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Sep 13 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Family Court

Family Court Case No. 2022-DR-10-3072

Appellate Case No. 2023-001376

Justin McGee, Respondent,

v.

Lindsay F. McGee, Petitioner.

**MOTION TO CONFIRM AUTOMATIC STAY
PURSUANT TO S.C. CODE ANN. § 17-30-110**

COMES NOW the Petitioner, Lindsay F. McGee, by and through her undersigned counsel, pursuant to S.C. Code Ann. § 17-30-110, and respectfully moves this Honorable Court to confirm the automatic stay in the above-referenced matter.

Background and Procedural History

Petitioner Lindsay F. McGee and Respondent Justin M. McGee are involved in a pending matter in the Charleston County Family Court entitled Justin M. McGee v. Lindsay F. McGee, case number 2022-DR-10-3072. Petitioner filed a Motion to Suppress Evidence in this court on August 30, 2023. [Exhibit 1]. On August 30, 2023, Petitioner filed a copy of the motion with the Family Court and provided a copy to that court's Chief Administrative Judge. On September 12, 2023, Petitioner reminded the family court that there is a supplemental temporary hearing

and three motions, filed by Respondent/Plaintiff, to compel third parties to provide documents responsive to subpoenas which are scheduled to be heard on September 18, 2023. [Exhibit 2]. Petitioner requested that these pending motions be continued based upon the automatic stay as provided by S.C. Code Ann. §17-30-110. Respondent does not agree that the family court case is stayed pending a resolution of the Motion to Suppress and is requesting that all pending matters be heard as scheduled on September 18, 2023. [Exhibit 3]. An email from the clerk's office advised that the pending motions will go forward on September 18, 2023. [Exhibit 4]. Subsequent to the email from the clerk's office, there have been additional communications from each party with the Court regarding their respective positions on whether the case should be automatically stayed in the family court. [Exhibit 5]. The family court judge, however, has not indicated whether he/she intends to stay all matters or allow the family court case to proceed in spite of the pending Motion to Suppress.

South Carolina Code Ann. §17-30-110 (A) provides that all proceedings requiring the use of the contents of any intercepted communication that are the subject of the motion to suppress pursuant to this section are automatically stayed pending the determination of the motion to suppress. The pending matters in the Family Court all require the use of what Petitioner alleges are illegally obtained evidence, or information derived from illegally obtained evidence, that are the subject of the Motion to Suppress.

Petitioner respectfully requests that this Honorable Court issue an Order confirming the automatic stay pursuant to S.C. Code Ann. § 17-30-110.

[SIGNATURE ON NEXT PAGE]

McDOUGALL, SELF, CURRENCE & McLEOD, LLP



PETER G. CURRENCE

791 Greenlawn Dr. Suite 4

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(803) 776-3130

Attorney for Petitioner

September 13, 2023

EXHIBIT 1

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
Family Court

AUG 30 2023
SC Court of Appeals

Family Court Case No. 2022-DR-10-3072

Appellate Case No.

Justin McGee,

Petitioner,

v.

Lindsay F. McGee,

Respondent.

MOTION TO SUPPRESS EVIDENCE

This matter comes before the Court on behalf of Petitioner (the Petitioner in the pending action before the Family Court for Charleston County) by and through her undersigned counsel, who would show unto this Court, pursuant to Rule 240, SCACR, and Court News as posted and denoted as 2020-03-20-01, and S.C. Code Ann. § 17-30-110, that the relief requested here should be granted. Petitioner moves before this Court for an Order to suppress certain electronic communications between Petitioner and non-parties and between Petitioner and Respondent, based upon information and belief, her counsel of record in the pending Family Court action.

Petitioner makes this Motion on the following grounds:

1. Petitioner and Respondent are husband and wife, having been married on March 10, 2012. They are the parents of three children who are aged eight, six and three. The parties separated on or about February 21, 2021.

2. On or about September 15, 2021, Respondent gave Petitioner an iPhone 12. In exchange, Petitioner gave Respondent her iPhone 8 after she performed a “factory reset” and transferred her number 843-xxx-3367 to the iPhone 12. However, Petitioner did not remove the SIM card from the iPhone 8 before giving Respondent possession of the iPhone 8. This is significant because the SIM card gave Respondent the ability to restore the information on Petitioner’s iPhone 8, thus giving Respondent access to all of Petitioner’s text messages, emails, and iCloud account information.

3. As set forth in the affidavit of John Bumgarner, Petitioner is informed and believes that Respondent has been intercepting and/or reading her text and email communications since on or about September 2021, including privileged communications with Petitioner’s attorneys.

4. At the time of the separation, Petitioner and Respondent were members of The McGee Law Firm, LLC. Respondent was, and is, the administrator of the law firm email domain and both parties had email accounts which they utilized for personal and business. Upon information and belief it was on or about November 1, 2022 that Respondent terminated Petitioner’s access to the law firm email, lindsay@mcgee-lawfirm.com.

5. On or about February 1, 2021, Petitioner moved into a home located at 664 McCutchen Circle where she has resided since that time. Respondent occasionally came to the home to visit with the children or even keep the children for Petitioner. At some point, Respondent complained that Petitioner did not have USB connections for his electronic devices and installed a power adapter with additional plugs and USB ports. Then he installed more and eventually he placed various devices throughout the house and in her garage. Attached at **Exhibit 1** is a picture of the same adapter which Respondent installed in Petitioner’s garage and, upon information and belief, in other areas of her house.

6. Soon after the parties' separation, Petitioner began to have concerns that Respondent seemed to "know" about private conversations she was having with friends while Petitioner was in the privacy of her home, alone in her car, or otherwise alone and not in the presence of a third-party. Petitioner was further concerned that Respondent seemed to "know" details of pictures, text messages and/or emails between Petitioner and third parties. And that at times certain text messages and/or emails would "disappear" from her telephone" and/or her iCloud account. At some point, Petitioner would discover random password changes to her iCloud and Gmail account. When Petitioner would then go through the "forgot password" process and change her password, within hours or days, the new password would be invalid, thus requiring her to create yet another password.

7. On or about January 10, 2021, Petitioner created the email account lmcgee9310@gmail.com to ensure she had confidential communications with her then attorney, James T. McLaren. With increasing concerns that Respondent was accessing her financial information, Petitioner opened a new checking account at Bank of America on November 17, 2021 using 843-xxx-3367 as her recovery telephone number and lmcgee9310@gmail.com as her recovery email account. In September 2022, Petitioner believed that Respondent "knew" things that he should not have known and was informed and believed that Respondent was able to read her text messages. As a result, Petitioner purchased an iPhone 13 and obtained a new number (843) xxx-2168 on the same account which she used for her iPhone 8 and iPhone 12.

8. However, it was evident that Respondent continued to know about conversations Petitioner was having with third parties as evidenced by their telephone conversation and text exchange on October 2022 when he threatened her about with whom she chooses to communicate and telling her "F*** Around and Find Out", which was a phrase he often used to tell Petitioner

that if she spoke with someone that he would know about it. [Exhibit 2] Interestingly, John Bumgarner noted that an unknown IP address, which he suspects was Respondent, had accessed Petitioner's iCloud account on October 30, 2023.

9. Respondent reinstated Petitioner's access to her lindsay@mcgee-lawfirm.com email on May 10, 2023 after asking her to prepare some documents in a case he was working and suggesting that she use the law firm email for this purpose. [Exhibit 3] Petitioner logged into the account at approximately 11:14 a.m. during which time she deleted thousands of mostly junk and spam emails. Thereafter, at approximately 1:55 p.m., Respondent logged into the account, recovered the emails deleted by Petitioner, and stored them in a retention folder he named "Manage Litigation Hold." Petitioner did not log back into the lindsay@mcgee-lawfirm.com account after the May 10, 2023 login. Petitioner is informed and believes that Respondent terminated her access to this account either when he logged in on May 10, 2023 at 1:55 p.m. to create the "manage litigation hold" or in the days following the May 12, 2023 incident for which Respondent was arrested for Criminal Domestic Violence. In any event, Petitioner did not have access to the lindsay@mcgee-lawfirm.com email from November 2022 until May 10, 2023, or after May 15, 2023. [Exhibit 4]

10. A Temporary Hearing was held in the Family Court on June 13, 2023. Respondent's affidavit package included a copy of an email dated May 16, 2023, from Bank of America to lindsay@McGee-lawfirm.com. [Exhibit 5] On May 16, 2023, Petitioner no longer had access to the lindsay@mcgee-lawfirm.com email account. Respondent's counsel stated that Respondent was the system administrator for the law firm email domain and, with that authority, had legally retrieved the May 16, 2023, Bank of America from the lindsay@mcgee-lawfirm.com email account. Petitioner immediately contacted Bank of America at which time she discovered

that the lindsay@mcgee-lawfirm.com email address was added to her online banking on March 13, 2023, during the time period that Petitioner did not have access to this email account.

11. Petitioner issued subpoenas to Bank of America on June 14 and 15, 2023 to obtain the login history and other information regarding a suspected intrusion into her online account. The internal Bank of America records show that someone accessed Petitioner's bank account on Monday, March 13, 2023, at 07:20 PST (10:20 EDT) using an unidentified Apple iPhone that was connected to the AT&T cellular network. [Exhibit 6] At this point, Petitioner began issuing additional subpoenas to identify the individual to whom this IP address belonged. Notwithstanding, Petitioner is informed and believes that Respondent added the lindsay@mcgee-lawfirm.com email address to her online banking account because Respondent was the only person who had access to that email account at the time.

