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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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APPEAL FROM LEXINGTON COUNTY

Family Court

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Family Court Case No. 2023-DR-32-00229

Appellate Case No. 2023-000959

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Megan Cronin — Petitioner,

v.

William Cronin, — Respondent.

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**RETURN TO PETITIONER'S MOTION TO SUPPRESS RECORDED COMMUNICATIONS AND RESPONDENT'S MOTION TO DISMISS AND FOR A FINDING OF SPOLIATION AND SANCTIONS**

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES



AUTHORITIES

## STATEMENT OF ISSUES ON APPEAL

1. Should Petitioner be permitted to suppress evidence found on an Apple MacBook Air if Petitioner has destroyed the device following both a Spoliation letter and an Order requiring she turn over the device for an expert examination?

2. Is Respondent entitled to a finding of Spoliation with a specific inference that Petitioner had the inclination and opportunity to engage in an adulterous affair?

3. Is Respondent also entitled to a sanction in the way of attorney's fees or otherwise due to Petitioner spoliation of evidence?

## STATEMENT OF THE CASE

Petitioner filed a Summons, Complaint, Notice of Motion, and Motion for *Pendente Lite* Relief in this action on February 3, 2023. On March 1, 2023, Counsel for Respondent filed an Answer and Counterclaim to Petitioner's Summons, Complaint, Notice of Motion, and Motion for *Pendente Lite* Relief, alleging Wife had committed adultery.

In an Affidavit dated March 2, 2023, Respondent testified that he purchased a MacBook Air laptop around the time of Christmas 2022[1]. Respondent further testified that the MacBook Air laptop was used by both parties and had the same family password as all of the other "household devices". On January 1, 2023, when Husband logged onto the laptop, he saw Wife's Imessages. In those messages, Wife called another man her "love" and discussed having previously shown this man nude photographs. (Exhibit 1). Wife did not admit or deny her affair when confronted. A temporary hearing was scheduled for March 2, 2023.

On February 1, 2023, Husband was arrested for CDV2nd. It is Husband's position that this arrest was trumped up by Petitioner in an effort to deflect attention from her own actions. The CDV charge was ultimately dismissed for lack of evidence on April 27, 2023 (Exhibit 2).

On February 20, 2023, Counsel for Respondent served Wife with a Spoliation letter. Specifically, Wife was put on notice to abstain from destroying, concealing, or altering any paper or electronic data, including data contained on social media, cell phones, tablets, computers, or voicemail. (Exhibit 3). Following the Spoliation letter, Respondent sent Counsel for Petitioner a letter on February 21, 2023 specifying that the Petitioner needed to provide three specific devices: (1) an Apple MacBook Air; (2) an iPad; and (3) an iPhone (Exhibit 3).

[1] Respondent has now clarified that the MacBook was purchased around Christmas 2021, not 2022.

At the time of the Spoliation Letter and the February 21, 2023 letter, Counsel for Respondent and Husband had reason to believe that Wife's devices (particularly her messages to others) not only contained information about her adulterous affair, but information that could potentially prove that the domestic violence arrest against Husband was a set-up and carried out in bad faith. At no time in February 2023 did Wife raise any of the issues she has raised in her June 15, 2023 Motion to Suppress. On March 1, 2023, Counsel for Respondent requested that Wife bring the three devices (specifically the family MacBook purchased around Christmas 2021) to the Courthouse at the hearing on March 2, 2023. (Exhibit 4) This request was ignored.

On March 2, 2023 the parties entered into a Temporary Order, in which Wife agreed to turn over the devices. Wife agreed to be ordered to provide Respondent's forensic expert, Christopher J. Watkins, Certified Forensic Computer Examiner and Certified Mobile Device Examiner, with any and all cell phones, laptops, Mac and/or Apple products in her possession in order for Mr. Watkins to perform a forensic analysis of these devices (Exhibit 5). At the time of Wife's Motion for Temporary Relief, Wife did not raise any of the issues raised in her June 15, 2023 Motion to Suppress. There was no temporary hearing, which would have been the first opportunity for Wife to object to the manner in which Husband viewed her Imessages.

On March 20, 2023, Counsel for Respondent inquired about Petitioner's availability to have the devices downloaded, asking that the parties coordinate with expert Christopher Watkins (Exhibit 6).

On March 21, 2023, Attorney for Petitioner responded that he had spoken to Petitioner. Counsel for Petitioner asked "if we were to concede that you will be able to prove opportunity and inclination, would this be truly necessary?" (Exhibit 7).

Counsel for Petitioner did not admit on March 21, 2023 that the devices had already been disposed of. On March 22, 2023, Counsel for Respondent replied that the device downloads would be needed, per the Temporary Order. At this time, the CDV charges against Respondent had not been dismissed and Husband remained convinced that the devices, specifically the Mac, would contain evidence of an affair and possibly information to exonerate him. That same day, Mr. Watkins replied with his availability (Exhibit 8). On March 22, 2022, Counsel for Petitioner replied that he did not believe that he would be able to respond that quickly (Exhibit 9). Counsel for Petitioner did not reveal on March 22, 2022 that the devices had already been disposed of. Instead, Counsel for Petitioner continued to stall. On March 23, 2023, Counsel for Respondent again requested an update on the devices from Counsel for Petitioner (Exhibit 10). On the same day, Counsel for Petitioner responded that he would try to get an update that afternoon (Exhibit 10). No update was provided on March 23rd.

On March 31, 2023, Counsel for Respondent once again reminded Counsel for Petitioner that the device downloads needed to be performed (Exhibit 11). The parties were in the discovery phase of their case, custody was at issue, and the criminal charges against Husband had not been dismissed. On that same day, Counsel for Petitioner responded that he was ready to schedule the appointment for the download (Exhibit 12). Counsel for Petitioner did not admit the devices had already been disposed of on March 31, 2023. Importantly, Petitioner's counsel requested discovery responses from Husband. On that same day, Counsel for Respondent added Respondent's forensic expert to the email thread, requesting his availability. Also on March 31, 2023, Respondent's forensic expert replied to the email thread with his availability (Exhibit 13).

On April 3, 2023, over a month after Respondent's first request that the devices be turned over, Counsel for Respondent once again followed up with Counsel for Petitioner, asking for the

date that Petitioner would be going to have the devices examined (Exhibit 14). On April 3, 2023, Counsel for Petitioner responded that Petitioner would have the devices examined on Wednesday, April 5, 2023 (Exhibit 15). Counsel for Petitioner did not inform the undersigned that the requested devices had already been disposed of, nor did Counsel for Petitioner raise any objections to the devices being examined.

