Plaintiff, by and through the undersigned counsel, opposes the Motion filed by Defendant to remove the currently serving Guardian *ad Litem* and for a transfer of custody.

Defendant alleges that the Guardian *ad Litem* was provided "illegally obtained recordings by Plaintiff of the minor child and Defendant..." Defendant is incorrect and this Motion must fail based upon the law of this state and the federal law.

Plaintiff and Defendant are the parents of a minor child who is currently 8 years old. A Final Order of Divorce was filed on February 20, 2022, bearing Civil Action Number 2018-DR-23-4502. The Final Order of Divorce approved the parties' Agreement attached as a "Memorandum of Agreement for Sarah Huet de Guerville v. Brice Huet de Guerville." A copy is attached hereto at Exhibit "A". In that Agreement, the parties agreed to "joint legal custody of their Minor Child, with primary placement with Plaintiff. On all major parenting decisions, the parties will consult and use good

faith effort to resolve differences, but if the parties are unable to agree on the major parenting decision, Plaintiff will have the right to make the final decision.”

As set out hereinbelow, the mother (Plaintiff) had the legal authority to vicariously consent to the recording of the child’s conversation with Defendant/Father. The mother also had the moral obligation to determine what was taking place during these conversations.

The mother admits that she recorded three or perhaps four conversations between the child and the father. These conversations usually took place with the child being in a separate room in the residence that the child shared with his mother. (The Temporary Order calls for the child to have a private conversation with the parent currently no caring for the child.) At the conclusion of these conversations, the child appeared to the mother extremely upset, sometimes even crying, and in an emotional state telling his mother that he had to talk to her about the conversation that had just taken place between him and his father.

Upon the mother’s recording of these conversations, and reviewing these conversations, the mother’s fears were unfortunately confirmed. Not only was the father coaching the child about how to talk to the mother and how to talk to the Guardian *ad Litem*, but the father also continued to demean the mother during these conversations. The mother had hoped that this conduct was not continuing (as the conduct was previously taking place, even in public, where the father was demeaning and disrespectful to the mother, not only in front of the child but in front of other individuals, for example at a soccer field). The father has previously engaged in verbal

tirades towards the mother even though the minor child was standing literally next to the mother.

The South Carolina Supreme Court in the case of The State v. Samuel Whitner, 399 S.C. 547, 732 S.E.2d 861 (S.C. 2012) (attached hereto as Exhibit "B") addressed the issue as to whether the Wiretap Act intended to adopt vicarious consent doctrine allowing a parent the ability to consent on behalf of a child for recording and accessing certain communications between the child and others. In Whitner, the minor child was 11 years old. According to the child's testimony, when she was 5 or 6 years old the child's father exposed his penis to the minor child and forced her to perform oral sex on him on two (2) separate occasions. When the child was 11 years old, the child described the abuse to her mother. The mother encouraged the child to confront the father. The child telephoned the father to confront him, and the father denied the incidents. A conversation between the child and the father was subsequently recorded by the stepfather with the mother's consent. During the course of that subsequent conversation the father admitted the sexual abuse and stated the incident was a mistake that he deeply regretted. The father filed a motion to suppress the recorded conversation claiming the recording intercepted without the consent of either party violated the South Carolina Homeland Security Act which generally prohibits the interception of communications.

The Court of Appeals held a suppression hearing, taking testimony and allowing oral argument. Likewise, the mother testified indicating she believed the recording of the conversation between the child and the father was needed because she did not

know what the conversation between the child and the father entailed, the child crying often. The mother indicated she needed to determine if it was appropriate to permit the father to have continued contact with the child.

On the legal issue of "consent", the South Carolina Court of Appeals held that the legislature, in enacting the Wiretap Act, intended to adopt the vicarious consent doctrine. The mother could, therefore, lawfully vicariously consent to the recording on behalf of the child. The Court of Appeals found that the mother had a good faith and objectively reasonable basis for believing the recording was necessary and in the child's best interest and denied the father's Motion to Suppress.

In this case, the minor child (8 years old) was visibly and emotionally distressed following his telephone conversations with the father. As set out hereinabove, the mother was concerned as to what was transpiring during these telephone conversations between the parties' son and the father, particularly given the father's outrageous conduct towards the mother at various times and locations including one occasion where the father verbally attacked the mother at the child's soccer game while the child was present. The mother believes that she, like the mother in the Whitner, case had a good faith basis for not only listening to the inappropriate contents of these conversations but also sharing them with the court and with the Guardian *ad Litem*.

