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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY
WALTON J. MCLEOD, CIRCUIT COURT JUDGE

Appellate Case No. 2022-001060

Emily P. Smith and Emily P. Smith and Associates, LLC,Appellant,

v.

Robert T. Smith; Southern Collection, LLC;
Southern Collection Brokerage, LLC;
Terrance Smith and Associates, LLC; Robert B. Smith,
And Sherry C. Smith, Respondents.

**RECORD ON APPEAL
VOLUME II OF II**

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Certificate of Counsel

State of South Carolina)
) Court of Common Pleas
County of Lexington)

2022-CP-32-01419

Emily P. Smith and Emily P.)
Smith and Associates, LLC,)

)
Plaintiffs)

vs.)

Transcript of Record

)
Robert T. Smith; Southern)
Collection, LLC; Southern)
Collection Brokerage, LLC;)
Terrance Smith and Associates,)
LLC; Robert B. Smith;and)
Sherry C. Smith)

)
Defendants)

June 3, 2022
Lexington, South Carolina

B E F O R E:

Honorable Walton J. McLeod, Judge

A P P E A R A N C E S:

Desa Ballard, Esq.
Haley Hubbard, Esq.
Attorneys for the Plaintiffs

Mark B. Goddard, Esq.
Ashby Jones, Esq.
Attorneys for the Defendants

Joy E. Holston
Official Court Reporter

1 THE COURT: We are here today to hear the Defense
2 motions and the Plaintiffs responses. Ms. Jones, you are
3 going to go first?

4 MS. JONES: Yes, sir.

5 THE COURT: If you wouldn't mind, just give me a
6 little bit, I am somewhat familiar with the case but are
7 there any new events that have occurred in the last few
8 weeks?

9 MS. JONES: Not in this case, Your Honor, lots in the
10 Family Court case. But in this case, no sir.

11 THE COURT: All right. Well, I will be happy to hear
12 from you.

13 MS. JONES: Thank you, may it please the Court?

14 THE COURT: Yes, ma'am.

15 MS. JONES: Your Honor, I have gotten a little bogged
16 down and I am sure the Court has too in all of these
17 briefs. And I think it is important for us to pull back
18 and maybe ask ourselves three questions. What do we have
19 here, where is this headed and what does Ms. Smith really
20 want. If we start with just the basic, what do we have
21 here. What we have are husband and wife who are co-owners
22 of an LLC that is a real estate company. It is not, it is
23 not a complex asset. These folks are real estate agents,
24 Mr. Smith is the broker in charge of the company. They
25 determined that their marriage was over and almost a year

1 ago Ms. Smith filed a complaint in Family Court for
2 divorce. And in that complaint she alleged that Family
3 Court was the proper jurisdiction for the divorce matter.
4 This is a significant representation that she made and we
5 answered and counterclaimed and also took the position
6 that Lexington Family County, Family Court is aware of
7 where we need to be. It is significant, Your Honor,
8 because of our Family Law statute which I am sure the
9 Court has read, cited in our brief. But it helps me
10 sometimes to just read the statute on its own. And the
11 statute is section 20-3-630 and it defines marital
12 property. And marital property in Family Court has a very
13 broad definition. It is any property acquired by the
14 parties during the marriage regardless of how it is
15 legally titled, regardless of how it is legally titled.
16 And that is significant, Your Honor, because what these
17 two did when they entered into a Family Court case and
18 what we have here is typical marital assets like homes and
19 retirement accounts. But they have squarely placed this
20 entity, Southern Collection, in the jurisdiction of the
21 Family Court. And that is the very normal, that is very
22 normal.

23 THE COURT: If I understand, two people become
24 married and then they start an LLC or an S Corporation, or
25 a Limited Liability Partnership, whatever; you are saying

1 that is a normal occurrence in Family Court?

2 MS. JONES: It is and it is presumed to be a marital
3 asset. That is the floor. In fact, if either party
4 wanted to take the position that this LLC was not a
5 marital asset there would be a burden of proof that they
6 would have to establish at the final merits hearing of
7 their divorce case. And I don't believe that either of
8 these two are taking that position because to divest this
9 company from a marital asset label, these two would have
10 to indicate that it was inherited, that it was gifted from
11 somebody or that it was owned by one of them before they
12 got married. None of that is true. So this asset is
13 absolutely a marital asset and within the exclusive
14 jurisdiction of Family Court. It absolutely is. We are
15 about a year into the case and it has proceeded normally.
16 And what I mean by that, Judge, is we have a typical
17 restraining order which tells husband and wife, you may
18 not divest of marital assets; you may not harm marital
19 assets and an example of that would be allowing the
20 marital home to fall in disarray. Another example in this
21 case would be destroying the company, doing things to harm
22 the company. Things like, one of them took a billboard
23 out and said, Southern Collections is a terrible real
24 estate company. Don't ever go there. That would be
25 destroying a marital asset. They have been living under

1 this restraining order for some time and you have in your
2 materials, from me we have a pending contempt action
3 against wife because we believe she has violated that
4 provision through her actions.

5 THE COURT: Is that the motion that is scheduled for
6 August 23rd?

7 MS. JONES: No sir, it is called a petition for
8 contempt which is different than a motion and the petition
9 for the contempt, we asked the Family Court to receive
10 information about wife's activities within the business
11 and punish her for trying to harm the business.

12 THE COURT: Okay. I say that because I thought I
13 read somewhere that a hearing in Family Court is scheduled
14 in August.

15 MS. JONES: It is, Your Honor, and that is the next
16 question, where are we headed. Well, August 23rd, we have
17 several hearings scheduled. And the first that I believe
18 is going to be heard that day is our motion, husband has
19 filed a motion to ask the Court to issue more specific
20 restraining orders as to wife. In other words, we have
21 asked the Court to order her not to sabotage the company.
22 We have asked the Court to make her return all of the
23 furniture she took out of the lobby. We have asked her to
24 stop trying to get closing attorneys to divert, commission
25 wires to other places other than the brokerage which is a

1 violation of the regulations at --

2 THE COURT: Just so I am, just so I can understand
3 the, what you are essentially saying is, they have agents
4 who work for them and when they make sales, a
5 commissioning theory goes to the LLC.

6 MS. JONES: Yes, sir.

7 THE COURT: And so you are, we are not getting into
8 this today but what, you are talking about if there are
9 allegations that someone were diverting those commissions
10 away from the LLC?

11 MS. JONES: Yes, sir.

12 THE COURT: Okay.

13 MS. JONES: So our motion on the 23rd would be to
14 address our allegations that some of that has been going
15 on. There are other things that we have listed in this
16 August 23rd motion that we are asking the Court to do.
17 One of them is to name Southern Collection, LLC as a party
18 Defendant. I am not sure we need to do that anymore. And
19 here is why. Ms. Smith has essentially divested herself
20 as a member of the LLC. So while she is still and Mark
21 can talk more about that, Mr. Goddard, in a moment. But
22 while she is still a co-owner of this company, I don't
23 know that she has any authority to manage it anymore. And
24 my goal in having the entity named was to make very clear
25 to Ms. Smith what would be permissible within her role as

1 a member of the LLC. But on the same day, Your Honor, Ms.
2 Smith has a motion. And in her motion she is asking the
3 Court to give her permission to supplement the original
4 complaint she filed nearly a year ago --

5 THE COURT: To be clear, you mean the Family Court?

6 MS. JONES: In the Family Court, asking for
7 permission to revise that complaint and in that complaint
8 change her mind which is now to take the position that the
9 business entity should not be within the jurisdiction of
10 the Family Court. And she is asking permission to amend
11 her complaint to ask, to ask the Family Court, can we take
12 this marital asset out of the Family Court so that we can
13 proceed in another venue. That is what she is asking. We
14 are like, and I mentioned this in our virtual hearing,
15 Judge; we are not just cart before the horse here today.
16 We are like, haven't cut the trees down to make the cart,
17 to build the cart to pull behind the horse. We are so far
18 removed from this lawsuit being filed because Ms. Smith
19 hasn't even been given permission to ask to do that. And
20 I don't believe she will be permitted to do it. I don't,
21 we are way into this case, we have forensic accountants on
22 both sides; we are trying to schedule a mediation. And
23 the law is clear. And we prepared this morning, and I
24 don't know if the Court has seen it yet because it just
25 got filed this morning. If I may approach?

1 THE COURT: Yes, ma'am.

2 MS. JONES: This is our return to the, to Ms. Smith's
3 brief. And it describes, Your Honor, how in Family Court
4 --

5 THE COURT: I have not read it.

6 MS. JONES: Yes, sir. And it is pretty straight
7 forward but it describes how in Family Court the
8 presumption is marital and that is a presumption that Ms.
9 Smith would have to rebut, if she wanted to, if she were
10 able to prove that the asset was non-marital maybe then
11 this Court would have jurisdiction over the asset. But
12 she hasn't even asked to do that. Ms. Ballard, in her
13 memo, seems to make two points. And the first she makes
14 is, no temporary order has been issued stating that this
15 business is a marital asset. Well that is a fallacy on
16 two counts. Number one, a temporary order would never
17 include a final designation such as that. That is not
18 what temporary orders are for. But number two, it is not
19 even necessary because it is already presumed. It is
20 already a marital asset, it is already within the
21 jurisdiction of the Family Court. Family Court doesn't
22 need to say it. It is already there. The other argument
23 she seems to be making is that she now wishes to have a
24 jury trial and she can only be afforded a jury trial on
25 these issues in Circuit Court. It is interesting to me

1 that that is our eleventh hour argument because almost a
2 year ago Ms. Smith filed an action in Family Court, a
3 non-jury court asking for relief declaring that it has
4 jurisdiction over the issues of this marriage. Then this
5 action was filed and if you look at the original
6 complaint, non-jury, asked again for non-jury. And I
7 believe it is a bit contrived now at this eleventh hour to
8 try to seek a jury trial in some effort to get her foot in
9 the door and avoid the jurisdictional arguments that are
10 such a concern for them. So where is this headed. Your
11 Honor, I would like to talk about where this is headed in
12 Family Court and why this Circuit Court case cannot
13 continue and it needs to be dismissed or at a minimum,
14 stayed. In Family Court, if we are not able to resolve
15 this case at mediation we will go to a merits hearing.
16 And at that merits hearing the Family Court will have the
17 authority to award someone this business. They will. And
18 if the Family Court, when taking into consideration all of
19 the assets and the debts of the marriage, they will
20 essentially make two lists. Everything of value, all of
21 the debt, there will be a net number and it will get
22 divided. But this business will not be carved out and
23 considered separately. It will be in a pile of assets and
24 debts; it will be evaluated and cobbled up. And the
25 Family Court has the authority to award this asset to one

1 of these parties and require that person to pay out the
2 other party.

3 THE COURT: As you put it to me, this is a normal
4 occurrence with Family Court.

5 MS. JONES: Normal. And I would like to pass a case
6 up, Your Honor, called the Moore case. May I approach?

7 THE COURT: Yes, ma'am. Of course.

8 MS. JONES: Your Honor, the Moore case is a long case
9 and it talks mostly about personal good will and other
10 types of good will in a business evaluation. But it
11 demonstrates one of the things that Family Court can do.
12 In the Moore case, husband and wife owned a light fixture
13 company together, they were equal owners. And the Court
14 gave the business to the wife and ordered her to buy out
15 the husband. That was the ruling. That is not what they
16 fought about. What they fought about was how much was it
17 worth because personal good will, this is an interesting
18 point that I would like the Court to hear because it
19 points to where we are headed. Ms. Smith has divested
20 herself from this LLC and has gotten another job,
21 apparently, is not a realtor in this company anymore. She
22 no longer --

23 THE COURT: She disassociated herself?

24 MS. JONES: Disassociated herself. She no longer
25 works at Southern Collection, LLC. That is fine with us

1 in Family Court because Mr. Smith is still rocking along
2 broker in charge, running the business, it is going fine.
3 If we can't resolve the case in a year Ms. Smith is going
4 to have a very hard time proving that this entity is
5 anything but personal good will. And that is very
6 important because personal good will is non-marital.
7 Personal good will means if I leave my law office, walk
8 out onto the street and leave the building and the
9 structure, is it the same place, do the same clients come
10 there. If the answer is no then the law firm's mostly
11 personal good will that I carry with me where ever I go.
12 So I am not sure why she is doing this and that is why,
13 the question is, what does she want because the case that
14 she has filed in Circuit Court, Your Honor, is to dissolve
15 the LLC, to dissolve it. And I realize if she prevails in
16 this action and Mr. Goddard can speak more to this, she
17 expects a payout for whatever this LLC is worth and she
18 expects that payout to be carved out from what will happen
19 in Family Court. Because in Family Court, Family Court
20 Judge is going to consider debt too. And both of these
21 folks have considerable tax liabilities that is a marital
22 debt. But if she gets to come here and do it this way
23 this Court won't consider tax liabilities, personal tax
24 liabilities. But where we are headed in Family Court, in
25 Family Court the entity will not be dissolved, the entity

1 can still be an ongoing concern. I don't understand why
2 it is so important to her that this man's livelihood, that
3 the name that he has been associated with for so many
4 years, the name that has such a good reputation in this
5 community no longer exist. And that is what she is trying
6 to do in this case. The short answer, Your Honor, is she
7 doesn't have subject matter jurisdiction to do any of it
8 because Family Court hasn't divested a subject matter
9 jurisdiction. If she were to proceed then, you know, she
10 would be throwing a Circuit Court party and we will come
11 to the party. And what that would be like is
12 counterclaims to address all of the behaviors that we
13 believe that she has participated in to harm this company.
14 But we don't want to do that because we believe that
15 Family Court can handle all of that and they do every day.
16 One of the arguments that she makes is that she believes
17 my client's parents are holding assets of the marriage.
18 Well that is something that a Family Court Judge deals
19 with every day because, first of all, we deny it. But,
20 secondly, if it were true, if it were true that one party
21 took \$80,000.00 dollars and parked it with a non-party to
22 the case, those third parties get brought into Family
23 Court actions all the time.