On April 4, 2023, Counsel for Respondent asked Counsel for Petitioner to have Petitioner arrange her appointment with Mr. Watkins, and that she bring all electronic devices to him (not just her cellular phone) (Exhibit 16). On April 5, 2023, Mr. Watkins emailed both Counsel for Petitioner and Counsel for Respondent informing them that Mrs. Cronin had not provided the correct three devices, and instead provided an iPhone 14 and Lenovo Yoga 7 laptop computer (Exhibit 17). Christopher Watkins has testified to this in the Affidavit attached as Exhibit 18. On April 5, 2023, Counsel for Respondent stated to Mr. Watkins which devices should have been provided (Exhibit 18). Counsel for Petitioner continued to stall. On April 10, 2023, Counsel for Respondent followed up on the issue, seeking clarification from Counsel from Petitioner (Exhibit 19).

On April 10, 2023, over a month after the initial request for the devices, Counsel for Petitioner informed Counsel for Respondent, that Petitioner no longer had the three devices requested as Mrs. Cronin claims she "threw them out before the litigation began, when she bought new electronics" (Exhibit 20). If this is true, Petitioner agreed to turn over the devices in a Temporary Order and observed as her Counsel exchanged correspondence about the delivery of those devices to Christopher Watkins, all while knowing she had destroyed these pieces of evidence. If this is true, Petitioner observed her Husband hire an expert witness for the purpose of evaluating the devices, never bothering to mention they no longer existed. Instead, Petitioner

presented two newly-purchased devices for evaluation in an attempt to confuse counsel and Mr. Watkins. This was dishonest on the part of Petitioner and possibly her counsel.

This was Respondent's first knowledge that the Mac computer he had purchased for his family had allegedly been "thrown away". Counsel for Petitioner suggested Wife had thrown the Mac away prior to the date the action was filed, on February 3, 2023. At no time in the discussions since February 20, 2023, when the first Spoliation letter was sent, did Petitioner's counsel mention Wife had "thrown out" the devices. Wife certainly didn't clarify this important piece of evidence was missing when she entered into the Temporary Order by consent.

Also on April 10th, Counsel for Respondent sent several emails, including Respondent's criminal defense lawyer (the CDV was still pending) seeking detail (Exhibit 21) about the destruction of the devices. Counsel for the Respondent also provided Counsel for the Petitioner, via email, a copy of the call log from the iPhone 12 that had outgoing calls on February 21, 2023, to BestBuy the day after Wife was served with the anti-spoliation letter. The outgoing call logs proved Wife did not dispose of the iPhone 12 prior to the litigation. (Husband has served a Subpoena on BestBuy to learn if Wife traded in her iPhone 12 and the other devices for the replacement phone and laptop).

On April 10, 2023, Counsel for Petitioner informed Counsel for Respondent, via email, again, that Mrs. Cronin no longer had the devices and attempted to remedy the situation by suggesting that the alleged paramour's, Anthony Petrella, devices would have the information being sought (Exhibit 22).

On April 27, 2023 the criminal charges against Respondent were dismissed for insufficient evidence (Exhibit 23). On May 9, 2023, Petitioner requested an extension to respond to discovery. No extension was granted and a Motion to Compel discovery responses is pending. Petitioner

did, however, respond to Requests to Admit, invoking the 5th amendment when asked to admit adultery (Exhibit 24). Also on May 9th, Counsel for Respondent asked for an update regarding the devices. That same day, Counsel for Petitioner informed Counsel for Respondent, via email, that Mrs. Cronin no longer had the devices. No detail or explanation was provided (Exhibit 25).

Though on May 9, 2023, Co-counsel for Petitioner indicated that she was meeting with her client the next day and would "get some clarity" as to the requested information regarding the devices, no "clarity" was provided on May 10, 2023 or at any time (Exhibit 26). On May 12, 2023 and May 15, 2023, Counsel for Respondent once again inquired about Petitioner devices with no response.

On May 11, 2023, Respondent's Counsel noticed Petitioner's deposition to take place on July 5, 2023. On May 19, 2023, Respondent's Counsel noticed the deposition of Petitioner's paramour, Anthony Petrella, to take place on July 6, 2023. On May 25, 2023, Respondent received a Notice of Appearance from Richard G. Whiting, Esquire that Mr. Whiting had formally entered the case as Plaintiff's Counsel.

As of the execution of this Return, there is no information concerning what Petitioner did with the three devices (Apple MacBook Air; iPad; and iPhone). Now, Petitioner has raised serious accusations against Respondent concerning activity on the MacBook Air. Without the MacBook Air available, Husband is unable to prove that he had regular access to this device, that the discovery of the Imessages was not an interception of any sort, or any other pertinent facts necessary to defend the Motion to Suppress. Petitioner has made the Apple MacBook Air the most critical piece of evidence in this matter. Though Respondent has already retained an expert who is qualified to examine the device and support Respondent's assertions, it has been destroyed.

## III. ARGUMENT

### *A. Wife has not demonstrated she is entitled to relief under the Electronic Communications Privacy Act, Stored Communications Act, the Computer Fraud and Abuse Act or any other provision. Husband's Motion to Suppress should be denied.*

**The Electronic Communications Privacy Act of 1986, Title I (also known as "The Wiretap Act"):**

Under the Electronic Stored Communications Privacy Act of 1986, Title I also known as the Wiretap Act, codified at 18 U.S.C §§ 2511(1)(a), the inception of electronic communications must be intentional, as opposed to inadvertent. *Sanders v. Robert Bosch Corp.*, 38 F.3d 736 (4th Cir. 1994) (*quoting* 18 U.S.C.S §§ 2510-22). In *Sunbelt Rentals, Inc v. Victor*, 43 F. Supp. 3d 1026 (N.D. Cal. 2014), the Court found that the Plaintiff had failed to allege facts sufficient to establish that Defendant had "intentionally intercepted" any of Plaintiff's text messages. In *Sunbelt*, Plaintiff synched an iPhone to his Apple account, without first unlinking Defendant's iPhone. As such, Defendant did not intentionally capture or redirect Plaintiff's messages - the transmission of the text messages were solely Plaintiff's doing. Thus, the Court found that the requisite intentional conduct was lacking. This is exactly what has occurred in the present case.

Here, Petitioner has failed to allege facts sufficient enough to establish that Respondent "intentionally intercepted" any of her text messages, emails, or any other electronic communication synced to the devices. Like the Defendant in *Sunbelt*, Respondent did nothing to intentionally capture or redirect Petitioner's messages. Also like the facts in *Sunbelt*, Petitioner's text messages appeared on the Cronin family's shared laptop through Petitioner's own actions. The text messages were available on the MacBook as a result of Petitioner syncing her Apple devices to the MacBook (Affidavit of William Cronin, Page 2, Paragraph 3). Therefore, Respondent did not intentionally intercept Petitioner's text messages or any other electronic communications.

