

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY FAMILY COURT

Appellate Case No. 2023-001376

Justin McGeeRespondent,

v.

Lindsay F. McGee.....Petitioner.

**Respondent Justin McGee’s Motion to Lift Stay
of Divorce and Custody Proceedings**

Nine months ago, this Court ordered that the divorce and custody proceedings collateral to this Motion to Suppress filed by Petitioner Lindsay F. McGee (“Wife”) were stayed under S.C. Code Ann. § 17-13-110(A). (Order, Sep. 13, 2023.) The Court then ruled that these proceedings had to be resolved expeditiously. (Order, Sep. 22, 2023.) This Motion to Suppress has been anything but expedited, however. Since that stay, the Court has now twice certified issues to a Family Court Judge, and the current certification anticipates the matter being entertained below for *at least* another 120 days, all while prohibiting important custody and divorce issues from being resolved. The Homeland Security Act’s stay provision does not contemplate indefinitely stopping parties from finalizing important issues involving the custody of their children, especially where our Supreme Court has issued other orders requiring that divorce and custody proceedings be resolved expeditiously.

Therefore, Respondent Justin McGee (“Husband”) moves the Court to lift the stay of the custody and financial issues in the family court action while the Motion to Suppress is resolved.

Factual and Procedural Background

Husband and Wife were married on March 10, 2012. The couple had three children and lived together in Charleston County until their May 2022 separation. In October 2022, Husband filed for divorce on the ground of adultery, which Wife has admitted in an affidavit to this Court and elsewhere. Husband later moved for temporary relief, requesting that the Family Court issue an order detailing a set parenting plan and awarding temporary financial relief. Wife thereafter moved for temporary relief of her own.

After a hearing on the parties' motions, the Family Court issued a Temporary Order on June 15, 2023. The Temporary Order required the Guardian *ad Litem* to conduct an initial investigation and then the parties to return for a supplemental temporary hearing within 90 days of June 15, 2023. This hearing has never been held, and the children's issues have not been addressed in any way, leaving three young children in legal limbo with no ability for redress for nearly a year.

On September 1, 2023, Wife filed an Amended Motion to Suppress Evidence with this Court under the Homeland Security Act, S.C. Code Ann. §§ 17-30-10 to -145, the Wire and Electronic Communications Interception and Interception of Oral Communications Act, 18 U.S.C. §§ 2510–2523 (“the Federal Act”); the Stored Communications Act, 18 U.S.C. §§ 2701–13; and the Computer Fraud and Abuse Act, 18 U.S.C. § 1030. Husband promptly filed a Motion to Dismiss, which this Court denied.

Wife then moved to “confirm” an automatic stay of the parties' divorce and custody proceedings in the Family Court under S.C. Code Ann. § 17-30-110(A). This Court granted the motion over Husband's objections. (Order, Sep. 14, 2023.) In a subsequent order, the Court certified issues to the Family Court for resolution. (Order, Dec. 5, 2024.) After roughly five

months of limited discovery and five hearings, all during which the underlying family court proceedings have been stayed, the Honorable Spiros Ferderigos, Family Court Judge (“Special Referee”) issued his Report and Proposed findings dated May 3, 2024 (the “Report”). Husband filed exceptions to the Report. Wife did not.

A month after the Report was issued, this Court again certified issues to the Special Referee for resolution. This time, however, the certification contemplates 120 days, plus any period of extensions approved by the Court. Thus, the second certification order contemplates a stay of the divorce and custody proceedings for another four months, if not more.

Argument

This Court should lift the stay of the family court proceedings so that the parties can address custody and related financial issues for four reasons.