24 THE COURT: Would that be on the basis that they are
25 potentially holding marital assets?

1 MS. JONES: That is right. That is right. So if Ms.
2 Smith thinks that that is happening, she has a remedy for
3 that in Family Court. If she thinks that he is diverting
4 money that is owed to her she can seek relief in Family
5 Court. Surely, nothing --

6 THE COURT: Third parties in Family Court as well?

7 MS. JONES: Sir?

8 THE COURT: Could they be made parties in Family
9 Court?

10 MS. JONES: Absolutely, it happens all the time.
11 There is a case called Stone -- restaurant called the Boat
12 House down at the beach, I am sure you have been there,
13 Judge. There is a case called Stoney, it has gone up on
14 appeal many times and a brother got brought into the case
15 because he co-owns the restaurant with husband. And he
16 was right there through the end of the trial, part of that
17 case. It is a convoluted case.

18 THE COURT: I am aware of instances where a
19 shareholder or property LLC has multiple owners too, which
20 are husband and wife, other parties get brought in because
21 of their, or something --

22 MS. JONES: That's right.

23 THE COURT: But even if they are not corporate
24 partners, that may not be the right word to use but even
25 if they are not partners or otherwise involved with a

1 corporate entity, they are just a third party, holding
2 what could be described as marital assets.

3 MS. JONES: That's right.

4 THE COURT: So can be made a party in the Family
5 Court.

6 MS. JONES: That's right and what happens in that
7 situation, such as let's presume for instance, that Mr.
8 Smith and his wife don't own this company together. That
9 he owns it with Mr. Goddard. The company could be brought
10 in as a party in the divorce case, and Mr. Smith's share
11 of the company is a marital asset. Now in that case what
12 a Court would do is evaluate the value of Mr. Smith's
13 share and if he wishes to keep it, which he obviously
14 would, he owns it with Mark Goddard, he is not wanting to
15 divest of all of this, then he has got to pay her back.
16 That is how it works. Usually there are other assets that
17 can be shifted around to take care of that. Last, Your
18 Honor, in her memo in opposition Ms. Ballard is citing
19 cases from West Virginia and Alabama. And I would argue,
20 Your Honor, that those are not even persuasive here
21 because I don't believe that the West Virginia Family Law
22 statute defines marital assets as broadly as we do, first.
23 Second, in the Whitaker case, that is not at all similar
24 to what is happening here. In the Whitaker case, husband
25 and wife reached an agreement where husband agreed to

1 divest of a non-marital asset and then later there is a
2 dispute about it. And that is why subject matter
3 jurisdiction became an issue in that case because they did
4 deal with a non-marital asset and then one party tried to
5 find the other in contempt over a non-marital asset.
6 Really not similar at all to what is going on here. So we
7 would ask the Court to dismiss this case and allow the
8 Family Court case to proceed. This has been a very
9 expensive enterprise for these folks. I am perplexed as
10 to what the goal is. If the goal is to destroy the
11 company, you know, I don't understand that. Because if
12 what she wants is to be bought out for a fair price, she
13 can get that in Family Court. But the goal to destroy the
14 company all together, take the name and it not be his
15 livelihood and he is a very well known fellow in this
16 town, and it not be what he is known for, there is sort of
17 a menacing tone to that that I don't understand. Thank
18 you, Your Honor.

19 THE COURT: Mr. Goddard, I suspect a lot of your
20 argument is going to be the same.

21 MR. GODDARD: Yes, Your Honor. And I am going to do
22 my best not to kind of replot the ground. I think that it
23 is important in looking at this is the timing of
24 everything is very important. And I think the case law
25 and the statutes make that clear. Yes, the Family Court

1 has exclusive jurisdiction over marital assets. However,
2 there is an exception that is, that is in the case law, is
3 if the Circuit Court case is filed first. Okay. That
4 case and it says in the Gilley case, that once subject
5 matter is vested in a court, is not going to be divested.
6 She had the opportunity in this case to file this
7 complaint 13 months ago and invest this Court with
8 jurisdiction to hear this matter. The Gilley case has
9 that exact scenario. Husband files in Circuit Court for a
10 partition action, wife, well, I may have, one way or the
11 other, the spouse then goes to Family Court and seeks to
12 have the equitable distribution occur and say that, and
13 moves into Circuit Court for lack of subject matter
14 jurisdiction. The Supreme Court said in that case, no.
15 Subject matter jurisdiction vested on the filing of the
16 original complaint. We have the opposite case in this
17 case but the same facts. The Family Court vested,
18 jurisdiction was vested upon filing of the divorce
19 petition, specifically asking for the equitable division
20 of assets and asking for them to consider these business
21 assets. What, they are now asking them to divest the
22 Family Court of jurisdiction after it has already
23 established jurisdiction. And the case law is clear, you
24 cannot do that, Your Honor. The Gilley case is also,
25 very, illustrative in this action as well because they

1 come out and say, well, Family Court can't consider now
2 marital assets. And in that case it says, well, this
3 undivided interest was a non-marital asset. They can't
4 consider that, they can't apportion that so it's proper in
5 Circuit Court. Because that was all part of an
6 anti-nuptial agreement to remove that from the marital
7 asset. There is no such agreement in this case, there is
8 no such exception to any of the marital assets. This is
9 the distributional interest of this LLC is a personal
10 property that is marital asset. Your Honor, finally, the
11 Gilley case says, partition actions are exclusively within
12 the jurisdiction of the Circuit Court. The Family Court
13 cannot partition property. There is no statute giving the
14 Circuit Court exclusive jurisdiction over the
15 apportionment of these business assets. Although
16 Plaintiff tries to argue the Circuit Court has exclusive
17 jurisdiction, they are trying to combine multiple
18 different parts of that statute, Your Honor, to do so.
19 Importantly, this case, the dissolution cause of action is
20 under 33-44-801. And 801 says specifically, a judicial
21 decree is necessary in order to dissolve a company under
22 certain, one, two, three, four; certain actions of the
23 members. It says judicial decree. 803 of that statute
24 says the Circuit Court has jurisdiction to oversee the
25 winding up of the company after dissolution. That is a

1 big, big issue there. It is after the dissolution, Your
2 Honor. The judicial decree, it does not, to find to
3 dissolve the company doesn't have to occur in Circuit
4 Court, it can happen somewhere else. What is really
5 confusing in all of this --

6 THE COURT: You are telling me the Family Court can
7 dissolve a company?

8 MR. GODDARD: The Family Court cannot issue the
9 judicial decree. Under 801 it says, judicial decree. It
10 does not, where as other statutes specifically list
11 Circuit Court, that statute does not.

12 THE COURT: Do you have a case that cites that
13 statute as being used for the purpose of a judicial decree
14 to dissolve a limited liability company?

15 MR. GODDARD: I do not have a case law that says
16 that. No, Your Honor.

17 THE COURT: Well, keep going.

18 MR. GODDARD: What I think is even more important,
19 whether you can dissolve or not dissolve, let's look at
20 what the complaint actually asked at the end. It asked to
21 go under Rule, under Article 7, for the valuation and the
22 purchase of this asset. That's what she really wants.
23 The attorney fees section at the end and the wherefore
24 section says, under Article 7 they want to issue attorneys
25 fees. Well, all Article 7 has to do is, the purchase of

1 that distributional interest, what is the fair market
2 value and what can be paid to them. That absolutely is
3 done in Family Court. Your Honor, they can, these Family
4 Court, just like Ms. Jones said, the Family Court
5 absolutely will apportion the assets and make one person
6 buy them out. That is all that is really being done here.
7 They have the right to do that. Your Honor, I do want to
8 touch base briefly on the two cases, the two out of
9 jurisdiction cases, the Whaley case and the Whitaker case.
10 I join Ms. Jones argument that, first of all, the Family
11 Court jurisdiction issues are different. I will let her
12 speak on that like she did. What is also important is,
13 the LLC Act, these are all State Acts, Your Honor, they
14 are all different and their implementation is all
15 different. Although the, the South Carolina statute is on
16 its own and has its own interpretations. So I agree with
17 Ms. Jones that the Whaley and Whitaker case, Whitaker
18 cases are not persuasive. The last case cited by
19 Plaintiff is the Palmetto Wildlife Extractors case. And
20 that is important, two partners not married. So obviously
21 the Family Court would not have jurisdiction to hear that
22 anyways. All the Palmetto Extractors case says is, an
23 arbitrator cannot rule on a judicial dissolution because
24 the statute is clear that judicial decree is necessary.
25 It does say in that case that a Circuit Court needs to do

1 that. However, Your Honor, that case would have no reason
2 to bring Family Court jurisdiction into the consideration
3 because these are unmarried parties. Your Honor, I think
4 it is clear that these are marital assets. These same
5 disputes are happening in Family Court. I think what is
6 important to understand, to realize in this, is there is a
7 reason why we don't want to have competing arguments.
8 Through judicial efficiency, we are going to have -- if
9 this stays you are going to have the same counterclaims,
10 the same actions, all have to be litigated in this case as
11 they are already being in Family Court because the issues
12 are not separate, they are all the same actions, Your
13 Honor. And they are all, her actions outside of, her
14 personal actions damaging the company are the same ones
15 damaging individually and would be heard in both the
16 Family Court and in this case, the same the other way. I
17 think, Your Honor, it is clear that the jurisdiction is in
18 the Family Court and this case should be dismissed and
19 allowed to proceed in that realm. Thank you.

20 THE COURT: Okay. Ms. Ballard.

21 MS. BALLARD: Thank you, Your Honor. Desa Ballard
22 and Haley Hubbard representing Emily Smith who is here
23 with us today. Your Honor, I told you last time we talked
24 about this in our virtual hearing, that we are asking a
25 question that has not been asked before. And I think the

1 most important statute for Your Honor to be aware of is in
2 the LLC section which is, and we cited this in our brief,
3 33-44-201 which says that a limited liability company is a
4 legal entity distinct from its members. In other words,
5 whoever its members are and whatever their other disputes
6 might be, this code section, this code title and chapter
7 govern all of the dealings in an LLC. Now I will tell you
8 how we got here. We got here because the Family Court on
9 two occasions refused to deal with anything about the
10 business of the company. And we have a client who has
11 been unable for a year to get any relief whatsoever from
12 the Family Court regarding her income, her business, her
13 ability to function. So what we did is we said, you know
14 what, this is an LLC. And an LLC has an independent
15 existence separate and apart from its members. So even
16 though there might be a thousand cases out there, prior to
17 today, in which the Family Court has attempted to
18 adjudicate the rights of members of an LLC, the Family
19 Court never had jurisdiction to do that. And when you
20 asked me last time we were before you, if I could point
21 you to a place that says that the Circuit Court only has
22 jurisdiction to do that, I didn't but I do now. And that
23 is 33-44-803 says only the Circuit Court may order a
24 judicial supervision of the winding up. Now, when the
25 Family Court was filed --

1 THE COURT: They will agree with that.

2 MS. BALLARD: That is absolutely true. But the point
3 is, the Family Court, what we did was we disassociated
4 from the company which statutorily begins the process of
5 winding up the company.

6 THE COURT: So the purpose of the disassociation was
7 to facilitate the winding up?

8 MS. BALLARD: Yes.

9 THE COURT: Okay.

10 MS. BALLARD: That is what the statute says. If
11 somebody, a party has a right to disassociate at any time
12 from an LLC. And so we filed the Article of
13 Disassociation which automatically triggers the winding up
14 process under Title 33, Chapter 44. And I said to you
15 last time, we can't treat members of an LLC who happen to
16 be married differentially than we treat other members of
17 LLC's. And I will admit to you, that if the Family Court
18 had, at any time during the past year said, oh okay, this
19 is what we will do about the income and assets of the LLC,
20 Emily probably would not be here today. But the Family
21 Court has been busy, the Family Court has been dealing
22 with custody and other things like that, none of the
23 temporary orders are dealing with property issues like
24 this. So that caused us to look at our other options and
25 our other options are, we have an LLC that is independent

1 of this marriage. We have an LLC that exist
2 notwithstanding this marriage. We have an LLC that exist
3 and is defined by the sections that say how it operates,
4 how it is dissolved, how it has wound up, how the Court
5 can appoint a receiver to oversee the winding up of the
6 corporation. And you can't deprive Ms. Smith of her
7 rights as a member of the LLC simply because she is
8 involved in a domestic case.

9 THE COURT: Has she deprived herself of any of these
10 rights by disassociating?

11 MS. BALLARD: No, sir. What she has done is, she
12 managed to find a way to make a living when the Family
13 Court was unable to give her that. The Family Court was
14 asked twice --

15 THE COURT: And I have to ask this question.

16 MS. BALLARD: Of course.

17 THE COURT: Just based off of your argument thus far
18 --

19 MS. BALLARD: Yes.

20 THE COURT: And I never practiced in Family Court.

21 MS. BALLARD: Neither did I.

22 THE COURT: And I don't know the in's and out's of
23 Family Court.

24 MS. BALLARD: Nor do I.

25 THE COURT: But what you are telling me is, and in

1 just a very simple synopsis here is, I will try to be
2 careful -- you don't like the way the Family Court case is
3 going. You don't like the way that the Family Court is
4 not making certain rulings.

5 MS. BALLARD: No.

6 THE COURT: You don't agree with the rulings.

7 MS. BALLARD: No.

8 THE COURT: You didn't get the relief you sought.

9 MS. BALLARD: What I am telling you is that the
10 Family Court had two opportunities to have two temporary
11 hearings in which it could have addressed these LLC issues
12 and it did not do so.

