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Mar 14 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM UNION COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Appellate Case No. 2023-001049

Jane and John Smith, individually and as Guardians of H.A., and
H.A., Individually, Appellant,

v.

South Carolina Department of Social Services, South Carolina
Department of Children's Advocacy, Tammy Gaye Causey Dalsing,
and Edward Anthony Dalsing, Respondents.

RESPONSE OF RESPONDENT SOUTH CAROLINA DEPARTMENT OF SOCIAL
SERVICES TO APPELLANTS' MOTION FOR RECONSIDERATION

BACKGROUND

On May 12, 2021, the Trial Court granted a consent motion for a protective order filed by Respondent South Carolina Department of Social Services (SCDSS). (May 12, 2021, Order.) In accordance with the terms of the protective order, “[c]ounsel for the parties shall take reasonable efforts to prevent unauthorized disclosure of documents designated as Confidential pursuant to the terms of this Order.” (Id. at 4, ¶ 5.c.) (Id. at 4-5, ¶ 6.) The protective order also mandates that all provisions of the order “restricting the use of documents designated CONFIDENTIAL shall continue to be binding after the conclusion of litigation unless otherwise agreed or ordered.” (Id. at 6, ¶ 9.a.)

On March 2, 2023, in connection with its motion for summary judgment, SCDSS filed a motion to submit confidential records under seal in accordance with the terms of the protective order. (March 2, 2023 Motion.) The records were described in an index. (March 2, 2023 Motion, Ex. A – Descriptive Index of Documents Sought to be Filed Under Seal.) In their designation of matter to be included in the record on appeal, Appellants sweepingly identified: “8. All documents submitted ‘under seal’ at the summary judgment hearing”. (Appellants’ November 1, 2024 designation.) Notably, in their initial brief, Appellants actually reference few of those documents and it is unclear why such a sweeping designation was made. Now, having done so and stymied by the proposition of having to compile such a voluminous record including vast quantities of highly confidential information, Appellants seek to unseal confidential records protected by the Children’s Code and make them public.

Some of the confidential documents that Appellants now attempt to make public relate reports of abuse or neglect made to SCDSS. Section 63-7-1990(A) of the Children’s Code provides that: “All reports made and information collected pursuant to this article maintained by the Department of Social Services and the Central Registry of Child Abuse and Neglect are confidential.” S.C. Code Ann. § 63-7-1990(A) (2008). Other documents contain information relating to reports of abuse or neglect that were investigated by SCDSS and unfounded. Such records are also protected from disclosure pursuant to Section 63-7-2000 of the Children’s Code.

Still other documents contain information relating to the termination of the parental rights of H.A.’s biological parents. Section 63-7-2600 of the Children’s Code provides that:

All papers and records pertaining to a termination of parental rights are confidential and all court records must be sealed and opened only upon order of the judge for good cause shown.

S.C. Code Ann. § 63-7-2600 (2008). There is no good cause to make those documents public.

Other documents relate to proceedings of the Family Court relating to H.A. Section 63-3-20(D) of the Children’s Code also mandates that those documents are confidential; “Records in the family court concerning juveniles shall be kept confidential as prescribed in Sections 63-7-1990 and 63-19-2020.” S.C. Code Ann. § 63-3-20(D) (2008).

By order dated May 26, 2023, the Trial Court granted SCDSS’s motion. (May 26, 2023, Order.) The Trial Court aptly found that the documents are confidential pursuant to Sections 63-7-1990, 63-7-2000, and 63-7-2600 of the Children’s Code. (Id. at 1, ¶ 2.) The Trial Court correctly found that the documents had been designated as confidential pursuant to the protective order. (Id. at ¶ 3.) Notably, all parties consented to SCDSS’s motion to seal. (Id. at 2, ¶ 7.)

Appellants did not appeal the May 26, 2023 Order nor have they raised any issues concerning that Order in this appeal. Appellants also have not raised any issues concerning the protective order.

ARGUMENT

Appellants Are Not Entitled to the Relief They Seek

Oddly, in contravention to the Children’s Code, the protective order, and the May 26, 2023 Order, Appellants seek to have the records properly filed under seal readily available to the general public. Appellants do not cite any law authorizing such disclosure.

As the Trial Court correctly found, the public’s right of access is outweighed by the recognized public interest in shielding confidential materials relating to children as recognized throughout the Children’s Code. The public does not have access to the information contained in the sealed records. There is a significant perceived harm to not only the parties, but individuals

not involved in this litigation by the disclosure of the sensitive and personal information contained in the sealed records. Clearly, the documents filed under seal should remain under seal.

Appellants are prohibited from filing with this Court, unredacted versions of documents that include the following: 1) Social Security Numbers, Taxpayer Identification Numbers, Driver's License Numbers, Passport Numbers or any other Personal Identifying Numbers; 2) Names of Minor Children; 3) Financial Account Numbers; 4) Home Addresses of minors, sexual assault and abuse and neglect victims, and non-parties; and 5) Dates of Birth. In re Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, 407 S.C. 607, 607-08, 57 S.E.2d 421 (2014); see also S.C. Code Ann. § 30-2-330(A) (The General Assembly enacted legislation specifically prohibiting parties from filing documents containing certain personal identifying information.) Many of the documents which Appellants now intend to put into the public domain are replete with such information.

If additional confidential material must be filed as part of the record on appeal, the South Carolina Supreme Court permits a party to “file a motion to seal with the appellate court in which the matter is pending. This is true even if the lower court or administrative tribunal may have issued an order sealing the record.” In re Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, 407 S.C. 607, 608, 57 S.E.2d 421, 422 (2014). Accordingly, Appellants should file a motion with this Court to seal all materials containing information that is confidential and protected from disclosure by the Children’s Code.

CONCLUSION

Based upon the foregoing authorities and argument, Respondent South Carolina Department of Social Services submits that this Court should deny Appellants’ motion for

reconsideration and instruct Appellants to file a motion to seal with this Court concerning the confidential and protected materials Appellants seek to file in the Record on Appeal.

March 14, 2025

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PROOF OF SERVICE

The undersigned, Stephanie H. Burton certifies that she is a member of Gibbes Burton, LLC and on the 14th day of March 2025, she served a copy of the Response of Respondent South Carolina Department of Social Services to Appellants' Motion for Reconsideration by email, copies of the same addressed to:

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