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Nov 20 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 STRIKE AFFIDAVIT OF JAMES NOLAN AND ALL REFERENCES TO
THE NOLAN AFFIDAVIT AND TO SEAL**

Petitioner Lindsay McGee moves to strike the Nolan email, and all references thereto, which was purportedly written and emailed to Respondent by “James Nolan” which Respondent moves to file under seal. Petitioner further moves to seal these submissions from public inspection. Petitioner asserts that the Nolan email is hearsay, it cannot be authenticated, and the content is inflammatory, vulgar, and not relevant to Petitioner’s *Motion to Suppress Evidence*. The grounds for this motion are as follows:

The parties separated on February 21, 2021. Respondent began purchasing covert surveillance equipment beginning in January 2021. (Bumgarner Aff. ¶ 19)¹. Respondent admits

¹ Bumgarner Affidavit attached to Reply to Return to Petitioner’s Motion to Supplement the Record filed November 20, 2023.

that he began installing covert surveillance equipment which he refers to as “nanny cameras” in Petitioner’s residence (the “McCutchen House”) as early as June 2021. (Respondent’s Return to Mot. to Supp. P. 2). Respondent’s purchase history indicates that he purchased approximately twenty covert surveillance devices since January 2021. (Bumgarner Aff. ¶ 5). The Smart Home Manager and router logs in the McCutchen House, which are undisputed, indicated thirteen covert surveillance devices were installed in the home. (Bumgarner Aff. ¶ 9). Petitioner has been under twenty-four-hour, seven day a week surveillance in her home since at least June 2021.

In June 2022, Respondent engaged the services of a private investigator, John Clayton. (Clayton depo. p. 6, ll. 9-14). Mr. Clayton installed sixteen to seventeen GPS devices on Petitioner’s vehicle to track her physical location. (Clayton depo. p. 30, ll. 1-9). Mr. Clayton also provided Respondent with a username and password to enable him to access the online service to track Petitioner’s location in real time. (Clayton depo. p. 17, ll. 10, 11). In addition, Mr. Clayton installed covert surveillance cameras outside Petitioner’s residence and in adjacent yards. (Clayton depo. p. 13, l. 23). This enabled Respondent to know what individuals came to and/or entered the McCutchen House.

Although Respondent admits that he purchased and installed surveillance cameras in the home and that he purchased the CAMDUCK spy camera, he claims that he does not know who placed the CAMDUCK in the McCutchen House and suggests that “it could have been it could have been Wife or any of the many other individuals Wife has allowed unfettered access to McCutchen House. (McGee Aff. ¶ 6)². Significantly, although Husband had Wife under constant surveillance including thirteen covert surveillance devices were installed in the home and cameras

² Petitioner Affidavit attached to Reply to Return to Petitioner’s Motion to Supplement the Record filed November 20, 2023

outside the McCutchen House, he offers no evidence to support his claims that Petitioner allowed many individuals to enter the McCutchen House.

Respondent then claims that an email from someone purporting to be James Nolan was sent to him unsolicited on November 11, 2023 and attaches what Respondent purports is a “true and correct” copy to *Respondent’s Motion to Seal Noan Email*. (McGee Aff. ¶ 8). The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. (See Rule 901, SCRE) In this case, Respondent has failed to provide any source of authentication of this email as provided in Rule 901(b) (1-10). No one can identify the James Nolan who purportedly sent the email. Respondent does not know who James Nolan is. (Respondent Aff. ¶ 9). Petitioner does not know James Nolan, moreover, she has never engaged in the vile and vulgar activities described in the Nolan email. (Petitioner Aff. ¶ 10). Finally, this document does not meet the criteria for self-authentication. (See Rule 903, SCRE)

Additionally, Petitioner does not know what is meant by a “true and correct” copy, however, what is conspicuously missing from the attached Nolan email the message header information which would prove whether the email was even transmitted electronically or whether it was created using a word processor. (Bumgarner Aff. ¶ 22). Although Respondent has his own technology expert with whom he has consulted and has filed an affidavit responsive to Petitioner’s *Motion to Suppress Evidence* and responsive to Petitioner’s experts’ affidavits, Respondent has not offered an affidavit from his expert attesting to the existence of the header information which would verify that the Noal email was even transmitted, much less advising that even minimal due diligence was conducted to obtain the subscriber information related to the account

jimmynolan@protonmail.com. Respondent fails to even provide information that this was even an email.