12. Thereafter, Petitioner began to delve into her suspicions that 1) Respondent was somehow accessing her text messages and emails and 2) there may also be recording devices in her home and/or automobile. On June 22, 2023, Petitioner's expert, John Bumgarner, requested access to Petitioner's Smart Home Manager Application associated with her home Wi-Fi network. This search revealed the possibility of there being covert surveillance cameras in Petitioner's home. Petitioner recalled electronic items that Respondent either gave her or placed in her home. Specifically, Petitioner identified some power adapters with additional plugs that Respondent installed in her home, as well as other potential devices. Petitioner immediately removed the plug adapters, one of which she found in the garage where Petitioner often retreats to speak on the phone with her attorney outside the presence of her children. [Exhibit 7]

13. On June 23, 2023, Petitioner delivered these plug adapter devices to her forensic expert Steve Abrams. Mr. Abrams disassembled the device Petitioner found in her garage and

confirmed that it contained a hidden camera. Mr. Abrams was able to extract the 16GB SD card embedded in the device and determined that the SD card contained video and audio recordings for the time period between October 9, 2022, and July 22, 2023, the date Petitioner removed this device from an outlet in her garage. The person monitoring this covert surveillance camera had allowed someone to listen to Petitioner's private conversations when the device was triggered by motion detection. There was a gap in the recordings from December 24, 2022, to April 30, 2023 as a result of someone deleting all data during that time period. The interim time gap in information unquestionably indicates that someone was accessing the device and selectively deleted information. Moreover, the deleted data included March 7, 2023 when Respondent came to Defendant's home, entered the garage, and took her golfcart.

14. Petitioner issued a subpoena to SCS Enterprises to obtain the purchase history for the covert surveillance camera discovered in her residence. SCS Enterprises' subpoena response indicates that a total of five devices identical to the device that was found in Petitioner's garage were purchased by Respondent on January 31, 2022, April 25, 2022, and July 26, 2022 and shipped to his office address 125 A Wappoo Creek Drive, Suite A, Charleston, South Carolina, 29412. [Exhibit 8]

15. According to the affidavit of Mr. Bumgarner, the WF-113 model of the covert surveillance camera that Respondent purchased from SCS Enterprises has the default name of GF-PH130. Petitioner's router log files indicate that there had been six different GF-PH130 named devices that have authenticated and connected to the Wi-Fi network in Petitioner's home. Mr. Bumgarner also found that all of these devices last connected to Petitioner's Wi-Fi network in July 2023 and on Saturday July 8, 2023, at approximately 21:05 EDT a device named "Justins-iPhone" was connected to Petitioner's home Wi-Fi network. [Exhibit 9]

16. Petitioner then issued a subpoena to PayPal through which Respondent paid for the three separate purchases from SCS Enterprises. The documents provided by PayPal reflect that Respondent purchased additional covert surveillance on January 24, 2022, from the website knowyournanny.com which sells covert surveillance cameras. [Exhibit 10] The devices purchased from knowyournanny.com were shipped to Respondent's office located at 125 A Wappoo Creek Drive, Suite A, Charleston, South Carolina, 29412. A subpoena to Nanny Watch Services to identify the specific device purchased is outstanding. Finally, PayPal records also indicated that Respondent purchased a covert surveillance camera from Deluxe CCTV Incorporated's website on April 25, 2022, which is the same date that he purchased two covert surveillance cameras from SCS Enterprises.

17. It is significant that Respondent admitted to Petitioner that he placed the camera in her garage, but advised Petitioner that the other devices are now being kept at his office and in his home. Mr. Bumgarner notes that several of the covert surveillance cameras with the default names of GF-PH130 went offline the weekend of July 4, 2023. Upon information and belief, these devices were likely removed from Petitioner's residence prior to Friday, July 07, 2023, at 18:43 EDT, although one device came online on August 26, 2023.

18. Counsel for Petitioner respectfully submits that on its face the actions of Respondent intercepting Petitioners' Bank of America email and using that intercepted Bank of America email as evidence in court violated 18 USC §2515 which specifically prohibits the use of these recorded conversations or the use of any evidence of intercepted wire or oral communications in "... any trial, hearing, or other proceeding in or before any Court, ... of the United States, a state, or a political subdivision thereof if the disclosure of that information would be in violation of this chapter" as well as the corresponding state statute (SC Code §17-30-65) as addressed hereinbelow.

19. Petitioner is informed and believes that Respondent committed numerous

interceptions of her electronic and aural communications in violation of the South Carolina Homeland Security Act (SC Code of Laws §17-30-10, *et seq*) and the Electronic Communications Privacy Act (18 USC §2510, *et seq.*) when he accessed the lindsay@mcgee-lawfirm.com email account to intercept, read, print and disseminate the May 16, 2023 email from Bank of America, when he intercepted and/or read her text and email communications including those with her attorneys, and when he secreted at least six Wi-Fi connected hidden cameras with microphones within petitioner's home without her knowledge and used them to monitor and record her conversations, including with her attorneys, for over a year. While both the South Carolina Homeland Security Act (§17-30-15 (4)(a)(ii)) and Title I of the Electronic Communications Privacy Act have exemptions to the interception language for systems administrators "in the normal course of [their] employment while engaged in any activity which is a necessary incident to the rendition of [their] service" (18 USC §2515(2)(a)), the conduct engaged in by Respondent, intercepting the communications of Petitioner purely to benefit his own self-interest, falls clearly outside any legitimate system administrator exemption. Petitioner is informed and believes that Respondent has already utilized one of these illegally intercepted electronic communications by providing screenshots or photographs of the May 16, 2023, Bank of America interception to the family court through his attorneys.

20. Additionally, Respondent likely also committed multiple violations of the Stored Communications Act by accessing email and electronic communications in electronic storage in Petitioner's iCloud, and Microsoft and Google email accounts. Respondent also violated the Computer Fraud and Abuse Act (18 USC §1030) by intentionally accessing a protected computer without authorization and thereby obtaining information contained in a financial record of Bank of America, a financial institution, on March 13, 2023, through May 16, 2023.

21. Petitioner respectfully submits that prior to the review, dissemination, or any use of such recordings, Petitioner may move before this Court, and hereby does move for this Court to hold an expedited hearing before an appropriate panel, to make a factual finding not only as to whether or not the intercepted communications violate the law, but also as to the other general admissibility issues relating to audio and video recordings and the information derived therefrom. SC Code of Laws §17-30-65 prohibits the introduction of any intercepted material into evidence before any court or tribunal within the state.

22. As such, Respondent's use of the material that he intercepted from the electronic and aural communications of Petitioner, and any material derivative of the intercepted material, should be suppressed, and barred from use in any litigation between the parties. Petitioner respectfully requests this honorable Court to issue an order suppressing all of the material that was intercepted by Respondent, including any and all derivative material.

23. Petitioner requested the identification of all surveillance devices and the identification of intercepted communications by Interrogatories and Request for Production served on opposing counsel on August 14, 2023, but responses are not yet due, although Counsel for Defendant made a request that Plaintiff comply with this request forthwith and deliver the requested covert cameras and electronic devices to Mr. Abrams for inspection. [Exhibit 11] Petitioner respectfully submits that she would be entitled to those discovery responses prior to any hearing set by this Court in this matter so as to properly prepare for the hearing.

24. Petitioner is informed and believes that since September 2021, and beginning the months prior to May 22, 2023, Respondent has monitored her actions and each and every conversation she has engaged in for conceivable nineteen months inside her home, including but not limited to countless telephone calls of which Respondent heard everything Plaintiff said to

friends, her now known paramour, and more importantly her attorneys. Petitioner is further informed and believes that Petitioner has been intercepting and/or reading her text messages since approximately September 2021, including her privileged communications with her attorneys. Petitioner is informed and believes that the genesis of virtually all evidence Respondent has compiled in this case, information that he provided to his private investigator, information he provided to his attorneys to develop their strategies and defenses, the allegations in his complaint, and his discovery requests seeking information is derived from the illegal audio/video recordings Respondent obtained from the covert surveillance cameras he placed in Petitioner's home and the text messages and emails of Petitioner that he illegally intercepted and/or read.

25. Further, Respondent engaged the services of a private investigator, John Clayton, on or about June 2022, after Respondent had been intercepting and reading Petitioner's text and email communications, after he had been accessing her Gmail account, and after May 2022 when he placed covert video/audio recording devices in Petitioner's home. Petitioner is informed and believes that the reason for engaging the private investigator and the directives including who to surveil was derived from the illegally obtained information and all evidence obtained by Mr. Clayton throughout his investigation is "fruit of the poisonous tree" and should be suppressed.

26. For these reasons and such further reasons as may appear at any hearing to be set on the matter, Petitioner hereby moves for a hearing to be held by this Court, if needed following this Court's review of this Motion and attachments, as required by S. C. Code Ann. § 17-30-110, *et seq*, and U. S. Code Ann., 18 U.S.C.A. § 2511, *et seq*, and appropriate rulings made as to the intercepted communication(s) and that in the interim, any action by the trial court below be stayed in addition to an Order requiring the immediate listing of and disclosure of all audio/video recording devices, documents and/or records concerning the interception of electronic

communications of Petitioner, plus, such other action, rulings, and other relief as may be appropriate in this matter, including but not limited to, an award of attorney's fees, costs and expenses.

27. Petitioner also moves for an order of this Court requiring the lower Court to segregate and seal the unlawfully obtained electronic communications and any evidence that has been gleaned from the use of said covert surveillance cameras and from the lindsay@mcgee-lawfirm.com email account. Petitioner believes that information should be segregated in the lower Court's file prohibiting review of said information by any Court including but not limited to Family Court, Common Pleas, General Sessions, Federal Court, either party, or the public.

28. Counsel verifies that he attempted in good faith to resolve this matter prior to filing this Motion, to no avail. Counsel also affirms to this Court that he has by copy of this Motion, notified opposing counsel, the guardian, and the Court below of this Motion.

