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Apr 03 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The 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.

**REPLY TO RESPONDENT’S RETURN TO PETITIONER’S
MOTION TO SUPPRESS RECORDED COMMUNICATIONS**

Scarlet B. Moore, #72534
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April 1, 2023

NOW INTO COURT, comes the Petitioner Brice Huet de Guerville (“Father”), who submits the following Reply to the Return of the Respondent to the Petitioner’s Motion to Suppress Recorded Communications:

As an initial matter, the Petitioner has attached an affidavit, enclosed, to respond to the issues raised by the Mother in her Return. (See Exhibit “A” – Affidavit of Petitioner Brice Huet de Guerville.)

Despite the Mother’s assertions in her Return, Mother is not the “primary parent” of the minor child. The specific language regarding custody in the Divorce Decree (attached to the Mother’s Return) is that the parties share *joint* custody of the child, and have a duty to *consult* and use good faith efforts to resolve differences, but if unable to reach an agreement, the Mother is the final decisionmaker “on all major parenting decisions.” Joint Custody is defined in S.C. Code § 63-15-210(1), which means that both parents have equal rights and responsibilities for major decisions concerning the child, including the child’s education, medical and dental care, extracurricular activities and religious training, however a judge may designate one parent to have sole authority to make specific, identified decisions while both parents retain equal rights and responsibilities for all other decisions. Certainly, the decision to implement a very narrow and specific exception to federal and state wiretapping laws and record private communications between a Father and son, which privacy was so mandated by the Divorce Decree in Judge Robertson’s standard guidelines, certainly should be considered a “major parenting decision” for which consultation would be required. However, if this Honorable Court does not deem the issue in this case as a “major parenting decision,” the Father would retain the authority during his parenting time with joint custody to make “all other decisions” for the child. The Mother at no time consulted with the Father regarding taping his private communications with the child. This

point is significant as both Mr. Richard Whiting, Esq., and Mother in Return seem to assert that as the “primary parent” Mother can tape at will. Not only is this position not supported by the federal and state statutes, and case law and progeny, the argument is not supported by the specific language of the Divorce Decree and the custodial arrangement between Father and Mother. Specifically, the court in *Thompson v. Dulaney*, 838 F. Supp. 1535 (D. Utah 1993.), cited by the court in *Pollock v. Pollock*, 154 F.3d 601 (6th Cir. 1998), held that the court was not adopting a “bright line” rule.

Second, Mother’s argument that she was not capable of complying with Honorable Judge Marsh Robertson’s standard restraining orders, which specifically permitted the Father to have reasonable private phone conversations with his child, is utterly lacking in any merit. Mother asserts in Return that it was “legitimately difficult” for the child to have private conversations with the Father given the size of her residence. An easy and inexpensive solution to this alleged problem would have been for the Mother to utilize earplugs or earbuds to listen to audio content during the Father’s phone conversations, or simply turn on the television. The Mother brazenly admits to eavesdropping on the conversations to the extent that she could allegedly hear the Father’s voice on the other end of the phone call. Of course, during the illegal taping sessions, the Mother placed the child’s phone on “speaker” so that she could use a third party’s phone located in the child’s room to record the Father and son’s communications and went into the child’s room to turn the volume “way up” on his video calling portal. What is also lacking in consideration by Mother in Return is the impact on the child to being recorded and listened to while speaking with his Father. As Father details in his affidavit, the child’s therapist does not support the Mother taping the child’s conversations with third parties as such can create anxiety in the child – especially given that there are other vehicles in place for Mother to gather the

desired information regarding the welfare of her child. (See Exhibit “A” – Affidavit of Petitioner Brice Huet de Guerville.)

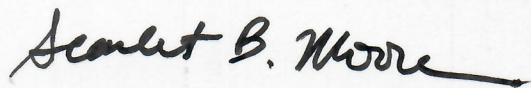
Further, the Mother fails to recognize in Return that the prevailing Divorce Decree permits the parents to discuss with the child the fact that an order exists, and that the provisions of the order must be followed, except if the Minor Child is in counseling or other psychological/psychiatric care and the Minor Child’s provider believes it is in the Minor Child’s therapeutic best interest to discuss the litigation. (See Divorce Decree page 6 of Memorandum of Agreement.) There is no blanket prohibition preventing the parents from discussing all aspects of the litigation, and the Mother’s emphasis on this point as justification to illegally tape the private conversations of Father and son are misplaced. Nevertheless, the Mother has failed to establish the level of harm to her child as was present in State v. Whitner, 399 S.C. 547, 732 S.E.2d 861 (S.C. 2012) – a sexual abuse prosecution – to justify recording the conversations. Further, in Campbell v. Price, 2 F.Supp.2d 1186 (E.D. Ark. 1998), a case cited by the court in Pollock, the concern was actual emotional abuse to the child based on the actions of the recorded parent. The Mother in Return provides no expert affidavit establishing any emotional abuse to the child during the course of Father’s private telephone conversations with the child, nor any emotional or physical abuse to the child during in-person interactions with the child – to the contrary. (See Exhibit “A” – Affidavit of Petitioner Brice Huet de Guerville.) In fact, this court in the McMaster case suppressed the audio recordings by Father despite legitimate concerns about parental alienation – which can be considered child abuse.

Further, Mother rejects the notion that the desired information should be gathered through “inquisitions of third party examinations.” In fact, when the South Carolina Department of Social Services investigates allegations of abuse and/or neglect of children, a very common

technique is to submit the child to a forensic interview by a trained specialist who can interview the child pursuant to expert techniques. And as referenced by Petitioner in his motion, there are multiple discovery devices that can be utilized in family court that suppress the “need” to record private telephone communications. Lastly, every Guardian *ad Litem* appointed in a family court matter in the State of South Carolina is a third party who is charged with interviewing children and providing a written report to a court – which certainly is not deemed an “inquisition” but rather a valuable vehicle to provide reports to a court in the best interests of a child. It simply was not “necessary” for the Mother in this case to record private telephone communications between the Father and son.

For the foregoing reasons, the Petitioner prays that this Honorable Court will suppress the audio recordings made by the Mother and prevent same from being entered into evidence at the trial of this matter.

Respectfully Submitted,



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Appeal from Greenville County

Greenville County Family Court

Hon. Judge Rochelle Conits, Family Court Judge, Presiding

Appellate Case No. 2023-000387

Sarah Huet de Guerville..... Respondent,

Versus

Brice Huet de Guerville..... Petitioner.

