

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 Seal Nolan Email

On November 11, 2023, Respondent Justin McGee (“Husband”) received an email from an individual purporting to be James Nolan (the “Nolan Email”), referencing issues raised in the November 3, 2023 Motion to Supplement the Record filed by Petitioner Lindsay F. McGee (“Wife”). The Nolan Email is relevant to these proceedings as it specifically references the CAMDUCK camera (the “CamDuck”) and the contents of the videos on that device that were previously referenced, without much detail, in Petitioner’s Motion and supporting affidavit. (Mot. to Suppl. R. at 4; Second Suppl. Aff. of Steven Marc Abrams ¶¶ 2, 5). Because of the sensitive nature of the allegations in the email and its language, Husband moves to file the email under seal. *See In Re: Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings*, Case No. 2013-002681 (April 15, 2014).

The grounds for this motion are:

1. This is an action by Wife against Husband under the Homeland Security Act, S.C. Code Ann. 17-30-10 to -145. Wife filed her Motion and Amended Motion to Suppress, Husband has filed a Return denying the allegations. Wife recently moved to supplement the record for a

second time, which Husband responded to earlier today. For the reasons in Husband's filings to date, he asks that the Court deny Wife's motions and dismiss this action on an expedited basis.

2. In support of the relief he requests, Husband now asks the Court to seal the Nolan Email referenced in his Return filed earlier today. Husband respectfully requests expedited briefing and consideration of this motion as these proceedings are intended to be expedited. *See* S.C. Code Ann. § 17-30-10. The upcoming holidays and lack of an establish holiday visitation and custody schedule also counsel in favor of expedited consideration.

3. The above-referenced administrative order requires a "party seeking to seal material beyond those personal identifiers listed above must file a motion to seal with the appellate court in which the matter is pending. . . . Parties and counsel are reminded that the standard established in *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 630 S.E.2d 464 (2006), and *Davis v. Jennings*, 304 S.C. 502, 405 S.E.2d 601 (1991), must be met before any request to seal all or a portion of a record will be granted."

4. On a motion to seal, the court "*must* consider the following factors, pursuant to recently enacted Rule 41.1, SCRCF: (1) ensuring the parties' right to a fair trial or hearing; (2) the need for witness cooperation; (3) the reliance of the parties upon expectations of confidentiality of the proceeding; (4) the public or professional significance of the proceeding; (5) the perceived harm to the parties from disclosure; (6) why alternatives other than sealing the documents are not available to protect legitimate private interests; and (7) why the public interest, including, but not limited to, the public health and safety, is best served by sealing the documents." *Ex parte Cap. U-Drive-It, Inc.*, 369 S.C. at 12, 630 S.E.2d at 470 (emphasis added). "In addition, the court *may* consider (8) public interest in the proceeding; (9) the private or public status of the litigants and case generally; (10) whether release would enhance the public's understanding of an important

historical event; (11) whether the public already has access to information contained in the records; (12) whether a particular decision will sustain or offend the fundamental interests of public access, and any other relevant factors.”

5. The standards in *Ex parte Capital U-Drive-It* and *Davis* support sealing the email here. So too does Rule 41.1, SCRCF, which is referenced in *Ex parte Capital U-Drive-It* and is the closest corollary to the above-referenced administrative order:

a. Sealing the Nolan Email would not impact the parties’ right to a fair trial or hearing. Although Husband has concerns about the expedited nature of the proceedings and the summary nature of them, sealing a one-page email relevant to the Motion to Supplement the Record currently pending before this Court would not impede the ability for either party to proceed.

b. The need for witness cooperation would not be impacted by sealing the email because the Court has stayed any discovery in the collateral Family Court proceedings.

c. To date, the parties have not relied on expectations of confidentiality in these proceedings. All of Wife’s filings have been made without sealing of any kind. Although the parties previously discussed the possibility of sealing the collateral Family Court proceedings, no such sealing order has been entered.

d. These proceedings have no public or professional significance. This action was brought under the Homeland Security Act and arises from allegations made by Wife after Husband filed for divorce. There is no public interest in the outcome of this proceeding or the divorce proceeding—they are merely private disputes between two parties.

e. The parties and their minor children may be harmed from the public disclosure of the contents of the Nolan Email. There is already a great deal of sensitive private information about the parties in the public record on this case, but the Nolan Email exposes even

more sensitive information about what may be contained on the video recordings of which Wife complains.¹ Were that information to become public, the parties' reputations could be unnecessarily questioned; the information also does not need to be disclosed to the parties' minor children.

f. Husband seeks very narrow relief: sealing a one-page email he received unsolicited and unprompted. No other portion of the record is currently sealed. Alternatives other than sealing the document are not available to protect legitimate the above-referenced private interests because of the nature of the email and its claims, including the language used, which undermine some of Wife's allegations.

g. The public interest, including public health and safety, would not be impacted by sealing the Nolan Email. Instead, the protection of the minor children in the collateral divorce proceeding is best served by sealing the Nolan Email.

6. Husband's counsel conferred with Wife's counsel by phone and email on November 13, 2023. The parties were not able to reach a resolution of this Motion to Seal given Wife's evidentiary objections to the Nolan Email. Husband does not seek to have those evidentiary rulings made at this time; rather, he only seeks leave to file the Nolan Email under seal.

7. Husband provides a copy of the Nolan Email to the Court under separate cover and asks that it remain provisionally sealed pending consideration of the current motion. *See In Re: Revised Order Concerning Personal Identifying Information and Other Sensitive Information in*

¹ As set forth in his Return filed earlier today, Husband did not place the CamDuck in Wife's bedside cabinet, and he does not know the contents of the recordings Wife references. (Return Ex. 1, McGee Aff. ¶¶ 5, 10). All that Husband knows about those recordings is derived Steven Abrams' affidavit and the Nolan Email. (*Id.* ¶¶ 8–9). Husband does not know who James Nolan is or how he is connected to Wife, other than Nolan's allegations that he is one of Wife's sexual partners depicted on the video. (*Id.*).

Appellate Court Filings, Case No. 2013-002681 (April 15, 2014) (“Until the motion is ruled on, the clerk of the appellate court shall treat the material as if it is sealed.”).

Conclusion

For the reasons set forth above, Husband respectfully requests this Court enter an order sealing the Nolan Email.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ Matthew A. Abee

Matthew A. Abee, SC Bar No. 101100
E-Mail: matt.abee@nelsonmullins.com
Morgan E. 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
November 13, 2023

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Proof of Service

I, the undersigned partner of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Respondent Justin McGee, 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 Seal Nolan Email
Exhibit A – Nolan Email**

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
November 13, 2023

Matt Abee

From: Matt Abee
Sent: Monday, November 13, 2023 7:14 PM
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: Return to Motion to Supplement the Record- McGee v. McGee (No. 2023-001376) - 079821.0150
Attachments: Motion to Seal - McGee 4886-5658-2032 v.2.pdf; UNDER SEAL - Exhibit A - Nolan Email.pdf; Proof of Service - McGee (Motion to Seal).pdf

Pete and Dick,

For service on you by email under Supreme Court Order No. 2022-05-06-03, please find our Motion to Seal Nolan Email. I am also attaching Exhibit A, the Nolan Email. This email will be provided to the Court under separate cover so that it is provisionally sealed while the motion is pending.

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

-Matt



MATT ABEE **PARTNER**
matt.abee@nelsonmullins.com

*Licensed in South and North Carolina

MERIDIAN | 17TH FLOOR

1320 MAIN STREET | COLUMBIA, SC 29201

T 803.255.9335 F 803.256.7500

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