13 THE COURT: To be clear, you mean they did not
14 address it in a manner that suits your client or they did
15 not have a hearing or they did not have an order that
16 addressed the relief you sought.

17 MS. BALLARD: They had hearings where both sides
18 presented financial information about these companies and
19 the temporary orders which I think are attached to one of
20 the briefs, I think our brief. The temporary orders
21 decline to address anything regarding it at all. Didn't
22 even mention the word, LLC; didn't even mention the word,
23 membership interest; didn't even mention the word, income.

24 THE COURT: Could we agree on, we may not agree, but
25 based off the summary here, the background. Did the LLC

1 come into existence during the marriage?

2 MS. BALLARD: It did, absolutely.

3 THE COURT: Is it a marital asset?

4 MS. BALLARD: No. It can't be because of the
5 section, 33-44-201 which says the entity is completely
6 separate from the members who make it up.

7 THE COURT: I understand that LLC's are, I have never
8 been taught, a jural person.

9 MS. BALLARD: Correct.

10 THE COURT: But they are owned by, well, they are
11 owned by people with heart beats that happen to be husband
12 and wife.

13 MS. BALLARD: Correct.

14 THE COURT: Still, okay --

15 MS. BALLARD: Apparently, yes.

16 THE COURT: But it is your contention it is not a
17 marital asset.

18 MS. BALLARD: It is not a marital asset nor can it
19 be. And the reason that we cited the two cases that we
20 cited for you, is to show how our Courts have construed
21 the construction of whatever those Family Court statutes
22 are. And the most important thing to remember when you
23 are looking at that, Your Honor, is that Family Courts are
24 not constitutional courts. Family Courts are created by
25 statute, therefore their jurisdiction are defined by the

1 General Assembly; therefore the jurisdictional statutes
2 that exist for Family Court are in derogation of the
3 common law and have to be construed strictly. So
4 determining what is and isn't a marital asset, on one
5 hand, versus a clear definition of what an LLC is, how it
6 operates, how it is dissolved and what its members rights
7 are; clearly Title 33, Section 44; Title 33, Chapter 44
8 defines that for us. This law is clear, this law is
9 settled. Now, what I mentioned to you before is, we
10 wouldn't be here had the Family Court exercised
11 jurisdiction over the LLC but it never did. It just said,
12 not dealing with that, not dealing with that at all. So
13 Ms. Smith's domestic lawyer filed a motion and said, okay,
14 fine.

15 THE COURT: Would it be clear that the Family Court
16 has not filed an order saying that they are not --

17 MS. BALLARD: No, they have not. But my point is,
18 because it is a statutory court and not a constitutional
19 court and because we have to strictly construe the
20 jurisdiction that has been established in that Family
21 Court, unless it expressly says, including corporate
22 entities, we have to strictly construe in derogation of
23 the common law, that jurisdictional statute. So we have
24 to assume that this LLC stands alone.

25 THE COURT: Again, I feel like I am in Family Court,

1 I am doing the best I can.

2 MS. BALLARD: I don't want you to be in Family Court.

3 THE COURT: Another question about property interest
4 here.

5 MS. BALLARD: Yes, sir.

6 THE COURT: The husband and wife certainly have
7 personal property amongst them, did they not?

8 MS. BALLARD: Sure.

9 THE COURT: Is that personal property something that
10 would be considered for marital property, cars, boats.

11 MS. BALLARD: Sure, yes. An LLC is different and the
12 assets and the assets of an LLC are different. In fact,
13 the statute says that the members have no ownership
14 interest in any of the assets of the LLC.

15 THE COURT: Well, with, when your client filed a
16 disassociation --

17 MS. BALLARD: Yes.

18 THE COURT: How did that affect the interest in the
19 LLC?

20 MS. BALLARD: That was her statement that she is no
21 longer a member of the LLC and it triggered the obligation
22 under the LLC Act for the other members, and in this case
23 the other single member, to buy her out.

24 THE COURT: Right. That would be a distributional
25 interest, would it not?

1 MS. BALLARD: It would be.

2 THE COURT: And wouldn't a distributional interest be
3 personal property?

4 MS. BALLARD: No. And the reason I say that is
5 because of --

6 THE COURT: And I am relying on --

7 MS. BALLARD: The distributional interest, I tried it
8 once, Your Honor. I tried it once when I was trying to
9 collect on a debt. We had a judgment and the debtor had
10 an interest in an LLC so I tried suing the LLC and learned
11 to my great surprise that a distributional interest is not
12 personal property.

13 THE COURT: And I just rely on 33-44-501.

14 MS. BALLARD: Correct, section (b). A distributional
15 interest in a limited liability company is personal
16 property and may be transferred in whole or in part. But
17 the other sections of the statute say that the membership
18 interest is just a distributional interest and the members
19 have no ownership interest in the assets of the LLC, all
20 they have is the distributional interest which is the
21 right to receive distributions.

22 THE COURT: Money.

23 MS. BALLARD: When there is any, yes, money.

24 THE COURT: Is there anything else that would be
25 distributed other than cash?

1 MS. BALLARD: Not normally, no.

2 THE COURT: What else can be distributed?

3 MS. BALLARD: I have seen --

4 THE COURT: I guess the shares?

5 MS. BALLARD: I have seen like-kind property,
6 distributions where you take this building, I take that
7 building. Those kind of LLC distributions.

8 THE COURT: I don't know what the assets are of the
9 LLC.

10 MS. BALLARD: Nobody does, nobody does. That is what
11 this Court has to figure out.

12 THE COURT: I have to figure out --

13 MS. BALLARD: You have to figure out --

14 THE COURT: Is the Family Court not capable of doing
15 that?

16 MS. BALLARD: No. And the Family Court doesn't have
17 jurisdiction to do that. What happens is, the Family
18 Court by its, whatever has developed in Family Court over
19 the years, they think they have the right to divide up an
20 LLC, nobody has ever told them they don't. But you look
21 closely at all the cases including the ones that have been
22 cited by our opposing counsel. They don't rely on Title
23 33, Chapter 44. They just say, oh okay, we have got debt
24 and we have got assets and let's just put them all in a
25 pot and divide them all up. That is not how this works.

1 THE COURT: Does the Family Court have to come up
2 with some value in the end game?

3 MS. BALLARD: I don't know.

4 THE COURT: Don't they have the right, what a final
5 hearing is, decide who gets what based upon what they have
6 heard, what evidence they have taken on determining the
7 value of marital assets and how to divide them?

8 MS. BALLARD: Again, I am not a Family Court lawyer.

9 THE COURT: Then we are both in the same boat.

10 MS. BALLARD: Right. All I can tell you is that only
11 the Circuit Court can supervise the dissolution of an LLC.

12 THE COURT: Well, again, assuming your point, let's
13 just assume that you are right, just for argumentative
14 sake.

15 MS. BALLARD: Okay.

16 THE COURT: But the Family Court has got to come up
17 with a final amount. They are going to divide up assets.

18 MS. BALLARD: Yes.

19 THE COURT: They can do that.

20 MS. BALLARD: Yes. But they are going to take these
21 assets, whatever these assets are and they are going to
22 jumble them up with the marital assets. And you heard Ms.
23 Jones say so. You heard Ms. Jones say they have got tax
24 liabilities. Well, those are personal tax liabilities,
25 some of which were owned by Mr. Smith before he married

1 Ms. Smith. And dividing up tax liabilities, of course the
2 Family Court is going to do that. But it can't do that
3 using the assets of the LLC.

4 THE COURT: I am not making my point adequately well
5 or asking my question --

6 MS. BALLARD: I am sorry, I apologize.

7 THE COURT: But, but and again, I am basing this off
8 of my layman's knowledge and experience of hearing other
9 things in the world. So it may not be accurate but it is
10 my understanding that when two people get a divorce, let's
11 just assume they are people of financial means.

12 MS. BALLARD: Okay.

13 THE COURT: Have assets that were acquired during the
14 marriage. Those assets, otherwise what is the point of
15 having a financial declaration from the parties. Why
16 would the Family Court even want to know that if they
17 can't take care of the issue we are talking about in this
18 case here today? Why is it that the value of the, now the
19 value of these LLC's or this particular LLC specifically
20 for the Family Court, I mean, I haven't seen a financial
21 declaration. I think that is reserved for the Family
22 Court.

23 MS. BALLARD: Let me turn the question around.

24 THE COURT: I may offer an answer, I may not.

25 MS. BALLARD: If Mr. and Ms. Smith were not

1 litigating in Family Court, if they were not getting a
2 divorce, Ms. Smith would still have the right to
3 disassociate from an LLC that she owns with her husband.
4 And there is no question that we would be litigating that
5 in Circuit Court, none whatsoever. And simply because the
6 parties are married Ms. Smith is going to lose her right
7 granted to her as a member of an LLC because she is
8 married. That is an issue that has to be considered under
9 an equal protection argument, Your Honor. She doesn't
10 lose her status as a member of an LLC by virtue of being
11 married or by virtue of being in domestic proceedings.
12 She has a right to have these statutes applied to her.

13 THE COURT: She would lose her status by making a
14 voluntary decision to disassociate from the LLC.

15 MS. BALLARD: She triggered her statutory rights.

16 THE COURT: Okay.

17 MS. BALLARD: She triggered her statutory rights by
18 disassociating and because it is not marital property, no
19 Court has said it is marital property and there is no
20 presumption that it is marital property.

21 THE COURT: Does the Family Court have, for lack of a
22 better term, under advisement would become marital
23 property.

24 MS. BALLARD: No, no.

25 THE COURT: There has been no mention of marital

1 property in this divorce case?

2 MS. BALLARD: There is no mention of these LLC's.
3 They have said who can live where and that sort of thing.
4 But these LLC's have not been dealt with at all.

5 THE COURT: Okay.

6 MS. BALLARD: Or this LLC. Now, the other point I
7 did want to make because Ms. Jones has made a compelling
8 argument for her client's good will. What we learned when
9 we were researching to file this action is that not long
10 after Southern Collections started Mr. Smith started a
11 whole separate business, Southern Brokerage Collection
12 which we have also named as a Defendant here and that is
13 the one he is operating under. That is the one he is
14 working the agents through.

15 THE COURT: Before or after the divorce was filed?

16 MS. BALLARD: After. He did that after the divorce
17 was filed. He created a new LLC and those assets came
18 from somewhere. We don't know where they came from. But
19 if you accept their argument, those are marital assets and
20 he couldn't do that but he did. So we are looking at
21 multiple LLC's, we are looking at third parties who
22 admittedly --

23 THE COURT: Did you seek relief on that specifically
24 in the Family Court already?

25 MS. BALLARD: Your Honor, no. And you asked me last

1 time about that and you said, you weren't convinced that
2 the Family Court didn't have the authority to issue a
3 receiver, to appoint a receiver. And you were going to
4 allow us to go to Family Court and ask for a receiver. We
5 didn't do that because the Family Court does not have
6 jurisdiction to do that.

7 THE COURT: You didn't, you didn't ask though and the
8 reason that whole argument was based on, there was a Court
9 of Appeals case or Supreme Court case that mentioned the
10 Family Court appointing a receiver. I recognize the
11 statute says what it says but the Supreme Court certainly
12 didn't say you can't do that.

13 MS. BALLARD: Well, they weren't asked.

14 THE COURT: Well, they --

15 MS. BALLARD: There have been lots of cases where
16 both the Court of Appeals and the Supreme Court has said,
17 we know we have done this ten times previously but nobody
18 brought this issue up.

19 THE COURT: Well, I also am aware of many cases that,
20 not just Family Court, but particularly in General
21 Sessions where the Court takes the opportunity by saying,
22 we are troubled by such events that occurred in this case.

23 MS. BALLARD: Right.

24 THE COURT: They weren't troubled by a Family Court
25 appointing a receiver. That was my only point. And I say

1 this. If the Family Court requires you, we can't do that
2 and that to me, at least clarifies it in my mind.

3 MS. BALLARD: We are not asking the Family Court for
4 a receiver.

5 THE COURT: I defer that to your discretion.

6 MS. BALLARD: We have the right to have a receiver
7 appointed in this court by this Court for the purpose of
8 winding up a corporation that is not even operating at
9 this point because Mr. Smith created a whole separate
10 corporation that he is now operating under his brokerage
11 that Ms. Smith is not a party to. She had an absolute
12 right to disassociate, she did and she has a right to have
13 the interest of the LLC evaluated and distributed in
14 accordance with these statutes. What the Family Court is
15 going to do is put everything in one big pot and draw a
16 line down the middle. And that is not what she is
17 entitled to, she is entitled to have her LLC interest
18 considered separately. And separate and apart, they own a
19 --

20 THE COURT: And that is based solely on your
21 contention that if the LLC's are not marital property?

22 MS. BALLARD: They are not, they are not because the
23 statute says they are separate and apart from their
24 members. What that means is, if the parties are married
25 to each other, it doesn't matter. What it means it is

1 separate and apart from its members. It doesn't have
2 anything to do with what the relationship between those
3 members is. They are not brothers, they are not father
4 and daughter, they are not spouses, they are members of an
5 LLC; separate and apart from their individual status.

6 THE COURT: Second question.

7 MS. BALLARD: Yes.

8 THE COURT: You are not representing Ms. Smith in her
9 divorce case?

10 MS. BALLARD: Correct.

11 THE COURT: Okay. And that's --

12 MS. BALLARD: Sheila Robinson.

13 THE COURT: Okay. She is not here, right?

14 MS. BALLARD: She was but she had another hearing.

15 THE COURT: Well, let me just ask, I am not cutting
16 you off but, just for this specific Family Court question.
17 You are not finished.

