

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM UNION COUNTY  
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

**RECEIVED**

**May 12 2025**

**SC Court of Appeals**

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.

MOTION TO SEAL OF RESPONDENT SOUTH CAROLINA DEPARTMENT OF SOCIAL  
SERVICES

**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.) 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.)

By order dated May 26, 2023, the Trial Court granted SCDSS’s motion. (May 26, 2023, Order.) 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.

On February 3, 2025, Appellants filed a motion to unseal certain records. (Feb. 3, 2025, Motion.) On March 5, 2025, this Court denied that motion due to Appellants’ failure to include a case number and specify what documents Appellants seek to unseal. (Mar. 5, 2025, Order.)

On March 13, 2025, Appellants filed a motion to reconsider that order. (March 13, 2025, Motion.) Appellants alleged that they were seeking an order unsealing all documents which were submitted to the lower court under seal during the underlying civil action, C.A. No. 2020-CP-44-00104. (Id.) On April 16, 2025, this Court granted Appellants’ motion to unseal the documents in that case for the limited purpose of completing the record on appeal. (April 16, 2025, Order.) This Court instructed that “[t]hese documents shall be placed in a supplemental record on appeal, which will allow them to be sealed at this court should a party so move.” (Id.) On May 8, 2025, Appellants served Respondent South Carolina Department of Social Services (SCDSS) with their Record on Appeal. SCDSS moves for an order sealing Appellants’ Record on Appeal.

## **ARGUMENT**

### **Appellants’ Record on Appeal Must Be Sealed**

The documents contained in Appellants’ Record on Appeal must be sealed pursuant to precedent and statutory law. In Ex parte Capital U-Drive-It, Inc., 369 S.C. 1, 630 S.E.2d 464 (2006), the South Carolina Supreme Court considered whether a family court judge erred in

unsealing the records of the plaintiff's divorce proceeding at the request of the defendant, the plaintiff's former employer, for use in an unrelated civil action the defendant had filed against the plaintiff. Id. at 8. In this case, there is no dispute that the Court properly sealed the documents at issue in this motion to seal. Nonetheless, the Court's analysis in Capital supports SCDSS's position that it is necessary for this Court to issue an order for Appellants' supplemental record on appeal to be filed under seal.

In Capital, the Court noted that although judicial proceedings and court records are presumptively open to the public under the common law, the First Amendment of the federal Constitution, and the state Constitution, "[p]ublic access to court records may be restricted in certain situations, such as matters involving juveniles,..." Id. at 10. Furthermore, [r]estrictions may be based on a statute or the court's inherent power to control its own records and supervise the functioning of the judicial system." Id.

The Court also stated that in deciding whether to seal court records, courts must consider the following seven factors pursuant to Rule 41.1 of the South Carolina Rules of Civil Procedure: (1) ensuring the parties' right to a fair trial or hearing; (2) the need for witness cooperation; (3) the reliance of the parties upon expectations of confidentiality of the proceeding; (4) the public or professional significance of the proceeding; (5) the perceived harm to the parties from disclosure; (6) why alternatives other than sealing the documents are not available to protect legitimate private interests; and (7) why the public interest ... is best served by sealing the documents. Id. at 12. Courts may also consider the five following factors: (1) public interest in the proceeding; (2) the private or public status of the litigants and case generally; (3) whether release would enhance the public's understanding of an important historical event; (4) whether the public already has access

to information contained in the records; and (5) whether a particular decision will sustain or offend the fundamental interests of public access, and any other relevant factors. Id.

Here, most notably, the documents in Appellants' Record on Appeal are confidential pursuant to Sections 63-7-1990, 63-7-2000, and 63-7-2600 of the Children's Code. Some of the documents that Appellants have included in their Record on Appeal relate to 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 in the Record on Appeal 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 in the Record on Appeal 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 allow those documents to be released to the public.

Other documents in the Record on Appeal 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).

No factor weighs against sealing the Record on Appeal. Sealing the documents will not hinder the parties' right to a fair appeal. The second factor, the need for witness cooperation, is not applicable. The parties have an expectation of confidentiality concerning the documents contained in the Record on Appeal given that the documents had been previously designated as confidential pursuant to the consent protective order. The underlying civil action relates to a battle between two families relating to a minor child. Therefore, the underlying proceeding is of no public or professional significance. 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 Record on Appeal. There are no alternatives other than sealing that would protect the parties' legitimate privacy interests. The public interest is best served by sealing the Record on Appeal because, as mentioned above, the South Carolina General Assembly has enacted multiple statutes to protect the information contained in the Record on Appeal.

Similarly, there is no public interest in the underlying proceeding. Although SCDSS is a state agency, the other parties and individuals mentioned in the documents contained in the Record on Appeal are private individuals. Releasing the Record on Appeal to the public would not enhance the public's understanding of any important historical event. The public does not have access to the information contained in the Record on Appeal. 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.

### **CONCLUSION**

Based upon the foregoing authorities and arguments, Respondent South Carolina Department of Social Services submits that this Court should issue an order sealing the documents contained in the supplemental Record on Appeal.

May 9, 2025

s/Stephanie H. Burton  
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