AFFIDAVIT OF BRICE HUET DE GUERVILLE

The undersigned after being duly sworn, hereby deposes and states:

I have reviewed the affidavit submitted by Sarah Huet de Guerville, attached to her Return to my Motion to Suppress Recorded Conversations, and I have the following responses to the allegations in her affidavit:

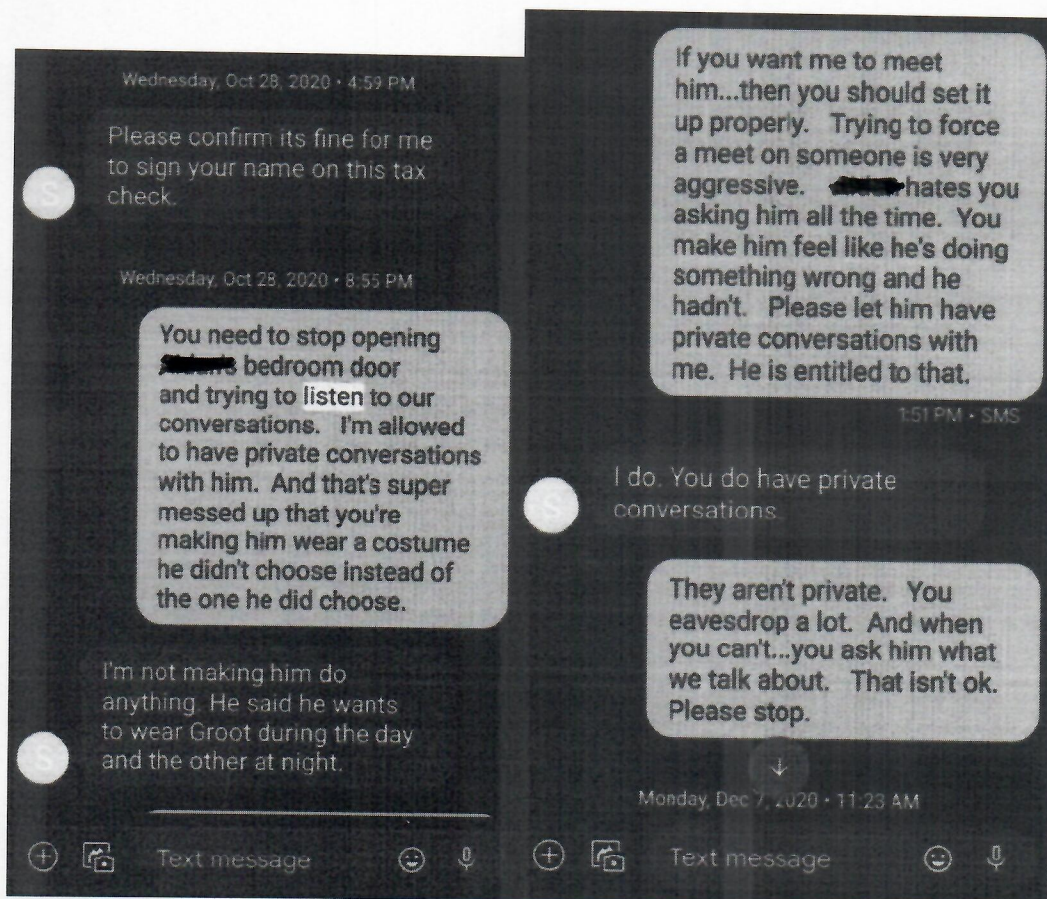
Regarding Sarah's Item 2 -- I only said Sarah kidnapped AHG one time as a joke in response to her being rude to a normal question. The kids were not close enough to hear me.

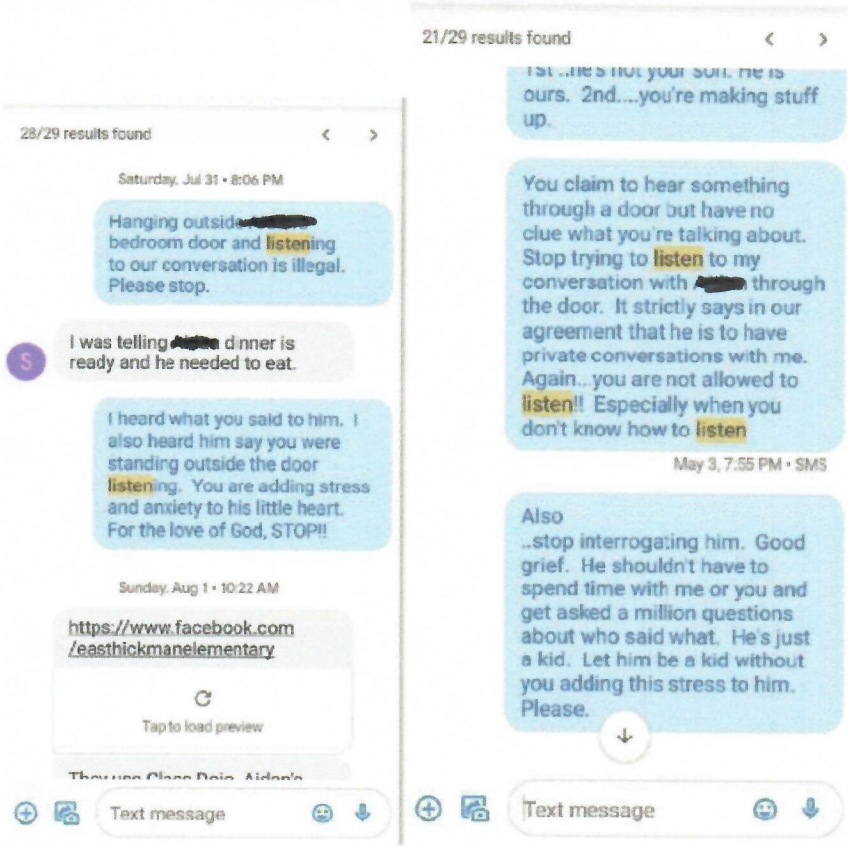
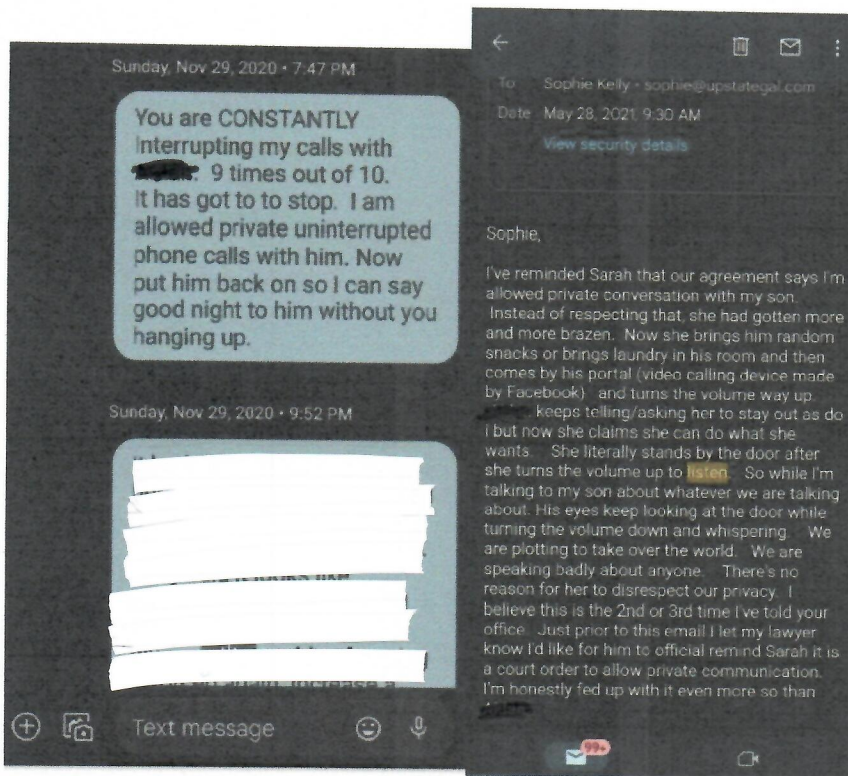
Sarah has shown she does not care about my time with my kids and their time together with me. When Sarah was still living in Greenville, I would go to AHG's soccer games and practices with AHG's sister, my daughter from a previous relationship. The kids would ask if they could both ride with me after soccer and go get ice cream or Chick-fila. Sarah said no every time. I would then ask if she was going directly home, she said yes. So, I asked if I could just drive AHG directly to her place so the kids could at least spend some time together in the car. She would say no. The only time Sarah cares that my kids spend anytime together is when she wants to look like she cares in order to help make her argument in our current custody case that I don't have to have my kids at the same time, because she and my daughter's mother can do it for me. It's all about her winning a court case, nothing to do with what is best for the kids. Which is also why she records me talking to AHG.