18 MS. BALLARD: I understand that.

19 THE COURT: What is the real timeline of the end game
20 here?

21 MS. JONES: So we are trying to get a mediation
22 scheduled. I think we are aiming for August. If we
23 resolve the case at mediation then these two could be in
24 court before six weeks and it could be over. If we don't
25 resolve it and we have to have a trial it could be another

1 year. I have a lot to say in response but I would like --

2 THE COURT: I just wanted to know in my mind what is
3 the real timeline here for the Family Court case.

4 MS. JONES: We are real backed up downstairs. COVID
5 really backed --

6 THE COURT: I understand. I can't just have term
7 hearings every time y'all want one either. I have done
8 this twice.

9 MS. JONES: We understand.

10 THE COURT: It is novel.

11 MS. BALLARD: It is novel, it is novel. To follow up
12 on your question to Ms. Jones. They have had mediation
13 scheduled four times and it has been canceled. So we
14 don't know whether it would be canceled again. We have
15 some control in Circuit Court. We have some control. I
16 have had Circuit Court Judges say you guys have to mediate
17 by the end of June or by the end of whatever. It has to
18 happen. We have ADR rules that apply in Circuit Court
19 that tell us when and how this has to happen. There is a
20 structured system in Circuit Court for dealing with the
21 interest in an LLC and they don't fit well into Family
22 Court. They don't fit well at all. Now, they apparently
23 have been there before and the Courts have done the best
24 they can but the point I was trying to make with our other
25 State cases that we referred to is that the definition of

1 what the Family Court can do is defined by their
2 jurisdictional statutes. And in those cases the Family
3 Court didn't have jurisdiction over the LLC's because they
4 had independent existence through statutes. That is what
5 we have here. We have a statute that spells out the
6 jurisdiction of the Family Court which doesn't have the
7 word, corporate entity or LLC or anything else in it. It
8 doesn't have the word, corporate interest; doesn't have
9 the word, membership interest. It has none of those words
10 in it. And you have to define that jurisdictional
11 statute, the derogation of common law very strictly. So
12 unless that statute specifically says, bring us your LLC's
13 and your corporate interest along with your marriage, they
14 have no jurisdiction to address those assets. None. And
15 as the Court pointed out, only the Circuit Court has the
16 authority to supervise the dissolution and the winding up
17 of an LLC. They cannot order it dissolved in Family
18 Court, it can't happen.

19 THE COURT: Okay.

20 MS. BALLARD: Thank you, Your Honor.

21 MS. JONES: If we can, we have some reply here. Lots
22 of clarity on the Family Court. First of all, we do have
23 ADR rules in Family Court. We do have scheduling orders
24 in Family Court. We haven't scheduled this mediation four
25 times. Just to clear that up. Just one, canceled.

1 THE COURT: And since we are on that subject. Do you
2 know who your mediator is for the next one?

3 MS. JONES: I am sorry, Judge, I can't remember.
4 Sheila and I agreed on somebody and I can't remember who
5 it is.

6 THE COURT: You have somebody --

7 MS. JONES: I can get my office to call and find out
8 who it is.

9 THE COURT: I don't need you to do that right this
10 minute. My unsolicited opinion is that, if you have got a
11 hearing scheduled in Family Court on August 23rd on some
12 other matters, maybe it would help you if you got it
13 scheduled before August 23rd. But, again --

14 MS. JONES: My mediation is September 15th.

15 THE COURT: Okay.

16 MS. JONES: Your Honor, first off, our statute and
17 may I pass this up, Your Honor?

18 THE COURT: Yes, ma'am.

19 MS. JONES: It defines what non-marital property is.
20 And it is a very discrete list and LLC's are not on there.
21 Your Honor, I am in Family Court four or five days a week
22 and honestly, Judge, I feel like I am in the twilight zone
23 a little bit here because this LLC is absolutely a marital
24 asset. No question. And, Your Honor, if you see attached
25 to our return that we filed this morning is a chart that

1 Ms. Smith prepared. I passed this up earlier.

2 THE COURT: I have got it, I have got it.

3 MS. JONES: It is a chart that Ms. Smith prepared.

4 And it does exactly what she would prefer not to do which
5 is make a list of everything these folks own that has
6 value and all of their debts. And if you look at the
7 second page, item 6, businesses; Ms. Smith has listed
8 these businesses as assets. If you look at item seven is
9 all the tax liability and she has listed them as
10 liabilities. But the biggest number that I am sure is an
11 offense to Ms. Smith of the last number on the last page
12 which is the net value of the marital estate according to
13 Ms. Smith. She believes that if you take all of the
14 assets and the debts of this marriage together the net
15 value is \$34,754.00 dollars. So if these two are to
16 divide this evenly they would each get about \$15,000.00
17 dollars, Your Honor. And that is what she would like to
18 not do. She would like this Court to cobble out the
19 business and run with her share of that asset. Now, Ms.
20 Ballard has said that we have been to court so many times
21 and she has not gotten any relief on any of these
22 complaints. And she kind of buried in her argument was
23 some truth to why we are here. Ms. Smith doesn't like the
24 way she has earned income since this case has begun. She
25 doesn't like it. At the outset of this case these folks

1 did enter financial declarations into evidence and they
2 both said they made \$20,000.00 dollars a month in gross
3 income, both of them, evenly. But she doesn't like the
4 way this has gone down ever since and she has filed no
5 motion to address it, none. If she believes he has
6 violated a court order she can file a contempt action,
7 that is what we have done in response to what we believe
8 she is doing incorrectly. She hasn't done that. The only
9 request she has made that the Court order an accounting of
10 the business and that was denied because she knew that
11 anyway. The next best forensic accountant is welcome to
12 do an accounting at any time. All of the books are open,
13 she is a co-owner. So to suggest to this Court that she
14 sought relief and not received it and now must come here
15 to receive that relief is just inaccurate. She hasn't
16 complained about any of this in a Family Court and she
17 can. If she thinks he has done something wrong she can
18 absolutely go there and request for an advance on, as
19 being stayed, she can ask for alimony, there is all kinds
20 of things she can do. She hasn't done it. The suggestion
21 that he has done something wrong to form an LLC after the
22 date of filing speaks to the lack of knowledge of Family
23 Court law. The date the case was filed, and if you look
24 on Ms. Smith's own chart, she has value dates in the
25 right-hand column and they are all kind of around the

1 month of August. She is getting these values as close to
2 the date of filing as she can. She is doing that on
3 purpose because the law says in Family Court, the date the
4 assets and debts of the marriage are evaluated is the date
5 of filing.

6 THE COURT: Filing of the complaint?

7 MS. JONES: Yes, sir. Which was August 18th of '21.
8 So if Mr. Smith wanted to go form five LLC's after that on
9 his own, he can do that. That isn't marital, he can do
10 that. Now if she thinks he is taking marital money and
11 diverted it to a non-marital asset the Family Court is the
12 place to complain about that. She can absolutely complain
13 about that in Family Court. And if she can prove it she
14 can get relief on that. We would deny doing that but that
15 is her remedy. There is no remedy that she seeks that
16 isn't available to her in Family Court. So I am real
17 perplexed by the whole argument because the, what she is
18 wanting to do is absolutely, you know, Family Court is a
19 court of equity. That is why we have the chart because it
20 should be fair. One party shouldn't have to incur all the
21 tax liability in Family Court while the other party gets
22 paid out for the business in Circuit Court. In any case,
23 Your Honor, she made this decision long ago. She made the
24 decision to file in Family Court and that is where she has
25 been. She doesn't like how it has been going and she is

1 here. And frankly, she can file more motions in Family
2 Court, she has only filed one at the very beginning of the
3 case.

4 THE COURT: At the beginning of your argument you
5 mentioned this case should be dismissed or at a minium
6 stayed.

7 MS. JONES: Yes, sir.

8 THE COURT: Are there, in your opinion, causes of
9 action that are currently in the Circuit Court case that
10 could exist after the completion of the Family Court case?

11 MS. JONES: Well, you know, the way the Family Court
12 case will be completed is one of these folks will be
13 awarded the LLC and will have to buy out the other one if
14 it is worth anything.

15 THE COURT: That will be a distributional interest
16 paid for?

17 MS. JONES: Yes, yes. I think what is lost in all of
18 this is I don't believe these folks own the building that
19 they are in. We are talking about some computers and
20 desks and two people with personal good will out in the
21 community running down list agreements. In my opinion, it
22 is going to be mostly personal good will anyway. So I am
23 super confused why we are here. In other words, the
24 business won't be worth anything.

25 THE COURT: Well, and you spoke about claims against

1 the two current non-parties in the Family Court case.
2 That would be Mr. Smith's parents.

3 MS. JONES: Correct.

4 THE COURT: That is a conversion?

5 MS. JONES: Correct. So it is their position that
6 Mr. Smith's parents are sitting on assets, money that
7 belongs to the parties. And if that is true they can
8 bring them into the Family Court and seek a remedy that
9 way. Or they could presume that, let's say it is \$10.00
10 dollars, let's say Ms. Smith believes that Mr. Smith's
11 parents has \$10.00 dollars that is a marital asset. What
12 she could do is on this chart put the \$10.00 dollars on
13 here and put it in his column. What is incomplete about
14 the chart and what we do at mediations is we drag this
15 chart all the way to the far right and do husband/wife.
16 So if husband has made off with \$10.00 dollars and given
17 it to his parents, that is not happening. But if he has,
18 he has got \$10.00 dollars in his column before we even
19 start the negotiation. That is how it works. And that is
20 what we need to do, just let this rock along and get this
21 done. I think Mr. Goddard needed to clarify --

22 THE COURT: Yes, sir.

23 MR. GODDARD: Just very briefly, Your Honor. And I
24 think it, this issue of strictly construing jurisdiction
25 and the Court not, you know, under the exclusive

1 jurisdiction of the Family Court. The Family Court
2 jurisdictional statute expressly says that any and all
3 personal property is marital property. The LLC statute
4 specifically, as you said earlier, specifically defines
5 the distributional interest as personal property. That is
6 the only, there are two things a owner or better word, a
7 member of a company of an LLC owns. It has its membership
8 rights and the financial rights. Membership rights is the
9 right to vote, right to manage the company based on
10 whatever your percentage ownership is. The financial
11 rights is your right to receive money, distributions.
12 That is your only right as a member of an LLC is to
13 receive those distributions. That is what is at issue
14 here. She wants the money which is her distributional
15 interest is the only way she would get that money. It is
16 not, this idea of the LLC is a separate entity. That is a
17 hundred percent correct. The LLC is a separate entity.
18 That is why you get limited liability. You set up a LLC
19 to run the brokerage so if a third party were to come sue
20 for actions of Terrance or Emily within the scope of their
21 employment, the action is against the LLC and they can't
22 get to the members. The members rights in this,
23 importantly, are specific to their financial rights. The
24 only way they get money is through those financial rights
25 or distributional interest. It is defined here that the

1 distributional interest is personal property. So you
2 don't have to, it is not outside of what the Family Courts
3 have considered. The financial rights are explicitly
4 personal property. And I do think, I want to clarify,
5 Your Honor, this idea that this disassociation suddenly
6 moves to the automatic dissolution of the company. That
7 is just not correct under the statute. The filing of a
8 state of disassociation does trigger certain events. It
9 does trigger in an at-will company which is what Southern
10 Collection, LLC, of an at-will company potentially or the
11 obligation of the company to purchase the distributional
12 interest of the disassociated member.

13 THE COURT: In other words to buy the person --

14 MR. GODDARD: To buy them out. To buy them out, the
15 company has to buy them out if the company is going to
16 continue. Okay. That is under Article 7 of the LLC act.
17 What now has happened is she has made a petition, if she
18 doesn't want to get bought out, she has made a petition
19 under Rule 801 to dissolve the company completely and wind
20 up the company. Okay. This step of going from the
21 disassociation to the winding up is ignoring the exact
22 cause of action here that she has to prove, that all of
23 these bad acts alleged against Terrance occurred and made
24 it impractical to continue. 701 explicitly says, if there
25 is not a finding for dissolution, all that happens is they

1 have to buy her out. That can occur here, Your Honor.
2 That is exactly what is going to occur in the Family
3 Court. There is a question that is going to say, is this
4 company going to continue, yes. And you have to buy her
5 distributional interest out, whatever that value is.

6 THE COURT: Okay.

7 MS. BALLARD: One last point, Your Honor. In the
8 answers to interrogatories in the Family Court, Mr. Smith
9 has said that his father is currently holding the office
10 profit sharing funds in his Bank of America checking
11 account. So that is why they are named in this action.
12 So even if Emily and Terrance are stuck in Family Court,
13 our claim for conversion against Mr. Smith's parents
14 continues in this court because they are not parties in
15 the Family Court action at all. They probably could have
16 been but if borrowing from the argument that we got there
17 first, we got there first. We filed our action for
18 conversion before anything was ever considered in Family
19 Court about the ownership of these funds.

20 THE COURT: Okay. If I need any additional materials
21 from y'all I will let you know.

22 MS. BALLARD: Thank you, Your Honor.

23 THE COURT: If I need any additional submissions I
24 will let you know. Clearly I haven't read this yet but I
25 will.

1 MS. BALLARD: Thank you.

2 MR. GODDARD: Your Honor, very briefly. I also filed
3 under Rule 12(b)(6), in the event 12(b)(1), I would just
4 suggest --

5 THE COURT: Stand on your brief?

6 MR. GODDARD: My brief, standing on my brief on that
7 is fine or we can postpone the 12(b)(6) --

8 THE COURT: No, no.

9 MR. GODDARD: A separate hearing. I am fine on my
10 brief. I just wanted to say I did also move under
11 12(b)(6) as to a couple of the corporate defendants.

