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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Family Court

Rochelle Y. Conits, Family Court Judge

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Appellate Case No. 2023-001918  
Case No. 2023-DR-23-0198

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Jeffrey Ellicott Lindley..... Respondent,

v.

Sara Elizabeth Lindley..... Petitioner.

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**RETURN TO PETITIONER’S MOTION TO SUPPRESS EVIDENCE**

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Respondent (“Husband”), by way of Return to Petitioner’s (“Wife”) Motion to Suppress Evidence filed December 14, 2023 (the “Motion to Suppress”), sets forth the following.

At issue are several sexually explicit messages Wife exchanged in 2022 via direct messaging on the Instagram social media application with George Tagg, a man who is not her husband (the “Sexually Explicit Messages”). Almost nine months to the day after Wife moved at a temporary hearing in the underlying family court action to exclude the Sexually Explicit Messages on the exact same grounds as those stated in the Motion to Suppress, and on the literal eve of a motion hearing regarding the Sexually Explicit Messages that she scheduled months ago, Wife now purports to invoke this Court’s original jurisdiction to seek the relief she already affirmatively sought from – and was denied by – Judge Rochelle Y. Conits of the family court.

This Court should dismiss Wife's Motion to Suppress because it is jurisdictionally and procedurally improper. Alternatively, this Court should deny Wife's Motion to Suppress because it includes only a partial and self-serving recitation of facts and is not supported by the law.

### **FACTS AND PROCEDURAL BACKGROUND**

Husband and Wife married on April 22, 2006. They have two minor children, a daughter who is 16 and a son who is 13.

Below is a summary of the relevant procedural history of the family court case. The procedural history is important in understating why the Motion to Suppress is improper and should be dismissed or denied.

#### **I. Wife's Marital Misconduct**

On August 16, 2022, Husband installed a free version of Dr. Fone on the parties' home MacBook computer. Dr. Fone is a computer program that allows files (such as music files) to be moved from one device to the other. He used Dr. Fone one time on September 30, 2022 for four minutes for the sole purpose of transferring his music files from the parties' MacBook computer onto his new iPhone. (Affidavit of Jeff Lindley dated December 12, 2023, attached as Ex. A, p. 1). Months passed without incident.

In December 2022, Husband found explicit messages previously exchanged between Wife and George Tagg describing their sexual activity. Husband found the Sexually Explicit Messages on the family iPad that Wife, the parties' two minor children, and Husband all used. The iPad did not have a passcode, and Wife left the Instagram app open for anyone using the iPad to read. (Affidavit of Jeff Lindley dated March 15, 2023, attached as Ex. B, p. 1). Husband

did not install spyware or take any illegal action on this iPad or any other device used by Wife; rather, Husband took photos of the Sexually Explicit Messages. (*Id.*).

On January 18, 2023, Husband initiated the underlying divorce action in the Greenville County Family Court by filing a Summons and Complaint.

## **II. March 2023 Temporary Hearing and Wife's Motion *in Limine***

Husband also filed a Motion for Temporary Relief on January 18, 2023, seeking a variety of relief on a temporary basis. On March 13, 2023, Wife served her Return to Motion and Motion for Temporary Relief, also seeking a variety of relief on a temporary basis. Among other things, Wife sought temporary alimony.

On March 15, 2023, the parties appeared before Judge Conits for a temporary hearing. At the commencement of the temporary hearing, Wife served Husband and submitted to Judge Conits what she titled a Motion *in Limine*. (Motion attached as Ex. C). In the undated<sup>1</sup> Motion *in Limine*, Wife sought relief pursuant to – and only pursuant to – the South Carolina Homeland Security Act, S.C. Code § 17-30-10 *et seq.* (the “Act”). Specifically, Wife sought that “[t]he court should exclude any evidence obtained from Wife’s cellular telephone, iPad tablet and/or computer pertaining to any communications between Wife and George Tagg as any such communications were improperly intercepted in violation of South Carolina Code § 17-30-10 - 145 (2010) . . .”) (*Id.*, p. 1). Wife cited the Act numerous times in support of her Motion *in Limine*, oftentimes simply quoting the statutory language. Wife also attached an order of this Court from *Coggeshall v. Fulmer* as purportedly supporting her request for relief under the Act by way of the Motion *in Limine*.

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<sup>1</sup> The Motion and Order Information Form and Coversheet attached to the Motion *in Limine* reflects that it was submitted on March 15, 2023, but the motion itself is not dated.

At the March 15, 2023 temporary hearing, Wife’s counsel expressly took the position that “some [of] the materials [Husband] has in his affidavit violate the wire tapping statute . . . specifically there are . . . text messages and direct messaging that were taken from my client’s phone without her permission.” (Portions of transcript attached as Ex. D, p. 7, ll. 10–11, 13–15). Wife’s counsel asserted that “this information violates the, that they call it the ‘Act’ but the, and I’ve given [the] court the copy of the statute as well, it’s the Interception of wire, electronic, and oral communications, Section 17-30-10, et al.[.]” (*Id.* at p. 8, ll. 18–23).

Husband submitted the Sexually Explicit Messages as part of his materials in support of his requests for temporary relief. Husband did not seek to introduce any of Wife’s text messages as evidence at the temporary hearing, nor has he sought to introduce any text messages at any other time. The only evidence at issue are Instagram direct messages, specifically the Sexually Explicit Messages.

Wife made no reference at the time of the March 15, 2023 temporary hearing to this Court’s statutory exclusive jurisdiction under the Act to hear and decide motions to suppress allegedly intercepted communications.

Wife made no motion at the time of the March 15, 2023 temporary hearing to continue or stay the temporary hearing. To the contrary, she affirmatively sought for the family court to rule on her Motion *in Limine* and her Motion for Temporary Relief. (Synopsis for Hearing held March 15, 2023 attached as Ex. E).

### **III. Temporary Order**

On May 26, 2023, Judge Conits filed the Temporary Order. (Temporary Order attached as Ex. F).

In the Temporary Order, Judge Conits addressed Wife's Motion *in Limine*, stating (under the heading "Wife's Motion *in Limine*") that "[w]hile Wife raised the specter of illegal conduct by Husband, there is not sufficient supporting evidence to bar the Sexually Explicit Messages coming into evidence and being considered by the Court at this time." (*Id.*, p. 7). The Temporary Order confirms that "Husband presented pictures of the Sexually Explicit Messages on an iPad. Husband took these pictures with his cell phone, i.e. used one electronic device to manually photograph the screen of another electronic device. The pictures are of messages sent and received in an open application on an unprotected iPad used by Husband and Wife and readily accessible to them and the parties' children." (*Id.*, p. 5).

#### **IV. Wife's Motion to Reconsider the Temporary Order**

On June 16, 2023, Wife filed a Motion to Reconsider and Alter or Amend Judgement [sic] Pursuant to SCRC 52, SCRC 59(e) and SCR[C]P 60 regarding the Temporary Order (the "Motion to Reconsider"). In the Motion to Reconsider, Wife seeks reconsideration of Judge Conits' denial of her Motion *in Limine* and also seeks a corresponding increase in spousal support. (Motion to Reconsider attached as Ex. G). As before, Wife made no reference in the Motion to Reconsider to this Court's statutory exclusive jurisdiction under the Act to hear and decide motions to suppress allegedly intercepted communications. As part of the Motion to Reconsider, Wife did not seek a continuance or stay of any pending matter in the underlying action. As she did at the temporary hearing, Wife submitted herself to the family court's jurisdiction to rule on her Motion to Reconsider (in part by seeking reconsideration of the family court's ruling on the Motion *in Limine*).

On December 5, 2023, Husband filed and served his Return to the Motion to Reconsider, requesting that the Court deny the motion and require Wife to pay his attorneys' fees and costs.

On December 13, 2023, as allowed by Rule 6(d), SCRCP, Husband served his opposing affidavits, including his affidavit (Ex. A) and the Affidavit of Derek Ellington dated December 12, 2023 (attached as Ex. H).

**V. Other Motions**

Although not directly related to the Motion to Reconsider, on September 19, 2023, Husband filed a Motion for Temporary Relief (the “Second Motion for Temporary Relief”) and also a Motion to Compel Discovery Responses, and for Attorneys’ Fees and Costs (the “Motion to Compel”). The Second Motion for Temporary Relief sought a reduction, modification, or suspension of Husband’s financial obligations under the Temporary Order due to a change in Husband’s financial circumstances, including his loss of employment in September 2023, and subsequent reemployment but with significantly reduced income in November 2023.

**VI. Motions Hearing in Underlying Action**

The family court docket scheduled a hearing before Judge Conits on October 10, 2023 to address the Motion to Reconsider, the Return to Motion to Reconsider, and the Second Motion for Temporary Relief. The family court docket scheduled a hearing on November 17, 2023 to address the Motion to Compel. The parties jointly moved to continue, reschedule, and consolidate the hearings on these motions.

The family court docket subsequently scheduled a one and one-half hour motions hearing for December 15, 2023 at 10:00 a.m. before Judge Conits.

On December 14, 2023 at 6:02 p.m. – literally the eve of the motions hearing – Wife served the Motion to Suppress and an accompanying Motion to Confirm Stay via email to the undersigned.

In the Motion to Suppress and in the Motion to Confirm Stay – for the first time in the litigation which has been pending for eleven months – Wife purported to avail herself of this Court’s original jurisdiction to consider matters she proactively raised in the family court on two prior occasions, first in March 2023 (the Motion *in Limine*) and then in June 2023 (the Motion to Reconsider). In the Motion to Confirm Stay, Wife confusingly requested this Court to stay, among other proceedings, her own Motion to Reconsider filed almost six months prior. If Wife believed she was entitled to a stay of any proceeding – but especially *her own motion* – surely she would have asserted that position prior to, or at, the temporary hearing (at the earliest), or prior to filing the Motion to Reconsider (at the latest). She did neither.

Prior to filing the Motion to Suppress and the Motion to Confirm Stay, Wife did not file any interlocutory appeal regarding the family court’s denial of the Motion *in Limine*. Instead, Wife doubled down on her position in the family court by filing the Motion to Reconsider, demonstrating what had been her consistent belief that the family court was and is the appropriate forum to decide the issue. Not until literally the last minute – after Wife received Husband’s opposing affidavits served before the December 15 hearing – did Wife take any action in this Court, and only then by seeking relief identical to that in the Motion *in Limine*, a motion which had already been heard and ruled upon – a ruling which Wife herself sought and thereafter moved the family court to reconsider.

On December 15, 2023, Judge Conits commenced a hearing on the Motion to Reconsider, the Second Motion for Temporary Relief, and the Motion to Compel. At the outset of the hearing, Wife asserted, over Husband’s objection, that the family court lacked jurisdiction to consider her own Motion to Reconsider and the Second Motion for Temporary Relief because the day before she filed the Motion to Suppress and the Motion to Confirm Stay.

Judge Conits took the Motion to Reconsider under advisement but proceeded with the hearing on the Second Motion for Temporary Relief and the Motion to Compel. At the hearing, Judge Conits granted the Motion to Compel and found a sufficient change of circumstances to warrant a reduction of Husband's financial obligations under the Temporary Order. This included, among other things, reducing Husband's monthly unallocated support payment to Wife from \$2,500 to \$1,750 and a recalculation and modification downward of Husband's monthly child support obligation. To clarify, Judge Conits did not address the Sexually Explicit Messages in ruling on the Second Motion for Temporary Relief and the Motion to Compel. A Second Temporary Order and an order granting the Motion to Compel are pending as of this filing.

On December 27, 2023, Judge Conits communicated to counsel her determination that the family court is without jurisdiction to rule on the Motion to Reconsider pending the outcome of the Motion to Suppress in the Court of Appeals.

### ANALYSIS

#### **I. Wife's Motion to Suppress is procedurally improper and should be dismissed.**

This Court should dismiss Wife's Motion to Suppress because she waived her right to file it in this Court by first seeking a ruling on the same relief in the family court. The Motion *in Limine* was effectively a motion to suppress under the Act. Wife cited no authority other than the Act in support of the Motion *in Limine*. Wife allowed the March 15, 2023 hearing to proceed to a ruling on the Motion *in Limine*. Wife filed the Motion to Reconsider seeking review and alteration of that ruling. Wife's own Motion to Reconsider sat pending for six months before Wife took the first action in this Court at the literal last minute before the commencement of a determinative hearing that Wife requested, and only after she received Husband's opposing

affidavits. Wife knew her rickety position had been exposed, and thus she went into damage control mode by seeking a delay of the court ruling that she herself had sought.

The Act sets forth clear, unambiguous, specific requirements regarding any motion to suppress evidence under the Act. Wife did not fulfill these requirements. Specifically, the Act provides that:

(A) **Prior to any trial, hearing, or proceeding** . . . 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:

(1) communication was unlawfully intercepted[.]

S.C. Code § 17-30-110(A)(1) (emphasis added) (formatting altered for clarity).

The Act unambiguously requires that “[t]he motion must be made **before the trial, hearing, or proceeding** unless there was no opportunity to make the motion or the person was not aware of the grounds of the motion.” S.C. Code § 17-30-110(A) (emphasis added). The Act further requires that “[t]he motion **must be made before the reviewing authority** and must be decided on an expedited basis.” *Id.* (emphasis added).

The Act defines the “reviewing authority” as “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 § 17-30-15(9).

The Act’s requirement that any motion to suppress evidence under the Act be “made before the trial, hearing, or proceeding” in which the evidence is or may be introduced is logical and obvious. Even though Husband does not believe Wife is entitled to relief under the Act, it nevertheless would have at least been a proper filing if Wife had filed the Motion to Suppress in this Court prior to the March 2023 temporary hearing, and sought a corresponding stay of the temporary hearing pending this Court’s adjudication of a properly filed, even if baseless, motion to suppress. But Wife did not file the Motion to Suppress before the March 2023 temporary

hearing. And Wife did not file the Motion to Suppress when she filed the Motion to Reconsider. And Wife did not file the Motion to Suppress until after she saw Husband's evidence opposing her Motion to Reconsider. Rather, she untimely filed it nine months later, after she first elected to seek the identical relief in the family court by filing the Motion *in Limine*.

For more than seven months, the parties have been operating under a Temporary Order based in part on the family court's ruling on Wife's Motion *in Limine*. The proverbial horse is even further out of the proverbial barn now that the family court has ruled on the Second Motion for Temporary Relief, even though the Sexually Explicit Messages were not part of that ruling.

Wife cannot claim she had no opportunity to make the motion. Wife knew that the Sexually Explicit Messages would be part of Husband's presentation at the temporary hearing, as she showed up to the March 2023 motion hearing with the written Motion *in Limine*. She specifically sought exclusion of the Sexually Explicit Messages, which Wife specifically alleged Husband intercepted in violation of the Act. (Ex. C). The fact that Wife filed the Motion *in Limine* in the family court conclusively proves that she had every opportunity to instead properly and timely file a motion to suppress in this Court, but did not do so.

Moreover, the Act plainly requires that any motion to suppress evidence brought under the Act must be brought before the hearing, and must be brought before the reviewing authority. "Whe[n] the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed[,] and the court has no right to impose another meaning." *Crocker v. S.C. Dep't of Health & Env't Control*, 428 S.C. 1, 6, 831 S.E.2d 924, 927 (Ct. App. 2019).

Wife's Motion to Suppress is therefore deficient on its face for two reasons: (1) Wife made the Motion *in Limine* at the temporary hearing, not *before* the hearing as required by the

Act; and (2) Wife did not make the motion before the reviewing authority. Wife did not do either of the things plainly required by the statute, and thus she waived her opportunity to seek a determination under the Act as to whether the Sexually Explicit Messages should be suppressed. The Court's inquiry should end here, and the Motion to Suppress should be dismissed.

But even if Wife is allowed to proceed with the Motion to Suppress despite its procedural flaws and despite Wife's waiver of her rights under the Act, the Motion must fail for the substantive reasons set forth more fully below.

**II. Wife cannot now complain of her own decision to waive her rights under the Act, and equity favors dismissing the Motion to Suppress.**

Wife cannot plead ignorance of the Act or its requirements. Nor can Wife now complain of a result her own behavior caused. "A party cannot complain of an error which [her] own conduct has induced." *State v. Carlson*, 363 S.C. 586, 595, 611 S.E.2d 283, 287 (Ct. App. 2005); see *McKissick v. J.F. Cleckley & Co.*, 325 S.C. 327, 350, 479 S.E.2d 67, 79 (Ct. App. 1996).

Wife knew the Act existed prior to the temporary hearing in March 2023. This is evident from her attorney's sworn attorney fee affidavit submitted at the temporary hearing. (Affidavit attached as Ex. I). The attorney fee affidavit submitted at the temporary hearing includes the following 4.5-hour entry of Wife's counsel on March 14, 2023 – the day before the temporary hearing – regarding what became the Motion *in Limine*: "Drafted Motion to Suppress; Research." (*Id.*, p. 3). Wife's counsel even called it a "Motion to Suppress". Wife's counsel spent hours in March 2023 researching the Act and drafting the Motion *in Limine*.

Also, the Motion *in Limine* quotes from the Act and sought relief pursuant to – and only pursuant to – S.C. Code § 17-30-10 *et seq.* Any research by Wife's counsel for the Motion *in Limine* necessarily included researching the statute, including § 17-30-110 and its unambiguous

requirements that any motion to suppress pursuant to the Act be made “[p]rior to any trial, hearing, or proceeding” and that any such motion “must be made before the reviewing authority . . .” and the “reviewing authority” being defined as a three judge panel of this Court.

Finally, the Order of this Court that Wife attached to the Motion *in Limine* plainly states on the first page that such a motion must be filed in the Court of Appeals:

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ORDER

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This case involves two ongoing family court and circuit court actions: Justin Fulmer (Fulmer) is the plaintiff in an ongoing civil matter (Civil Case)<sup>1</sup> against Anna Coggeshall, Lauren Trent Fulmer (Trent), and Frazier Law Firm, P.C. (Frazier), and a party in a divorce action (Divorce Action) with Trent. Coggeshall filed a motion to suppress the contents of text messages pursuant to section 17-30-110 of the South Carolina Code (2014), a part of the South Carolina Homeland Security Act. *See* S.C. Code Ann. §§ 17-30-10 to -145 (2014).

Sections 17-30-110 and 17-30-15 require that this court hear the motion to suppress. *See* § 17-30-110(A) (requiring motions to suppress the contents of intercepted wire or oral communications be made to the "reviewing authority"); § 17-30-15(9) (defining "[r]eviewing authority" as "a panel of three judges of the South Carolina Court of Appeals"). Coggeshall contends Fulmer

(Ex. C, attachment).

Wife chose not to exercise her right to file a timely and proper motion to suppress under the Act. She must accept the consequences of her lack of diligence. After all, the family court is a court of equity and “[e]quity aids the vigilant and the diligent.” *Collins v. Sigmon*, 299 S.C. 464, 468, 385 S.E.2d 835, 837 (1989) (internal quotation omitted).

Wife attempts to gloss over the procedural history of this case – including her two prior submissions to the family court to rule on the same issues – and assert that she should be allowed to count her filing of the Motion to Suppress prior to the hearing on the Motion to Reconsider and other motions (scheduled nine months after the temporary hearing and six months after Wife’s Motion to Reconsider) as having been properly made.

If Wife is allowed to utilize such revisionist history, any family court litigant could raise a similar evidentiary issue at a temporary hearing or trial, allow the family court to rule on it, operate under an order incorporating the ruling, at some point file a motion to reconsider the original ruling, and then file a motion under the Act. This would render pointless the Act's requirements about when and where to file a motion to suppress, and essentially result in there being no temporal limit on an aggrieved litigant's attempt to obtain a more favorable ruling from this Court at some uncertain future date. This Court has held that, "... [W]e should seek a construction that gives effect to every word of a statute rather than adopting an interpretation that renders a portion meaningless." *Hinton v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 357 S.C. 327, 342, 592 S.E.2d 335, 343 (Ct. App. 2004).

The General Assembly laid out an unambiguous statutory scheme that has been in place for more than twenty years, and there is no uncertainty about its provisions. This Court should decline to accept Wife's late, inequitable attempt to avoid the consequences of her own action and inaction.

### **III. Wife's communications were not "intercepted" by Husband as required by the Act.**

Even if this Court holds that Wife's Motion to Suppress does not suffer from fatal procedural flaws, and even if this Court ignores the invited error doctrine, the Court should deny the Motion to Suppress because Husband did not "unlawfully intercept" the Sexually Explicit Messages.

There are two possible methods by which Husband could have obtained the Sexually Explicit Messages, one of which – a contemporaneous interception – did not occur, and one of which – a later discovery of the Sexually Explicit Messages that Wife previously exchanged with Mr. Tagg – occurred but is not an unlawful interception.

**A. There is no evidence that Husband installed spyware or malware to intercept the Sexually Explicit Messages.**

Wife's Motion to Suppress primarily hinges on a premise that she cannot prove: that Husband maliciously populated spyware or malware onto her electronic devices to undelete previously deleted direct Instagram messages and then save them to his own device. This did not happen, and no evidence before this Court demonstrates otherwise.

In the Motion to Suppress, Wife cites to the affidavit of her expert Steven Abrams. But Mr. Abrams' affidavit is full of lukewarm assertions and does not add to anything Wife already presented in the Motion *in Limine* at the temporary hearing, which motion the family court considered and denied.

Wife's entire Motion is premised on the false conclusory assertion that

[Husband] installed software called Dr. Fone onto a MacBook used by [Wife], which synced the software to all devices used by [Wife], including her iPhone and her iPad in August and September 2022. Dr. Fone has the capabilities to allow [Husband] to recover deleted electronic communications, from [Wife]'s Apple devices as well as transfer, migrate, and store data from [Wife]'s electronic devices to [Husband]'s electronic devices.

(Motion to Suppress, p. 2.).

Wife has produced no evidence of this assertion.

Husband admits using Dr. Fone – on one occasion for a matter of minutes – to transfer music from the home MacBook to his personal iPhone but adamantly denies intercepting any of Wife's communications with Mr. Tagg. Husband detailed his use of Dr. Fone in his affidavit submitted in support of his position on Wife's Motion to Reconsider. (Affidavit attached as Ex. A). Husband denies that he “propagated” or “pushed” Dr. Fone onto any of Wife's electronic devices.

Wife has done nothing to contradict Husband's admission of his very limited use of Dr. Fone, an admission which provides a straightforward reason for the presence of Dr. Fone on his device (and, via iCloud, on Ms. Lindley's devices). The mere presence of Dr. Fone on any device does not prove malicious action on Husband's part.

As part of Mr. Abrams' response to a subpoena issued by Husband, he produced some of his communications with Wife's counsel. (Communications attached as Ex. J). In these communications, Wife's counsel went so far as to instruct Mr. Abrams what his conclusion should be in an email the day before he signed his affidavit supporting the Motion *in Limine*, when she stated "I want to file a file a Motion to Reconsider, if I can, asking the court to exclude the [Sexually Explicit Messages] because they were deleted, then uploaded by Dr.fone software then deleted again and [Husband] was the administrator on that. So, the messages were inappropriate[ly] obtained." (*Id.*).

But nothing in Mr. Abrams' affidavit or in the Motion to Suppress provides evidence of – much less proves – that Husband intercepted Wife's communications through software/spyware/malware manipulation. Crucially, Mr. Abrams confirmed as much in an email to Wife's counsel the day he signed his affidavit in support of the Motion to Reconsider.

- Wife's counsel asked if Mr. Abrams could "confirm [Husband] used Dr Fone to retrieve deleted messages from Tagg".
- Mr. Abrams responded in pertinent part as follows:
  - "NO. I did not recover any data to show directly that Dr. Fone was used to undelete material related to Tagg."
  - "[T]he log file I found was not for one of Sara's devices, it was a different phone in the log."

- “So I have no direct evidence that Husband used Dr. Fone to access Tagg material.”
- “**There is no evidence.**” (emphasis added).

(*Id.*).

All of Mr. Abrams’ – and Wife’s – theories about Husband’s use of Dr. Fone are speculation at best and misrepresentation at worst. There is no evidence that Husband used Dr. Fone for any reason other than the very limited purpose for which he admits using it.

The only non-statutory authority Wife cites in support of her fanciful conclusions is an Order of this Court in *Fulmer v. Coggeshall*.<sup>2</sup> But *Fulmer* involved one party’s absconding with the Apple Watch of another party and using it to surreptitiously view text messages sent to and from that party’s cell phone. That is not what happened here, and, as set forth more fully herein, the procedural posture and the facts of this case are radically difference from those in *Fulmer*.

The utter lack of evidence of Husband’s collecting Wife’s electronic data was confirmed by Husband’s forensic expert Derek Ellington’s Affidavit dated December 12, 2023 and submitted in support of Husband’s position on Wife’s Motion to Reconsider. (Affidavit attached as Ex. H). Mr. Ellington confirms that, “[i]n my review of [Husband’s] devices, I did not see any evidence of [Wife’s] data having been collected by [Husband].” (*Id.*, p. 1). Mr. Ellington also states that “other than photographs of an iPad which I understand were part of materials already submitted to the [Family] Court, I saw no trace of [Wife’s] data of any sort having been intercepted or collected by [Husband].” (*Id.*, p. 2). Mr. Ellington also provides critical context

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<sup>2</sup> It appears that the cited order is unpublished as it cannot be located through the South Carolina Judicial Department website (<https://www.sccourts.org/courtOrders/searchOrder.cfm>) or on Westlaw. Thus, Wife should not have cited this order in the Motion. Rule 268(d)(2), SCACR (“ . . . unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved.”) Husband responds to this citation of authority in the abundance of caution, but maintains it is improper and should not be considered.

and counterargument to the one-sided factual allegations made by Wife and Mr. Abrams in the Motion to Suppress.

Mr. Ellington is in a better position than Mr. Abrams to know about the lack of any evidence of wrongdoing by Husband because he actually examined Husband's devices, unlike Mr. Abrams, who only examined Wife's devices. Mr. Ellington's affidavit supports Husband's consistent position throughout this case regarding how and when he learned of and accessed the Sexually Explicit Messages.

**B. Wife's claims that Husband unlawfully intercepted the Sexually Explicit Messages by later photographing them are not cognizable under the Act.**

Husband admits that he used his own cell phone to take photographs of the Sexually Explicit Messages on a mutually accessible communal iPad after the messages were originally sent. Wife correctly states in the Motion to Suppress that Husband "used his personal iPhone to take pictures of Instagram direct messages between [Wife] and another individual appearing on the screen of an iPad tablet." (Motion to Suppress, pp. 3–4, ¶ 10). This is not an illegal interception. Accessing Instagram direct messages – or any other electronic communication – after the fact is not a violation of the Act.

The Act applies only to the acquisition of the contents of electronic communications that occur contemporaneous with their transmission and does not apply to the subsequent acquisition of such communications while they are held in electronic storage. *See State v. Guerrero-Flores*, 402 S.C. 540, 534, 741 S.E.2d 577, 580 (Ct. App. 2013) ("[t]he [Act] is patterned after Title III of the Omnibus Crime Control and Safe Streets Act of 1968 (the 'Federal Act')" and explaining that "federal cases analyzing comparable provisions of the Federal Act are persuasive in interpreting provisions of the [Act]"); *Fraser v. Nationwide Mut. Ins. Co.*, 352 F.3d 107, 113 (3d

Cir. 2003) (“Every circuit court to have considered the matter has held that an ‘intercept’ under the [Federal Act] must occur contemporaneously with transmission.”).

Husband has consistently maintained that he discovered the Sexually Explicit Messages and other Instagram direct messages between Wife and Mr. Tagg in December 2022, days after the damning conversation in question occurred on December 9, 2022. Husband has also consistently maintained that he did not discover the Sexually Explicit Messages by using Dr. Fone or any other software program, or by any real-time manipulation or interception of the messages. Rather, he discovered the messages by picking up the non-password protected family iPad and opening the Instagram app.

The Temporary Order confirms that “Husband took these pictures with his cell phone, i.e. used one electronic device to manually photograph the screen of another electronic device.” (Ex. E, p. 5). Further, “Wife does not deny the authenticity of the Sexually Explicit Messages or that she sent and received the messages.” (*Id.*).

It is obvious from the photographs of the Sexually Explicit Messages submitted at the temporary hearing that Husband was not taking the photographs in real time as Wife received them from, and/or sent them to, Mr. Tagg. Take for instance the exemplary photograph included in the Temporary Order, which is similar to the other photographs Husband took of Wife’s direct messages. (*Id.*, p. 6).

The bezel of the iPad is clearly visible, along with the date and time on the iPad screen when Husband took the photograph (“10:33 AM Mon, Dec 12”). (*Id.*). It is also obvious that the messages were sent days earlier. The messages are tagged with information like “WED 11:04 AM”, “THU 11:43 PM”, “FRI 8:25 AM”, and “FRI 11:15 AM”. (*Id.*). If Husband intercepted the messages “in flight”, they would not bear time stamps from prior days. It is also obvious that

Mr. Tagg was not active in the chat at the time Husband photographed the messages, as seen at the top of the message thread under Mr. Tagg's user name: "Active 56m ago". (*Id.*). This does not mean that the most recent message was 56 minutes ago, but it does mean Mr. Tagg was not even using the messaging application and further confirms the messages could not have been obtained in real time.

All of this evidence further confirms that Husband did not illegally intercept the Sexually Explicit Messages.

**C. Wife impliedly consented to Husband's accessing the Sexually Explicit Messages.**

The Act makes it unlawful "for a person not acting under color of law to intercept a wire, oral, or electronic communication . . . where one of the parties to the communication has given prior consent to the interception." S.C. Code § 17-30-30(C). The consent exception applies to both express and implied consent. "Implied consent . . . is inferred from surrounding circumstances indicating that the [party] knowingly agreed to the surveillance." *Berry v. Funk*, 146 F.3d 1003, 1011 (D.C. Cir. 1998) (alteration in original) (internal quotation marks omitted) (quoting *Griggs-Ryan v. Smith*, 904 F.2d 112, 117 (1st Cir. 1990).") Husband accessed the Sexually Explicit Messages via a communal, non-passcode protected iPad. Wife had impliedly consented to Husband's accessing the iPad in question.

As set forth above, Husband testified in his affidavit submitted at the March 15, 2023 temporary hearing as to the circumstances under which he discovered the Sexually Explicit Messages. (Ex. B). Husband testified that he "found explicit messages between [Wife] and [Mr. Tagg] describing their sexual activity. I found these on the family iPad that [Wife] and I and the children all used. The iPad did not have a passcode. [Wife] left the Instagram app open for me (or our children, or anyone else who picked it up) to read." (*Id.*, p. 1).

Therefore, as an additional basis for denying the Motion to Suppress, the Court should find Wife impliedly consent to Husband's accessing the non-password protected iPad.

### **Conclusion**

Husband denies the allegations set forth in the Motion to Suppress and affirmatively alleges the Motion is fatally deficient. Moreover, the Motion to Suppress is supported only by speculative claims that are easily contradicted by the evidence, and by scant authority that (even if it is appropriate to cite) is easily distinguished from the circumstances of this case.

This Court should dismiss or deny Wife's Motion to Suppress. Husband reserves the right to seek to supplement the record and/or the bases for this Return should additional evidence or arguments arise during the pendency of the Court's adjudication of the Motion to Suppress.

As set forth in the Proof of Service being filed concurrently herewith, the undersigned certifies that he has, by copy of this Return, notified Wife's counsel of the filing of this Return.

HAYNSWORTH SINKLER BOYD, P.A.

By: s/Jordan W. Peeler

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(864) 240-3278

Attorneys for Husband

Greenville, South Carolina  
January 4, 2023

**Exhibit A (Affidavit of Jeff Lindley Dated December 12, 2023)**

STATE OF SOUTH CAROLINA )  
COUNTY OF GREENVILLE )  
AFFIDAVIT OF JEFF LINDLEY  
2023 DEC 13) A 11: 20

PERSONALLY APPEARED before me, Jeff Lindley, who being duly sworn and upon penalty of perjury, states the following is true and correct.

SUMMARY

Sara is desperate for a re-do of our March 2023 temporary hearing – a hearing for which she had nearly two months to prepare. Sara should not be allowed a second bite at the apple.

All of Sara’s supposedly “new” alleged “evidence” could have been, and should have been, submitted in March. The Court should not reward her failure to act.

However, even if the Court considers the new information, nothing Sara submitted in her motion changes the facts. I did nothing wrong, and her expert Steve Abrams agrees.

Rather than deal with the actual issues in the case – like responding to discovery and paying down our debt – Sara wants to pretend like I behaved inappropriately. The Court should deny Sara’s motion and award me the attorneys’ fees and costs I incurred defending against it.

I DID NOT INTERCEPT SARA’S MESSAGES

The bottom line is this: I did not use the Dr. Fone software – or any software, malware, or other program – to monitor or intercept Sara’s messages with her paramour George Tagg.

I reaffirm my sworn affidavit submitted at the temporary hearing, including that I found the Instagram direct messages between Sara and George on an iPad in my house that was not password protected. I took photographs of the messages using my iPhone. These photographs are the evidence I submitted and on which the Court relied in issuing the Temporary Order.

While I have sold computer software, I do not know how to “hack”. I have no technical certifications and no expertise in deploying malware, using malware, or handling malware. Nor would I risk my livelihood by using malware.

**My Use of Dr. Fone**

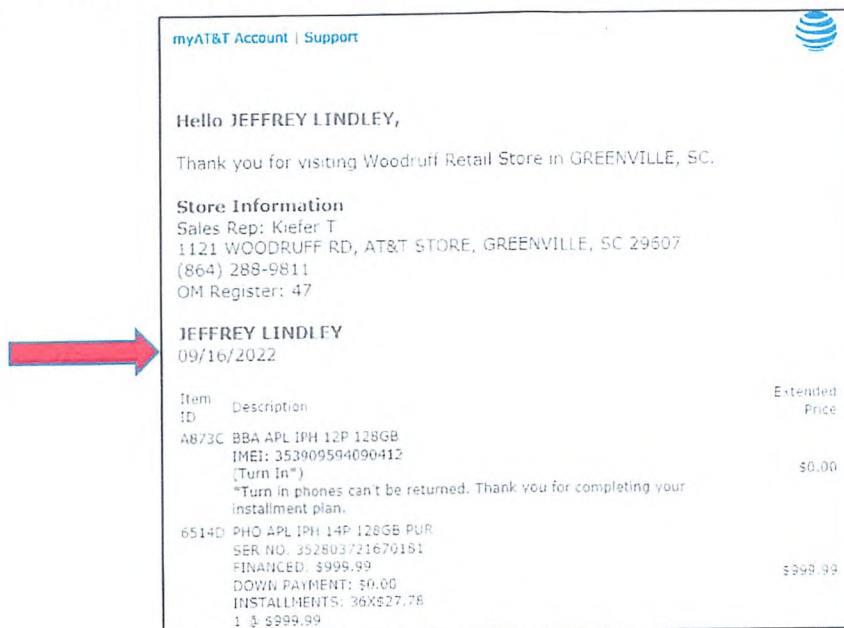
On August 16, 2022, I installed a free version of Dr. Fone on our home MacBook computer. Dr. Fone is a computer program that allows files (such as my music files) to be moved from one device to the other.

I used Dr. Fone one time on September 30, 2022 for four minutes for the sole purpose of transferring my music files from our MacBook computer onto my new iPhone. That’s it. This is

consistent with Sara's allegation in her motion that "the Transfer app . . . was configured and integrated with the iTunes libraries on the MacBook on September 30, 2022." (Motion p. 3).

I could not have used Dr. Fone on the on the other dates Sara's expert Steve Abrams alleges (March 23, 2023 and April 17, 2023). To my knowledge, the computer is and has been in the former marital residence. I have not had access to the MacBook since we separated in January 2023. I did not have access to the MacBook at any time in March or April 2023.

My one-time use of Dr. Fone was not nefarious. I used it to transfer digital music files to my new iPhone purchased 14 days earlier on September 16, 2022.



Apple will not allow a user to transfer certain types of music files via iCloud. The only way to transfer these files is to use a transfer tool like Dr. Fone.

In the process of transferring music, Dr. Fone also transferred photographs from my iPhone to the home computer. These were personal photographs, mostly of me and our children. Since that is not what I intended to use Dr. Fone to do, I cancelled that process. The music transferred in totality.

All of this is backed up by Steve Abrams' affidavit dated June 7, 2023.

I did not "propagate" or "push" the Dr. Fone app onto any of Sara's devices (meaning I did not put it on there). I believe that when the Dr. Fone app was downloaded on the MacBook it would have automatically synced with every device connected to the computer (Sara's iPhone,

and the family's iPads). Mr. Abrams verified that none of those other devices actually connected to Dr. Fone.

I did not, as Sara alleges in her motion, install Dr. Fone to "recapture deleted written messages between she and Mr. Tagg and then transfer that data to an iPhone . . . and transfer this data into an iCloud account." I used Dr. Fone to transfer music to my new phone – period.

### **Dr. Fone is Not Spyware or Malware**

Sara accuses me of "perjury" (Motion p. 8) for my truthful statement in my temporary hearing affidavit that "I did not install spyware or take any illegal action on [the] iPad or any other device" she used. I stand by that statement. It is as true today as it was then. I did not mislead the Court. Nothing in Mr. Abrams' affidavit proves otherwise.

Dr. Fone is not malware or spyware. It is a legitimate transfer software, designed for the very purpose for which I used it. Dr. Fone has a 1-800 number and a customer support team. It is not a hacking tool.

**Transfer**  
Transfer data  
between your phone  
and computer

"You can rest assured that Dr Fone enjoys the trust of millions of users worldwide and it has also received acclaim from reputed media outlets such as PC World, Forbes, CNET, etc."

**iGEEKS**  
06

### **My Cooperation in Setting the Record Straight**

Unlike Sara, to further confirm that I did not use Dr. Fone to download or extract Sara's data via improper electronic methods, I voluntarily made my devices available to be copied by my forensic consultant and examined for privileged information by a third party Sara and I agreed should conduct the review. I have not taken any action to delay that process and I intend to be fully cooperative.

### **CONCLUSION**

Sara doesn't want to face the consequences of her actions and is grasping at straws. I did nothing wrong. The Court should deny the motion and grant me the attorney's fees I incurred to defend myself.

Sworn to before me this 12th  
day of December, 2023

Jonathan

Notary Public of South Carolina

My Commission Expires: 12/15/24

Jeff Lindley

Jeff Lindley

**Exhibit B (Affidavit of Jeff Lindley Dated March 15, 2023)**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

**AFFIDAVIT OF JEFF LINDLEY**

PERSONALLY APPEARED before me, Jeff Lindley, who being duly sworn and upon penalty of perjury, states the following is true and correct.

**SUMMARY**

My wife Sara broke up our marriage by engaging in a sexual relationship with a man named George Tagg, and she is adding insult to injury by now denying it even after initially admitting her guilt when I confronted her. Sara's focus is now on saving face and maintaining her reputation rather than taking responsibility and moving forward. She has even resorted to lying in this case.

Unlike Sara's selfish self-preservation mode, over the past two months I have done everything in my power to focus on and provide as much normalcy, stability, and positivity as possible to our daughter Ella, who turned 16 in January, and our son Jack, who turned 12 in December. Sara has been minimizing my time with our children even though I have always been heavily involved in their lives. I am trying to be the hands-on father I have always been and see them as often as I can. I should continue to be involved in their lives. We need to sell certain assets, I need to continue to have access to the home equity line to be able to meet our obligations, and there are other important financial matters that need attention (for example, \$87,825 in taxes owed in 30 days, and Sara is now refusing to sign).

Sara filed a late motion asking for alimony at this hearing but she is not entitled to it.

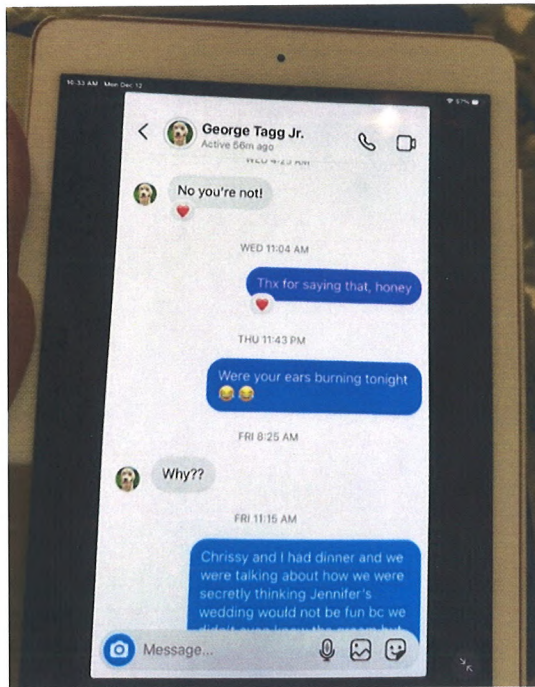
**SARA'S ADULTERY**

We are here for one reason – Sara broke our marital vows by cheating on me with George Tagg. George and Sara both grew up in Memphis and connected last year at an out of town wedding that neither of their spouses attended.

In December 2022 I found explicit messages between Sara and George describing their sexual activity. I found these on the family iPad that Sara and I and the children all used. The iPad did not have a passcode. Sara left the Instagram app open for me (or our children, or anyone else who picked it up) to read. I did not install spyware or take any illegal action on this iPad or any other device used by Sara. As can be seen below, I took photos of the messages between them.

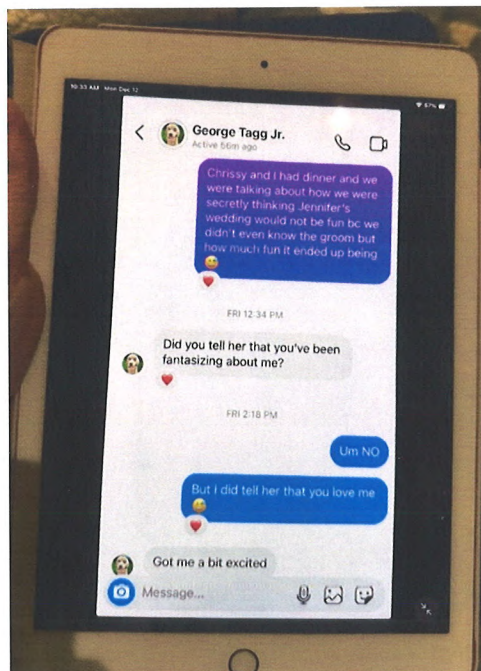
**Sara's Adultery with her paramour George Tagg**

On December 9, 2022, Sara and George continued their existing messages on Instagram.