I have never generally told AHG he does not need to listen to his mother. Though there may be isolated incidents where that has occurred, they are situational and trivial. I have never done so in a way that attempts to undermine Sarah's authority over AHG as his mother.

Regarding Sarah's Item 3 -- Sarah claims her apartment was small and therefore it was difficult to not hear me talking to AHG while he was in his room with the door closed. Sarah lived in a 2-bedroom apartment in Greenville, SC. The apartment website says her apartment was between 1,062 sq ft and 1,185 sq ft -- a similar size to my apartment. I don't hear AHG talking to his mother when he stays in his room with the door shut even if I am close by in the kitchen. I believe Sarah is completely fabricating this as an excuse. It is not believable, especially when I know for a fact that AHG would complain to me multiple times that his mother was standing at his door trying to listen to our conversations. He would feel like he would need to hide in the corner of his room between his bed and a wall while whispering because of her

attempts to listen. You can see from my attached screenshots below that I have complained to Sarah many times to stop listening to us and interrogating our son. Her documented behavior only shows that she was only interested in trying to get “dirt” to win our custody case. At no point has she done anything to show she was concerned with our son’s well-being, his emotional and mental health. She has many resources at her disposal to ensure he was not being damaged by anything I said or did. And even at my request to use those resources, she said he didn’t need any help – that AHG was fine. I’m sure that Sarah is concerned about the repercussions of taping private phone conversations between myself and my son, but I believe her trying to cover it up with lies and manipulation only makes it worse.





19/29 results found

It was not late and you prevented me from having communication with my son.

You spoke to him.

I prevented nothing. Have a good day.

No. We couldn't speak. There was no signal

Apr 3, 10:44 AM • SMS

We heard you just fine.

I couldn't hear him. And you're not allowed to **listen**. It's supposed to be private.

He is trying to call you.

When? It didn't ring

Text message

We will be home in 30 minutes but he won't be able to talk until later this evening.

I don't understand why you keep deliberately trying to make communication with my son difficult. You add/create so much unnecessary drama/difficulties. It's like you enjoy it and feel like it's some little way to pick at me.

Jul 31, 5:18 PM • SMS

I'm surprised you would say that. I've been flexible to work with you on visitation and have done my best to accommodate reasonable communication for ~~_____~~ to you.

Read back all the texts. You clearly are trying to be difficult. And it's not the first time. Happens a lot.

Text message

19/20 results found

Reasonable is not for you to decide. We have always agreed one hour is the standard. That precedent has been said. Your mood can't change it.

Been set*

Oh NO. You're just wrong. Reasonable = reasonable. Tonight was certainly not that. That's it for today.

You making him talk to me while he was eating ice cream and saying "see...he doesn't want to talk to you." is really messed up. Massive manipulating. Of course he doesn't want to talk while eating ice cream. Who would? But you right there did not allow for **private** conversation. Blatant violation.

You do n...state anything. I am his dad

Text message

5/20 results found

time and not ignore me when I ask why you aren't answering. It creates unnecessary tension.

Okay

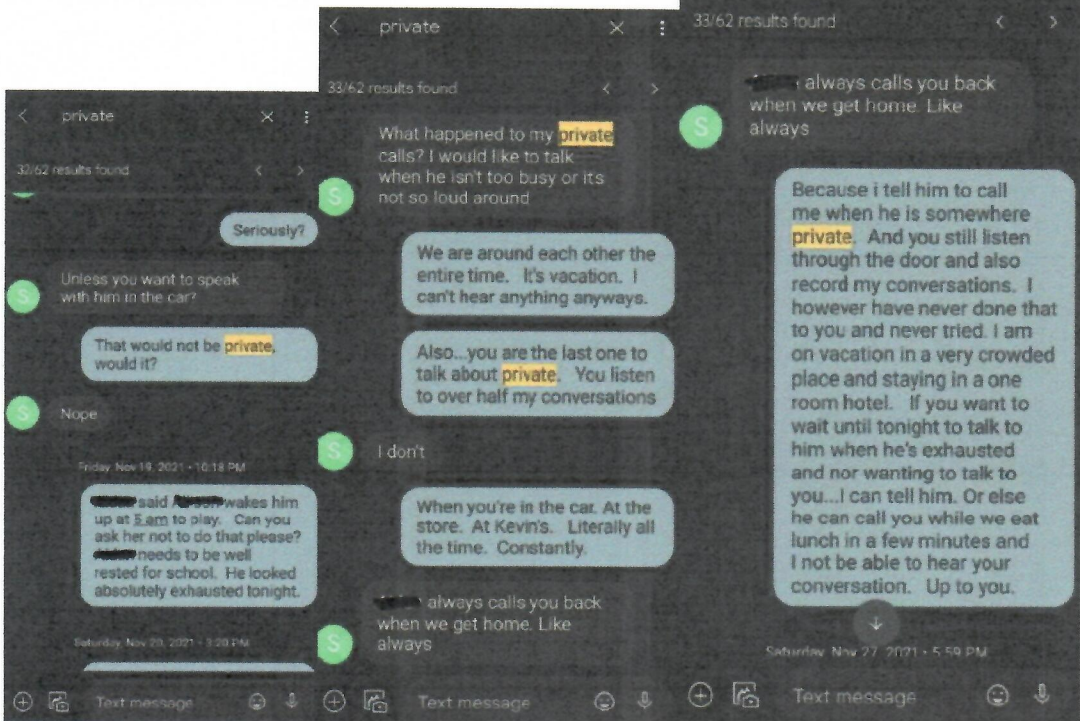
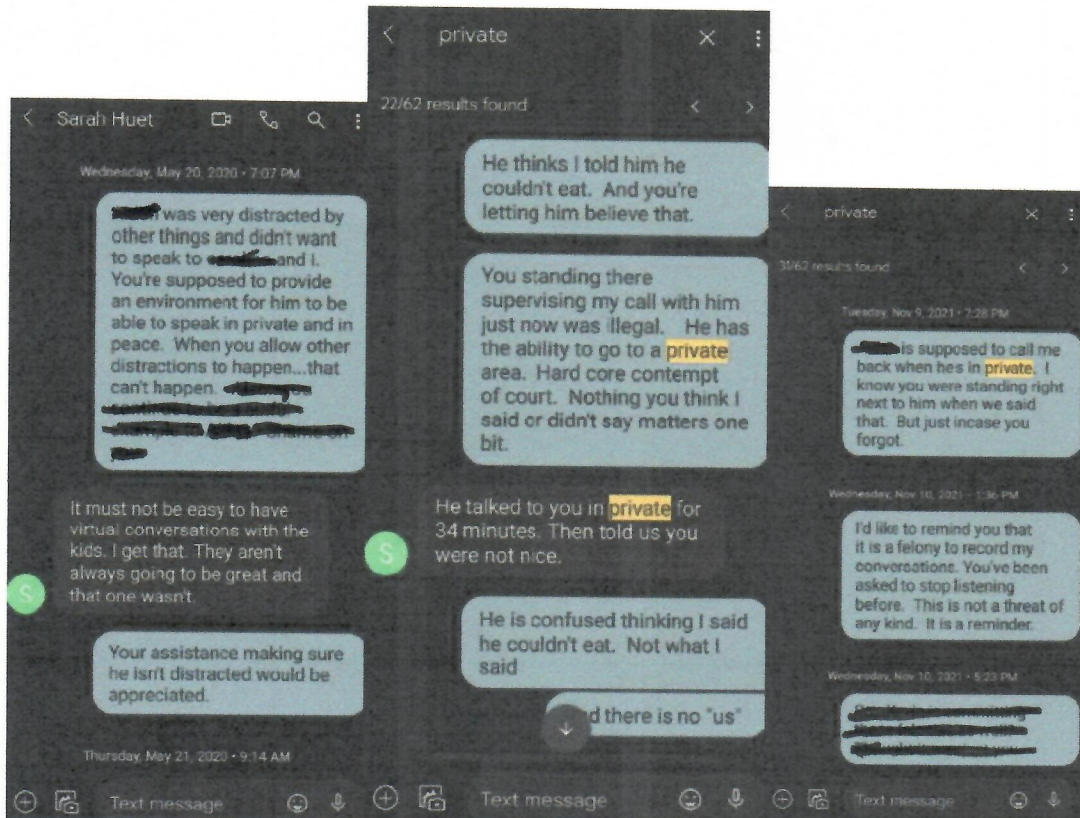
6/17/20, 7:17 PM