12 THE COURT: Okay. You stand on your brief?

13 MR. GODDARD: Yes, Your Honor.

14 THE COURT: Ms. Ballard, anything in response other
15 than what you wrote and put in writing?

16 MS. BALLARD: No, sir.

17 THE COURT: Okay.

18 MS. BALLARD: We are good where we are. Thank you so
19 much.

20 THE COURT: Y'all have a nice day.

21 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

22

23

24

25

Preliminary Marital Assets Addendum									
Smith vs. Smith									
Case No.: 2021-DR-32-1578									
DOM: 11/3/2012; DOS: ; DOF:									
ASSETS									
		Title	Value	Husband Adjustment	Non-Marital Wife Adjustment	Net Equity	Value Date	Notes	
1	REAL ESTATE								
a	112 John Preston Dr., Lexington SC 29072		681,400	-	-	681,400	8/24/2021	zillow estimate	
a1	<i>Guild Mortgage</i>	W	(419,064)	-	-	(419,064)	4/22/2021		
a2	<i>Palmetto Citizens</i>	W	(99,612)	-	-	(99,612)	4/22/2021		
b	1155 Harp Street, Raleigh NC 27604	W	580,000	-	(580,000)	-	5/6/2020	Wife's non-marital property	
b1	<i>Guild Mortgage</i>		(339,264)	-	339,264	-	4/22/2021	Wife's non-marital property	
			403,460	-	(240,736)	162,724			
2	VEHICLES								
a	2018 Porsche Cayenne S	W	40,000	-	-	40,000		estimate	
a1	<i>Loan</i>	W	(36,356)	-	-	(36,356)			
b	2012 Volvo		10,000	-	-	10,000		estimate	
b1			13,644	-	-	13,644			
3	PERSONAL PROPERTY								
a	Household Goods, Furnishings, etc.				TBD				
			-	-	-	-			
4	CHECKING, SAVING, & MM ACCOUNTS								
a	Palmetto Citizens Checking #5192	W	1,494	-	-	1,494	8/25/2021		
b	True Alliant #7400	W	-	-	-	-	8/25/2021		
b1	<i>Line of Credit</i>	W	(75)	-	-	(75)	8/25/2021		
			1,419	-	-	1,419			

Preliminary Marital Assets Addendum									
Smith vs. Smith									
Case No.: 2021-DR-32-1578									
DOM: 11/3/2012; DOS: ; DOF:									
	Title	Value	Husband Adjustment	Non-Marital Wife Adjustment	Net Equity	Value Date	Notes		
DEBTS									
8 ALL OTHER DEBTS									
a	Capital One #7089	(12,000)	-	-	(12,000)	8/25/2021			
b	Visa #5326	(7,160)	-	-	(7,160)	4/22/2021			
c	BB&T CC / Overdraft	(8,428)			(8,428)	8/25/2021			
d	American Express #TBD								Business account
	College Foundation Student Loan	(5,000)	-	-	(5,000)				
		(32,588)	-	-	(32,588)				
		\$ 257,429	\$ 87,277	\$ (240,736)	\$ 103,971				
CHILDREN ITEMS									
9 CHILDREN ITEMS									
a	BB&T Checking #3113	9,915	-	-	9,915	12/31/2020	Olivia's account		
b	529 Plan	12,579	-	-	12,579	8/25/2021	Olivia's account		
c	529 Plan	12,260	-	-	12,260	8/25/2021	Oliver		
		34,754	-	-	34,754				
FOOTNOTES									



STATE OF SOUTH CAROLINA)	IN THE CIRCUIT COURT FOR THE
)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON)	C.A. NO.: 2022-CP-32-01419
Emily P. Smith, et al,)	
)	
Plaintiff,)	
)	
v.)	AFFIDAVIT OF
)	SHEILA MCNAIR ROBINSON
Robert T. Smith, et al,)	
)	
Defendant.)	
_____)	

Personally appeared before me, Sheila McNair Robinson, who, after being duly sworn, deposes and states as follows:

I am the attorney for Emily P. Smith in a Family Court action currently pending in Lexington County Family Court (*Emily P. Smith vs. Robert T. Smith 2021-DR-32-1578*). The following Orders have been issued by the Family Court during the pendency of this case:

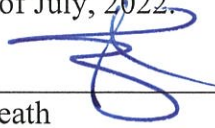
1. Temporary Order filed on September 9, 2021. (Exhibit A)
2. Order Appointing Guardian *ad Litem* filed on September 9, 2021. (Exhibit B)
3. Supplemental Temporary Order filed on September 24, 2021. (Exhibit C)
4. Order Denying Emergency/Expedited Hearing filed on November 5, 2021. (Exhibit D)
5. Second Supplemental Temporary Order filed on January 25, 2022. (Exhibit E)
6. Consent Confidentiality and Protective Order filed on February 10, 2022. (Exhibit F)
7. Order Withdrawing Motion to Compel filed on April 13, 2022. (Exhibit G)
8. Order Denying Emergency Hearing filed on May 3, 2022. (Exhibit H)
9. Consent Order Extending 365 Day Dismissal filed on June 30, 2022. (Exhibit I)

Southern Collection, LLC is not a party to the Family Court Action, and the corporate issues have not been addressed by any of these attached Orders.

Further Affiant Sayeth Not.


Sheila McNair Robinson

Sworn to and Subscribed before me
This 26 day of July, 2022.



Elizabeth F. Sineath
Notary Public for South Carolina
My Commission Expires: 1/5/2027

STATE OF SOUTH CAROLINA) IN THE FAMILY COURT FOR THE
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT
2021 SEP -9 PM 2:35) C.A. NO.: 2021-DR-32-1578

EMILY P. SMITH,)
LISA M. BOYER)
CLERK OF COURT)
LEXINGTON, SC)

PLAINTIFF,)

v.)

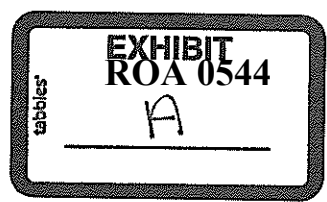
ROBERT TERENCE SMITH,)
DEFENDANT.)

TEMPORARY ORDER

Date of Hearing: August 26, 2021
Presiding Judge: W. Greg Seigler
Plaintiff's Attorney: Sheila McNair Robinson
Defendant's Attorney: Ashby Lawton Jones
Court Reporter: Sanya Kaiser

This matter came before the Court on August 26, 2021 at 4:30 p.m. The hearing was held via WebEx Virtual Courtroom pursuant to the authority of the South Carolina Supreme Court Order issued on April 30, 2020. The action was commenced by the filing of a Notice of Motion and Motion for Emergency/Expedited Temporary Relief, Summons and Complaint on August 18, 2021. The Honorable Robert E. Newton issued an Order on August 18, 2021 granting the Motion for an expedited hearing. The Defendant was personally served with the pleadings and Order for Expedited Hearing on August 19, 2021, as evidenced by the Affidavit of Service filed with the Court. The time for filing a responsive pleading has not yet passed.

Present at the hearing were the Plaintiff and her attorney, Sheila McNair Robinson. Also present were the Defendant with his attorney, Ashby Lawton Jones. The Court heard oral arguments of counsel and then recessed the hearing to take the matter under advisement. After careful consideration of the affidavit packages submitted by both parties and all information



presented at the hearing, this Court makes the following findings of fact and conclusions of law:

1. Both parties are citizens and residents of Lexington County, South Carolina, having been so in excess of one (1) year prior to the commencement of this action.
2. The Plaintiff and Defendant last resided together as wife and husband in Lexington County, South Carolina.
3. The Plaintiff and Defendant are presently wife and husband, having been married to each other on November 3, 2012. Of this marriage, two (2) children have been born, namely: O. G. S., born in 2014; and O. P. S., born in 2016. No other children have been born of these parties, and no child is expected.
4. This Court finds that the two (2) minor children have resided in South Carolina since birth. South Carolina is therefore the home state of the children pursuant to the Uniform Child Custody Jurisdiction Enforcement Act codified at S.C. Code §63-15-300 et. seq.
5. This Court finds that this Court has subject matter and personal jurisdiction of this action and of these parties. Venue is proper in Lexington County, South Carolina.
6. This Court finds that the Plaintiff has filed this action in which she is seeking a divorce from the Defendant on the basis of habitual drunkenness. The Plaintiff is further seeking an Order requiring the Defendant to vacate the marital home, for an Order granting her exclusive use and possession of the marital home, for sole custody of the children, for supervised visitation between the Defendant and the minor children, for child support, and other ancillary relief. In his affidavit, the Defendant denied the habitual drunkenness allegations and made an oral motion to dismiss the case for lack of jurisdiction since the parties are still residing together. Alternatively, the Defendant requested that the parties have shared custody of the children under a nesting arrangement in the marital home.

7. This Court finds that South Carolina case law is clear that “habitual drunkenness is the fixed habit of frequently getting drunk; it does not necessarily imply continual drunkenness. Based on this definition, one need not be an alcoholic to be guilty of habitual drunkenness. It is sufficient if the use or abuse of alcohol causes the breakdown of normal marital relations.” *Lee v. Lee*, 316 S.E. 2d 435, 437 (Ct. App. 1984), cited in *Curry v. Curry*, 741 S.E. 2d 558 (S.C. App. 2013). Moreover, our Supreme Court has long held that a party may receive temporary relief upon a *prima facie* showing of habitual drunkenness. *Fisher vs. Fisher*, 278 S.E. 2d 780 (1980). This Court finds that to make a *prima facie* showing, the Plaintiff must establish that the Defendant’s use of alcohol caused the breakdown of the marriage and that it occurred at or near the time of the filing for divorce. *Bodkin vs. Bodkin*, 694 S.E.2d 230 (Ct. App. 2010) (citing *Epperly vs. Epperly*, 440 S.E. 2d 884 (1994)). This Court finds, based upon a review of the affidavit packages, especially the Private Investigative Report of Stillinger Investigations, that the Plaintiff has met her burden of proof in establishing a *prima facie* showing of the Defendant’s habitual drunkenness.

8. This Court finds that the Plaintiff is granted exclusive use and possession of the marital home located at 112 John Preston Drive, Lexington, South Carolina. She shall be responsible for all costs associated with this home. The Defendant shall immediately vacate the home, taking with him his clothes, shoes and toiletries.

9. This Court finds that both parties are restrained from selling, mortgaging, destroying, or otherwise disposing of any marital property without prior written consent of both parties or prior Order of the Court. This Court further finds that neither party shall incur any debt in the name of the other party or increase any marital debt during the pendency of this litigation.

10. The Plaintiff shall have temporary sole custody of the two minor children. This Court finds that the Lexington County Department of Social Services issued a Safety Plan on

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23

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LISA M. COMER
CLERK OF COURT
LEXINGTON SC

August 12, 2021 which requires the Defendant's visitation to be supervised (sight and sound) by the Plaintiff's parents, Ron and Teddie Bishop. This Court finds that the Defendant shall continue to have supervised visitation with the Plaintiff's parents serving as the sight and sound supervisors pending the expedited investigation of the Guardian *ad Litem*, as set forth in full herein below. The Defendant shall be allowed to exercise said visitation at the marital home if he so desires. The Defendant shall also have reasonable telephonic and video contact with the children, and the Plaintiff shall ensure the children are available and are encouraged to speak with the Defendant during these calls.

11. The Defendant shall pay child support to the Plaintiff in the amount of \$2,000 per month commencing September 1, 2021 and continuing on the first of each month thereafter. The Defendant shall pay this child support directly to the Plaintiff. In the event that the Defendant is ever more than five (5) days late in making any one child support payment, the Plaintiff may file an affidavit with the Office of the Clerk of Court requiring all future child support payments to be paid through the State Disbursement Unit, together with the applicable surcharge.

12. The Plaintiff shall maintain medical insurance coverage on the minor children. All noncovered medical, dental, counseling, orthodontic, vision and other health-related expenses for the children shall be divided equally between the parties. The Plaintiff shall provide a bill/invoice to the Defendant within ten (10) days of incurrence, and the Defendant shall pay his one-half within ten (10) days of the date the bill/invoice is provided or pursuant to other payment arrangements acceptable with the medical provider.

13. The parenting guidelines and restrictions attached to this Order shall be in full force and effect for both parties. Neither parent shall administer corporal punishment to either minor child.

24

LEBA M. COLLIER
CLERK OF COURT
DIXONSTON SC

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14. Michelle Gorski is appointed as the Guardian *ad Litem* for the two (2) minor children. A separate Order of appointment is being issued simultaneously with this Temporary Order. Ms. Gorski is to complete an expedited investigation within forty-five (45) days of the date of this Order. At the conclusion of the expedited investigation a supplemental temporary hearing shall be scheduled. The parties shall equally divide the retainer payable to Ms. Gorski as set forth more fully in the detailed order of appointment.

15. The parties agree that either Lisa Kinon or Kevin Barth shall serve as the mediator in this case.

16. This Court finds that the Defendant shall reimburse the Plaintiff the sum of \$6,779.33 in private investigative fees, with this sum being paid directly to the Plaintiff within thirty (30) days of the date of this Order.

