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Jul 15 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.

SECOND MOTION TO SEAL OF RESPONDENT SOUTH CAROLINA DEPARTMENT OF
SOCIAL SERVICES

BACKGROUND

On May 8, 2025, Appellants filed a motion to file the record on appeal and supplemental record out of time. (May 8, 2025, Motion.) On May 12, 2025, Respondent South Carolina Department of Social Services (SCDSS) filed a motion to seal the record and supplemental record on appeal. (May 12, 2025 Motion.) On May 23, 2025, Respondents Tammy Gaye Causey Dalsing, and Edward Anthony Dalsing filed a return joining in that motion to seal. (May 23, 2025, Motion.)

Respondents SCDSS notified Appellants that several items from Respondent SCDSS's designation of matter were not in the record on appeal or the supplemental record on appeal. Those items included an order of the South Carolina Administrative Court, deposition testimony, and materials from investigations conducted by SCDSS's Out of Home Abuse and Neglect unit

concerning H.A. Therefore, on May 28, 2025, Respondent SCDSS filed a motion seeking an order to require Appellants to supplement the Record on Appeal with those items. (May 28, 2025, Motion of SCDSS.) That same day, Respondents Tammy Gaye Causey Dalsing, and Edward Anthony Dalsing also filed a motion to supplement the record. (May 28, 2025, Motion of the Dalsings.)

On June 13, 2025, Appellants served Appellants' second supplemental record on appeal which included the missing designated items. (June 13, 2025, Second Supp. R.) On June 19, 2025, the Dalsings notified Appellants that other items from the Dalsings' designation of matter were not included in the second supplemental record on appeal. Those materials include deposition testimony and the exhibits submitted by the Dalsings to the Court in support of their motion for summary judgment. On June 23, 2025, Appellants filed a motion to file a second and third supplemental record on appeal. (June 23, 2025, Motion.)

On July 3, 2025, this Court issued an order granting the motion to seal the supplemental record on appeal filed on May 8, 2025. (July 3, 2025, Order.) In the order, this Court also instructed the parties that it would consider the motions to supplement the record once the motions were fully briefed or the time for responding to the motions expired. (Id.) That same day, Appellants filed and served their third supplemental record on appeal, which is currently accessible on this Court's case management system. (July 3, 2025, Third Supp. R.)

The deadline for filings responses and replies has expired. The motions to supplement the record are unopposed. Respondent SCDSS moves for an order sealing Appellants' second supplemental record on appeal and Appellants' third supplemental record on appeal.

ARGUMENT

Appellants' Second and Third Supplemental Records on Appeal Must Be Sealed

The documents contained in Appellants' second and third Supplemental Records 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 the plaintiff's former employer for use in an unrelated civil action that the defendant had filed against the plaintiff. Id. at 8. The Court's analysis in Capital demonstrates that it is necessary for this Court to issue an order that Appellants' second and third supplemental records on appeal 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' Second and Third Supplemental Records 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 Supplemental Records 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 Supplemental Records 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 Supplemental Records 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 Supplemental Records 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 Supplemental Records 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 Supplemental Records on Appeal given that the documents had been previously designated as confidential pursuant to a 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 Supplemental Records 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 Supplemental Records on Appeal because, as mentioned above, the South Carolina General Assembly has enacted statutes to protect the information contained in the Supplemental Records 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 Supplemental Records on Appeal are private individuals. Releasing the Supplemental Records 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 Supplemental Records 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 second and third supplemental records on appeal.

July 15, 2025

s/Stephanie H. Burton
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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 15th day of July 2025, she served a copy of the Second Motion to Seal of Respondent South Carolina Department of Social Services to Appellants' by email, copies of the same addressed to:

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