How much time do you spend interrogating ~~_____~~? You won't even let me speak to him in **private**. Each time he goes back to you after my time with him...you text me with some sort of complaint. Then mask it with an accusation of me doing what you're doing. Which is creating an environment for ~~_____~~ to tell you what you want to hear. Something negative to complain about. Can you please stop with that nonsense? At the very minimum...let me speak my son in **private**.

6/17/20, 8:11 PM • SMS

Thursday, Jun 17, 2020 • 6:25 PM

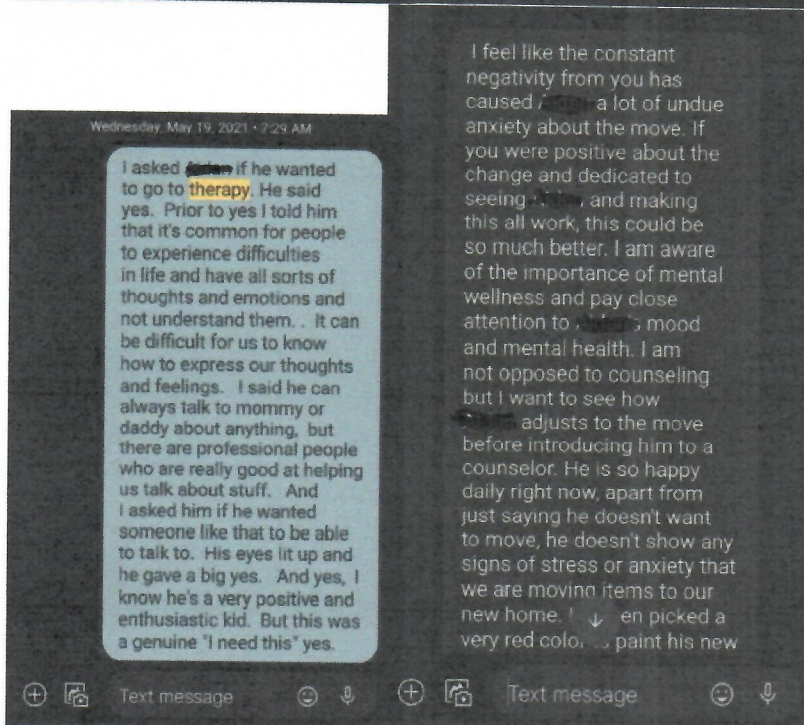
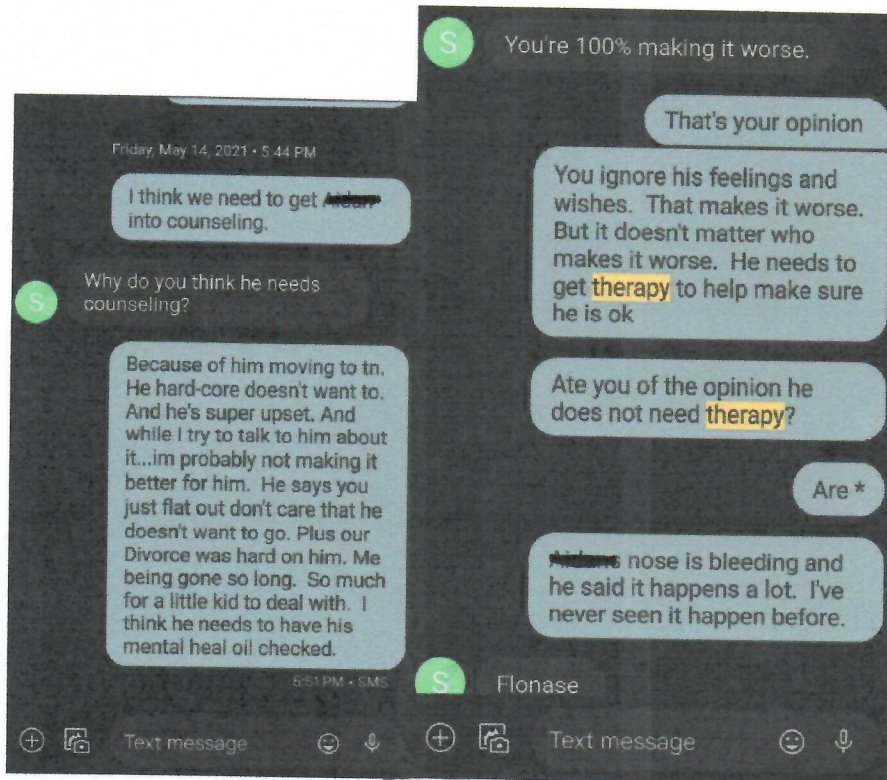
Text message