The leading federal case addressing this case is Pollock v. Pollock, 154 F.3d 601 (6<sup>th</sup> Cir. 1998). In that case, the Sixth Circuit Court of Appeals held that the mother did not violate federal acts when she recorded conversations between her daughter and the daughter's stepmother. "[A]s long as the guardian has a good faith, objectively

reasonable basis for believing that it is necessary and in the best interest of the child to consent on behalf of his or her minor child to the taping of telephone conversations, the guardian may vicariously consent on behalf of the child to the recording." See also Wagner v. Wagner, 64 F.Supp.2d 895, 896 (D. Minn. 1999) "holding a guardian may consent on behalf of a minor child to the interception of a communication", Campbell v. Price, 64 F.Supp.2d 1186, 1191 (E.D. Ark. 1998) "holding a parent's good faith concern for his minor child's best interest may empower the parent to legally intercept the child's conversations", and Thompson v. Dulaney, 838 F.Supp 1535, 1544 (D. Utah 1998) "finding the vicarious consent doctrine permissible under the federal wiretap statute because of a parent's duty to act in the best interest of their child."

In this case, the mother has the primary custody of the child and all final decision-making authority for the child. Clearly she has the ability to not only listen to but record the conversations between the child and other individuals.

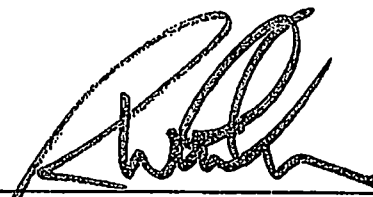
The father may contend that the recording of the telephone conversations of him is an invasion of privacy under either a federal or state constitution. As the court in Whitner sets out, the argument is dependent upon the rejection of the vicarious consent doctrine. "Because the Wiretap Act provides for vicarious consent of a minor child, Appellant's (here the mother) constitutional argument must be rejected .... (See Whitner IV.)

Chief Justices I'oa'i and Beatty concurred in that decision authored by Judge Kitteridge. Justice Pleicones and Acting Justice Eugene C. Griffith, Jr. concur in a separate decision.

It is further anticipated that the father may argue that he was in Tennessee or Kansas for one or more of these telephone calls. That makes no difference. Both Tennessee and Kansas, like South Carolina, requires only one party's consent in a conversation to intercept, listen, or record that conversation.

Finally, the relief requested by the father in his motion to remove the Guardian *ad Litem* and to transfer custody sets out that he has filed a contempt action addressing the issue of Plaintiff recording the conversation allegedly "illegally." This court is not the court deemed appropriate for the determination as to whether or not the recordings should be suppressed. Pursuant to both federal and state statutes, our South Carolina Court of Appeals has designated the court of original jurisdiction to address that issue.

Respectfully submitted,



---

Richard G. Whiting  
Attorney for Plaintiff  
1515 Lady Street (29201)  
Post Office Box 7877  
Columbia, SC 29202  
803-256-9067  
[dick.whiting@whitinglawsc.com](mailto:dick.whiting@whitinglawsc.com)

# EXHIBIT H

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

IN THE FAMILY COURT OF THE  
THIRTEENTH JUDICIAL CIRCUIT

Sarah Huet de Guerville, )  
 )  
 )  
Plaintiff, )

**AFFIDAVIT OF**  
**BRICE HUET DE GUERVILLE**  
Docket No. 2021-DR-23-394

v. )

Brice Huet de Guerville, )  
 )  
 )  
Defendant. )

I, the defendant, have lost all confidence in Megan Goodwin Burke. I do not believe she is fit to report on our case and to serve in the best interest of my son for the following reasons:

1. One of the main reasons, I believe Megan violated Title 17-chapter 30 interception of wire, electronic, or oral communication law. Section 17-30-20 states that a person who commits any of the following acts is guilty of a felony and must be punished upon conviction as provided in section 17-30-50.