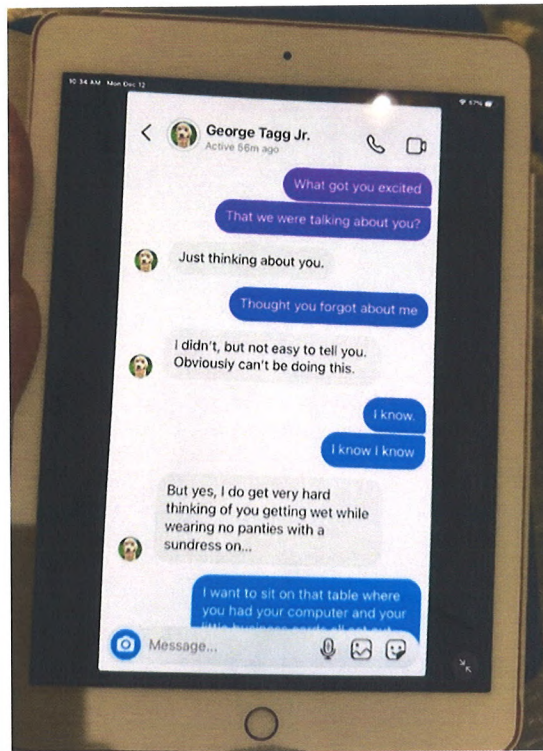


Fri., Dec. 9, 2022

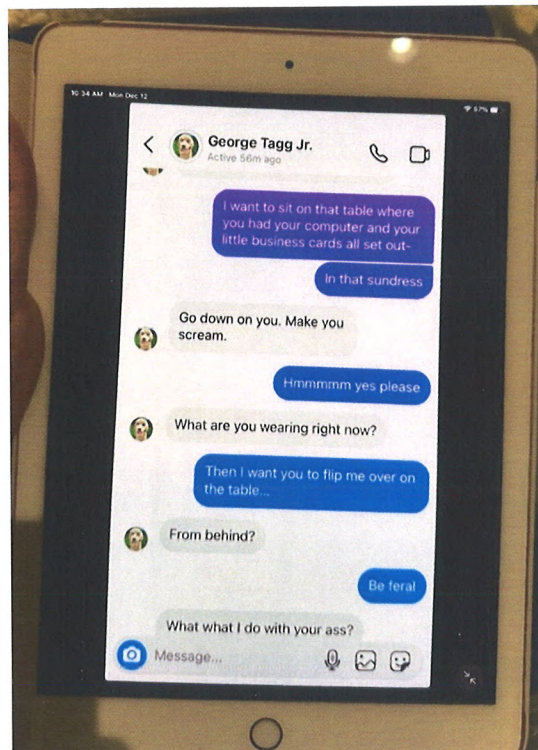
Sara was home alone. She tells George that she and Chrissy “secretly” thought the wedding where Sara and George met in February 2022 would not be fun but “how much fun it ended up being”. Sarah ended that message with the flirtatious and suggestive “grinning while sweating” emoji. 🥰 George loved her message. ❤️ George responded by asking Sara if she told Chrissy she had been fantasizing about him. Sara loved his message. ❤️ She replied that instead she told Chrissy “that you [George] love me”. 🥰 George loved her message. ❤️



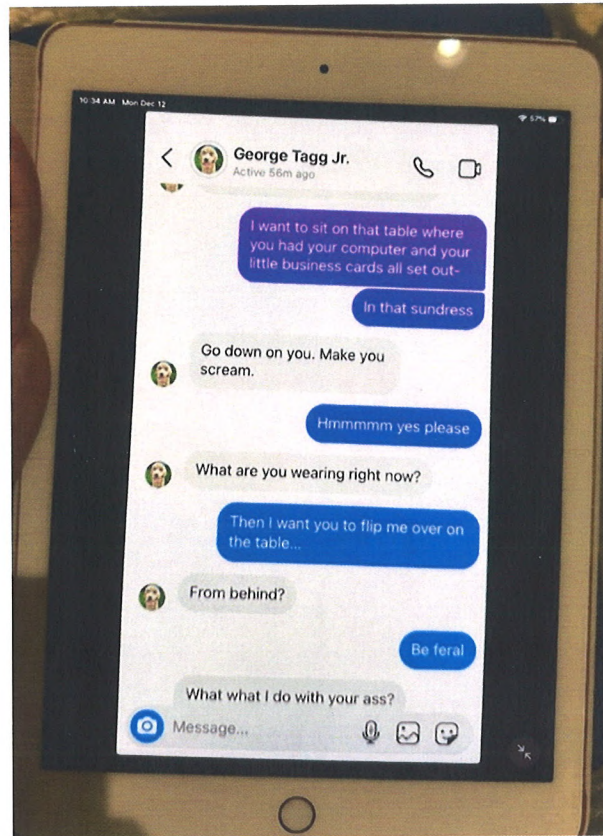
George says he gets “very hard” thinking of her “getting wet while wearing no panties with a sundress on...” This is a specific reference to a specific outfit he has seen her wear.



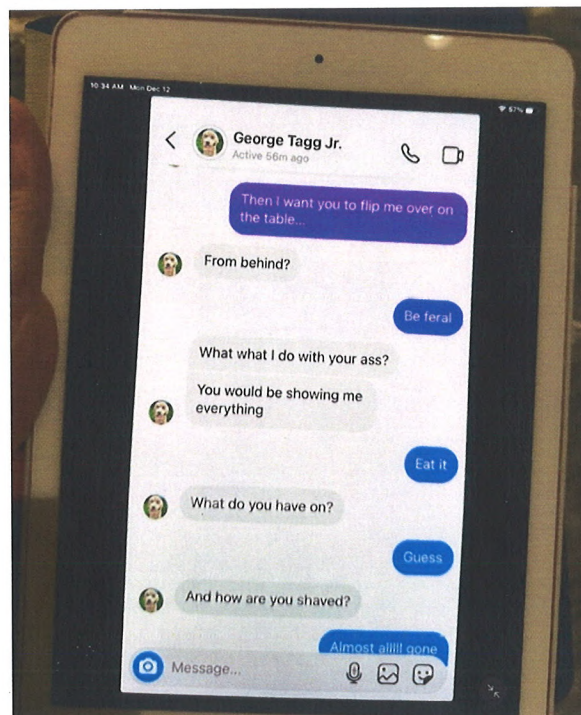
Sara likewise responds very specifically by saying she wants “to sit on **that table** where you had **your computer** and **your little business cards all set out-**“ . . . “In **that sundress**”.



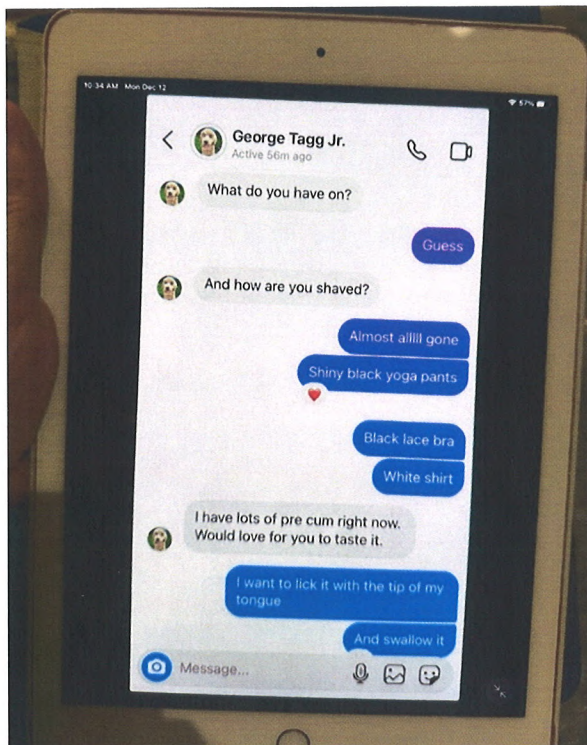
George messages about “going down” on Sara and “making her scream.” There is again reference to the table mentioned above.



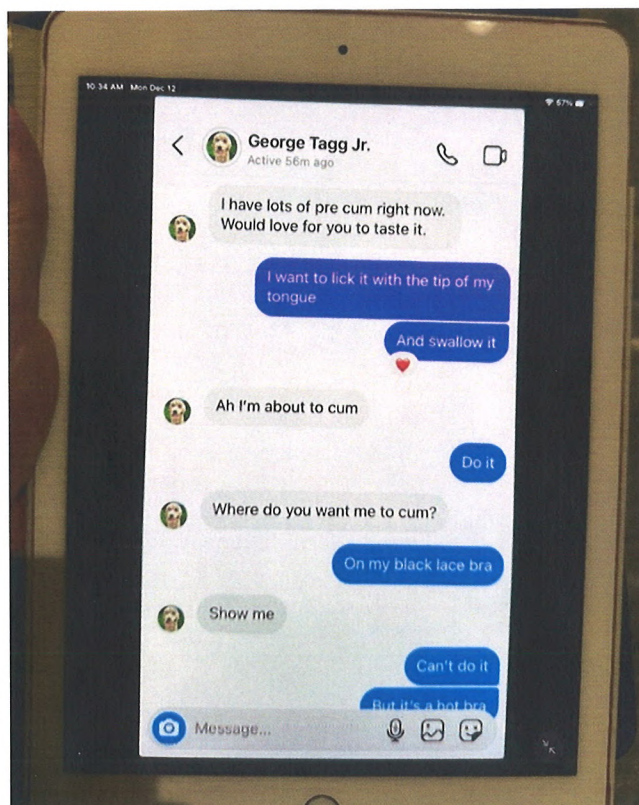
George asks “what I do with your ass?” Sara responds “Eat it.”



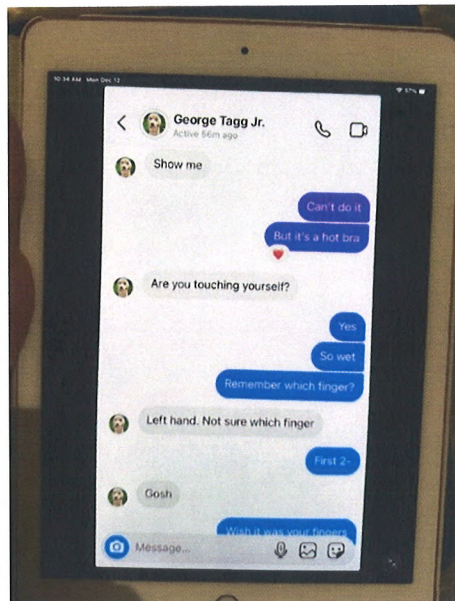
Sara tells George her pubic area hair is “almost alllll gone”. George responds he has “lots of pre cum right now” and Sara says “I want to lick it with the tip of my tongue” “and swallow it”.



George responds “Ah I’m about to cum” and Sara says “Do it.”



George then asks “Are you touching yourself?” Sara answers “Yes.” She says she is “so wet” and asks George “Remember which finger?” she uses to pleasure herself. He confirms he knows it’s her “Left hand. Not sure which finger”.

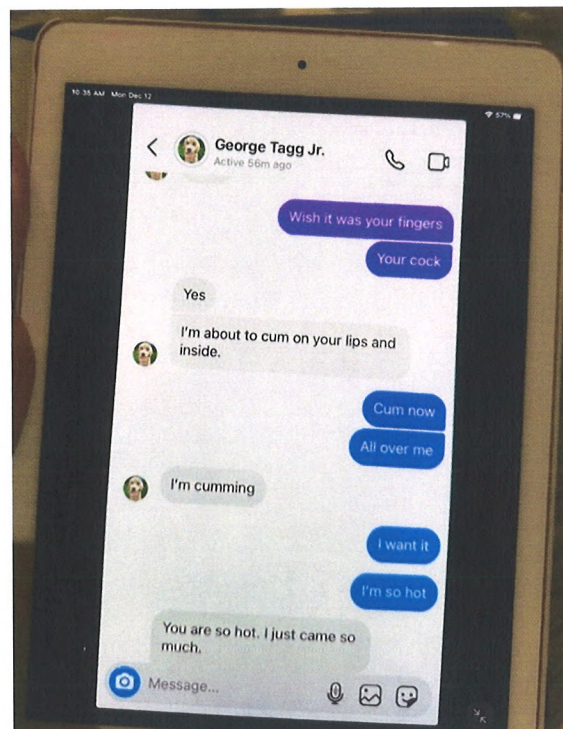


She tells him “first 2” and then “wish it was your fingers.” Then “Your cock.”

George: “I’m about to cum”

Sara: “Cum now”

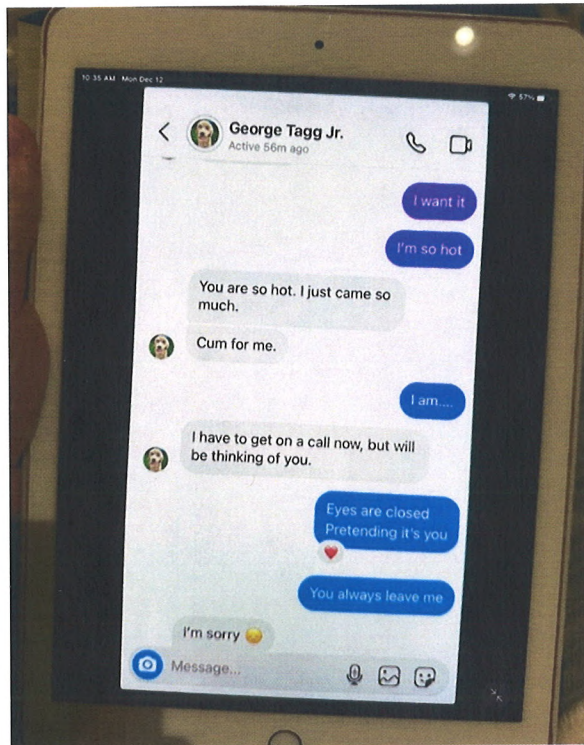
George: “I’m cumming” and “I just came so much.”



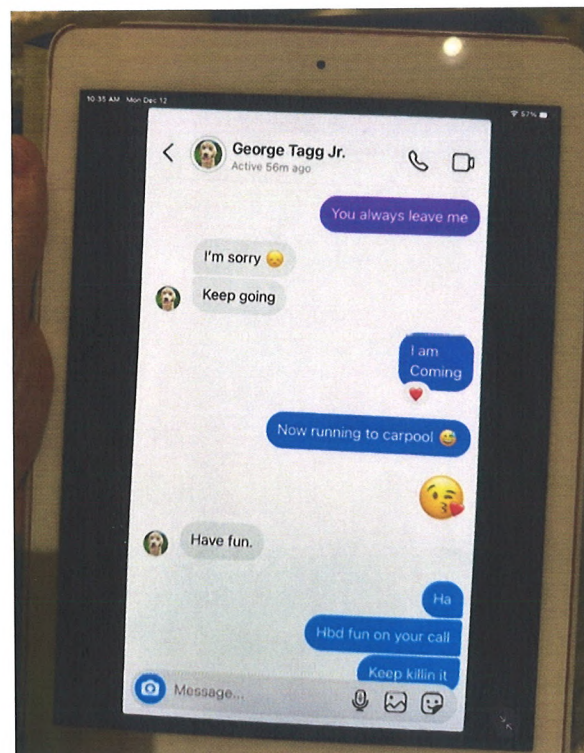
Then it was Sara's turn to orgasm.

George: "Cum for me"

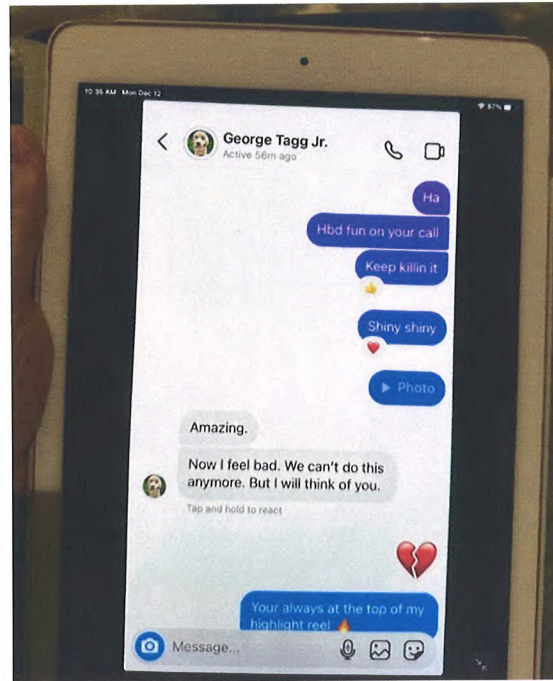
Sara: "I am...." and "Eyes are closed Pretending it's you"



Sara finishes pleasuring herself by saying "I am coming".



She also sent George a photo (that I cannot see) to which he responded “Amazing” before saying “We can’t do this anymore.” Sara responds with a broken heart.



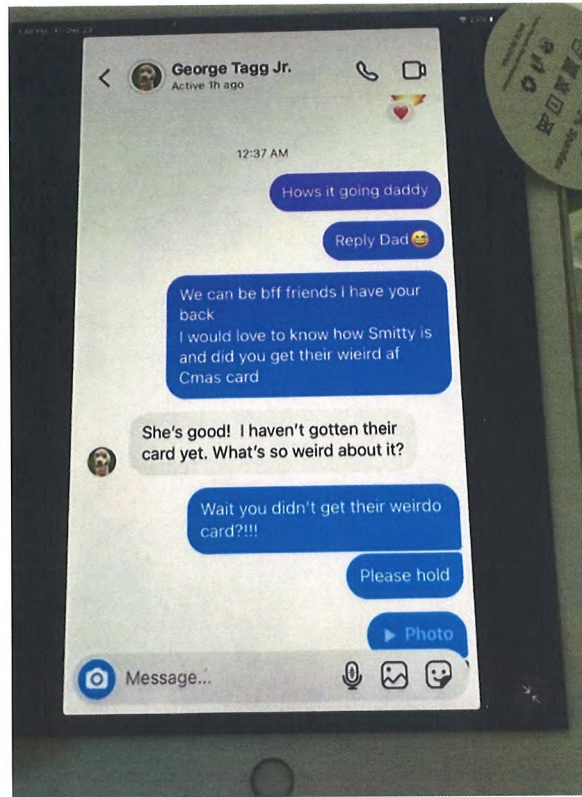
These are the kinds of intimate details that can only come from physical familiarity. The damning conversation includes George and Sara mutually pleasuring themselves at the same time to orgasm while engaging in very specific, very sexual commentary.

One time is enough.

But the exchange reads like this is not the first time. Flirtatious talk. Feigned guilt. Increasingly suggestive messages. Mutual masturbation. Coordinated climaxes. Sara all but acknowledges this is not the first time when she says “You **always** leave me”. (emphasis added). George confirms this by replying that they “[o]bviously can’t be doing this.” And yet they did.

The fact that Sara jokingly shifts from “I am coming” to “Now running to carpool” 😏 confirms the callousness and coolness with which she handled her violation of our vows – further evidence there have been other times.

Sara continued messaging with George throughout the holidays and New Year. One of the last messages I saw implies Sara intends to stay in contact. After calling George “daddy”, Sara says they can just be “bff friends” and confirms her loyalty to him by telling him she has his back. Sara comes off as increasingly desperate and infatuated. The full message thread shows that by that time she was sending far more messages than George sent responses.



George lives in Massachusetts. My lawyer asked for his voluntary cooperation to provide evidence in this matter and he hired a lawyer and refused.

The heartbreak I feel – and the immediate effect on our marriage – is no less acute or real because I read Sara’s messages instead of walking in on Sara and George in person. This is clearly the behavior of two people with very real feelings for each other engaging in mutual sexual gratification. I am trying to put together the pieces and find a way forward.

Sara’s blatant betrayal broke our marriage and should prevent her from being awarded alimony or spousal support of any kind.

### **When Sara Met George**

By December 2022 when Sara and George engaged in the mutual masturbation I read, she had completely checked out of our marriage. I wanted to learn how they connected.

In early February 2022, Sara attended her high school friend Jennifer’s small wedding in Florida. Sara and George are both from Memphis, and they both attended the wedding. George is the groom’s cousin and officiated. In the photo below, George is standing up front and Sara is on the end of the second row.



The wedding was during the week, and I took off considerable time from work so she could attend. After the first day, Sara texted to ask if she could stay until Friday. I agreed. Sara told me that the wedding party all stayed in the same house in Florida so she had plenty of time to spend alone or sneak off with George. Within days of the wedding, Sara spent hundreds of dollars at a lingerie store – items I never saw.

Sara came to me in the middle of March 2022 and said she needed to go to Memphis. While she was in Memphis, she attended a party held in Jennifer’s (the bride) honor.

In June, Sara went on a girls’ trip to Boston, where George lives. She took the last possible flight back to Greenville on Sunday night.

Then I saw the December messages.

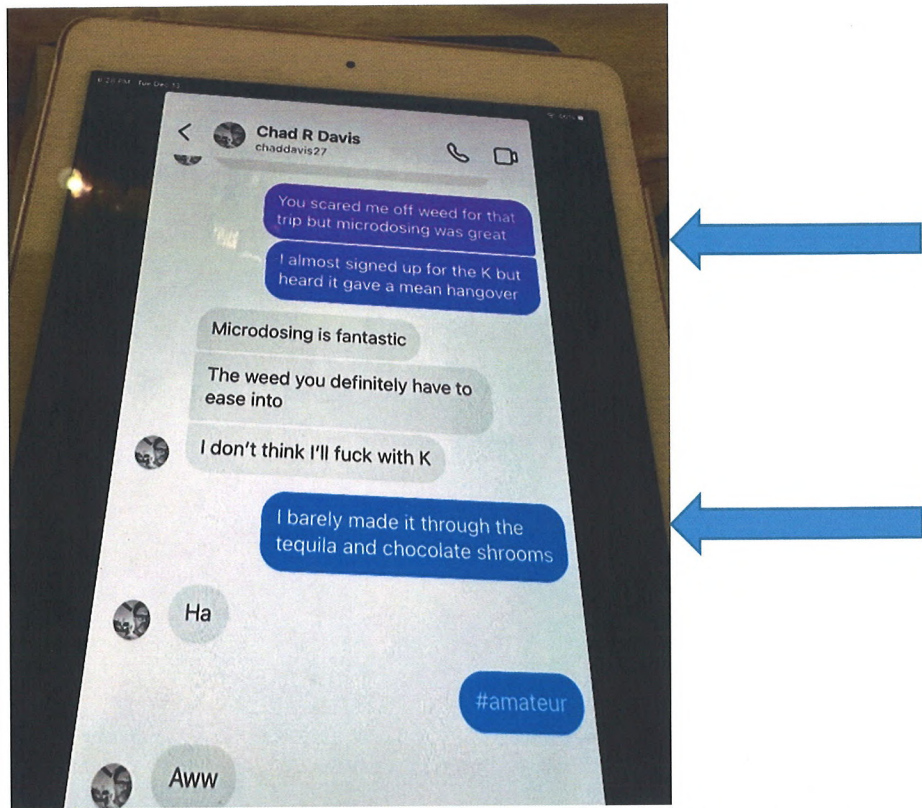
### SARA’S LIE

Sara is not credible. I served written discovery on her, asking about her drug use. She denied using any drugs during our marriage. This is a lie.

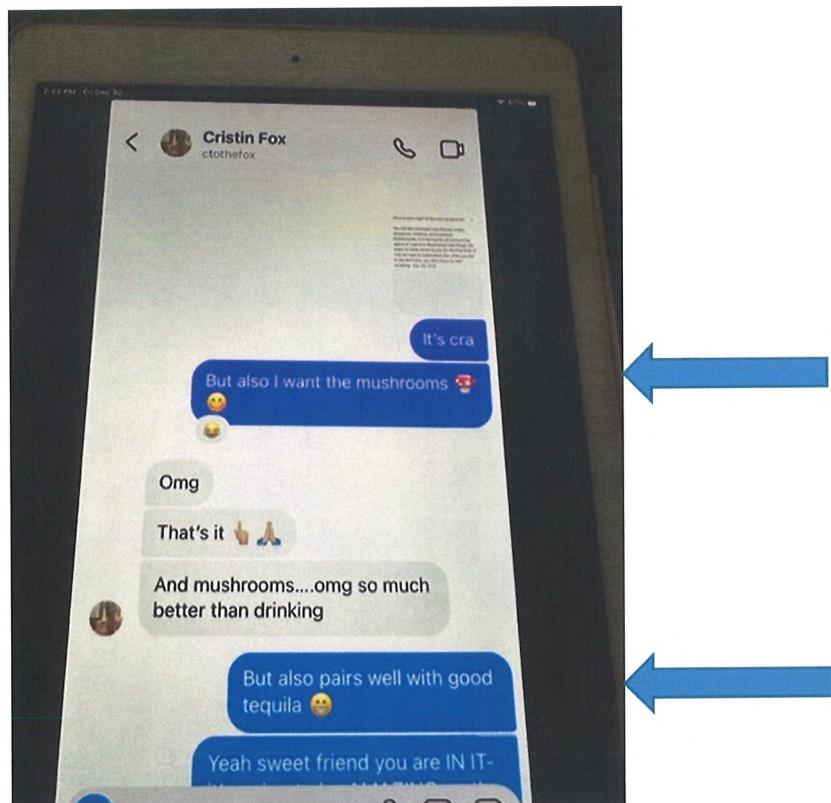
26. Since April 22, 2006, have you participated in the purchasing or consumption of amphetamines, barbiturates, benzodiazepines, cannabis (including marijuana and derivatives such as liquid tetrahydrocannabinol (THC) and edible THC), cocaine, methamphetamines, opioids, hallucinogens, psychedelic drugs, or any drug of that nature (synthetic, prescription, or otherwise), no matter the form of ingestion? If your answer to this Interrogatory is yes, state the date, number of times you have participated in such activities, and the amount consumed on each occasion.

**RESPONSE: No.**

Sara has used drugs before by her own admission outside of this litigation. Specifically, in November 2022 she attended a “retreat” at Summit (a gathering in Palm Desert, CA that is supposedly “mind expanding”). She messaged with Chad Davis, her high school boyfriend, about the retreat. Sara’s messages are the blue bubbles and Chad is the gray. Sara admitted to “microdosing” (psychedelic drug use) and to consuming “srhooms” (hallucinogenic mushrooms).



Sara and her friend Cristin Fox were together at the retreat in November 2022. Sara also messaged Cristin about using mushrooms with tequila.



We specifically asked about this use of hallucinogens and psychedelics in our discovery request. Sara lied in her response when she said “No.” She cannot be trusted.

### **MY RELATIONSHIP WITH THE CHILDREN**

Ella and Jack are and always have been my top priority. They are my entire world. I know they need to be with me as much as they can be, and vice versa.

#### **Before Separation**

Before Sara’s behavior caused us to separate, I got up between 6:30 and 6:45 a.m. Over the past year or so, Sara was not getting up in the morning to help with Ella and Jack. I got them fed and their lunches made. I drove Jack to school **every day** I was in town. Ella began driving in April 2022 so she drives herself to school. Before Ella started driving herself to cheerleading practice, I frequently picked her up. Sara usually handled school pick up duty, but I helped out from time to time. I usually worked from 8:00 a.m. until 6:00 p.m. I would call Sara to see if I needed to pick up dinner or make it. Sara rarely cooked but would sometimes pick up something premade for us to eat as a family.

#### **After Separation**

Sara has been inconsistent in how much time she allows me with the children. I try not to push too much until we have a schedule in place because I do not want to upset or unnecessarily involve Ella and Jack. I saw the children often in the days immediately following our separation. I picked Jack up for school every day the following week. I took Jack to dinner following our midweek workouts. I took Ella to her boyfriend’s basketball games, usually once during the week and again on the weekend.

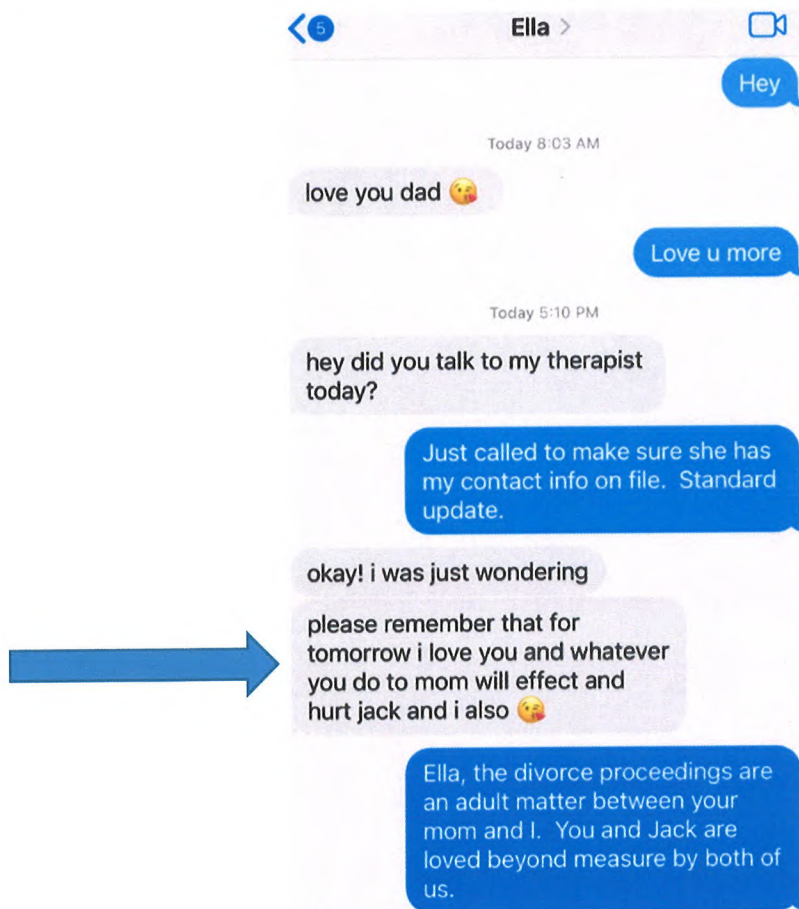
Eventually Sara said I could take Jack to midweek workouts and dinner afterwards, and that I could take him to school on Tuesdays and Thursdays, which I did for a couple weeks.

I had my new house ready for the children to stay with me the last weekend in February. But Sara only allowed them to come that Saturday night. Jack expressed that he wanted to spend the next weekend with me. Sara later told him he couldn’t sleep at my house every weekend and that he would have to get used to every other weekend. For a time she restricted his iPad use, which is his only means of communicating directly with me.

Since Ella is 16 she usually comes and goes more freely. She has stopped by for dinner, and we’ve gone out to dinner a few times.

Recently I have been unable to arrange times to see the children – this is unusual. I believe Sara is minimizing their time with me to make herself look better in court. The children and I have always spent quality time together. We have a close relationship that I am doing my best to maintain despite my differences with Sara. (Photos of Ella, Jack, and me at Ex. A).

Just yesterday our daughter sent me this alarming text, in which she states “please remember that for tomorrow I love you and whatever you do to mom will effect and hurt jack and I also.” I immediately responded to tell her this hearing is an adult matter and both Sara and I love both children.



I am asking the Court to craft a schedule where we can both be active parents. I believe Sara and I should jointly make major decisions for the children. I am desperate to do my part, to spend time with the children and continue building up our relationship. I want to spend weekends with the children and participate in Jack’s and Ella’s therapy, their sports, and their other activities. All of this requires that we cooperate and co-parent the children. I am willing to do my part.

## OUR FINANCES

### My Income

I work in sales for ZScaler, an IT cloud security company. I have worked in sales in the IT/tech sector for many years. By its nature IT sales involves a great deal of variability in income from month to month, and from year to year. This has always been true, and Sara is fully aware of it. I normally earn more in the third and fourth quarters of our fiscal year (which ends in July).

We use what are called on-target earnings (OTEs). OTEs include a guaranteed base salary as well as commission and other performance variable components. I also receive restricted stock units (RSUs). RSUs vest over a period of four years and can be used to make up for deficient sales. Sometimes they are additive income, like this past year. Sometimes they are not, like in 2021 when I received virtually no RSU income. If I switch employers like I did in 2018, 2019, and 2021, any unvested RSUs stay with my former employer. When I start a new position, I begin at the bottom (sales representative) each time.

In the past months, I have not been able to make as many sales. I typically have long periods where my income only consists of salary and maybe some small commissions. My earnings come in peaks and troughs. A summary of my income for the past four years is below.

I am the senior director of my division. I have been responsible for presiding over a recent large-scale reorganization which has seen my division go from 22 individuals to 12 in just the last two months (a 45% reduction). As a company, we are not planning any additional cuts, but future performance hinges on increased sales. Nothing is guaranteed.

	2019*		2020		2021		2022	
Salary	153,593.50		261,000.00		301,000.29		214,375.05	
<b>Total Salary:</b>		<b>153,593.50</b>		<b>261,000.00</b>		<b>301,000.29</b>		<b>214,375.05</b>
Commissions	0.00		140,385.71		41,886.07		440,811.76	
Bonus	0.00		56,250.00		67,500.00		0.00	
Combination - Commissions/Bonus	153,593.50		0.00		314,746.08		0.00	
<b>Total (Commissions, Bonus):</b>		<b>153,593.50</b>		<b>196,635.71</b>		<b>424,132.15</b>		<b>440,811.76</b>
Stock	0.00		15,833.79		92,583.35		308,610.70	
<b>Total Stock:</b>		<b>0.00</b>		<b>15,833.79</b>		<b>92,583.35</b>		<b>308,610.70</b>
Other	0.00		3,252.25		159.21		424.56	
Award Trip earned - nonrecurring	0.00		0.00		0.00		10,203.72	
<b>Total Other:</b>		<b>0.00</b>		<b>3,252.25</b>		<b>159.21</b>		<b>10,628.28</b>
<b>Total Combined Income:</b>		<b>307,187.00</b>		<b>476,721.75</b>		<b>817,875.00</b>		<b>974,425.79</b>

\* Approximate breakdown for salary and commissions/bonus

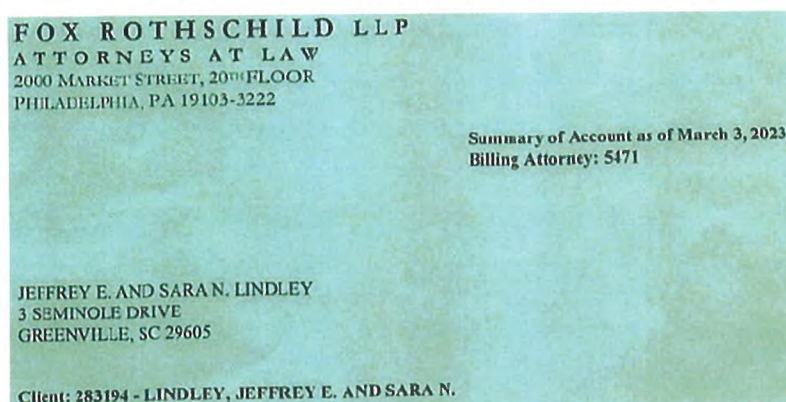
My total compensation in 2019 (\$307,187) and 2020 (\$476,722) were not nearly as good as 2021 (\$817,875) and 2022 (\$974,426). By all indications I have seen so far, I expect 2023 to be back on the lower end of this range.

Because of the consistent variability in my income, I have had a home equity line of credit (HELOC) in place on every home I have owned since 2006. This includes both houses Sara and I have lived in in Greenville (22 Gossamer Place and 3 Seminole Drive). From a financial management perspective, it always made sense to have an open HELOC I could access for “big ticket” items like income tax payments, property taxes, insurance premiums, the purchase of our Keowee lake lot and the lot on which we built the current marital residence, the Memphis condo where Sara’s mother lives, car purchases, vacations, etc. The HELOC evens out the low income periods. I have employed this financial tool for more than 20 years, and during my entire marriage to Sara.

When we first moved in to the Seminole Drive home in March 2018, the house was valued at \$2.4 million and had a mortgage of just over \$561,275. At the same time, I opened a \$500,000 HELOC. I have carried a balance of \$263,000 on that HELOC since 2021 when I purchased a condo where Sara’s mother has lived rent free since April 2021. Sara’s mother pays the condo fee (around \$200 per month) and the utilities; otherwise, I pay the property taxes, insurance, and other carrying costs of approximately \$4,000 per year.

### **Liquidating 529s and Establishing Education Trusts**

This past July, I spoke to my financial advisor about the dismal performance of Ella and Jack’s 529 plans. We decided it would be in the children’s best interests to no longer invest in the 529s. Instead we would liquidate the assets and convert them to a trust where they could be invested more aggressively over time. I met with attorney Tod Hyché at Fox Rothschild LLP on August 19, 2022 to begin establishing the trusts for our children’s education. Mr. Hyché drafted the trusts, and we executed them in December 2022. The billing records below confirm this (the August 2022 time was billed in October 2022, and December time was billed in February 2023).



Matter ID: 283194.00001	ESTATE PLANNING		
3043279	10/4/2022		\$750.00
3118048	2/3/2023	\$5,718.00	\$5,718.00
Matter Total			\$6,468.00
Total Due			\$6,468.00

Sara was aware of this process, as she was also a client of the firm as shown on the bill. I also kept her in the loop – for example, below is the email I sent her on December 12.

----- Forwarded message -----  
**From:** Jeff Lindley <[jlindley40@gmail.com](mailto:jlindley40@gmail.com)>  
**Date:** Mon, Dec 12, 2022 at 5:06 PM  
**Subject:** Trusts  
**To:** Sara Nokes <[saranokes@yahoo.com](mailto:saranokes@yahoo.com)>

Say,  
 The trusts are being drafted for the kids education. I am going have Pete be the trustee and Pres Romeyn as the money manager. That way we can max our personal contributions each year 34k per kid!! We will redo the will after the new year as well and we will have to use Pete as a trustee or pick someone else. Todays Matt.

I liquidated the 529 plans on December 13 (the total balance was \$94,748.57). The trusts were fully executed in late December. The 529 balance plus an additional \$209,300 were transferred to set up the trusts. \$200,000 of that amount came from the sale of RSUs that Sara and I agreed would be used to fund the children’s college education. I moved \$9,300 from the HELOC to equalize the balances between the children.

**HELOC as Financial Planning Tool**

In October 2022, I began seeing a large worldwide shift in customer buying patterns. I sensed we were in for an economic slowdown. I talked to Sara about what was going on at work. I pleaded for her to reduce spending and prepare for a downturn. I also knew we were going to have a large tax bill for 2022. On October 24, I reached out to Robert Thompson, our banker at Southern First, to extend the credit line from \$500,000 to \$750,000. I did this with the foresight of having a built-in buffer in case I experienced job loss, income loss, etc.

**From:** Jeff Lindley <[jlindley40@gmail.com](mailto:jlindley40@gmail.com)>  
**Sent:** Monday, October 24, 2022 11:11:53 AM  
**To:** Robert Thompson III <[rthompson@southernfirst.com](mailto:rthompson@southernfirst.com)>  
**Subject:** Equity Line Expansion

Robert,

Per our conversation, I would like to expand and extend the equity line to 750K.

Thanks,

Jeff

From: Robert Thompson III <[rtompson@southernfirst.com](mailto:rtompson@southernfirst.com)>  
Date: Mon, Oct 24, 2022 at 12:23 PM  
Subject: Re: Equity Line Expansion  
To: Jeff Lindley <[jlindley40@gmail.com](mailto:jlindley40@gmail.com)>, Ashleigh Featherstone <[afeatherstone@southernfirst.com](mailto:afeatherstone@southernfirst.com)>  
On it. Thx

The current balance of the HELOC is approximately \$392,887. I have utilized \$25,098 in funds from it since December 2022 as below. This spending has not in any way been underhanded or any sly attempt to hide money from Sara or keep her from having sufficient funds. It has been necessary to meet obligations and fund our family. It is in keeping with the financial status quo.

- \$9,300 to establish the children's trust funds;
- \$19,000 for my attorney's fees and legal costs necessitated by Sara's behavior;
- \$20,000 contribution toward Sara's attorney's fees;
- \$45,000 as a lease buyout to purchase Sara's vehicle;
- \$10,000 for property taxes on 3 Seminole Drive;
- \$25,000 for the following:
  - \$3,500 for homeowner's insurance on 3 Seminole Drive;
  - \$6,580 for the rental deposit and first month's rent I was forced to incur in finding a new residence after our separation, and \$410 for a moving truck;
  - \$1,802 for property taxes on the Memphis condo;
  - \$3,851 for property taxes on our boat;
  - \$1,200 for HOA fees on our lake lot;
  - \$1,590 for the children's CCES fees;
  - \$1,535 for car insurance, insurance on the Memphis condo, and personal liability insurance;
  - \$2,386.50 for Ella's CCES reenrollment; and
  - \$2,243.50 for Jack's CCES reenrollment.

The HELOC has been open since 2018. It was increased by \$250,000 in November 2022. It has been used – and is being used – exclusively to support the family. I have not misused,

misplaced, misspent, or misrepresented any marital assets either before or after our separation. Sara was notified in advance about the increased credit line and the children's trusts, and all of this started well before I learned of her affair.

Continued access to the HELOC is critical to maintaining our family's financial stability. I have completed our 2022 federal and state tax returns. We owe \$87,825 for our federal return (due next month, on April 15) and will get an anticipated \$6,000 refund from our state return.

<b>1040-V</b> Department of the Treasury Internal Revenue Service		<b>Payment Voucher</b> Do not staple or attach this voucher to your payment or return. Go to <a href="http://www.irs.gov/Payments">www.irs.gov/Payments</a> for payment options and information.		OMB No. 1545-0074 <b>2022</b>	
1 Your social security number (SSN) (If a joint return, SSN shown first on your return)		2 If a joint return, SSN shown second on your return		3 Amount you are paying by check or money order. Make your check or money order payable to "United States Treasury"	
4 Your first name and middle initial <b>JEFFREY E</b>		Last name <b>LINDLEY</b>		<b>87,825</b>	
If a joint return, spouse's first name and middle initial <b>SARA N</b>		Last name <b>LINDLEY</b>			
Home address (number and street) <b>3 SEMINOLE DRIVE</b>		Apt. no.		City, town, or post office. If you have a foreign address, also complete spaces below. <b>GREENVILLE</b>	
Foreign country name		Foreign province/state/country		State ZIP code <b>SC29605</b>	
Foreign postal code					

For Paperwork Reduction Act Notice, see your tax return instructions.  
DAA  
Lindley v. Lindley  
Supplemental Documents

MB00209

Sara knows of this joint tax liability and is now refusing to sign.

I do not have sufficient funds available other than the HELOC to pay our tax liability. I need to continue to utilize the same financial planning strategy I have used our entire marriage during the pendency of this case. This benefits Sara as much as anyone else.

I have also been forced to spend over \$13,000 out of pocket to set up my new residence. This includes furniture, towels, sheets, kitchen utensils, plates, pots and pans, and setting up the children's rooms. Much of this expense could have been avoided if Sara had allowed me to take excess furniture, beds, rugs, and other items from the marital residence. She refused.

### Other Assets

We have assets which can be sold to generate income:

- The Marital Residence. I approached Sara about listing the Seminole Drive home so we can divide the assets. We even had Blair Miller with Wilson Associates come out and meet with us. So far, Sara is refusing to cooperate in listing the house. I believe we could list it between \$2.7 and \$2.8 million.
- Our lake lot on Lake Keowee in Seneca.
- Our 2022 MasterCraft boat.

We also own the condo in Memphis where Sara's mother lives. Sara may want this asset as part of equitable apportionment.

### Accounting of Infidelity

I want Sara to account for all of the money she has spent on George, or in connection to her relationship with him, since they began their relationship. I want to know if she has spent money on anyone other than George. That money should have been used to support our family, not her boyfriend.

### Attorneys' Fees and Costs

In January Sara asked me for \$20,000 to pay for a lawyer. I transferred it to her.

Today 12:56 PM

Hey- I need to retain an attorney.  
Can you please put 20k into my  
checking account?

I hoped we could come to a reasonable agreement and avoid this expensive contested hearing. On January 26, she acknowledged receiving the advance. She also promised that I could see the children whenever I wanted and that I was always welcome to the house. She did not keep either of those promises.

From: Sara Nokes <[saranokes@yahoo.com](mailto:saranokes@yahoo.com)>  
Date: Thu, Jan 26, 2023 at 1:10 PM  
Subject: Re: Money Transfer  
To: Jeff Lindley <[jlindley40@gmail.com](mailto:jlindley40@gmail.com)>

Jeff,  
Thank you for the money.

I agree we need to tell the kids in the best way for them. All that matters is these 2 amazing children we have. I know we both know how much we love them.