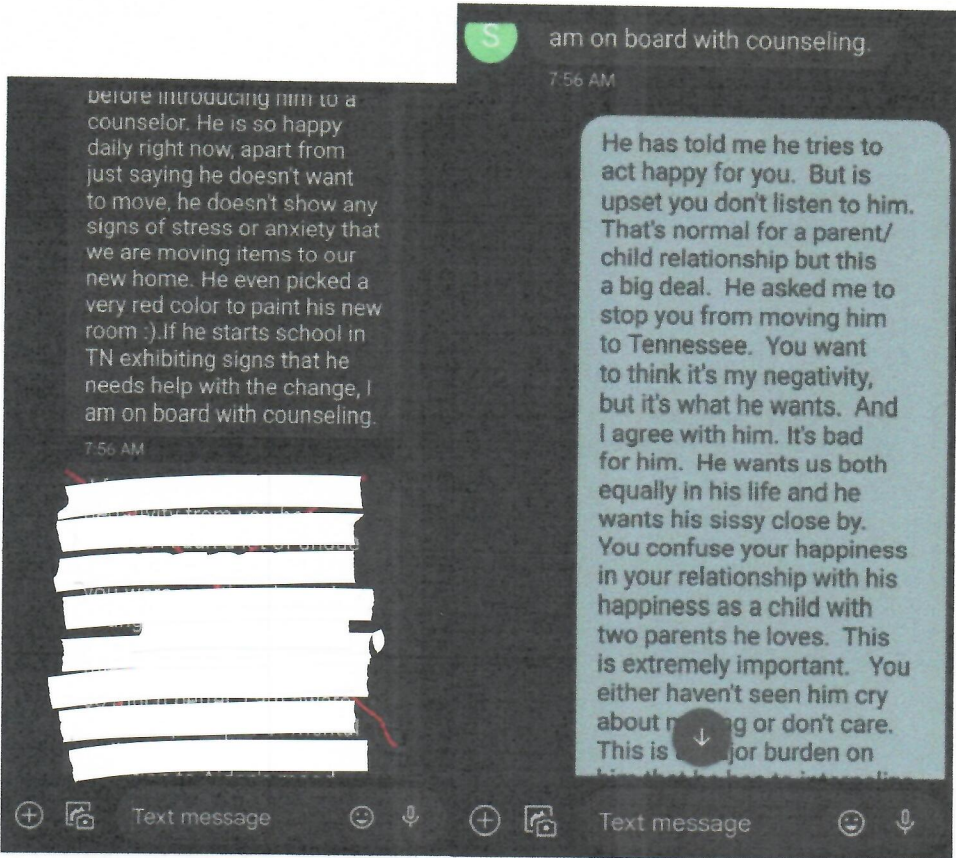


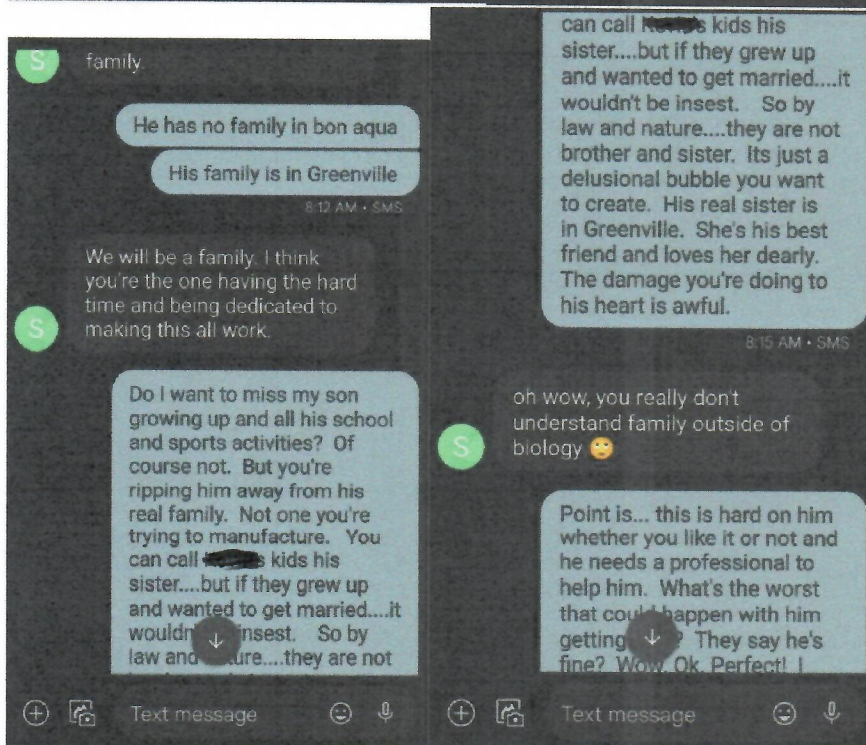
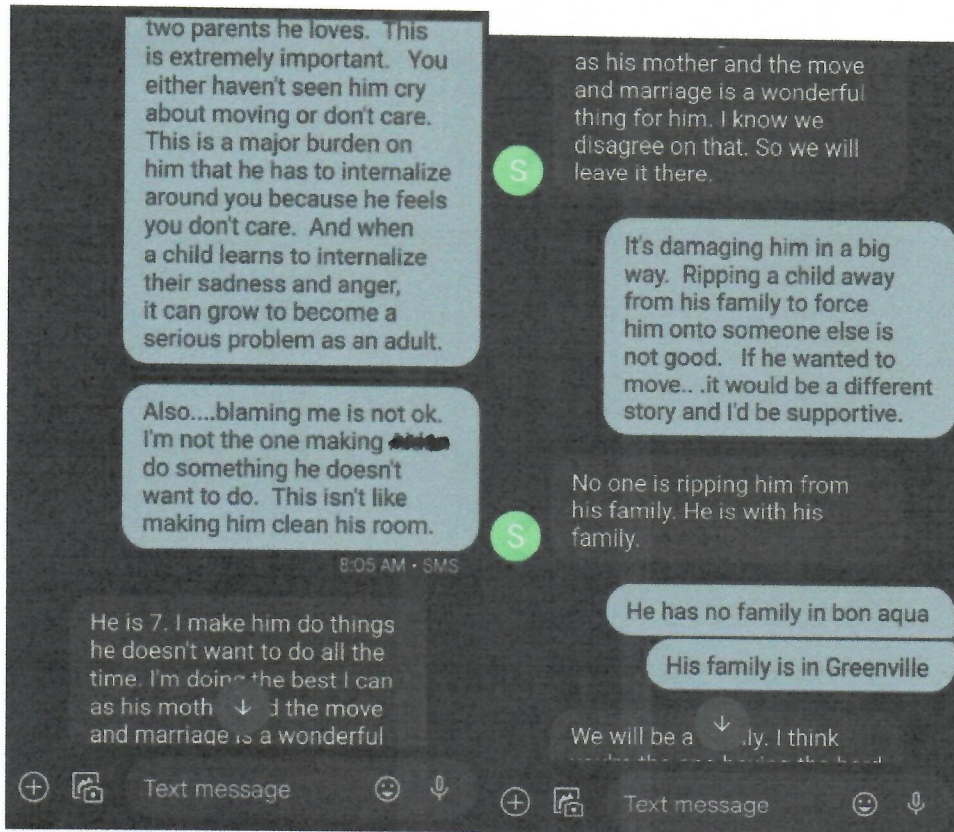
concerned about AHG's emotional health. I also call both of my kids almost every single night. There would be many more recordings by Sarah if her claims of me manipulating and hurting AHG were true since she was consistently trying to listen. I have included a screenshot above to Sophie Kelly, the assistant to the Guardian ad Litem on our case, prior to me learning Sarah had been recording us.