29. This motion is further supported by the Affidavit of Petitioner [Exhibit 12], Affidavit of John Bumgarner [Exhibit 13], and Affidavit of Steve Abrams [Exhibit 14], as well as such other evidence which becomes available prior to the hearing in this matter.

CONCLUSION

Based upon the foregoing, Petitioner respectfully requests the following relief:

30. For this Court to hold an expedited hearing before an appropriate panel, to make a factual finding not only as to whether or not the intercepted communications violate the law, but also as to the other general admissibility issues including suppressing all evidence relating to audio and video recordings, interception of text and email messages, and the information derived therefrom;

31. For a factual finding that Respondent installed covert surveillance recording devices in Petitioner's home and unlawfully obtained video and audio recordings;

32. For a factual finding that Respondent unlawfully accessed and intercepted Petitioner's text messages and emails;

33. For a factual finding that Respondent unlawfully accessed Petitioner's Bank of America personal account and intercepted Petitioner's emails from Bank of America, including the email dated May 16, 2023;

34. For a factual finding not only as to whether or not the intercepted communications violate the law, but also as to the other general admissibility issues relating to audio and video recordings and the information derived therefrom, to include any evidence from Respondent's private investigator, John Clayton;

35. For any action by the trial court below be stayed pending this court's Order.

36. For Respondent to be required to provide the immediate listing of and disclosure of all audio/video recording devices, documents and/or records concerning the interception of electronic communications of Petitioner, and to make those recording devices available, with the original SD card and link to the software to decrypt the audio, for inspection by Petitioner's expert;

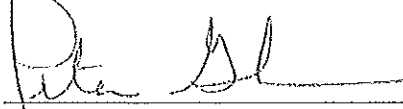
37. To determine and find that Respondent used unlawfully, obtained information to advance his case through his attorney's and exhibits;

38. For an award of attorney's fees and costs and expert fees and costs;

39. For such other and further relief as this court deems just fit and proper.

(See following page for signature block.)

McDOUGALL, SELF, CURRENCE & McLEOD, LLP

A handwritten signature in black ink, appearing to read "Peter G. Currence", written over a horizontal line.

PETER G. CURRENCE

791 Greenlawn Dr. Suite 4

Columbia, South Carolina 29209

(803) 776-3130

Attorney for Petitioner

August 30, 2023

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
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Case No. 2022-DR-10-3072

Justin McGee,.....Respondent

v.

Lindsay McGee,Petitioner

PROOF OF SERVICE

I certify that I have served the MOTION TO SUPPRESS EVIDENCE on Respondent, by email and by depositing a copy of it in the United States Mail, postage prepaid on August 29, 2023, addressed below:

Mr. Jerry N. Theos
Theos Law Firm, LLC
11 State Street
Charleston SC 29401

Ms. Marie-Louise Ramsdale
Ramsdale Law Firm
1476 Ben Sawyer Blvd., Suite 5
Mt. Pleasant, SC 29464

Ms. Elizabeth J. Stringer
Stringer Law
753 Folly Road
Charleston, SC 29412

The Honorable Alice Anne Richter
Chief Administrative Judge
Charleston County Family Court
100 Broad Street
Charleston, SC 29401

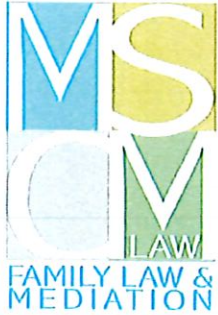


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ATTORNEYS FOR PETITIONER

August 12, 2023

EXHIBIT 2



McDougall | Self | Currence & McLeod | LLP

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Michael W. Self*‡
Peter G. Currence
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September 12, 2023

VIA EMAIL ONLY

The Honorable Alice Anne Richter
Chief Administrative Judge
Charleston County Family Court
100 Broad Street, Suite 143
Charleston, SC 29401-2265

Re: Justin McGee v Lindsay F. McGee
Docket # 2022-DR-10-3072

Dear Judge Richter:

I represent Ms. Lindsay McGee in the above referenced matter. Mr. Justin McGee is represented by Mr. Jerry Theos and Ms. Marie-Louise Ramsdale. Elizabeth Stringer is the Guardian ad Litem.

Currently, the following matters are scheduled to be heard on September 18, 2023:

Supplemental temporary hearing per the June 15, 2023 Order
Three (3) Motions to Compel filed June 21, 2023
Rule to Show Cause for Third Party Stephen Daniel Fowler
Rule to Show Cause for Third Party Jarrett Christopher Forino
Rule to Show Cause for Third Party Karen Keys
Order of Continuance filed on June 30, 2023

South Carolina Code Ann. §17-30-110 (A-3) provides, *inter alia*, that

...all proceedings requiring the use of the contents of any intercepted communication that are the subject of the motion to suppress pursuant to this section are automatically stayed pending the determination of the motion to suppress.

Reply to Columbia | pete@mscmlaw.com | www.mscmlaw.com

September 12, 2023
Page 2

The pending matters above all require the use of what Ms. McGee alleges are intercepted communications for the fruits of those intercepted communications that are the subject of the Motion to Suppress. By letter dated August 30, 2023, I provided you with a Motion to Suppress Evidence which was filed on behalf of Ms. McGee in the Court of Appeals hoping to receive some guidance as to pending matters in the Family Court.

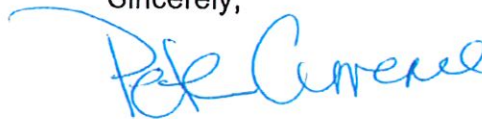
Please let me know whether the Court intends to move forward with the Supplemental Temporary Hearing scheduled for September 18, 2023 and whether the Court intends to hear the Rules to Show Causes and Motions to Compel regarding certain witnesses which were filed on behalf of Mr. McGee. Again, Ms. McGee asserts that every one of these Motions will involve either illegally obtained evidence or fruits obtained as a result of illegally obtained evidence.

Since the statute provides that these matters are automatically stayed, I did not feel it necessary to file a Motion to continue these hearings. Please let me know how the Court would like to handle these matters or whether I need to move forward with a Motion for Continuance.

I appreciate your consideration in regard to the above.

With kind regards.

Sincerely,



PETER G. CURRENCE
(signed in my absence to avoid delay)

PGC:lr 

cc: Lindsay McGee (via email only)
Jerry N. Theos (via email only)
Brittany Point (via email only)
Marie-Louise Ramsdale (via email only)

EXHIBIT 3



THEOS LAW FIRM, LLC

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September 12, 2023

VIA EMAIL

The Honorable Alice Anne Richter
100 Broad Street, Suite 143
Charleston, South Carolina 29401

Re: Justin McGee v Lindsay McGee
Case No.: 2022-DR-10-3072

Dear Judge Richter:

Marie-Louise Ramsdale and I represent Justin McGee in this Family Court case (Justin M. McGee vs. Lindsay F. McGee, Case No.: 2022-DR-10-3072).

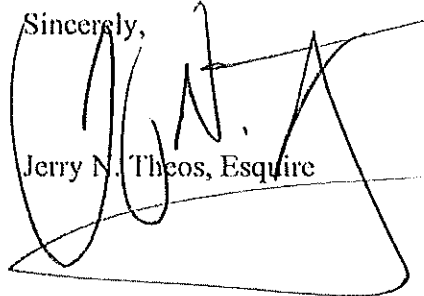
On August 30, 2023 and September 12, 2023, Defendant Lindsay F. McGee requested via correspondence, that the hearings scheduled for September 18, 2023 be continued and/or stayed in light of her recent filings in the Court of Appeals under the South Carolina Homeland Security Act. We respectfully request that the hearings proceed as scheduled, in that we believe the Court of Appeals lacks jurisdiction over Ms. McGee's filings and, in any event, that said filings would not impose an automatic stay of this Family Court case.

First, Ms. McGee has not filed an appeal of any order of this Court and instead, contends and argues that the Court of Appeals has original jurisdiction. As explained in Mr. McGee's Motion to Dismiss filed with the Court of Appeals (copy enclosed), the Homeland Security Act does not create any type of original jurisdiction in the Court of Appeals for claims to suppress evidence of alleged illegal wiretapping. Further, in that the Family Court has not been asked to consider any such suppression motion or consider addressing wiretapping issues, there is nothing for Ms. McGee to appeal or to seek to stay.

Second, South Carolina law is clear that an "appeal from a temporary order does not, standing alone, operate to stay the effect or enforcement of the order." *Terry v. Terry*, 400 S.C. 453, 456, 734 S.E.2d 646, 648 (2012). This is because the Family Court may address any

perceived error—including one relating to evidence—at a future hearing. Moreover, Ms. McGee has not requested any type of supersedeas from the Court of Appeals and no stay has been entered.

Given that the Family Court has jurisdiction, we respectfully request that the hearings scheduled for September 18, 2023, proceed as scheduled.

Sincerely,

Jerry N. Theos, Esquire

Encl: as stated
cc: Justin McGee, via email only
Marie-Louise Ramsdale, Esquire, via email only
Peter G. Currence, Esquire, via email & US Mail
Elizabeth Stringer, Esquire/GAL via email only

RECEIVED

Sep 08 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY FAMILY COURT

Appellate Case No. 2023-001376

Justin McGeeRespondent,

v.

Lindsay F. McGee.....Petitioner.

Respondent’s Motion to Dismiss

Respondent Justin McGee moves this Court to dismiss these proceedings because the Court lacks jurisdiction to review Petitioner’s Amended Motion to Suppress Evidence before consideration by the Charleston County Family Court in the first instance.