Please give me one more day to be in the best place I can be for them and us.

You know I want you to see the kids whenever you want to see them and are always welcome to the house.

♥

S

On March 5, Sara texted me demanding an additional \$10,000 for her attorney's fees. This was after she fired her first attorney and hired another attorney within a week or so of this hearing. I have not advanced her any more money.

Also I am going to need \$10k more for legal fees.

**WHAT I WANT**

My motion addresses in detail what I want. Below are the highest priorities.

**Sara Should Not Receive Alimony.** Sara’s adultery with George Tagg should prevent her from receiving any alimony or spousal support. Plus, her request comes too late.

**Custody and Visitation.** I am seeking joint custody of our children and for Sara and I to attempt to agree on decision making. I am seeking a reasonable visitation schedule as outlined in my Proposed Parenting Plan. Sara and I should both be actively involved in their lives.

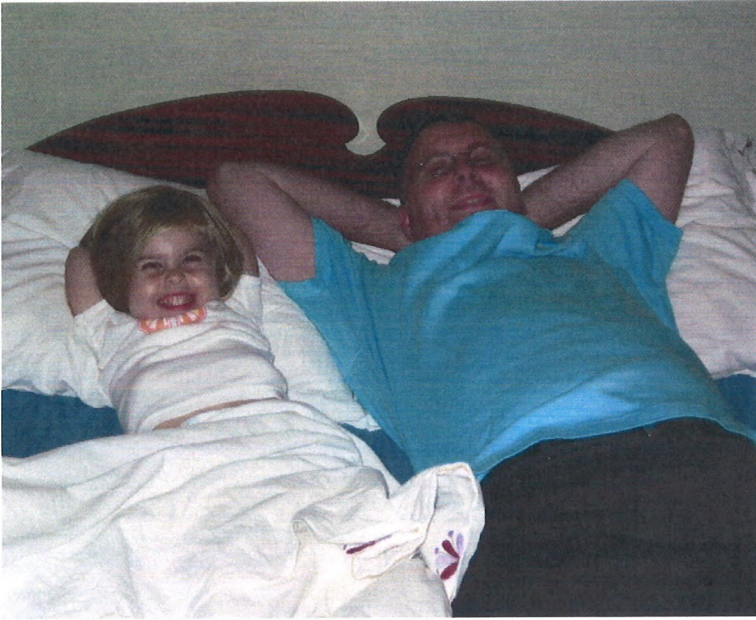
**Finances.** I need to continue to have access to our accounts, including the HELOC, so I can continue to provide support for the children and maintaining our assets. Some assets need to be sold.

**Restraining Orders.** I am requesting the restraining orders and no adverse contact order outlined in my motion, to prioritize the children, establish boundaries, and protect our assets.

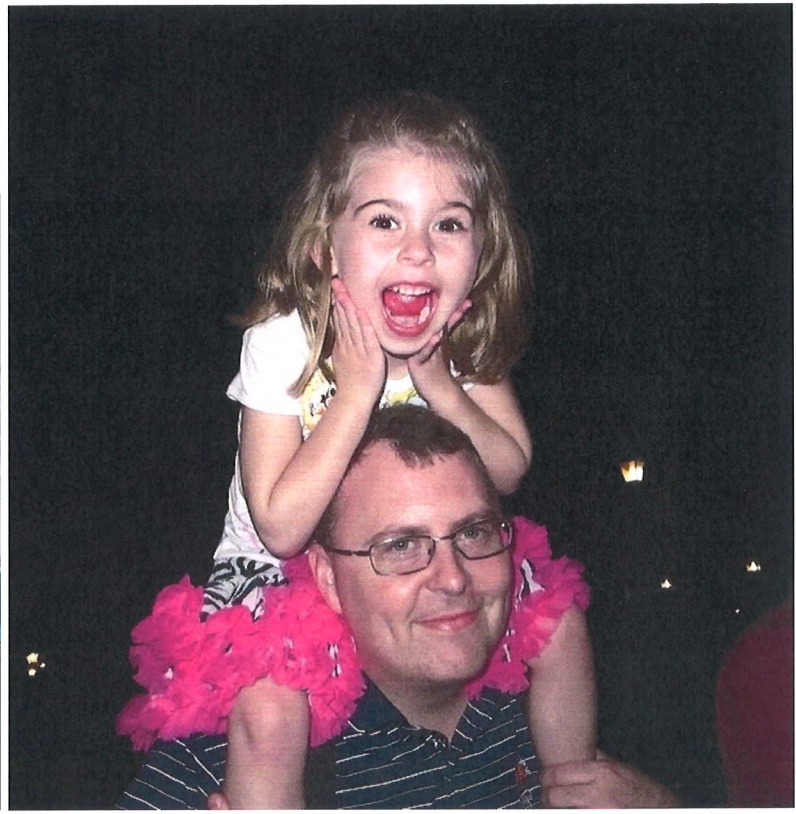
**Fees.** My fees and costs already far exceed my retainer due to Sara’s unreasonable positions in this case. We would not be involved in litigation had she honored our wedding vows. I have already contributed \$20,000 toward Sara’s attorney’s fees. I served written discovery requests on Sara in part to get a better of idea of her relationship with George prior to this hearing so I could better understand the issues. As of the time I signed this affidavit, Sara had not fully responded to my discovery requests. I believe Sara should be required to make a contribution towards my attorney’s fees and costs.

Sworn to before me this 15th day of March, 2023  
Sonny Dew  
Notary Public of South Carolina  
My Commission Expires: 12/15/24

Jeff Lindley Jeff Lindley



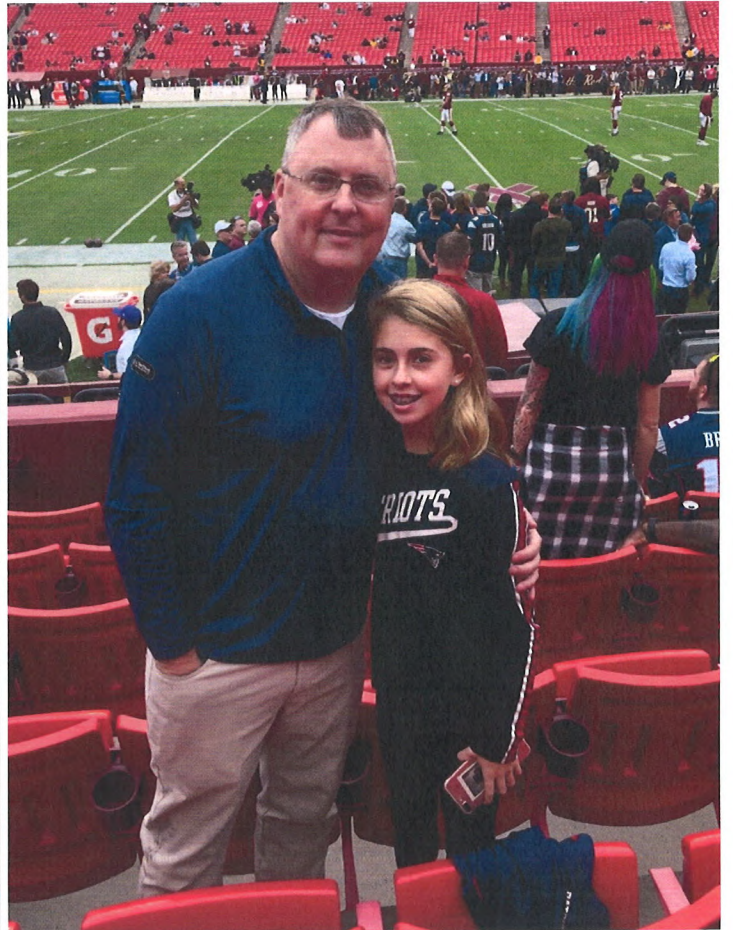
Ella and I



Ella and I at Disney



Ella and I at the airport



Ella and I at a Patriots game



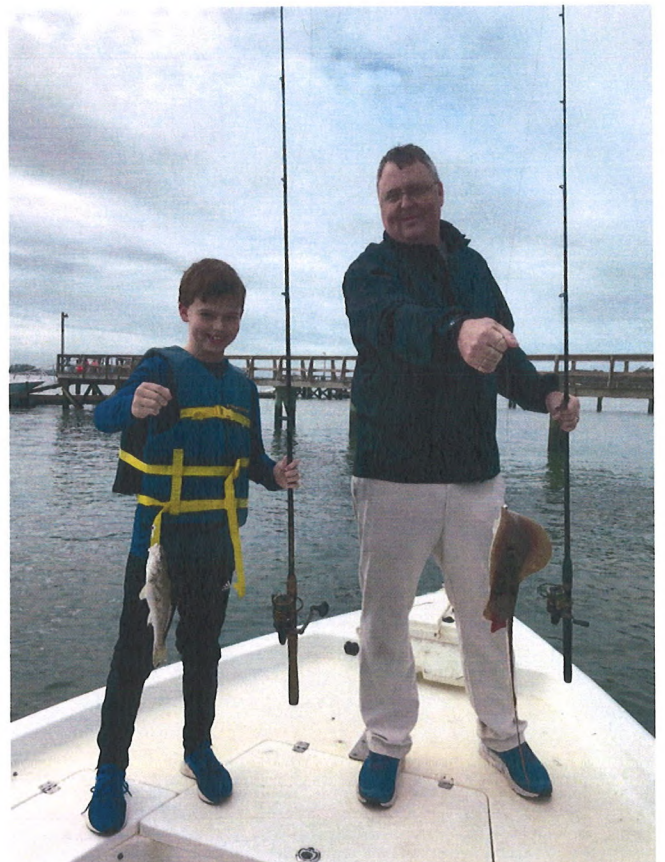
Ella and I on a dad/daughter dinner date



Ella and I at Christmas



Jack and I snorkeling in St. Martin



Jack and I fishing



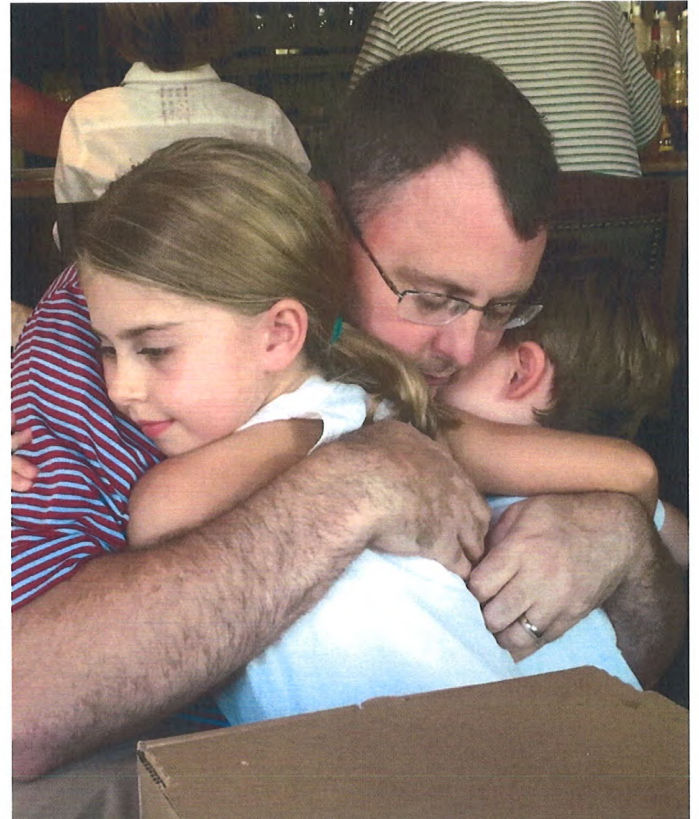
Jack and I on our way to Universal Studios



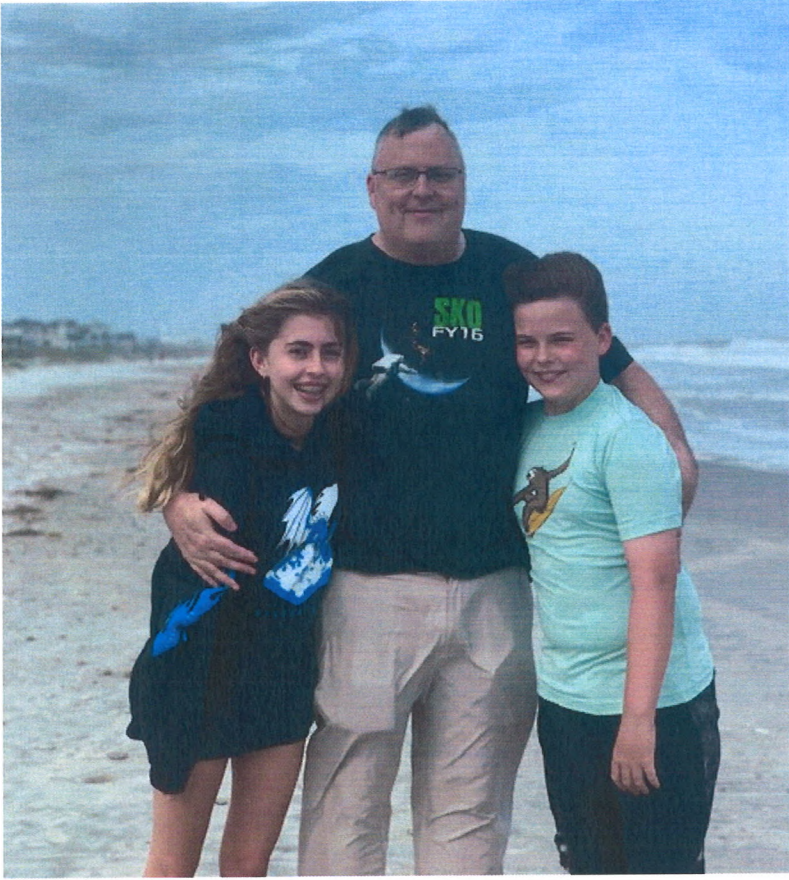
Jack and I at paintball



Ella, Jack and I tubing in Vermont while visiting family



Ella, Jack, and I snuggling at Kiawah



Ella, Jack, and I at the beach



Ella, Jack, and I at a CCES football game (Ella is a cheerleader)

**Exhibit C (Motion *in Limine* Filed By Sara Lindley)**

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

)IN THE FAMILY COURT FOR THE  
)THIRTEENTH JUDICIAL CIRCUIT  
)

Jeffrey Ellicott Lindley,  
  
Plaintiff,

)  
)  
)

Vs.

) DEFENDANT'S NOTICE OF MOTION  
) AND MOTION IN *LIMINE*  
)

Sara Elizabeth Lindley,  
  
Defendant.

)  
)  
)

) Docket No.: 2023-DR-23-0198  
)

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COMES NOW, Defendant Sara Elizabeth Lindley (“Wife”), by and through her undersigned counsel, shall move the presiding judge of the Family Court for the Thirteenth Judicial Circuit, at the Greenville County Family Court, 350 Halton Road, Greenville, South Carolina on the 15<sup>th</sup> day of March, 2023 at 3:30 p.m., or as soon thereafter as it may be scheduled, for an Order to exclude introduction of or references to certain electronic communications improperly intercepted from Wife’s electronic devices.

The court should exclude any evidence obtained from Wife’s cellular telephone, iPad tablet and/or computer pertaining to any communications between Wife and George Tagg as any such communications were improperly intercepted in violation of *South Carolina Code* §17-30-10 -145 (2010) “The Act”.

*South Carolina Code* §17-30-65 provides that “whenever any . . . electronic communication has been intercepted, no part of the contents of the communication and no evidence derived therefrom may be received in evidence, in any trial, hearing or other proceeding in or before the court . . .”

Pursuant to *South Carolina Code* §17-30-15 (3) “intercept” means the aural or other acquisition of the contents of any wire, electronic, or . . . communication through the use of any electronic, mechanical, or other device.

*South Carolina Code §17-30-15 (4)* “electronic, . . . other device” means any device or apparatus which can be used to intercept a wire, electronic, or oral communication . . .

*South Carolina Code §17-30-15 (13)* “electronic communication” is any transfer, signs, signals, writing, images, . . . of any nature transmitted in whole or in part by a wire, . . . electromagnetic, photoelectronic, . . . or any other device that affects intrastate, interstate, . . . commerce.

*South Carolina Code §17-30-15 (18)* electronic storage is any temporary intermediate storage or wire or electronic communication incidental to the electronic transmissions of the communication or the storage of electronic communication by an electronic communication service for purposes of backup protection of such communication.

*South Carolina Code §17-30-20 (1), (3), and (4)* provide that the Act is violated when an individual intentionally intercepts, attempts to intercept or procures any other person to use or attempt to intercept; intentionally discloses or attempts to disclose to any other person the contents of any electronic communication, knowing or having reason to know the information was obtained through interception; or when a person intentionally uses or attempts to use any contents of the electronic communication knowing or having reason to know the communication was procured through the interception of an electronic device.

Defendant (“Husband”) intercepted electronic communications of Wife by installing/downloading spyware onto Wife’s electronic devices without Wife’s knowledge or consent. Husband installed Dr.Fone onto Wife’s personal cellular phone in or about August, 2022, Wife’s personal iPad on or about September 30, 2022; and Wife’s personal computer on August 16, 2022, enabling him to recover deleted electronic communications from Wife’s devices, transfer data from Wife’s devices to his electronic devices, migrate data from Wife’s’ devices to another electronic device of Husband’s, and store data from Wife’s electronic devices to another electronic device.

Husband used Dr.Fone to access electronic communications of Wife's devices held in electronic storage, as well as seek to access Wife's deleted data, which violates the Act.

Husband may argue that he owned Wife's device and that he had permission to access Wife's devices because she gave him her pin code when he requested it from Wife. Our appellate court noted that even if an individual intercepting electronic communications owns the device from which the communications are being intercepted, there must be evidence that permissions to access the communications on the device must be given. *Fulmer v. Buckhannon, et. al.* Appellate Case No.: 2022-000330. Husband misled Wife to give him her device under the guise that he wanted to call his device because he could not find it within the home. As in *Fulmer*, Wife's devices are synced with each other and electronic communications on one device can be accessible on her other devices. Wife's permission was limited to accessing her device to find Husband's device and not to access her communications, messages, photographs or other data on her devices.

Husband is further precluded from arguing that he had implied permission to access Wife's electronic communications because she provided him her pin code for a very limited purpose. Husband did not have Wife's actual or implicit consent to install Dr.Fone to her electronic devices or to view and share her private messages or recover deleted data from her phone. Wife certainly never consented, either actual or implied, for Husband to load spyware on her devices. *Fulmer*, citing *Berry v. Funk*, 146 F.3d 1003, (D.C. 1998) quoting *United States v. Lanoue*, 71 F. 3d 966, 981 (1<sup>st</sup> Cir. 1995) held that without actual notice, implicit consent to an interception may only be implied "when the surrounding circumstances *convincingly* show that the party knew about and consented to the interception of the electronic communication.

Husband interception of Wife's electronic communications are inadmissible and no part of the contents of the communications and no evidence derived therefrom may be received in

evidence, any trial, hearing or other proceeding. South Carolina Code Section 17-30-65 (A), See *Fulmer, supra*.

**WHEREFORE**, Defendant/Wife prays this Court to exclude the electronic communications set forth herein and for such other and further relief as the Court deems just and proper.

**RESPECTFULLY SUBMITTED BY**

MOONEYHAM BERRY, LLC



E. Kimberly Berry, SC Bar # 13286

Attorney for Defendant

Email: [kimb@mbllc.com](mailto:kimb@mbllc.com)

1225 S Church Street

Greenville South Carolina 29605

(864) 421-0036

# The South Carolina Court of Appeals

Justin Shayne Fulmer, Respondent,

v.

Melissa Emery Buckhannon Esq., Frazier Law Firm P.C.,  
SC House Calls, Inc., Anna Coggeshall, Bryan  
Coggeshall, Katherine Coggeshall, Lauren Trent Fulmer,  
and Thomas Buckhannon, Defendants.

Of whom Anna Coggeshall is the Petitioner.

Appellate Case No. 2022-000330

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## ORDER

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This case involves two ongoing family court and circuit court actions: Justin Fulmer (Fulmer) is the plaintiff in an ongoing civil matter (Civil Case)<sup>1</sup> against Anna Coggeshall, Lauren Trent Fulmer (Trent), and Frazier Law Firm, P.C. (Frazier), and a party in a divorce action (Divorce Action) with Trent. Coggeshall filed a motion to suppress the contents of text messages pursuant to section 17-30-110 of the South Carolina Code (2014), a part of the South Carolina Homeland Security Act. *See* S.C. Code Ann. §§ 17-30-10 to -145 (2014). Sections 17-30-110 and 17-30-15 require that this court hear the motion to suppress. *See* § 17-30-110(A) (requiring motions to suppress the contents of intercepted wire or oral communications be made to the "reviewing authority"); § 17-30-15(9) (defining "[r]eviewing authority" as "a panel of three judges of the South Carolina Court of Appeals"). Coggeshall contends Fulmer illegally intercepted text messages sent between her and several individuals utilizing an Apple iWatch that was stolen from her home. Trent and Frazier moved to join the motion because their communications with Fulmer were among those

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<sup>1</sup> Justin claims he filed the Civil Case because he believed the communications involved "a scheme to undermine his relationship with his young daughter."

obtained by Fulmer using the iWatch. We grant the motions to join and the motion to suppress.

## FACTS

Coggeshall and Fulmer have one child together, a daughter (Daughter). According to Coggeshall, she discovered her Apple iWatch—which was "synched" with her phone and received copies of text messages between herself and others—went missing while she and Fulmer were in the midst of paternity, child support, and custody litigation (Custody Litigation) over Daughter. When that litigation concluded in December 2021, Coggeshall discovered text messages obtained from her missing iWatch were being used by Fulmer as the basis for the Civil Case against Coggeshall, Trent, Frazier, and others.<sup>2</sup>

Fulmer claims the iWatch in question belongs to him and that he "allowed" Coggeshall to use his iWatch in the past. He asserts Coggeshall later returned the device to him and he noticed her "messages began appearing on the watch." He argues Coggeshall failed to delete her electronic information from the iWatch or take other "precautions to secure the contents of the device." While the parties dispute ownership of the iWatch, they agree Fulmer currently possesses the watch and used it to view text messages that were sent to and from Coggeshall's cell phone.

## INTERPRETATION OF THE HOMELAND SECURITY ACT

"The Homeland Security Act is patterned after Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510–22 (2002) (Federal Act)." *State v. Guerrero-Flores*, 402 S.C. 530, 534, 741 S.E.2d 577, 580 (Ct. App. 2013). "[F]ederal cases analyzing comparable provisions of the Federal Act are persuasive in interpreting the provisions of the Homeland Security Act . . . ." *Id.*

## MOTIONS TO JOIN

"The decision to grant or deny a motion to join an action pursuant to Rule 19, SCRCP, or intervene in an action pursuant to Rule 24, SCRCP, lies within the sound discretion of the trial court." *Ex parte Gov't Emps. Ins. Co. (Ex parte*

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<sup>2</sup> The Civil Case includes other named defendants, but they did not move to join Coggeshall's motion.

*GEICO*), 373 S.C. 132, 135, 644 S.E.2d 699, 701 (2007). Rule 24(a), SCRPC provides:

Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

"Generally, the rules of intervention should be liberally construed where judicial economy will be promoted by declaring the rights of all affected parties." *Ex parte GEICO*, 373 S.C. at 138, 644 S.E.2d at 702. Accordingly, this court "should consider the practical implications of a decision denying or allowing intervention." *Id.* "A party has standing if the party has a personal stake in the subject matter of a lawsuit and is a 'real party in interest.'" *Id.* (quoting *Bailey v. Bailey*, 312 S.C. 454, 458, 441 S.E.2d 325, 327 (1994)).

Prior to any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority, *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: (1) communication was unlawfully intercepted . . . . The reviewing authority may, in its discretion, conduct a hearing and require additional testimony or documentary evidence.

§ 17-30-110(A) (emphasis added).

We find Frazier and Trent are "aggrieved person[s]" pursuant to the Homeland Security Act because their communications with Coggeshall were among those obtained by Fulmer and resolution of Coggeshall's motion inevitably impacts their rights in the Civil Case. See § 17-30-110(A) (stating any aggrieved person may move to suppress the contents of intercepted communications); Rule 24(a)(2), SCRPC (stating anyone claiming an interest related to the transaction at issue and "so situated that disposition of the action may . . . impair or impede his ability to

protect that interest" should be permitted to intervene in an action). Accordingly, we grant both motions to join.

## MOTION TO SUPPRESS

"The interception of wire, electronic, or oral communications is hereby authorized only in the manner permitted by this chapter." § 17-30-10. The Act is violated when a person "intentionally intercepts . . . any wire, oral, or electronic communication"; "intentionally discloses or attempts to disclose to any other person the contents of any . . . electronic communication, knowing or having reason to know the information was obtained through the interception of a[n] . . . electronic communication"; or when a person "intentionally uses or attempts to use the contents of any . . . electronic communication, knowing or having reason to know that the information was obtained through the interception of a[n] . . . electronic communication." § 17-30-20(1), (3), (4).

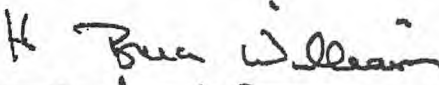
"'Intercept' means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device." § 17-30-15(3). An "'[e]lectronic, mechanical, or other device' means any device or apparatus which can be used to intercept a wire, electronic, or oral communication." § 17-30-15(4). An "aggrieved person" is any person "who was a party to any intercepted wire, oral, or electronic communication or a person against whom the interception was directed." § 17-30-15(10). "Whenever any wire, oral, or electronic communication has been intercepted, no part of the contents of the communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court . . . ." § 17-30-65(A).

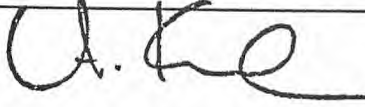
In *United States v. Szymuszkiewicz*, the Seventh Circuit observed an interception must be "contemporaneous" with the sending of the communication, which includes communications obtained while in transit between intended devices and also communications that are received by an intended recipient but then, through programming, automatically forwarded to an unintended recipient. 622 F.3d 701, 705-06 (7th Cir. 2010). In *Epstein v. Epstein*, the Seventh Circuit clarified its reasoning in *Szymuszkiewicz*, noting an interception "need not occur at the time the wrongdoer receives the [communication]" because "'copying [the communication] at the server was the unlawful interception.'" 843 F.3d 1147, 1150 (2016) (quoting *Szymuszkiewicz*, 622 F.3d at 704).

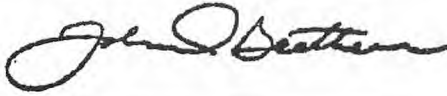
Based on the affidavits provided by the parties, we find the preponderance of the evidence indicates Coggeshall was the rightful owner of the iWatch. Accordingly, Fulmer's repeated use of the device to view her text messages amounted to interceptions under the Homeland Security Act. See § 17-30-15(3) (defining an interception as the acquisition of electronic communications through the use of any electronic device); § 17-30-20 (prohibiting the intentional interception of electronic communications). Further, even if Fulmer was the original owner of the iWatch, we find there is no evidence Coggeshall gave him permission to access her communications on the device. See *Berry v. Funk*, 146 F.3d 1003, 1010-11 (D.C. Cir. 1998) (stating that implicit consent to an interception, absent actual notice, may only be implied "when '[t]he surrounding circumstances [] convincingly show that the party knew about and consented to the interception'" (quoting *United States v. Lanoue*, 71 F.3d 966, 981 (1st Cir. 1995))).

## CONCLUSION

Accordingly, we grant Coggeshall's motion to suppress and prohibit Fulmer from using these communications in the Civil Case and Divorce Action and any potential future litigation. See § 17-30-65(A) ("Whenever any wire, oral, or electronic communication has been *intercepted*, no part of the contents of the communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding . . . ." (emphases added)). Additionally, we deny Coggeshall's request for attorney's fees.<sup>3</sup> Any further motions concerning these cases should be addressed to the family and circuit courts.

  
\_\_\_\_\_  
C.J.

  
\_\_\_\_\_  
J.

  
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J

<sup>3</sup> However, the parties may still pursue attorney's fees and damages in a civil action. See § 17-30-135(A)(4) ("Any person whose wire, oral, or electronic communication is *intercepted* . . . has a civil cause of action . . . and is entitled to recover . . . a reasonable attorney's fee and other litigation costs reasonably incurred." (emphasis added)).

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# South Carolina Legislature

South Carolina Law > Code of Laws > Title 17

## South Carolina Code of Laws Unannotated

### Title 17 - Criminal Procedures

#### CHAPTER 30

##### Interception of Wire, Electronic, or Oral Communications

###### Editor's Note

2002 Act No. 339, Section 1, provides as follows:

"This act may be cited as the 'South Carolina Homeland Security Act'".

###### **SECTION 17-30-10.** Interception of wire, electronic, or oral communications authorized.

The interception of wire, electronic, or oral communications is hereby authorized only in the manner permitted by this chapter.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

###### **SECTION 17-30-15.** Definitions.

As used in this chapter:

- (1) "Wire communication" means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception including the use of this connection in a switching station furnished or operated by any person engaged in providing or operating the facilities for the transmission of intrastate, interstate, or foreign communications or communications affecting intrastate, interstate, or foreign commerce. The term includes any electronic storage of the communication.
- (2) "Oral communication" means any oral communication uttered by a person exhibiting an expectation that the communication is not subject to interception under circumstances justifying the expectation and does not mean any public oral communication uttered at a public meeting or any electronic communication.
- (3) "Intercept" means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.
- (4) "Electronic, mechanical, or other device" means any device or apparatus which can be used to intercept a wire, electronic, or oral communication other than:
  - (a) any telephone or telegraph instrument, equipment, or facility, or any component thereof:
    - (i) furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business or furnished by the subscriber or user for connection to the facilities of the service and used in the ordinary course of its business; or
    - (ii) being used by a provider of wire or electronic communications service in the ordinary course of its business or by an investigative or law enforcement officer in the ordinary course of his duties; or
  - (b) a hearing aid or similar device being used to correct subnormal hearing to not better than normal.
- (5) "Person" means an employee or agent of the State of South Carolina or political subdivision of the State, of the United States, or of any other state or political subdivision of the State, and any individual, partnership, association, joint stock company, trust, or corporation.
- (6) "Investigative or law enforcement officer" means an officer of the State of South Carolina or political subdivision of the State, of the United States, or of any other state or political subdivision of the State, who is empowered by law to conduct on behalf of the government investigations of or to make arrests for offenses enumerated in this chapter or similar federal offenses.
- (7) "Contents", when used with respect to any wire, oral, or electronic communication, include any information concerning the substance, purport, or meaning of that communication.
- (8) "Judge of competent jurisdiction" means a circuit court judge designated by the Chief Justice of the Supreme Court of the State of South Carolina.
- (9) "Reviewing authority" means a panel of three judges of the South Carolina Court of Appeals designated by the Chief Judge of the South Carolina Court of Appeals.
- (10) "Aggrieved person" means a person who was a party to any intercepted wire, oral, or electronic communication or a person against whom the interception was directed.
- (11) "Law enforcement agency" means the South Carolina Law Enforcement Division (SLED) or an agency of the United States if the primary responsibility of the agency is the prevention and detection of crime and if its agents and officers are empowered by law to conduct criminal investigations and to make arrests.
- (12) "Communication common carrier" has the same meaning which is given the term "common carrier" in 47 U.S.C. Section 153(h).
- (13) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, photooptical system, or any other device that affects intrastate, interstate, or foreign commerce, but does not include:
  - (a) any wire or oral communication;
  - (b) any communication made through a tone-only paging device;
  - (c) any communication from an electronic or mechanical device which permits the tracking of the movement of a person or an object; or

(d) electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.

(14) "User" means any person or entity who:

(a) uses an electronic communication service; and

(b) is duly authorized by the provider of the service to engage in its use.

(15) "Electronic communications system" means any wire, radio, electromagnetic, photooptical, or photoelectronic facilities for the transmission of wire or electronic communications, and any computer facilities or related electronic equipment for the electronic storage of these communications.

(16) "Electronic communication service" means any service which provides to users of the service the ability to send or receive wire or electronic communications.

(17) "Readily accessible to the general public" means, with respect to a radio communication, that the communication is not:

(a) scrambled or encrypted;

(b) transmitted using modulation techniques whose essential parameters have been withheld from the public with the intention of preserving the privacy of the communication;

(c) carried on a subcarrier or other signal subsidiary to a radio transmission;

(d) transmitted over a communications system provided by a common carrier, unless the communication is a tone-only paging system communication; or

(e) transmitted on frequencies allocated under Part 25; Subpart D, Subpart E, or Subpart F of Part 74; or Part 94 of the Rules of the Federal Communications Commission, unless, in the case of a communication transmitted on a frequency allocated under Part 74 that is not exclusively allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio.

(18) "Electronic storage" means:

(a) any temporary intermediate storage of a wire or electronic communication incidental to the electronic transmission of the communication; or

(b) any storage of a wire or electronic communication by an electronic communication service for purposes of backup protection of such communication.

(19) "Aural transfer" means a transfer containing the human voice at any point between and including the point of origin and the point of reception.

(20) "Remote computing service" means the provision to the public of computer storage or processing services by means of an electronic communications system.

(21) "Pen register" means a device which records or decodes electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which the device is attached, but the term does not include any device used by a provider or customer of a wire or electronic communication service for billing or recording as an incident to billing, for communication services provided by the provider, or any device used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business.

(22) "Trap and trace device" means a device which captures the incoming electronic or other impulses which identify the originating number of an instrument or a device from which a wire or electronic communication was transmitted.

(23) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any other possession or territory of the United States.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

#### **SECTION 17-30-20. Prohibited acts.**

Except as otherwise specifically provided in this chapter, a person who commits any of the following acts is guilty of a felony and, upon conviction, must be punished as provided in Section 17-30-50 of this chapter:

(1) intentionally intercepts, attempts to intercept, or procures any other person to intercept or attempt to intercept any wire, oral, or electronic communication;

(2) intentionally uses, attempts to use, or procures any other person to use or attempt to use any electronic, mechanical, or other device to intercept any oral communication when:

(a) the device is affixed to or otherwise transmits a signal through a wire, cable, or other like connection used in wire communication; or

(b) the device transmits communications by radio or interferes with the transmission of the communication;

(3) intentionally discloses or attempts to disclose to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;

(4) intentionally uses or attempts to use the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;

(5) intentionally discloses or attempts to disclose to any other person the contents of any wire, oral, or electronic communication intercepted by means authorized by Section 17-30-70 or Section 17-30-95 when that person knows or has reason to know that the information was obtained through the interception of such a communication in connection with a criminal investigation and the disclosure is not otherwise authorized under this chapter; or

(6) intentionally uses, attempts to use, or procures any other person to use any electronic, mechanical, or other device or service that causes the telephone network to display a telephone number on a phone call recipient's caller identification display that is not the number of the originating device. This provision shall not apply to:

(a) the legitimate law enforcement use of this procedure by the South Carolina Law Enforcement Division;

(b) a person or entity that places a call and blocks or otherwise prevents the delivery of a telephone number to a call recipient's caller identification display;

(c) a person or entity that places an authorized call on behalf of another person or entity and inserts a telephone number identified with the person or entity on behalf of whom the call is being placed; or

(d) a communications service provider that delivers a call originated by another person or entity.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002; 2010 Act No. 270, Section 2, eff June 24, 2010.

**SECTION 17-30-25. Interception and disclosure of information by provider of wire or electronic communications service; exceptions when authorized by law.**

(A) It is lawful under this chapter for an operator of a switchboard, or an officer, employee, or agent of a provider of wire or electronic communication service whose facilities are used in the transmission of a wire or electronic communication to intercept, disclose, or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the provider of that service, except that a provider of wire communication service to the public must not utilize service observing or random monitoring except for mechanical or service quality control checks.

(B) Notwithstanding any other provision of law, a provider of wire, oral, or electronic communication service, or an officer, employee, or agent thereof, or landlord, custodian, or other person may provide information, facilities, or technical assistance to a person authorized by law to intercept wire, oral, or electronic communications if the provider, or an officer, employee, or agent thereof, or landlord, custodian, or other person, has been provided with:

(1) a court order directing such assistance signed by the authorizing judge; or

(2) a certification in writing by a person specified in Section 17-30-95 that no warrant or court order is required by law, that all statutory requirements have been met, and that the specified assistance is required, setting forth the period of time during which the provision of the information, facilities, or technical assistance is authorized and specifying the information, facilities, or technical assistance required.

(C) A provider of wire, oral, or electronic communication service, or an officer, employee, or agent thereof, or landlord, custodian, or other person must not disclose the existence of any interception or the device used to accomplish the interception with respect to which the person has been furnished an order under this chapter, except as may otherwise be required by legal process and then only after prior notice to the Attorney General or his Assistant Attorney General. Any such disclosure renders the person liable for the civil damages provided under Section 17-30-135, and the person may be prosecuted. An action shall not be brought against a provider of wire, oral, or electronic communication service, or an officer, employee, or agent thereof, or landlord, custodian, or other person for providing information, facilities, or assistance in accordance with the terms of a court order under this chapter.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

**SECTION 17-30-30.** Interception by employee of Federal Communications Commission, by person acting under color of law, and when party has given prior consent.

(A) It is lawful under this chapter for an officer, employee, or agent of the Federal Communications Commission, in the normal course of his employment and in discharge of the monitoring responsibilities exercised by the commission in the enforcement of 47 U.S.C. Chapter 5, to intercept a wire, oral, or electronic communication transmitted by radio or to disclose or use the information thereby obtained.

(B) It is lawful under this chapter for a person acting under color of law to intercept a wire, oral, or electronic communication, where the person is a party to the communication or one of the parties to the communication has given prior consent to the interception.

(C) It is lawful under this chapter for a person not acting under color of law to intercept a wire, oral, or electronic communication where the person is a party to the communication or where one of the parties to the communication has given prior consent to the interception.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

**SECTION 17-30-35.** Lawful interceptions of electronic communications.

(A) It is lawful under this chapter for a person to:

(1) intercept or access an electronic communication made through an electronic communication system that is configured so that the electronic communication is readily accessible to the general public;

(2) intercept any radio communication which is transmitted by:

(a) any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress;

(b) any governmental, law enforcement, civil defense, private land mobile, or public safety communications system, including any police or fire communications system, readily accessible to the general public;

(c) a station operating on an authorized frequency within the bands allocated to the amateur, citizens band, or general mobile radio services; or

(d) any marine or aeronautical communications system;

(3) engage in conduct which is:

(a) prohibited by Section 633 of the Communications Act of 1934; or

(b) excepted from the application of Section 705(a) of the Communications Act of 1934 and by Section 705(b) of that act;

(4) intercept any wire or electronic communication the transmission of which is causing harmful interference to any lawfully operating station of consumer electronic equipment to the extent necessary to identify the source of the interference;

(5) intercept, if the person is another user of the same frequency, any radio communication that is not scrambled or encrypted made through a system that utilizes frequencies monitored by individuals engaged in the provision or the use of the system;

(6) intercept a satellite transmission that is not scrambled or encrypted and that is transmitted:

(a) to a broadcasting station for purposes of retransmission to the general public; or

(b) as an audio subcarrier intended for redistribution to facilities open to the public, but not including data transmissions or telephone calls, when the interception is not for the purposes of direct or indirect commercial advantage or private financial gain; or

(7) intercept and privately view a private satellite video communication that is not scrambled or encrypted or to intercept a radio communication that is transmitted on frequencies allocated under Subpart D of Part 74 of the rules of the Federal Communications Commission that is not scrambled or encrypted, if the interception is not for an unlawful purpose or for purposes of direct or indirect commercial advantage or private commercial gain.

(B) It is lawful under this chapter for a provider of electronic communication service to record the fact that a wire or electronic communication was initiated or completed in order to protect the provider, another provider furnishing service toward the completion of the wire or electronic communication, or a user of that service, from fraudulent, unlawful, or abusive use of such service.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

**SECTION 17-30-40.** Disclosure of content of communication by provider of electronic communication service.

(A) Except as provided in subsection (B), a person or entity providing an electronic communication service to the public must not intentionally divulge the contents of any

communication while in transmission on that service to any person or entity other than an addressee or intended recipient of the communication or an agent of the addressee or intended recipient.

(B) A person or entity providing electronic communication service to the public may divulge the contents of the communication:

- (1) as otherwise authorized by this chapter;
- (2) with the lawful consent of the originator or any addressee or intended recipient of the communication;
- (3) to a person employed or authorized, or whose facilities are used to forward the communication to its destination; or
- (4) which were inadvertently obtained by the service provider and which appeared to pertain to the commission of a crime, if the divulgence is made to a law enforcement agency.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

**SECTION 17-30-45.** Use of pen register or trap and trace device.

It is lawful under this chapter to use a pen register or a trap and trace device as authorized under South Carolina law or under federal law.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

**SECTION 17-30-50.** Penalty for violating Sections 17-30-20 through 17-30-45.

(A) Except as provided in subsection (B), whoever violates the provisions of Sections 17-30-20 through 17-30-45, upon conviction, must be imprisoned not more than five years or fined not more than five thousand dollars, or both.

(B) If the offense is a first offense under this chapter and is not for any unlawful purpose or for purposes of direct or indirect commercial advantage or private commercial gain, and the wire or electronic communication with respect to which the offense under this chapter was committed is a radio communication that is not scrambled, encrypted, or transmitted using modulation techniques the essential parameters of which have been withheld from the public with the intention of preserving the privacy of the communication, then:

- (1) if the communication is not the radio portion of a cellular telephone communication, a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit, a public land mobile radio service communication, or a paging service communication, and the conduct is not that described in Section 17-30-35(7), the person committing the offense is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than one year or fined not more than one thousand dollars, or both;
- (2) if the communication is the radio portion of a cellular telephone communication, a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit, a public land mobile radio service communication, or a paging service communication, the person committing the offense is guilty of a misdemeanor, and must, upon conviction, be fined not more than one thousand dollars for each violation.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

**SECTION 17-30-55.** Mailing or manufacturing devices for unlawful interception of wire, oral, or electronic communications.

(A) Except as otherwise specifically provided in this chapter, any person is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both, who intentionally:

- (1) sends through the mail or otherwise sends or carries any electronic, mechanical, or other device, knowing or having reason to know that the design of the device renders it primarily useful for the purpose of the unlawful interception of wire, oral, or electronic communications as specifically defined by this chapter; or
- (2) manufactures, assembles, possesses, or sells any electronic, mechanical, or other device, knowing or having reason to know that the design of the device renders it primarily useful for the purpose of the unlawful interception of wire, oral, or electronic communications as specifically defined by this chapter.

(B) It is lawful under this section for the persons listed in items (1) and (2) of this subsection to send through the mail, send, or carry in intrastate, interstate, or foreign commerce or manufacture, assemble, possess, or sell any electronic, mechanical, or other device, knowing or having reason to know that the design of the device renders it primarily useful for the purpose of the surreptitious interception of wire, oral, or electronic communications.

The persons to whom this subsection applies are:

- (1) a provider of wire or electronic communication service or an officer, agent, or employee of, or a person under contract with, such a provider, in the normal course of the business of providing that wire or electronic communication service; or
- (2) an officer, agent, or employee of, or a person under contract with, bidding upon contracts with, or in the course of doing business with, the United States, a state, or a political subdivision of the State, in the normal course of the activities of the United States, a state, or a political subdivision of the State.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

**SECTION 17-30-60.** Seizure and forfeiture.

Any electronic, mechanical, or other device used, sent, carried, manufactured, assembled, possessed, or sold in violation of this chapter may be seized and forfeited to the State.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

**SECTION 17-30-65.** Admissibility of contents of, or evidence derived from, intercepted communications; contents as public record.