Section 17-30-20 subsection (4) was violated by Megan Goodwin Burke and her office. It states that "intentionally uses or attempts to use the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection." Subsection (5) and (6) apply as well. Simply sharing of the recording even if she did not make the recording, is a felony. Mrs. Burke's office was made aware by me many times that the recordings provided to her by the plaintiff of our son and my conversations were illegally obtained prior to her sharing the recordings with others without my permission. Her office was made aware that neither I nor my son were aware that we were being recorded and we both

believed we were in private, meeting the standard of the wiretap act. As an attorney, she should know the law. I'm told that not knowing the law is not an excuse for breaking the law.

However, our court order provides that I am to have private conversations with my son. That in and of itself should make her aware it was improper without her needing to be told. Mrs. Burke further failed to seek communication between my lawyer and her office to verify that this was proper after I notified her office it was not. At a minimum my attorney should have been given the opportunity to defend me. She had many months between me telling her it was illegal and her initial report to reach out to the attorneys to debate the legality. The GAL chose not to do so and instead shared the recordings in her report. My lawyer would have advised her that a court order would be needed to allow the recordings to be heard and then shared per Section 17-30-25/30. Sharing between attorneys is still sharing according to Title 17. There is no provision to allow you to share to one party or another.

As ruled by the South Carolina Supreme Court, there is an exception for the plaintiff to have vicarious consent for our child, now age 8. But the circumstances are clear in that decision. The plaintiff must suspect that I was harming the child per the South Carolina Supreme Court in the case of *The State v. Samuel Whitner* and she needed the recordings to verify I was or was not in order to protect the child. No such thing occurred. Whitner is clear. It's to protect the child from suspected abuse. Not for things you don't like, and suspect will help your court case. In fact, this position was relayed to me by Richard G. Whiting on February 7, 2022, at 11:43 a.m during an interview to possibly hire him to argue just this filing. I did not decide to hire him since I felt his services wouldn't be needed. He has now written the opposite in support of the plaintiff's position. I provided a screenshot of prove the call was made as stated. In fact, the mother has made up an excuse after the fact that I was harming the child in order to justify

illegally recording us. The child only left our conversation crying once because he might not get to go to Disney with his sister, my fiancé, and I, based on a recent change in the plaintiff's location. The mother knew this fact. She recorded that conversation. She can't claim after it was a reason. Any child would be upset by that. But by no means a sign of abuse. To the contrary, the therapist can report that I am a kind, loving parent to the child. My bond with my son is the strongest I have ever had with anyone. We are as close as any father and son could ever be. We love each other very much. It's the mother who is abusive, despite her love for him. The child has never been in any such danger from me and no concern of any danger ever existed. Another recording by the plaintiff is of my son telling me that his mother and her boyfriend told him that he would see me more if he moved to TN. This made my son very excited, and he called me to tell me the good news. He was extremely upset when he learned the truth. It was not me who made him upset. I did not lie to him. He hates lying and I promised him I never would lie to him. The guardian hears proof of this significant manipulation of a child and did nothing, she said nothing. She did not care. No sign in her report it mattered at all. Again, not liking what you hear is not an acceptable excuse to invoke vicarious consent.

The guardian also can't provide vicarious consent because she did no such thing prior to the recordings nor notify my attorney or me there was ever a concern to warrant her needing to be concerned there was abuse. The guardian has claimed that she has a good, close relationship with the child and that the child trusts her. If that is true, then the child would have told her I abuse him or threaten him in anyway. The therapist would be told something similar, which she verified she has not been told in an e-mail dated January 5, 2023 attached hereto. There simply is no truth to the plaintiff's claim. It's 100% fabricated. We also know that the mother did not witness the child being visibly upset due to interactions with the defendant as being a reason to

record because the mother would put her ear up to the door and listen to the conversations making the child feel like he had to hide in the corner of his room so his mother would not hear him speaking on the phone. She did this every night. The mother had to then start placing recording devices in the room during our conversations in hopes of finding something to complain about. A complaint of these many violations by the mother were made to the guardian, and the guardian did nothing to protect the child from this. We also have a pending contempt motion to be decided at trial. No child should feel like they need to hide in the corner because one parent makes them feel uncomfortable. To this day, our son often has to tell his mother to leave his room and not come in while we talk on the phone. The mother was just desperate to try and get "dirt" on me.