Petitioner filed her motion under the South Carolina Homeland Security Act (“the Homeland Security Act”). Yet section 17-30-110 only allows this Court to review a motion to suppress wiretap evidence after a judge of competent jurisdiction (1) receives an application from a qualified individual for an order authorizing or approving the interception of certain communications and (2) issues an order authorizing or approving the interception of such communications. See S.C. Code Ann. §§ 17-30-70(A), -80(A)(1), -80(D). The Homeland Security Act is not an independent grant of original jurisdiction to this Court but is instead an establishment of appellate jurisdiction in criminal cases. Because this is a civil case and there was neither an application nor an order for authorization or approval—indeed, Petitioner has not challenged the alleged interception in the Family Court in the first instance—this Court lacks jurisdiction to rule on Petitioner’s Amended Motion to Suppress Evidence.

Factual and Procedural Background

Petitioner Lindsay F. McGee and Respondent Justin McGee were married on March 10, 2012. They have three children. The parties last lived together in Charleston County until they separated in May 2022.

The parties tried to amicably resolve their marital issues for several months. Unfortunately, because of Petitioner's adultery, alcohol consumption, and drug abuse, Respondent was compelled to file an action for divorce in October 2022. Respondent moved for temporary relief in May 2023, asking the Family Court's for an order setting a parenting plan and temporary financial relief. Soon after, Petitioner followed suit with a motion for temporary relief of her own.

The next month, Judge Michelle Hurley held a temporary hearing in which each party submitted affidavits and various exhibits to support their requests for temporary relief. Each party noted objections to certain submissions at the outset of the hearing. Petitioner never made an objection even alluding to the Homeland Security Act, nor did she allege Respondent improperly interfered with her communications. On June 15, 2023, the Family Court issued its Temporary Order setting the terms of, among other things, a week-to-week parenting schedule with limitations on Petitioner's ability to associate with certain individuals in the children's presence. The Temporary Order also required the parties to engage in discovery and set a de novo review hearing for September 18, 2023.

Over the past ninety days, the parties have engaged in discovery. Several subpoenas have been issued involving the issues Petitioner raises in the Amended Motion filed with this Court.¹

¹ Some of these subpoenas are outstanding. For example, Bank of America responded yesterday requesting a 14-day extension to Wife's subpoena for records related to access of certain financial information central to the wiretap allegations. Husband anticipates this subpoena response will likely undermine many of the claims Wife makes in her Amended Motion.

Respondent has moved to compel and contempt actions against Petitioner's witnesses, as well as a motion to quash subpoenas Petitioner has issued involving many of the same issues purportedly before this Court. These issues are set to be heard at the same time as the September 18 de novo review hearing, along with all other discovery or evidentiary issues that have arisen since the issuance of the Temporary Order.

Argument

South Carolina courts must assure themselves of jurisdiction before entertaining the merits of any action. *See Anderson v. Anderson*, 299 S.C. 110, 115, 382 S.E.2d 897, 900 (1989) ("The jurisdiction of a court over the subject matter of a proceeding is determined by the Constitution, the laws of the state, as is fundamental."); *see also Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 577 (1999) (holding that a "court may not hypothesize subject-matter jurisdiction for the purpose of deciding the merits."). Because this Court lacks original jurisdiction over a section 17-30-110 motion to suppress and because the circumstances granting the Court appellate jurisdiction over such motions do not exist in this case, the Court should dismiss these proceedings.

Under the South Carolina Constitution, this Court "shall have such jurisdiction as the General Assembly shall prescribe by general law." S.C. Const. art. V, § 9. General state law provides that the Court "has jurisdiction over any case in which an appeal is taken from an order, judgment, or decree of the circuit court, family court, a final decision of an agency, a final decision of an administrative law judge, or the final decision of the Workers' Compensation Commission." S.C. Code Ann. § 14-8-200(a). These two authorities make no provision for the Court to entertain this action in its original jurisdiction.

Although Petitioner suggests this Court has original jurisdiction over civil wiretap suppression motions and goes so far as to ask the Court to make detailed factual findings, she cites

no constitutional provision, statute, or court rule providing this Court with that jurisdiction. For example, the Supreme Court’s jurisdiction in our Constitution specifically references that court’s ability to issue *original writs*. See S.C. Const. art. V, § 5; see also S.C. Code Ann. § 14-3-310 (referencing the Supreme Court’s original jurisdiction). A court rule similarly provides for original proceedings, but only in the Supreme Court. Rule 245, SCACR. Respondent knows of no such similar grant of original jurisdiction to this Court. In fact, state law makes clear that this Court’s jurisdiction “is appellate only” and is not original (unlike the jurisdiction statutorily granted to the Supreme Court in some cases). S.C. Code Ann. § 14-8-200(a). The distinction between the two courts’ jurisdiction makes sense, given that original jurisdiction in an appellate court is generally reserved for matters addressing novel issues of significant public interest, see, e.g., *Laffitte v. Bridgestone Corp.*, 381 S.C. 460, 464, 674 S.E.2d 154, 156–57 (2009), and given the general rule that our Supreme Court will not entertain matters of original jurisdiction when the matter can be addressed by a trial court in the first instance, *Key v. Currie*, 305 S.C. 115, 116, 406 S.E.2d 356, 357 (1991).

The Homeland Security Act also does not expand this Court’s appellate jurisdiction. Passed in 2002 and placed in Title 17 (Criminal Procedures), section 17-30-110 establishes the requirements for moving to suppress under the Homeland Security Act: “Prior to any trial, hearing, or proceeding in or before any court, . . . any aggrieved person may move to suppress the contents of any intercepted wire, oral, or electronic communication, or evidence derived therefrom, on the grounds that the . . . communication was unlawfully intercepted[.]” S.C. Code Ann. § 17-30-110(A)(1). The motion to suppress “must be made before the reviewing authority^[2] and must be

² The Homeland Security Act defines “[r]eviewing authority” to mean “a panel of three judges of the South Carolina Court of Appeals designated by the Chief Judge of the South Carolina Court of Appeals.” S.C. Code Ann. § 17-30-15(9).

decided on an expedited basis.” *Id.* § 17-30-110(A). “Upon receiving the motion, the reviewing authority must notify the issuing judge who must transfer copies of the contents of all recordings, applications, orders, and other documents relating to the issuance of the order of authorization.” *Id.* “After reviewing the materials, the reviewing authority must first determine whether all materials otherwise discoverable under South Carolina law were made available to the aggrieved person.” *Id.* If a majority of the reviewing authority “determine[s] that all necessary materials were made available, the reviewing authority must decide whether the order of authorization was issued and the communications were intercepted in conformity with the requirements of this chapter.” *Id.*

The circumstances underlying Petitioner’s Amended Motion to Suppress Evidence fall outside the review contemplated by section 17-30-110 and should be dismissed for two reasons.

First, the phrase “reviewing authority” implies there must be an order for this Court to review in the first instance. *See* S.C. Code Ann. § 14-8-200(a) (providing the Court of Appeals’ jurisdiction “is appellate only”); S.C. Code Ann. § 17-30-110(B) (explaining that although the Court of Appeals en banc has initial appellate jurisdiction over the State’s appeal of an order granting a motion to suppress, “[a]ll other appellate procedures remain in force and effect”). Section 17-30-110 consistently references the Court’s authority to determine whether “the order of authorization or approval” complied with the Homeland Security Act. The requirements for obtaining such an order are set forth in sections 17-30-70 and -80. An application for the order “must be initiated by the Chief of [the South Carolina Law Enforcement Division (SLED),]” reviewed by “the Attorney General or his designated Assistant Attorney General[,]” and submitted “to a judge of competent jurisdiction” S.C. Code Ann. § 17-30-70(A); *see id.* § 17-30-80(A)(1). Upon application, the judge may grant “an order authorizing or approving the

interception of wire, oral, or electronic communications” by SLED or an individual contracted by SLED to investigate certain offenses. *Id.* §§ 17-30-70(A)(1)-(3); *see id.* 17-30-80(D). In this case, there is neither an application nor an order addressing the admissibility of the evidence within the jurisdictional parameters of section 17-30-110. Thus, there is nothing for this Court to review.³

Second, section 17-30-110 indicates suppression is an appropriate remedy only in cases involving interception by a State agent or employee. This interpretation is bolstered by several factors. As noted above, Title 17—which encompasses the Homeland Security Act—is entitled “Criminal Procedures.” Although the Homeland Security Act references civil actions for wrongful interceptions in one section, there are no references to civil liability in section 17-30-110. *See* S.C. Code Ann. § 17-30-135; *see also, e.g., State v. Bixby*, 388 S.C. 528, 548–49, 698 S.E.2d 572, 583 (2010); *State v. Guerrero-Flores*, 402 S.C. 540, 534, 741 S.E.2d 577, 580 (Ct. App. 2013). Even in its references to appellate review, section 17-30-110 only guarantees *the State* a right to appeal orders of authorization or approval and orders granting a motion to suppress. *See* S.C. Code Ann. § 17-30-110(B) (“*The State* has the right to appeal an order granting a motion to suppress made under subsection (A).” (emphasis added)); *id.* § 17-30-110(C) (“*The State* has the right to appeal the denial of the application of an order of authorization or approval. The appeal must be directed to the reviewing authority and must be conducted in a manner consistent with subsection (A).” (emphasis added)). This limitation suggests suppression is only available in cases involving a State interceptor, which Respondent certainly was not.

³ Petitioner’s Amended Motion is inconsistent on this point. In one breath, she asks for this Court to make detailed findings of fact in the first instance. (*See* Am. Mot. to Suppress Evidence at 1.) Yet she styles her Motion and Amended Motion as being an “appeal” from Charleston County Family Court. (*Id.*) To be clear: there has been no ruling by the family Court for this Court to review because Petitioner has made no objection under the Homeland Security Act below.

