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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.

RETURN TO PETITIONER’S MOTION TO CONFIRM AUTOMATIC STAY

Respondent (“Husband”), by way of Return to Petitioner’s (“Wife”) Motion to Confirm Automatic Stay Pursuant to S.C. Code Ann. § 17-30-110(A) filed December 14, 2023 (the “Motion to Confirm Stay”), sets forth the following.

FACTUAL AND PROCEDURAL BACKGROUND

Husband and Wife were married on April 22, 2006. During the course of their marriage, the parties had two (2) children and lived in Greenville, South Carolina. The parties have lived separate and apart since January 2023.

On January 18, 2023, Husband commenced the underlying family court case seeking, *inter alia*, a divorce from Wife on the ground of adultery. The same day, Husband filed a Motion for Temporary Relief. On or around March 14, 2023, Wife filed a Return and Motion for Temporary Relief.

On March 15, 2023, the parties appeared before Judge Rochelle Y. Conits for a temporary hearing. At the commencement of the temporary hearing, Wife served a Motion *in Limine* seeking to preclude Husband from entering into evidence communications allegedly obtained in violation of the South Carolina Homeland Security Act, S.C. Code Ann. § 17-30-10 (the “Act”). The only authority for which Wife sought relief was pursuant the Act.

Judge Conits filed a Temporary Order on May 26, 2023, holding there was not a sufficient basis to support Wife’s request to preclude Husband’s use of the above-referenced communications.

On June 16, 2023, Wife filed a Motion to Reconsider in the underlying matter seeking an order altering and amending the findings of fact and conclusions of law in the Temporary Order and making new findings and conclusions pursuant to Rule 52, SCRCF. Wife further sought alteration or amendment of the Temporary Order pursuant to Rule 59(e) and Rule 60, SCRCF. Specifically, Wife sought an order granting her the relief requested in her Motion *in Limine* and excluding from evidence all references to the communications presented by Husband at the temporary hearing.

On December 14, 2023, Wife filed a Motion to Suppress Evidence (the “Motion to Suppress”) with this Court pursuant to the South Carolina Homeland Security Act, S.C. Code Ann. § 17-30-10 *et seq.* Husband is separately filing a return to the Motion to Suppress.

Also on December 14, 2023, Wife filed the Motion to Confirm Automatic Stay Pursuant S.C. Code Ann. § 17-30-110(A).

On December 15, 2023, Judge Conits held a hearing on Wife’s Motion to Reconsider.

On December 27, 2023, Judge Conits communicated to counsel that she found the family court to be without jurisdiction to rule on Wife’s Motion to Reconsider pending Wife’s Motion to

Suppress Evidence. Judge Conits stated she has ruled on all other pending matters. (Communication attached as Ex. A).

ANALYSIS

I. Wife’s Motion to Suppress should be dismissed or denied, and thus the Motion to Confirm Stay will be moot.

For the reasons set forth more fully in Husband’s Return to Wife’s Motion to Suppress, Husband requests that this Court dismiss or deny Wife’s Motion to Suppress. Husband incorporates as though fully set forth herein all statements and arguments in his Return to Wife’s Motion to Suppress, including the lengthy procedural history of the underlying action. The dismissal or denial of Wife’s Motion to Suppress would render the Motion to Confirm Stay moot.

II. The Motion to Confirm Stay is moot because the family court has already decided not to proceed.

S.C. Code Ann. § 17-30-110 provides that “[a]ll 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.” S.C. Code Ann. § 17-30-110(A). While Husband does not believe that Wife properly filed her motion and thus the Motion to Suppress cannot be granted and there is no automatic stay in the first instance, the only pending proceeding that could potentially require the use of any allegedly intercepted communication is Wife’s Motion to Reconsider.

Wife’s Motion to Reconsider was scheduled to be heard by Judge Conits on December 15, 2023, and the evening before the hearing Wife sought this Court to stay the hearing that Wife sought on her own motion. At the December 15 hearing, Judge Conits took under advisement the issue of whether the family court had jurisdiction to rule on Wife’s Motion to Reconsider while the Motion to Suppress and Motion to Confirm Stay are pending in this Court.