(A) Whenever any wire, oral, or electronic communication has been intercepted, no part of the contents of the communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the State, or a political subdivision thereof, if the disclosure of that information would be in violation of this chapter. The prohibition of use as evidence provided in this section does not apply in cases of prosecution for criminal interception in violation of the provisions of this chapter.

(B) The contents of any wire, oral, or electronic communication intercepted pursuant to this chapter and the contents of any application for an order and an order of authorization issued pursuant to this chapter are not included in the definition of a public record contained in Section 30-4-20(c), and may only be disclosed in a manner provided by this chapter.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

**SECTION 17-30-70.** Orders authorizing interception; application process; agencies and individuals authorized to conduct interception.

(A) An application for an order authorizing or approving the interception of wire, oral, or electronic communications must be initiated by the Chief of SLED. After reviewing the application, the Attorney General or his designated Assistant Attorney General may authorize the submission of the application to a judge of competent jurisdiction for, and the judge may grant in conformity with this chapter, an order authorizing or approving the interception of wire, oral, or electronic communications by:

(1) the South Carolina Law Enforcement Division for the investigation of the offense as to which the application is made when the interception may provide or has provided evidence of the commission of the offenses of murder (Section 16-3-10); assault and battery with intent to kill (Section 16-3-620); kidnapping (Section 16-3-910); voluntary manslaughter (Section 16-3-50); armed robbery (Section 16-11-330(A)); attempted armed robbery (Section 16-11-330(B)); drug trafficking as defined in Sections 44-53-370(e) and 44-53-375(C); arson in the first degree (Section 16-11-110(A)); arson in the second degree (Section 16-11-110(B)); accessory before the fact to commit any of the above offenses (Section 16-1-40); or attempt to commit any of the above offenses (Section 16-1-80). This interception may also be authorized when it may provide or has provided evidence of any conspiracy or solicitation to commit any violation of the offenses specified in this subsection;

(2) the South Carolina Law Enforcement Division for the investigation of the offense as to which the application is made when the interception may provide or has provided evidence of the commission of any offense related to terrorism or the commission of a terrorist act, any offense related to bombs, destructive devices, bacteriological and biological weapons, and weapons of mass destruction as provided for in Article 7, Chapter 23, Title 16 or evidence of any conspiracy or solicitation to commit any crime specifically enumerated in this subsection; or

(3) an individual operating under a contract with the South Carolina Law Enforcement Division for the investigation of an offense listed in subsection (1) or (2). Any interception conducted under this chapter by persons authorized by this subsection must conduct the interception under the direct supervision of an agent or officer of the South Carolina Law Enforcement Division.

(B) Any person authorized to intercept wire, oral, or electronic communications pursuant to this section must have completed training provided by SLED pursuant to Section 17-30-145.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

Code Commissioner's Note

Section 16-3-620, referenced in subsection (A)(1) was repealed by 2010 Act No. 273, Section 5.

Editor's Note

2010 Act No. 273, Section 7.C, provides:

"Wherever in the 1976 Code of Laws reference is made to the common law offense of assault and battery of a high and aggravated nature, it means assault and battery with intent to kill, as contained in repealed Section 16-3-620, and, except for references in Section 16-1-60 and Section 17-25-45, wherever in the 1976 Code reference is made to assault and battery with intent to kill, it means attempted murder as defined in Section 16-3-29."

**SECTION 17-30-75.** Disclosure of content of intercepted communication.

(A) Any SLED agent who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication or evidence derived from it may disclose the contents to an attorney authorized by law to investigate and institute any action on behalf of the State of South Carolina or political subdivision of the State, or to another SLED agent, investigative, or law enforcement officer to the extent that the disclosure is appropriate to the proper performance of the official duties of the officer or person making or receiving the disclosure.

(B) Any SLED agent, investigative, or law enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication or evidence derived from it may use the contents to the extent the use is appropriate to the proper performance of his official duties.

(C) Any person who has received, by any means authorized by this chapter, or by the laws of any other state or the United States, any information concerning a wire, oral, or electronic communication or evidence derived from it, intercepted in accordance with the provisions of this chapter, may disclose the contents of that communication or the derivative evidence while giving testimony under oath or affirmation in any criminal proceeding in any court of the State or of the United States or in any grand jury proceedings.

(D) No otherwise privileged wire, oral, or electronic communication intercepted in accordance with or in violation of the provisions of this chapter loses its privileged character.

(E) When a SLED agent, while engaged in intercepting wire, oral, or electronic communications in the manner authorized by this chapter, intercepts wire, oral, or electronic communications relating to offenses other than those specified in the order of authorization or approval, the contents thereof and evidence derived from it may be disclosed or used as provided in subsections (A) and (B). The contents and any evidence derived from it may be used under subsection (C) when authorized or approved by a judge of competent jurisdiction when the judge finds on subsequent application that the contents were otherwise intercepted in accordance with the provisions of this chapter. The application must be made as soon as practicable.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

**SECTION 17-30-80.** Application for interception order; contents; establishing allegations of fact; additional evidence; basis for entry of order.

(A) Each application for an order authorizing or approving the interception of a wire, oral, or electronic communication under this chapter must be made in writing upon oath or affirmation to a judge of competent jurisdiction and must state the applicant's authority to make the application. Each application must include the following information:

(1) the identity of the SLED agent making the application and the person authorizing the application;

(2) a full and complete statement of the facts and circumstances relied upon by the applicant to justify his belief that an order should be issued, including:

(a) details as to the particular offense that has been, is being, or is about to be committed;

(b) except as otherwise provided, a particular description of the nature and location of the facilities from which or the place where the communications are to be intercepted;

(c) a particular description of the type of communications sought to be intercepted;

(d) the identity of the person, if known, committing the offense and whose communications are to be intercepted;

(3) a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(4) a statement that the communications sought to be intercepted are not otherwise legally privileged;

(5) a statement of the period of time for which the interception is required to be maintained and, if the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

(6) a full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to a judge for authorization to intercept, or for approval of interceptions of, wire, oral, or electronic communications involving any of the same persons, facilities, or places specified in the application, and the action taken by the judge on each of the applications; and

(7) when the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception or a reasonable explanation of the failure to obtain the results.

(B) Allegations of fact in the application may be based either upon the personal knowledge of the applicant or upon information and belief. If the applicant personally knows the facts alleged, this knowledge must be stated in the application. If the facts stated in the application are derived in whole or in part from the statements of persons other than the applicant, the sources of these facts must be either disclosed or described, and the application must contain the facts establishing the existence and reliability of the informants or the reliability of the information supplied by them. The application must also state, so far as possible, the basis of the informant's knowledge or belief. Affidavits of persons other than the applicant may be submitted in conjunction with the application if they tend to support any fact or conclusion alleged in the application. An accompanying affidavit may be based either on the personal knowledge of the affiant, or information and belief with the source of the information and the reason for belief specified.

(C) The judge may require the applicant to furnish additional testimony or documentary evidence in support of the application. Any hearing ordered by the judge regarding the application must be tape recorded.

(D) Upon application, the judge may enter an ex parte order, as requested or as modified, authorizing or approving interception of wire, oral, or electronic communications within the territorial jurisdiction of the court in which the judge is sitting, and outside the jurisdiction but within the State of South Carolina in the case of a mobile interception device authorized by the judge within the jurisdiction, if the judge determines on the basis of the facts submitted by the applicant that:

(1) there is probable cause for belief that an individual is committing, has committed, or is about to commit an offense as provided in Section 17-30-70;

(2) there is probable cause for belief that particular communications concerning that offense will be obtained through the interception;

(3) normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous; and

(4) except as otherwise provided, there is probable cause for belief that the facilities from which, or the place where, the wire, oral, or electronic communications are to be intercepted are being used, or are about to be used, in connection with the commission of the offense, or are leased to, listed in the name of, or commonly used by that person.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

**SECTION 17-30-85.** Information to be specified in order.

Each order authorizing or approving the interception of any wire, oral, or electronic communication must specify:

(1) the identity of the person, if known, whose communications are to be intercepted;

(2) the nature and location of the communications facilities as to which, or the place where, authority to intercept is granted;

(3) a particular description of the type of communication sought to be intercepted and a statement of the particular offense to which it relates;

(4) the identity of the agency authorized to intercept the communications and of the person authorizing the application; and

(5) the period of time during which the interception is authorized, including a statement as to whether or not the interception automatically terminates when the described communication has been first obtained.

An order authorizing the interception of a wire, oral, or electronic communication, upon the request of the applicant, must direct that a provider of wire or electronic communication service, landlord, custodian, or other person must furnish the applicant at once all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that the service provider, landlord, custodian, or person is according to the person whose communications are to be intercepted. The obligation of a provider of wire, oral, or electronic communication service under such an order may include, but is not limited to, conducting an in-progress trace during an interception, or providing other assistance to support the investigation as may be specified in the order.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

**SECTION 17-30-90.** Duration and termination of interception; reports to authorizing judge.

(A) No order entered may authorize or approve the interception of any wire, oral, or electronic communication for any period longer than is necessary to achieve the objective of the authorization or in any event longer than thirty days. The thirty-day period begins on the day on which the South Carolina Law Enforcement Division first begins to conduct an interception under the order or ten days after the order is entered, whichever occurs earlier. Extensions of an order may be granted but only upon application for an extension made in accordance with Section 17-30-80(A) and upon the court making the findings required by Section 17-30-80(C). The period of extension must be no longer than the authorizing judge determines necessary to achieve the purposes for which the extension was granted and in no event for longer than thirty days. Every order and extension of the order must contain a provision that the authorization to intercept must be executed as soon as practicable, must be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this chapter, and must terminate upon attainment of the authorized objective or in any event in thirty days. If the intercepted communication is in code or foreign language and an expert in that foreign language or code is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after the interception. An interception under this chapter may be conducted by an agent of the South Carolina Law Enforcement Division or by an individual operating under a contract with and under the direct supervision of an agent of the South Carolina Law Enforcement Division.

(B) When an order authorizing interception is entered pursuant to this chapter, the order must require reports to be made to the judge who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. The reports must be made at such intervals as the judge may require.

(C) Upon termination of the authorization in the warrant, all interception must cease and as soon as practicable after termination any device installed to accomplish interception must be removed or must be permanently deactivated by any means approved by the issuing judge.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

**SECTION 17-30-95.** Interception prior to obtaining order; oral notification of judge in emergency.

(A) Notwithstanding any other provision of this chapter, any agent of the South Carolina Law Enforcement Division specifically designated by the Attorney General or his designated Assistant Attorney General may intercept the wire, oral, or electronic communication if an application for an order approving the interception is made within forty-eight hours after the interception begins to occur, and the agent determines that more likely than not:

(1) an emergency exists that involves an offense provided for in Section 17-30-70 and an immediate danger of death or serious physical injury to any person or the danger of escape of a prisoner and requires that a wire, oral, or electronic communication be intercepted before an order authorizing the interception can, with due diligence, be

obtained; and

(2) there are grounds upon which an order could be entered under this chapter to authorize the interception.

(B) In the absence of an order, the interception must immediately terminate when the communication sought is obtained or when the application for the order is denied, whichever is earlier. If the application for approval is denied, or in any other case in which the interception is terminated without an order having been issued, the contents of any wire, oral, or electronic communication intercepted must be treated as having been obtained in violation of Section 17-30-20, and an inventory must be served as provided for in Section 17-30-100(E) on the person named in the application.

(C) Agents of the South Carolina Law Enforcement Division designated to intercept wire, oral, or electronic communications pursuant to this section must have completed training provided by SLED pursuant to Section 17-30-145.

(D) A judge of competent jurisdiction must be notified orally of the intent to begin the interception of any wire, oral, or electronic communication when an emergency exists pursuant to the provisions of this section before any interception is conducted. The judge must make a written record of this notification.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

**SECTION 17-30-100.** Recording, sealing, custody, and destruction of intercepted communications; notification of and inspection by parties to interception.

(A) The contents of any wire, oral, or electronic communication intercepted by any means authorized by this chapter, if possible, must be recorded on tape or wire or other comparable device. The recording of the contents of any wire, oral, or electronic communication under this subsection must be kept in such a way as will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the order, or extensions of the order, the recordings must be made available to the judge issuing the order and sealed under his directions. Custody of the recordings must be wherever the judge orders. They must not be destroyed except upon an order of the issuing or denying judge, or that judge's successor in office, and in any event must be kept for ten years. Duplicate recordings may be made for use or disclosure as permitted by this chapter.

(B) The presence of the seal provided for by this section, or a satisfactory explanation for the absence thereof, must be a prerequisite for the use or disclosure of the contents of any wire, oral, or electronic communication or evidence derived therefrom as required by federal law.

(C) Applications made and orders granted under this chapter must be sealed by the judge. Custody of the applications and orders must be wherever the judge directs. As required by federal law, the applications and orders must be disclosed only upon a showing of good cause before a judge of competent jurisdiction and must not be destroyed except on order of the issuing or denying judge, or that judge's successor in office, and in any event must be kept for ten years.

(D) A violation of the provisions of this section may be punished as contempt of the issuing or denying judge.

(E) Within a reasonable time but not later than ninety days after the termination of the period of an order or extensions of the order, the issuing or denying judge must cause to be served on the persons named in the order or the application, and those other parties to intercepted communications as the judge may determine in his discretion to be in the interest of justice, an inventory which must include notice of the:

(1) fact of the entry of the order or the application;

(2) date of the entry and the period of authorized, approved, or disapproved interception, or the denial of the application; and

(3) the fact that during the period wire, oral, or electronic communications were or were not intercepted.

The judge, upon the filing of a motion, must make available to the person or the person's counsel for inspection the portions of the intercepted communications, applications, testimony, recordings, and orders that would otherwise be discoverable under the South Carolina Rules of Evidence, unless otherwise provided by federal law or Rules of Court. On an ex parte showing of good cause to a judge of competent jurisdiction, the serving of the inventory required by this paragraph may be postponed.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

**SECTION 17-30-105.** Providing copies of intercepted communications to parties as prerequisite to receiving evidence; prejudice as factor in motions to waive time for providing copies and for continuance.

As required by federal law, the contents of any intercepted wire, oral, or electronic communication or evidence derived therefrom must not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding unless each party, not less than ten days before the hearing or proceeding and not less than thirty days prior to trial, has been furnished with a copy of the court order and accompanying application under which the interception was authorized or approved. These time periods may be waived by the judge if the judge finds that it was not possible to furnish the party with the above information within the specified time periods before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving the information. In determining prejudice, the judge must specifically consider the complexity of the case, the duration of the recordings, and the party's need to retain experts to review the material and must also take these factors into consideration when deciding a motion for continuance made by a party furnished with these materials after the time periods set out above. Upon filing of a motion by an aggrieved person, the judge must make available to the aggrieved person or his counsel for inspection the portions of the intercepted communication or evidence derived therefrom that would be otherwise discoverable under South Carolina law.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

**SECTION 17-30-110.** Pretrial motion to suppress; grounds; appeals by State; exclusive remedy.

(A) Prior to any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority, 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:

(1) communication was unlawfully intercepted;

(2) order of authorization or approval under which it was intercepted is insufficient on its face; or

(3) interception was not made in conformity with the order of authorization or approval.

The motion must be made before the trial, hearing, or proceeding unless there was no opportunity to make the motion or the person was not aware of the grounds of the motion. The motion must be made before the reviewing authority and must be decided on an expedited basis. 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. Disclosure of the contents of these materials must only be to the extent necessary to effectively render a decision or to the extent authorized by this chapter. The issuing judge also must designate the portions of these materials that were made available to the aggrieved person. 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. If a majority of the members of the reviewing authority determines that not all of the necessary materials were made available, the reviewing authority may order that those additional portions be made available and allow the aggrieved person appropriate time to review the materials. The aggrieved person may then amend his motion to include any additional grounds derived from the additional materials. If a majority of the members of the reviewing authority determine 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. If the reviewing authority does not unanimously determine that the order of authorization was issued and the communications were intercepted in conformity with the requirements of this chapter, the contents of the intercepted wire or oral communication or evidence derived therefrom must be treated as having been obtained in violation

of this chapter. Unless otherwise provided by federal law or Rules of Court, all South Carolina Rules of Evidence apply. The reviewing authority may, in its discretion, conduct a hearing and require additional testimony or documentary evidence. 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.

(B) The State has the right to appeal an order granting a motion to suppress made under subsection (A). The judges of the South Carolina Court of Appeals en banc have initial appellate jurisdiction over the appeal. All other appellate procedures remain in force and effect.

(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). In addition to the requirements of subsection (A), the reviewing authority must unanimously determine that the issuing judge abused his discretion in denying an application for an order of approval before the decision of the issuing judge may be overturned. Upon a determination of an abuse of discretion, the reviewing authority must order that the application of authorization or approval be granted and an order of authorization or approval be issued. The State has no further right to appeal the decision of the reviewing authority. For purposes of the aggrieved person, an order granted pursuant to this subsection is considered interlocutory. The appeal must be taken within thirty days after the date the order was entered and must be diligently prosecuted.

(D) The remedies and sanctions described in this chapter with respect to the interception of electronic communications are the only judicial remedies and sanctions for violations of those sections involving the communications.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

**SECTION 17-30-115.** Interception of communications; requirements relating to specifications of facilities; exceptions.

The requirements relating to the specification of the facilities from which, or the place where, the communication is to be intercepted do not apply if:

(1) in the case of an application with respect to the interception of an oral communication the:

(a) application is initiated by the Chief of the South Carolina Law Enforcement Division (SLED) and is approved by the Attorney General or his designated Assistant Attorney General;

(b) application contains a full and complete statement as to why the specification is not practical and identifies the person committing the offense and whose communications are to be intercepted; and

(c) judge finds that the specification is not practical; and

(2) in the case of an application with respect to a wire or electronic communication the:

(a) application is initiated by the Chief of SLED and is approved by the Attorney General or his designated Assistant Attorney General;

(b) application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant makes a showing that there is probable cause to believe that the person's actions could have the effect of thwarting interception from a specified facility;

(c) judge finds that such showing has been adequately made; and

(d) order authorizing or approving the interception is limited to interception only for such time as it is reasonable to presume that the person identified in the application is or was reasonably proximate to the instrument through which the communication will be or was transmitted.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

**SECTION 17-30-120.** Determination of facility as prerequisite to interception when facility not specified in order; petition by provider to modify or quash.

If an interception of a communication is to be carried out pursuant to Section 17-30-115, the interception may not begin until the facilities from which, or the place where, the communication is to be intercepted is ascertained by the person implementing the interception order. A provider of wire or electronic communications service that has received an order as provided under Section 17-30-115 may petition the court to modify or quash the order on the ground that the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the State, must decide such a petition expeditiously.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

**SECTION 17-30-125.** On-scene orders to cut or divert telephone lines; grounds; administrative subpoena for production of certain subscriber or customer information; regulations; good faith reliance as defense.

(A) For purposes of this section:

(1) "Attorney General" means the Attorney General of the State of South Carolina or the Attorney General's designee who is employed by the Attorney General and is an officer of the court.

(2) "SLED" means the South Carolina Law Enforcement Division.

(B) The supervising agent of SLED or the supervising law enforcement officer of a political subdivision of this State at the scene of an incident where there is reasonable cause to believe that:

(1) the incident involves immediate danger of death or serious bodily injury to a person or the danger of a prisoner's escape;

(2) a person is holding one or more hostages;

(3) the probability exists that a subject about to be arrested will resist with the use of weapons;

(4) a person has barricaded himself, is armed, and is threatening to commit suicide; or

(5) a threat has been made against a critical infrastructure in South Carolina as defined by federal law, pursuant to 42 U.S.C. 5195c(e); may order law enforcement or telephone company personnel to cut, reroute, or divert telephone lines solely for the purpose of preventing telephone communications between the suspect and any person other than a law enforcement officer or the law enforcement officer's designee, if the cutting, rerouting, or diverting of telephone lines is technically feasible and can be performed without endangering the lives of telephone company or other utility personnel.

(C) An officer of the court who is employed by SLED may issue an administrative subpoena to a telephone company, Internet service provider, or communications entity for the production of subscriber or customer information as described in subsection (B), not including the contents of any communications, if:

(1) SLED has reasonable cause to believe that the information is material to an active emergency incident involving at least one of the following situations:

(a) a threat of death or serious bodily injury to a person;

- (b) the danger of a prisoner's escape;
- (c) a person who is holding one or more hostages;
- (d) the probability exists that a person about to be arrested will resist arrest with the use of weapons;
- (e) a person who has barricaded himself, is armed, and is threatening to commit suicide; or
- (f) a threat against a critical infrastructure in South Carolina as defined by federal law, pursuant to 42 U.S.C. Section 5195c(e); and

(2) SLED is not otherwise able to obtain a warrant or subpoena for the information from a court due to:

- (a) the court not being able to issue a warrant or subpoena in a timely fashion and the immediate need to obtain the information; or
- (b) SLED having reasonable cause to believe that obtaining a warrant or subpoena from the court could result in perpetuating an emergency incident that the warrant or subpoena is intended to prevent.

(D)(1) An administrative subpoena must be made in writing upon oath or affirmation of the officer of the court who is employed by SLED. The officer must sign the administrative subpoena affirming that SLED has reasonable cause to believe that the information is material to an active emergency incident involving at least one of the situations listed in subsection (C)(1), and that SLED is not otherwise able to obtain a warrant or subpoena for the information from a court due to one of the reasons listed in subsection (C)(2).

(2) The officer must submit the administrative subpoena to the Attorney General for review prior to issuing the administrative subpoena to a telephone company, Internet service provider, or communications entity. The officer must not issue the administrative subpoena without authorization by the Attorney General, pursuant to subsection (E). The officer may submit the administrative subpoena with signature to the Attorney General in person, by mail, by facsimile, or by other electronic means. If the officer, after a good faith effort, is not able to submit the administrative subpoena with signature to the Attorney General in person, by mail, by facsimile, or by other electronic means, the officer may orally or electronically explain and affirm the administrative subpoena to the Attorney General.

(E)(1) The Attorney General must authorize an officer of the court who is employed by SLED to issue an administrative subpoena to a telephone company, Internet service provider, or communications entity, if, after review, the Attorney General determines that SLED has reasonable cause to believe that the information is material to an active emergency incident involving at least one of the situations listed in subsection (C)(1), and that SLED is not otherwise able to obtain a warrant or subpoena for the information from a court due to one of the reasons listed in subsection (C)(2).

(2) If the Attorney General authorizes the officer of the court who is employed by SLED to issue the administrative subpoena, the Attorney General must sign and return the administrative subpoena to SLED. The Attorney General may return the administrative subpoena with signature to SLED in person, by mail, by facsimile, or by other electronic means.

(3) If the Attorney General, after a good faith effort, is not able to return the administrative subpoena with signature to SLED in person, by mail, by facsimile, or by other electronic means, or the officer of the court employed by SLED was not able to submit the administrative subpoena with signature to the Attorney General and had to orally or electronically explain and affirm the administrative subpoena, the Attorney General may orally or electronically confirm authorization of the administrative subpoena. The Attorney General must return the administrative subpoena with signature to SLED within forty-eight hours after the Attorney General authorizes the administrative subpoena, or by the next business day if the time period falls on a weekend or holiday, whichever is later.

(4) The good faith reliance by the Attorney General as to the information affirmed by SLED to obtain an administrative subpoena constitutes a complete defense to any civil, criminal, or administrative action arising out of the administrative subpoena. The Attorney General is not responsible for any costs related to the defense of any civil, criminal, or administrative action arising out of the administrative subpoena.

(F)(1) Upon receipt of an administrative subpoena from SLED, a telephone company, Internet service provider, or communications entity shall disclose, as applicable, the subscriber's or customer's:

- (a) name;
- (b) address;
- (c) local and long distance telephone connection or electronic communication records, or records of session times and durations;
- (d) length of service, including the start date, and types of service utilized;
- (e) telephone or instrument number or other customer or subscriber number of identity, including any temporarily assigned network addresses; and
- (f) means and source of payment for such service, including any credit card or bank account numbers.

(2) If a telephone company, Internet service provider, or communications entity fails to obey an administrative subpoena without lawful excuse, SLED may apply to a circuit court having jurisdiction for an order compelling compliance. The telephone company, Internet service provider, or communications entity may object to the administrative subpoena on the grounds that the administrative subpoena fails to comply with this section, or upon any constitutional or other legal right or privilege. The court may issue an order modifying or setting aside the administrative subpoena or directing compliance with the original administrative subpoena.

(G) Information obtained by SLED pursuant to an administrative subpoena must not be made public and is not subject to the Freedom of Information Act.

(H)(1) SLED is authorized to promulgate permanent regulations, pursuant to the Administrative Procedures Act in Chapter 23, Title 1, to define the procedures and guidelines needed to issue an administrative subpoena as provided in this section.

(2) Pursuant to Section 1-23-130, SLED is authorized to promulgate emergency regulations to define the procedures and guidelines needed to issue an administrative subpoena as provided in this section until such time as permanent regulations are promulgated. The provisions of Section 1-23-130(A), (B), (D), and (E) are applicable to emergency regulations promulgated pursuant to this item. The provisions of Section 1-23-130(C) are not applicable to emergency regulations promulgated pursuant to this item. An emergency regulation promulgated pursuant to this item becomes effective upon issuance and continues for one year unless terminated sooner by SLED or concurrent resolution of the General Assembly.

(I) An administrative subpoena must comply with the provisions of federal law 18 U.S.C. Section 2703(c)(2).

(J) The good faith reliance by a telephone company on an oral or written order to cut, reroute, divert, or intercept telephone lines given by a supervising law enforcement officer pursuant to subsection (B), or the good faith reliance by a telephone company, Internet service provider, or communications entity to provide information to SLED pursuant to an administrative subpoena, constitutes a complete defense to any civil, criminal, or administrative action arising out of the order or administrative subpoena.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002; 2010 Act No. 270, Section 1, eff June 24, 2010.

**SECTION 17-30-130. Reporting intercepted communications.**

Any intercepted wire, oral, or electronic communication must be reported to the Administrative Office of the United States Courts as outlined in 18 U.S.C. Section 2519.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

**SECTION 17-30-135.** Civil action for wrongful interceptions.

(A) Any person whose wire, oral, or electronic communication is intercepted, disclosed, or used in violation of this chapter has a civil cause of action against any person or entity who intercepts, discloses, or uses, or procures any other person or entity to intercept, disclose, or use the communications and is entitled to recover from the person or entity which engaged in that violation relief as may be appropriate, including:

(1) preliminary or equitable or declaratory relief as may be appropriate;

(2) actual damages, but not less than liquidated damages computed at the rate of five hundred dollars a day for each day of violation or twenty-five thousand dollars, whichever is greater, not to exceed the limits on liability provided in subsection (F)(3);

(3) punitive damages, except as may be prohibited in subsection (F)(4); and

(4) a reasonable attorney's fee and other litigation costs reasonably incurred.

(B) A good faith reliance on a court order, subpoena, or a request of an agent of the South Carolina Law Enforcement Division under Section 17-30-95 constitutes a complete defense to any civil, criminal, or administrative action, other than an action for preliminary or equitable or declaratory relief.

(C) A civil action under this section may not be commenced later than five years after the date upon which the claimant first has a reasonable opportunity to discover the violation, except as provided in subsection (F)(2).

(D) Any person whose wire, oral, or electronic communication is intercepted, disclosed, or used in violation of this chapter is entitled to a jury trial.

(E) An investigative or law enforcement officer or governmental entity who willfully discloses or willfully uses information beyond the extent permitted by law is in violation of this chapter and subject to a civil cause of action and criminal penalties as provided in this chapter.

(F)(1) Any civil cause of action for damages authorized in subsection (A) and brought against the State, an agency, a political subdivision, or a governmental entity and its employee acting within the scope of his official duty must be brought pursuant to the South Carolina Tort Claims Act, Chapter 78, Title 15. For purposes of the Tort Claims Act, an action authorized in subsection (A) and brought against the State, an agency, a political subdivision, or a governmental entity and its employee acting within the scope of his official duty is a tort within the meaning of the Act.

(2) In any action authorized in subsection (A) and brought against the State, an agency, a political subdivision, or a governmental entity and its employee acting within the scope of his official duty, the provisions in the Tort Claims Act regarding the statute of limitations provided in Section 15-78-110 shall apply in lieu of subsection (C) of this section.

(3) In any action authorized in subsection (A) and brought against the State, an agency, a political subdivision, or a governmental entity and its employee acting within the scope of his official duty, the provisions in the Tort Claims Act regarding the limits on liability for damages as provided in Section 15-78-120(a) shall apply to all awards of damages under item (2) of subsection (A) of this section.

(4) In any action authorized in subsection (A) and brought against the State, an agency, a political subdivision, or a governmental entity and its employee acting within the scope of his official duty, the provisions in the Tort Claims Act prohibiting the award of punitive damages as provided in Section 15-78-120(B) shall apply in lieu of item (3) of subsection (A) of this section.

(5) For purposes of this subsection, the terms "State", "agency", "political subdivision", "governmental entity", "employee", and "scope of his official duty" have the same meanings as provided in the Tort Claims Act.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

**SECTION 17-30-140.** Mobile tracking devices; contents of application for order authorizing use; standards for installation and monitoring; definition.

(A) The Attorney General or any solicitor may make application to a judge of competent jurisdiction for an order authorizing or approving the installation and use of a mobile tracking device by the South Carolina Law Enforcement Division or any law enforcement entity of a political subdivision of this State.

(B) An application under subsection (A) of this section must include:

(1) a statement of the identity of the applicant;

(2) a certification by the applicant that probable cause exists to believe that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by the South Carolina Law Enforcement Division or any law enforcement entity of a political subdivision of this State which may provide evidence relating to any offense or any evidence of any conspiracy or solicitation to commit any violation of the laws of this State;

(3) a statement of the offense to which the information likely to be obtained relates; and

(4) a statement whether it may be necessary to use and monitor the mobile tracking device outside the jurisdiction of the court from which the authorization is being sought.

(C) Upon application made as provided under subsection (B), the court, upon a finding that the certification and statements required by subsection (B) have been made in the application and probable cause exists, must enter an ex parte order authorizing the installation and use of a mobile tracking device. The order may authorize the use of the device within the jurisdiction of the court and outside that jurisdiction but within the State of South Carolina if the device is installed within the jurisdiction of the court.

(D) A court may require greater specificity or additional information beyond that which is required by this section as a requisite for issuing an order.

(E) The standards established by the United States Supreme Court for the installation and monitoring of mobile tracking devices apply to the installation and use of any device as authorized by this section.

(F) As used in this section, a "tracking device" means an electronic or mechanical device which permits the tracking of the movement of a person or object.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.

**SECTION 17-30-145.** Surveillance training requirements.

Any SLED agent or an individual operating under a contract with the South Carolina Law Enforcement Division authorized under the provisions of this chapter to intercept wire, oral, or electronic communications must undergo training by SLED in conducting such surveillance with emphasis on techniques for minimizing the interception of communications that fall outside of the communications subject to interception pursuant to the provisions of this chapter.

HISTORY: 2002 Act No. 339, Section 14, eff July 2, 2002.



STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 )  
Jeffrey Ellicott Lindley )  
 Plaintiff, )  
 vs. )  
Sara Elizabeth Lindley )  
 Defendant. )

IN THE FAMILY COURT  
 THIRTEENTH JUDICIAL CIRCUIT

**MOTION AND ORDER INFORMATION  
 FORM AND COVERSHEET**

Docket No. 2023-DR-23-0198

Plaintiff's Attorney: Reid T. Sherard & Jordan W. Peeler, Bar No. _____ Address: ONE North Main Street, 2nd Floor, Greenville SC 29601 Phone: (864) 240-3278 Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: E. Kimberly Berry, Esq., Bar No. _____ Address: 1225 S. Church Street, Greenville, SC 29601 Phone: 864-421-0036 Fax 864-421-9060 _____ E-mail: _____ Other: _____
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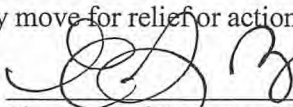
MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)  
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)  
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

**SECTION I: Hearing Information**

Nature of Motion: Motion in Limine  
 Estimated Time Needed: 30 Mins Court Reporter Needed:  YES /  NO

**SECTION II: Motion/Order Type**

Written motion attached  
 Form Motion/Order  
 I hereby move for relief or action by the court as set forth in the attached proposed order.

  
 Signature of Attorney for  Plaintiff /  Defendant

03.15.2023  
Date submitted

**SECTION III: Motion Fee**

PAID - AMOUNT: \$ \_\_\_\_\_  
 EXEMPT: (check reason)

- Rule to Show Cause in Child or Spousal Support
- Domestic Abuse or Abuse and Neglect
- Indigent Status  State Agency v. Indigent Party
- Sexually Violent Predator Act  Post-Conviction Relief
- Motion for Stay in Bankruptcy
- Motion for Publication  Motion for Execution (Rule 69, SCRPC)
- Proposed order submitted at request of the court; or,  
 reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: \_\_\_\_\_  
 Other: \_\_\_\_\_

<b>JUDGE'S SECTION</b> <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____ Judge Signature: _____
--	--

**CLERK'S VERIFICATION**

Collected by: \_\_\_\_\_ Date Filed: \_\_\_\_\_  
 MOTION FEE COLLECTED: \$ \_\_\_\_\_  
 CONTESTED - AMOUNT DUE: \$ \_\_\_\_\_

**Exhibit D (Portions of Temporary Hearing Transcript)**



1 reduction.

2 THE COURT: True?

3 MS. BERRY: Yes, and, Your Honor, that's true, that's  
4 correct on that. I have a, uh, motion in limine handin'  
5 up ---

6 THE COURT: 'kay.

7 MS. BERRY: --- with regard some a the materials in the  
8 husband's affidavit.

9 THE COURT: 'kay.

10 MS. BERRY: We believe that some a the materials he has  
11 in his affidavit violate the wire tapping statute, ---

12 THE COURT: Okay.

13 MS. BERRY: --- specifically there are, there are text  
14 messages and direct messaging that were taken from my client's  
15 phone without her permission.

16 THE COURT: A -- messages between she and a third party?

17 MS. BERRY: Yes.

18 THE COURT: Okay.

19 MS. BERRY: Uh, he did not have permission to access the  
20 phone, he certainly did not have permission, even if he's  
21 gonna argue he owns the phone 'cause it's his cell phone  
22 account, the the law is pretty clear in this respect I  
23 believe, federal law as well as our state law, and I've given  
24 the Court a copy of the case ---

25 THE COURT: Okay.

1 MS. BERRY: --- of *Fulmer vs.*, I don't know how you s --  
2 it might be *Buckhannon* (phonetic) and it says in there, um,  
3 this is a lot like this case, there was one device, that  
4 device was syncing up with other devices, one party started  
5 getting text messages from the device they had, uh, and the  
6 Court found that even if you have what you call implicit  
7 permission by virtue of, you know, the pin code or you own the  
8 phone you still have to show that you had permission to access  
9 the messages, he's never had permission to access messages, he  
10 certainly never had permission to go into her Instagram  
11 account or other accounts and we've got in our packet, Your  
12 Honor, um, where somebody has downloaded on her phone spyware  
13 in August, September, um, it's called Dr.Fone, it's F-O-N-E,  
14 and it retrieves deleted data, it transports data, it shares  
15 data with other devices, um, my client did not load those on  
16 her phone, uh, and it -- you -- it's in there, he he is usin'  
17 this to support his allegation my client's committed adultery  
18 and that the Court should deny her alimony, um, and so  
19 obviously we believe that this information violates the, that  
20 they call it the "Act" but the, and I've given a court the  
21 copy of the statute as well, it's the Interception of wire,  
22 electronic, and oral communications, Section 17-30-10, et  
23 al., ---

24 THE COURT: Okay.

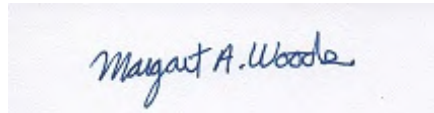
25 MS. BERRY: --- uh, we believe that that, those messages

CERTIFICATE OF REPORTER

I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on March 15, 2023 at the time and place heretofore set forth; and that the foregoing pages numbered from 2 through 40, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

April 5, 2021

A rectangular box containing a handwritten signature in blue ink that reads "Margaret A. Woods".

---

Margaret A. Woods, Court Reporter  
in and for the State of South Carolina at Large.

**Exhibit E (Synopsis For Temporary Hearing)**

*Jeffrey Ellicott Lindley v. Sara Elizabeth Lindley*

*C.A. No.: 2023-DR-23-0198*

*Synopsis for Hearing held March 15, 2023*

1. Plaintiff/Husband/Father: Jeff Lindley
2. Defendant/Wife/Mother: Sara Lindley
3. Children: Ella, 16 years of age; Jack 12 years of age
4. Date of Marriage: April 22, 2006 (17 year marriage)
5. Plaintiff's Occupation/Income: IT/Cloud Storage sales  
\$80,579.16– gross monthly for 2022  
\$68,156.25 – gross monthly for 2021
8. Defendant's Occupation/Income: Part-time Yoga Instructor  
\$111.00 gross monthly
9. Temporary Relief Needed by Defendant/Wife/Mother:
  - (a) Granting Wife primary custody of the children;
  - (b) Setting a visitation schedule for Husband taking into consideration the ages, schedule and activities of the parties and children;
  - (c) Granting Wife temporary possession of the former marital home with Husband responsible for the mortgage, taxes, insurance, maintenance and repairs during the pendency of this action.
  - (d) Requiring the parties to be subject to appropriate conditions and restrictions akin to those set forth on Exhibit A attached to and incorporated into the Wife's Counterclaim;
  - (e) Requiring the Husband to pay child support to the Wife for the support of the parties' minor children;
  - (f) Requiring the Husband to pay alimony and/or spousal support to the Wife;
  - (g) Requiring the Husband to maintain medical, dental and/or hospitalization insurance coverage on the Wife and the parties' children;
  - (h) Awarding the Wife exclusive use and possession the vehicle she typically drives with Husband responsible for all expenses associated therewith;

(i) Awarding the Wife an advance of cash or funds from accounts held by the Husband, as the vast majority of the parties' marital assets and funds are in the name of and strictly controlled by the Husband to which the Wife has no access;

(j) Requiring the Husband to contribute to all or a portion of the following debts and expenses:

i. the debt payments, taxes, insurance, maintenance and any other expenses associated with the former marital home;

ii. the debt payments, taxes and insurance associated with the parties' automobiles;

iii. any credit card debts in the parties' names;

iv. any other debts, liabilities or expenses in the Husband's name or incurred by him.

(k) Issuing restraining orders against Husband from:

i. Encumbering, concealing, destroying, liquidating, disposing of, altering, damaging, or transferring any marital assets without the consent of the Wife;

ii. Incurring any debts or liabilities for which the Wife could be held liable;

iii. Altering any beneficiary designations on any available life insurance policies on the Husband's life or retirement plans;

iv. Issuing a "No Adverse Contact Order";

(l) Requiring the Husband to pay the Wife's attorney's fees and costs; and

(m) Awarding such other and further relief as this Court may deem just and proper.

**Exhibit F (Temporary Order)**

FILED CLERK OF COURT  
GREENVILLE, SC

STATE OF SOUTH CAROLINA )  
COUNTY OF GREENVILLE )  
Jeffrey Ellicott Lindley, )  
) )  
Plaintiff, )  
) )  
vs. )  
) )  
Sara Elizabeth Lindley, )  
) )  
Defendant. )

IN THE FAMILY COURT FOR THE  
THIRTEENTH JUDICIAL CIRCUIT

FAMILY COURT

2023 MAY 26 A 11:41

TEMPORARY ORDER

Docket No:  
2023-DR-23-198

**Plaintiff's Attorneys:**  
Reid T. Sherard  
Jordan W. Peeler

**Hearing Date:**  
March 15, 2023

**Defendant's Attorney:**  
E. Kimberly Berry

**Judge:**  
Rochelle Y. Conits

**Guardian ad Litem:**  
N/A

**Court Reporter:**  
Margaret A. Woods

The order addresses Plaintiff's ("Husband") Motion for Temporary Relief filed January 18, 2023 (the "Motion"). The Motion was timely and properly served via hand delivery on Defendant ("Wife") on January 20, 2023. Wife served a Return to Motion and Motion for Temporary Relief on March 14, 2023, the day before the hearing (the "Return to Motion"). At the commencement of the hearing Wife served a Motion *in Limine*.

Wife was originally represented in this matter by Travis V. Olmert of The Olmert Law Firm, LLC. Mr. Olmert filed his Notice of Representation of Wife on February 6, 2023.

Both parties, through counsel, served written discovery on the other. Thereafter, on March 3, 2023, Mr. Olmert submitted a proposed order to the Court to relieve him as counsel, and copied Husband's counsel and Ms. Berry on that submission. The undersigned filed the Order Relieving

Counsel on March 8, 2023, relieving Mr. Olmert as counsel for Wife as of that date. Ms. Berry thereafter served her Notice of Representation of Wife.

Both parties appeared with counsel at a hearing held on March 15, 2023, and both parties submitted numerous documents at the commencement of the hearing.

Husband objected to the Court hearing any relief requested in Wife's Return to Motion and objected to Wife's Motion *in Limine*, arguing it was not timely served in compliance with Rule 6(d), SCRCF. Wife argued that the relief requested in her Return to Motion is properly before the Court, and the relief requested is based on matters that Husband raised in the Motion. Wife further argued that her Motion in Limine, is not bound by Rule 6(d), SCRCF, as it is an evidentiary motion and can be raised as the time of the hearing.

The Court allowed extensive argument from both parties' counsel on both procedural and substantive issues. The Court took the matter under advisement at the conclusion of the hearing to allow time for a detailed reading of the parties' submissions and other matters in the file and further consideration of the ruling contained within this Temporary Order.

Based on the pleadings, the Motion, the Memorandum of Law, the Return to Motion, the Motion *in Limine*, the financial declarations, the affidavits and exhibits, the court required forms such as parenting plans, other matters in the Court's file, the stipulations of the parties, the representations made by counsel, and applicable law, this Court makes the following findings of fact and conclusions of law.

This is a temporary adjudication of the issues presented at the temporary hearing and is not a permanent or final adjudication of any issues raised and is wholly without prejudice to either party's position on a final adjudication of any issues.

### **Jurisdiction and Venue**

Husband and Wife married on April 22, 2006. The parties are citizens and residents of Greenville County, South Carolina and so resided for more than three (3) months prior to the commencement of this action.

The issues raised in the pleadings are within the exclusive jurisdiction of this Court pursuant to S.C. Code § 63-3-530. This Court has personal and subject matter jurisdiction over the parties and this action.

Greenville County, South Carolina is the proper venue for this action.

### **Temporary Stipulations – By Written Document**

At the commencement of the March 15, 2023 hearing, counsel announced the resolution of many issues on a temporary basis. These temporary stipulations were reduced to writing in a document titled “Stipulations for Temporary Order” (the “Temporary Stipulations”), and provided to the Court for review. The Temporary Stipulations are attached hereto as Exhibit A and are hereby adopted, approved, incorporated into, merged and integrated with, and made the Order of this Court.

### **Contested Issues**

With the above stipulations resolving certain issues, the below issues from the Motion remain for a decision by this Court:

1. Husband’s request that this Court terminate any claim either party may have to alimony or spousal support, and refusing to award alimony or spousal support to either party; and
2. Husband’s request that this Court require Wife to account for any and all marital or non-marital assets which she has depleted, liquidated, altered, or encumbered in any way, and all debt incurred, since the commencement of her alleged marital misconduct.