Furthermore, Petitioner has failed to show that Respondent "intercepted" her text messages or electronic communications. In order for a communication to be intercepted, "it must be acquired during transmission, not while it is in electronic storage." *Konop v. Hawaiian Airlines, Inc.*, 302 F.3d 868, 878 (9th Cir. 2002). In *Sunbelt*, the Court held that Plaintiff vaguely alleged that Defendant intercepted Plaintiff's electronic communications (his text messages) but provided no facts to support the assertion. In *Sunbelt*, the Court held that, if anything, the pleadings suggested that Defendant read Plaintiff's text messages after they were sent and received on the iPhone. The Court in *Sunbelt* held that Defendant reading the text messages after they were sent and received was insufficient to demonstrate intentional interception under the Wire Tap Act.

Petitioner has failed to show that Respondent "intercepted" her text messages or other electronic communications during the transmission. Respondent states that he inadvertently viewed the text messages while utilizing the family MacBook Air, after the messages had already been received and stored on the device. Further, per *Konop* and *Sunbelt*, relevance lies on whether or not the text messages were already electronically stored on the device that Respondent read the messages on, the MacBook. As in *Sunbelt*, it is clear that the transmission of the text messages had already occurred prior to the Respondent's reading of them. On January 1, 2023, Respondent's logged into the shared family laptop and saw text messages between Petitioner and her paramour that dated back to December of 2022 (Affidavit of William Cronin, Page 3, Paragraph 6; Affidavit of Patty Cronin Page 2, Paragraph 4). Further, Respondent's did not see any text messages as they were transmitted (Affidavit of William Cronin, Page 3, Paragraph 6). Therefore, the Court should find that Respondent did not violate the Wiretap Act because he did not "intercept" Petitioner's text messages or electronic communications intentionally, or during the transmission of the

communications. Thus, the Court should find that Respondent was not in violation of the Wiretap Act.

**Stored Communications Act (SCA, 18 U.S.C. Chapter 121 §§ 2701–2713):**

Under the Stored Communications Act (also known as the "SCA", codified at 18 U.S.C. Chapter 121 §§ 2701–2713), a person cannot "intentionally access[es] without authorization a facility through which an electronic communication service is provided … and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage." *Theofel v. Farey-Jones*, 359 F.3d 1066 (9th Cir. 2003) (*quoting* 18 U.S.C. §§ 2701(a)). In *Sunbelt*, the Court held that no facts were presented by the Plaintiff that Defendant accessed Plaintiff's text messages through Plaintiff's cellphone provider or Apple's network.

Here, Petitioner has failed to allege facts sufficient enough to establish that Respondent "intentionally access[ed]" any of her text messages, emails, or any other electronic communications. Furthermore, the Petitioner fails to allege facts that Respondent accessed information "without authorization." In order to access the MacBook, Respondent was required to provide a password to the device. There is no evidence of Respondent accessing the MacBook through any other means than entering the correct password. The Cronin family had a password that they used for many password-protected items in their home, such as the garage door, the T.V. remote, the alarm keypad, iPads, iPhones, and multiple laptops they owned over the years (Affidavit of William Cronin, Page 3, Paragraph 5). Both parties knew the password to the laptop, as did the parties' minor children (Affidavit of William Cronin Page 3, Paragraph 5; Affidavit of Patty Cronin Page 2, Paragraph 3). Although Petitioner alleges that she never provided Respondent with the password to the MacBook, this is a question of fact, as Respondent his Mother have both

testified this is untrue. Thus, the Court should find that Respondent was not in violation of the Stored Communications Act.

**Electronic Communications Privacy Act of 1986, 18 U.S.C.S. § 2510-22:**

Under the Electronic Communications Privacy Act of 1986, 18 U.S.C.S. §§ 2510-22 oral and electronic communications are protected while those communications are being made, in transit, and when they are stored on computers in which a person has a reasonable expectation of privacy. 18 U.S.C.S. § 2510-22. Petitioner has failed to meet her burden to establish a "reasonable expectation of privacy" for her MacBook device. Petitioner alleges that she had a reasonable expectation of privacy to the MacBook air, yet the laptop was purchased by the Respondent for the entire family to use. The MacBook device was not under the sole control and possession of Petitioner, in fact, even the parties' young children have used and accessed the MacBook for their own enjoyment (Affidavit of William Cronin, Pages 1-2, Paragraph 4; Affidavit of Patty Cronin, Page 2, Paragraph 3). It does not reasonable for Petitioner to suggest that a device that is allegedly used solely for Petitioner 's work, would be available to young, minor children.

Furthermore, Respondent regularly used and accessed the MacBook previously, with no objection from Petitioner. Petitioner and Respondent often used the laptop together to accomplish tasks for Petitioner's business such as payroll, website design, review of her company's finances, and to respond to emails of the company's employees (Affidavit of William Cronin, Page 2, Paragraph 4). Petitioner would leave Respondent alone with the laptop without any objection (Affidavit of William Cronin, Page 2, Paragraph 4; Affidavit of Patty Cronin, Page 2, Paragraph 2).

Petitioner, having synced her iPhone and MacBook device via Apple, knew or should have known that information sent or received on the iPhone would also be accessible on the MacBook. Therefore, Respondent was not in violation of the Electronic Communications Privacy Act.

***B. Husband is Entitled to a Finding of Spoliation and an Adverse Inference Against Wife Regarding the Inclination and Opportunity to Commit Adultery. Husband is also entitled to Sanctions.***

*Omnia praesumuntur contra spoliatorem,* all things are presumed against the destroyer. This has been the rule common law courts have followed since the seventeenth century. Rosenblit v. Zimmerman, 166 N.J. 391, 766 A.2d 749, 754 (N.J. 2001); see also Armory v. Delamirie, 93 Eng. Rep. 644 (K.B.), *1 Strange* 505 (1722); Hanson v. Lessee of Eustace, *43 U.S.* (2 How.) 653, 708-709 (1844). Petitioner has destroyed a critical piece of evidence in this matter.