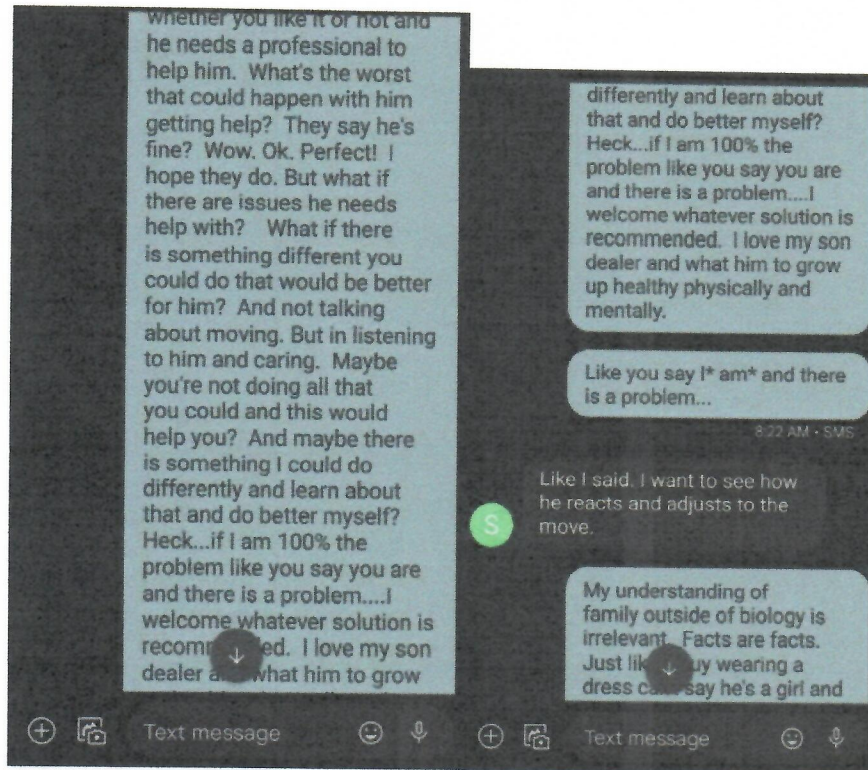
The part where Sarah states that I discouraged AHG's joy in moving to Tennessee is a fabrication by Sarah. AHG asked me to stop him from moving to Tennessee. His desire to stay in Greenville matched my desire for him to stay. But it didn't match Sarah's. So, she just needed to try and catch me talking to AHG about it and create a situation where she felt she could help her case in court. Fast forward to the March 13th recording. A recording where she lied to AHG about him seeing me more if he moved to Tennessee. Something he was very excited to tell me about, however Sarah conveniently didn't record that part. When I was told of this lie, I felt it was necessary for me to correct her lie and remind him of everything he had said to his sister and me. Unfortunately for the truth, I did it in a purely emotional way since I was so upset and in shock at what I just learned Sarah and her then fiancé did to my son. In the recording, my son was equally upset in learning he was lied to and wanted to get off the phone to process what just happened. I wholeheartedly regret that conversation. So much so I even requested that he go to therapy to make sure he was ok. Not just from that conversation, but from what I believed were constant manipulations by Sarah. Regardless of her claims that I was hurting AHG or my belief that she was, I fought to get AHG into therapy, and she denied my request. That shows she did not have any genuine concerns over his mental and emotional health. Screenshots below are after her

March 13th recording that she claims was made because of her claims I was hurting AHG's mental health, and before I was aware of the recordings:









The next point Sarah tries to make in item 3 is that I was coaching AHG in how to talk to the court lawyer, or “Guardian.” The only thing I recall telling AHG about the court lawyer is that she was there to help him and to be honest with her. She cares about what he wants. I don’t see how trying to help my son be comfortable talking to a stranger whom the court wants my son to talk to is a bad thing.

What I find concerning the most in item 3 is that Sarah wants the court to allow her and, as a result, any parent in the future in the entire state of South Carolina and perhaps the country to record a conversation with their child’s other parent any time they want, simply because the child was upset during a conversation -- completely bypassing the federal and state rights of the parent. All one parent has to do from now on is just claim the other parent had a stressful conversation. Then, anytime that parent wants, they can just record that child during private conversations with the other parent. And when

that child wants to complain about the parent doing the recording, they can be a gatekeeper to any complaints. Or, if the child just wants to have private teenage boy to father conversations that he doesn't want his mother to listen to, she can just listen in. Completely violating his wish to have a private conversation. My fight to have these recordings suppressed is not about my embarrassment for handling an emotional situation poorly and saying things I regret. It's about protecting my son's privacy from now on and my rights. My son should have the right to have private conversations with either parent over the phone without fear of being recorded. That's the biggest damage that would be done today if these recordings are allowed to be used at the trial of our case.

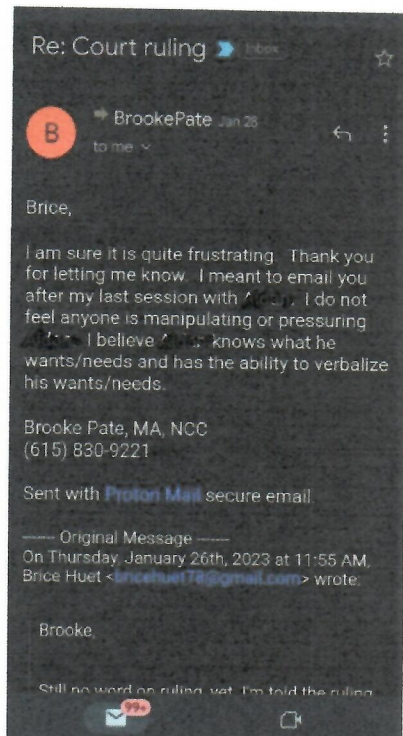
In item 3 of Sarah's affidavit, she ends it saying she believe my conversations are destructive to AHG. Yet as shown above in the screenshots, she said he showed no signs of anxiety and did not believe he needed therapy as I requested. She claims I manipulate our son, however I believe she manipulates him as well - but I have never recorded her private conversations with AHG.

Item 4 of Sarah's affidavit -- Sarah states that I caused AHG distress. Again, the standard Sarah wants to now set for South Carolina law and Federal law. Sarah is twisting the details a bit. Before Sarah moved to Tennessee, I had a vacation planned with AHG and his sister to go to Disney. The day we would leave was on a Wednesday. Not a big deal since we all lived in the same city of Greenville, I could work during the day, get the kids that evening and leave early the next morning. Then Sarah won her temporary motion to move to Tennessee. This meant it was impossible for me to get the kids as planned. I believed I would not be able to bring AHG with us on vacation. I asked Sarah to be the one to tell him. Up until that point, I had not told him where we

were going because I was trying to keep it a secret. Sarah knew. Sarah didn't want to tell him. So, I did. When I told him he was very upset. We got off the phone and he went to talk to his mother. He called me back and told me that his mother said it was ok - - that she would take him to Disney the next weekend. That made him feel better. I felt her refusal to work with me so AHG could still go to Disney was a deliberate attempt by her to thwart our trip so she could be the first to take him to Disney. But more troubling is that Sarah is requesting that this court again allow her to have sole judgment to play gotcha in choosing to record. Zero concern for anyone's privacy.

Regarding Item 5, I did tell Sarah I would lose my job. Most employers don't want their employees constantly leaving work early and frequently. I did believe Sarah was being cruel and selfish. Especially since she is the one that begged me to take the temporary job in Kansas City and at the first opportunity she had to move out of Greenville, use my job in Kansas City she begged me to take as an excuse to the court of why she should be allowed to move to Tennessee. In fact, it's the sole reason she was allowed. So yes, I did tell her she was being cruel and selfish and she didn't care if she hurt me or AHG. I believed it to be true.

Sarah's item 6 is just a repeat. She has no real concern for anything I say harming AHG. She has and has had resources to help him. AHG is capable of telling her what is bothering him if he needs her help. He now has a therapist that Sarah finally sends him to over a year after I asked her to send him and only because the guardian suggested it. Screenshot from AHG's therapist below, Mrs. Brooke Pate. Perhaps this response is why she didn't want to send him before. Because there's a difference between isolated reactionary foolish comments and actual efforts to manipulate and harm.