Our son would be the first to tell anyone that I'm a good, kind, loving father. I am not asking this court to rule on the legality of the recordings at this time, but to rule that the guardian did not handle the recordings properly and that they created an unfair bias. Furthermore, the guardian doesn't even think she's capable of being bias. It's human nature. Denying it only proves you are, in my opinion. The GAL made no attempt at qualifying these recordings as legal per the wiretap act. She made a decision on her own. She included the recordings in her prelim report instead of addressing them separately. The simple act of sharing, regardless of how you share or to whom you share them with, is illegal according to the wiretap act. The wiretap act strictly prohibits that in order to protect the defendant's constitutional 4<sup>th</sup> amendment rights. It expressly states only a Judge can approve it and it must be requested prior. We certainly can't continue with the assumption it is proper until ruled upon. And we certainly can't assume the GAL has no bias.

I believe the recordings provided a great deal of bias to the guardian. The guardian even mentions her views on them on multiple occasions in her prelim report. Not only did she share the recordings, but she used them. The recordings simply show that I spoke about this case with my son. Which is not one of the restrictions in Judge Robertson's restraining order that we use like it is in Judge Brown's. I understand in the legal community it is the standard to not discuss court topics with the children involved. I can only follow the restrictions assigned to me. Not a standard set by another agreement not assigned to me. Besides that, this is a unique situation where we do speak about it on occasion and a very surface level because my son has asked that I stop him from going to Tennessee and continues to ask that I get him home. Home is where he feels the safest and happiest. Home is our home. In Greenville. So, this topic comes up. Also, I check on his emotional and mental health since I know this has been hard for him. I instruct him to do his best to just be a boy, have fun as much as possible and let daddy handle it. The guardian and plaintiff believe I have violated a restriction that does not exist in Judge Robertson's. Also, speaking about the case or anyone is not a reason allowed under title 17. The plaintiff has argued all sorts of ways to get around the wiretap act as a way to do what they wish. But I believe the law is clear as written. It specifically states the only times it is allowed and how. Especially for a representative of the government, such as the GAL. The reasons allowed are specific. Only a judge can approve it and must be requested prior. The reasons given by the plaintiff for vicarious consent are fabricated. Not liking something is not the same as it being abuse. Nor are attempts to get dirt on your opponent. *Whitner* does not allow for vicarious consent to either the plaintiff or the guardian. I also have recordings that prove I do not cuss in front of my children as the plaintiff claims. That same proof shows it is the plaintiff and her husband who cuss in front of the child. Something the plaintiff admitted to in text.

2. The guardian was inundated with way too many emails by the mother and I. We had two cases going on the same time. It's clear from her report that she got confused on numerous issues. Deliberate or intentional. I don't know. The bias is clear, though.

3. The guardian appears to have lied when she described her home visit in TN. The guardian described her visit as being 15 minutes alone with my son in his room and equally outside playing alone. On multiple separate occasions spanning many months apart, my son described the interaction as not having any alone time with Megan Burke during her visit to Tennessee. I have proof of this claim. The plaintiff was with them the whole time. My son has been consistent in how he describes that visit. I have proof of this claim. In the prelim report, the guardian said it was bad for my son to leave school early to make our exchange time. The plaintiff told me and the guardian that the school threatened truancy. I spoke to the school and the school told me they told the plaintiff and the guardian both that it was fine for the boy to leave early, he wasn't missing anything. We have the email from the school principal. This is another lie by both the plaintiff and the GAL. The guardian was asked to do the investigation quickly since we needed it done prior to the timeframe the plaintiff wanted to move. The guardian took her time and made no effort to expedite anything. She didn't schedule anything quickly or make any prelim report quickly. She ran out the clock and milked the money coming in. My attorney even noticed they were "checking in" slowly to add hours to bill. My son also described his time with Megan, whether at her office or elsewhere, as feeling like he wasn't being heard or listened to and not asking him anything. After suspecting the guardian of not properly caring about the child, my attorney requested that the guardian set up another one on one with the guardian but asked that she record the session. After leaving that session, my son stated that he felt for the first time that the guardian finally wanted to hear what he had to say.