In Federal Court, the power to impose spoliation sanctions arises from both federal common law and the Federal Rules of Civil Procedure. *See* Norton, Woodard and Cleveland, Fifty Shades of Sanctions: What Hath the Goldsmith's Apprentice Wrought?, 64 S.C.L.Rev. 459, 463 (Spring, 2013). According to federal common law, "[t]he duty to preserve material evidence arises not only during litigation, *but also extends to that period before the litigation when a party reasonably should know that the evidence may be relevant to anticipated litigation.*" Silvestri v. Gen. Motors Corp., 271 F.3d 583, 591 (4th Cir. 2001) *(citing* Kronisch v. United States, 150 F.3d 112, 116 (2d Cir. 1998)) (*Emphasis added*). The Federal Rules of Civil Procedure also allow for sanctions for disrupting discovery or disobeying a court order. *See* Fed. R. Civ. P. 37.

In the Fourth Circuit, "a party seeking sanctions for spoliation must prove the following elements:

> (1)[T]he party having control over the evidence had an obligation to preserve it when it was destroyed or altered; (2) the destruction or loss was accompanied by a "culpable state of mind;" and (3) the evidence that was destroyed or altered was "relevant" to the claims or defenses of the party that sought discovery of the

> spoliated evidence, to the extent that a reasonable factfinder could conclude that the lost evidence would have supported the claims or defenses of the party that sought it.

*Goodman v. Praxair Services, Inc.*, 632 F.Supp.2d 494, 509 (D.Md. 2009). The culpable state of mind requirement may be satisfied by bad faith/knowing destruction, gross negligence, and ordinary negligence. *Id.* at 518 *(citations omitted).* "The degree of fault impacts the severity of the sanction, and the Fourth Circuit has established guidelines to determine when the harshest of sanctions, such as summary judgment or default judgment, should be implemented. *Id.* "To justify the harshest sanction of dismissal, the district court must consider both the spoliator's conduct and the prejudice caused and be able to conclude either (1) that the spoliator's conduct was so egregious as to amount to a forfeiture of his claim, *or* (2) that the effect of the spoliator's conduct was so prejudicial that it substantially denied the Defendant the ability to defend the claim." *Id.* at 519. Sanctions may even be warranted where "the information may have been lost or destroyed inadvertently, 'for reasons unrelated to the litigation." *Victor Stanley, Inc. v. Creative Pipe, Inc.*, 269 F.R.D. 497, 529 (D.Md. 2010).

Ordinary negligence is the failure to identify, locate, and preserve evidence, where a reasonably prudent person acting under similar circumstances would have done so. *See In re Ethicon, Inc. Pelvic Repairs Sys, Prod. Liab. Litig.*, 299 F.R.D. 502, 519 (S.D.W. Va. 2014). Gross negligence consists of similar conduct to ordinary negligence, but to a greater degree. *Id.* Willfulness and bad faith consist of "intentional, purposeful, or deliberate conduct." *Id.* "The sanction imposed directly relates to the level of intent demonstrated by the party failing to preserve the evidence in question." *See Nucor Corp v. Bell*, 251 F.R.D. 191 (D.S.C. 2008).

In the Federal Courts, adverse inferences with a non-rebuttable presumption are not only used in jury trials, but in bench trials as well. *See Beaven v. U.S. Dept. of Justice*, 622 F.3d 540 (2010). In *Beaven,* a group of staff members at the Federal Bureau of Prisons ("BOP") Lexington,

Kentucky, Federal Medical Center alleged that Defendants, including the Bureau of Prisons and the Department of Justice, violated the Privacy Act. *See id.* at 544. The case rested upon a BOP employee negligently leaving a green file folder on a desk that contained a roster of all the employees' names, addresses, Social Security numbers, home telephone numbers and other personal information. An inmate was able to view the information in the folder. *Id.* at 544-45.

At some point after discovery of the possible violation of the Privacy Act, a Warden directed that the file folder be destroyed. *Id.* at 546. After a twenty-three-day bench trial, the district court imposed an adverse evidentiary inference for spoliation. *Id.* The Court of Appeals affirmed the ruling of the district court, stating "The district court did not abuse its discretion in imposing a non-rebuttable adverse inference after finding that the Defendant's destruction of the folder 'severely compromised' the Plaintiffs' case by depriving the Plaintiffs of the most relevant piece of evidence to prove their claims." *Id.* at 555. It further stated that the "spoliation sanction was 'necessary to further the remedial purpose of the inference'." *Id.* "When… a plaintiff is unable to prove an essential element of her case due to the negligent loss or destruction of evidence by an opposing party… it is proper for the trial court to create a rebuttable presumption that establishes the missing elements of the plaintiff's case that could only have been proved by the availability of the missing evidence." *Id.* Finally, the Court stated that "although an adverse inference is usually permissive for the factfinder, not mandatory, here the district court judge was the fact finder and therefore was free to accept to inference and discredit the Defendants' proffered testimony to the contrary. *Id.* Like the Court in *Beaven,* the Lexington County Family Court serves as the fact-finder.

In Family Court, the presentation of evidence located on party-owned devices is quite common. Technology has advanced rapidly, especially in the form of communication. Caselaw

has not kept up, and the Family Court bar is left with very little guidance. While it is true a Motion to Suppress, such as the one filed here, offers some ability to have the issues addressed, the effect of such a Motion is procedurally devastating at the trial level. All discovery tools are halted, upcoming hearings are delayed, and children's issues cannot be addressed even if there is an emergency. In the present case, by filing this Motion to Suppress Petitioner has been able to avoid her own deposition, responding to discovery in a timely fashion and a hearing scheduled on July 20, 2023.

"State appellate cases addressing spoliation in the family law context are at a premium." *See* Carole S. Gailor, *In-Depth Examination of the Law Regarding Spoliation in State and Federal Courts*. 23 J. Am. Acad. Matrim. Law. 71, 95 (2010). "Until state case law is significantly more developed, the law regarding spoliation as it has matured in the federal courts will be the source of guidance for state court decisions on this issue." *Id.* at 96. "The state courts in family law cases will have to resolve many of these questions on a case-by-case basis to develop a body of law that provides more guidance to the practitioner." *Id.*

There are, however, a few family court cases in other states which could serve as guideposts. Minnesota, for example, will impose an adverse inference to parties who fail to make full and accurate disclosures regarding marital property. *See Solon v. Solon*, 255 N.W.2d 395, 396 (Minn. 1977). In Delaware, a court issued an adverse inference when a husband destroyed documents that could have supported the Petitioner's claims regarding certain assets being non-marital. *See Danberger v. Danberger*, 95 A.3d 53 (Del. Fam. Ct. 2013).