16. All other issues shall be held in abeyance pending further Order of the Court.

IT IS THEREFORE ORDERED that the Plaintiff has established a showing of a *prima facie* showing of the Defendant's habitual drunkenness;

IT IS FURTHER ORDERED that the Plaintiff shall have exclusive use and possession of the marital home as set forth in full hereinabove;

IT IS FURTHER ORDERED that the Defendant shall immediately vacate the marital home as set forth herein above;

IT IS FURTHER ORDERED that the Plaintiff shall have sole temporary custody of the minor children, with the Defendant having supervised visitation as set forth more fully herein above;

IT IS FURTHER ORDERED that the Defendant shall pay child support to the Plaintiff in the amount of \$2,000 per month as set forth more fully hereinabove;

IT IS FURTHER ORDERED that the attached parenting guidelines and restrictions shall apply to both parties, and neither shall administer corporal punishment to either minor child;

IT IS FURTHER ORDERED that the Plaintiff shall maintain medical insurance coverage on the minor children, with all noncovered health-related expenses being divided equally between the parties as set forth more fully hereinabove;

IT IS FURTHER ORDERED that Michelle Gorski is appointed as Guardian *ad Litem* for the minor children and she shall conduct an expedited investigation within forty-five (45) days of the date of this Order;

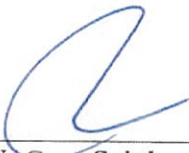
IT IS FURTHER ORDERED that another temporary hearing shall be scheduled at the conclusion of the expedited investigation of the Guardian *ad Litem*;

IT IS FURTHER ORDERED that either Lisa Kinon or Kevin Barth shall serve as the mediator in this case;

IT IS FURTHER ORDERED that the Defendant shall reimburse the Plaintiff the sum of \$6,779.33 in private investigative fees, with this sum being paid directly to the Plaintiff within thirty (30) days of the date of this Order;

IT IS FURTHER ORDERED that all other issues shall be held in abeyance pending further Order of the Court.

IT IS SO ORDERED.


W. Greg Seigler
Presiding Judge of the
Family Court for the
Eleventh Judicial Circuit

LISA M. COMER
CLERK OF COURT
LEXINGTON SC

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FILED

Lexington, South Carolina

September 8, 2021



STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE FAMILY COURT FOR THE
ELEVENTH JUDICIAL CIRCUIT
C.A. NO.: 2021-DR-32-1578

EMILY P. SMITH,)
PLAINTIFF,)

v.)

ROBERT TERENCE SMITH,)
DEFENDANT.)

**ORDER APPOINTING
GUARDIAN AD LITEM**

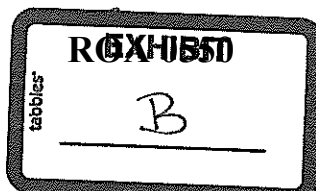
Date of Hearing: August 26, 2021
Presiding Judge: W. Greg Seigler
Plaintiff's Attorney: Sheila McNair Robinson
Defendant's Attorney: Ashby Lawton Jones
Court Reporter: Sanya Kaiser

This matter came before the Court on August 26, 2021 at 4:30 p.m. for an expedited temporary hearing. Based upon the findings in the Temporary Order, which is being issued simultaneously with this Order, it appears that it is necessary that a Guardian *ad Litem* be appointed to appear and represent the minor children, O.G.S. and O.P.S., both of whom are more fully described on the filed Confidential Reference List of Redacted Identifiers and which the Guardian *ad Litem* is entitled to a copy. This is an action that involves custody and visitation of the parties' minor children which requires the appointment of a Guardian *ad Litem*.

IT IS THEREFORE ORDERED that Michelle S. Gorski is appointed to serve as the Guardian *ad Litem* to protect the interests of the minor children, O.G.S., born in 2014; and O.P.S., born in 2016.

IT IS FURTHER ORDERED that the Guardian *ad Litem* shall:

1. Be allowed private access to the children by the caretakers of the children, whether caretakers are individual, authorized agencies or health care providers;



2. Upon proof of appointment as Guardian *ad Litem* and upon request, the Guardian *ad Litem* shall have access to information in the possession of medical and dental authorities, psychologists, social workers, counselors, schools, law enforcement personnel, and any private or public service providers about the children for whom they are Guardian *ad Litem*;

3. Be given notice of all hearings and proceedings involving this case, or any other hearings or meetings when the children's best interests might be affected, or any meetings or hearings the Guardian *ad Litem* may request; and

4. Perform the functions listed in S.C. Code Ann. § 63-3-830, et seq., including but not limited to the following:

- a. Representing the best interests of the minor children;
- b. Conducting an independent, balanced, and impartial investigation to determine the facts relevant to the situation of the children and the family. The investigation must include, but shall not be limited to:
 - (1) Obtaining and reviewing relevant documents; provided, however, that the Guardian *ad Litem* must not be compensated for reviewing documents solely to financial matters not relevant to the suitability of the parents as to custody, visitation, or child support;
 - (2) Meeting with and observing the children on at least one occasion;
 - (3) Visiting the home settings if deemed appropriate;
 - (4) Interviewing parents, caregivers, school officials, law enforcement officers, and others with knowledge relevant to the case;
 - (5) Obtaining the criminal history of each party when determined necessary; and
 - (6) Considering the wishes of the children, if appropriate.

- c. Advocating for the children's best interest by making specific and clear suggestions, when necessary, for evaluation, services and treatment for the children and the children's family.
- d. Attending all court hearings relating to custody and visitation issues, except when attendance is excused by the Court or the absence is stipulated by both parties. The Guardian *ad Litem* is not required to attend a hearing solely to a financial matter if the matter is not relevant to the suitability of the parties as to custody, visitation, or child support. The Guardian *ad Litem* must provide accurate, current information directly to the Court, and that information must be relevant to matter pending before the Court.
- e. Maintaining a complete file, including notes.
- f. Presenting to the Court and all parties clear and comprehensive written reports including, but not limited to, a final written report regarding the children's best interest. The final report may contain conclusions based upon the facts contained in the report. The final report must be submitted to the Court and all parties no later than twenty (20) days prior to the merits hearing, unless that time period is modified by the Court, but in no event later than ten (10) days prior to the merits hearing. The ten (10) day requirement for the submission of the final report may only be waived by mutual consent of both parties. The final written report must not include a recommendation concerning which party should be awarded custody, nor may the Guardian *ad Litem* make a recommendation as to the issue of custody at the merits hearing unless requested by the Court for reasons specifically set forth on the record. The Guardian *ad Litem* is subject to cross-examination on the facts and conclusions contained in the final written report. The final written report must include the names, addresses, and telephone numbers of those interviewed during the investigation.
- g. Perform such other duties as directed by the Court.



h. Investigate the locations where the parties interact with the minor children, including the parties' homes and work places.

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i. Conduct random alcohol and drug tests at the Guardian *ad Litem's* discretion.
IT IS FURTHER ORDERED that this appointment shall continue to be in effect until formal discharge by the Court.

LISA M. DUNN
CLERK OF COURT
LEXINGTON SC

IT IS FURTHER ORDERED that upon receipt of this Order, the Guardian *ad Litem* shall make all filings and disclosures to the Court and the parties pursuant to S.C. Code Ann § 63-3-820 (D) and § 63-3-860 (Supp. 2002).

IT IS FURTHER ORDERED that the parties shall execute all releases necessary for the Guardian *ad Litem* to obtain records to investigate this case, or obtain and provide such records at the request of the Guardian *ad Litem*.

IT IS FURTHER ORDERED that the Guardian *ad Litem* is to be given access to the children's and parties' financial, medical, psychological, and intellectual testing records. The Guardian *ad Litem* is entitled to obtain copies of all relevant documents.

IT IS FURTHER ORDERED that the Guardian *ad Litem* is authorized is authorized to have access to records prepared or related to any medical and psychiatric treatment of the children's and parties' medical and psychological treatment with any appropriate medical or health care professionals. This access is authorized by this Order, as provided by 45 CFR 164.512(e)(I)(i), the Health Insurance Portability and Accountability Act (HIPAA), which authorizes covered entities to disclose protected health information in the course of any judicial or administrative proceeding when responding to an Order of the Court.

IT IS FURTHER ORDERED that the Guardian *ad Litem* is specifically authorized by this Order to utilize the information obtained pursuant to this Order to prepare and/or include in any

report or testimony concerning the Guardian *ad Litem*'s investigation required by this Order.

IT IS FURTHER ORDERED that the Guardian *ad Litem* shall not retain an attorney without prior approval of the Court, after notice to all parties and a hearing.


IT IS FURTHER ORDERED that the parties shall deposit with the Guardian *ad Litem* the sum of \$2,000.00 as a retainer within ten (10) days of the filing date of this Order, with each to pay \$1,000.00 directly to the Guardian. The Guardian *ad Litem* may charge a reasonable fee not to exceed \$5,000.00 for performing the tasks assigned herein. The Guardian *ad Litem* shall submit itemized periodic bills to the parties and their attorneys on a monthly basis, including hours, expenses, costs and fees. The Guardian *ad Litem*'s hourly rate is \$85.00. If the Guardian *ad Litem* determines that it is necessary to exceed the fee authorized above, the Guardian *ad Litem* must provide notice to both parties and obtain the judge's written authorization or the consent of both parties to charge more than \$5,000.00.

IT IS FURTHER ORDERED that the Plaintiff shall pay 50% of the initial retainer and subsequent fees, and the Defendant shall pay 50% of the initial retainer and subsequent fees. These payments shall without prejudice to either party to request a reallocation of the fees by the Court at a subsequent hearing. The parties shall remain current with the periodic bills to be submitted by the Guardian *ad Litem*. The Guardian *ad Litem* shall bill the parties monthly and the parties shall pay the monthly billings within fifteen (15) days of receipt of their bill.

IT IS SO ORDERED.

Lexington, South Carolina

September 8, 2021


W. Greg Seigler
Presiding Judge, Family Court
Eleventh Judicial Circuit

2021 SEP -9 PM 2:35
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

FILED



STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
EMILY P. SMITH,)
PLAINTIFF,)
v.)
ROBERT TERENCE SMITH,)
DEFENDANT.)

2021 SEP 24 PM 3:56
LISA M. GANTER
CLERK OF COURT
LEXINGTON, SC

IN THE FAMILY COURT FOR THE
ELEVENTH JUDICIAL CIRCUIT
C.A. NO.: 2021-DR-32-1578

**SUPPLEMENTAL
TEMPORARY ORDER**

Date of Hearing: August 26, 2021
Presiding Judge: W. Greg Seigler
Plaintiff's Attorney: Sheila McNair Robinson
Defendant's Attorney: Ashby Lawton Jones
Court Reporter: Sanya Kaiser

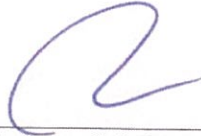
This matter came before the Court on August 26, 2021 at 4:30 p.m. A Temporary Order was signed on September 8, 2021 and filed with the Clerk of Court on September 9, 2021. The parenting guidelines and restrictions referenced in the Temporary Order were not attached. This Supplemental Temporary Order is being issued to include a copy of the parenting guidelines and restrictions, which are attached hereto.

The Temporary Order filed on September 9, 2021 remains in full force and effect, and this Supplemental Temporary Order merely includes the parenting guidelines and restrictions which were inadvertently not attached to the Temporary Order.

The attached parenting guidelines and restrictions are in effect and shall apply to both parties.



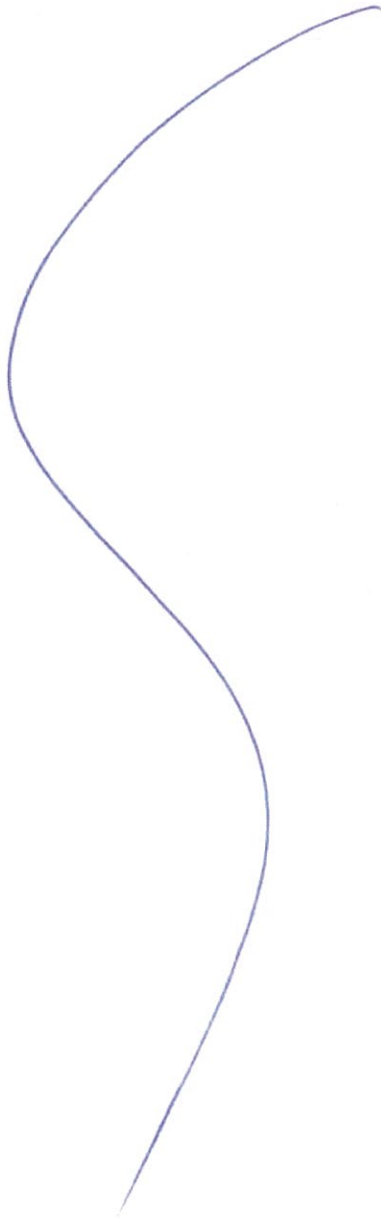
IT IS SO ORDERED.



W. Greg Seigler
Presiding Judge of the
Family Court for the
Eleventh Judicial Circuit

Lexington, South Carolina

September 24, 2021



2021 SEP 24 PM 3:56
LISA M. GOMER
CLERK OF COURT
LEXINGTON SC



JUDGE MORRIS'

CO-PARENTING PLAN AND RESTRICTIONS ON PARENTS CONDUCT

Both parents have vital roles in the raising of their child and each should be intimately involved in his day to day lives. In order to facilitate each parent's involvement the following will apply:

I OTHER PARENTAL GUIDELINES, RIGHTS, & INSTRUCTIONS:

A. Contact Information: Both parents will keep the other advised as to their permanent address, e-mail address, home, cell, and work phone numbers if applicable. Also, whenever a party is traveling out of the area of their permanent residence on an overnight basis with the child, they shall keep the other parent advised of their itinerary and contact information.

B. Telephone/E-mail Contact: Both parents shall have reasonable and at all times private telephone and e-mail contact with the child. E-mail is limited to age appropriate use and ability to use a computer but does not require the purchase of a computer by either parent.

C. Important Events: Both parties shall timely notify the other party of any reasonably important event occurring while the child is in their care, such as, but not limited to, extracurricular activities, baptisms, sporting events, dance recitals, school plays, etc. Both parents may attend all such events if it is appropriate for parents to attend. When in doubt, the other parent shall be given notice.