Additionally, Wife's Return to Motion sought alimony. Wife's Motion *in Limine* sought to "exclude introduction of or references to certain electronic communications improperly intercepted from Wife's electronic devices" because Husband allegedly "intercepted electronic communications of Wife by installing/downloading spyware onto Wife's electronic devices without Wife's knowledge or consent." Husband objected to the Court considering either of Wife's requests because Wife did not give Husband timely notice of either of her motions under Rules 21(a), SCRFC, and Rule 6(d), SCRCP, respectively.

### **Findings and Conclusions Regarding Contested Issues**

Husband and Wife have two minor children, Ella, born in 2007 (age 16), and Jack, born in 2010 (age 12).

The parties are living separate and apart, and have been so residing since January 20, 2023 when Husband voluntarily left the former marital residence after Wife was served with this action. Husband is 48 years old and he is employed in sales. Wife is 46 years old and currently resides in the former marital residence. Wife works part-time as a yoga instructor.

#### **Wife's Return to Motion**

Wife requested additional relief in the Return to Motion. Wife's Return to Motion was not served before the hearing. However, although not necessarily noticed in time, given the fact that Husband raised a bar to alimony in the Motion, and for purposes of judicial economy, it is appropriate to consider Wife's request for alimony.

#### **Wife's Motion *in Limine***

The central issue before the Court for adjudication is Husband's allegation that Wife committed adultery; if Wife committed adultery, there is a statutory bar to alimony and if she did not there is not a statutory bar to alimony.

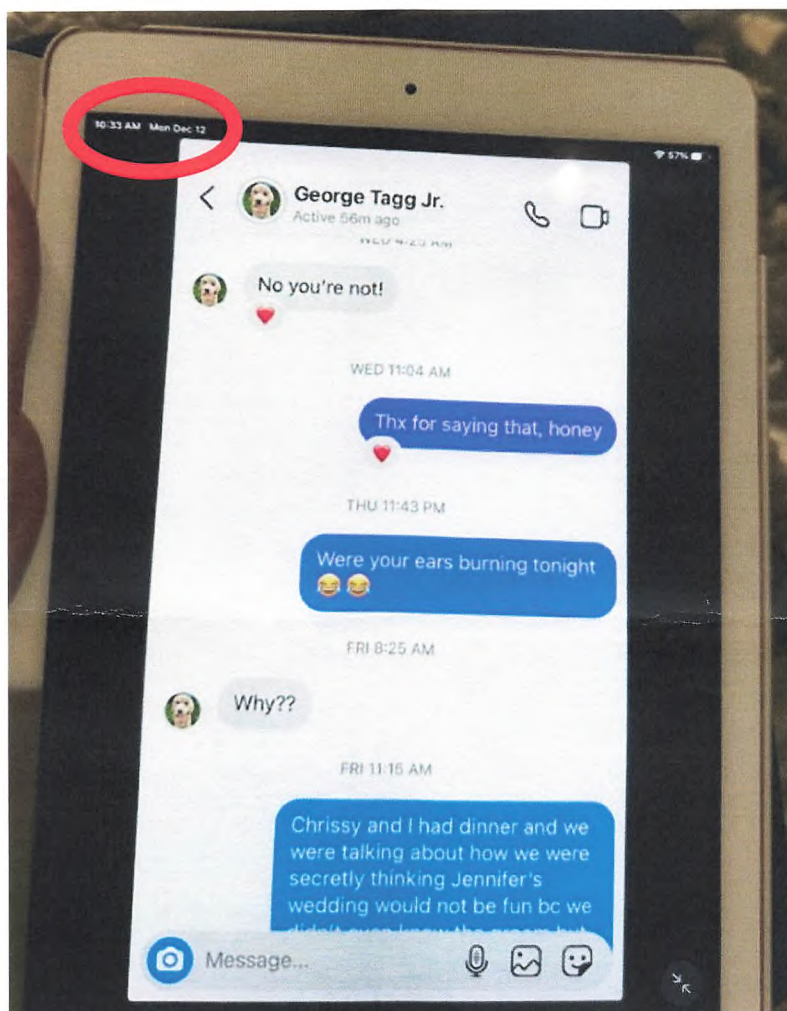
Proof of adultery must be “sufficiently definite to identify the time and place of the offense, and the circumstances under which it was committed.” *Nemeth v. Nemeth*, 325 S.C. 480, 484, 481 S.E.2d 181, 183 (Ct. App. 1997). However, “approximate times, places and the circumstances of such adultery” is sufficient. *DuBose v. DuBose*, 259 S.C. 418, 424, 192 S.E.2d 329, 331 (1972). Because, by its very nature, “adultery is an activity that takes place in private, the proof may be, and in fact generally will be, circumstantial.” *Id.* (citing *McLaurin v. McLaurin*, 294 S.C. 132, 363 S.E.2d 110 (Ct. App. 1987); *Loftis v. Loftis*, 284 S.C. 216, 325 S.E.2d 73 (Ct. App. 1985)).

On or about December 9, 2022, Wife exchanged numerous sexually explicit Instagram direct messages with a man named George C. Tagg, Jr., in which messages both Wife and Mr. Tagg refer to specific acts of sexual conduct (hereinafter, the “Sexually Explicit Messages”). Wife asserts the Court cannot consider the Sexually Explicit Messages because she claims such evidence was improperly obtained in violation of the South Carolina Homeland Security Act governing the interception of wire, electronic, or oral communications, S.C. Code § 17-30-10 *et seq.* (“the Homeland Security Act”).

As part of his submissions at the hearing, Husband presented pictures of the Sexually Explicit Messages on an iPad. Husband took these pictures with his cell phone, i.e. used one electronic device to manually photograph the screen of another electronic device. The pictures are of messages sent and received in an open application on an unprotected iPad used by Husband and Wife and readily accessible to them and the parties’ children. Husband denies the substance of Wife’s motion and asserts it was not timely served since Wife’s counsel handed a copy of the motion to his counsel at the commencement of the March 15, 2023 hearing.

Wife argues that the iPad was her personal iPad and that the other family members (parties’ children) had their own devices and she was the only family member who used or accessed this

particular device. Wife further argued that Husband loaded spyware (Dr. Fone) onto one of her devices so he could access data from her devices. She also argued that she had deleted these messages long before December of 2022 and that these messages were not readily accessible on her device. She further argued that Husband did not have consent, express or implied, to access her device and he intercepted electronic communications in violation of the S.C. Code § 17-30-10 *et seq.* and the Sexually Explicit Messages are not admissible. Wife does not deny the authenticity of the Sexually Explicit Messages or that she sent and received the messages. The evidence establishes that Husband used his cell phone to take photographs of a communal iPad located in the family residence prior to separation, as can be seen by the below exemplar photograph.



It is obvious that the above photograph, which is identical in form to the other photographs Husband submitted, is a photograph of an electronic device. For but two examples, the bezel of the iPad is clearly seen, as is the date and time on the screen of the iPad (circled – 10:33 AM Mon Dec 12) when Husband took the photo.

While Wife raised the specter of illegal conduct by Husband, there is not sufficient supporting evidence to bar the Sexually Explicit Messages coming into evidence and being considered by this Court at this time.

### **Alimony**

In support of his position that alimony is barred, Husband relies on the Sexually Explicit Messages as well as his claim that Wife admitted to him that she broke the marital vows. In addition to admitting to exchanging the Sexually Explicit Messages with Mr. Tagg, which she described as “flirtatious and complimentary” and that they “became inappropriate and even a bit cringe worthy”, Wife admits that she met Mr. Tagg for the first time at family friend’s wedding in Florida in February, 2022. Wife denies that she engaged in any interactions with Mr. Tagg that were sexual in nature or that she and Mr. Tagg were ever alone together.

Husband alleges Wife’s conduct rises to the level of adultery and thus she is statutorily barred from being awarded alimony pursuant to S.C. Code § 20-3-130.

Wife denies that she admitted to Husband she broke their marital vows. Wife denies that she has participated in any physical sexual activities together with Mr. Tagg and that she has not had any “sexual physical form of contact with another man or woman, other than Jeff since we married.” Wife further argues that she and Mr. Tagg have never been alone together where there was an opportunity to engage in a sexual act. Wife denies she committed adultery and in her

Return to Motion she seeks an award of alimony. In her affidavit submitted at the hearing, Wife specifically requested between \$14,000 and \$16,000 in monthly alimony.

The Sexually Explicit Messages go beyond being merely “flirtatious and complimentary”. They graphically describe sexual conduct using language that is commonly known even if rarely put into words. The words used and the conduct described are not vague or ambiguous, nor are they open to more than one interpretation. Wife and Mr. Tagg communicated with one another at a definite time and under definite circumstances. They communicated only with one another with the intent to give and receive mutual sexual gratification, which they each confirmed to each other that they received. The Sexually Explicit Messages indicate Wife and Mr. Tagg pleased themselves to orgasm while referencing specific locations and body parts.

The Court must consider whether either party has committed marital misconduct in the alimony analysis. S.C. Code § 20-3-130(C)(10) (“[i]n making an award of alimony . . . the court must consider and give weight in such proportion as it finds appropriate to all of the following factors: . . . (10) marital misconduct or fault of either or both parties, whether or not used as a basis for a divorce or separate maintenance decree if the misconduct affects or has affected the economic circumstances of the parties, or contributed to the breakup of the marriage . . .”).

Husband made a *prima facie* showing of marital misconduct by Wife. Whether Wife’s conduct rises to the level of adultery and thus serves as a statutory bar to an award of alimony is reserved for adjudication by the Court at the final merits hearing. However, the Sexually Explicit Messages are horrific and damaging, and they have the potential to cause harm to the minor children. The Court, *sua sponte*, finds it necessary to place additional restraints and requirements on the parties regarding dissemination of the Sexually Explicit Messages as set forth more fully in the ordering clause below. The Court will file a separate order to seal the file.

**I therefore order:**

1. **Stipulations.** The Temporary Stipulations attached hereto as Exhibit A are approved and incorporated into this Temporary Order as if repeated verbatim in this ordering clause.

2. **Unallocated Monthly Payments.** Husband shall make monthly unallocated payments directly to Wife in the amount of Two Thousand Five Hundred and 00/100 (\$2,500.00) Dollars, commencing April 1, 2023, and continuing on the first day of each month thereafter. Whether these payments shall be considered alimony or as an advance to Wife from her portion of the equitable apportionment of the marital estate shall be determined by the Court at the final merits hearing. This provision serves as a temporary adjudication of Wife's request for alimony.

3. **Accounting.** Each party shall account for all marital assets he or she has depleted, liquidated, altered, or encumbered in any way, and all marital debt incurred, since the date of filing of this action or since the first evidence of marital misconduct by either party, whichever is earlier. If Husband withdraws or otherwise utilizes funds from the home equity line of credit ("HELOC") associated with the former marital residence, he shall provide an accounting of such funds contemporaneously with the withdrawal. Whether any such HELOC withdrawals constitute a depletion of a marital asset to be charged against Husband or as a payment of expenses not to be charged against Husband shall be determined by the Court at the final merits hearing.

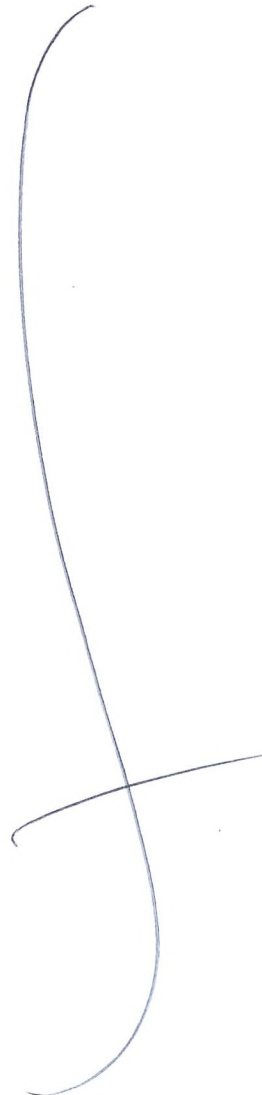
4. **Restraint Against Disseminating Evidence.** Both parties are specifically restrained from disseminating the Sexually Explicit Messages outside of this case. If either party has disseminated the Sexually Explicit Messages outside of this case, he or she shall make reasonable efforts to retract the disseminated Sexually Explicit Messages.

5. **Other Issues.** All other issues related to temporary relief which are not addressed in this Temporary Order are held in abeyance.

I so order.

  
\_\_\_\_\_  
Rochelle Y. Conits  
Family Court Judge

Greenville, South Carolina  
5/25, 2023



**EXHIBIT A**

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT FOR THE
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
	)	
Jeffrey Ellicott Lindley,	)	
	)	
Plaintiff,	)	STIPULATIONS FOR
	)	TEMPORARY ORDER
vs.	)	
	)	
Sara Elizabeth Lindley,	)	
	)	
Defendant.	)	Docket No:
		2023-DR-23-0198

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Plaintiff (“Husband”) and Defendant (“Wife”) stipulate the following matters *pendente lite*, which shall be incorporated into the Temporary Order to be issued from the temporary hearing to be held on March 15, 2023.

1. **Non-Prejudicial.** These Stipulations are not a permanent or final resolution of any issue, and are not prejudicial to the position of either party on the final adjudication of any issue except as stated herein. Any sums Husband agrees to pay herein on behalf of Wife or for her benefit are specifically without prejudice to his position that Wife is not entitled to alimony or spousal support on a temporary or final basis.

2. **Custody and Parenting Time.**

a. **Custody.** The parties shall maintain joint custody of the minor children E.N.L. and J.E.L. as defined herein.

b. **Decisions.** Each party shall have equal access to medical, educational, and other related information concerning the minor children as provided for under law.

i. **Day to day.** The day to day, ordinary decisions regarding the children’s care and well-being shall be made by the party with whom the children are physically present at the time the decision is to be made.

## EXHIBIT A

ii. Major. Major decisions, including but not limited to those concerning the children's health (to be broadly defined, including but not limited to medical, dental, vision, prescription, psychiatric, psychological, testing, counseling, optical, orthodontic, learning, therapy, intervention, treatment, immunization/inoculation/vaccination, and/or similar physical, mental, or emotional health), education (including choice of school, tutoring, and the like), extracurricular activities, social behavior, body image (including significantly varied personal appearance, cosmetic surgery, body piercing, body modification, tattooing and the like), discipline style, and religious training shall be made jointly after significant communication between the parties during which the opinions and perspectives of each party are considered over a reasonable period of time. To the extent the parties cannot reach an agreement, Wife shall make the final decision.

c. Weekend and Weekday Placement. Husband shall have parenting time with the minor children as detailed herein, which the parties may alter by mutual agreement in writing (text message, e-mail, or other similar electronic communication used by both parties showing agreement is acceptable). To the extent the below schedule does not place the children with Husband, they shall be with Wife.

i. Weekends. Commencing Friday, March 24, 2023, Husband shall have visitation with the minor children on alternating weekends commencing when school is dismissed on Friday and concluding when school begins on Monday morning.

ii. Weekdays. Each week, Husband shall mid-week visitation with the children on a day and at a time mutually agreed upon by Husband and the children, taking into consideration the children's schedules. In the event there is no agreement the default night shall be every Thursday from the time school is dismissed until 8:00 p.m.

**EXHIBIT A**

d. Summer: Husband and Wife shall share an alternating week on/week off schedule during the months of June and July. A summer week shall be defined as Sunday at 6:00 p.m. until the immediately following Sunday at 6:00 p.m. For summer 2023, Wife shall have the children the week of May 28, 2023 through June 4, 2023, and then the parties shall alternate weeks. Summer visitation shall end with Wife having the children the week of July 23, 2023 through July 30, 2023. Thereafter, the Weekend and Weekday schedule shall resume with Husband having the children the weekend beginning August 4, 2023.

e. Holiday:

i. Spring School Break. Husband shall have spring school break on even-numbered years starting at 6:00 p.m. the last day of school and ending at 6:00 p.m. the evening prior to the children returning to school. Wife shall have spring school break on odd-numbered years starting at 6:00 p.m. the last day of school and ending at 6:00 p.m. the evening prior to the children returning to school.

ii. Easter: If Easter does not coincide with the children's school spring break, Husband shall have child placement from 6:00 p.m. on the children's last day of school prior to Easter until 6:00 p.m. the night before the children return to school after Easter in even-numbered years. Wife shall have this placement on odd-numbered years.

iii. Thanksgiving Visitation: Husband shall have Thanksgiving vacation on odd-numbered years, and Wife shall have Thanksgiving vacation on even-numbered years. Thanksgiving shall commence at 6:00 p.m. on the last day the children are in school or would be in school if they were attending school, and shall end at 6:00 p.m. on the following Sunday.

iv. Christmas Visitation: Wife shall have the children during the first half of Christmas break on odd-numbered years starting at 6:00 p.m. the day school lets out and ending

## EXHIBIT A

2:00 p.m. Christmas Day and shall have the second half of Christmas break on even-numbered years starting at 2:00 p.m. Christmas Day and ending at 6:00 p.m. the evening prior to school starting back. Husband shall have the same Christmas holiday with the children except it shall be on the alternating years.

v. Mother's Day/Father's Day: The children shall be with the mother on Mother's Day and with the father on Father's Day from 9:00 a.m. until 9:00 p.m. (Regardless of whose weekend upon which it may fall.)

vi. Monday/Friday Days Out of School: As to any other Monday or Friday the children are not in school (e.g. snow days, holidays, teacher workdays, and the like), the parent having the children for that weekend as a normal part of the alternating weekends or selected summer visitations shall have the children on that Monday the holiday is celebrated until 6:00 p.m. or starting at 6:00 p.m. the Thursday night before the Friday out of school. This does not include Memorial Day 2023, as the alternating week on/week off summer schedule includes that day.

vii. Birthday Visitation: On each parent's birthday, the children shall be with that parent from 8:00 a.m. until 9:00 p.m. except for school days when the children shall be with that parent from 5:30 p.m. until 8:30 p.m. (This does not allow for the children to be taken out of school; neither does this require the parent to take time off from work.) The party not having the children on a child's birthday shall have three (3) hours on a non-school day and two (2) hours on a school day, independent of any activity of the party with whom the children are placed on that day. This visitation shall be at a reasonable time but not to conflict with any activity the primary party having the child on that day may be having for the child. All the children shall be together on any of their sibling's birthdays.

f. Interruption of Scheduled Time: The Weekend and Weekday visitation shall be

## EXHIBIT A

suspended during the entire Christmas school vacation, the entire school spring break/Easter vacation, the entire Thanksgiving school vacation, and summer such that the party not having the last weekend with the children as part of the vacation/summer shall have the first weekend with the children thereafter, and the alternating weekend schedule shall recommence.

g. Transportation. Unless otherwise mutually agreed in writing (text message, e-mail, or other similar electronic communication used by both parties showing agreement is acceptable), Husband shall pick up the children at the commencement of his parenting time and shall return the children to Wife's residence or the children's school; provided, the older party is expected to drive herself (the car she drives may be parked if she does not) and may also drive the younger child depending on the circumstances. Each party shall be responsible for transportation of the child(ren) during his or her time with them.

h. In the event a party cannot attend the child(ren)'s scheduled events in which parental involvement is expected or encouraged, and/or in the event a party is unavailable to be with the child(ren) on an overnight basis, then the other party shall be given the first option to participate in the events or care for the child(ren). Notice shall be provided to the other party as soon as a conflict or unavailability is known.

3. Former Marital Residence. Wife shall have temporary use and possession of the home and real property located at 3 Seminole Drive, Greenville, South Carolina (the "Former Marital Residence"). Husband shall pay the mortgage, taxes, and insurance related to the Former Marital Residence and he shall be entitled to seek a credit in equitable apportionment for the reduction in the principal balance on the mortgage resulting from the payments he makes during the pendency of this action. Wife shall pay the utilities and maintenance on the Former Marital Residence; provided, Husband shall pay any necessary repair over \$500 (which he may get quotes for and may handle

## EXHIBIT A

arrangements for the repair) and he shall be entitled to seek a credit in equitable apportionment for any such amounts expended.

4. **Sale of Lake Lot and Boat.** The parties shall cooperate to immediately list for sale the lot located at 806 Bright Leaf Court, Seneca South Carolina and the 2022 MasterCraft boat. All net sale proceeds from the sale of either asset shall be held in escrow pending the final order in this case, unless the parties agree otherwise.

5. **Vehicles.**

a. Wife shall have use and possession of the vehicle she drives, and Husband shall have use and possession of the vehicle he drives. Husband shall be responsible for the taxes and insurance associated with Wife's vehicle and Husband's vehicle; otherwise, each party shall be responsible for the expenses associated with their respective vehicles.

b. Husband shall be responsible for the reasonable expenses associated with the vehicle the parties' daughter drives; provided, this provision does not prevent this vehicle from being parked for disciplinary purposes or if the child refuses to abide by the visitation schedule provided herein.

6. **Accounts and Debts.**

a. Each party shall have exclusive use and possession of any cash or money in accounts in their respective possession and/or control, and/or titled in their respective name.

b. Except as otherwise detailed in this Order, each party shall be responsible for the timely payment of any and all debts listed solely in his or her name, and any and all debts incurred by him or her.

7. **Child Support.**

a. Husband shall pay to Wife child support in the sum of Three Thousand, Five Hundred and 00/100 (\$3,500.00) Dollars per month commencing April 1, 2023, and on the first

## EXHIBIT A

day of every month thereafter. The parties have calculated the child support amount based on Husband's monthly gross income; no monthly income for Wife; Husband pays approximately \$273.50 per month for the children's health insurance premiums; and in consideration of Husband's payment for both children to continue to attend Christ Church Episcopal School.

b. For so long as it is in the children's best interests, as an incident of child support, Husband shall pay the tuition and required fees associated with the minor children's attendance at Christ Church Episcopal School.

### **8. Health Insurance and Uninsured Medical Expenses.**

a. Health and dental insurance for minor children. So long as it remains available to him through his employment at the same or substantially similar expense, Husband shall timely maintain and provide each child with the existing health, dental, and vision insurance coverage.

b. Uninsured medical expenses for minor children. Wife shall pay the first \$250.00 of uninsured (that is, not covered by insurance) health (to be broadly defined, including but not limited to medical, dental, vision, psychiatric, psychological, testing, counseling, optical, orthodontic, learning, therapy, intervention, treatment, immunization/inoculation/vaccination, and/or similar physical, mental, or emotional health) expenses not covered by insurance incurred by or on behalf of Wife and the parties' children every year. Thereafter, Husband shall pay ninety percent (90%) and Wife shall pay ten percent (10%) of the necessary, uninsured health expenses not covered by insurance incurred by or on behalf of the minor children. Any uncovered health care expense shall be paid by the party responsible within thirty (30) days of his or her being given a copy of the bill, statement, or Explanation of Benefit (EOB) showing the diagnosis or prognosis, the treatment and the expense therefore. The party obtaining health care for the child shall provide the bill, statement, or EOB to the other parent within thirty (30) days of incurring the expense.

## EXHIBIT A

Payment shall be made to the health care provider or, if the provider has been paid, directly to the other party, regardless of whether the insurance reimbursement has been received.

c. Health insurance and uninsured medical expenses for each party. So long as it remains available to Husband through his employment at the same or substantially similar expense, Husband shall timely maintain and provide Wife with the existing health insurance coverage on a temporary basis.

9. **Restraining Orders.** The parties shall be restrained and enjoined from:

a. Disposing, transferring, selling, hypothecating, mortgaging, pledging, alienating, destroying, devaluing, or otherwise altering the status or value of any asset (of any kind, no matter how titled or in whose possession, custody, or control) in any manner outside the ordinary course of living/business (to specifically exclude any transactions with/for any person who is an alleged paramour or one who under the circumstances may reasonably be construed as a paramour), to comply with a court order, to pay attorney's fees and costs, or mutual written agreement of the parties, pending a final Order of this Court. Regarding the home equity line of credit ("HELOC") associated with the Former Marital Residence:

i. Husband shall have access to the HELOC to pay the anticipated tax liability of \$87,825 associated with the married filing jointly 2022 federal tax return as prepared by Bradshaw, Gordon & Clinkscales, LLC (and any agreed upon revisions to same), which they agree to timely file.

ii. On or before March 31, 2023, each party shall be entitled to pay from the HELOC up to \$30,000 each in attorney's fees and costs (\$60,000 total), not including any amounts already paid from the HELOC by either party towards their own or the other party's attorney's fees and costs. Any such contribution shall be without prejudice to either party's right to seek

## EXHIBIT A

reallocation of these amounts as part of the issues of equitable apportionment and attorney's fees and costs at the final hearing in this matter. Either party may seek a second temporary hearing regarding access to the HELOC or other assets for attorney's fees and costs if this matter is not resolved in mediation.

b. Except as stated herein, incurring any debt or expense in the parties' joint names, the other party's name, or for which the other party could be held responsible;

c. Engaging in any conduct of the nature or type which impedes or might tend to impede the other party's employment, or any conduct which in any way harms the other party's professional reputation. This restraint does not prohibit either party from issuing subpoenas to the other parties' employer for information relevant to this litigation or from addressing any civil or criminal matters related to the parties' employment. This restraint specifically includes but is not limited to a restraint on each party from disparaging the other party to any third party or online/social media; and

d. Destroying, deleting, losing, concealing, or altering any paper document or electronically stored information ("ESI") and other data or information generated by and/or stored on any electronic device in that party's possession, custody, or control (including but not limited to computer(s), phone(s), tablet(s), and thumb drive/memory card/flash memory).

**10. Child-Related Restraining Orders.** Both parties shall be restrained and enjoined from:

a. Having any form of physical or verbal confrontation in front of the minor children, or allowing a third party to have such a confrontation;

b. Physical discipline of the minor children;

c. Discussing the specifics of, or otherwise providing the details of, this litigation directly with, to, or in the presence of the minor children, or allowing a third party to so discuss or

## EXHIBIT A

provide; provided, each parent shall be allowed to tell the minor children of the existence of any court order and the need to follow it. The only exception to this restraining order is if a child is in counseling or under psychological/psychiatric care and the care provider believes it is in the child's therapeutic best interest to discuss the same, but this may only be done in that limited context absent a written order to the contrary.

d. Making disparaging remarks or negative comments about or toward the other parent to or in the presence of the minor children, or in a manner in which the minor children may become aware of the disparagement, or allowing a third party to so disparage the other parent;

e. Making disparaging remarks or negative comments about or toward the minor children to or in the presence of the minor children, or in a manner in which the minor children may become aware of the disparagement, or allowing a third party to so disparage the children;

f. Using profanity or verbally abusive language in the presence of the minor children, or in a manner in which the minor children may become aware of the profanity or verbally abusive language, or allowing a third party to so verbally abuse;

g. Excessively using or being under the influence of alcoholic beverages in the presence of or while caring for the minor children, or allowing a third party to do so;

h. Possessing, using, or being under the influence of any drug that is illegal to possess or use in any quantity in South Carolina (to specifically include but not be limited to cannabis, marijuana and derivatives such as liquid tetrahydrocannabinol (THC) and edible THC, regardless of prescription), kratom, any non-prescribed legal drug, or any synthetic drug, in the presence of or while caring for the minor children, or allowing a third party to do so;

i. Misusing or abusing any prescription drug or other mind-altering substance in the presence of or while caring for the minor children, or allowing a third party to do so;

## EXHIBIT A

- j. Exposing the minor children to any illegal, illicit, or immoral activity, or allowing a third party to do so;
- k. Exposing the minor children to any person who is an alleged paramour or one who under the circumstances may reasonably be construed as a paramour, so long as the parties are married.
- l. Conduct detrimental to the minor children of a particular nature relating to the children's particular needs, for but one example exposing a child to any substance to which they are allergic or failing to address their medical needs;
- m. Smoking or vaping in the presence of the minor children, or allowing a third party to do so;
- n. Exposing the minor children to age-inappropriate games or movies, or allowing a third party to do so;
- o. Displaying any sexually explicit or otherwise indecent material, or exhibiting any sexually explicit or otherwise indecent behavior, to or in the presence of the children, or allowing a third party to do so
- p. Failing to properly supervise the children;
- q. Failing to properly and safely secure any and all firearms when caring for the minor children;
- r. Providing the minor children with a mobile/cellular telephone without the other parent's consent; and
- s. To the extent not otherwise addressed herein, engaging in conduct or exposing the minor children to situations that endanger their physical, mental, or emotional wellbeing.

**EXHIBIT A**

11. **Parenting Guidelines.** The parties are required to see that:

a. When the children are in their care, the children properly and timely attend school (avoiding excessive tardies) and are not out of school in violation of any educational requirement of this State; and

b. When the children are in their care, the children receive proper medical attention and appropriately take prescribed medications or reasonably necessary medical treatments and to that end shall ensure that when the children are in their care, they attend any scheduled medical appointments and shall exchange medications which are to be taken, all as might be reasonable and appropriate.

12. **No Adverse Contact Order.** Each party shall be subject to a “no adverse contact order” (hereinafter “NACO”) which shall restrain each of them from engaging, directly or indirectly, in adverse conduct towards the other. This NACO shall permit the parties to contact, associate, and communicate with one another only so long as both parties mutually consent to such contact, association, or communication; provided, in no event shall the parties be prevented from reasonable and appropriate communications regarding their children. The purpose of this NACO is to both encourage and require civil contact and communication between the parties, and to prevent unpleasant contact and communication. This NACO is not intended to trigger, implement or effect any provisions of 18 U.S.C. §§ 922(g) (and any subparts) or S.C. Code § 16-25-30 (and any subparts), nor is the NACO intended to rise to the level of, or be considered, an order of protection as defined in S.C. Code §§ 20-4-10 *et seq.* Willful violations of this NACO (including but not limited to inappropriate communications) shall subject the offending party to this Court’s contempt powers.

13. **Attorney’s Fees and Costs.** Husband has contributed the sum Twenty Thousand and 00/100 (\$20,000) Dollars towards Wife’s attorney’s fees and costs. Husband’s contribution is

## EXHIBIT A

without prejudice to Husband's right to seek reallocation of this amount as part of the issues of equitable apportionment and attorney's fees and costs at the final hearing in this matter.

14. **Mediation.** The parties shall attend mediation with Kelly Pope-Black, Leslie Riddle, or any other mutually agreeable mediator upon the completion of the written discovery process as well as any depositions sought by a party before mediation (without prejudice to further written discovery and depositions if mediation fails) and as soon as each party's and counsel's schedules allow; provided, in any event, this mediation shall occur no later than July 31, 2023 unless the parties mutually agree otherwise.

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 )  
 )  
Jeffrey Ellicott Lindley )  
 Plaintiff, )  
 vs. )  
 )  
Sara Elizabeth Lindley )  
 Defendant. )

IN THE FAMILY COURT  
 THIRTEENTH JUDICIAL CIRCUIT

**SUPPORT INFORMATION SHEET**

Docket No. 2023-DR-23-198

Check appropriate box:

- No spousal or child support ordered. (No other items should be completed.)  
 If support is ordered to be paid directly or through the Court, **you must complete BOTH pages** (as applicable).

Obligation Type	Child Support	Spousal Support	Other
Amount	\$	\$	\$2,500.00
Collection Costs (5%)	\$	\$	\$
<b>Payment Frequency</b>			
Payment Start Date	April 1, 2023		
Weekly	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bi-weekly	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monthly	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Semi-monthly (1st & 15th)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Semi-monthly (15th & 30th)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Total Arrearage Amount</b>	\$	\$	\$
<b>Wage Withholding</b>			
Required by S.C. Code Ann. §63-17-1420	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ordered	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Not Ordered	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Name of Custodial Parent (if applicable): \_\_\_\_\_

**\*\*\*\*\*OBLIGOR'S DESIGNATION STATEMENT: PAYMENT OF COURT COSTS\*\*\*\*\***

I acknowledge that S.C. Code Ann. § 63-3-370 requires that I pay and the Family Court has ordered that I pay court costs in an amount equal to five (5) percent of any support payment made through the Clerk of Court or the centralized wage withholding system. I owe and will pay these costs in addition to my support obligation.

To meet my duty to pay court costs, I designate an amount equal to five (5) percent of the support payment I make to be applied and distributed in payment of court costs, not support.

I acknowledge the Clerk of Court or, if payments are withheld from my income, the centralized wage withholding system to deduct the fee from every payment made by me or on my behalf.

I acknowledge that should I not pay the full amount due, that an arrearage will accrue and that the Clerk of Court may take enforcement action against me for failure to pay all amounts ordered by the Court.

If an amendment to the law changes the amount of court costs, this designation authorizes deduction of court collection costs in the amount established by law.

Date: \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
 Signature of Person paying Support\*\*

**\*\*NOTE TO CLERK: FILE AND PROCESS THIS FORM EVEN IF SIGNATURE OF PERSON PAYING SUPPORT IS NOT PROVIDED.\*\***

# IDENTIFYING INFORMATION ON THIS PAGE

## A. OBLIGEE/PAID TO:

Name: Sara Elizabeth Lindley  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Email Address: \_\_\_\_\_ Phone: \_\_\_\_\_  
SSN: \_\_\_\_\_ Gender: Female Race: Caucasian Height: \_\_\_ Weight: \_\_\_  
Date of Birth: \_\_\_\_\_ Scars: \_\_\_\_\_  
Driver's License Number: \_\_\_\_\_ Driver's License Issuing State: \_\_\_\_\_  
Employer: \_\_\_\_\_  
Employer Address: \_\_\_\_\_

## B. OBLIGOR/PAID BY:

Name: Jeffrey Ellicott Lindley  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Email Address: \_\_\_\_\_ Phone: \_\_\_\_\_  
SSN: \_\_\_\_\_ Gender: Male Race: Caucasian Height: \_\_\_ Weight: \_\_\_  
Date of Birth: \_\_\_\_\_ Scars: \_\_\_\_\_  
Driver's License Number: \_\_\_\_\_ Driver's License Issuing State: \_\_\_\_\_  
Employer: \_\_\_\_\_  
Employer Address: \_\_\_\_\_

## C. CHILDREN

CHILDREN'S NAMES	DATE OF BIRTH	SSN
1. ENL	2007	
2. JEL	2010	
3.		
4.		
5.		
6.		

\_\_\_\_\_  
PREPARED BY

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

STATE OF SOUTH CAROLINA )

COUNTY OF GREENVILLE )

Jeffrey Ellicott Lindley )

Plaintiff, )

vs. )

Sara Elizabeth Lindley )

Defendant. )

IN THE FAMILY COURT  
THIRTEENTH JUDICIAL CIRCUIT

**JUDGMENT IN A  
FAMILY COURT CASE**

FILED CLERK OF COURT  
GREENVILLE, SC

2023 MAY 26 A 11:49

Docket No. 2023-DR-23-198

Submitted by:  Reid T. Sherard	Attorney for <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant <input type="checkbox"/> GAL

**DECISION BY COURT** (check all that apply)

- This action came to trial, hearing or was resolved by consent and an order was rendered.
- This action has been dismissed pursuant to  Rule 12(b), SCRPC  Rule 41(a), SCRPC
- Rule 43(k), SCRPC  Family Court Benchmark
- Other: \_\_\_\_\_

**IT IS ORDERED AND ADJUDGED:**  See attached order;  Statement of Judgment by the Court:

Additional information for Clerk: \_\_\_\_\_

**ORDER INFORMATION**

- This is a  Temporary  Final order. If Final, does this order end the case?  Yes  No
- Support  is not ordered  is ordered, and it is to be paid  through the court.  directly to the CP.
- Case number under which support is paid if different from this one: \_\_\_\_\_
- This order involves the immediate  issuance  dismissal of a bench warrant, or  does not apply.
- The following motions are ended by this order (include motion filing date): Plaintiff's Motion for Temporary Relief (filed January 18, 2023) and Defendants Return to Motion and Motion for Temporary Relief.
- This order adds or dismisses the following parties to this case:
- dismiss  add: \_\_\_\_\_  dismiss  add: \_\_\_\_\_

INFORMATION FOR THE JUDGMENT INDEX/TRANSCRIPT OF JUDGMENT (§ 20-3-670(B)(1))		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information to enroll, indicate "N/A" in one of the boxes below.		
Judgment In Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount to be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order: _____		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the South Carolina Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: title abstractors and researchers should refer to the official court order for judgment details.**

*Reid T. Sherard*  
Family Court Judge

4141  
Judge Code

6-25-23  
Date

**FOR CLERK OF COURT OFFICE USE ONLY**

This judgment was entered on the \_\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on \_\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

CLERK'S USE ONLY

\_\_\_\_\_  
\_\_\_\_\_

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

CLERK'S USE ONLY

\_\_\_\_\_  
\_\_\_\_\_

**ATTORNEYS FOR THE DEFENDANT(S)**

\_\_\_\_\_  
**CLERK OF COURT**

**Court Reporter:** \_\_\_\_\_

**Custodial Parent (if applicable):** \_\_\_\_\_

STATE OF SOUTH CAROLINA )  
COUNTY OF GREENVILLE )

IN THE FAMILY COURT  
THIRTEENTH JUDICIAL CIRCUIT

Jeffrey Ellicott Lindley, )

FILED CLERK OF COURT  
GREENVILLE, SC  
2023 MAY 26 A 11:49  
FAMILY COURT

**MOTION AND ORDER INFORMATION  
FORM AND COVERSHEET**

vs. )

Sara Elizabeth Lindley, )

Defendant. )

Docket No. 2023-DR-23-198

Plaintiff's Attorney:  
Reid T. Sherard, Bar No. 72536  
Jordan W. Peeler, Bar No. 102558  
Address: P.O. Box 2048, Greenville, SC 29602  
Phone: 864-240-3278 Fax 888-696-4585  
E-mail: [rsherard@hsblawfirm.com](mailto:rsherard@hsblawfirm.com)  
[jpeeler@hsblawfirm.com](mailto:jpeeler@hsblawfirm.com)

Defendant's Attorney:  
E. Kimberly Berry, Bar No. 13286  
Address: 1225 S. Church Street, Greenville, SC 29605  
Phone: 864-421-0036 Fax 864-421-9060  
E-mail: [kimb@mbllc.com](mailto:kimb@mbllc.com)

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

**SECTION I: Hearing Information**

Nature of Motion:

Estimated Time Needed:

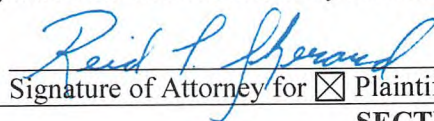
Court Reporter Needed:  YES/ NO

Unavailable Dates:

**SECTION II: Motion/Order Type**

- Written motion attached
- Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

  
Signature of Attorney for  Plaintiff /  Defendant

May 22, 2023  
Date submitted

**SECTION III: Motion Fee**

- PAID – AMOUNT: \$
- EXEMPT: (check reason)
  - Rule to Show Cause in Child or Spousal Support
  - Domestic Abuse or Abuse and Neglect
  - Indigent Status  State Agency v. Indigent Party
  - Sexually Violent Predator Act  Post-Conviction Relief
  - Motion for Stay in Bankruptcy
  - Motion for Publication  Motion for Execution (Rule 69, SCRPC)
  - Proposed order submitted at request of the court; or,  
reduced to writing from motion made in open court per judge's instructions  
Name of Court Reporter: Margaret A. Woods
  - Other: \_\_\_\_\_

**JUDGE'S SECTION**

- Motion Fee to be paid upon filing of the attached order.
- Other: \_\_\_\_\_

JUDGE CODE \_\_\_\_\_ Date: \_\_\_\_\_

Judge Signature: \_\_\_\_\_

**CLERK'S VERIFICATION**

- Collected by: \_\_\_\_\_ Date Filed: \_\_\_\_\_
- MOTION FEE COLLECTED: \$ \_\_\_\_\_
- CONTESTED – AMOUNT DUE: \$ \_\_\_\_\_

Custodial Parent (if applicable):  
SCCA 233F (12/2009)

**Exhibit G (Motion to Reconsider)**

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

FILED CLERK OF COURT  
GREENVILLE, S.C.  
2023 JUN 18 10:53 AM  
FAMILY COURT

) IN THE FAMILY COURT FOR THE  
) THIRTEENTH JUDICIAL CIRCUIT

Jeffrey Ellicott Lindley,  
Plaintiff,

Vs.

Sara Elizabeth Lindley,  
Defendant.

)  
)  
)  
) DEFENDANT'S NOTICE OF MOTION  
) AND MOTION TO RECONSIDER and  
) ALTER or AMEND JUDGEMENT  
) PURSUANT TO SCRPC 52, SCRPC 59(e)  
) and SCRP 60.

) Docket No.: 2023-DR-23-0198

TO: The Honorable Rochelle Y. Conits, Family Court Judge, and Reid T Sherard,  
Counsel for Plaintiff.

PLEASE TAKE NOTICE, Defendant Sara Elizabeth Lindley ("Wife"), by and through her undersigned counsel, moves before the Family Court for the Greenville County, Thirteenth Judicial Circuit, as soon as counsel may be heard, before the Honorable Rochelle Y. Conits, pursuant to Rule 52, Rule 59(e), and Rule 60 of the *South Carolina Rules of Civil Procedure*, for the Honorable Court to reconsider its Temporary Order field May 26, 2023 in the Family Court for Greenville County and received by Wife's counsel, via electronic mail on May 30, 2023 from the office of Plaintiff's ("Husband") counsel, in the following particulars:

1. Denial of Wife's Motion in Limine: The Court denied Wife's Motion in *Limine* to exclude introduction of or references to certain electronic communications improperly intercepted from Wife's electronic devices by Husband as any such communications were improperly intercepted in violation of *South Carolina Code* §17-30-10 -145 (2010) "The Act".

Wife retained Steven M. Abrams, J.D., M.S. who has performed over 1250 computer forensic investigations, been qualified as a computer forensic expert in numerous family court matters in South Carolina's family courts, federal court in the South Carolina Federal District Court and North Carolina. He was appointed the Court's Expert in the United States District Court,

District of South Carolina, Rock Hill Division. Due to timing and availability, a computer forensic examination could not be conducted and completed prior to the temporary hearing on March 15, 2023.