While South Carolina cases addressing spoliation are few and far between, our Courts have traditionally recognized that "a party is entitled to favorable presumptions about the contents of missing evidence when an opponent is responsible for the destruction of evidence that might

otherwise be expected to have been relevant." Kevin Eberle, *Spoliation in South Carolina,* S.C. Law., Sept. 2007. "[W]hen evidence is lost or destroyed by a party, an inference may be drawn by the jury that the evidence which was lost or destroyed by that party would have been adverse to that party." *Kershaw County Bd. Of Education v. U.S. Gypsum Co.,* 302 S.C. 390, 394-95, 396 S.E.2d 369, 372 (1990) *(citing Welsh v. Gibbons,* 211 S.C. 516, 46 S.E.2d 147 (1948)). Failure to allow a factfinder to apply an adverse inference to evidence not preserved for trial is prejudicial and is considered reversible error. *See Stokes v. Spartanburg Reg'l Med. Center*, 368 S.C. 515, 629 S.E.2d 675 (Ct. App. 2006).

In *Kershaw*, the Court acknowledged that an adverse inference is but one of a range of options available, to include an outright dismissal of claims and striking out pleadings. *Kershaw County Br. Of Education v. U.S. Gypsum Co.*, 302 S.C. 390, 395 (1990). The decision of what kind and whether to impose discovery sanctions is left to the sound discretion of the Circuit Court. *See Fields v. Regional Med. Ctr. Orangeburg,* 354 S.C. 445, 581 S.E.2d 489 (Ct. App. 2003).

One of the most severe sanctions the Court can impose is to strike a party's entire pleading and declare them in default. *See QZO, Inc. v. Moyer*, 358 S.C. 246, 594 S.E.2d 541 (Ct. App. 2004). In *Moyer*, the Respondent initially filed suit against the Appellant based on a belief that Appellant intended to open a competing business in violation of South Carolina Trade Secrets Act. *See id.* at 358 S.C. 251. Respondent had reason to believe a computer belonging to the company was in possession of Appellant. In its complaint, Respondent requested a TRO enjoining Appellant from using any proprietary information and ordering Appellant to surrender the computer either to Respondent or a neutral third party.

The Court granted the TRO on the same day the original complaint was filed after determining the computer was in danger of being altered or destroyed before a hearing could be

held and that Respondent would suffer irreparable harm if destruction occurred. *See id.* The TRO was served upon Appellant the same day it was issued. However, Appellant did not turn the computer over until seven days later. *See id.* Upon receiving the computer, Respondent turned it over to an expert for inspection. However, the examination revealed that the hard drive had been reformatted the day before, effectively erasing any information it may have contained. *See id.* As a result, the Court granted Respondent's motion for sanctions and struck Appellant's pleadings and finding him in default.

The Court of Appeals upheld the trial court's decision to sanction Appellant, stating there was ample evidence to support a finding he had willfully violated the TRO. *Moyer*, 358 S.C. 246, 257, 549 S.E.2d 541, 547 (Ct. App. 2004). "It is undisputed that Appellant did not turn the computer over to [Respondent] until seven days after the issuance of the TRO. When the computer was eventually turned over, it became clear that the hard drive had been formatted the day before, effectively erasing any information contained therein." *Id.* In addressing the severity of the sanctions, the Court found the sanctions were appropriate in light of Appellant's willful destruction of evidence. *See id.* The trial court specifically noted that "Appellant's reasons for not complying with the TRO were 'a great mysterious sequence of coincidences that strain credulity'." *Id.* Here, Petitioner did not provide Respondent's expert with a reformatted MacBook Air hard drive, she simply attempted to provide a completely different device. Petitioner cannot claim these are "coincidences". Petitioner's own lawyer has admitted she "threw away" devices. Worse, Petitioner permitted Court Orders to be entered, experts to be hired, discovery to be conducted, and attorney's fees to be incurred to address this issue, all while knowing she had destroyed the evidence. Petitioner's Motion to Suppress is Petitioner's last gasp at deflecting from her own poor choices. She should not be rewarded for her subterfuge.

Both South Carolina Courts and Federal Courts consider intent and relevancy when considering appropriate sanctions. *See Pringle v. SLR, Inc. of Summerton*, 382 S.C. 397, 675 S.E.2d 783 (Ct. App. 2009); *QZO, Inc. v. Moyer*, 358 S.C. 246, 594 S.E.2d 531 (Ct. App. 2004); *Goodman v. Praxair Services, Inc.*, 632 F.Supp.2d 494, 509 (D.Md. 2009).

South Carolina Courts have not articulated a list of elements akin to their federal cousins. However, in the case at bar, Petitioner's conduct regarding the destruction of evidence has been so egregious that it warrants sanctions under both the South Carolina and federal rubrics. Petitioner knew she had a duty to preserve evidence. Petitioner received her first notice informing her of her duty to preserve evidence on February 20, 2023. On February 21, 2023, Petitioner received a supplement to the spoliation notice, listing three (3) specific devices that were to be preserved. Petitioner's knowledge of her duty to preserve the evidence in question is beyond doubt.

Petitioner 's state of mind is also relevant. Considering the totality of the circumstances surrounding the disposing of the three devices (Apple MacBook Air; iPad; and iPhone), Respondent believes that Petitioner willingly and intentionally disposed of the devices in bad faith to prevent Respondent from discovering the contents within. Respondent also made clear that he viewed the contents of the devices relevant to Petitioner's claim that he was physically violent with her. Had Respondent's charges not been dismissed for insufficient evidence, Respondent believed the devices could have held information such as communications with others to prove that the CDV was of Petitioner's own creation and an effort deflect from her own poor behavior.

Respondent contends that based upon the actions of Petitioner, it is appropriate for this Court (or the Trial Court if the Court of Appeals deems the Trial Court to be a more appropriate forum) to rule that there is an adverse inference that Petitioner had both the opportunity and inclination to engage in an adulterous affair, as well as an adverse inference that Petitioner 's claim

against Respondent for domestic violence was fabricated. As there is no jury in a Family Court setting, this inference should also include striking Petitioner's Complaint in its entirety and awarding Respondent's attorney's fees and costs. While this sanction may seem harsh at the outset, it is the only appropriate remedy to sanction egregious conduct and to level the evidentiary paying field. *See Nucor Corp v. Bell,* 251 F.R.D. 191, 201 (D.S.C. 2008) *(stating sanctions as harsh a default judgment may be appropriate in instances where sanctions are needed to punish conduct and to level the evidentiary playing field).*

CONCLUSION

For these reasons and such further reasons as may appear at any hearing to be set on the matter, Respondent hereby moves for this honorable court to dismiss Petitioner's Motion to Suppress Recorded Communications or, in the alternative, Respondent would request to move for a hearing to held by this Court as required by South Carolina Code Annotated Section 17-30-110 and United States Code Annotated Section 2511, and an appropriate ruling to be made as to the communications. Respondent would also request any other action, rulings and other relief as may be appropriate in this matter, including but not limited to, a finding of Spoliation, issuing appropriate sanctions, an award of attorney's fees and costs, and expenses associated with this action or remanding the matter to the Trial Court so that a hearing may be held to address Wife's spoliation of evidence.