As further grounds, the vile and disgusting Nolan email should be stricken from the record because it is hearsay. Rule 801, SCRE defines hearsay as “. . . a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Respondent claims that there have been many other individuals in Respondent’s home who could have placed the camera there. (Return p. 2). He then offers into evidence an “unsolicited” and anonymous email to establish that someone else knew the CAMDUCK recording device was recording both audio and video in Wife’s bedroom. The existence of the email is offered by Respondent for the truth of the matter asserted, which is 1) his fabricated assertion that at least one other individual must know of the existence of the CAMDUCK and 2) that someone else could have “planted” the device in Petitioner’s residence. Finally, the Nolan email offered by Respondent is not subject to any exceptions as provided by Rule 803, SCRE.

Conclusion

Without knowing the identity, or even the existence, of the out of court declarant, the purported Nolan email cannot be authenticated. Further, the Nolan email does not contain the header information to confirm that it was actually transmitted to Respondent. Finally, the email is hearsay. For these reasons, and the Nolan email, all references to the email in *Respondent’s Return to Petitioner’s Motion to Supplement the Record* and all references to the Nolan email in Respondent’s affidavit attached thereto, should be stricken and sealed from public inspection due to the vile and vulgar nature of the email.

Respectfully submitted,

McDOUGALL, SELF, CURRENCE
& McLEOD, LLP



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(803) 776-3130

Attorney for Petitioner

November 20, 2023

**DEPOSITION TRANSCRIPT
OF JOHN CLAYTON**

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE FAMILY COURT
NINTH JUDICIAL CIRCUIT

JUSTIN M. McGEE, : DOCKET NO.
Plaintiff 2022-DR=10-3072
vs. :
LINDSAY McGEE,
Defendant :

DEPONENT: JOHN CLAYTON
DATE: AUGUST 11, 2023
TIME: 11:00 a.m.
LOCATION: THEOS LAW FIRM, LLC
11 STATE STREET
CHARLESTON, SC
REPORTED BY: CAROL T. LUCIC, RPR, RMR

CLARK BOLEN COURT REPORTING & VIDEO CONFERENCING
CHARLESTON, SC 29405
843-762-6294
WWW.CLARK-ASSOCIATES.COM

1 private investigators?

2 A. Yes. We have to do a \$10,000 security
3 bond.

4 Q. Who is yours through?

5 A. J.R. Monroe. It's Monroe. I can't
6 remember the initials.

7 Q. Are they here in Charleston?

8 A. Columbia.

9 Q. What was the exact date in June of '22
10 that you were hired by Mr. McGee?

11 A. I don't recall the exact date. I just
12 remember it was in June. I thought they had a copy
13 of the contract here, but I want to say it was
14 right around the middle of the month.

15 Q. I'll get to this later, but I think we had
16 asked for a copy of your contract, and I don't see
17 where I have gotten that.

18 Can you provide me a copy of that?

19 A. Yes, sir.

20 Q. Prior to June 2022 had you ever done work
21 with Mr. McGee on any cases in which he was the
22 attorney?

23 A. Yes, sir.

24 Q. How many cases have you worked on with
25 him?

1 A. Yes, sir.

2 Q. Where are they out of?

3 A. On the Internet. I don't know where their
4 brick and mortar is at.

5 Q. Tell me about these black -- they're
6 called black mini boxes?

7 A. Yes.

8 Q. Tell me about a black mini box. What is
9 that?

10 A. They're just small cameras that I can move
11 around. I recharge them, and they work off of an
12 SD card. I am able to remove the SD card whenever
13 I retrieve it. I'll put them out and then retrieve
14 it usually in the next day or two and then bring it
15 back.

