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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.

**Response to Petitioner’s Motion to Confirm Automatic Stay
Pursuant to S.C. Code Ann. § 17-30-110**

Petitioner Lindsay F. McGee has moved for this Court to “confirm” the automatic stay in the above-referenced matter under South Carolina Code section 17-13-110. Respondent Justin McGee respectfully requests the Court deny Petitioner’s motion because:

- (1) The Court lacks jurisdiction to entertain a motion to suppress wiretap evidence arising from divorce and custody proceedings in some type of original proceeding;
- (2) The Family Court has only issued a temporary order, and any proceedings in that case are not final; and
- (3) Petitioner has not properly invoked the Court’s authority to stay collateral proceedings in the Family Court and has filed no motion for a supersedeas nor could she.

Factual and Procedural Background

Petitioner and Respondent were married on March 10, 2012. The couple had three children and lived together in Charleston County until their May 2022 separation. In October 2022, Respondent filed for divorce on the ground of adultery. Respondent later moved for temporary

relief, requesting that the Family Court issue an order detailing a set parenting plan and awarding temporary financial relief. Petitioner thereafter moved for temporary relief of her own.

After a temporary hearing on the parties' motions, the Family Court issued a Temporary Order on June 15, 2023. The Temporary Order required the parties to engage in discovery and set a *de novo* review hearing for September 18, 2023.

On September 1, 2023, Petitioner filed an Amended Motion to Suppress Evidence with this Court under the South Carolina Homeland Security Act, S.C. Code Ann. §§ 17-30-10 through -145. Respondent promptly filed a Motion to Dismiss and Motion for Extension of Time. Petitioner now moves for this Court to "confirm" an automatic stay of the Family Court proceedings under section 17-30-110.

Argument

As explained in Respondent's Motion to Dismiss, this Court lacks original jurisdiction over a section 17-30-110 motion to suppress, and the circumstances granting the Court appellate jurisdiction over such motions do not exist here.¹ Because the motion is improper under section 17-30-110, the automatic stay provision of that section cannot apply.

The automatic stay provision of Rule 241, SCACR, also cannot apply. Rule 241(a) generally imposes an automatic stay "upon service of a notice of appeal in a civil matter" but then carves out certain matters from the automatic stay provision. Rule 241(b), SCRCR; *see also* Rule 205, SCACR ("*Upon the service of the notice of appeal*, the appellate court shall have exclusive jurisdiction over the appeal" (emphasis added)). But Petitioner has not served a notice of appeal, and indeed, there is no order from which she could appeal. *See Terry v. Terry*, 400 S.C. 453, 456, 734 S.E.2d 646, 648 (2012) ("A notice of appeal from a temporary order does not, standing alone,

¹ To avoid redundancy, Respondent simply incorporates by reference his Motion to Dismiss here.

operate to stay the effect or enforcement of the order. A temporary order of the family court is without prejudice to the rights of the parties. Such orders are, by definition, temporary[.]” (footnote omitted)). This is because the Family Court “at the final hearing has the authority to redress any error from the temporary order. . . . If a party desires to challenge the family court’s final resolution of the matter, the aggrieved party may appeal from final judgment.” *Id.* at 457, 734 S.E.2d at 648.

Additionally, Petitioner has not filed a notice of appeal and this case is not subject to an exception. *See* Rule 241(c). As such, an automatic stay would be improper as it would be comparable to granting an order imposing a supersedeas of the family court matter. Moreover, Petitioner should not be allowed to seek such an order given that the merits of the parties’ dispute separately pending in the Family Court involve the custody of their children. Appellate courts generally do not take exclusive jurisdiction over child related matters so as to provide the Family Court the necessary flexibility to protect the rights and wellbeing of minors, regardless of the pendency of other proceedings. *Cf.* Rule 241(b)(6), SCACR (exempting from the automatic appellate stay “Family court orders regarding a child or requiring payment of support for a spouse or child as provided in S.C. Code Ann. § 63-3-630”). It would make no sense, then, to impose an automatic stay in the Family Court here based on collateral proceedings filed in a court lacking jurisdiction when state law provides that no such stay exists when that same appellate court would have jurisdiction had there been an authorized appeal. *Id.* Plaintiff’s request for an immediate stay of the parties’ separately pending litigation in the Family Court is not only improperly before this Court, it is also contrary to the best interest of the parties’ minor children.

Conclusion

Therefore, this Court should deny Petitioner’s Motion to Confirm Automatic Stay.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ Matthew A. Abee

Matthew A. Abee, SC Bar No. 101100
E-Mail: matt.abee@nelsonmullins.com
Morgan Spires, SC Bar No. 105197
E-Mail: morgan.spires@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Respondent Justin McGee

Columbia, South Carolina
September 14, 2023

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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): **Response to Petitioner’s Motion to Confirm Automatic Stay Pursuant to S.C. Code Ann. § 17-30-110**

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

Richard G. Whiting
Law Offices of Richard Whiting
1515 Lady Street
Columbia, SC 29201
dick.whiting@whitinglawsc.com
Counsel for Petitioner

Elizabeth J. Stringer
Elizabeth J. Stringer LLC
PO Box 12370
Charleston, SC 29422-2370
liz@stringerlaw.us
Guardian ad litem

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ Matthew A. Abee

Matthew A. Abee, SC Bar No. 101100

E-Mail: matt.abee@nelsonmullins.com

Morgan Spires, SC Bar No. 105197

E-Mail: morgan.spires@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 14, 2023

Matt Abee

From: Matt Abee
Sent: Thursday, September 14, 2023 8:00 AM
To: pete@mscmlaw.com; Dick.whiting@whitinglawsc.com
Cc: lizzie@mscmlaw.com; Jerry@Theoslaw.com; Brittany Point; Jackie; ml@ramsdalelaw.com; Lori Ross; liz@stringerlaw.us; Morgan Spires; Andrew Fischer
Subject: Service Copy - Response to Motion to Confirm Automatic Stay - McGee v. McGee (No. 2023-001376) - 079821.01501
Attachments: Response to Motion to Confirm Automatic Stay - McGee - No. 2023-001376.pdf; Proof of Service - McGee.pdf

Pete and Dick,

For service on you by email under Supreme Court Order No. 2022-05-06-03, please find our Response to the Motion to Confirm the Automatic Stay and a Proof 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](https://nelsonmullins.com) [VCARD](#) [VIEW BIO](#)

*Licensed in South and North Carolina.