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JUDGE MORRIS
CLERK OF COURT
LEWISTON, ME

2021 SEP 24 PM 3:56

LISA B. COLLIER
CLERK OF COURT
LEXINGTON SC

D. **Access to Records:** Both parents shall have full and complete access to all medical providers, school records, school personnel, coaches, counselors and other professionals involved in the child's lives and shall be allowed to discuss their child's circumstances and needs with these people. Each party shall inform the other party of the identity of such people and how to contact such people. Each parent shall permit and encourage communication with teachers, administrators, health care professionals, counselors, therapists or any other individual involved with the child.

E. **Medical Emergencies:** In the event of a medical emergency experienced by a child, the parent who has the child may make appropriate decisions to protect the health and welfare of the child, this is not to undermine the custodial parent's legal authority to make appropriate decisions. The visiting parent shall make reasonable efforts to contact the custodial parent but shall have the authority to act and shall not delay in protecting the child from imminent danger. The visiting parent may sign such forms as are required by the various providers in order to address the emergency. The visiting parent shall notify the custodial parent as soon as possible as to the nature and the extent of the emergency.

F. **Failure to Pay Child Support/Denial of Visitation:** The failure to pay child support does not alter this visitation and the denial

2021 SEP 24 PM 3:56
LISA M. ...
CLERK OF COURT
LEXINGTON SC

of this visitation does not alter one's duty to pay child support.
(Remedies such as sanctions for Contempt may apply.)

G. **Pick Up and Return of Child:** Unless otherwise specified, the visiting parent shall pick up and return the child to and from the custodial parent's residence for all periods of visitation. The custodial parent may not thwart/deny visitation by moving away and if the custodian moves greater than fifteen (15) miles from the location where the child lived when the order establishing visitation is signed, the custodial parent shall have the child at the old location until an order or written agreement is obtained altering this location. (This is not a ruling as to the right or prohibition of one's right to move or relocate.)

H. **Notice of Relocation:** If either party moves more than fifteen (15) miles from the place where they were living at the time of the signing of an order establishing visitation, they must give at least ninety (90) days notice of such move.

I. **Consultation Regarding Major Issues:** Both parents shall consult on major issues concerning the child such as education, health, extracurricular activities and the like. The parties shall endeavor to reach agreements on these issues and shall attempt to present a united front to the child. In the event the parents are unable to reach an agreement as to issues concerning the child then the

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LISA M. ...
CLERK OF COURT
LEXINGTON, VA

custodial parent shall make the decision for the benefit of the child. In the event the parties do not reach a mutual agreement and the custodial parent must make the decision, the other parent shall not undermine the custodial parent's decision or convey to the child his or her disagreement with the custodial parent's decision in the presence of the child. The other parent shall not attempt to usurp the custodial parent's role in the event of a disagreement or countermand the custodial parent's instructions given to those individuals involved with the care, education, or supervision of the child.

J. **Clothing:** The custodial parent shall provide all clean clothing necessary for the child while the visiting parent is exercising visitation. The visiting parent shall return all of the clothing to the custodial parent at the conclusion of visitation.

K. **Illness:** Each parent shall notify the other of any serious illness relating to the child while under their care. A serious illness is defined as one which requires the child to be absent from school or deviate from his normal schedule for more than one day. If the child requires more than one visit to a health care provider for whatever malady, the party who has the child shall notify the other of the nature of the malady and the treatment.

L. **Reference to the names of "Mother" and "Father":** The parties are directed that names such as Mom, Mommy, Mother or Dad,

Daddy, or Father or the like are specifically reserved for the mother and father. Neither shall permit the use of such names by the minor child for persons other than the mother or the father,

II. RESTRICTIONS:

A. **Confrontations:** There shall be no form of physical or verbal confrontation between the parents in front of their child. Any communications between the parties concerning issues involving the child shall be between the parents. Third parties will not be used unless by mutual agreement of the parties. The parties will make themselves available for communications with each other as needed. When these discussions do occur they shall be polite and confined to those discussions that are reasonably necessary for the benefit of the child or as mutually agreed upon by the parties.

B. **Discussions:** The parties shall not discuss issues relating to the child in their presence unless by mutual agreement. When discussions do take place in the presence of the child the parties shall treat each other with the dignity and respect that they are entitled to as parents of the child. The parties shall not discuss the issues of the litigation in the presence of the child or where the child may reasonably overhear such conversations.

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LEXINGTON, VA
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C. **Alcohol:** The parties shall not excessively consume or be under the influence of alcohol or use any illegal drug or abuse any prescription drug while the child is under their care.

D. **Profanity:** The parties shall not use profanity against the other or towards the child, or make any derogatory comments about or towards the other party, or allowing anyone else to do so in front of their child.

E. **Boyfriend/Girlfriend:** Until a divorce is granted neither party shall permit the child to be in the presence with anyone with whom they have a romantic interest.

F. **School:** Both parents are required to see that the child/children properly attend school

G. **Not Scheduling Events to Conflict With Visitation:** Neither party shall schedule (or allow others to schedule) elective matters with the child on or during the other party's visitation unless absolutely necessary.

H. **"X" and "R" Rated Movies:** In no case shall the child be exposed to any x-rated or pornographic material. The parents may use discretion as to the child sixteen (16) years or over as to "R" rated movies; but if either parent objects, the child shall not be exposed to any "R" rated movies,

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USA CLERK OF COURT
LEXINGTON SC

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

) IN THE FAMILY COURT FOR THE
) ELEVENTH JUDICIAL CIRCUIT
) Case No.: 2021-DR-32-1578

Emily P. Smith,

Plaintiff,

v.

Robert Terence Smith,

Defendant.

~~ORDER FOR~~ Denying EMERGENCY/EXPEDITED HEARING *[Signature]*

After a review of the Motion and Affidavit of Defendant, Robert Smith, I find it appropriate that an Emergency/Expedited Hearing be granted:

THEREFORE, IT IS ORDERED that an Emergency/Expedited Hearing in this matter be granted and is scheduled on the _____ day of _____ 2021 at _____ o'clock _____ M. and the five (5) day notice requirement is hereby waived.

AND IT IS FURTHER ORDERED that a copy of the Motion and Order for Emergency/Expedited Hearing shall be served upon the Plaintiff.

AND IT IS FURTHER ORDERED that any person not less than 18 years of age, who is not an attorney in or party to this action, is designated to serve this Order along with the other above-mentioned documents in this matter.

AND IT IS SO ORDERED.

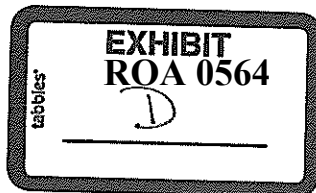
Lexington, South Carolina

[Signature]

Presiding Judge, Eleventh Judicial Circuit

November 5 2021

Hour of Issuance: _____



STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

Emily P. Smith,)

Plaintiff,)

v.)

Robert Terence Smith,)

Defendant.)

IN THE FAMILY COURT FOR THE
ELEVENTH JUDICIAL CIRCUIT
Case No.: 2021-DR-32-1578

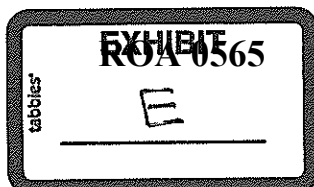
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LISA B. GORSKI
CLERK OF COURT
LEXINGTON, SC

**SECOND SUPPLEMENTAL
TEMPORARY ORDER**

Date of Hearing:	December 2, 2021
Presiding Judge:	The Honorable Robert E. Newton
Plaintiff's Attorney:	Sheila McNair Robinson, Esquire
Defendant's Attorney:	Ashby Lawton Jones, Esquire
Guardian <i>ad Litem</i> :	Michelle S. Gorski
Court Reporter:	Carole Shealy

This matter was before the Court on December 2, 2021 on Defendant's Motion for Emergency/Expedited Relief filed on November 5, 2021. Present and appearing at the appointed time and place were the Plaintiff and her attorney, Sheila McNair Robinson, Esquire. The Defendant and his attorney, Ashby Lawton Jones, Esquire and the Guardian *ad Litem*, Michelle S. Gorski, Esquire were also present.

The record reflects this action was commenced by the filing of a Notice of Motion and Motion for Emergency/Expedited Relief on behalf of the Defendant on November 5, 2021. The request for an emergency or expedited hearing was denied and the matter was set in the ordinary course. Defendant requested an Order granting him reasonable unsupervised visitation and attorney's fees. Plaintiff filed a Return to Defendant's Motion on December 1, 2021, wherein Plaintiff requests that if the Court lifts the



supervision requirement the Court impose specific restrictions. In addition, Plaintiff requests the Court Order an accounting regarding certain financial matters and requests an award of fees, as well. Both parties submitted Affidavits and supporting documents and the Court has considered those materials as well as the arguments of Counsel. In addition, the Guardian ad Litem submitted her Initial Report which the Court has considered. All Motions before the Court were properly served.

These parties have been operating under a Temporary Order issued by the Honorable W. Greg Seigler on September 9, 2021, from a hearing on August 26, 2021. That Order granted Plaintiff sole custody and required the Defendant to have visitation consistent with a DSS Safety Plan that was then in effect that required all of Defendant's visitation to be supervised by Plaintiff's parents. A Supplemental Temporary Order was issued on September 24, 2021, which included parenting restrictions and guidelines omitted from the prior Order.

It is contradicted that shortly after the Temporary Order was issued, Plaintiff's parents became unavailable to provide supervision and the South Carolina Department of Social Services closed its case and terminated the prior Safety Plan. In addition, the prior Order did not set out a specific schedule of visitation and the parties have been unable to agree on a regular schedule. As a result, Defendant has had very limited contact with the children since the last Order. The facts surrounding those issues are highly contested as are allegations regarding respective motives of the parties. However, at the hearing the issue of supervision was no longer contested. The issue in

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COLUMBIA, SC

contest was the amount of visitation and any restrictions, as well as the fees and financial issues.

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RESTRICTIONS

Based upon a review of all information submitted, the Court finds it appropriate to lift the supervision requirement and set a specific scheduled parenting time for the Defendant.

I. VISITATION SCHEDULE:

A. REGULAR VISITATION: Father will have visitation commencing on Friday, December 17, 2021, from after school until 6:00 P.M. on Sunday, December 19, 2021. Father will then have the children from 3:00 P.M. on Christmas Day until 6:00 P.M. on New Year's Day. Thereafter, Father will have the children every other weekend from Friday afterschool until the children return to school on Monday morning, and in the off weeks, Father will have the children from after school on Wednesday until they are returned to school on Thursday morning. This schedule will commence with Wednesday, January 5, 2022.

B. HOLIDAY VISITATION:

- 1. Christmas Visitation:** The mother shall have one (1) week prior to Christmas in the even years, with such visitation to continue until 3:00 p.m. on December 26th. The father shall have from 3:00 p.m. on December 26th, with such visitation to end at 6:00 p.m. on the last day of visitation. In the odd years, this visitation shall reverse and the father will have the week prior to Christmas and the mother will have the week following Christmas until the children return to school.
- 2. Thanksgiving Visitation:** The father shall have Thanksgiving visitation in the even numbered years and the mother shall have visitation in the odd numbered years. Thanksgiving shall commence at 6:00 p.m. on the last day the children are in school or would be in school if they were attending the school

in the district where they are living and shall end at 6:00 p.m. on the following Sunday.

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LISA J. ...
CLERK OF ...
LEWIS & CLARK

Easter Break and Spring Vacation: In the odd years, the father shall have Easter weekend with such visitation commencing the Friday before Easter at 6:00 p.m. and ending at 6:00 p.m. on Easter Sunday in the even years. The mother will have the child/children for the Easter weekend in the even years. The parent who has the Easter weekend shall also have that portion of the Easter break that adjoins the weekend with the exchange of the children to occur at 6:00 p.m. on the Wednesday of the Spring Break.

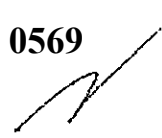
4. **Mother's Day and Father's Day:** The children shall be with the mother on Mother's Day and with the father on Father's Day from Saturday at 6:00 p.m. until Sunday at 6:00 p.m.
5. **Monday/Friday Holidays or School In Service Days:** As to any other holiday or school in service day which occurs on a Monday or a Friday and which is recognized by the school district in which the children resides, the parent having the children for that weekend may keep the child for these days. Such visitation will start at 6:00 p.m. the day before the holiday or in service day and end at 6:00 p.m. the day of the holiday or in service day depending on whether it occurs on a Friday or Monday.
6. **Religious Holidays:** If the children are being raised in a particular faith which has a major religious holiday not otherwise included in the above time frames, the parents shall alternate visitation with the children from 6:00 p.m. the day prior to the event until 6:00 p.m. the day after the event. However, if the child is required to travel and the holiday starts, for example at sundown, the child may be picked up as soon as school is out as might be reasonably necessary to allow for the child to arrive at the parent's home prior to the required time of commencement of the holiday.
7. **Summer Visitation:** The visiting parent shall have two (2) full weeks during the summer. The weeks shall not be consecutive. He/she shall select these weeks in writing on or before April 15 in each odd numbered year. The custodial parent shall also have two (2) full weeks during the summer with no interruptions in visitation in the odd numbered years and he/she shall give notice by May 1 of the weeks he/she selects. In the even years, the right to have first choice as to selection of weeks shall reverse and the custodial parent will select His/her weeks by April 15 with the visiting parent to select his/her weeks by May 1 of each year. These weeks shall include the party's normal every other weekend visitation period and run from Sunday at 6:00 p.m. to Sunday at 6:00 p.m. unless otherwise agreed. In other words, a week

will not be seven days plus the parties' normal weekend. The visiting parent's failure to select weeks by the deadlines set forth above does mean he/she forfeits visitation, but such visitation will be set by the custodial parent.