First, even assuming the Homeland Security Act stay provision is properly invoked here,¹ the stay is not absolute. As the Court’s September 14, 2023 Stay Order recognizes, S.C. Code Ann. § 17-30-110(A) only stays “proceedings requiring the use of the contents of any intercepted communications that are the subject of the motion to suppress . . .” As the discovery in this matter confirms, however, Husband possesses no intercepted communications, much less intercepted communications that he is attempting to use in the divorce and custody proceedings. After all, many of the alleged communications Wife claims were illegally obtained are *not* actionable under the Homeland Security Act because they are non-audio recordings. The only recordings that exist

¹ Husband does not concede this point. He maintains that this Court lacks jurisdiction to entertain this matter under the Homeland Security Act as set forth in his Motion to Dismiss and his exceptions to the Special Referee’s Report. Husband makes this motion subject to those jurisdictional objections. Because this Court lacks original jurisdiction over a section 17-30-110 motion to suppress, the stay provision of that section cannot apply.

are in Wife's possession—Husband has never had them, does not want them, and has no plans to use them. Therefore, the family court action can hardly be said to be one “requiring the use of the contents” as contemplated by S.C. Code Ann. § 17-30-110(A).

Second, no litigant should be allowed to secure an indefinite stay of child custody issues by merely filing a Motion to Suppress and then stringing out discovery for over half a year. Appellate courts generally do not take exclusive jurisdiction over child-related matters so as to provide the Family Court with the necessary flexibility to protect the rights and wellbeing of minors, regardless of the pendency of other proceedings. *Cf.* Rule 241(b)(6), SCACR (exempting from the automatic appellate stay “Family court orders regarding a child or requiring payment of support for a spouse or child as provided in S.C. Code Ann. § 63-3-630”). It would make no sense, then, to continue a stay in the Family Court based on a collateral proceeding before a court that lacks jurisdiction when state law indicates no such stay exists when that same court would have jurisdiction had there been a proper appeal. *Id.* A continued stay of the parties' separately pending litigation in the Family Court is not only improperly before this Court, but it is also contrary to the best interest of the parties' minor children. Husband is informed and believes that the Guardian has numerous concerns about the children's wellbeing that she needs to investigate and bring before the Family Court as appropriate. Further, Wife has failed to pay the Guardian as court ordered, hampering the Guardian's ability to fulfill her court-ordered responsibilities. The Guardian has filed a Rule to Show Cause but due to the stay it has not been set. Additionally, Husband has no ability to enforce Wife's compliance with the underlying court order, which, again, directly affects the wellbeing of three young children.

Third, a continued stay of the divorce and custody proceedings contravenes two separate directives from our Supreme Court. The Supreme Court has directed by order that this Court must

expeditiously resolve all appeals involving issues of child custody. *See In re Expediting Appeals in Matters Involving Child Custody and Visitation*, No. 2022-001278 (Nov. 17, 2022). The Supreme Court has separately ordered that divorce proceedings be resolved within one year of filing. *See In re Family Court Benchmark*, No. 2020-07-24-01 (July 24, 2020). Continuing to stay the divorce and custody proceedings for another 120 days, or potentially longer, frustrates these policy directives from the Supreme Court.

Fourth, continuing the stay the Family Court proceedings places significant financial hardships on Husband that prevent him from affording a defense against these allegations. Husband is enjoined by the Family Court from selling or encumbering any assets until the divorce is finalized. Thus, he cannot secure any lines of credit to pay for attorneys or experts to combat Wife's allegations, either here or in the federal court litigation between the parties.² Meanwhile, Husband is paying most of the childcare and related expenses for the parties' three children—obligations Wife is required to split under the Family Court's Temporary Order. Husband cannot, however, seek to compel Wife's compliance with her childcare responsibilities under the Temporary Order because this Court has stayed those Family Court proceedings. Thus, Husband is forced to choose between covering his children's expenses or hiring experts to defend these claims. He should not be required to make that choice given that the issue of paying for childcare is not a proceeding "requiring" the use of any communications alleged to have been illegally obtained.

² *See Lindsay McGee v. Justin McGee*, No. 2:24-cv-01659-RMG (similar Homeland Security Act and other civil claims brought by Wife and removed by Husband to federal court).

Conclusion

For the reasons set forth above, this Court should lift the stay of the custody and financial issues in the Family Court proceedings.

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The Honorable Spiros Ferderigos, Special Referee

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Proof of Service

I, the undersigned partner of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Respondent Justin McGee, certify that I have served all counsel in this action with a copy of the document(s) set forth below by email under *In re Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules*, Appellate Case No. 2020-000447 (April 24, 2024):

Document(s): **Respondent Justin McGee’s Motion to Lift Stay of Divorce and Custody Proceedings**

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