16 Q. Where do you place those cameras?

17 A. All kinds of places. The sky is the
18 limit.

19 Q. Did you use black mini boxes in this work
20 you did surveilling Lindsay McGee?

21 A. Yes.

22 Q. Where did you put the black mini boxes?

23 A. Mainly in and around the neighbor's front
24 yard or right in her own front yard.

25 Q. If you're facing her house, which

1 A. I'm not giving that up.

2 Q. How often did you access SafeWatch to
3 check Ms. McGee's location?

4 A. I couldn't tell you.

5 Q. Did you give anyone else access to that
6 data through SafeWatch's system?

7 A. Yes.

8 Q. Who did you give access to?

9 A. Almost all of my clients.

10 Q. So for Lindsay McGee who did you give
11 access to?

12 A. I gave access to Justin.

13 Q. Anybody else?

14 A. For Lindsay, no.

15 Q. What about for Dan Fowler?

16 A. Justin.

17 Q. What about for Jay Forino?

18 A. Justin.

19 Q. What about for Jannelle Keys?

20 A. Conor, Justin.

21 Q. The GPS trackers we know are Queclink
22 GL300s. Do you agree with that?

23 A. If you got that off the trackers that were
24 recovered, then yes. I don't look at the -- the
25 only thing I ever look at is the serial numbers on

1 Q. So is that master file for one GPS device
2 or is it a master file for all 16 or 17?

3 A. This is several because I'm looking at a
4 date of 8/31. This one goes until May of this
5 year, 2023, so it would be a bunch of different
6 trackers.

7 Q. But you don't know which of the 16 or 17
8 trackers are on there?

9 A. No, sir.

10 Q. Could it be all of them or do you not
11 think it was all of them?

12 A. No, I don't think we have the entire
13 report here because a lot of information has been
14 lost due to the trackers being removed from the
15 vehicles.

16 Q. When did you download that data?

17 A. I don't remember. I don't have a date.
18 It was just something that accumulated.

19 Q. You produced that to me this week.

20 Did you download it this week or did you
21 download that in the past?

22 A. In the past.

23 Q. But it would have to have been after May
24 of 2023; correct?

25 A. Correct.

1 CERTIFICATE OF REPORTER
STATE OF SOUTH CAROLINA
2 COUNTY OF CHARLESTON

3

4 I, Carol T. Lucic, Registered Professional
Reporter and Notary Public for the State of South
5 Carolina at Large, do hereby certify that the
witness in the foregoing deposition was by me duly
6 sworn to testify to the truth, the whole truth, and
nothing but the truth in the within-entitled cause;
7 that said deposition was taken at the time and
location therein stated; that the testimony of the
8 witness and all objections made at the time of the
examination were recorded stenographically by me
9 and were thereafter transcribed by computer-aided
transcription; that the foregoing is a full,
10 complete, and true record of the testimony of the
witness and of all objections made at the time of
11 the examination; and that the witness was given an
opportunity to read and correct said deposition and
12 to subscribe the same.

13

Should the signature of the witness not be
14 affixed to the deposition, the witness shall not
have availed himself/herself of the opportunity to
15 sign or the signature has been waived.

16

I further certify that I am neither
17 related to nor counsel for any party to the cause
pending or interested in the events thereof.

18

19 Witness my hand, I have hereunto affixed
my official seal on August 15, 2023, at Charleston,
20 Charleston County, South Carolina.

21

22 Carol T. Lucic
NCRA MERIT REPORTER
REGISTERED PROFESSIONAL REPORTER

23

24

My Commission expires: November 27, 2027

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In the Court of Appeals**

APPEAL FROM CHARLESTON COUNTY
Family Court

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 STRIKE AFFIDAVIT OF JAMES NOLAN AND ALL REFERENCES TO THE NOLAN AFFIDAVIT AND TO SEAL on Respondent, by email addressed below:

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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 the MOTION TO STRIKE AFFIDAVIT OF JAMES NOLAN AND ALL REFERENCES TO THE NOLAN AFFIDAVIT AND TO SEAL in regard to the above referenced matter. Please file and return a filed stamped copy to me. I am mailing the filing fee under separate cover to you today.

Thank you for your assistance in regard to the above.

With kind regards.

Sincerely,

PETER G. CURRENCE

PGC:lr

Enclosures

cc: Lindsay McGee (via email only)
Jerry Theos (via email only)
Marie-Louise Ramsdale (via email only)
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Reply to Columbia Office | jom@mscmlaw.com | www.mscmlaw.com