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CLERK OF COURTS
TRAVIS COUNTY

8. **Birthdays Visitation:** On each parent's birthday, the children shall be with the parent for a minimum of four (4) hours except for school days when the children shall be with that parent from 5:30 p.m. until 8:00 p.m. (This does not require the parent to take time off from work.) The party not having the child on a child's birthday shall have four (4) hours visitation on a non-school day and two (2) hours visitation on a school day, independent of any activity planned by the party who has care of the child on that day. This visitation shall be at a reasonable time and shall not to conflict with any activity the party who has the child on that day may have planned. All the children shall be together on any of their brother's/sister's birthdays and parent's birthdays.
9. **Fourth of July, Labor Day and Memorial Day:** The mother shall have Labor Day and Memorial Day in the odd numbered years. The father shall have the Fourth of July in the odd numbered years. For Memorial Day and Labor Day such visitation shall commence at 6:00 p.m. on the day prior to the holiday and will continue until 6:00 p.m. on the day of the holiday. On the Fourth of July, such visitation shall commence at 6:00 p.m. the day before the holiday and will continue until 9:30 p.m. on the day of the holiday. In the even years this visitation will reverse and the father will have Memorial Day and Labor Day and the mother will have the Fourth of July weekend.
10. **Halloween:** If the children are participating in Halloween activities, the mother will have visitation with the children from 5:00 p.m. until the children return to school or 9:00 a.m. in the odd numbered years and the father will have the children in even numbered years.
11. **Variation from Schedule:** The parties shall have the right to vary visitation as can be mutually agreed upon. In the event the parties vary from the schedule for any period of time, either party can require both to return to the use of the schedule by giving notice in writing to the other.

2. All parenting guidelines and restrictions previously ordered will remain in full force and effect except that Defendant shall be restrained from consuming any alcohol for twelve (12) hours prior to exercising his time with the children and is absolutely restrained from the consumption of any alcohol during his parenting time.



The Guardian ad Litem is authorized to request drug and alcohol testing at any time and the party must comply within twenty-four (24) hours of the written request.

3. The parties shall enroll in and utilize Our Family Wizard for all non-emergency communications regarding the children.

4. The parties are reminded and admonished by the Court regarding the restraints on disparagement or discussion regarding the litigation with the children or in their presence.

5. Neither party shall allow the children to be in the presence of Father's emancipated daughter without direct supervision.

6. The Court denies Plaintiff's request for a Court ordered accounting.

7. All remaining issues are held in abeyance including request for temporary fees incident to this motion.

IT IS SO ORDERED.

Lexington, South Carolina
July 21, 2022.


The Honorable Robert E. Newton

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CLERK OF COURT
LEXINGTON, SC

ORIGINAL

STATE OF SOUTH CAROLINA)

IN THE FAMILY COURT FOR THE

COUNTY OF LEXINGTON)

ELEVENTH JUDICIAL CIRCUIT

Case No.: 2021-DR-32-1578

Emily P. Smith,

Plaintiff,

v.

Robert Terence Smith,

Defendant.

CONSENT CONFIDENTIALITY AND
PROTECTIVE ORDER

WHEREAS, the parties are engaged in the above-captioned domestic litigation;

WHEREAS, at the request of Dr. Roni Caw, it was requested and the parties agreed that Dr. Marc Harari would perform a "Forensic Mental Health Evaluation specifically designed to evaluate and assess [the parties'] general mental health as it pertains to their parental capacity" and these are intended to be utilized to facilitate marital therapy services and not intended for forensic purposes such as Family Court;

WHEREAS, this report contains sensitive information about the parties, their children, and this litigation and the disclosure of which serves no public purpose and with the relevance limited to the litigation between the parties;

WHEREAS, neither party is objecting to the release of the report to the parties, their counsel, and/or any expert witness which may be called or required in the trial of this matter, except to the extent that it remain confidential and that is absolutely not be shared with the minor children in this case;



WHEREAS, each party agrees that the confidentiality of the report is required to be maintained;

WHEREAS, in order to protect the confidentiality of this report, the parties have agreed that neither party, their counsel or any respective experts shall reveal the information obtained other than confined in the course of this litigation;

Based upon consent of the parties through counsel, and for good cause shown, I find that a Confidentiality Order should be issued.

Accordingly, and by reason of the foregoing,

IT IS ORDERED THAT the following procedure shall be in effect in order to keep the records confidential:

- a. One copy of the report of Dr. Marc Harari shall be provided to each party's counsel.
- b. Counsel shall safeguard the report, but not make any copies unless for a purpose permitted below. The parties may review the report at their counsel's offices, but shall not be permitted to have physical or digital copies other than the copy already in his/her possession. No additional copies shall be made or disseminated.
- c. The contents shall not be disclosed or disseminated verbally or in writing by the parties, including on social media.
- d. If any documents are used at a deposition or in court, the document must be made an Exhibit Under Seal so that the public cannot access it.

- e. Copies may be provided to any custody evaluator, or other experts as needed, which shall be returned to the providing counsel or the Guardian *ad Litem* at the end of litigation.

IT IS FURTHER ORDERED THAT the parties, counsel, and any experts shall have access to this information but shall not share, disseminate, expose, disclose or in any manner share this information with individuals not directly involved in this matter, especially the minor children of the parties.


IT IS FURTHER ORDERED THAT that the report of Dr. Marc Harari referenced above, and the information contained therein, will not be published or disseminated by anyone other than the parties to this litigation or the court, and only within the confines of this case, should the case proceed to a hearing or trial, and that neither party will object to sealing this portion of the record should any confidential information be entered as evidence.

IT IS FURTHER ORDERED THAT at the conclusion of this litigation, both parties, their experts and their attorneys shall continue to be subject to the confidentiality provisions of this Order, and that the report shall not be shared with the minor children.

AND IT IS SO ORDERED this 10th day of February, 20 22 at
Lexington, South Carolina.

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CLERK OF COURT
LEWIS AND CLARK
COUNTY
SOUTH CAROLINA
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AND, IT IS SO ORDERED.


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 PRESIDING JUDGE
 FAMILY COURT - ELEVENTH CIRCUIT

Lexington, South Carolina

February 10, 2022

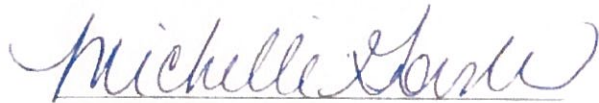
WE CONSENT:



 ASHBY LAWTON JONES
 ATTORNEY FOR DEFENDANT



 SHEILA M. ROBINSON
 ATTORNEY FOR PLAINTIFF



 MICHELLE GORSKI
 GUARDIAN AD LITEM

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE FAMILY COURT FOR THE)
ELEVENTH JUDICIAL CIRCUIT)
Case No.: 2021-DR-32-1578)

Emily P. Smith,)

Plaintiff,)

v.)

Robert Terence Smith,)

Defendant.)

Denying
ORDER FOR EMERGENCY HEARING

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JISAM, COMER
CLERK OF COURT
LEXINGTON SC

After a review of the Motion and Verification of Defendant, Robert Smith, I find it appropriate that an Emergency Hearing be granted.

THEREFORE, IT IS ORDERED that an Emergency Hearing in this matter be granted and is scheduled on the _____ day of _____ 2022 at _____ o'clock _____ M. and the five (5) day notice requirement is hereby waived.

AND IT IS FURTHER ORDERED that a copy of the Motion and Order for Emergency Hearing shall be served upon Plaintiff.

AND IT IS FURTHER ORDERED that any person not less than 18 years of age, who is not an attorney in or party to this action, is designated to serve this Order along with the other above-mentioned documents in this matter.

This order is without prejudice to raising jurisdictional or family and acting
AND IT IS SO ORDERED. *changes in the circuit and acting*
as the
denial
HSC is procedural
not substantive

Lexington, South Carolina

Presiding Judge, Eleventh Judicial Circuit

May 3, 2022

Hour of Issuance: 4:43 PM



SCANNED

FILED

STATE OF SOUTH CAROLINA)

2022 JUN 30 AM 8:57

IN THE FAMILY COURT OF THE)

COUNTY OF LEXINGTON)

ELEVENTH JUDICIAL CIRCUIT)

C.A. NO.: 2021-DR-32-1578)

EMILY P. SMITH,)

LISA K. COMER)
CLERK OF COURT)
LEXINGTON, SC)

PLAINTIFF,)

VS.)

**CONSENT ORDER
EXTENDING 365 DAY DISMISSAL**

ROBERT TERENCE SMITH,)

DEFENDANT.)

Presiding Judge:

W. Greg Seigler

Plaintiff's Attorney:

Sheila McNair Robinson

Defendant's Attorney:

Ashby Lawton Jones

This matter was to come before the Court pursuant to a Notice of Motion and Motion to Extend 365 Day Deadline filed by the Plaintiff. Prior to the scheduling of the case for a hearing, counsel informed the Court the parties were able to reach an agreement and wished to submit a consent Order in lieu of a court appearance.

This Court finds the Plaintiff moved to have the 365 Day Administrative deadline extended to give the parties sufficient time to attend mediation in an effort to resolve the issues. This Court finds mediation was previously scheduled to be held on July 20, 2022. Mediation is now scheduled to take place on September 15, 2022 with The Honorable Lisa Kinon serving as the mediator.

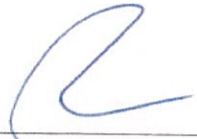
This Court finds that counsel for the Defendant has no objection to the Motion and consents to the relief requested.

This Court therefore grants the motion and extends the 365 day administrative deadline until October 1, 2022. If no hearing request is submitted by that date, the Court finds the case may be subject to being administratively dismissed.



IT IS THEREFORE ORDERED the 365 Day Administrative deadline is extended until
October 1, 2022.

IT IS SO ORDERED.

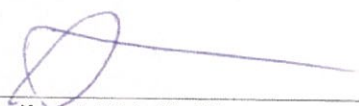


W. Greg Seigler
Presiding Judge of the
Family Court for the
Eleventh Judicial Circuit

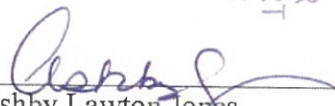
June 29, 2022

Lexington, South Carolina

WE CONSENT:



Sheila McNair Robinson
Attorney for Plaintiff



Ashby Lawton Jones
Attorney for Defendant

LISA H. COOPER
CLERK OF COURT
ELEVENTH JUDICIAL CIRCUIT

2022 JUN 30 AM 8:57

FILED



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ROA 0579

Filing ID: 220427-1415219

Filing Date: 04/27/2022

Apr 27 2022
REFERENCE ID: 1028011

**STATE OF SOUTH CAROLINA
SECRETARY OF STATE**

**MEMBERS STATEMENT
OF DISSOCIATION
FROM A LIMITED LIABILITY COMPANY**


SECRETARY OF STATE OF SOUTH CAROLINA

The following member of the listed limited liability company hereby files this Statement of dissociation in accordance with Section 33-44-704 of the 1976 S.C. Code of Laws, as amended.

1. Name of the limited liability company from which a member has dissociated:

Southern Collection, LLC

2. Name of member who has dissociated from the limited liability company:

Emily P. Smith

(Name)

112 John Preston Drive

(Street Address)

Lexington, South Carolina 29072

(City, State, Zip Code)

3. Unless otherwise specified, this statement is effective when endorsed for filing by the Secretary of State. Specify any delayed effective date and time: _____
(Date)

4. This statement is being filed by:



- a. The dissociating member:

Signed as Filer: Desa Ballard

(Signature)

04/27/2022

(Date)



- b. The limited liability company:

(Signature)

(Date)

(Print Name)

(Capacity)

ROA 0579

Form Revised by South Carolina Secretary of State, August 2016
F0050

SC Secretary of State
Mark Hammond

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ROA 0580

Apr 27 2022
REFERENCE ID: 1028011

**STATE OF SOUTH CAROLINA
SECRETARY OF STATE**


SECRETARY OF STATE OF SOUTH CAROLINA

**MEMBERS STATEMENT
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(Date)

4. This statement is being filed by:

- a. The dissociating member:


(Signature)

(Date)

- b. The limited liability company:

(Signature)

(Date)

(Print Name)

(Capacity)

CERTIFIED TO BE A TRUE AND CORRECT COPY
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ORIGINAL ON FILE IN THIS OFFICE

ROA 0581

Business Name:

Southern Collection, LLC

Apr 27 2022

REFERENCE ID: 1028011


SECRETARY OF STATE OF SOUTH CAROLINA

Signature Page for a Secretary of State Business Filing

be completed, scanned, and attached to any business filing where one of the following is true.

- The filing party signs the digital form on behalf of official signee.
- An attorney's signature is required. (Articles of Incorporation for Corporation and Benefit Corporation)

Official Signatures

(Officer, Incorporator, Director, Agent, Partner, etc)

Required for forms where the signee is not present upon online submission and a filing party is providing a digital signing on their behalf. If the provided space is not enough, please attach multiple pages.

Desa Ballard
Name

4-27-2022
Date

Desa Ballard
Signature

Attorney
Title / Position

Emily P. Smith
Name

4-27-2022
Date

Emily P. Smith
Signature

owner
Title / Position

Name

Date

Signature

Title / Position

Name

Date

Signature

Title / Position

Name

Date

Signature

Title / Position

RECEIVED

Jun 09 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY
WALTON J. MCLEOD, CIRCUIT COURT JUDGE

Appellate Case No. 2022-001060

Emily P. Smith,Appellant,

v.

Robert T. Smith; Southern Collection, LLC;
Southern Collection Brokerage, LLC;
Terrance Smith and Associates, LLC; Robert B. Smith,
And Sherry C. Smith, Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Respectfully submitted,

s/ Harvey M. Watson III
Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)
Haley Hubbard (S.C. Bar No. 103195)

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haley@desaballard.com

ATTORNEYS FOR APPELLANT

May 22, 2023