4. The guardian further failed in protecting my son by not requesting he go to therapy in 2020. This sudden change has been difficult for my son. New house, new school that received a C grade over the A school he went to in Greenville with all his close friends, no family within a 3-hour drive. Living in the middle of nowhere in a junkyard. Strange new man always around who forces himself on my son. Having to spend roughly 90 hours a month constantly in the car causing back and neck pain. Plaintiff not making our son shower regularly. Bullying from his own mother. I requested/agreed that my son should be in therapy to help him around May of 2020. The guardian left it up to the mother and made no effort to request he go. \* Only after the guardian wrote her report and recommended the child go to therapy did the plaintiff feel forced to send our son to therapy over a year later, roughly. In those sessions, our son strongly stated that he wanted to be back home in Greenville. He complained about being uncomfortable with the plaintiff's husband touching/hugging him. My son had shared this same concern with the guardian, yet guardian did nothing. I shared this concern with the plaintiff...the plaintiff did nothing, in fact, the plaintiff forced our son to discuss this in front of the plaintiff's husband in order to pressure my son into agreeing to whatever they wanted. I had asked that the plaintiff talk to our son in private, so he didn't feel uncomfortable talking about her husband. The plaintiff provided a recording that showed the 2<sup>nd</sup> half of that conversation. Something that the therapist, I believe, found disturbing. The guardian did nothing and failed my son. The therapist had to make an official request to the plaintiff that this stops in order for the plaintiff's husband to finally stop. Based on the pattern of behavior, it's reasonable to assume the plaintiff and her husband will again pressure my son to allow him to touch him against his wishes. I've heard the excuses given by the plaintiff. They just want the boy to feel loved by the stepdad and included. Which would be fine if the child was fine with the attempts. But when a child

repeatedly tells you no and you do it anyways, is that abuse? Assault? I don't think it's normal for my son to not want to be hugged. I am my sons confident. I am the person who comes to for everything that bothers him. But he won't tell me why he doesn't like it. He only says it makes him uncomfortable and doesn't want to talk about it. I fear he has not yet articulated his reasons and those reasons could be really bad. I do not want to risk continued exposer. I don't want us all to look back and wish we did more today.

5. The child has complained that the mother insults his intelligence and mocks his emotions. She gets angry and yells at him constantly. Less so now that she is trying to stop drinking until our trial is finished. I've had to ask her multiple times to be nicer to him and not insult him. The child recently said on Christmas that if he had to choose one parent to be with and never see the other ever again, he would choose me (prior to seeing his new playstation5). This made me very sad. He should want to see his mother and I equally. This was a change from his usual wish of seeing both parents equally. As much as he loves his mother, the abuse I fear she places upon him, in my opinion, is hurting him and he is not in the best care under her custody. My son is also tired of being in Tennessee and wants to be home where, I, his father and his sister are. As well as his paternal grandparents whom he sees as much as possible when here but would see more when he moves back home. He should immediately return to Greenville. The guardian made no attempts to protect the child from any of the pleadings my son made to the guardian.

6. On the contrary, the guardian appears to have protected the plaintiff, instead. The plaintiff is in marketing. She's adept at using keywords to entice the view/reader. She uses "love", "family" as words to mask any impropriety. The plaintiff has bipolar disorder but made a veiled attempt at exploring this topic. The plaintiff is an alcoholic as proven in the PETH test

results. But the guardian warned the plaintiff in her report that the guardian would test her again. After seeing the report from the guardian, my son heard the plaintiff's father tell her to do whatever it takes to stop her drinking for the rest of this case, or she would lose the boy. This protection of the plaintiff shows significant bias and incompetence.

7. Another sign of bias from the guardian is the use of pictures of my two children. The other is not a part of this case as she is from a previous relationship. I get my daughter almost 50% of the time. The boy in this case has been ripped apart from his sister whom he shares a very close bond with. The guardian was shown many loving, close, bonding photos, but chose to minimize their closeness with photos of them appearing like they were acquaintances. In the previous divorce case where Megan Burke served as guardian, no illegal recordings were used, and Megan recommended that the relationship with my son in this case and his older sister from my previous relationship was important to maintain. This time, the guardian chose to recommend that the plaintiff's new husband's children were of equal importance. Despite my son telling the guardian he views them as playmates but not as family. And that he, my son, wants to be back to his home in Greenville. And that the plaintiffs' new stepchildren constantly make fun of him and his mother. Which is normal for children to do, but something my tender-hearted boy is greatly bothered by. This has been corroborated by my son's therapist. My son will tell anyone who will listen he very much wants to be back home in Greenville and not in Tennessee.