I would ask this court to rule that Sarah does not have an honest interest in recording our son and only a selfish one. Allowing these recordings would do damage to a lot of children and parents who want to have private conversations with their parent and children simply so one parent can play gotcha. Each parent has many tools at their disposal to protect their children without violating anyone's privacy illegally. For example, once Sarah had the recordings from March 13th and so on, why didn't she immediately file a contempt complaint? I learned of her recordings and immediately sought a contempt complaint. I learned of the recordings on August 4, 2021 however Sarah's Return states we filed our contempt complaint on September 21, 2021. Sarah filed her counter contempt claim on November 4, 2021. The billing from the guardian Ad litem shows that Sarah sent the guardian the recordings on April 12, 2021.

So, per the evidence I have shown in this affidavit, Sarah had been listening for many months prior to her claim of the first recording she made on March 13, 2021, and sent that

recording to the GAL on April 12, 2021. Sarah says in her affidavit to this court that it was necessary to protect AHG because I was causing him anxiety and was in contempt of court, but doesn't want to send him to therapy and doesn't sent the recordings to the GAL for a month after recording them and only files a contempt complaint 9 months after the initial recordings and only as a counterclaim to my claim. The timeline alone should be sufficient to see through Sarah's manipulation.

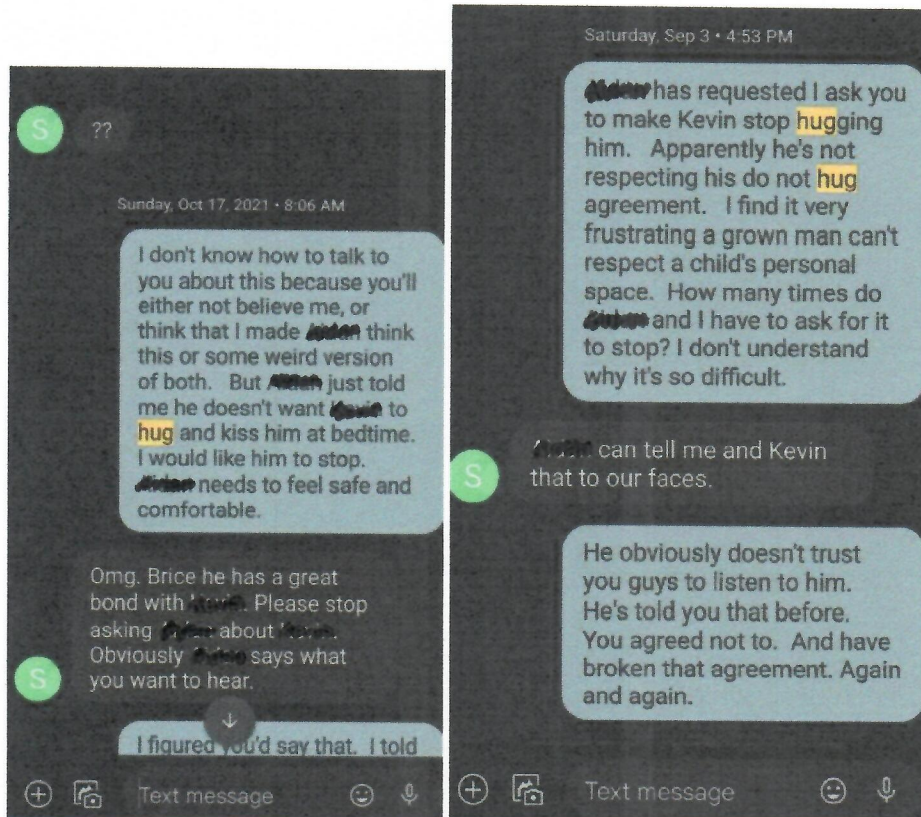
I'd also like to point out that in the recordings, the child states that the mother discusses the court order with the child. I state that I only discuss broadly, as this situation is unique. Moving out of state is a huge deal to a child and isn't something you can avoid discussing. Some details about where we meet and when obviously need to be discussed. We didn't file a contempt claim about this because we understand the necessity to do it. I don't understand her double standards.

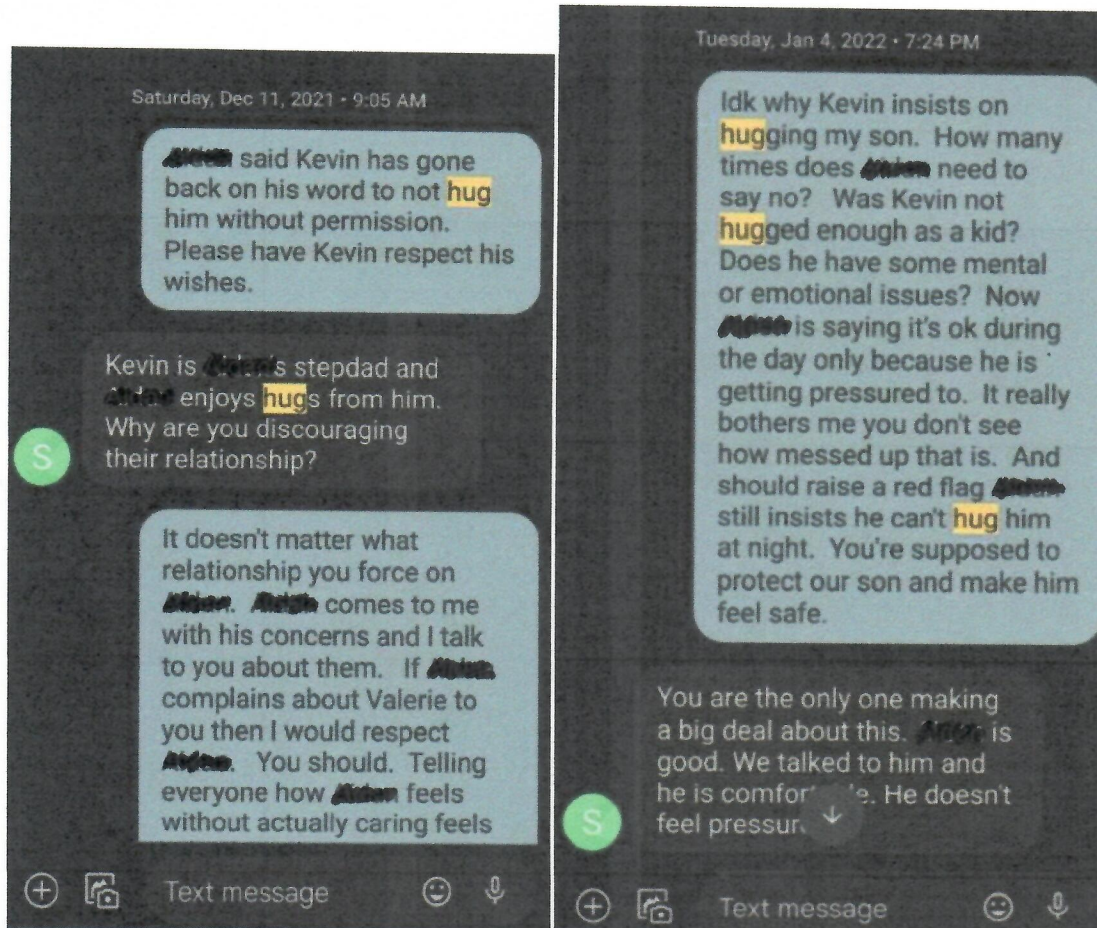
On page 4 of Sarah's return to motion, she accurately states that we withdrew our motion to transfer custody, but I did so pretrial for reasons related to my private communication with my attorney – not because I do not want to have AHG in my home a majority of the parenting time following a trial on the merits.