Mr. Abrams conducted a forensic examination of Wife's Apple devices (iPhone, iPad and MacBook laptop computer) which were provided to Mr. Abrams and provided an Affidavit of his findings dated June 7, 2023, a copy of which is attached hereto as "Exhibit 1". Following his forensic examination, the following was determined:

- Dr. Fone by Wondershare is a toolkit of applications for performing various system functions and hacks of Apple and Android mobile devices. *Exhibit 1 - Abrams Affidavit, p. 2;*

- Mr. Abrams uses the Dr.Fone toolkit in his practice when conventional forensic tools cannot get access to mobile devices and data. He utilizes the toolkit with an order or consent from the phone user/owner before employing the Dr.Fone tools that bypass security features of mobile devices, especially when they access data located off of the mobile device itself, such as in the cloud over the Internet. *Exhibit 1 Abrams Affidavit, p. 2;*

- Among the applications in the Dr. Fone Toolkit are apps to recover deleted data from Apple and Android devices, to bypass the passcodes on Apple Devices, and to transfer the data (including messenger apps like WhatsApp, and iMessage) from the mobile devices to a computer;. *Exhibit 1 Abrams Affidavit, p. 2;*

- Dr.Fone Phone Manager application, which allows data to be copied from mobile devices (Apple phones and tablets) to a MacBook computer, was installed on the Lindley MacBook in August 2022. On September 30, 2022, Husband configured the Dr. Fone phone manager app on the MacBook and propagated the application to the iPhone and iPad via shared iCloud drive storage. *Exhibit 1 Abrams Affidavit, pgs. 2, 3;*

• Forensic artifacts collected from the Lindley devices show that the principal installation of Dr.Fone occurred on the MacBook. **This happened on August 16, 2022.** Artifacts on the MacBook show that the Dr.Fone Phone Manager package was installed on the MacBook, and the Transfer app which is part of the Phone Manager was configured and integrated with the iTunes libraries on the MacBook on September 30, 2022. This would be a necessary step in setting up Dr. Fone to collect data, including deleted data from Apple mobile devices. *Exhibit 1 Abrams Affidavit, p. 3;*

• Various components of the Dr. Fone Phone Manager were accessed and used on the MacBook on at least three dates, September 30, 2022, March 23, 2023, and April 17, 2023. **There may have been additional dates between August 2022 and April 2023, the record of which was overwritten by subsequent use of the software.** *Exhibit 1 Abrams Affidavit, p. 3*

• **According to a Dr.Fone installation log file on the MacBook, on September 30, 2022, at 10:15PM, user “jlindley40” connected Dr.Fone to an iPhone and began a transfer from the iPhone to the MacBook. The iPhone is serial number D594HHC7XP which does not correspond with either of the Apple mobile devices examined. The log file details each photo that was copied from the iPhone in the four-minute transfer from 10:15 through 10:19 PM. This artifact time closely matches the Dr. Fone transfer application artifacts found on both the iPhone and iPad examined and confirms that jlindley40 was the user who likely pushed this application on to the iCloud drive shared by both of Sara Lindley’s Apple mobile devices.** *Exhibit 1 Abrams Affidavit, p. 3;*

• . . . it appears on the iPad (“Sara’s iPad”) that a Dr. Fone transfer application installation package (.drfone\_transfer\_setup\_full3354.dmg.icloud) was synched via iCloud at 10:09PM on September 30, 2022. (2022-10-01 02:09:23 (UTC)). The full path of this Dr. Fone transfer application is

“/mobile/Library/MobileDocuments/com~apple~CloudDocs/Documents/.drfone\_transfer\_setup\_full3354.dmg.icloud” The “/mobile/Library/MobileDocuments” portion of this path indicates that the file is in the iCloud share directory. **This indicates that jlindley40 used the MacBook to push this Dr.Fone transfer application over iCloud to the shared iCloud library at 10:09PM on September 30, 2022. *Exhibit 1 Abrams Affidavit, p. 3;***

- Sara Lindley’s iPhone also found this same Dr.Fone transfer application in the iCloud share directory, at the same exact time on September 30, 2022. This confirms that the iCloud from the MacBook was being shared with both the iPhone and iPad. They both saw and accessed the Dr.Fone application from iCloud placed there from the MacBook. *Exhibit 1 Abrams Affidavit, p. 4;*

- **Evidence confirmed that Dr.Fone toolkit was installed by Husband on the MacBook and via iCloud was shared with Sara Lindley’s iPhone and iPad. Thus, the Dr.Fone software was available on both of Wife’s Apple mobile devices. *Exhibit 1 Abrams Affidavit, p. 4***

- **The Dr.Fone transfer logfile from September 30, 2022, contains evidence that Husband installed the Dr.Fone Toolkit (which was installed on all three Apple devices examined) and used it to backup an iPhone, perhaps Husband’s, showing he had the knowledge and ability to use the software to copy data from iPhones and iPads. *Exhibit 1 Abrams Affidavit, p. 4.***

Based on the forensic examination of Wife’s devices, Mr. Abrams confirms that the Dr.Fone toolkit was installed on the MacBook, on September 30, 2022, at 10:15PM, and the user was “jlindley40”; jlindley connected Dr.Fone to an iPhone and began a transfer of data from the iPhone to the MacBook; the iPhone used is serial number D594HHC7XP which was not either Apple mobile devices examined and used by Wife. Mr. Abrams examination further confirms the log file details each photo that was copied from the iPhone in the four-minute transfer from 10:15 through

10:19 PM. This artifact time closely matches the Dr. Fone transfer application artifacts found on both the iPhone and iPad examined and confirms that jlindley40 was the user who likely pushed this application on to the iCloud drive shared by both of Wife's Apple mobile devices.

It is illogical to even assume that Wife is the one that installed Dr. Fone on the MacBook so she could recapture deleted written messages between she and Mr. Tagg and then transfer that data to an iPhone that most likely belongs to Husband and transfer this data into an iCloud account managed by Husband (Jeff Lindley "jlindley40")! A request for possession of Mr. Lindley's devices to allow for a forensic examination was made on May 26, 2023, in correspondence to his counsel, which to date has not been addressed or acknowledged by Husband.

Pursuant to *South Carolina Code* §17-30-65, "whenever any . . . electronic communication has been intercepted, no part of the contents of the communication and no evidence derived therefrom may be received in evidence, in any trial, hearing or other proceeding in or before the court . . ."

"Interception" as defined by *South Carolina Code* §17-30-15 (3) means the aural or other acquisition of the contents of any wire, electronic, or . . . communication through the use of any electronic, mechanical, or other device.

"Electronic Communication" as defined by *South Carolina Code* §17-30-15 (13) is any transfer, signs, signals, writing, images, . . . of any nature transmitted in whole or in part by a wire, . . . electromagnetic, photoelectronic, . . . or any other device that affects intrastate, interstate, . . . commerce.

*South Carolina Code* §17-30-20 (1), (3), and (4) provide that the Act is violated when an individual intentionally intercepts, attempts to intercept or procures any other person to use or attempt to intercept; intentionally discloses or attempts to disclose to any other person the contents of any electronic communication, knowing or having reason to know the information was obtained through interception; or when a person intentionally uses or attempts to use any contents of the

electronic communication knowing or having reason to know the communication was procured through the interception of an electronic device.

Husband intercepted electronic communications of Wife, without Wife's knowledge or consent, by installing/downloading spyware onto the MacBook used by Wife, to enable him to recover deleted electronic communications from Wife's devices, transfer data from Wife's devices to his electronic devices, migrate data from Wife's' devices to another electronic device of Husband's, and store data from Wife's electronic devices to another electronic device, which is a direct violation of the Act.

It does not matter that any one or all of these devices used in the collection, migration and transfer of data are devices Husband may claim ownership interest in. In *Fulmer v. Buckhannon. et. al.* Appellate Case No.: 2022-000330, our appellate court noted that even if an individual intercepting electronic communications owns the device from which the communications are being intercepted, there must be evidence that permissions to access the communications on the device was given.

Husband is further precluded from arguing that he had implied permission to access Wife's electronic communications because she provided him her pin code for a very limited purpose. Wife never gave Husband consent, actual or implicit, to install Dr.Fone on the MacBook so he could restore, collect and transfer data from Wife's iPad and iPhone or to view and share her private active messages or recover private deleted data from her phone. Wife certainly never consented, either actual or implied, for Husband to load Dr. Fone to access her devices. *Fulmer*, citing *Berry v. Funk*, 146 F.3d 1003, (D.C. 1998) quoting *United States v. Lanoue*, 71 F. 3d 966, 981 (1<sup>st</sup> Cir. 1995) held that without actual notice, implicit consent to an interception may only be implied "when the surrounding circumstances *convincingly* show that the party knew about and consented to the interception of the electronic communication.

It is important to note that all the message provided by Husband with specific sexual language or reference has no date stamp, day stamp or time stamp, while a few have dates in October and November. As noted by Mr. Abrams, the components of the Dr. Fone Manager were accessed on several occasions but there can be additional dates between August, 2022 and April, 2023, the “record of which was overwritten by subsequent use of the software” Abram’s Affidavit, p. 3. This distinction is important because Husband has been accessing Wife’s data through Dr. Fone since August. Husband knew or should have know about the messages between Wife and Mr. Tagg all the way up until November, when he engaged in sexual intimacy with while the parties vacationed together in Curacao and then gifted Wife a diamond ring for Christmas in December, 2022. There is no way to know how many times Husband accessed Wife’s data with Dr.Fone applications, given the “overwrite” feature, prior to Wife’s devices being turned over to counsel to Mr. Abrams.

Husband interception of Wife’s electronic communications are inadmissible and no part of the contents of the communications and no evidence derived therefrom may be received in evidence, any trial, hearing or other proceeding. South Carolina Code Section 17-30-65 (A), See *Fulmer, supra*. Further, any submissions by Husband that contain any data collected from any device used by Wife should be stricken from the record and removed from the Court’s file.

2. **Finding the iPad Husband accessed was a communal iPad and the photographs of messages were authentic**

The Temporary Order provides that “[t]he pictures are of messages sent and received in an open application on an unprotected iPad used by Husband and Wife and readily assessable to them and the parties’ children.” Temporary Order, pg. 5. The Court ruled that the “evidence establishes that Husband used his cell phone to take photographs of a communal iPad located in the family residence prior to separation . . .” Temporary Order, pg. 6.

Husband testified under oath in his affidavit, he “found explicit messages between Sara and George . . . I found these on the family iPad that Sara and I and the children all used. . . . Sara left the Instagram app open for me (or our children, or anyone else who picked it up) to read. I did not install spyware or take any illegal action on this iPad, or any other device used by Sara.” (Jeff Lindley Affidavit, p. 1). This testimony is false and tantamount to perjury. Not only did Husband mislead the Court about the manner in which he got access to Wife’s iPad with the intention of obscuring the Court from his inappropriate conduct, he also intentionally misled the Court in an effort to inflame the Court’s concern for the parties’ children’ and the possibility that Wife’s reckless management of her device risked exposure of the children to these messages. Husband blatantly misrepresented to the court when he testified that he did not install spyware or take any illegal action on Wife’s iPad or any other device of Wife’s, as proven and supported by Wife’s expert, Mr. Abrams.

Other than Husband’s testimony, which is not credible, there is no other evidence to independently support Husband’s position alleging Wife engage in marital misconduct or engaged in adulterous activities. In fact, there is ample evidence from an independent forensic examiner to support that Husband accessed this data from Wife’s devices, utilizing Dr. Fone, an application designed to perform various system functions and hacks of Apple mobile devices, including an application to recover deleted data from Apple devices and to transfer data from mobile devices to a computer.

Any findings, especially in a temporary order, finding that the messages Husband used to support his adultery claim were appropriately acquired or accessed, and discovered inadvertently or accidentally in real time in December, 2022, and easily and openly assessable on Wife’s iPad device in December, 2022, should be stricken from the Temporary Order, as the evidence on this issue is clearly refuted and independent evidence from a qualified forensic examiner supports the evidence

was inappropriately and/or illegally obtained in violation of *South Carolina Code* §17-30-10 -145 (2010) "The Act".

Further the data Husband acquired from Wife's electronic devices should be stricken from the record and the Temporary Order and any findings of marital misconduct or adultery on the part of the Wife based on this data, absent any other supporting evidence, should be reversed and stricken from the Temporary Order.

3. Denial of alimony/spousal support to Wife based on marital misconduct: The Temporary Order issued by this Court found that Wife engaged in marital misconduct but stops short of finding this conduct rises to the level of adultery. The only "evidence" that Husband presented to this Court supporting his allegation that Wife committed adultery, are messages he inappropriately intercepted from Wife's electronic devices in violation of *South Carolina Code* §17-30-10 -145 (2010) and such messages were not and are not admissible evidence. Absent these messages, which alone do not meet the requisite statutory findings for adultery, Husband has no evidence of any kind, other than Wife's honest admission that she engaged in some inappropriate written messaging with Mr. Tagg, which also do not support the requisite findings for adultery.

The Court's finding that Wife engaged in marital misconduct should be stricken from the Temporary Order. Wife has not committed adultery. Wife has not gambled or engaged in reckless spending. She has not abused alcohol or drugs. She has not physically assaulted Husband. Not only does Wife deny engaging in any physical acts of sexual gratification with Mr. Tagg where they were together or were able to physically touch each other, she had unrefuted corroborating witness testimony to that point. Even if the data Husband accessed from her electronic devices, was admissible, the text, while hurtful, do not support a finding of adultery or misconduct.

Currently, adultery is the only fault ground that is a statutory bar to alimony. Other forms of marital misconduct, such as gambling, alcohol abuse, drug abuse or even physical spousal abuse do

not act as absolute bars to alimony. The Court's ruling in this Temporary Order is tantamount to barring Wife from receipt of alimony. The Court relied extensively on Husband's testimony and the data he inappropriately intercepted from Wife's electronic devices in denying Wife spousal support or an appropriate level of support as an advance towards equitable distribution. Given the findings of Mr. Abrams, Husband's testimony is not credible and the data he intercepted is not admissible.

As the Court is aware, Temporary Orders can control a case for months and often years, in highly contested cases. Loss of ability to maintain the accustomed marital standard of living until a final hearing can be conducted can have devastating financial consequences on a party, as will be the case here. This is a marriage of long duration (17 years). Wife has stayed at home raising the parties' children and supporting Husband in his numerous career changes and moves. **Husband has earned and continues to earn a significant income in excess of \$59,000.00 per month!** The statutory factors in awarding alimony to Wife all weigh heavily in her favor and she should be awarded an appropriate level of alimony on a temporary basis. The unallocated support of \$2,500.00 per month is woefully insufficient, based both on the level of alimony she is entitled to and the significant value of the marital estate if Wife is to receive an appropriate advance towards her marital share during the pendency of this action so that she can support herself and the minor children.

Following the temporary hearing, Wife became employed with Christ Church Episcopal School in front office of the elementary school. Her annual income, before deductions is approximately \$30,000.00. She also receives a significant discount on the parties' children's tuition annually as part of her employment, saving the parties close to \$25,000.00 per year.

The Temporary Order should be modified, altered or amended to award Wife temporary alimony/spousal support in the amount of \$8,500.00 which takes into account that Husband is

paying the monthly mortgage payment on the marital residence in the amount of \$4,392.50, in addition to taxes and insurance on the residence.

**WHEREFORE**, this Motion is filed in accordance with South Carolina Law. Pursuant to Rule 11, *South Carolina Rules of Civil Procedure*, attorney for Wife would show that she consulted with counsel for Husband prior to filing this motion and that further consultation would serve no useful purpose.

**NOW, THEREFORE, DEFENDANT, SARA LINDLEY, PRAYS FOR THE FOLLOWING RELIEF:**

1. Granting Wife's Motion in *Limine* and excluding any and all evidence of or references to "Sexually Explicit Messages", any and all evidence of or references to any data collected from any device that Wife had access to and finding that electronic data Husband presented at the temporary hearing be excluded from evidence.
2. Awarding Wife temporary alimony in the amount of \$8,500.00, which takes into consideration all the appropriate statutory factors, including Husband's payment of the mortgage, taxes and insurance associated with the marital residence where Wife resides with the parties' minor children.
3. For attorney's fees and expert fees incurred by Defendant, Sara Lindley, in bringing this motion.
4. For such other and further relief as the court deems appropriate.

# **Exhibit Tab 1**

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

FILED CLERK OF COURT  
GREENVILLE  
IN THE FAMILY COURT  
OF THE  
THIRTEENTH JUDICIAL CIRCUIT  
FAMILY COURT

Jeffrey Ellicott Lindley,  
Plaintiff,  
versus  
Sara Elizabeth Lindley,  
Defendant.

AFFIDAVIT OF  
STEVEN M. ABRAMS, J.D., M.S.

Civil Action No. 2023-DR-23-0198

**PERSONALLY appeared before me the undersigned who being duly sworn says as follows:**

**Background**

1. My Name is Steven Marc Abrams. I am a licensed attorney in South Carolina, New York, and Washington, DC. My fields of concentration are digital forensics, cybercrime and electronic privacy, and computer law. My office address is 1154 Holly Bend Drive, Mount Pleasant, South Carolina 29466. My office phone number is (843) 216-1100. I divide my practice between digital forensics expert services and a civil litigation practice concentrating on cyberlaw, electronic privacy and defamation matters.
2. I have undergraduate and graduate degrees in Computer Science and worked in hardware and software development, and digital forensics for over 25 years before completing a law degree in 2007. Since 2007 when I began my practice of law, I continued providing digital forensics services as part of my civil law practice and as sworn law enforcement investigating criminal matters for state, federal, and military police organizations. For 11 years until my police retirement in July 2019, I was a commissioned State Constable in South Carolina. Although no longer sworn, I still regularly assist local law enforcement

agencies with digital forensics investigations. Since 2010, my law practice has exclusively concentrated on digital forensics and electronic privacy law which is largely based in private rights of action contained in state and federal computer crime statutes such as the Computer Fraud and Abuse Act (18 USC §1030), the Electronic Communications Privacy Act (18 USC §2501 et seq.), and the Stored Communications Act (18 USC §2701 et seq.), and common law torts. My full credentials are included in my CV which is appended to this affidavit as **Exhibit A**.

3. The basis of this report are forensic examinations of three Apple devices, an iPhone, an iPad, and a MacBook laptop computer provided to me by Wife, Sara Lindley.

**Evidence of malware infection using Wondershare Dr. Fone toolkit.**

4. Wife reported that she believed that her husband used Dr.Fone to recover deleted contents from her Apple mobile devices after she had deleted them. My examination therefore focused on malware, and particularly on Dr. Fone.
5. Dr. Fone by Wondershare is a toolkit of applications for performing various system functions and hacks of Apple and Android mobile devices. I have the Dr.Fone toolkit and use it in my practice when conventional forensic tools cannot get access to mobile devices and data. (However, I get an order or consent from the phone user/owner before employing the Dr.Fone tools that bypass security features of mobile devices, especially when they access data located off of the mobile device itself, such as in the cloud over the Internet.) Among the applications in the Dr. Fone Toolkit are apps to recover deleted data from Apple and Android devices, to bypass the passcodes on Apple Devices, and to transfer the data (including messenger apps like WhatsApp, and iMessage) from the mobile devices to a computer.
6. My examination found that the Dr.Fone Phone Manager application, which allows data to be copied from mobile devices (Apple phones and tablets) to a MacBook computer, was installed on the

Lindley MacBook in August 2022. On September 30, 2022, Husband configured the Dr. Fone phone manager app on the MacBook and propagated the application to the iPhone and iPad via shared iCloud drive storage. It was used on the MacBook extensively on March 22, 2023. It appears to have been last accessed on the MacBook on April 17, 2023. A summary of key Dr.Fone artifacts on each Lindley device follows

7. It appears from my examination of the forensic artifacts collected from the Lindley devices that the principal installation of Dr.Fone occurred on the MacBook. This happened on August 16, 2022. Artifacts on the MacBook show that the Dr.Fone Phone Manager package was installed on the MacBook, and the Transfer app which is part of the Phone Manager was configured and integrated with the iTunes libraries on the MacBook on September 30, 2022. This would be a necessary step in setting up Dr. Fone to collect data, including deleted data from Apple mobile devices. Various components of the Dr. Fone Phone Manager were accessed and used on the MacBook on at least three dates, September 30, 2022, March 23, 2023, and April 17, 2023. There may have been additional dates between August 2022 and April 2023, the record of which was overwritten by subsequent use of the software.
8. According to a Dr.Fone installation log file on the Macbook, on September 30, 2022, at 10:15PM, user "jlindley40" connected Dr.Fone to an iPhone and began a transfer from the iPhone to the MacBook. The iPhone is serial number D594HHC7XP which does not correspond with either of the Apple mobile devices I examined. The log file details each photo that was copied from the iPhone in the four minute transfer from 10:15 through 10:19 PM. This artifact time closely matches the Dr. Fone transfer application artifacts found on both the iPhone and iPad that I examined, and allows me to confirm that jlindley40 was the user who likely pushed this application on to the iCloud drive shared by both of Sara Lindley's Apple mobile devices.
9. For example, it appears on the iPad ("Sara's iPad") that a Dr. Fone transfer application installation package (.drfone\_transfer\_setup\_full3354.dmg.icloud) was synched via iCloud at 10:09PM on September 30, 2022. (2022-10-01 02:09:23 (UTC)). The full path of this Dr. Fone

transfer application is

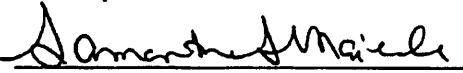
“/mobile/Library/MobileDocuments/com~apple~CloudDocs/Documents/.drfone\_transfer\_setu  
p\_full3354.dmg.icloud” The “/mobile/Library/MobileDocuments” portion of this path indicates  
that the file is in the iCloud share directory. This indicates that jlindley40 used the MacBook to  
push this Dr.Fone transfer application over iCloud to the shared iCloud library at 10:09PM on  
September 30, 2022.

10. An examination of Sara Lindley’s iPhone also found this same Dr.Fone transfer application in the  
iCloud share directory, at the same exact time on September 30, 2022. This confirms that the  
iCloud from the MacBook was being shared with both the iPhone and iPad. They both saw and  
accessed the Dr.Fone application from iCloud placed there from the MacBook.
11. The evidence found in my examination confirmed what I was told that Dr.Fone toolkit was  
installed by Husband on the Macbook and via iCloud was shared with Sara Lindley’s iPhone and  
iPad. Thus the Dr.Fone software was available on both of Wife’s Apple mobile devices.
12. The Dr.Fone transfer logfile from September 30, 2022, contains evidence that Husband installed  
the Dr.Fone Toolkit (which was installed on all three Apple devices that I examined) and used it  
to backup an iPhone, perhaps his own, showing he had the knowledge and ability to use the  
software to copy data from iPhones and iPads.

**FURTHER THE AFFIANT SAYETH NOT!**

  
Steven Marc Abrams, J.D., M.S.

SWORN TO BEFORE ME  
This 7<sup>th</sup> day of June, 2023

  
Notary Public for South Carolina  
My Commission Expires: March 18, 2024

**APPENDIX A.**

**Steven M. Abrams, J.D., M.S.  
Curriculum Vitae**

**Steven M. Abrams, J.D., M.S.**  
**Attorney, Digital Forensics Examiner and Instructor**  
**1154 Holly Bend Drive**  
**Mount Pleasant, SC 29466**  
**843-216-1100**  
**Steve@AbramsForensics.com**

### **Curriculum Vitae**

My key practice areas are Electronic Privacy, Digital Forensics and e-Discovery, and Computer Law.

#### **Education**

- 2016 -Techno Security 2016, Computer Forensics Training Seminar, Myrtle Beach, SC, June 5-8, 2016
- 2014 -Georgia Bureau of Investigations, Internet Evidence Finder Forensics Training, Decatur, Georgia, February 2014
- 2013 -Techno Security 2013, Computer Forensics Training Seminar, Myrtle Beach, SC, June 2-5, 2013
- 2012 -Techno Security 2012, Computer Forensics Training Seminar, Myrtle Beach, SC, June 3-6, 2012
- 2011 -November 9-12: EnCase 7 Training, Salt Lake City, UT  
-November 6 – 9: Paraben Forensics Innovations Conference, Park City, UT  
- South Carolina Assoc. of Legal Investigators (SCALI) Annual Training Seminar, May 2011  
- April 7, 2011: SC Electronic Crime Task Force Quarterly Meeting and Training
- 2010 -Techno Security 2010, Computer Forensics Training Seminar, Myrtle Beach, SC, June  
- SCALI Annual Training Seminar, May 2010
- 2009 - Cellebrite Mobile Device Forensics Certification (CCMDE), SEMAR, Mexico City, Mexico  
-SCALI Annual Training Seminar, May 2009
- 2008 - South Carolina Basic Constable Training, Tri-County Technical College / SC Criminal Justice Academy, October – November 2008  
- Commissioned as a South Carolina State Constable (LEO) on November 20, 2008.  
- Techno Security 2008, Computer Forensics Training Seminar, Myrtle Beach, SC, June
- 2007 - Charleston School of Law, Charleston, SC, Juris Doctor (J.D. - Magna Cum Laude)  
  
- GMU2007 Computer Forensics Symposium, Regional Computer Forensic Group of the High Technology Crime Investigation Association, Fairfax VA, Aug. 2007 (40 CEU HTCIA)  
- Techno Security 2007, Computer Forensics Training Seminar, Myrtle Beach, SC, June

- 2006 - University of Aberdeen, School of Law, Kings College, Old Aberdeen, Scotland  
in collaboration with the University of Baltimore Law School  
Summer Law Program in Comparative Criminal Procedure and UK Business Entities &  
Taxation
- Techno Security 2006, Computer Forensics Training Seminar, Myrtle Beach, SC, June
- SCALI Annual Training Seminar, May 2006
  
- 2005 - SCALI Annual Training Seminar, May 2005
- SCALI Fall Training Seminar, October 2005
  
- 2004 - Access Data Advanced Windows Forensics, June 23-25, 2004, New York City. (24  
Credit Hours)
- SCALI Annual Training Seminar, May 2004 (10 CEU)
  
- 2003 - GMU2003 Computer Forensics Symposium, Regional Computer Forensic Group  
of the High Technology Crime Investigation Association, George Mason University,  
Fairfax, VA. Aug.2003, (40 CEU HTCIA)
- Techno Security 2003, Computer Forensics and Security Conference (24 CEU)
- SCALI Annual Training Seminar & PI Training Seminar (16 CEU SLED)
  
- 2002 - SCALI Annual & Fall Training Seminars (16 CEU SLED)
- GMU2002 Computer Forensics Symposium, Regional Computer Forensic Group  
of the High Technology Crime Investigation Association, Fairfax VA, Aug. 2002,  
(40 CEU HTCIA)
- Access Data Computer Forensic Boot Camp, North Carolina Justice Academy,  
Edneyville, NC (24 CEU)
  
- 1992-1994 Microsoft Internet Developer Workshops NY, NY
  
- 1992-1993 Novell NetWare CNE Training, IBM Skills Discovery, Jericho NY
  
- 1984-1985 Microcomputer and Electronics Engineering, Hofstra University, Hempstead NY
  
- 1982-1983 Ph.D. Studies, Faculty Fellowship, Columbia University, Graduate School of Arts &  
Sciences
- 1981-1982 Columbia University, College of Physicians & Surgeons, Master of Science (M.S.)
  
- 1977-1981 Allegheny College, Meadville PA, Bachelor of Arts (B.A.) (Psychology - Computer  
Science)

**Professional Licenses**

***Current***

Licensed Attorney in South Carolina  
 Licensed Attorney in District of Columbia  
 Licensed Attorney and Counselor at Law in New York

***Previous***

Licensed as a Private Investigator in South Carolina and New York (2002-2008), South Carolina  
 State Constable (Sworn, 2008-2019).

### **Experience (Selected)**

2016 – Present, Senior Attorney, Abrams Cyber Law & Forensics, LLC. Mount Pleasant, SC 29466. Concentration on Electronic Privacy and Defamation Cases, Electronic Discovery, and Digital Forensics.

2018 - Continuing Legal Education Instructor, *Electronic Privacy Violations during Divorce: Legal and Ethical Guidelines for Family Law Practitioners*, SC Bar, Columbia SC (February 21, 2018).

2016 – Continuing Legal Education Instructor, *Smartphones as evidence for Personal Injury Cases*, NBI, Charleston SC (December 8, 2016).

2011 – 2016 Sole Practitioner Abrams Law Firm, PC. Mount Pleasant, SC 29466

2011 - Digital Forensics Instructor / Investigator, H-11 Digital Forensics / United States Embassy, Tirane, Albania.

2010 – Facilitator, Instructor, Annual In-Service Legals and CDV Training (SLED), Lowcountry Constable Association.

2009 – Speaker, South Carolina Association for Justice, Hilton Head, SC (August 6, 2009) Topic: Civil Discovery of E-mails after *O’Grady*

2009 – Digital Forensics Instructor/Investigator, H-11 Digital Forensics / United States Embassy, Mexico City, Mexico.

2008 – Digital Forensics Instructor/Investigator, H-11 Digital Forensics / United States Embassy, Mexico City, Mexico.

2008 – Faculty, SC Bar Convention – Family Law Section CLE

2008 – 2011 Shareholder, Abrams Millonzi Law Firm, P.C., Mount Pleasant, SC 29464

2007 - Presenter, “E-Discovery: Definition, FRCP Changes and Application CLE”, NBI, Charlotte, NC, December 19, 2007

2007 - Digital Forensics Instructor/Investigator, H-11 Digital Forensics, United States Embassy, Mexico City, Mexico

2007 - Presenter, “Civil to Criminal: Collaborative Computer Forensics Investigations between PIs and Law Enforcement”, GMU2007, August 9th & 10th, 2007

2007 - Presenter – “A South Carolina Lawyer’s Roadmap to Navigating the New Federal E-Discovery Rules,” The South Carolina Bar (CLE Division), April 13, 2007.

2006 - Presenter – “Typical Internet Sexual Activity and its Detection”, Family Law CLE, The South Carolina Bar (CLE Division), November 2006.

2006 - Instructor, “3-day Hands-on Computer Forensics Workshop”, Trident Technical College, N. Charleston, SC, CLE accredited by The South Carolina Bar, January 2006.

- 2005 - Lecturer, "Computer Forensic Introduction", Trident Technical College, CLE accredited by South Carolina Bar and CEU / In-Service hours for PIs / LE by SLED.
- 2001 - Present Steve Abrams & Company, Ltd. (dba Abrams Computer Forensics)  
Licensed Private Investigator, Computer Forensics Examiner
- 1998 - 2001 Steve Abrams & Company, Ltd. Mt. Pleasant, SC, President
- 1996 - Democratic National Committee, Instructor - Southeast and Northeast Regional Schools for Congressional Campaign Managers.
- 1995 - 1999 Direct Marketers of Charleston Mt Pleasant, SC, Partner  
Co-owner of Political Database Marketing Company and full service political print shop.
- 1994 - 1995 The Software Studio Mt Pleasant, SC, Owner  
Owner of software development company that developed database applications for the Newspaper publishing industry.
- 1992-1993 Town of North Hempstead, Manhasset, NY, Deputy Commissioner of Finance
- 1986 - 1992 Digitron Telecommunications, Inc., Huntington, NY, Director of R&D
- 1984 - 1986 Computer Associates International., Islandia, NY, Senior Systems Programmer
- 1983 Contel Information Systems Division. Great Neck NY, Software Engineer  
(Developed the first Network Forensics Applications for the DoD)

### **Recent Publications**

- Steven M. Abrams, Knowledge of Computer Forensics Is Becoming Essential for Attorneys in the Information Age, 75 N.Y. St. B. Assn. J. 8, 15 (Feb. 2003).
- Steven M. Abrams, Knowledge of Computer Forensics, Essential for 21st Century Private Investigators, 16 PI Mag. 46, 59 (October 2003).

### **Professional Awards & Honors**

- 2008 - Member, SLED Ad Hoc Committee on Computer Forensics
- 2007 - CALI Excellence for the Future Award, Aviation Law, Charleston School of Law, Fall 2006
- CALI Excellence for the Future Award, Interviewing, Counseling & Negotiation, Charleston School of Law, Fall 2006
  - CALI Excellence for the Future Award, Insurance Law, Charleston School of Law, Fall 2006
- \_ Dean's List, Charleston School of Law, Fall 2006, Spring 2007.

2004 - "2004 SCALI Investigator of the Year"

2003 - Member, SLED Private Investigations Business Advisory Committee

**Professional Associations**

Member, Institute of Electrical and Electronics Engineers - IEEE

Member, Lowcountry Constables Association - LCA

**Bar Association Memberships**

Admitted to practice in South Carolina, District of Columbia, and New York.

**Compensation**

I receive \$425 per hour, plus mileage, travel and lodging expenses, for all Computer Forensics services and for depositions and trial testimony.

**Previous Expert Testimony**

I have completed over 1250 computer forensics investigations; the overwhelming majority of cases were settled and did not require me to testify.

South Carolina cases in which I was qualified in court as an expert are:

*Hillburn v. Hillburn*, (2001-DR-08-2354);  
*Smith v. Smith*, (2001-DR-22-212);  
*Natale v. Natale*, (2003-DR-10-775)  
*Berda v. Berda*, (2003-DR-10-1899);  
*Murphy v. Murphy* (2004-DR-10-1510) and  
*Overstolz v. Fountain of Youth Wellness Centers LLC* (2003-CP-10-000761).  
*Gitter v. Gitter* (2008-DR-10-2865)  
*Ricigliano v. Ricigliano*, (2009-DR-18-0102)  
*Edwards v Junevicus*, (2010-DR-10-4736)  
*BTM Machinery Inc. v. Michael J. Finley* (2013-CP-10-4366)  
*Cherry v Cherry* (2014-DR-10-95)  
*Whitfield v. Schimpf and Sweetgrass Plastic Surgery, LLC* (Case No. 2017-CP-10-2758)

I was qualified as a testifying expert on digital forensics in federal court in the South Carolina Federal District Court

*UHLIG, LLC, V JOHN ADAM SHIRLEY, (CIVIL ACTION No.. 6:08-1208-HFF)*  
*GREENVILLE DIVISION*  
*UNITED STATES OF AMERICA v. BRANDON DANIELS (CRIMINAL, 2021)*  
*CHARLESTON DIVISION*

I have also prepared expert's reports under Federal Rule 26(a)(2)(B) for the following federal civil suits filed in the United States District Court for the District of South Carolina:

***Lumpkin v. Bennani***, (Civil Action No. 2:03-2904-23), and  
***Miller v. American LaFrance Corp.*** (Civil Action No. 2:04-1668-23)  
***Microsoft v. BWC Products Inc.*** (Civil Action No. 2:06-CV-2023-CWH)  
***Quala Systems, Inc, et al, v. Bulkhaul USA, Inc., et al.*** (Civil Action No. 2:07-CV-00673-PMD)  
***Mainfreight v. John Marco, et al.***, (Civil Action No. 9:cv00563 JFA)

And in the United States District Court for the Southern District of New York:  
***UNITED STATES OF AMERICA v. KEITH RANIERE (also known as "VANGUARD") and ALLISON MACK*** (Case 1:18-cr-00204-NGG-VMS)

I was appointed the Court's Expert in United States District Court, District of South Carolina, Rock Hill Division:

***The Travelers Home and Marine Ins. Co. v. Pope***, C/A No.: 0:10-cv-1688-JFA

I was qualified as a testifying computer forensics expert in North Carolina courts in: ***Hollins v. Lightfoot***.

In addition, I have been deposed in the following matters over the past ten years:

***Thomas & Assoc. v. Christopher Humphreys*** (Case No. 2018-CP-10-0455)  
***Catherine Cope v. Wells Fargo Bank N.A., Century 21 Properties Plus, and Jim Bailey, individually;*** (Case No.: 2018-CP-18-00112)  
***Rick Gray v. Church Mutual*** (2017)  
***Calandra v. Calandra*** (2004-DR-10-2675)  
***McLernon v. McLernon*** (2003-DR-10-3090)  
***White v. Cassidy*** (2004-DR-08-256)  
***Khoury v. Noce*** (2006-CP-10-001830)  
***Quala Systems, Inc, et al, v. Bulkhaul USA, Inc., et al.*** (Civil Action No. 2:07-CV-00673-PMD)  
***Mainfreight v. John Marco, et al.***, (Civil Action No. 9:cv00563 JFA)  
***Beard v. Dunn & Dixon-Hughes et al***, (Case No. 2010-CP-08-0776)  
***UHLIG, LLC, V JOHN ADAM SHIRLEY, (CIVIL ACTION NO.6:08-1208-HFF)***  
***ALTMAN, ET AL. V. FIRST CITIZENS BANK AND TRUST COMPANY*** (2012-CP-34-0124)

(Revised: January 29, 2023)

## **Exhibit Tab 2**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

IN THE FAMILY COURT  
THIRTEENTH JUDICIAL CIRCUIT

Jeffrey Ellicott Lindley

FIELD CLERK OF COURT  
GREENVILLE, SC  
Plaintiff, )

JUDGMENT IN A  
FAMILY COURT CASE

Sara Elizabeth Lindley

vs.

2023 MAY 26 A 11:49

Defendant ) Docket No. 2023-DR-23-198  
FAMILY COURT

Submitted by: Reid T. Sherard	Attorney for <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant <input type="checkbox"/> GAL
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**DECISION BY COURT** (check all that apply)

- This action came to trial, hearing or was resolved by consent and an order was rendered.
- This action has been dismissed pursuant to  Rule 12(b), SCRPC  Rule 41(a), SCRPC  
 Rule 43(k), SCRPC  Family Court Benchmark  
 Other: \_\_\_\_\_

**IT IS ORDERED AND ADJUDGED:**  See attached order;  Statement of Judgment by the Court:

Additional information for Clerk: \_\_\_\_\_

**ORDER INFORMATION**

- This is a  Temporary  Final order. If Final, does this order end the case?  Yes  No  
Support  is not ordered  is ordered, and it is to be paid  through the court.  directly to the CP.  
Case number under which support is paid if different from this one: \_\_\_\_\_  
This order involves the immediate  issuance  dismissal of a bench warrant, or  does not apply.  
 The following motions are ended by this order (include motion filing date): Plaintiff's Motion for Temporary Relief (filed January 18, 2023) and Defendants Return to Motion and Motion for Temporary Relief.  
 This order adds or dismisses the following parties to this case:  
 dismiss  add: \_\_\_\_\_  dismiss  add: \_\_\_\_\_

INFORMATION FOR THE JUDGMENT INDEX/TRANSCRIPT OF JUDGMENT (§ 20-3-670(B)(1)) Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information to enroll, indicate "N/A" in one of the boxes below.		
Judgment In Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount to be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the South Carolina Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: title abstractors and researchers should refer to the official court order for judgment details.

*Reid T. Sherard*  
\_\_\_\_\_  
Family Court Judge

4141  
\_\_\_\_\_  
Judge Code

6-25-23  
\_\_\_\_\_  
Date

**FOR CLERK OF COURT OFFICE USE ONLY**

This judgment was entered on the \_\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on \_\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

**CLERK'S USE ONLY**

\_\_\_\_\_

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

**CLERK'S USE ONLY**

\_\_\_\_\_

**ATTORNEYS FOR THE DEFENDANT(S)**

\_\_\_\_\_  
**CLERK OF COURT**

**Court Reporter:** \_\_\_\_\_

**Custodial Parent (if applicable):** \_\_\_\_\_

STATE OF SOUTH CAROLINA )

IN THE FAMILY COURT  
THIRTEENTH JUDICIAL CIRCUIT

COUNTY OF GREENVILLE )

Jeffrey Ellicott Lindley, )

Plaintiff, )

vs. )

Sara Elizabeth Lindley, )

Defendant. )

Docket No. 2023-DR-23-198

**MOTION AND ORDER INFORMATION  
FORM AND COVERSHEET**

<b>Plaintiff's Attorney:</b> Reid T. Sherard, Bar No. 72536 Jordan W. Peeler, Bar No. 102558 Address: P.O. Box 2048, Greenville, SC 29602 Phone: 864-240-3278 Fax 888-696-4585 E-mail: <a href="mailto:rsherard@hsblawfirm.com">rsherard@hsblawfirm.com</a> <a href="mailto:jpeeler@hsblawfirm.com">jpeeler@hsblawfirm.com</a>	<b>Defendant's Attorney:</b> E. Kimberly Berry, Bar No. 13286 Address: 1225 S. Church Street, Greenville, SC 29605 Phone: 864-421-0036 Fax 864-421-9060 E-mail: <a href="mailto:kimb@mbllc.com">kimb@mbllc.com</a>
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- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

**SECTION I: Hearing Information**

Nature of Motion:

Estimated Time Needed:

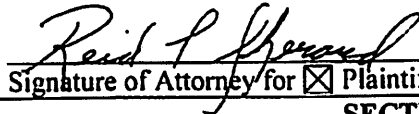
Unavailable Dates:

Court Reporter Needed:  YES/ NO

**SECTION II: Motion/Order Type**

- Written motion attached
- Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

  
Signature of Attorney for  Plaintiff /  Defendant

May 22, 2023  
Date submitted

**SECTION III: Motion Fee**

- PAID - AMOUNT: \$
- EXEMPT: (check reason)
  - Rule to Show Cause in Child or Spousal Support
  - Domestic Abuse or Abuse and Neglect
  - Indigent Status  State Agency v. Indigent Party
  - Sexually Violent Predator Act  Post-Conviction Relief
  - Motion for Stay in Bankruptcy
  - Motion for Publication  Motion for Execution (Rule 69, SCRCP)
  - Proposed order submitted at request of the court; or,  
reduced to writing from motion made in open court per judge's instructions  
Name of Court Reporter: Margaret A. Woods
  - Other: \_\_\_\_\_

**JUDGE'S SECTION**

- Motion Fee to be paid upon filing of the attached order.
- Other: \_\_\_\_\_

JUDGE CODE \_\_\_\_\_ Date: \_\_\_\_\_

Judge Signature: \_\_\_\_\_

**CLERK'S VERIFICATION**

- Collected by: \_\_\_\_\_ Date Filed: \_\_\_\_\_
- MOTION FEE COLLECTED: \$ \_\_\_\_\_
  - CONTESTED - AMOUNT DUE: \$ \_\_\_\_\_

Custodial Parent (if applicable):  
SCCA 233F (12/2009)

FAMILY COURT

STATE OF SOUTH CAROLINA )  
COUNTY OF GREENVILLE )  
IN THE FAMILY COURT FOR THE  
THIRTEENTH JUDICIAL CIRCUIT

Jeffrey Ellicott Lindley, )  
) )  
Plaintiff, )  
) )  
vs. )  
) )  
Sara Elizabeth Lindley, )  
) )  
Defendant. )

**TEMPORARY ORDER**

Docket No:  
2023-DR-23-198

**Plaintiff's Attorneys:**  
Reid T. Sherard  
Jordan W. Peeler

**Hearing Date:**  
March 15, 2023

**Defendant's Attorney:**  
E. Kimberly Berry

**Judge:**  
Rochelle Y. Conits

**Guardian ad Litem:**  
N/A

**Court Reporter:**  
Margaret A. Woods

The order addresses Plaintiff's ("Husband") Motion for Temporary Relief filed January 18, 2023 (the "Motion"). The Motion was timely and properly served via hand delivery on Defendant ("Wife") on January 20, 2023. Wife served a Return to Motion and Motion for Temporary Relief on March 14, 2023, the day before the hearing (the "Return to Motion"). At the commencement of the hearing Wife served a Motion *in Limine*.

Wife was originally represented in this matter by Travis V. Olmert of The Olmert Law Firm, LLC. Mr. Olmert filed his Notice of Representation of Wife on February 6, 2023.

Both parties, through counsel, served written discovery on the other. Thereafter, on March 3, 2023, Mr. Olmert submitted a proposed order to the Court to relieve him as counsel, and copied Husband's counsel and Ms. Berry on that submission. The undersigned filed the Order Relieving

Counsel on March 8, 2023, relieving Mr. Olmert as counsel for Wife as of that date. Ms. Berry thereafter served her Notice of Representation of Wife.

Both parties appeared with counsel at a hearing held on March 15, 2023, and both parties submitted numerous documents at the commencement of the hearing.

Husband objected to the Court hearing any relief requested in Wife's Return to Motion and objected to Wife's Motion *in Limine*, arguing it was not timely served in compliance with Rule 6(d), SCRCF. Wife argued that the relief requested in her Return to Motion is properly before the Court, and the relief requested is based on matters that Husband raised in the Motion. Wife further argued that her Motion in *Limine*, is not bound by Rule 6(d), SCRCF, as it is an evidentiary motion and can be raised as the time of the hearing.

The Court allowed extensive argument from both parties' counsel on both procedural and substantive issues. The Court took the matter under advisement at the conclusion of the hearing to allow time for a detailed reading of the parties' submissions and other matters in the file and further consideration of the ruling contained within this Temporary Order.