The Supreme Court's decision in *State v. Whitner*, 399 S.C. 547, 732 S.E.2d 861 (2012), does not demand a different result. *Whitner* confirms that the Homeland Security Act "parallels" the Wire and Electronic Communications Interception and Interception of Oral Communications Act ("the Federal Act"). *Id.* at 553, 732 S.E.2d at 864. The Federal Act imposes similar limitations on the scope of a motion to suppress and the federal government's right to appellate review. *See* 18 U.S.C. § 2518(1), (10)(a) (permitting a motion to suppress "the contents of any wire or oral communication intercepted" pursuant to an order of authorization or approval obtained from "a judge of competent jurisdiction" by an "investigative or law enforcement officer"); *id.* § 2518(10)(b) ("In addition to any other right to appeal, the United States shall have the right to appeal from an order granting a motion to suppress made under paragraph (a) of this subsection, or the denial of an application for an order of approval, if the United States attorney shall certify to the judge or other official granting such motion or denying such application that the appeal is not taken for purposes of delay."). Unlike the Homeland Security Act, however, the Federal Act allows a judge of competent jurisdiction—defined to include "a judge of a United States district court or a United States court of appeals"—to both issue the order of authorization or approval and rule on the motion to suppress. *See id.* §§ 2510(9), 2518(1).

Conversely, the Homeland Security Act imposes a two-step process during which (1) a judge of competent jurisdiction must issue an order of approval and authorization and (2) the reviewing authority must separately review a motion to suppress evidence obtained as a result of the order of approval and authorization. That process did not occur in this case. Moreover, *Whitner* is factually distinguishable because it arose from a criminal prosecution, which more squarely falls under the criminal procedure provisions of Title 17. For that reason, it makes sense the *Whitner* Court noted, in dicta, that this Court previously conducted a suppression hearing to

address the petitioner's challenges to the State's interception of the disputed call recording. *Whitner*, 399 S.C. at 551, 732 S.E.2d at 863. Again, those circumstances are not before this Court, as the underlying action here is a family court divorce proceeding.

Therefore, this Court lacks jurisdiction to rule on Petitioner's Amended Motion to Suppress Evidence.

Conclusion

Respondent vehemently denies the allegations set forth in Petitioner's Amended Motion. But the proper forum for addressing the merits of those allegations is the Charleston County Family Court, not this Court. Because Petitioner cannot establish a basis for this Court's jurisdiction other than her strained interpretation of section 17-30-110, the Court should dismiss Petitioner's Amended Motion to Suppress Evidence. If the Court denies Respondent's Motion to Dismiss, Respondent alternatively asks the Court to grant his separately filed Motion for Extension of Time to File Return to Petitioner's Amended Motion to Suppress Evidence.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ Matthew A. Abee

Matthew A. Abee

SC Bar No. 101100

E-Mail: matt.abee@nelsonmullins.com

1320 Main Street / 17th Floor

Post Office Box 11070 (29211-1070)

Columbia, SC 29201

(803) 799-2000

Attorney for Respondent Justin McGee

Columbia, South Carolina
September 8, 2023

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Sep 08 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY FAMILY COURT

Appellate Case No. 2023-001376

Justin McGeeRespondent,

v.

Lindsay F. McGee.....Petitioner.

Proof of Service

I, the undersigned partner of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Petitioner Academy, Ltd. d/b/a Academy Sports + Outdoors, certify that I have served all parties in this action with a copy of the document(s) set forth below by email:

Document(s): **Respondent’s Motion to Dismiss**

Counsel Served: Peter G. Currence
McDougall, Self, Currence & McLeod, LLP
791 Greenlawn Drive, Suite 4
Columbia, SC 29209
pete@mscmlaw.com
Counsel for Petitioner

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ Matthew A. Abee
Matthew A. Abee
SC Bar No. 101100
E-Mail: matt.abee@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorney for Respondent Justin McGee

Columbia, South Carolina
September 8, 2023

Matt Abee

From: Matt Abee
Sent: Friday, September 8, 2023 2:59 PM
To: 'pete@mscmlaw.com'
Cc: 'lizzie@mscmlaw.com'; 'Jerry@Theoslaw.com'; 'Brittany Point'; 'Jackie'; 'ml@ramsdalelaw.com'; 'Lori Ross'
Subject: Service Copy - Motion to Dismiss and Motion for an Extension - McGee v. McGee (No. 2023-001376) - 079821.01501
Attachments: Respondent's Motion to Dismiss - McGee (2023-001376).pdf; Respondent's Motion for Extension to File Return - McGee (2023-001376).pdf; Proof of Service - McGee (Motion to Dismiss).pdf; Proof of Service - McGee (Extension Motion).pdf

Pete,

For service on you by email under Supreme Court Order No. 2022-05-06-03, please find Respondent's Motion to Dismiss, Motion for an Extension, and Proofs of Service.

Please feel free to contact me should you have any questions. Thanks.

-Matt

Please note that I will be out of the country September 22 through October 6, 2023.



MATT ABEE PARTNER
matt.abee@nelsonmullins.com

MERIDIAN | 17TH FLOOR
1320 MAIN STREET | COLUMBIA, SC 29201
T 803.255.9335 F 803.256.7500

NELSONMULLINS.COM [VCARD](#) [VIEW BIO](#)

*Licensed in South and North Carolina.

EXHIBIT 4

FROM CDJames@charlestoncounty.org
TO Jackie@Theoslaw.com, legalassistant@stringerlaw.us, jessica@ramsdalelaw.com
CC lori@mscmlaw.com, pete@mscmlaw.com, Brittany@Theoslaw.com, liz@stringerlaw.us, manager@stringerlaw.us, Jerry@Theoslaw.com, Janet@Theoslaw.com, ml@ramsdalelaw.com, Kendall@ramsdalelaw.com, samantha@ramsdalelaw.com
BCC
RE: McGee 2022-DR-10-3072

Sep 12 1:38 PM

Good afternoon,

I am following up with the below emails regarding the September 18th hearing in the above mentioned case. I have just been informed that the A case should be placing their agreement on the record. Therefore this case will most likely be reached on Monday September 18th, 2023 at 9:30 AM.

Please reply to this email to confirm you have received this notice.

Thank you

Christine James

From: Christine Davy James
Sent: Tuesday, July 25, 2023 12:36 PM
To: Jackie <Jackie@Theoslaw.com>; Karen Dhooge <legalassistant@stringerlaw.us>; Jessica Nimmo <jessica@ramsdalelaw.com>
Cc: Lori Ross <lori@mscmlaw.com>; Pete Currence <pete@mscmlaw.com>; Brittany Point <Brittany@Theoslaw.com>; Elizabeth Stringer <liz@stringerlaw.us>; Andrew Fischer <manager@stringerlaw.us>; Jerry Theos <Jerry@Theoslaw.com>; Janet <Janet@Theoslaw.com>; Marie-Louise Ramsdale <ml@ramsdalelaw.com>; Kendall Miller <Kendall@ramsdalelaw.com>; Samantha Hattaway <samantha@ramsdalelaw.com>
Subject: RE: McGee 2022-DR-10-3072

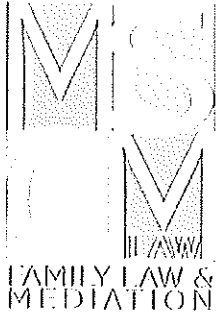
Yes ma'am, Thank you. The Plaintiff's motion to quash filed on July 19th, 2023 is now scheduled to be heard on September 18th, 2023 at 9:30 AM. This will make seven motions and three rules scheduled for this hearing. At this time, this hearing is still in the B position.

Thank you all.

Christine James

EXHIBIT 5

McDougall Self Currence McLeod LLP



John O. McDougall*†
Michael W. Self*‡
Peter G. Currence
Ryan A. McLeod*‡
Alyssa H. Richardson
R. Jason Hall^
Adam Pickworth

791 Greenlawn Dr. Suite 4, Columbia, SC 29209-2641
P.O. Box 90860, Columbia, SC 29290-1860
803.776.3130 phone; 803.776.7748 fax
21 East Calhoun St., Sumter, SC 29150-4315
P.O. Box 2197, Sumter, SC 29151-2197
803.778.5062 phone; 803.778.6908 fax

September 12, 2023

VIA EMAIL ONLY

The Honorable Spiros S. Ferderigos
Chief Administrative Judge
Charleston County Family Court
100 Broad Street, Suite 143
Charleston, SC 29401-2265

Re: Justin McGee v Lindsay F. McGee
Docket # 2022-DR-10-3072

Dear Judge Ferderigos:

I am providing you with this letter as I understand you are acting Chief Administrative Judge while Judge Richter is on vacation.

I have briefly reviewed Mr. Theos' letter and, respectfully, he incorrectly framed the issues, and he is mistaken about his legal analysis. First, we are not appealing a temporary order. We have filed a motion to suppress illegally intercepted electronic communications, which is a somewhat rare and different filing. Mr. McGee contends that because Title 17 is a criminal procedure statute, that the Court of Appeals does not have jurisdiction to hear a case arising out of civil or family court so, therefore, it is improper for us to file a motion under that statute. That is also not correct.

If you look at Section 17-30-135, still under the criminal procedure title, it provides a civil cause of action for violations of the Act. Section 17-30-110 is the appropriate section regarding the suppression of evidence. Further, it is my understanding that the Court of Appeals has entertained some 40 of these filings over the last 10 years with an equal share from criminal, common pleas, and family court. Furthermore, the court has accepted motions to suppress in *Anna Coggeshall v. Justin Shayne Fulmer*, Appellate Case No. 2022-000330 filed March 18, 2022; *Shawn Kosienski v. Sabrina Lynch*, Appellate Case No. 2021-001424 filed December 7, 2021; and *Jennifer Renee McMaster v. James Michael McMaster*, Appellate Case No. 2021-000278 filed March 16, 2021.