In all the sessions AHG has had with the therapist since he started in May 2021, not once has the therapist said there was any indication that I was harming AHG in any way. The only time there was any hint of anything of any concern from AHG was about his mother and his mother's new husband. The below screenshot is the email from AHG's therapist requesting Sarah's new husband stop hugging AHG and my request. Unfortunately, AHG asked them many times and they didn't listen. I asked Sarah and was ignored. Sarah even sent the guardian a recording of the second half of their conversation confronting AHG about this after I asked her to

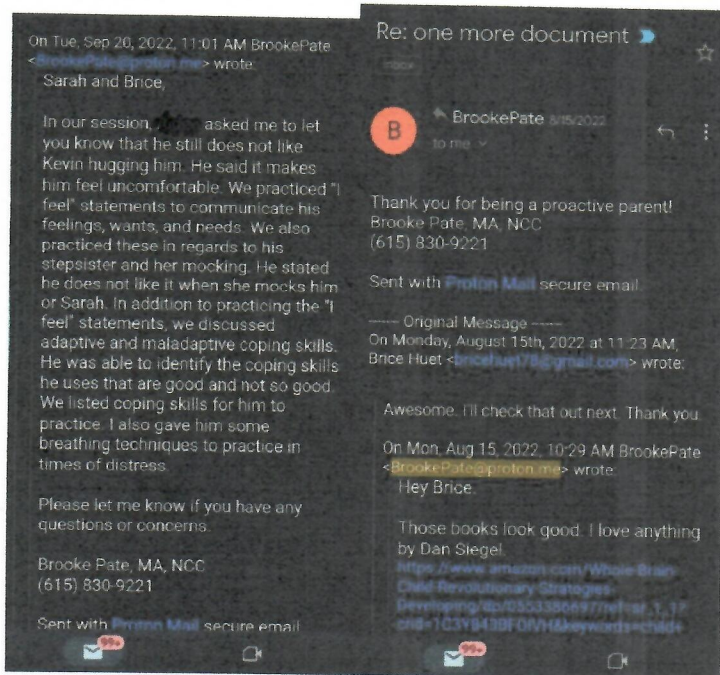
talk to him away from Kevin so he could share with her comfortably. The recording they made shows me they bullied him. I'm thankful the therapist stepped in.

To the contrary, the therapist appears to be thankful I am a proactive father. Not one complaint shared from AHG or his therapist, regarding me.



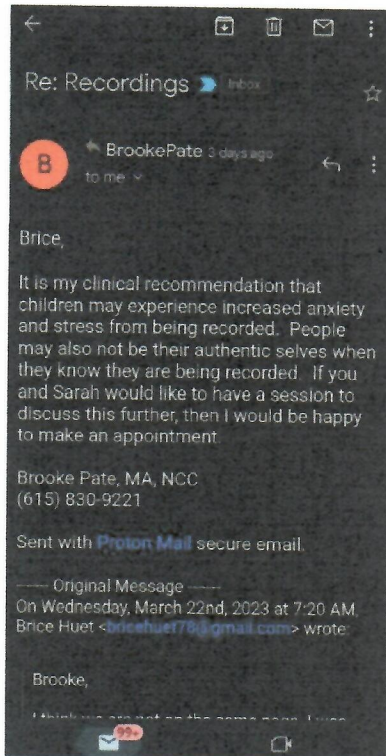


There are many more texts of me fighting with Sarah to protect AHG. I don't view hugging as bad. I myself love hugs and AHG does, too. But what I do believe is that nobody should be forced to hug anyone. Especially if you've made it clear numerous times you do not want it. At a minimum, this proves contrary to Sarah's claim that she is in tune with how AHG feels and is a good judge of when it is necessary to record AHG. She isn't capable of understanding when it's not ok for our son to be hugged let alone capable of determining when he needs to be recorded while talking to me. Please note the dates of the screenshots. It took a long time to get Sarah to force her new husband to stop. And only when the therapist made the request did, they listen.



AHG's therapist does however believe that recording a child is not good for him.

Unfortunately, Sarah wants to continue to record him at will. If she wins this case, she will be given just that authority. Screenshot below:



In my closing response, on page 5 of Sarah’s Return her attorney repeats that the parent must find it was “necessary” AND in the best interest of the child to record in order to have vicarious consent. I believe my affidavit shows that Sarah did not find it necessary AND in the best interest of the child and it was only in her self-serving interest. The timeline of her contempt claim proves it was not necessary. The screenshots of her listening to our son talking to me constantly proves it was not necessary since she would have many more recordings if it were. Her rejection of the therapist request from me shows she has no genuine concern for AHG’s mental and emotional health. And at no point in our son’s existence has she ever once claimed I was abusive in any way to our child. Sadly, Sarah’s attorney in the motion to remove the guardian made a verbal claim to the judge that I have a history of abuse and that was her cause for having concern. That was highly upsetting and untrue. I have done nothing but love

both my children with all my heart and have made tremendous sacrifices for my children. Sacrifices that have cost me precious time with my kids and are now risking permanent damage with my son now since our son was temporarily allowed to move to Tennessee. I pray the court sees this and agrees the recordings are a violation of state and federal law and that the mother did not meet the necessary standard under the law needed to record.

Lastly, Sarah's Return claims, as Sarah's trial counsel has claimed, that I want the recordings suppressed because I think they will hurt me in court. I am fighting to keep these recordings suppressed to not only protect my constitutional rights, but my son's privacy and ability to speak to me without his mother invading his privacy. He deserves that.

FURTHER DEPONENT SAYETH NOT.

SWORN TO BEFORE ME

This 31ST day of March 2023


Printed Name of Notary: Scarlet B. Moore

Notary Public for South Carolina

My Commission Expires: 2/5/25



Brice Huet de Guerville

RECEIVED

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2021-DR-23-0394

Sarah Huet de Guerville.....Respondent,

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Brice Huet de Guerville.....Petitioner.

CERTIFICATE OF SERVICE

I certify that on this date, April 1, 2023, I served a copy of the **Reply to Return to Motion to Suppress Recorded Communications** on counsel of record to their email addresses, as follows:

Megan Goodwin Burke, Esq.
meg@upstatelegal.com

Angela Frazier, Esq.
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Chip Howard, Esq.
howardlawgville@gmail.com

Brian Dumas, Esq.
brian@briandumasattorney.com

s/Scarlet B. Moore

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April 1, 2023
Greenville, South Carolina

SCARLET B. MOORE, ESQ.

Attorney at Law

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Apr 03 2023

SC Court of Appeals

April 1, 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
Appellate Case No. 2023-000387

Dear Madam Clerk,

Please find enclosed the Petitioner's Reply to Return of the Respondent, and a Certificate of Service.

I received a call last week from the Clerk's office regarding my client's affidavit that was attached to the original motion. The Clerk wanted confirmation that the affidavit was notarized. The affidavit was notarized by trial counsel, Chip Howard, Esq., and the original was submitted to the Greenville County Family Court. If the Court requires additional information, documentation or clarification on this point please let me know.

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

Very Truly Yours,

s/Scarlet B. Moore

Scarlet B. Moore, Esq.
Counsel for Appellant

SBM/s

Cc: Chip Howard, Esq.
Angela Frazier, Esq.
Megan Burke, Esq.
Brian Dumas, Esq.

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