8. The last couple examples at the time of this writing that I find troubling, is that the guardian never did do another PETH test on the plaintiff until after we filed this motion. The guardian also didn't contact the therapist to inquire about my son until after we filed this motion. It appeared that the guardian made a few moves to "cover her tracks" so to speak. Because the

therapist required my approval to share anything with the GAL, and the guardian did not make the request until after she was notified of our motion to remove her, I did not think it was proper for the guardian to have access to the child's therapist until a Judge has ruled on this motion. That is not an indication of anything to hide, to the contrary. The sessions with the therapist show that I am a good, kind, loving father and that the child wants to move home to Greenville. The sessions show that the mother frequently yells at our son and clarified over a zoom meeting that this was an angry yelling and not a raised voice yelling like the mother tried to claim. I was married to her; I know exactly what my son has to endure. My heart hurts for him. There are numerous other things that occurred that paint a picture of bias and incompetence, which is surprising considering her positive reputation. Unfortunately, the wellbeing of my son is at stake, and he can't afford to not have his best interests in mind by someone whose job it is to do so.

9. The temporary hearing Judge approved the plaintiff's move based on the Latimer v. Farmer factors. The guardian was supposed to review if those factors had been met or not. They were not met and the guardian did not mention them. The plaintiff tricked and manipulated the court into believing the factors were met and that I left her alone with the child. The plaintiff essentially lied to the court in order to trick the court into allowing her to move. We failed on our end to predict the lies and be prepared to defend them. Something we will correct. The guardian failed the Judge's order in that respect.

### Summary

I have filed a complaint with the South Carolina Office of Disciplinary counsel and intend to file a civil lawsuit at some point over the felony recordings. I don't yet know what

criminal prosecution will come of this. They are slow moving. The relationship between the guardian and I as well as the trust, has irrevocably been broken. My son does not trust her. I don't see how our case can be fairly adjudicated with her as a part of it. We can't un-ring the bell. She can't continue on and pretend her bias does not exist. Especially after this motion and this affidavit. I would like to request going forward that a new guardian be appointed and both parties agree what of Mrs. Burke's work product can still be used and what would need to be redone by a new guardian. Anything with the taint of bias cannot be used. Things such as medical records and background checks would be data that can't be biased. As well as order that the new guardian not be informed of any of the issues with the guardian by either the guardian or any of the parties involved. In addition, I would like to request that the new guardian complete their investigation in 30 days and report complete in 1 week after so neither party has to endure a protracted legal battle. Or something of a reasonable quickness. I'd also like to request that any outstanding fees owed to Megan Burke's office be voided. In closing, I believe that the entire point of this case is to show what is best for the child. Where will he thrive and be the happiest? We can show the best place for him is in Greenville. Who is best suited to represent the child and the court to prove to this court what is best for the child? Megan Goodwin Burke has failed my son. She did not put the child's best interest first. She did not listen to him and seek his thoughts and feelings. She failed this court. She committed a felony, I believe, along the way and aided one party over another. She did not remain neutral. She cannot be trusted to be neutral and advocate for my child's best interests. I understand it would be shocking in the GAL community to remove a GAL. It is not my wish to embarrass anyone. Only to protect my son. Whether that be from his mother or the guardian. I care not who. I also request that my son be immediately ordered home to Greenville, where his safety can be assured,

and no longer have to go back to Tennessee. The plaintiff's job is in Greenville. This will not be a hardship on her. My son is my number one priority and I trust the court will decide in his favor and award us these requests.

Thank you for your consideration.

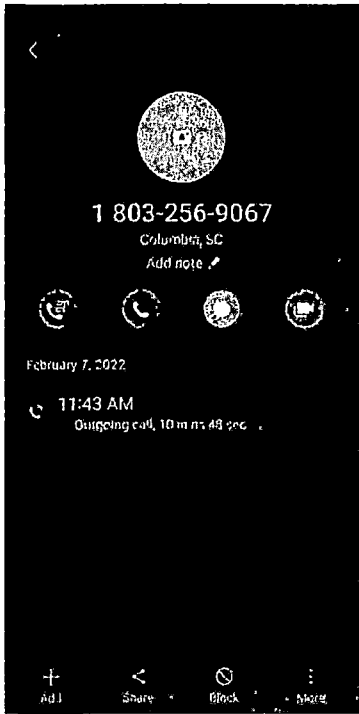


\_\_\_\_\_  
Brice Huet de Guerville

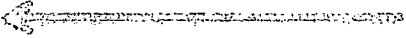
SWORN to before me this  
4<sup>th</sup> day of January, 2023

