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Nov 15 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions

Honorable Frank R. Addy, Jr., General Sessions Judge

Case Nos. 2022-A24-102-00386, 2022-A24-102-00411,
2022-A24-102-00412, 2022-A24-102-00449

The State,

Respondent,

vs.

Stephen Mark Pressley,

Respondent,

In re: Victims Jane Doe 1, Jane Doe 2, and Jane Doe 3,

Appellants.

MOTION TO STAY ORDER

Victims hereby petition the Court to stay the trial court's Order for Release of Counseling Records during the pendency of this appeal. This motion is based upon the following:

FACTUAL BACKGROUND

Victims appeal and seek appellate review of the trial court's decision to grant Respondent Pressley's (hereinafter "Pressley") Motion to Compel Disclosure of Records of Children's

Advocacy Center and Counseling Records. The victims in this matter include Victim (hereinafter “Jane Doe 1”) and her two minor children. The oldest child is hereinafter named Jane Doe 2, and the youngest child is hereinafter named Jane Doe 3. Jane Doe 1 is the victim of a pending Domestic Violence case against Pressley. The minor children are the victims of Pressley in one (1) pending Criminal Sexual Conduct with minor or Attempt- victim under 11 years of age, 1st degree, and two (2) Criminal Sexual Conduct with minor, or Attempt- victim 11 to 14 years of age, 2nd degree cases. Pressley filed a Motion to Compel Disclosure of Records of Children’s Advocacy Center and Counseling Records of the minor children. The motion referenced all pending charges and requested records of the Children’s Advocacy Center, including videotape interviews, interview reports, medical records, counseling records, court advocacy records, and consultation records. Defense counsel also requested all of Jane Doe I’s counseling records.

The trial court addressed the motion in a hearing held on October 26, 2023. The State and Victims opposed the release of the records. The trial court compelled the release of the mental health records of all three victims to Defendant, without an in camera review, and subject to a confidentiality order. The trial court’s order had not been signed at the time Victims filed a Notice of Appeal/Notice of Request for Appellate Review on November 6, 2023, although actual, verbal notice of the court’s decision was provided during the hearing held on October 26, 2023. The trial court subsequently signed the Order for Release of Counseling Records (To Be Filed Under Seal) on November 9, 2023.¹

Although a final hearing has not been held in these cases, irreparable harm to the victims’ privacy rights will result if appellate review is not made before a final determination in the case. That harm cannot be undone. The trial court’s pending order affects the substantial right

¹ See attached Order for Release of Counseling Records.

of privacy of the victims and effectively prevents an appeal of the decision because the violation to privacy could not be reversed upon appeal. S.C. Code § 14-3-330.

Victims filed a Notice of Appeal seeking appellate review of this Court's decision to compel disclosure of the victims' privileged records, or alternatively the issuance of a writ of mandamus to require compliance with and enforcement of the Victims' rights, pursuant to S.C. Const. art. I, § 24 (B).

LEGAL AUTHORITY

Jurisdiction of an appeal is within the appellate court upon the service of the Notice of Appeal, but the trial court may proceed with matters not affected by the appeal. Rule 205, SCACR. The matters involved in this appeal/ request for appellate review include an inquiry into whether the South Carolina Supreme Court's in camera review protocol in *State v. Blackwell*, 420 S.C. 127 (2017,) is applicable before determining whether the victims' mental health records must be provided to the state and defense, and whether one minor victim's comment regarding her own counseling records can waive the other victims' rights. These matters are addressed within the trial court's order and are the very subject of Victims' appeal. The Order for Release of Counseling Records should be stayed as the matters within the order are directly affected by the appeal. See *Tillman v. Oakes*, 398 S.C. 245, 728 S.E.2d 45 (Ct. App. 20120) ("Under Rule 205, the lower court is deprived of the power to proceed with matters that are affected by the appeal, but is specifically allowed to proceed with matters not affected by the appeal.").

If the State or a criminal defendant files an appeal, the execution of the sentence or further proceedings in the lower court are stayed. Rule 246, SCACR. The appellate court rules account for the effect of a criminal appeal, when initiated by one of the parties. However, Rule 246 does not contemplate the filing of an appeal by a victim of crime. The treatment of civil

appeals also provides general insight into the effect of an appeal on the enforcement of an order in controversy.

Appeals in civil matters are generally stayed automatically. Rule 241(a), SCACR. A stay of a lower court's order following an appeal is established as the most common outcome under the appellate court rules for both civil and criminal cases. It is a reasonable inference that since a stay is afforded to either party in a civil case, to the state in a criminal matter and to the defendant in a criminal matter, that it would also apply to the victim in a criminal case.

A stay of the trial court's order is necessary because the issues on appeal in this case will otherwise become moot. If the records are released, especially without first undergoing in camera review, there will be no manner in which to restore the loss of privacy, fairness, respect and dignity to the victims.

WHEREFORE, Appellants hereby seek an order staying the trial court's order for release of counseling records that was signed on November 9, 2023.

Respectfully submitted,

S.C. VICTIM ASSISTANCE NETWORK

s/ Tamika D. Cannon
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November 14, 2023

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CERTIFICATE OF SERVICE OF MOTION TO STAY ORDER

THE STATE OF SOUTH CAROLINA
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APPEAL FROM GREENWOOD COUNTY
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Case Nos . 2022-A24-102-00386, 2022-A24-102-00411,
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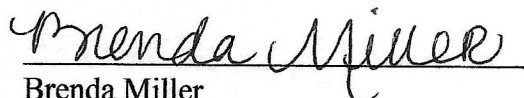
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Appellants.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal by emailing a copy of it on November 15, 2023 to the South Carolina Court of Appeals to ctappfilings@sccourts.org, and by emailing a copy of it on November 15, 2023, to the attorney of record for the State of South Carolina, Caroline Avant Hughes, and by emailing to the attorney of record for Respondent Pressley, Charles E. Grose, Jr. The Notice was mailed by U.S. first class postage to the Clerk of the General Sessions Court of Greenwood County at 528 Monument Street #114, Greenwood, SC 29646, on November 15, 2023.



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