Counsel for Respondent affirms to this Court that she has, by copy of this Motion, notified opposing counsel, the Guardian *ad Litem*, and the Court below of this reply Motion.

*Signature page to follow*

KINARD & JONES, LLC

ASHBY LAWTON JONES
EMILY T. LOONEY
808 South Lake Drive
Lexington, SC 29072
(803) 359-1003
ATTORNEYS FOR RESPONDENT

Lexington, South Carolina
6 · 23, 2023.

RECEIVED
Jun 23 2023
SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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APPEAL FROM LEXINGTON COUNTY

Family Court

---

Family Court Case No. 2023-DR-32-00229

Appellate Case No. 2023-000959

---

Megan Cronin Petitioner,

v.

William Cronin, Respondent.

---

AFFIDAVIT OF RESPONDENT, WILLIAM CRONIN, IN SUPPORT OF RESPONDENT'S RETURN TO MOTION TO SUPPRESS ELECTRONIC COMMUNICATIONS

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PERSONALLY APPEARED BEFORE ME, WILLIAM CRONIN, WHO TESTIFIED TO THE FOLLOWING UNDER PENALTY OF PERJURY:

1. My name is William Cronin. Megan and I were married on July 23, 2011. I work as a sales representative with Hunter Engineering Company. Megan is a speech language pathologist and owns her own business, Inspire Speech and Feeding. We have two children together A.C. (2014) and L.C. (2017), who are my whole world.

2. I purchased the Macbook Air laptop that is at the center of this Court of Appeals Motion in November of 2021. I used my American Express to purchase the laptop. I previously

stated in the affidavit for the Temporary Hearing of this case that I believed that the laptop was purchased in December of 2022, but this was a typo. I knew it was around Christmas, but it was 2021, not 2022. I have now located the receipt and see that our MacBook Air was purchased on November 25, 2021. I knew the password to the computer, because it was the password that I have long used for many devices. I also configured the computer, which means I set up the computer when we first got it. The laptop was a shared family laptop, which I had access to, and Megan never raised any objection to me, or our children, using it.

3. Megan synched her IMessage from her cellphone to the laptop. This means that Megan's text messages could also be viewed on the computer. I do not know when she synched the laptop to her IMessages. However, Megan synched her IMessages to the laptop knowing that our entire family regularly used the laptop, including our minor children. This was her choice. She also never objected to my using the laptop despite her text messages being synched to the computer.

4. Megan and I would often use the laptop together. I assisted Megan with the financial aspects of her business. Megan and I sat together and worked on payroll for her business on the laptop. Megan did not like to do payroll without me, as she wanted to make sure payroll was done properly. We would look at the business' bank accounts together on the laptop. Megan hated responding to emails with her staff when there were disputes and would often ask me to type the emails for her. I assisted Megan with the business' website using the laptop. Megan would leave me unattended with the computer and would get up and walk away while we were doing the tasks. I would often work from the computer alone, and Megan never raised any objection. The laptop was a part of lives, like any other piece of furniture that we own. It was something that we all used.

Our daughter used the laptop to watch movies on Netflix and DisneyPlus. Our son used the laptop as well, but our daughter is more tech savvy and preferred the laptop.

5. I am not a tech savvy person, which is why Megan and I (formerly) used the same password in many aspects of our lives. The password for the MacBook air was the same password for our garage door, T.V. Remote, alarm keypad for the marital home, both of our iPhones (mine and Megan's), both of the iPads we owned, and multiple laptops over the years since we have been married. The only deviation from using that password was when extra digits were required. I believe I came up with the password over a decade ago, but it's meaning was special to me and Megan, so we used it for everything. My mother also knew what the password was, because it was the code that we used for so many aspects of our lives. Both of our children were familiar with the code and knew it by heart.

6. I discovered Megan's affair on January 1, 2023. That morning, Megan and I had discussed going to dinner. Later in the day, Megan texted if we were getting dinner. I wanted to celebrate the New Year, but did not know what was open, so I went to the laptop to search for what was open on New Years Day. Upon opening the computer, the first thing I saw was the IMessage window, which popped up automatically when I typed in our shared password. On the IMessage window were messages between Megan and an unknown number. These messages went back throughout the month of December. The discovery of the messages on our family laptop was completely inadvertent. I have never intentionally sought out Megan's text messages from any person. Further, the messages appeared to be from the month of December 2022 and I did not see any messages as they were transmitted.

7. The affidavit that Megan submitted to this Court stated that I have downloaded and verified communications between her and her attorney. This is not just made up, but also

impossible. I did not know Megan had an attorney until after I hired my attorneys, and they informed me that Megan had filed an action against me. I do not know when Megan hired her attorney, but I believe that it was the week of January 23, 2023. I believe this because pursuant to a subpoena response received by my attorneys from Megan's father. Megan and her father were texting about setting up a consultations attorneys on January 23, 2023 and January 24, 2023. I left for a business trip on January 24, 2023 and did not return until February 1, 2023. On January 25, 2023, Megan and her father seemed to text about what kind of questions she should ask an attorney. Megan texted me on January 26th, 2023 and indicated that she was separating from me. Megan left the marital home on February 1, 2023, the morning that I returned from the trip. I believe she hired her attorney while I was away on the trip. She likely took the MacBook Air with her on February 1, 2023, when she left the marital home. Unfortunately, I cannot be sure of this, as Megan and her attorneys have muddled the timeline of when she got rid of the devices. It would have been impossible for me to monitor any of Megan's communications with any attorney. Megan's affidavit also states that I downloaded and viewed communications between her and her patients in violation of HIPAA. I have never done this, and do not know how one would go about this.

8. I believe the Motion to Suppress is just another example of Megan deflecting from her own poor choices and behavior. Megan and her dad trumped up a domestic violence charge against me, which has now been dropped due to lack of evidence. Megan disposed of all of her devices at some point, despite my attorney sending her a spoliation letter, and putting her on notice of what devices we would need to examine. I am seeking an Order from this Court that denies Megan's Motion to Suppress Electronic Communications.

*Signature page to follow*

William L. Cronin

William Cronin

Sworn to before me this 23
day of June 2023.

Betty Perdue

Notary Public for South Carolina

Betty Perdue

Printed Name

12.6.28

Commission Expiration Date

RECEIVED
Jun 23 2023
SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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APPEAL FROM LEXINGTON COUNTY

Family Court

---

Family Court Case No. 2023-DR-32-00229

Appellate Case No. 2023-000959

---

Megan Cronin Petitioner,

v.