\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: 1/24/2027

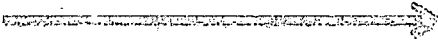
Phone Call on February 7, 2022 with Richard Whiting for Consultation



10 minute consult 10 months prior to Plaintiff's retaining Richard Whiting



Phone number matching to Richard Whiting's Office



10:28

richard whiting columbia

richard whiting columbia

News Images Maps + SC

**Richard G. Whiting**  
3.0(6)  
Family law attorney in Columbia, South Carolina · Open

Overview Reviews Photos Services

CALL DIRECTIONS SHARE WEBSITE

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Open · Closes 5PM

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Richard G. Whiting  
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Law Offices of Richard G. Whiting | South Carolina Family Law ...

Richard G. Whiting, Attorney



Chip Howard <howardlawgville@gmail.com>

---

**Aidan Huet**

---

BrookePate <BrookePate@proton.me>  
To: Brice Huet <bricehuet78@gmail.com>  
Cc: Chip Howard <howardlawgville@gmail.com>

Thu, Jan 5, 2023 at 10:35 AM

In my sessions with Aidan, he has never indicated there was any type of abuse from his father. I am mandated by the state to report any suspension of abuse and I have had no reason to make a report.

Brooke Pate, MA, NCC  
(615) 830-9221

Sent with Proton Mail secure email.

----- Original Message -----  
[Quoted text hidden]

**CHAPTER 30**  
**Interception of Wire, Electronic, or Oral Communications**

Editor's Note

2002 Act No. 339, Section 1, provides as follows:

"This act may be cited as the 'South Carolina Homeland Security Act'".

**SECTION 17-30-20. Prohibited acts.**

Except as otherwise specifically provided in this chapter, a person who commits any of the following acts is guilty of a felony and, upon conviction, must be punished as provided in Section 17-30-50 of this chapter:

(1) intentionally intercepts, attempts to intercept, or procures any other person to intercept or attempt to intercept any wire, oral, or electronic communication;

(2) intentionally uses, attempts to use, or procures any other person to use or attempt to use any electronic, mechanical, or other device to intercept any oral communication when:

(a) the device is affixed to or otherwise transmits a signal through a wire, cable, or other like connection used in wire communication; or

(b) the device transmits communications by radio or interferes with the transmission of the communication;

(3) intentionally discloses or attempts to disclose to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;

(4) intentionally uses or attempts to use the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;

(5) intentionally discloses or attempts to disclose to any other person the contents of any wire, oral, or electronic communication intercepted by means authorized by Section 17-30-70 or Section 17-30-95 when that person knows or has reason to know that the information was obtained through the interception of such a communication in connection with a criminal investigation and the disclosure is not otherwise authorized under this chapter; or

(6) intentionally uses, attempts to use, or procures any other person to use any electronic, mechanical, or other device or service that causes the telephone network to display a telephone number on a phone call recipient's caller identification display that is not the number of the originating device. This provision shall not apply to:

(a) the legitimate law enforcement use of this procedure by the South Carolina Law Enforcement Division;

(b) a person or entity that places a call and blocks or otherwise prevents the delivery of a telephone number to a call recipient's caller identification display;

(c) a person or entity that places an authorized call on behalf of another person or entity and inserts a telephone number identified with the person or entity on behalf of whom the call is being placed; or

(d) a communications service provider that delivers a call originated by another person or entity.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002; 2010 Act No. 270, Section 2, eff June 24, 2010.