Based on the pleadings, the Motion, the Memorandum of Law, the Return to Motion, the Motion *in Limine*, the financial declarations, the affidavits and exhibits, the court required forms such as parenting plans, other matters in the Court's file, the stipulations of the parties, the representations made by counsel, and applicable law, this Court makes the following findings of fact and conclusions of law.

This is a temporary adjudication of the issues presented at the temporary hearing and is not a permanent or final adjudication of any issues raised and is wholly without prejudice to either party's position on a final adjudication of any issues.

### **Jurisdiction and Venue**

Husband and Wife married on April 22, 2006. The parties are citizens and residents of Greenville County, South Carolina and so resided for more than three (3) months prior to the commencement of this action.

The issues raised in the pleadings are within the exclusive jurisdiction of this Court pursuant to S.C. Code § 63-3-530. This Court has personal and subject matter jurisdiction over the parties and this action.

Greenville County, South Carolina is the proper venue for this action.

### **Temporary Stipulations – By Written Document**

At the commencement of the March 15, 2023 hearing, counsel announced the resolution of many issues on a temporary basis. These temporary stipulations were reduced to writing in a document titled “Stipulations for Temporary Order” (the “Temporary Stipulations”), and provided to the Court for review. The Temporary Stipulations are attached hereto as Exhibit A and are hereby adopted, approved, incorporated into, merged and integrated with, and made the Order of this Court.

### **Contested Issues**

With the above stipulations resolving certain issues, the below issues from the Motion remain for a decision by this Court:

1. Husband’s request that this Court terminate any claim either party may have to alimony or spousal support, and refusing to award alimony or spousal support to either party; and
2. Husband’s request that this Court require Wife to account for any and all marital or non-marital assets which she has depleted, liquidated, altered, or encumbered in any way, and all debt incurred, since the commencement of her alleged marital misconduct.

Additionally, Wife's Return to Motion sought alimony. Wife's Motion *in Limine* sought to "exclude introduction of or references to certain electronic communications improperly intercepted from Wife's electronic devices" because Husband allegedly "intercepted electronic communications of Wife by installing/downloading spyware onto Wife's electronic devices without Wife's knowledge or consent." Husband objected to the Court considering either of Wife's requests because Wife did not give Husband timely notice of either of her motions under Rules 21(a), SCRFC, and Rule 6(d), SCRCP, respectively.

#### **Findings and Conclusions Regarding Contested Issues**

Husband and Wife have two minor children, Ella, born in 2007 (age 16), and Jack, born in 2010 (age 12).

The parties are living separate and apart, and have been so residing since January 20, 2023 when Husband voluntarily left the former marital residence after Wife was served with this action. Husband is 48 years old and he is employed in sales. Wife is 46 years old and currently resides in the former marital residence. Wife works part-time as a yoga instructor.

#### **Wife's Return to Motion**

Wife requested additional relief in the Return to Motion. Wife's Return to Motion was not served before the hearing. However, although not necessarily noticed in time, given the fact that Husband raised a bar to alimony in the Motion, and for purposes of judicial economy, it is appropriate to consider Wife's request for alimony.

#### **Wife's Motion *in Limine***

The central issue before the Court for adjudication is Husband's allegation that Wife committed adultery; if Wife committed adultery, there is a statutory bar to alimony and if she did not there is not a statutory bar to alimony.

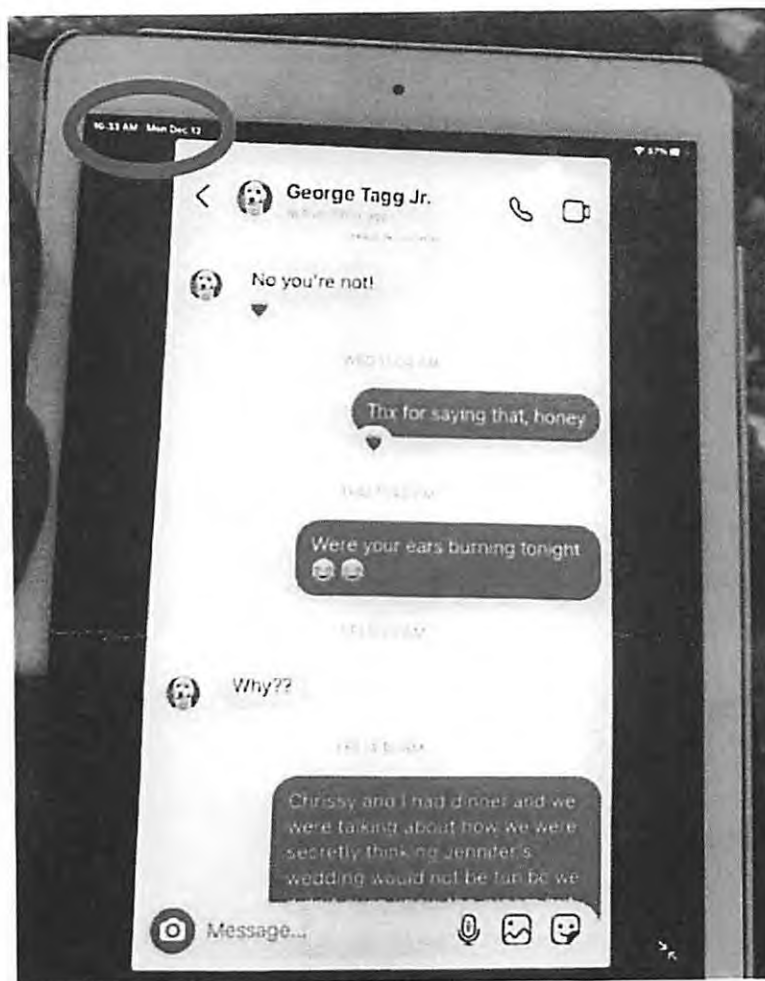
Proof of adultery must be “sufficiently definite to identify the time and place of the offense, and the circumstances under which it was committed.” *Nemeth v. Nemeth*, 325 S.C. 480, 484, 481 S.E.2d 181, 183 (Ct. App. 1997). However, “approximate times, places and the circumstances of such adultery” is sufficient. *DuBose v. DuBose*, 259 S.C. 418, 424, 192 S.E.2d 329, 331 (1972). Because, by its very nature, “adultery is an activity that takes place in private, the proof may be, and in fact generally will be, circumstantial.” *Id.* (citing *McLaurin v. McLaurin*, 294 S.C. 132, 363 S.E.2d 110 (Ct. App. 1987); *Loftis v. Loftis*, 284 S.C. 216, 325 S.E.2d 73 (Ct. App. 1985)).

On or about December 9, 2022, Wife exchanged numerous sexually explicit Instagram direct messages with a man named George C. Tagg, Jr., in which messages both Wife and Mr. Tagg refer to specific acts of sexual conduct (hereinafter, the “Sexually Explicit Messages”). Wife asserts the Court cannot consider the Sexually Explicit Messages because she claims such evidence was improperly obtained in violation of the South Carolina Homeland Security Act governing the interception of wire, electronic, or oral communications, S.C. Code § 17-30-10 *et seq.* (“the Homeland Security Act”).

As part of his submissions at the hearing, Husband presented pictures of the Sexually Explicit Messages on an iPad. Husband took these pictures with his cell phone, i.e. used one electronic device to manually photograph the screen of another electronic device. The pictures are of messages sent and received in an open application on an unprotected iPad used by Husband and Wife and readily accessible to them and the parties’ children. Husband denies the substance of Wife’s motion and asserts it was not timely served since Wife’s counsel handed a copy of the motion to his counsel at the commencement of the March 15, 2023 hearing.

Wife argues that the iPad was her personal iPad and that the other family members (parties’ children) had their own devices and she was the only family member who used or accessed this

particular device. Wife further argued that Husband loaded spyware (Dr. Fone) onto one of her devices so he could access data from her devices. She also argued that she had deleted these messages long before December of 2022 and that these messages were not readily accessible on her device. She further argued that Husband did not have consent, express or implied, to access her device and he intercepted electronic communications in violation of the S.C. Code § 17-30-10 *et seq.* and the Sexually Explicit Messages are not admissible. Wife does not deny the authenticity of the Sexually Explicit Messages or that she sent and received the messages. The evidence establishes that Husband used his cell phone to take photographs of a communal iPad located in the family residence prior to separation, as can be seen by the below exemplar photograph.



**It is obvious that the above photograph, which is identical in form to the other photographs Husband submitted, is a photograph of an electronic device. For but two examples, the bezel of the iPad is clearly seen, as is the date and time on the screen of the iPad (circled – 10:33 AM Mon Dec 12) when Husband took the photo.**

**While Wife raised the specter of illegal conduct by Husband, there is not sufficient supporting evidence to bar the Sexually Explicit Messages coming into evidence and being considered by this Court at this time.**

### **Alimony**

**In support of his position that alimony is barred, Husband relies on the Sexually Explicit Messages as well as his claim that Wife admitted to him that she broke the marital vows. In addition to admitting to exchanging the Sexually Explicit Messages with Mr. Tagg, which she described as “flirtatious and complimentary” and that they “became inappropriate and even a bit cringe worthy”, Wife admits that she met Mr. Tagg for the first time at family friend’s wedding in Florida in February, 2022. Wife denies that she engaged in any interactions with Mr. Tagg that were sexual in nature or that she and Mr. Tagg were ever alone together.**

**Husband alleges Wife’s conduct rises to the level of adultery and thus she is statutorily barred from being awarded alimony pursuant to S.C. Code § 20-3-130.**

**Wife denies that she admitted to Husband she broke their marital vows. Wife denies that she has participated in any physical sexual activities together with Mr. Tagg and that she has not had any “sexual physical form of contact with another man or woman, other than Jeff since we married.” Wife further argues that she and Mr. Tagg have never been alone together where there was an opportunity to engage in a sexual act. Wife denies she committed adultery and in her**

Return to Motion she seeks an award of alimony. In her affidavit submitted at the hearing, Wife specifically requested between \$14,000 and \$16,000 in monthly alimony.

The Sexually Explicit Messages go beyond being merely “flirtatious and complimentary”. They graphically describe sexual conduct using language that is commonly known even if rarely put into words. The words used and the conduct described are not vague or ambiguous, nor are they open to more than one interpretation. Wife and Mr. Tagg communicated with one another at a definite time and under definite circumstances. They communicated only with one another with the intent to give and receive mutual sexual gratification, which they each confirmed to each other that they received. The Sexually Explicit Messages indicate Wife and Mr. Tagg pleased themselves to orgasm while referencing specific locations and body parts.

The Court must consider whether either party has committed marital misconduct in the alimony analysis. S.C. Code § 20-3-130(C)(10) (“[i]n making an award of alimony . . . the court must consider and give weight in such proportion as it finds appropriate to all of the following factors: . . . (10) marital misconduct or fault of either or both parties, whether or not used as a basis for a divorce or separate maintenance decree if the misconduct affects or has affected the economic circumstances of the parties, or contributed to the breakup of the marriage . . .”).

Husband made a *prima facie* showing of marital misconduct by Wife. Whether Wife’s conduct rises to the level of adultery and thus serves as a statutory bar to an award of alimony is reserved for adjudication by the Court at the final merits hearing. However, the Sexually Explicit Messages are horrific and damaging, and they have the potential to cause harm to the minor children. The Court, *sua sponte*, finds it necessary to place additional restraints and requirements on the parties regarding dissemination of the Sexually Explicit Messages as set forth more fully in the ordering clause below. The Court will file a separate order to seal the file.

**I therefore order:**

1. **Stipulations.** The Temporary Stipulations attached hereto as Exhibit A are approved and incorporated into this Temporary Order as if repeated verbatim in this ordering clause.

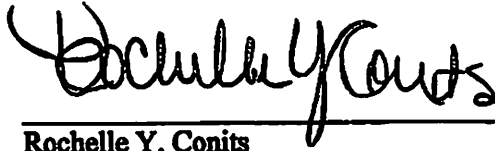
2. **Unallocated Monthly Payments.** Husband shall make monthly unallocated payments directly to Wife in the amount of Two Thousand Five Hundred and 00/100 (\$2,500.00) Dollars, commencing April 1, 2023, and continuing on the first day of each month thereafter. Whether these payments shall be considered alimony or as an advance to Wife from her portion of the equitable apportionment of the marital estate shall be determined by the Court at the final merits hearing. This provision serves as a temporary adjudication of Wife's request for alimony.

3. **Accounting.** Each party shall account for all marital assets he or she has depleted, liquidated, altered, or encumbered in any way, and all marital debt incurred, since the date of filing of this action or since the first evidence of marital misconduct by either party, whichever is earlier. If Husband withdraws or otherwise utilizes funds from the home equity line of credit ("HELOC") associated with the former marital residence, he shall provide an accounting of such funds contemporaneously with the withdrawal. Whether any such HELOC withdrawals constitute a depletion of a marital asset to be charged against Husband or as a payment of expenses not to be charged against Husband shall be determined by the Court at the final merits hearing.

4. **Restraint Against Disseminating Evidence.** Both parties are specifically restrained from disseminating the Sexually Explicit Messages outside of this case. If either party has disseminated the Sexually Explicit Messages outside of this case, he or she shall make reasonable efforts to retract the disseminated Sexually Explicit Messages.

5. **Other Issues.** All other issues related to temporary relief which are not addressed in this Temporary Order are held in abeyance.

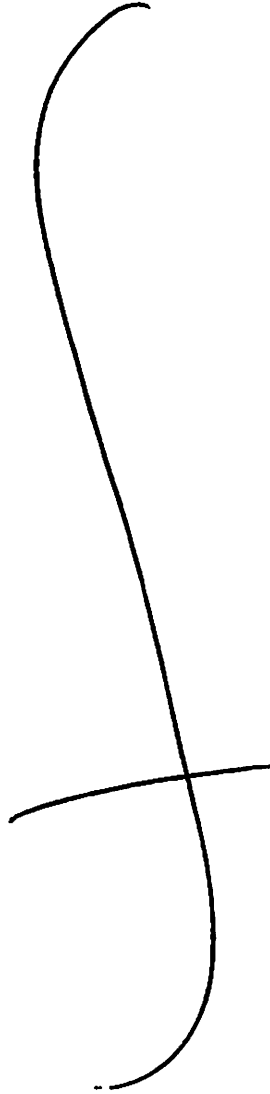
I so order.



Rochelle Y. Conits  
Family Court Judge

Greenville, South Carolina

5/25, 2023



**EXHIBIT A**

<b>STATE OF SOUTH CAROLINA</b>	)	<b>IN THE FAMILY COURT FOR THE</b>
	)	<b>THIRTEENTH JUDICIAL CIRCUIT</b>
<b>COUNTY OF GREENVILLE</b>	)	
	)	
<b>Jeffrey Ellicott Lindley,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>STIPULATIONS FOR</b>
	)	<b>TEMPORARY ORDER</b>
<b>vs.</b>	)	
	)	
<b>Sara Elizabeth Lindley,</b>	)	
	)	
<b>Defendant.</b>	)	<b>Docket No:</b>
		<b>2023-DR-23-0198</b>

---

Plaintiff (“Husband”) and Defendant (“Wife”) stipulate the following matters *pendente lite*, which shall be incorporated into the Temporary Order to be issued from the temporary hearing to be held on March 15, 2023.

1. **Non-Prejudicial.** These Stipulations are not a permanent or final resolution of any issue, and are not prejudicial to the position of either party on the final adjudication of any issue except as stated herein. Any sums Husband agrees to pay herein on behalf of Wife or for her benefit are specifically without prejudice to his position that Wife is not entitled to alimony or spousal support on a temporary or final basis.

2. **Custody and Parenting Time.**

a. **Custody.** The parties shall maintain joint custody of the minor children E.N.L. and J.E.L. as defined herein.

b. **Decisions.** Each party shall have equal access to medical, educational, and other related information concerning the minor children as provided for under law.

i. **Day to day.** The day to day, ordinary decisions regarding the children’s care and well-being shall be made by the party with whom the children are physically present at the time the decision is to be made.

**EXHIBIT A**

ii. **Major. Major decisions, including but not limited to those concerning the children's health (to be broadly defined, including but not limited to medical, dental, vision, prescription, psychiatric, psychological, testing, counseling, optical, orthodontic, learning, therapy, intervention, treatment, immunization/inoculation/vaccination, and/or similar physical, mental, or emotional health), education (including choice of school, tutoring, and the like), extracurricular activities, social behavior, body image (including significantly varied personal appearance, cosmetic surgery, body piercing, body modification, tattooing and the like), discipline style, and religious training shall be made jointly after significant communication between the parties during which the opinions and perspectives of each party are considered over a reasonable period of time. To the extent the parties cannot reach an agreement, Wife shall make the final decision.**

c. **Weekend and Weekday Placement. Husband shall have parenting time with the minor children as detailed herein, which the parties may alter by mutual agreement in writing (text message, e-mail, or other similar electronic communication used by both parties showing agreement is acceptable). To the extent the below schedule does not place the children with Husband, they shall be with Wife.**

i. **Weekends. Commencing Friday, March 24, 2023, Husband shall have visitation with the minor children on alternating weekends commencing when school is dismissed on Friday and concluding when school begins on Monday morning.**

ii. **Weekdays. Each week, Husband shall mid-week visitation with the children on a day and at a time mutually agreed upon by Husband and the children, taking into consideration the children's schedules. In the event there is no agreement the default night shall be every Thursday from the time school is dismissed until 8:00 p.m.**

## EXHIBIT A

d. Summer: Husband and Wife shall share an alternating week on/week off schedule during the months of June and July. A summer week shall be defined as Sunday at 6:00 p.m. until the immediately following Sunday at 6:00 p.m. For summer 2023, Wife shall have the children the week of May 28, 2023 through June 4, 2023, and then the parties shall alternate weeks. Summer visitation shall end with Wife having the children the week of July 23, 2023 through July 30, 2023. Thereafter, the Weekend and Weekday schedule shall resume with Husband having the children the weekend beginning August 4, 2023.

e. Holiday:

i. Spring School Break. Husband shall have spring school break on even-numbered years starting at 6:00 p.m. the last day of school and ending at 6:00 p.m. the evening prior to the children returning to school. Wife shall have spring school break on odd-numbered years starting at 6:00 p.m. the last day of school and ending at 6:00 p.m. the evening prior to the children returning to school.

ii. Easter: If Easter does not coincide with the children's school spring break, Husband shall have child placement from 6:00 p.m. on the children's last day of school prior to Easter until 6:00 p.m. the night before the children return to school after Easter in even-numbered years. Wife shall have this placement on odd-numbered years.

iii. Thanksgiving Visitation: Husband shall have Thanksgiving vacation on odd-numbered years, and Wife shall have Thanksgiving vacation on even-numbered years. Thanksgiving shall commence at 6:00 p.m. on the last day the children are in school or would be in school if they were attending school, and shall end at 6:00 p.m. on the following Sunday.

iv. Christmas Visitation: Wife shall have the children during the first half of Christmas break on odd-numbered years starting at 6:00 p.m. the day school lets out and ending

**EXHIBIT A**

2:00 p.m. Christmas Day and shall have the second half of Christmas break on even-numbered years starting at 2:00 p.m. Christmas Day and ending at 6:00 p.m. the evening prior to school starting back. Husband shall have the same Christmas holiday with the children except it shall be on the alternating years.

v. **Mother's Day/Father's Day:** The children shall be with the mother on Mother's Day and with the father on Father's Day from 9:00 a.m. until 9:00 p.m. (Regardless of whose weekend upon which it may fall.)

vi. **Monday/Friday Days Out of School:** As to any other Monday or Friday the children are not in school (e.g. snow days, holidays, teacher workdays, and the like), the parent having the children for that weekend as a normal part of the alternating weekends or selected summer visitations shall have the children on that Monday the holiday is celebrated until 6:00 p.m. or starting at 6:00 p.m. the Thursday night before the Friday out of school. This does not include Memorial Day 2023, as the alternating week on/week off summer schedule includes that day.

vii. **Birthday Visitation:** On each parent's birthday, the children shall be with that parent from 8:00 a.m. until 9:00 p.m. except for school days when the children shall be with that parent from 5:30 p.m. until 8:30 p.m. (This does not allow for the children to be taken out of school; neither does this require the parent to take time off from work.) The party not having the children on a child's birthday shall have three (3) hours on a non-school day and two (2) hours on a school day, independent of any activity of the party with whom the children are placed on that day. This visitation shall be at a reasonable time but not to conflict with any activity the primary party having the child on that day may be having for the child. All the children shall be together on any of their sibling's birthdays.

f. **Interruption of Scheduled Time:** The Weekend and Weekday visitation shall be

## **EXHIBIT A**

suspended during the entire Christmas school vacation, the entire school spring break/Easter vacation, the entire Thanksgiving school vacation, and summer such that the party not having the last weekend with the children as part of the vacation/summer shall have the first weekend with the children thereafter, and the alternating weekend schedule shall recommence.

g. **Transportation.** Unless otherwise mutually agreed in writing (text message, e-mail, or other similar electronic communication used by both parties showing agreement is acceptable), Husband shall pick up the children at the commencement of his parenting time and shall return the children to Wife's residence or the children's school; provided, the older party is expected to drive herself (the car she drives may be parked if she does not) and may also drive the younger child depending on the circumstances. Each party shall be responsible for transportation of the child(ren) during his or her time with them.

h. In the event a party cannot attend the child(ren)'s scheduled events in which parental involvement is expected or encouraged, and/or in the event a party is unavailable to be with the child(ren) on an overnight basis, then the other party shall be given the first option to participate in the events or care for the child(ren). Notice shall be provided to the other party as soon as a conflict or unavailability is known.

3. **Former Marital Residence.** Wife shall have temporary use and possession of the home and real property located at 3 Seminole Drive, Greenville, South Carolina (the "Former Marital Residence"). Husband shall pay the mortgage, taxes, and insurance related to the Former Marital Residence and he shall be entitled to seek a credit in equitable apportionment for the reduction in the principal balance on the mortgage resulting from the payments he makes during the pendency of this action. Wife shall pay the utilities and maintenance on the Former Marital Residence; provided, Husband shall pay any necessary repair over \$500 (which he may get quotes for and may handle

## **EXHIBIT A**

arrangements for the repair) and he shall be entitled to seek a credit in equitable apportionment for any such amounts expended.

4. **Sale of Lake Lot and Boat.** The parties shall cooperate to immediately list for sale the lot located at 806 Bright Leaf Court, Seneca South Carolina and the 2022 MasterCraft boat. All net sale proceeds from the sale of either asset shall be held in escrow pending the final order in this case, unless the parties agree otherwise.

5. **Vehicles.**

a. Wife shall have use and possession of the vehicle she drives, and Husband shall have use and possession of the vehicle he drives. Husband shall be responsible for the taxes and insurance associated with Wife's vehicle and Husband's vehicle; otherwise, each party shall be responsible for the expenses associated with their respective vehicles.

b. Husband shall be responsible for the reasonable expenses associated with the vehicle the parties' daughter drives; provided, this provision does not prevent this vehicle from being parked for disciplinary purposes or if the child refuses to abide by the visitation schedule provided herein.

6. **Accounts and Debts.**

a. Each party shall have exclusive use and possession of any cash or money in accounts in their respective possession and/or control, and/or titled in their respective name.

b. Except as otherwise detailed in this Order, each party shall be responsible for the timely payment of any and all debts listed solely in his or her name, and any and all debts incurred by him or her.

7. **Child Support.**

a. Husband shall pay to Wife child support in the sum of Three Thousand, Five Hundred and 00/100 (\$3,500.00) Dollars per month commencing April 1, 2023, and on the first

## EXHIBIT A

day of every month thereafter. The parties have calculated the child support amount based on Husband's monthly gross income; no monthly income for Wife; Husband pays approximately \$273.50 per month for the children's health insurance premiums; and in consideration of Husband's payment for both children to continue to attend Christ Church Episcopal School.

b. For so long as it is in the children's best interests, as an incident of child support, Husband shall pay the tuition and required fees associated with the minor children's attendance at Christ Church Episcopal School.

### **8. Health Insurance and Uninsured Medical Expenses.**

a. Health and dental insurance for minor children. So long as it remains available to him through his employment at the same or substantially similar expense, Husband shall timely maintain and provide each child with the existing health, dental, and vision insurance coverage.

b. Uninsured medical expenses for minor children. Wife shall pay the first \$250.00 of uninsured (that is, not covered by insurance) health (to be broadly defined, including but not limited to medical, dental, vision, psychiatric, psychological, testing, counseling, optical, orthodontic, learning, therapy, intervention, treatment, immunization/inoculation/vaccination, and/or similar physical, mental, or emotional health) expenses not covered by insurance incurred by or on behalf of Wife and the parties' children every year. Thereafter, Husband shall pay ninety percent (90%) and Wife shall pay ten percent (10%) of the necessary, uninsured health expenses not covered by insurance incurred by or on behalf of the minor children. Any uncovered health care expense shall be paid by the party responsible within thirty (30) days of his or her being given a copy of the bill, statement, or Explanation of Benefit (EOB) showing the diagnosis or prognosis, the treatment and the expense therefore. The party obtaining health care for the child shall provide the bill, statement, or EOB to the other parent within thirty (30) days of incurring the expense.

## **EXHIBIT A**

Payment shall be made to the health care provider or, if the provider has been paid, directly to the other party, regardless of whether the insurance reimbursement has been received.

c. **Health insurance and uninsured medical expenses for each party.** So long as it remains available to Husband through his employment at the same or substantially similar expense, Husband shall timely maintain and provide Wife with the existing health insurance coverage on a temporary basis.

9. **Restraining Orders.** The parties shall be restrained and enjoined from:

a. **Disposing, transferring, selling, hypothecating, mortgaging, pledging, alienating, destroying, devaluing, or otherwise altering the status or value of any asset (of any kind, no matter how titled or in whose possession, custody, or control) in any manner outside the ordinary course of living/business (to specifically exclude any transactions with/for any person who is an alleged paramour or one who under the circumstances may reasonably be construed as a paramour), to comply with a court order, to pay attorney's fees and costs, or mutual written agreement of the parties, pending a final Order of this Court. Regarding the home equity line of credit ("HELOC") associated with the Former Marital Residence:**

i. **Husband shall have access to the HELOC to pay the anticipated tax liability of \$87,825 associated with the married filing jointly 2022 federal tax return as prepared by Bradshaw, Gordon & Clinkscapes, LLC (and any agreed upon revisions to same), which they agree to timely file.**

ii. **On or before March 31, 2023, each party shall be entitled to pay from the HELOC up to \$30,000 each in attorney's fees and costs (\$60,000 total), not including any amounts already paid from the HELOC by either party towards their own or the other party's attorney's fees and costs. Any such contribution shall be without prejudice to either party's right to seek**

## EXHIBIT A

reallocation of these amounts as part of the issues of equitable apportionment and attorney's fees and costs at the final hearing in this matter. Either party may seek a second temporary hearing regarding access to the HELOC or other assets for attorney's fees and costs if this matter is not resolved in mediation.

b. Except as stated herein, incurring any debt or expense in the parties' joint names, the other party's name, or for which the other party could be held responsible;

c. Engaging in any conduct of the nature or type which impedes or might tend to impede the other party's employment, or any conduct which in any way harms the other party's professional reputation. This restraint does not prohibit either party from issuing subpoenas to the other parties' employer for information relevant to this litigation or from addressing any civil or criminal matters related to the parties' employment. This restraint specifically includes but is not limited to a restraint on each party from disparaging the other party to any third party or online/social media; and

d. Destroying, deleting, losing, concealing, or altering any paper document or electronically stored information ("ESI") and other data or information generated by and/or stored on any electronic device in that party's possession, custody, or control (including but not limited to computer(s), phone(s), tablet(s), and thumb drive/memory card/flash memory).

10. Child-Related Restraining Orders. Both parties shall be restrained and enjoined from:

a. Having any form of physical or verbal confrontation in front of the minor children, or allowing a third party to have such a confrontation;

b. Physical discipline of the minor children;

c. Discussing the specifics of, or otherwise providing the details of, this litigation directly with, to, or in the presence of the minor children, or allowing a third party to so discuss or

**EXHIBIT A**

provide; provided, each parent shall be allowed to tell the minor children of the existence of any court order and the need to follow it. The only exception to this restraining order is if a child is in counseling or under psychological/psychiatric care and the care provider believes it is in the child's therapeutic best interest to discuss the same, but this may only be done in that limited context absent a written order to the contrary.

d. Making disparaging remarks or negative comments about or toward the other parent to or in the presence of the minor children, or in a manner in which the minor children may become aware of the disparagement, or allowing a third party to so disparage the other parent;

e. Making disparaging remarks or negative comments about or toward the minor children to or in the presence of the minor children, or in a manner in which the minor children may become aware of the disparagement, or allowing a third party to so disparage the children;

f. Using profanity or verbally abusive language in the presence of the minor children, or in a manner in which the minor children may become aware of the profanity or verbally abusive language, or allowing a third party to so verbally abuse;

g. Excessively using or being under the influence of alcoholic beverages in the presence of or while caring for the minor children, or allowing a third party to do so;

h. Possessing, using, or being under the influence of any drug that is illegal to possess or use in any quantity in South Carolina (to specifically include but not be limited to cannabis, marijuana and derivatives such as liquid tetrahydrocannabinol (THC) and edible THC, regardless of prescription), kratom, any non-prescribed legal drug, or any synthetic drug, in the presence of or while caring for the minor children, or allowing a third party to do so;

i. Misusing or abusing any prescription drug or other mind-altering substance in the presence of or while caring for the minor children, or allowing a third party to do so;

**EXHIBIT A**

- j. Exposing the minor children to any illegal, illicit, or immoral activity, or allowing a third party to do so;**
- k. Exposing the minor children to any person who is an alleged paramour or one who under the circumstances may reasonably be construed as a paramour, so long as the parties are married.**
- l. Conduct detrimental to the minor children of a particular nature relating to the children's particular needs, for but one example exposing a child to any substance to which they are allergic or failing to address their medical needs;**
- m. Smoking or vaping in the presence of the minor children, or allowing a third party to do so;**
- n. Exposing the minor children to age-inappropriate games or movies, or allowing a third party to do so;**
- o. Displaying any sexually explicit or otherwise indecent material, or exhibiting any sexually explicit or otherwise indecent behavior, to or in the presence of the children, or allowing a third party to do so**
- p. Failing to properly supervise the children;**
- q. Failing to properly and safely secure any and all firearms when caring for the minor children;**
- r. Providing the minor children with a mobile/cellular telephone without the other parent's consent; and**
- s. To the extent not otherwise addressed herein, engaging in conduct or exposing the minor children to situations that endanger their physical, mental, or emotional wellbeing.**

## **EXHIBIT A**

**11. Parenting Guidelines.** The parties are required to see that:

a. When the children are in their care, the children properly and timely attend school (avoiding excessive tardies) and are not out of school in violation of any educational requirement of this State; and

b. When the children are in their care, the children receive proper medical attention and appropriately take prescribed medications or reasonably necessary medical treatments and to that end shall ensure that when the children are in their care, they attend any scheduled medical appointments and shall exchange medications which are to be taken, all as might be reasonable and appropriate.

**12. No Adverse Contact Order.** Each party shall be subject to a “no adverse contact order” (hereinafter “NACO”) which shall restrain each of them from engaging, directly or indirectly, in adverse conduct towards the other. This NACO shall permit the parties to contact, associate, and communicate with one another only so long as both parties mutually consent to such contact, association, or communication; provided, in no event shall the parties be prevented from reasonable and appropriate communications regarding their children. The purpose of this NACO is to both encourage and require civil contact and communication between the parties, and to prevent unpleasant contact and communication. This NACO is not intended to trigger, implement or effect any provisions of 18 U.S.C. §§ 922(g) (and any subparts) or S.C. Code § 16-25-30 (and any subparts), nor is the NACO intended to rise to the level of, or be considered, an order of protection as defined in S.C. Code §§ 20-4-10 *et seq.* Willful violations of this NACO (including but not limited to inappropriate communications) shall subject the offending party to this Court’s contempt powers.

**13. Attorney’s Fees and Costs.** Husband has contributed the sum Twenty Thousand and 00/100 (\$20,000) Dollars towards Wife’s attorney’s fees and costs. Husband’s contribution is

**EXHIBIT A**

without prejudice to Husband's right to seek reallocation of this amount as part of the issues of equitable apportionment and attorney's fees and costs at the final hearing in this matter.

**14. Mediation.** The parties shall attend mediation with Kelly Pope-Black, Leslie Riddle, or any other mutually agreeable mediator upon the completion of the written discovery process as well as any depositions sought by a party before mediation (without prejudice to further written discovery and depositions if mediation fails) and as soon as each party's and counsel's schedules allow; provided, in any event, this mediation shall occur no later than July 31, 2023 unless the parties mutually agree otherwise.

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 )  
Jeffrey Ellicott Lindley )  
 Plaintiff, )  
 vs. )  
 )  
Sara Elizabeth Lindley )  
 Defendant. )

IN THE FAMILY COURT  
 THIRTEENTH JUDICIAL CIRCUIT

**SUPPORT INFORMATION SHEET**

Docket No. 2023-DR-23-198

Check appropriate box:

- No spousal or child support ordered. (No other items should be completed.)
- If support is ordered to be paid directly or through the Court, you must complete BOTH pages (as applicable).

Obligation Type	Child Support	Spousal Support	Other
Amount	\$	\$	\$2,500.00
Collection Costs (5%)	\$	\$	\$
Payment Frequency			
Payment Start Date	April 1, 2023		
Weekly	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bi-weekly	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monthly	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Semi-monthly (1st & 15th)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Semi-monthly (15th & 30th)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Total Arrearage Amount	\$	\$	\$
Wage Withholding			
Required by S.C. Code Ann. §63-17-1420	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ordered	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Not Ordered	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Name of Custodial Parent (if applicable): \_\_\_\_\_

**\*\*\*\*\*OBLIGOR'S DESIGNATION STATEMENT: PAYMENT OF COURT COSTS\*\*\*\*\***

I acknowledge that S.C. Code Ann. § 63-3-370 requires that I pay and the Family Court has ordered that I pay court costs in an amount equal to five (5) percent of any support payment made through the Clerk of Court or the centralized wage withholding system. I owe and will pay these costs in addition to my support obligation.

To meet my duty to pay court costs, I designate an amount equal to five (5) percent of the support payment I make to be applied and distributed in payment of court costs, not support.

I acknowledge the Clerk of Court or, if payments are withheld from my income, the centralized wage withholding system to deduct the fee from every payment made by me or on my behalf.

I acknowledge that should I not pay the full amount due, that an arrearage will accrue and that the Clerk of Court may take enforcement action against me for failure to pay all amounts ordered by the Court.

If an amendment to the law changes the amount of court costs, this designation authorizes deduction of court collection costs in the amount established by law.

Date: \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
 Signature of Person paying Support\*\*

**\*\*NOTE TO CLERK: FILE AND PROCESS THIS FORM EVEN IF SIGNATURE OF PERSON PAYING SUPPORT IS NOT PROVIDED.\*\***

# IDENTIFYING INFORMATION ON THIS PAGE

**A. OBLIGEE/PAID TO:**

Name: Sara Elizabeth Lindley  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Email Address: \_\_\_\_\_ Phone: \_\_\_\_\_  
 SSN: \_\_\_\_\_ Gender: Female Race: Caucasian Height: \_\_\_\_\_ Weight: \_\_\_\_\_  
 Date of Birth: \_\_\_\_\_ Scars: \_\_\_\_\_  
 Driver's License Number: \_\_\_\_\_ Driver's License Issuing State: \_\_\_\_\_  
 Employer: \_\_\_\_\_  
 Employer Address: \_\_\_\_\_

**B. OBLIGOR/PAID BY:**

Name: Jeffrey Ellicott Lindley  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Email Address: \_\_\_\_\_ Phone: \_\_\_\_\_  
 SSN: \_\_\_\_\_ Gender: Male Race: Caucasian Height: \_\_\_\_\_ Weight: \_\_\_\_\_  
 Date of Birth: \_\_\_\_\_ Scars: \_\_\_\_\_  
 Driver's License Number: \_\_\_\_\_ Driver's License Issuing State: \_\_\_\_\_  
 Employer: \_\_\_\_\_  
 Employer Address: \_\_\_\_\_

**C. CHILDREN**

CHILDREN'S NAMES	DATE OF BIRTH	SSN
1. ENL	2007	
2. JEL	2010	
3.		
4.		
5.		
6.		

\_\_\_\_\_  
 PREPARED BY

\_\_\_\_\_  
 TITLE

\_\_\_\_\_  
 DATE

## Lindley v. Lindley

Johnson, Katie <kmjohnson@hsblawfirm.com>

Tue 5/30/2023 1:17 PM

To: Kim Berry <kimb@mbllc.com>

Cc: Larissa Lopez <larissa@mbllc.com>; Sherard, Reid <rsherard@hsblawfirm.com>; Peeler, Jordan <jpeeler@hsblawfirm.com>; Rhymer, Ann <arhymer@hsblawfirm.com>

1 attachments (12 MB)

Temporary Order (Filed 05.26.23) - Lindley.pdf;

Ms. Berry:

Attached please find a filed copy of the Lindley Temporary Order.

---

## HAYNSWORTH SINKLER BOYD

Katie M. Johnson | Legal Assistant

Direct 864.240.3277 | [kmjohnson@hsblawfirm.com](mailto:kmjohnson@hsblawfirm.com)

Haynsworth Sinkler Boyd, P.A.

ONE North Main, 2nd Floor | Greenville, SC 29601

Main 864.240.3200 | Fax 888.696.4585

[Web](#) | [Map](#) | [Blog](#)

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**CLERK'S  
COST PAID**

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

FILED CLERK OF COURT THE FAMILY COURT  
GREENVILLE, THIRTEENTH JUDICIAL CIRCUIT  
2023 JUN 16 A 8:53

Jeffrey Ellicott Lindley

Plaintiff,

vs.

Sara Elizabeth Lindley

Defendant.

**MOTION AND ORDER INFORMATION  
FORM AND COVERSHEET**

Docket No. 2023-DR-23-0198

Plaintiff's Attorney:  
Reid T. Sherard & Jordan W. Peeler, Bar No. \_\_\_\_\_  
Address:  
ONE North Main Street, 2nd Floor, Greenville  
SC 29601  
Phone: (864) 240-3278 Fax \_\_\_\_\_  
E-mail: \_\_\_\_\_ Other: \_\_\_\_\_

Defendant's Attorney:  
E. Kimberly Berry, Esq., Bar No. \_\_\_\_\_  
Address:  
1225 S. Church Street, Greenville, SC 29601  
Phone: 864-421-0036 Fax 864-421-9060 \_\_\_\_\_  
E-mail: \_\_\_\_\_ Other: \_\_\_\_\_

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)  
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)  
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

**SECTION I: Hearing Information**

Nature of Motion: Motion to Reconsider

Estimated Time Needed: 30 Mins

Court Reporter Needed:  YES /  NO

**SECTION II: Motion/Order Type**

- Written motion attached  
 Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

EKB  
Signature of Attorney for  Plaintiff /  Defendant

06.08.2023  
Date submitted

PAID - AMOUNT: \$ 25.00 SECTION III: Motion Fee

- EXEMPT: (check reason)
- Rule to Show Cause in Child or Spousal Support
  - Domestic Abuse or Abuse and Neglect
  - Indigent Status  State Agency v. Indigent Party
  - Sexually Violent Predator Act  Post-Conviction Relief
  - Motion for Stay in Bankruptcy
  - Motion for Publication  Motion for Execution (Rule 69, SCRPC)
  - Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
- Name of Court Reporter: \_\_\_\_\_  
 Other: \_\_\_\_\_

**JUDGE'S SECTION**

- Motion Fee to be paid upon filing of the attached order.  
 Other:

JUDGE CODE \_\_\_\_\_ Date: \_\_\_\_\_

Judge Signature: \_\_\_\_\_

**CLERK'S VERIFICATION**

Collected by: \_\_\_\_\_ Date Filed: \_\_\_\_\_

- MOTION FEE COLLECTED: \$ \_\_\_\_\_  
 CONTESTED - AMOUNT DUE: \$ \_\_\_\_\_

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

IN THE FAMILY COURT FOR THE  
THIRTEENTH JUDICIAL CIRCUIT  
Docket No.: 2023-DR-23-0198

Jeffrey Ellicott Lindley, )  
 )  
Plaintiff, )

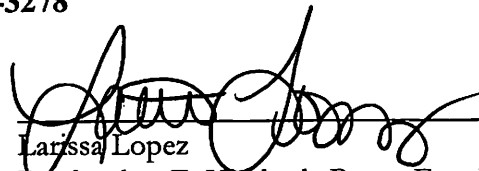
vs. )

Sara Elizabeth Lindley, )  
 )  
Defendant. )

CERTIFICATE OF SERVICE

I, Larissa Lopez, paralegal at MOONEYHAM BERRY, LLC, with offices at 1225 S. Church Street, Greenville, South Carolina 29605, have this 27 day of June, 2023, served Plaintiff, Jeffrey Ellicott Lindley, by and through his attorney of record, Reid Sherard, Esq., with a copy of the filed Notice of Motion and Motion for Reconsideration pursuant to SCRPC 52, 59(e) and 60, by having the same sent via Electronic Mail and U.S. Mail addressed to:

**Reid T. Sherard, SC Bar No. 72536**  
**E-mail: rsherard@hsblawfirm.com**  
**Jordan W. Peeler, SC Bar No. 102558**  
**E-mail: jpeeler@hsblawfirm.com**  
**ONE North Main Street, 2<sup>nd</sup> Floor**  
**P.O. Box 2048 (29602)**  
**Greenville, SC 29601**  
**(864) 240-3278**

  
Larissa Lopez  
Paralegal to E. Kimberly Berry, Esquire  
MOONEYHAM BERRY, LLC  
1225 South Church Street  
Greenville, South Carolina 29605  
Phone: (864) 421-0036  
Fax: (864) 421-9060

Greenville, South Carolina

**Exhibit H (Affidavit of Derek Ellington Dated December 12, 2023)**

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

)  
FILED CLERK OF COURT  
GREENVILLE, S.C.  
)  
2023 DEC 13 A 11:20  
FAMILY COURT

**AFFIDAVIT OF DEREK ELLINGTON**

Personally appeared before me, Derek Ellington, who being duly sworn and upon penalty of perjury, states the following is true and correct.

**MY BACKGROUND**

I am a South Carolina Licensed Private Investigator, a Certified Fraud Examiner, a North Carolina Licensed Digital Forensics Investigator, and an ACEDS Certified E-Discovery Specialist employed with Ellington Digital Forensics, LLC in Wake Forest, North Carolina. My full CV setting forth my credentials and qualifications is attached as Exhibit A.

I am regularly qualified as an expert witness in both State and Federal courts for both civil and criminal cases to testify regarding digital forensics including the acquisition, review, and E-Discovery production of Electronically Stored Information (ESI) from computers, mobile devices, and cloud-based data.

**SUMMARY OF MY INVOLVEMENT**

Jeff Lindley engaged me to provide expert testimony regarding the digital forensic issues in this case.

In preparation for submitting this affidavit, I have reviewed:

- Jeff Lindley’s devices (two phones and a computer)
- Ms. Lindley’s Motion to Reconsider submitted June 8, 2023 (the “Motion”)
- The Affidavit of Steve Abrams dated June 7, 2023 and submitted with the Motion (the “Abrams Affidavit”)
- Mr. Abrams’ response to a subpoena issued to him by Mr. Lindley’s attorneys.

I am also supposed to inspect the electronic copy of Sara Lindley’s electronic devices (which to date I have not received). This inspection has not occurred yet due to delays that I understand relate to Mr. Abrams’ schedule.