On December 27, 2023, Judge Conits ruled that the family court is without jurisdiction to hear Wife's Motion to Reconsider at this time, thus effectively staying that motion pending the adjudication of the Motion to Suppress and the Motion to Confirm Stay. (Ex. A). Judge Conits instructed Wife's counsel to prepare an order in accordance with her instructions, which order is pending at the time of this filing.

To the extent necessary, Judge Conits' voluntary stay of the Motion to Reconsider was an intervening event which mooted the request in Wife's Motion to Confirm Stay. *Arnold v. Ass'n of Citadel Men*, 337 S.C. 265, 274, 523 S.E.2d 757, 762 (1999) ("a cause of action may be mooted by intervening events, such as changes in the law or facts on which an action is based; this rule applies when the changes are judicial, legislative, or administrative").

Judge Conits' voluntary stay of the only pending proceeding that could potentially require the use of any allegedly intercepted communication leaves this Court without an actual controversy to grant Wife any effectual relief and renders moot the Motion to Confirm Stay. *See, e.g., Mathis v. S.C. State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973) ("A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy. This is true when some event occurs making it impossible for reviewing Court to grant effectual relief."); *Seabrook v. Knox*, 369 S.C. 191, 197, 631 S.E.2d 907, 910 (2006) ("If there is no actual controversy, this Court will not decide moot or academic questions.").

Staying proceedings in the underlying family court action will have no practical legal effect on Wife's Motion to Suppress, and without any proceedings to stay, it is impossible for this Court to grant Wife any effectual relief. Of course, all of this could have been avoided if Wife had properly and timely filed the Motion to Suppress rather than taking proactive action in the family court before reversing course at the eleventh hour.

CONCLUSION

For the reasons set forth above, this Court should order that the Motion to Confirm Stay is moot.

HAYNSWORTH SINKLER BOYD, P.A.

By: s/Jordan W. Peeler
Reid T. Sherard, SC Bar No. 72536
rsherard@hsblawfirm.com
Jordan W. Peeler, SC Bar No. 102558
jpeeler@hsblawfirm.com
Carlisle B. Allen, SC Bar No. 104605
callen@hsblawfirm.com
One N. Main Street, 2nd Floor
Greenville, South Carolina 29601
(864) 240-3278

Attorneys for Husband

Greenville, South Carolina
January 4, 2024

Exhibit A (Correspondence from Judge Rochelle Y. Conits)

Peeler, Jordan

From: Conits, Rochelle <RConitsJ@sccourts.org>
Sent: Wednesday, December 27, 2023 1:12 PM
To: Sherard, Reid; Peeler, Jordan; Kim Berry
Subject: Lindley v. Lindley

Counsel:

Having reviewed all documents submitted pertaining to the status of the Motion for Reconsideration, I find this Court to be without jurisdiction at this point to rule on that Motion pending Defendant's Motion to Suppress Evidence filed in the SC Court of Appeals.

Ms. Berry is requested to prepare an Order accordingly.

I have ruled on all other matters, and the issue of attorney fees shall be held in abeyance pending further Order of this Court.

Best.

Rochelle Y. Conits

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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 Confirm Automatic Stay Pursuant to S.C. Code Ann. § 17-30-110(A)**

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

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**From:** Allen, Carlisle  
**Sent:** Thursday, January 4, 2024 6:28 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 - Respondent's Return to Petitioner's Motion to Confirm Automatic Stay  
**Attachments:** Respondent's Return to Petitioner's Confirm Automatic Stay and Proof of Service.pdf; Exhibit A.pdf

Kim,

Please see attached Respondent's Return to Petitioner's Motion to Confirm Automatic Stay with Proof of Service and supporting exhibit.

This email constitutes service pursuant to Supreme Court Order No. 2022-05-06-03.

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](#)