# EXHIBIT I

29. Mother turned in text messages from her and Father to show the difficulties that the Parties have coparenting. Mother stated that Father simply refuses to work with her at all and would rather just keep pushing on the situation and attempt to deflect and manipulate than to talk and coparent with her. The text messages are hereto attached as EXHIBIT E.
- \* 30. Mother stated that Father is only worried about how he looks and is always trying to spin the narrative to his view. Mother stated that Father emotionally manipulates the minor child. Mother stated that the minor child is kind hearted and just wants to make everyone happy. Mother stated that Father coaches the child and that the minor child's actions are often a reflection of his fear to hurt Father's feelings. Mother stated that Step Father and the minor child have a close relationship, but that the minor child is afraid to hug Step Father or to spend time with him because of his fear to hurt Father's feelings for wanting to do so. Mother stated that the minor child is also worried that if he tells Father that he likes to live in Tennessee, likes Step Father, likes his Step Siblings, that Father will be mad at him. Mother stated that she has recordings of the conversations that Father has had with the minor child and that these show the manipulation that Father uses.
31. Mother stated that, when it comes to the school app, she did add Step Father. Mother stated that Step Father is highly involved in the minor child's life and that he is a parental figure to him as well. Mother stated that Step Father should be and has a right to be on the school app. Mother stated that, in addition, in case of an emergency, the school needs to be able to contact Step Father. Mother stated that Father is just trying to create issues where there are none.
32. Mother stated that Father will try to spin any situation and manipulate the children any way that he can for his own interest. Mother stated that she has always had a strong relationship with C.W., that she helped raise her for many years when she and Father were married, has always encouraged C.W.'s relationship with her brother, the minor child of this action, and has always loved her as her own. Mother stated that she takes any opportunity to see her when she can because she loves the minor child, but that Father is trying to turn her against her because he simply wants to exile Mother from C.W.'s life.
33. Mother stated that when it comes to the gun situation, Step Father has always had a tradition to take his children into the backyard and to shoot pumpkins. Mother stated that Step Father was trying to spend time with the minor child and that the minor child was never in an unsafe situation. Mother stated that Father just tries to use all situations as an attempt to cause problems and drama. Mother stated that Father is just difficult to work with and would rather make trouble and drama than to work

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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MAR 09 2023

SC Court of Appeals

Appeal from Greenville County  
Greenville County Family Court  
Hon. Judge Rochelle Conits, Family Court Judge, Presiding

2021-DR-23-0394

Sarah Huet de Guerville.....Respondent,

Versus

Brice Huet de Guerville.....Petitioner.

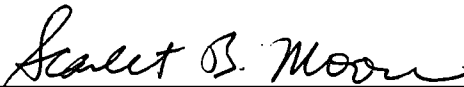
**CERTIFICATE OF SERVICE**

I certify that on this date, March 6, 2023, I served a copy of the **Motion to Suppress Recorded Communications** on counsel of record to their addresses, and by affixing proper postage and putting into the U.S. Mail:

Megan Goodwin Burke, Esq.  
217 E. Park Avenue  
Greenville, S.C. 29601

Angela Frazier, Esq.  
601 E. Mcbee Avenue, Suite 107  
Greenville, SC 29601

Chip Howard, Esq.  
P.O. Box 9754  
Greenville, S.C. 29604



Scarlet B. Moore, #72534  
Attorney for Petitioner  
P.O. Box 17615  
Greenville, S.C. 29606  
(864) 214-5805 / (864) 752-0930 (FAX)

March 6, 2023  
Greenville, South Carolina

**SCARLET B. MOORE, ESQ.**

*Attorney at Law*

P.O. BOX 17615  
GREENVILLE, SC 29606  
(864) 214-5805  
(864) 752-0930 (FAX)

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SC Court of Appeals

March 6, 2023

Jenny Abbott Kitchings  
Clerk, The South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, S.C. 29211


**RE: Huet de Guerville v. Huet de Guerville**  
**Docket No. 21-DR-23-0394**

Dear Madam Clerk,

Enclosed please find the Petitioner Brice Huet de Guerville's Motion to Suppress Recorded Communications, along with a Certificate of Service and Filing Fee.

Please let me know if you have questions regarding the enclosed. With kind regards, I remain

Very Truly Yours,



Scarlet B. Moore, Esq.  
Counsel for Appellant

SBM/s

Cc: Chip Howard, Esq.  
Angela Frazier, Esq.  
Megan Burke, Esq.  
Clerk of Court, Greenville County



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Scarlet B. Moore  
 Attorney at Law  
 P.O. Box 17615  
 Greenville, S.C. 29606

Jenny Abbott Kitchings  
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 P.O. Box 11629  
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