**SUMMARY OF MY FINDINGS**

In my review of Mr. Lindley’s devices, I did not see any evidence of Ms. Lindley’s data having been collected by Mr. Lindley.

In my review of the information submitted by Ms. Lindley, I saw misrepresentations by Mr. Abrams. I did not see any information that Mr. Lindley hacked Ms. Lindley’s device(s).

### **MY REVIEW OF MR. LINDLEY'S DEVICES**

Part of my work involved preserving digital copies of Mr. Lindley's electronic devices to produce to an agreed-upon third party (Russell Gilmore) to conduct a review for potential attorney-client privileged information contained on the devices. I preserved the images of two Apple iPhones (two iPhone 14 smartphones with serial numbers RYV9JC5V2C and D594HHC7XP) and one laptop computer belonging to Mr. Lindley (a Lenovo ThinkPad laptop with serial number PF2ZZQ0B). In my initial review of Mr. Lindley's devices and data, other than photographs of an iPad which I understand were part of materials already submitted to the Court, I saw no trace of Ms. Lindley's data of any sort having been intercepted or collected by Mr. Lindley.

The iPhone images were preserved using Cellebrite, the industry standard for cell phone preservation and review. The computer was imaged in E01 format, which is also the industry standard.

On or about November 26, 2023, I produced a copy of Mr. Lindley's phone and computer data to Mr. Gilmore so he could perform the privilege filter. I understand that as of the date of this affidavit, Mr. Gilmore has completed his privilege review and has been in contact with Mr. Abrams to coordinate Mr. Abrams' receipt and review of the data from Mr. Lindley's devices.

### **MY REVIEW OF MR. ABRAMS' AFFIDAVIT AND SUBPOENA RESPONSE**

As referenced in the Temporary Order and other filings, Mr. Lindley used his Apple iPhone to take pictures of Instagram direct messages between Ms. Lindley and George Tagg appearing on the screen of an iPad tablet.

In the Abrams Affidavit, Mr. Abrams attempts to direct attention away from the iPad pictures and Tagg messages by misrepresenting a simple utility program called Dr. Fone as some type of malicious cyber-attack or "hacking" of Ms. Lindley's electronic devices by Mr. Lindley.

Dr. Fone (<https://drfone.wondershare.net/>) is a utility program available for download on the Internet for \$39.95 from a company called Wondershare. Its most basic use is to replace some of the functionality of Apple's iTunes software with a more user-friendly interface.

With Dr. Fone, a non-tech savvy person can back up their phone, transfer files, and do some rudimentary repairs to inoperable or partially operable phones.

In furtherance of his "hacking" narrative, Mr. Abrams makes several incorrect or misleading statements about the Dr. Fone program and its uses.

## Mr. Abrams' Conflicting Statements Regarding Dr. Fone

In Paragraph 5 of the Abrams Affidavit, Mr. Abrams claims that *"I have Dr. Fone toolkit and use it in my practice when conventional forensic tools cannot get access to mobile devices and data."*

5. Dr. Fone by Wondershare is a toolkit of applications for performing various system functions and hacks of Apple and Android mobile devices. I have the Dr.Fone toolkit and use it in my practice when conventional forensic tools cannot get access to mobile devices and data. (However, I get an order or consent from the phone user/owner before employing the Dr.Fone tools that bypass security features of mobile devices, especially when they access data located off of the mobile device itself, such as in the cloud over the Internet.) Among the applications in the Dr. Fone Toolkit are apps to recover deleted data from Apple and Android devices, to bypass the passcodes on Apple Devices, and to transfer the data (including messenger apps like WhatsApp, and iMessage) from the mobile devices to a computer.

However, in Mr. Abrams' May 15, 2023, email to Attorney Kim Berry which he produced in response to the subpoena, he states, *"I am getting a copy of drfone to experiment with so I can see what it is and what artifacts it leaves behind."*

From: Steven Abrams <[steve@abramsforensics.com](mailto:steve@abramsforensics.com)>  
Sent: Monday, May 15, 2023 6:22 PM  
To: Kim Berry <[kimb@mbllc.com](mailto:kimb@mbllc.com)>  
Subject: RE: Dr.Fone is on the MacBook.

Kim

Here is what I know. Drfone was used on all three devices. It was loaded on to the MacBook in August 2022 (8/16/2022). The iPhone and iPad were accessed by plugging them into the MacBook the last week of September 2022. Data was extracted from the iPhone onto the MacBook, and the messages were extracted from the iPhone backup. I found many George Tagg messages on the iPhone, and most were deleted. The original messages (George Tagg) were from February 2022. I don't have a complete picture of this process yet. I am getting a copy of drfone to experiment with so I can see what it can do and what artifacts it leaves behind. The supposition that husband got the messages cited in his court

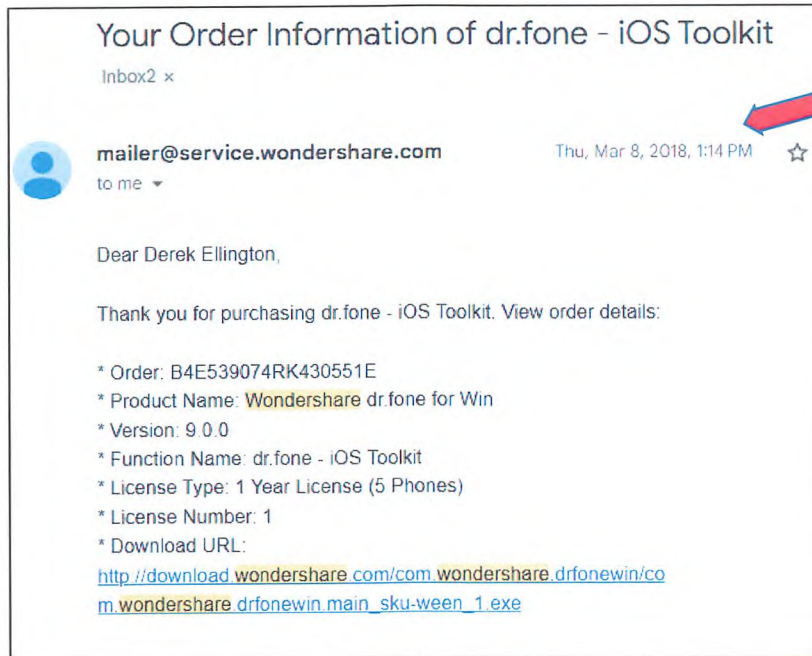
Abrams SDT\_000089

This statement directly contradicts Mr. Abrams' sworn assertion made three weeks later that Dr. Fone is an essential forensics tool for him and that he is experienced in its operation.

I believe if Mr. Abrams actually had prior experience with Dr. Fone, he might not have been so quick to misrepresent its capabilities.

## My Experience with Dr. Fone

Unlike Mr. Abrams, I am familiar with Dr. Fone and its capabilities and limitations.



As shown by the above order confirmation, I have tested out and monitored the latest versions of the program since March 8, 2018.

### **MR. ABRAMS' FALSE OR MISLEADING TESTIMONY**

In furtherance of his "hacking" narrative, Mr. Abrams makes several incorrect or misleading statements about the Dr. Fone program and its uses.

#### **Abrams Falsehood #1: Dr. Fone is not a malware program.**

Paragraph 4 of the Abrams Affidavit states: "*malware infection using Wondershare Dr. Fone toolkit.*"

Mr. Abrams categorizes Dr. Fone as a malware program. This is not true.

Malware programs, by definition, mislead the user as to their true usage, collect users' sensitive data, and are flagged by antivirus and malware protection vendors as such. To my knowledge, no anti-spyware, antivirus, or antimalware programs have flagged Dr. Fone as any type of threat or malicious program. Virustotal.com is a site that aggregates anti-spyware vendors' lists of flagged malicious programs. Virustotal.com reports that none of the 65 vendors that report to Virustotal.com listed Dr. Fone as a malicious program.



**Abrams Falsehood #2: There is no evidence that Mr. Lindley used Dr. Fone with malicious intent.**

In Paragraph 6 of the Abrams Affidavit, Mr. Abrams attempts to present the installation and usage of this utility software in a prejudicial light without any evidence to support malicious use. He states that Mr. Lindley configured the software on September 30, 2022, and reports extensively about the installation and configuration of the program, including that an iPhone was connected, and that data was transferred.

However, in Paragraph 8, Mr. Abrams admits that the iPhone connected to Dr. Fone with serial number D594HHC7XP was **not** an iPhone that he examined (this is one of Mr. Lindley's iPhone 14 smartphones that I have examined). Rather, he states in Paragraph 3 that he only examined an iPhone, an iPad, and a Mac computer provided by Ms. Lindley and not any device of Mr. Lindley.

Mr. Abrams admits in Paragraph 12 that the evidence is that Mr. Lindley utilized Dr. Fone for his own personal use: “*The Dr. Fone transfer log from September 30, 2022 contains evidence that Husband installed Dr. Fone Toolkit . . . and used it to backup an iPhone, perhaps his own[.]*”

But Mr. Abrams still clings to the narrative of a “hack” by creating a false impression that Mr. Lindley’s use of Dr. Fone showed “*he had the knowledge and ability to copy data from iPhones and iPads.*”

This directly contradicts Mr. Abrams’ own conclusion expressed in clear terms in his June 7, 2023, email to Attorney Kim Berry where he admits, “**I have no direct evidence that Husband used Dr. Fone to access Tagg material.**” (emphasis added).

From: Steven Abrams <[steve@abramsforensics.com](mailto:steve@abramsforensics.com)>  
Sent: Wednesday, June 7, 2023 2:37 PM  
To: Kim Berry <[kimb@mblic.com](mailto:kimb@mblic.com)>  
Subject: RE: Dr Fone is on the MacBook

NO. I did not recover any data to show directly that Dr. Fone was used to undelete material related to Tagg. I did show Husband setup and used Dr. Fone, and that the software was on all three devices I examined. But the log file I found was not for one of Sara's devices, it was a different iPhone in the log. So I have no direct evidence that Husband used Dr. Fone to access Tagg material. I did not find a lot of Tagg material, some of what I found was deleted, some was not deleted. I don't know how the undeleted Tagg material got that way. There is no evidence.

Best regards,  
Steve

**CONCLUSION**

In my opinion, Ms. Lindley’s Motion to Reconsider, and Mr. Abrams’ Affidavit creating the Dr. Fone “hacking” narrative, are intentionally misleading and were deliberately crafted to create an impression of events that simply did not happen.

Dr. Fone is not a “hacking tool”. It is not “malware”. It is irresponsible for a credentialed forensic expert to propagate a falsehood that hacking occurred when he does not have proof of same (which he admitted privately in an email to the lawyer). On the other hand, I have reviewed Mr. Lindley’s devices and there is no evidence he transferred Ms. Lindley’s data as she claims.

Sworn to before me this 12  
day of December, 2023

Jessica Coates  
Notary Public of North Carolina  
My Commission Expires: 11/29/24

Devek Ellington  
Devek Ellington  
NOTARY PUBLIC  
JESSICA COATES  
WAKE COUNTY, NC



# Ellington Digital Forensics, llc

Digital Forensics, Fraud Investigations, & E-Discovery

Exhibit A

## Derek W. Ellington, CFE, PI, DFI Curriculum Vitae

*ACFE Certified Fraud Examiner, ACEDS Certified E-Discovery Specialist  
AccessData/Exterro Certified Forensic Examiner*

**North Carolina Licensed Digital Forensics Examiner – 802701-DFE**

*Licensed Private Investigator:*

*North Carolina – 736819, South Carolina-D3532, Texas-66872601*

*Member: North Carolina Association of Private Investigators*

*Member: South Carolina Association of Legal Investigators*

*Member: Texas Association of Licensed Investigators*

*Linkedin.com/in/DerekEllington/*

## EXPERIENCE

**2008 - 2023 Ellington Digital Forensics, LLC, Wake Forest, NC**

**1995 - 2008 Ellington IT & Forensics Wake Forest, NC**

Experienced Consulting and Testifying Expert Witness. Testified over 200 times.

Forensic Data Collections and Investigations - Mobile Device Forensics

ACFE Working Group on Bylaws and Ethics 2019>

ACFE-Central Carolinas Chapter Secretary – 2022>

Cold Case Documentary Technical Consultant – Investigation Discovery, Blue44 Productions

CLE Instructor - Trainer for Sirchie Law Enforcement First Responders

**1992 - 1995 RAS Engineers Wake Forest, NC**

Engineering Tech / Investigator /Construction Investigation and Accident Reconstruction.

**1986/1990 Erskine College Due West, SC**

Studied Behavioral Science, Computer Science, and Law. Captain & MVP, Basketball 1989-90.

## ELLINGTON DIGITAL FORENSICS, LLC

Ellington Digital Forensics is a national full-service Digital Forensics lab based in the Raleigh, NC area. We are licensed in NC, SC and Texas as a Private Investigations company and registered as an LLC in both NC and Texas. We are approved for state and federal IDS payments. We provide forensic collections for many national E-Discovery firms. Our lab technology includes Cellebrite UFED, Magnet Axiom, Exterro FTK, Pinpoint Harvester, and Elcomsoft.

## COMPETENCIES

Digital Forensics, Fraud Investigations, Civil, Criminal, and Corporate Investigations  
Wrongful Death and Liability, Employee Misconduct, Theft of IP, Incident Response  
Expert Witness Testimony, Depositions, and Deposition review  
Information Technology Audits, IT Investigations and Misconduct  
E-Discovery and E-Discovery collections, Relativity  
Drafting Forensic Protocols, Subpoenas, Discovery Plans, TROs and Protective Orders  
Network Security, Device and Cloud-Based Security Reviews  
Audio and Video preservation and Analysis, DVR and Surveillance Systems

---

**Certified Fraud Examiner  
Licensed Digital Forensics Examiner  
E-Discovery Specialist  
Licensed Private Investigator**

**Office (919) 435 0752  
7620 Thompson Mill Road  
Wake Forest, NC 27587  
www.Ellington.net  
info@Ellington.net**

**ACFE - 827440  
North Carolina DFI - 910026M  
North Carolina PI - 736819  
South Carolina PI - 3532  
Texas PI - 66872601**



# Ellington Digital Forensics, llc

Digital Forensics, Fraud Investigations, & E-Discovery

Cloud/Local Backup Systems, LTO tape and other media. Google Vault/Dropbox/OneDrive  
Cellebrite UFED, Exterro FTK, Magnet Axiom, Elcomsoft, Recon, Aid4mail, Logicube  
Pinpoint Labs Harvester  
Server Operating Systems, Exchange Server, Office 365, G-Suite  
GPS, CDR and Location data  
Electronic Voting Systems – Electronic Poll Books  
Persistent Immersive Technology and its Impacts – Millennial Investigations

## MEDIA

### Documentary Production – Technical Advisor and on camera

*Breaking Homicide 2018 – Faith Hedgepeth Murder, Chapel Hill, NC 11/2017*  
*Breaking Homicide 2019 – S2E07 A Murder in Paradise, Kauai, HI 5/2019*  
*Breaking Homicide 2019 – S2E08 A Deadly Encounter, Jacksonville, FL 1/2019*  
*Dateline NBC Investigations 2019 – The Crossing, The Rob Tiptop Case 7/2019*  
*Hunt for the Smiley Faced Killers – William Hurley S01E03, Raleigh, NC 8/2018*

### Media Interviews

*Carolina Country Magazine – Data Doesn't Lie – 10/2020*  
*Nancy Grace True Crimes Podcast – regular panelist – 2020-2023*  
*Ex-It Strategy Podcast – Digital Forensics – Raleigh, NC 11/24/2020*  
*Dragoncon TV – Millennial Mind Interview – Atlanta, GA 9/2018*  
*ABC11 News – Cree Investigation – Durham, NC 5/2018*  
*ABC11 News – Cookie Scraping Expose – Wake Forest, NC 1/2019*  
*New Directions Family Law Youtube- Digital Forensics, Raleigh, NC 4/2019*  
**Digital Forensics and Family Law: Keeping Kids Safe:**  
*NCBA Family Law Section, Family Forum Newsletter, Section Vol.31 No. 4 3/2011*  
*On the Record Magazine, Raleigh, NC Issue 3 6/2011*  
**Digital Forensics and Family Law: Introduction to Digital Forensics**  
*NCBA Family Law Section, Family Forum Newsletter, Section Vol.31 No. 2 12/2010*  
*On the Record Magazine, Raleigh, NC Issue 1 1/2011*

## PRESENTATIONS AND INSTRUCTION GIVEN

### Incident Response and Cybersecurity for the Fraud Examiner

*Incident Response and Cybersecurity for the Fraud Examiner, ACFE-CCC, Raleigh, NC 5/4/2023*  
*Incident Response and Cybersecurity for the Fraud Examiner 4 hours, ACFE, Seattle WA, 6/11/2023*  
*Incident Response and Cybersecurity for the Fraud Examiner, ACFE, Seattle WA, 6/13/2023*

### Skeptic's Guide to TikTok from controversy to Covid

*Skeptrak Virtual Dragoncon, Atlanta, GA 9/2020*

### Death and your Digital Legacy

*Death and your Digital Legacy, Skeptrak Dragoncon, Atlanta, GA 9/2019*  
*Death, Data, and Digital Legacies, ACFE Global Conference, Nashville, TN 6/2022*  
*Death and your Digital Legacy, Association of IT Professionals, RTP Raleigh, NC 6/13/2023*

Certified Fraud Examiner  
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E-Discovery Specialist  
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North Carolina PI - 736819  
South Carolina PI - 3532  
Texas PI - 66872601



# Ellington Digital Forensics, llc

Digital Forensics, Fraud Investigations, & E-Discovery

## **How to be an expert at being an Expert**

*How to be an expert at being an Expert, ACFE Maryland, Baltimore, MD 4/2022*

## **Investigating the Millennial Mind- The Effects of Persistent Immersive Technology**

*Women in E-Discovery – Charlotte, NC 11/2019*

*Women in E-Discovery – Raleigh, NC 10/2019*

*IMM part 1 and 2, Central Alabama CFE/CPA, Montgomery, AL 8/2019*

*TechnoForensics & Security Conference – Myrtle Beach, SC 6/2019*

*TechnoForensics & Security Conference – Myrtle Beach, SC 6/2018*

*Wake County Women's Bar Association – Raleigh, NC 6/2018*

*Skeptrak Dragoncon – Atlanta, GA 9/2018*

*ACFE Global Fraud Conference – Las Vegas, NV 6/2018*

*Raleigh Wake Paralegals Association – Raleigh, NC 10/2018*

*NC ACFE Fraud Conference – Raleigh, NC 12/2018*

*Durham Family Law Group – Durham 2/2019*

*IMM ACFE Corporate Alliance Webinar – National, 3/2019*

*IMM ACFE Global Conference – Austin TX 6/2019*

## **Dr. Strangeletter: How I learned to stop worrying and love Litigation Hold- CLE**

*NC Bar Association – Cary, NC 2/24/20*

*Dirty 30 Paralegals Group Wilmington, NC 3/2017*

*NCCPA Fraud Conference, Greensboro NC 10/2017*

## **Hacking in Popular Culture – Myths versus Reality**

*Dragon-Con Skeptics Track Atlanta GA 9/2016*

## **A Guide to Getting Hacked – First steps in Incident Response**

*Electronic Frontier Foundation, Dragoncon, Atlanta GA 9/2017*

## **A Skeptics Guide to Voting Systems – Hacking Voting Systems**

*Skeptrack, Dragoncon, Atlanta GA 9/2017*

## **Digital Forensics for Law Enforcement First Responders**

*Sirchie, Inc. Youngsville, NC Quarterly 2015-2016*

## **Understanding Jailbreaking and Rooting Mobile Devices**

*Techno Security& Digital Forensics Conference Myrtle Beach, SC 6/2016*

## **Using iTunes and iCloud Extractions with Magnet IEF**

*Techno Security& Digital Forensics Conference Myrtle Beach, SC 6/2016*

## **Magnet Forensics Panelist – The Future of Mobile Device Forensics**

*Magnet Forensics User Summit Myrtle Beach 6/2015*

## **The Humanist Hour #165- Humanist Considerations in the Digital Age**

*American Humanist Association 8/2015*

## **Digital Forensics for Court Reporters - CLE**

*NC Verbatim Reporters Association, Cary NC 4/2015*

## **Cellebrite Panelist – Trends in Mobile Forensics 2015-2016**

*Techno Security& Digital Forensics Conference Myrtle Beach 6/2015*

## **Privacy in a Digital Age – CLE and Article**

*Pitt County NC Bar Association, Greenville NC 10/2014*

*Raleigh Wake Paralegals Association, Raleigh NC 10/2014*

*NCBA Family Law Section, Family Forum Newsletter, 10/2014*

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South Carolina PI - 3532  
Texas PI - 66872601**



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Digital Forensics, Fraud Investigations, & E-Discovery

## **Cloud Forensics for Attorneys - CLE**

*Tharrington Smith – Family Law Specialist Program, Raleigh NC 6/2014*

## **Incident Response for IT Executives and Auditors - CLE**

*Information Systems Audit and Control Association, RTP NC 4/2014*

## **The Digital Forensics Expert Witness - CLE**

*Campbell Law School, Raleigh NC 2/2014*

## **Technology and Custody Issues - CLE**

*NC Bar, Family Law Specialists Intensive, Charlotte, Wilmington NC 10/2014*

*Techno Security & Digital Forensics Conference Myrtle Beach 6/2015*

## **Forensics and Incident Response for Accountants and Fraud Examiners – 4 hours**

*Association of Certified Fraud Examiners, Raleigh, NC 2/2014*

## **Digital Forensics and ESI, New Legal Requirements - CLE**

*NC Bar, Family Law Specialists Intensive, Asheville, NC 10/2011*

*NC Bar, Family Law Specialists Intensive, Wilmington, NC 2/2012*

## **Mobile Devices as Electronically Stored Evidence (ESI) - CLE**

*Raleigh-Wake Paralegals Association, Raleigh, NC 10/2011*

*NC Bar, Family Law Specialists, Charlottesville, VA 7/2011*

## **Digital Forensics and Family Law: Understanding Deleted Files**

*NCBA Family Law Section, Family Forum Newsletter, Section Vol.31 No. 3 3/2011*

*On the Record Magazine, Raleigh, NC Issue 2 3/2011*

## **Digital Forensics and Electronic Discovery – CLE**

*The Thirteen Legal Group, Chapel Hill, NC 2/2010*

*Dirty Thirty Paralegals Association, Raleigh, NC 1/2011*

*Raleigh-Wake Paralegals Association, Raleigh, NC 10/2011*

*North Carolina Advocates for Justice Raleigh, NC 2/2016*

*NBI Training Seminar: Digital Forensics for Attorneys – 2hours – Raleigh, NC 6/2019*

## **Computer Forensics for Accountants and Fraud Examiners - CPE**

*Association of Certified Fraud Examiners, Raleigh, NC 2/2010 - 8 hours*

*North Carolina State Government Auditors Raleigh, NC 6/2016*

*North Carolina Association of Certified Public Accountants, Greensboro NC 10/2016*

## **Bad Grandma – A Case Study in Multilayered fraud**

*Association of Certified Fraud Examiners, Raleigh, NC 8/2022*

*Note: I have not listed any trainings or classes I have attended, that is because merely attending a class is not a measure of an expert's competence, nor does it provide any insight as to what that expert's opinion may be on a given subject. As an expert, I regularly attend training and classes where I may not fully agree with the instructor, methodology, or approach. A true measure of competence and opinions lies in the classes that an expert has taught, the public statements they have made, and the sworn testimony they have given.*

**Exhibit I (Attorney Fee Affidavit of Kimberly Berry)**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )  
  
Jeffrey Ellicott Lindley, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
Sara Elizabeth Lindley, )  
 )  
Defendant. )  
\_\_\_\_\_ )

IN THE FAMILY COURT FOR THE  
THIRTEENTH JUDICIAL CIRCUIT  
  
ATTORNEY'S FEE AFFIDAVIT  
  
Docket No.: 2023-DR-23-0198

PERSONALLY, APPEARED before me, E. Kimberly Berry, who, being duly sworn, swears and deposes that if she were called as a witness in the above entitled action, she would truthfully and accurately testify as follows:

**QUALIFICATIONS OF COUNSEL**

1. I am E. Kimberly Berry, and I am the attorney for Defendant, Sara Elizabeth Lindley.
2. I am a partner in the law firm of Mooneyham Berry, LLC.
3. I graduated from Mercer University School of Law in 1993 and was admitted to the Georgia Bar in 1993 (currently inactive); the U.S. District Court for Georgia in 1993; and was admitted to the South Carolina Bar in 1997.
4. I am a member of the American Bar Association, Family Law Section and the South Carolina Bar Family Law Section. My practice is primarily engaged in the practice of Family Law matters.
5. My primary practice involves litigation and matrimonial disputes and approximately 95% of my current case load involves matrimonial litigation.

**LEGAL AUTHORITIES**

6. In incorporate Rule 407 of the South Carolina Appellate Court Rules and Rule 1.5 of the Rules of Professional Conduct and further call attention of the Court to the holdings in E.D.M v. T.A.M., 307 S.C. 471, 415 S.E.2d 812 (1992); Glasscock v. Glasscock, 304 S.C. 158, 403 S.E.2d 313

(1991, concerning the factors and criteria which should be considered in the setting of attorney's fees). I rely upon the discretion of this Court in its determination of the amount of fees based, among other things, upon the Court's file, the Court's knowledge of litigation, which reflects the nature, extent and difficulty of the services rendered and the time necessarily devoted to the case, the beneficial results accomplished, the fact that there is not contingent compensation in domestic relations cases, the professional standing of counsel, and the fees customarily charged in this area for similar legal services.

7. I am informed and believe that the Family Court is authorized by statute to order the payment of suit money, including attorney's fees, to either party in a domestic action. South Carolina Code of Laws, § 20-3-120, 130 (1985); *Miller v. Miller*, 280 S.C. 314, 313 S.E.2d 288 (1984).

#### TIME AND COSTS

8. I, in accordance with the time and expense records of my office, which are maintained on a daily basis, state to the Court that the following time expenditures have necessarily been made in connection with the matters now before the Court, through and including the date of the hearing. My hourly rate in this matter is \$500.00 per hour for attorney time and \$100.00 per hour for paralegal time. My clients are responsible for all costs incurred.

9. The following is an accurate itemization of fees and costs incurred in connection with the matter now before the Court:

Date	Atty	Description	Time
03/01/2023	Paralegal	New file; scanned and saved all documents received from counsel	1.50
03/06/2023	Paralegal	File prep; reviewed drafted discovery responses; Spoke to Client over phone	1.0
03/07/2023	Paralegal	Revised witness list on discovery responses; emails with client	.50
03/07/2023	EKB	Received and reviewed settlement offer from Counsel; sent to client	.40
03/08/2023	EKB	Emails to and from Counsel regarding matter	.40
03/09/2023	EKB	Met with Client	1.50
03/10/2023	EKB	Emails with Client regarding Affidavits	.80

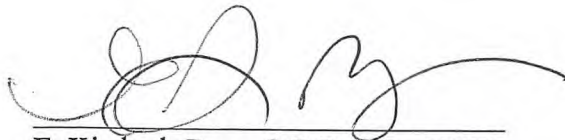
03/13/2023	EKB	Spoke with previous counsel regarding matter	.40
03/13/2023	Paralegal	Met with Client to discuss Financial Declaration	1.50
03/13/2023	EKB	Drafted Client's responses to Interrogatories	2.50
03/13/2023	EKB	Reviewed responses to Client's responses to Request for Production of Documents; revised	1.0
03/13/2023	Paralegal	Batestamped all documents for discovery responses; Cover letter to Counsel; COS	1.0
03/13/2023	Paralegal	Drafted cover letter; Notice of Representation; COS - sent	.30
03/13/2023	EKB	Drafted Defendant's Return to Motion for Temporary Relief	1.0
03/14/2023	EKB	Met with Client	2.0
03/14/2023	Paralegal	Drafted Supplemental responses to Request for production of documents; Batestamped all supplemental documents	1.0
03/14/2023	EKB	Drafted Motion to Suppress; Research	4.5
03/15/2023	EKB	Parenting Plan, Hearing submissions; Attorney's fees affidavit; Prepare client affidavit; Finalized Hearing Packets; Met with Client	5.0
03/15/2023	EKB	Travel to and from Court; Attend hearing	1.50
	<b>EKB</b>	<b>TOTAL</b>	<b>27.80</b>

The following is an accurate summarization of all fees and costs incurred in connection with the Motion for Temporary Hearing now before the Court:

Attorney Time (21.0 hours)	\$10,500.00
Paralegal Time (6.8 hours)	\$ 680.00
<b>TOTAL</b>	<b>\$11,180.00</b>

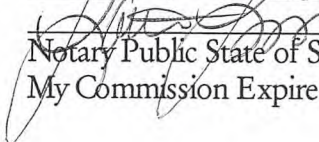
REQUEST FOR AWARD AND CONCLUSION

10. I respectfully submit, based not only upon the time necessarily devoted to this case, but also upon the other criteria which have been held to be relevant in the setting of attorney's fees, costs and suit money, that this Court review the file herein, together with this affidavit, and grant to Defendant, against Plaintiff, attorney's fees and costs, and costs associated with this matter, within a reasonable amount as may be determined by the Court.



E. Kimberly Berry, S.C. Bar No. 13286  
MOONEYHAM BERRY, LLC  
Post Office Box 8359  
Greenville, South Carolina 29604  
Phone: (864) 421-0036  
Fax: (864) 421-9060  
E-mail: [kimb@mbllc.com](mailto:kimb@mbllc.com)  
Attorney for Defendant

SWORN TO BEFORE ME THIS  
15 day of March, 2023



Notary Public State of South Carolina  
My Commission Expires: 2/1/2033

**Exhibit J (Steve Abrams' Communications Produced in Subpoena Response)**

## Steven Abrams

---

**From:** Steven Abrams  
**Sent:** Wednesday, June 7, 2023 8:10 PM  
**To:** Kim Berry  
**Subject:** RE: Dr.Fone is on the MacBook.  
**Attachments:** AbramsAffLindleyDrFone.pdf

Here is my Affidavit...

**From:** Kim Berry <kimb@mbllc.com>  
**Sent:** Wednesday, June 7, 2023 2:55 PM  
**To:** Steven Abrams <steve@abramsforensics.com>  
**Subject:** Re: Dr.Fone is on the MacBook.

Got it. Would it be helpful going forward to examine his devices?

I look forward to getting the affidavit and attachments. Please email me the signed notarized so I can attach for my file tomorrow and mail the original.

I really appreciate you working on this.

Thanks

Kim



Mooneyham Berry

Forensic Experts

E. Kimberly Berry

Mooneyham Berry, LLC

1225 S Church Street

Greenville, South Carolina 29605

Email: [kimb@mbllc.com](mailto:kimb@mbllc.com)

Direct Dial: (864) 383-9243

(864) 421-0036 Fax (864) 421-9060

**CONFIDENTIALITY NOTICE:** This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you are not the intended recipient please notify the sender immediately.

**From:** Steven Abrams <[steve@abramsforensics.com](mailto:steve@abramsforensics.com)>  
**Sent:** Wednesday, June 7, 2023 2:37 PM  
**To:** Kim Berry <[kimb@mbllc.com](mailto:kimb@mbllc.com)>  
**Subject:** RE: Dr.Fone is on the MacBook.

NO. I did not recover any data to show directly that Dr. Fone was used to undelete material related to Tagg. I did show Husband setup and used Dr.Fone, and that the software was on all three devices I examined. But the log file I found was not for one of Sara's devices, it was a different iPhone in the log. So I have no direct evidence that Husband used Dr.Fone to access Tagg material. I did not find a lot of Tagg material, some of what I found was deleted, some was not deleted. I don't know how the undeleted Tagg material got that way. There is no evidence.

Best regards,  
Steve

**From:** Kim Berry <[kimb@mbllc.com](mailto:kimb@mbllc.com)>  
**Sent:** Wednesday, June 7, 2023 2:27 PM  
**To:** Steven Abrams <[steve@abramsforensics.com](mailto:steve@abramsforensics.com)>  
**Subject:** Fw: Dr.Fone is on the MacBook.

Can you confirm he used Dr Fone to retrieve deleted messages from Tagg?



**Mooneyham Berry**

— — — — —

L. Kimberly Berry

Mooneyham Berry, LLC

1225 S Church Street

Greenville, South Carolina 29605

Email: [kimb@mbllc.com](mailto:kimb@mbllc.com)

Direct Dial: (864) 383-9243

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**From:** Kim Berry <[kimb@mbllc.com](mailto:kimb@mbllc.com)>  
**Sent:** Wednesday, June 7, 2023 2:19 PM  
**To:** Kim Berry <[kimb@mbllc.com](mailto:kimb@mbllc.com)>  
**Subject:** Fw: Dr.Fone is on the MacBook.



**Mooneyham Berry**

Mooneyham Berry, LLC

E. Kimberly Berry

Mooneyham Berry, LLC

1225 S Church Street

Greenville, South Carolina 29605

Email: [kimb@mbllc.com](mailto:kimb@mbllc.com)

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**From:** Steven Abrams <[steve@abramsforensics.com](mailto:steve@abramsforensics.com)>  
**Sent:** Wednesday, June 7, 2023 1:41 PM

To: Kim Berry <kimb@mbllc.com>  
Subject: RE: Dr.Fone is on the MacBook.

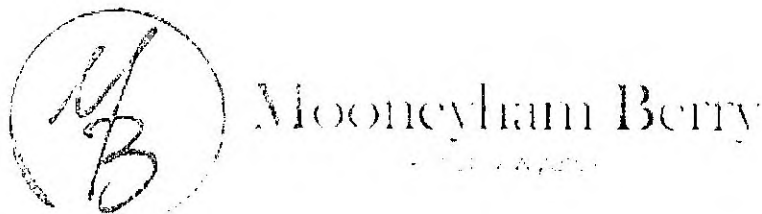
Kim

Here is a draft of my affidavit /report. If you find no errors or changes, I will sign it and send you a scan of the signed and notarized affidavit.

Best regards,  
Steve

From: Kim Berry <kimb@mbllc.com>  
Sent: Wednesday, June 7, 2023 9:55 AM  
To: Steven Abrams <steve@abramsforensics.com>  
Subject: Re: Dr.Fone is on the MacBook.

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT FOR THE
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
Jeffrey Ellicott Lindley,	)	
	)	
Plaintiff,	)	
	)	
Vs.	)	
	)	
Sara Elizabeth Lindley,	)	
	)	
Defendant.	)	Docket No.: 2023-DR-23-0198
	)	



E. Kimberly Berry  
 Mooneyham Berry, LLC  
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 Greenville, South Carolina 29605  
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 Direct Dial: (864) 383-9243

(864) 421-0036 Fax (864) 421-9060

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**From:** Steven Abrams <[steve@abramsforensics.com](mailto:steve@abramsforensics.com)>  
**Sent:** Wednesday, June 7, 2023 9:48 AM  
**To:** Kim Berry <[kimb@mbllc.com](mailto:kimb@mbllc.com)>  
**Subject:** RE: Dr.Fone is on the MacBook.

Kim  
Please send me a caption for my affidavit. I am finishing it now, but need the parties, case number, court information, or a completed caption.  
Thank you,  
Steve

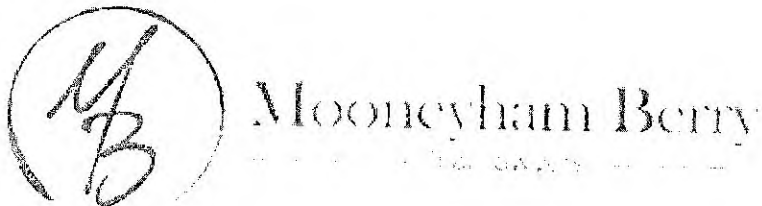
**From:** Kim Berry <[kimb@mbllc.com](mailto:kimb@mbllc.com)>  
**Sent:** Tuesday, June 6, 2023 9:39 AM  
**To:** Steven Abrams <[steve@abramsforensics.com](mailto:steve@abramsforensics.com)>  
**Subject:** Re: Dr.Fone is on the MacBook.

That would be great.

I have to file the Motion by Thursday - sorry for the quick notice. The Court completely relied on the text messages to deny alimony when the messages should never have been considered.

Thanks

Kim



E. Kimberly Berry

Mooneyham Berry, J.L.C.

1225 S Church Street

Greenville, South Carolina 29605

Email: [kimb@mbllc.com](mailto:kimb@mbllc.com)

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**From:** Steven Abrams <[steve@abramsforensics.com](mailto:steve@abramsforensics.com)>  
**Sent:** Monday, June 5, 2023 3:32 PM  
**To:** Kim Berry <[kimb@mbllc.com](mailto:kimb@mbllc.com)>  
**Subject:** RE: Dr.Fone is on the MacBook.

Kim

I will work on a formal report and then we can discuss this once you see everything in plain English.

Best regards,

Steve Abrams

**From:** Kim Berry <[kimb@mbllc.com](mailto:kimb@mbllc.com)>  
**Sent:** Monday, June 5, 2023 12:58 PM  
**To:** Steven Abrams <[steve@abramsforensics.com](mailto:steve@abramsforensics.com)>  
**Subject:** Re: Dr.Fone is on the MacBook.

Steven,

Hope you are well.

I got the documents you via drop box but honestly cannot get the reports to print in a way I understand. I also may not have been able to open some because of formatting.

Did you do a "formal" written report? If not, can you do one. I want to file a Motion to Reconsider, if I can, asking the court to exclude the Tagg messages because they were deleted, then uploaded by Dr.fone software then deleted again and Mr. Lindley was the administrator on that. So, the messages were inappropriate obtained.

I think the link you sent with the reports expired I cannot find it.

Kim



Mooneyham Berry

E. Kimberly Berry

Mooneyham Berry, LLC

1225 S Church Street

Greenville, South Carolina 29605

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**From:** Steven Abrams <[steve@abramsforensics.com](mailto:steve@abramsforensics.com)>

**Sent:** Monday, May 15, 2023 6:22 PM

**To:** Kim Berry <[kimb@mbllc.com](mailto:kimb@mbllc.com)>

**Subject:** RE: Dr.Fone is on the MacBook.

Kim

Here is what I know. Drfone was used on all three devices. It was loaded on to the MacBook in August 2022 (8/16/2022).

The iPhone and iPad were accessed by plugging them into the MacBook the last week of September 2022. Data was extracted from the iPhone onto the MacBook, and the messages were extracted from the iPhone backup. I found many George Tagg messages on the iPhone, and most were deleted. The original messages (George Tagg) were from February 2022. I don't have a complete picture of this process yet. I am getting a copy of drfone to experiment with so I can see what it can do and what artifacts it leaves behind. The supposition that husband got the messages cited in his court filings by recovering data using drfone months after they were sent and deleted is plausible based on what evidence I have now. I want to find at least some of the recovered messages on the MacBook in drfone to confirm the hypothesis.

Best Regards,  
Steve Abrams

**From:** Steven Abrams  
**Sent:** Tuesday, April 25, 2023 4:42 PM  
**To:** Kim Berry <[kimb@mbllc.com](mailto:kimb@mbllc.com)>  
**Subject:** Dr.Fone is on the MacBook.

Kim

The MacBook is still indexing and processing, nearly a week after I started it. I was able to get a look at the data thus far harvested, and see that Dr.Fone was installed on the MacBook on 8/16/2022 at 8:44UTC. There are a number of photos recovered from the hard drive in the Mac in the hours after that install. I'll know more once the MacBook indexing completes and I am able to index the iPad.

Best Regards,

Steve Abrams

**Steven M. Abrams, J.D., M.S.**

Attorney at Law / Digital Forensics Examiner

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(843) 216-1100

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177 Woodbine Ave.

Northport, NY 11768

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Jan 04 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Family Court

Rochelle Y. Conits, Family Court Judge

Appellate Case No. 2023-001918  
Case No. 2023-DR-23-0198

Jeffrey Ellicott Lindley..... Respondent,

v.

Sara Elizabeth Lindley..... Petitioner.

**Proof of Service**

I, the undersigned attorney of the law offices of Haynsworth Sinkler Boyd, P.A., attorneys for Respondent Jeffrey Lindley, certify that I have served all parties in this action with a copy of the document(s) set forth below by email:

Document(s): **Return to Petitioner’s Motion to Suppress Evidence**

Counsel Served: E. Kimberly Berry  
Mooneyham Berry, LLC  
Post Office Box 8359  
Greenville, SC 29604  
[kimb@mblc.com](mailto:kimb@mblc.com)  
*Counsel for Petitioner*

*[signature of counsel follows]*

HAYNSWORTH SINKLER BOYD, P.A.

By: s/CARLISLE B. ALLEN

Reid T. Sherard, SC Bar No. 72536

E-mail: rsherard@hsblawfirm.com

Jordan W. Peeler, SC Bar No. 102558

E-mail: jpeeler@hsblawfirm.com

Carlisle B. Allen, SC Bar No. 104605

E-mail: callen@hsblawfirm.com

ONE North Main Street, 2nd Floor

P.O. Box 2048 (29602)

Greenville, SC 29601

(864) 240-3278

*Attorneys for Respondent Jeffrey Lindley*

Greenville, South Carolina

January 4, 2024

## Allen, Carlisle

---

**From:** Allen, Carlisle  
**Sent:** Thursday, January 4, 2024 6:20 PM  
**To:** Kim Berry  
**Cc:** Sherard, Reid; Peeler, Jordan; Rhymer, Ann; Johnson, Katie; 'Larissa Lopez'  
**Subject:** Lindley v. Lindley (Case No. 2023-001918) - Service Email 1 of 2 - Respondent's Return of Petitioner's Motion to Suppress Evidence  
**Attachments:** Respondent's Return to Petitioner's Motion to Suppress and Proof of Service.pdf; Exhibit A - E.pdf

Kim,

Please see attached Respondent's Return to Petitioner's Motion to Suppress Evidence with Proof of Service and supporting exhibits.

This email constitutes service pursuant to Supreme Court Order No. 2022-05-06-03, and it will be sent in two parts due to the size of the attachments.

Thank you,



**Carlisle Allen** | Attorney  
Direct 843.720.4451 | [CAllen@hsblawfirm.com](mailto:CAllen@hsblawfirm.com)

Haynsworth Sinkler Boyd, P.A.  
134 Meeting Street, 3rd Floor | Charleston, SC 29401  
Main 843.722.3366 | Fax 843.722.2266

[Web](#) | [Bio](#) | [vCard](#) | [Map](#) | [Linked In](#) | [Blog](#)

## Allen, Carlisle

---

**From:** Allen, Carlisle  
**Sent:** Thursday, January 4, 2024 6:21 PM  
**To:** Kim Berry  
**Cc:** Sherard, Reid; Peeler, Jordan; Rhymer, Ann; Johnson, Katie; 'Larissa Lopez'  
**Subject:** Lindley v. Lindley (Case No. 2023-001918) - Service Email 2 of 2 - Respondent's Return of Petitioner's Motion to Suppress Evidence  
**Attachments:** Exhibits F -J.pdf

Kim,

Please see attached Respondent's Return to Petitioner's Motion to Suppress Evidence with Proof of Service and supporting exhibits.

This email constitutes service pursuant to Supreme Court Order No. 2022-05-06-03, and it will be sent in two parts due to the size of the attachments.

Thank you,



**Carlisle Allen** | Attorney  
Direct 843.720.4451 | [CAllen@hsblawfirm.com](mailto:CAllen@hsblawfirm.com)

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