Reply to Columbia | pete@mscmlaw.com | www.mscmlaw.com

*Diplomate, American College of Family Trial Lawyers †Fellow, International Academy of Matrimonial Lawyers

‡Fellow, American Academy of Matrimonial Lawyers ‡Certified Family Court Mediator †Certified Arbitrator

^License to Practice Law in Florida

September 12, 2023
Page 2

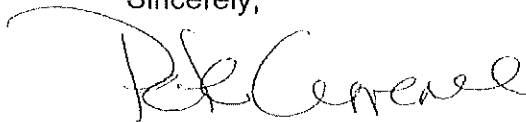
If the Court does not stay these proceedings pending the Appellate Court's ruling on the motion to suppress evidence, then going forward with next week's hearings as scheduled may be problematic as there will inevitably be illegal evidence, or evidence derived from illegal evidence, presented to the court. The dissemination, and even the review of that evidence may be further violations of the statute.

I can be available for a conference call this afternoon or anytime tomorrow at your convenience.

I have copied Dick Whiting on this correspondence as he has now been retained as co-counsel concerning this matter.

With kind regards.

Sincerely,



PETER G. CURRENCE

(signed in my absence to avoid delay)

PGC:lr 

cc: Lindsay McGee (via email only)
Jerry N. Theos (via email only)
Brittany Point (via email only)
Marie-Louise Ramsdale (via email only)
Richard G. Whiting (via email only)



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Jerry N. Theos, Esquire
Margaret Theos Guerry, Esquire
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E. Gordon Hay, VI, Esquire
Nicholas J. Theos, Esquire
Stephanie D. Alexander, Esquire
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September 13, 2023

VIA EMAIL

The Honorable Spiros S. Ferderigos
100 Broad Street, Suite 143
Charleston, South Carolina 29401

Re: Justin McGee v Lindsay McGee
Case No.: 2022-DR-10-3072

Dear Judge Ferderigos:

Marie-Louise Ramsdale and I represent Justin McGee in this Family Court case (Justin M. McGee vs. Lindsay F. McGee, Case No.: 2022-DR-10-3072). I am writing to you in response to the correspondence sent to you by Mr. Currence regarding his request for a stay.

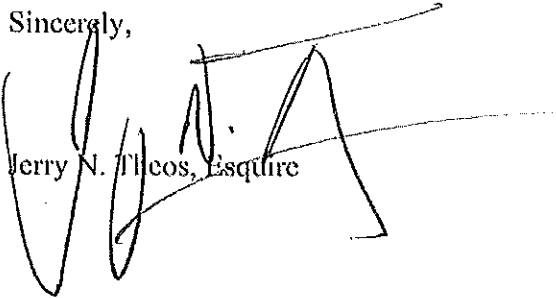
While there have been other civil or family proceedings before the Court of Appeals related to alleged violations of Title 17 over the years, none of those proceedings raised the jurisdictional issue or sought dismissal based upon the same grounds as set forth in Mr. McGee's Motion to Dismiss filed on Friday, September 8, 2023. A copy of the Motion to Dismiss is enclosed herewith for your review. Furthermore, the appellate rules do not provide for an automatic stay of the Family Court action immediately upon the filing of Mr. Currence's Motion to Suppress Evidence. *Cf.* Rules 205, 241, SCACR. This is because South Carolina law is clear that an appeal from a Family Court order, unless it is a final order, "does not, standing alone, operate to stay the effect or enforcement of the order." *Terry v. Terry*, 400 S.C. 453, 456, 734 S.E.2d 646, 648 (2012). Until and/or unless the Court of Appeals orders a stay, the hearings in Family Court should therefore proceed as scheduled. Moreover, upon review of the Court of Appeals docket, it appears Mr. Currence's Motion to Suppress Evidence has recently been marked "Held in Abeyance," apparently in light of Mr. McGee's filed Motion to Dismiss.

Given that the Family Court has continuing jurisdiction until such time as the Court of Appeals may order otherwise, we respectfully request that the hearings scheduled for September 18, 2023, proceed as scheduled.

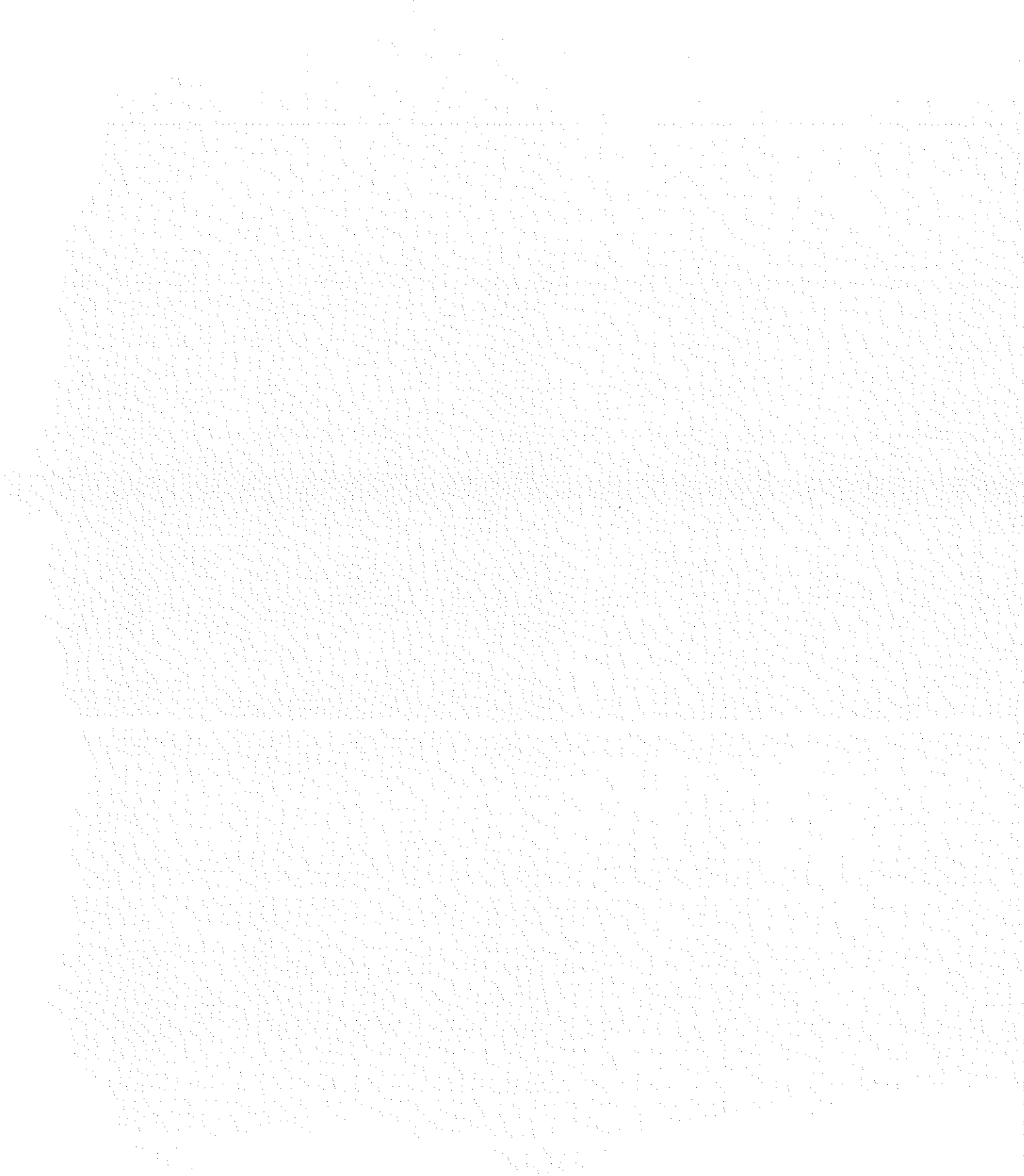
If Your Honor requires a conference call with counsel, I am available this afternoon or any time after 11:30am tomorrow, Thursday, June 14, 2023. I have copied Matthew A. Abee on this correspondence as he has been retained to represent Mr. McGee in the appellate matter. I ask that he also be present for any conference call and/or hearing related to the appellate action or issues arising therefrom.

Thank you for your attention and consideration of this matter.

Sincerely,


Jerry N. Tilcos, Esquire

Encl: as stated
cc: Justin McGee, via email only
Marie-Louise Ramsdale, Esquire, via email only
Peter G. Currence, Esquire, via email only
Elizabeth Stringer, Esquire/GAL, via email only
Matthew A. Abee, Esquire, via email only



RECEIVED

Sep 08 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY FAMILY COURT

Appellate Case No. 2023-001376

Justin McGeeRespondent,

v.

Lindsay F. McGee.....Petitioner.

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Respondent Justin McGee moves this Court to dismiss these proceedings because the Court lacks jurisdiction to review Petitioner’s Amended Motion to Suppress Evidence before consideration by the Charleston County Family Court in the first instance.

Petitioner filed her motion under the South Carolina Homeland Security Act (“the Homeland Security Act”). Yet section 17-30-110 only allows this Court to review a motion to suppress wiretap evidence after a judge of competent jurisdiction (1) receives an application from a qualified individual for an order authorizing or approving the interception of certain communications and (2) issues an order authorizing or approving the interception of such communications. *See* S.C. Code Ann. §§ 17-30-70(A), -80(A)(1), -80(D). The Homeland Security Act is not an independent grant of original jurisdiction to this Court but is instead an establishment of appellate jurisdiction in criminal cases. Because this is a civil case and there was neither an application nor an order for authorization or approval—indeed, Petitioner has not challenged the alleged interception in the Family Court in the first instance—this Court lacks jurisdiction to rule on Petitioner’s Amended Motion to Suppress Evidence.