William Cronin, Respondent.

---

AFFIDAVIT OF PATTY CRONIN IN SUPPORT OF RESPONDENT'S RETURN TO MOTION TO SUPPRESS ELECTRONIC COMMUNICATIONS

---

PERSONALLY APPEARED BEFORE ME, PATTY CRONIN, WHO TESTIFIED TO THE FOLLOWING UNDER PENALTY OF PERJURY:

1. My name is Patty Cronin. I am the Respondent, William Cronin's, mother. I am also the grandmother to his beautiful children, A.C. (2014) and L.C. (2017). I am close with my son and my grandchildren and spend as much time as I can with them. Before this litigation began, I would often go over to the marital home and spend time with William, Megan, and the children as a family.

2. I know that the family got the MacBook Air laptop in November of 2021. I understood this to be a family computer, as it was a computer that I witnessed the whole family use. The laptop was always out on the table or kitchen counter of the home. It was often open and left alone. On at least two occasions, I saw Megan and William use the laptop together while doing work for Megan's business, Inspire Speech and Feeding. On one of the occasions, I saw her walk away from what they were working on, and instruct William, "you do it." She was gone for some time and had no issues leaving William alone with the laptop.

3. I have always understood the MacBook to be a family device. I witnessed William and Megan's daughter, A.C., watch a Disney movie on the laptop with my other granddaughter (William's niece). Megan was at the house, but she was not standing there supervising. I believe that my granddaughter could access the computer whenever she wanted to. I know that my granddaughter knew the password to this laptop, as I witnessed her put the password in to open it.

4. William told me about the messages between Megan and some stranger the day he found them. William called, wanted to meet, and we met at Starbucks. William told me immediately that he thought Megan was cheating. I had long thought that Megan could be cheating on him. Her behavior had been different over the last year and I felt like something was off. After I told William that day that I had suspicions of Megan cheating on him, William revealed to me what was going on. William told me that he and Megan been talking about going to dinner and William went over to the laptop to search what restaurants were open. William logged in using their shared family password and the texts between Megan and that unknown number popped up. While he did not tell me there at Starbucks. William later told me in the next day or two that the messages went back for at least a month throughout the month of December.

*Signature page to follow*

Patty Cronin

Sworn to before me this 22nd
day of June 2023.

Notary Public for South Carolina

Emily Looney

Printed Name

10/06/32

Commission Expiration Date

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Jun 23 2023
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM LEXINGTON COUNTY

Family Court

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Family Court Case No. 2023-DR-32-00229

Appellate Case No. 2023-000959

---

Megan Cronin Petitioner,

v.

William Cronin, Respondent.

---

**ATTORNEY FEE AFFIDAVIT**

PERSONALLY APPEARED BEFORE ME, ASHBY LAWTON JONES, WHO TESTIFIED TO THE FOLLOWING:

1. I am an attorney and represent the Defendant/Respondent, William Cronin. I have practiced law since 1998. My current practice is approximately 95% family law. I appear in family court several times a week and enjoy a large caseload of family court litigants. I am a Fellow with the American Academy of Matrimonial Lawyers. I am Board Certified by the National Board of Trial Advocates in the area of Family Law.

2. I am the current Family Law Section chair of the South Carolina Association for Justice. I hold an AV Preeminent peer-review rating from Martindale-Hubbell. I have

contributed to the SCAJ journal, *The Bulletin*, on multiple occasions and the national magazine, *Family Lawyer.* I speak regularly at continuing legal education seminars, having spoken multiple times a year at Hot Tips, Bench/Bar, Essentials and the SCAJ Convention. Until Bridge the Gap was no longer offered to recent law graduates, I spoke alongside The Honorable Dorothy Jones at Bridge the Gap for many years in the area of Family Law and at Judge Jones' invitation.

3. I was named one of the Legal Elite of the Midlands by Columbia Business Monthly magazines in 2015, 2016, 2017, 2018, 2020, 2021 and 2022. I am a 2017, 2018, 2019, 2020, 2021 and 2022 Super Lawyers Selectee. I was named one of the Best Lawyers in America in 2021 and 2022. In April of 2022 I was presented with the Compleat Lawyer Award by the University of South Carolina School of Law.

4. Also, this year, I was invited by the South Carolina Family Court judiciary to join the newly-founded Inn of Family Court for South Carolina as a Master of Family Law. This year, I was named one of the top 25 Lawyers in South Carolina by Super Lawyers Magazine.

5. My hourly rate in this matter is $450.00. My associate, Emily T. Looney, Esquire, billed at her hourly rate of $175.00 for her time spent on this case. My associate, Alyssa R. Iglesias, Esquire billed at her hourly rate of $250.00 for her time spent on this case. My paralegals and law clerks billed at their hourly rate of $175.00 for their time spent on this case. My legal assistants billed at their hourly rate of $50.00. I believe these rates are customary for attorneys in my community with my level of expertise and reputation.

6. I incorporate Rule 407 of the South Carolina Appellate Rules, Rule 1.5 of the Rules of Professional Conduct, and further call the attention of the Court to the holdings in *Nienow v. Nienow, 268 S.C. 161, 232 S.E.2d 504 (1977), Atkinson v. Atkinson, 279 S.C. 454, 309 S.E.2d 14 (S.C.App. 1983); EDM v. TAM, 307 S.C. 471, 415 S.E.2nd 812 (1992); Sherman v.*

*Sherman, 307 S.C. 280, 414 S.E.2d 908 (S.C. App. 1992);* and *Glasscock v. Glasscock, 304 S.C. 158, 403 S.E.2d 313 (1991),* concerning the factors and criteria which should be considered in setting of attorney fees. I rely upon the discretion of this Court in determination of the amount of fees based, among other things, upon the Court's file, the Court's knowledge of the litigation between these parties, which reflects the nature, extent and difficulty of the services rendered, the time necessarily devoted to the case, the beneficial results accomplished, the fact that there is no contingency compensation in domestic relations cases, the professional standing of counsel, and fees customarily charged in this area for similar legal services.

7. The undersigned is informed and believes the Family Court is authorized by statute to order the payment of suit money, including attorney fees, to either party in a divorce action South Carolina Code of Laws Ann. Section 20-3-120, 130 (1985); *Miller v. Miller,* 280 S.C. 314, 313 S.E.2$^{d}$ 288 (1984).