Factual and Procedural Background

Petitioner Lindsay F. McGee and Respondent Justin McGee were married on March 10, 2012. They have three children. The parties last lived together in Charleston County until they separated in May 2022.

The parties tried to amicably resolve their marital issues for several months. Unfortunately, because of Petitioner's adultery, alcohol consumption, and drug abuse, Respondent was compelled to file an action for divorce in October 2022. Respondent moved for temporary relief in May 2023, asking the Family Court's for an order setting a parenting plan and temporary financial relief. Soon after, Petitioner followed suit with a motion for temporary relief of her own.

The next month, Judge Michelle Hurley held a temporary hearing in which each party submitted affidavits and various exhibits to support their requests for temporary relief. Each party noted objections to certain submissions at the outset of the hearing. Petitioner never made an objection even alluding to the Homeland Security Act, nor did she allege Respondent improperly interfered with her communications. On June 15, 2023, the Family Court issued its Temporary Order setting the terms of, among other things, a week-to-week parenting schedule with limitations on Petitioner's ability to associate with certain individuals in the children's presence. The Temporary Order also required the parties to engage in discovery and set a de novo review hearing for September 18, 2023.

Over the past ninety days, the parties have engaged in discovery. Several subpoenas have been issued involving the issues Petitioner raises in the Amended Motion filed with this Court.¹

¹ Some of these subpoenas are outstanding. For example, Bank of America responded yesterday requesting a 14-day extension to Wife's subpoena for records related to access of certain financial information central to the wiretap allegations. Husband anticipates this subpoena response will likely undermine many of the claims Wife makes in her Amended Motion.

Respondent has moved to compel and contempt actions against Petitioner's witnesses, as well as a motion to quash subpoenas Petitioner has issued involving many of the same issues purportedly before this Court. These issues are set to be heard at the same time as the September 18 de novo review hearing, along with all other discovery or evidentiary issues that have arisen since the issuance of the Temporary Order.

Argument

South Carolina courts must assure themselves of jurisdiction before entertaining the merits of any action. *See Anderson v. Anderson*, 299 S.C. 110, 115, 382 S.E.2d 897, 900 (1989) ("The jurisdiction of a court over the subject matter of a proceeding is determined by the Constitution, the laws of the state, as is fundamental."); *see also Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 577 (1999) (holding that a "court may not hypothesize subject-matter jurisdiction for the purpose of deciding the merits."). Because this Court lacks original jurisdiction over a section 17-30-110 motion to suppress and because the circumstances granting the Court appellate jurisdiction over such motions do not exist in this case, the Court should dismiss these proceedings.

Under the South Carolina Constitution, this Court "shall have such jurisdiction as the General Assembly shall prescribe by general law." S.C. Const. art. V, § 9. General state law provides that the Court "has jurisdiction over any case in which an appeal is taken from an order, judgment, or decree of the circuit court, family court, a final decision of an agency, a final decision of an administrative law judge, or the final decision of the Workers' Compensation Commission." S.C. Code Ann. § 14-8-200(a). These two authorities make no provision for the Court to entertain this action in its original jurisdiction.

Although Petitioner suggests this Court has original jurisdiction over civil wiretap suppression motions and goes so far as to ask the Court to make detailed factual findings, she cites

no constitutional provision, statute, or court rule providing this Court with that jurisdiction. For example, the Supreme Court's jurisdiction in our Constitution specifically references that court's ability to issue *original* writs. See S.C. Const. art. V, § 5; see also S.C. Code Ann. § 14-3-310 (referencing the Supreme Court's original jurisdiction). A court rule similarly provides for original proceedings, but only in the Supreme Court. Rule 245, SCACR. Respondent knows of no such similar grant of original jurisdiction to this Court. In fact, state law makes clear that this Court's jurisdiction "is appellate only" and is not original (unlike the jurisdiction statutorily granted to the Supreme Court in some cases). S.C. Code Ann. § 14-8-200(a). The distinction between the two courts' jurisdiction makes sense, given that original jurisdiction in an appellate court is generally reserved for matters addressing novel issues of significant public interest, see, e.g., *Laffitte v. Bridgestone Corp.*, 381 S.C. 460, 464, 674 S.E.2d 154, 156–57 (2009), and given the general rule that our Supreme Court will not entertain matters of original jurisdiction when the matter can be addressed by a trial court in the first instance, *Key v. Currie*, 305 S.C. 115, 116, 406 S.E.2d 356, 357 (1991).

The Homeland Security Act also does not expand this Court's appellate jurisdiction. Passed in 2002 and placed in Title 17 (Criminal Procedures), section 17-30-110 establishes the requirements for moving to suppress under the Homeland Security Act: "Prior to any trial, hearing, or proceeding in or before any court, . . . any aggrieved person may move to suppress the contents of any intercepted wire, oral, or electronic communication, or evidence derived therefrom, on the grounds that the . . . communication was unlawfully intercepted[.]" S.C. Code Ann. § 17-30-110(A)(1). The motion to suppress "must be made before the reviewing authority^[2] and must be

² The Homeland Security Act defines "[r]eviewing authority" to mean "a panel of three judges of the South Carolina Court of Appeals designated by the Chief Judge of the South Carolina Court of Appeals." S.C. Code Ann. § 17-30-15(9).

decided on an expedited basis.” *Id.* § 17-30-110(A). “Upon receiving the motion, the reviewing authority must notify the issuing judge who must transfer copies of the contents of all recordings, applications, orders, and other documents relating to the issuance of the order of authorization.” *Id.* “After reviewing the materials, the reviewing authority must first determine whether all materials otherwise discoverable under South Carolina law were made available to the aggrieved person.” *Id.* If a majority of the reviewing authority “determine[s] that all necessary materials were made available, the reviewing authority must decide whether the order of authorization was issued and the communications were intercepted in conformity with the requirements of this chapter.” *Id.*

The circumstances underlying Petitioner’s Amended Motion to Suppress Evidence fall outside the review contemplated by section 17-30-110 and should be dismissed for two reasons.

First, the phrase “reviewing authority” implies there must be an order for this Court to review in the first instance. *See* S.C. Code Ann. § 14-8-200(a) (providing the Court of Appeals’ jurisdiction “is appellate only”); S.C. Code Ann. § 17-30-110(B) (explaining that although the Court of Appeals en banc has initial appellate jurisdiction over the State’s appeal of an order granting a motion to suppress, “[a]ll other appellate procedures remain in force and effect”). Section 17-30-110 consistently references the Court’s authority to determine whether “the order of authorization or approval” complied with the Homeland Security Act. The requirements for obtaining such an order are set forth in sections 17-30-70 and -80. An application for the order “must be initiated by the Chief of [the South Carolina Law Enforcement Division (SLED),]” reviewed by “the Attorney General or his designated Assistant Attorney General[,]” and submitted “to a judge of competent jurisdiction” S.C. Code Ann. § 17-30-70(A); *see id.* § 17-30-80(A)(1). Upon application, the judge may grant “an order authorizing or approving the

interception of wire, oral, or electronic communications” by SLED or an individual contracted by SLED to investigate certain offenses. *Id.* §§ 17-30-70(A)(1)-(3); *see id.* 17-30-80(D). In this case, there is neither an application nor an order addressing the admissibility of the evidence within the jurisdictional parameters of section 17-30-110. Thus, there is nothing for this Court to review.³

Second, section 17-30-110 indicates suppression is an appropriate remedy only in cases involving interception by a State agent or employee. This interpretation is bolstered by several factors. As noted above, Title 17—which encompasses the Homeland Security Act—is entitled “Criminal Procedures.” Although the Homeland Security Act references civil actions for wrongful interceptions in one section, there are no references to civil liability in section 17-30-110. *See* S.C. Code Ann. § 17-30-135; *see also, e.g., State v. Bixby*, 388 S.C. 528, 548–49, 698 S.E.2d 572, 583 (2010); *State v. Guerrero-Flores*, 402 S.C. 540, 534, 741 S.E.2d 577, 580 (Ct. App. 2013). Even in its references to appellate review, section 17-30-110 only guarantees *the State* a right to appeal orders of authorization or approval and orders granting a motion to suppress. *See* S.C. Code Ann. § 17-30-110(B) (“*The State* has the right to appeal an order granting a motion to suppress made under subsection (A).” (emphasis added)); *id.* § 17-30-110(C) (“*The State* has the right to appeal the denial of the application of an order of authorization or approval. The appeal must be directed to the reviewing authority and must be conducted in a manner consistent with subsection (A).” (emphasis added)). This limitation suggests suppression is only available in cases involving a State interceptor, which Respondent certainly was not.

³ Petitioner’s Amended Motion is inconsistent on this point. In one breath, she asks for this Court to make detailed findings of fact in the first instance. (*See* Am. Mot. to Suppress Evidence at 1.) Yet she styles her Motion and Amended Motion as being an “appeal” from Charleston County Family Court. (*Id.*) To be clear: there has been no ruling by the family Court for this Court to review because Petitioner has made no objection under the Homeland Security Act below.

The Supreme Court's decision in *State v. Whitner*, 399 S.C. 547, 732 S.E.2d 861 (2012), does not demand a different result. *Whitner* confirms that the Homeland Security Act "parallels" the Wire and Electronic Communications Interception and Interception of Oral Communications Act ("the Federal Act"). *Id.* at 553, 732 S.E.2d at 864. The Federal Act imposes similar limitations on the scope of a motion to suppress and the federal government's right to appellate review. *See* 18 U.S.C. § 2518(1), (10)(a) (permitting a motion to suppress "the contents of any wire or oral communication intercepted" pursuant to an order of authorization or approval obtained from "a judge of competent jurisdiction" by an "investigative or law enforcement officer"); *id.* § 2518(10)(b) ("In addition to any other right to appeal, the United States shall have the right to appeal from an order granting a motion to suppress made under paragraph (a) of this subsection, or the denial of an application for an order of approval, if the United States attorney shall certify to the judge or other official granting such motion or denying such application that the appeal is not taken for purposes of delay."). Unlike the Homeland Security Act, however, the Federal Act allows a judge of competent jurisdiction—defined to include "a judge of a United States district court or a United States court of appeals"—to both issue the order of authorization or approval and rule on the motion to suppress. *See id.* §§ 2510(9), 2518(1).

Conversely, the Homeland Security Act imposes a two-step process during which (1) a judge of competent jurisdiction must issue an order of approval and authorization and (2) the reviewing authority must separately review a motion to suppress evidence obtained as a result of the order of approval and authorization. That process did not occur in this case. Moreover, *Whitner* is factually distinguishable because it arose from a criminal prosecution, which more squarely falls under the criminal procedure provisions of Title 17. For that reason, it makes sense the *Whitner* Court noted, in dicta, that this Court previously conducted a suppression hearing to

address the petitioner's challenges to the State's interception of the disputed call recording. *Whitner*, 399 S.C. at 551, 732 S.E.2d at 863. Again, those circumstances are not before this Court, as the underlying action here is a family court divorce proceeding.

Therefore, this Court lacks jurisdiction to rule on Petitioner's Amended Motion to Suppress Evidence.

Conclusion

Respondent vehemently denies the allegations set forth in Petitioner's Amended Motion. But the proper forum for addressing the merits of those allegations is the Charleston County Family Court, not this Court. Because Petitioner cannot establish a basis for this Court's jurisdiction other than her strained interpretation of section 17-30-110, the Court should dismiss Petitioner's Amended Motion to Suppress Evidence. If the Court denies Respondent's Motion to Dismiss, Respondent alternatively asks the Court to grant his separately filed Motion for Extension of Time to File Return to Petitioner's Amended Motion to Suppress Evidence.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ Matthew A. Abee

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Attorney for Respondent Justin McGee

Columbia, South Carolina
September 8, 2023

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY FAMILY COURT

Appellate Case No. 2023-001376

Justin McGeeRespondent,

v.

Lindsay F. McGee.....Petitioner.

Proof of Service

I, the undersigned partner of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Petitioner Academy, Ltd. d/b/a Academy Sports + Outdoors, certify that I have served all parties in this action with a copy of the document(s) set forth below by email:

Document(s): **Respondent’s Motion to Dismiss**

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McDougall, Self, Currence & McLeod, LLP
791 Greenlawn Drive, Suite 4
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pete@mscmlaw.com
Counsel for Petitioner

NELSON MULLINS RILEY & SCARBOROUGH LLP

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Attorney for Respondent Justin McGee

Columbia, South Carolina
September 8, 2023

Matt Abee

From: Matt Abee
Sent: Friday, September 8, 2023 2:59 PM
To: 'pete@mscmlaw.com'
Cc: 'lizzie@mscmlaw.com'; 'Jerry@Theoslaw.com'; 'Brittany Point'; 'Jackie'; 'mf@ramsdalelaw.com'; 'Lori Ross'
Subject: Service Copy - Motion to Dismiss and Motion for an Extension - McGee v. McGee (No. 2023-001376) - 079821.01501
Attachments: Respondent's Motion to Dismiss - McGee (2023-001376).pdf; Respondent's Motion for Extension to File Return - McGee (2023-001376).pdf; Proof of Service - McGee (Motion to Dismiss).pdf; Proof of Service - McGee (Extension Motion).pdf

Pete,

For service on you by email under Supreme Court Order No. 2022-05-06-03, please find Respondent's Motion to Dismiss, Motion for an Extension, and Proofs of Service.

Please feel free to contact me should you have any questions. Thanks.

-Matt

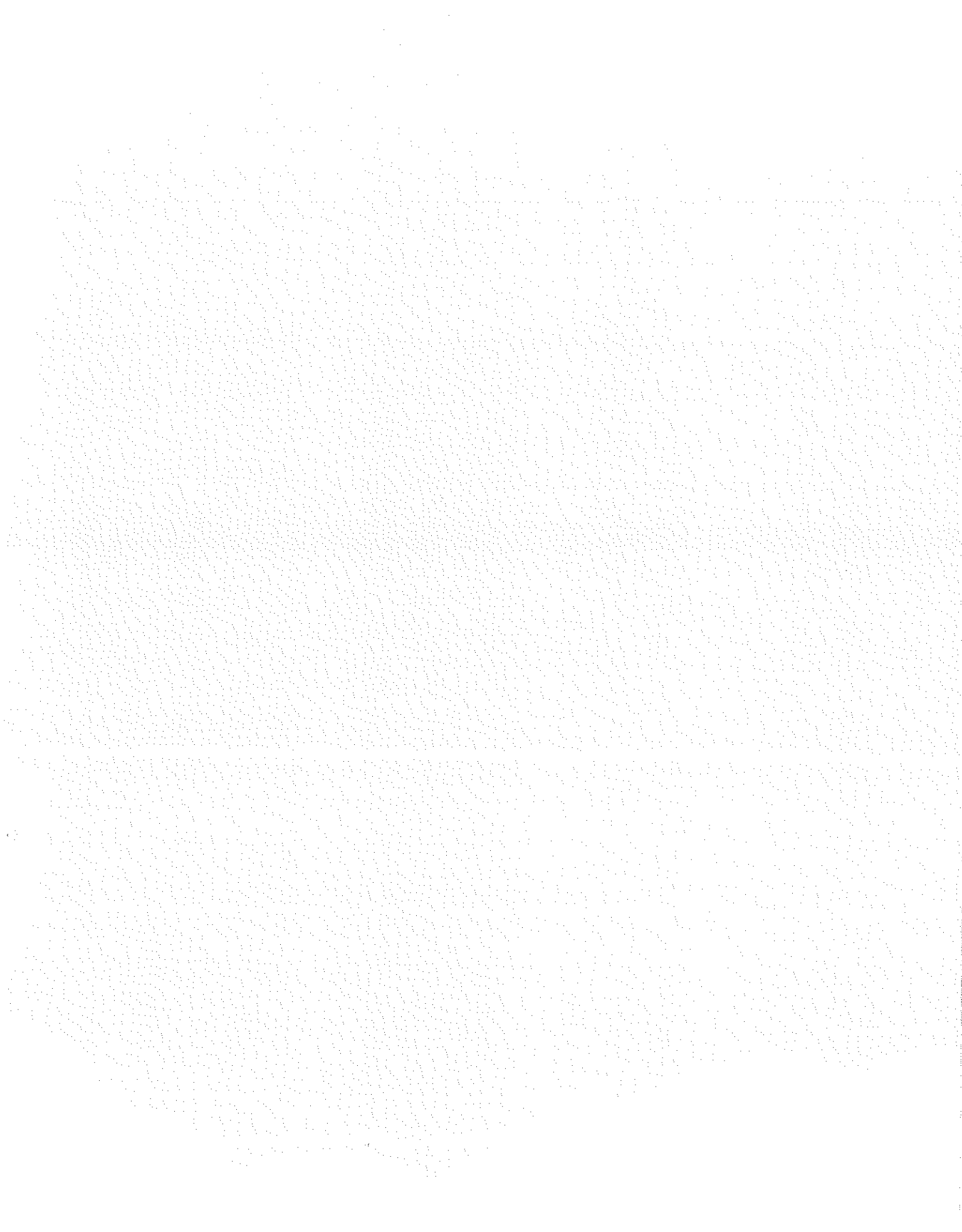
Please note that I will be out of the country September 22 through October 6, 2023.



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Case Information: 2023-001376

Court: Court of Appeals **Classification:** Motion to Suppress - Wiretap Evidence - Wiretap Evidence

Short Title: Justin McGee v. Lindsay McGee

Consolidated: View Full Title **Case Status:** Held in Abeyance

Filed Date: 08/30/2023

Disposition Date:

Remittitur Date:

Lower Court or Tribunal: 2023DR1003072

Oral Argument Date:

Disposition Type:

- Party Information

Appellate Role	Party Name	Former	Attorney(s)
Guardian ad Litem	Elizabeth J. Stricker	N	Self Represented
Respondent	Justin McGee	N	Peter George Currence Richard Giles Whiting
	Justin McGee	N	Matthew A. Abree Marie-Louise Ramesdale Nicholas Jerry Theos

Views

Display: Descend

Event Information

Filed Date	Event Information	Doc
09/11/2023	Correspondence - Incoming (Requesting to make a reply to motion to dismiss and notice of appearance)	
09/05/2023	Motion - Extension of Time (List)	
09/01/2023	Wiretap - Amended Motion to Suppress Received	
09/30/2023	Motion - Dismiss	
08/30/2023	Correspondence - Outgoing (Request for Return)	
08/30/2023	Wiretap - Motion to Suppress Received	



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September 13, 2023

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SC Court of Appeals

VIA EMAIL ONLY

Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29211

RE: Justin McGee v Lindsay McGee
Case #. 2022-DR-10-3072
Appellate Case #2023-001376

Dear Ms. Kitchings:

Enclosed please find MOTION TO CONFIRM AUTOMATIC STAY PURSUANT TO S.C. CODE ANN. § 17-30-110 in regard to the above referenced matter. Please file and return a filed stamped copy to me.

Thank you for your assistance in regard to the above.

With kind regards.

Sincerely,

PETER G. CURRENCE

PGC:lr

Enclosure

cc: Lindsay McGee (via email only)
Jerry Theos (via email only)
Marie-Louise Ramsdale (via email only)
Matthew A. Abee (via email only)

Reply to Columbia Office | jom@mscmlaw.com | www.mscmlaw.com