8. I estimate by the conclusion of this Motion I will have spent a total of 31 hours to defend this Motion. The attorney's fees and costs incurred in connection with this Motion are **$9,077.50.**

| | | | |
|---|---|---|---|
| 06/09/2023 | 0.3 | Review letter from Attorney Whiting, respond to same | ALJ |
| 06/09/2023 | 0.5 | Review and revise motion to compel compliance, pull exhibits, draft coversheet | ETL |
| 06/09/2023 | 0.5 | Draft letter to COC and Draft Letter and COS to both counsel with unfiled Motion | BKC |
| 06/12/2023 | 0.75 | Assist in Draft letters to OC and COS serving filed copy and unfiled copy of Return and Cross to OC | BKC |
| 06/12/2023 | 5 | Review and revise Return to Motion and Cross Motion for Temporary relief, For a Finding of Spoliation, and Motion Compel, revise and revise memoranda in support | ETL |
| 06/12/2023 | 0.1 | Email to opposing counsel regarding request for Zoom | ALJ |
| 06/12/2023 | 0.2 | Email to OC and to client serving Filed Return | ETL |
| 06/12/2023 | 0.3 | Review and revise Motion for Spoliation and brief | ALJ |
| 06/12/2023 | 0.25 | Review email from opposing counsel, respond to same | ALJ |

| | | | |
|---|---|---|---|
| 06/12/2023 | 0.25 | Review and revise Motion | ALJ |
| 06/14/2023 | 0.1 | Call with Laurens County Clerk of Court | ETL |
| 06/15/2023 | 0.1 | Email to opposing counsel regarding content of Abrams Affidavit | ALJ |
| 06/15/2023 | 0.1 | Review of emails in the case | ETL |
| 06/16/2023 | 1 | Review Motion to Suppress, begin research for return | ETL |
| 06/16/2023 | 0.75 | Review Motion to Suppress, email exchange with opposing counsel, telephone conference with Attorney Dumas | ALJ |
| 06/19/2023 | 0.1 | Review email from client, respond to same | ALJ |
| 06/19/2023 | 0.25 | Review disposition sheet, letter to counsel | ALJ |
| 06/20/2023 | 0.2 | Review email from opposing counsel, forward to client | ALJ |
| 06/20/2023 | 0.2 | Email to Southern Reporting canceling Deposition | BKC |
| 06/20/2023 | 0.4 | Scan and saved to server letter to OC and GAL, email OC, GAL, and client a copy of same | WM |
| 06/21/2023 | 4 | Begin to prepare Return to Motion to Suppress | ALJ |
| 06/21/2023 | 2 | Pull and format exhibits for Return | ETL |
| 06/21/2023 | 0.1 | Call with client | ETL |
| 06/21/2023 | 0.3 | Call regarding client's health | ETL |
| 06/21/2023 | 0.25 | Legal research re Court of Appeals time and service | ARI |
| 06/22/2023 | 2 | Continue to prepare Return to Motion to Suppress, review Affidavits | ALJ |
| 06/22/2023 | 5 | Assist with affidavit preparation, multiple calls with client, review and revise Return, research case law for return, calls with Court of Appeals | ETL |
| 06/23/2023 | 1.75 | Draft Attorney Fee Affidavit; assist in preparing exhibits | BKC |
| 06/23/2023 | 1.25 | Continue to assist with preparation of Return to Motion to Suppress | ALJ |
| 06/23/2023 | 3 | Revisions to Return | BKC |

9.85 x $450.00 = $4,432.50
0.25 x $250.00 = $62.50
17.3 x $175.00 = $3,027.50
3.6 x $175.00 = $1,505.00
Plus, fees and costs $50.00 = $9,077.50

Filing Fees: $50.00

9. On behalf of the Defendant/Respondent I request that this Court require Plaintiff/Petitioner to remit payment for the fees and costs associated with bringing this action in the amount of **$9,077.50.**

(*Signature Page to Follow*)

KINARD AND JONES LLC

ASHBY LAWTON JONES
808 South Lake Drive
Lexington, SC 29072
P: 803-359-1003
ATTORNEY FOR
DEFENDANT/RESPONDENT

Sworn to before me this 23rd
day of June 2023.

Notary Public for South Carolina

Emily Laney
Printed Name

10/06/2032
Commission Expiration Date

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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APPEAL FROM LEXINGTON COUNTY

Family Court

---

Family Court Case No. 2023-DR-32-00229

Appellate Case No. 2023-000959

---

Megan Cronin Petitioner,

v.

William Cronin, Respondent.

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**PROOF OF SERVICE**

I, Ashby Lawton Jones, Esquire, Partner of Kinard and Jones LLC certify that I have served the foregoing Entry of Appearance and the Respondent's Return to Appellant's Motion to Suppress Recorded Communications with attachments via U.S. First Class Mail, postage paid on June 23, 2023 and by email, to the following:

The Honorable Huntley S. Crouch
hcrouchsc@sccourts.org
205 East Main Street
Lexington, SC 29072

Richard G. Whiting, Esquire
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Nettie ElizaBeth D. Branham, Esquire
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West Columbia, SC 29171

Ashby Lawton Jones
June 23, 2023

KINARD & JONES LLC
Attorneys at Law

808 S. Lake Drive • Lexington, SC 29072 • 803.359.1003
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MURRY KINARD
†*ASHBY LAWTON JONES
KATHARINE S. FISHER
REBEKAH L. MANDEVILLE
ALYSSA R. IGLESIAS
EMILY T. LOONEY

VIA EMAIL ONLY
June 23, 2023

The Honorable Jenny Abbott Kitchings
ctappfilings@sccourts.org
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211



RE: Megan Cronin v. William Cronin
Appellate Case No.: 2023-000959

Dear Ms. Kitchings:

Enclosed for e-filing please find the Return to Petitioner's Motion to Suppress Recorded Communications and Respondent's Motion to Dismiss and For a Finding of Spoliation and Sanctions, in regard to the above referenced case. By copy of this correspondence, I am also serving copies of the same on Petitioner's Family Court attorneys, the Family Court Guardian *ad Litem*, and the Chief Administrative Judge for the Eleventh Judicial Family Court Circuit.

Under separate cover I will be mailing a check for the filing fee for this Motion. If you have any questions or concerns, please do not hesitate to contact me.

With kind regards, I am

Kinard and Jones, LLC

Ashby Lawton Jones
/bkc
Enclosure

cc: Andrew B. Farley, Esquire andrew@afarleylaw.com
Sabine S. Boulware, Esquire attorneyguardian@gmail.com
Richard G. Whiting, Esquire dick.whiting@whitinglawsc.com
Nettie ElizaBeth D. Branham, Esquire beth@bethbranhamlaw.com
The Honorable Huntley S. Crouch (*via email*)
William Cronin (*via email*)