THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY FAMILY COURT

Appellate Case No. 2023-001376

Justin McGee .....Respondent,

v.

Lindsay F. McGee.....Petitioner.

Reply to Respondent Justin McGee's Petition for Rehearing and Rehearing *En Banc*

Petitioner Lindsay F. McGee ("Wife") responds to the pending Petition for Rehearing—which due to the uncertainty about the procedural rules applicable to this matter, also seeks rehearing *en banc*, reconsideration, and a stay—by first raising procedural points as a distraction from the merits of the arguments raised in the Petition, and then making generalized statements in opposition to the merits. The Court should not be swayed by Wife's arguments, and instead should grant the relief sought in the Petition filed by Respondent Justin McGee ("Husband").[1]

Argument

I. Wife's generalized arguments in opposition to the merits of Husband's Petition for Rehearing are not grounds for denying the Petition.

Wife does not meaningfully respond to the factual and legal issues raised by Husband's Petition. To the extent she does, she makes only generalized statements or relies on improper

[1] As he has continuously done to date, Husband files this Petition subject to his jurisdictional and related objections as set forth in his December 20, 2023 filing with the Special Referee, which are incorporated by reference.

supplemental affidavits filed long after discovery should have closed in this case. In so doing, she also fails to establish that this Court has jurisdiction or that she excepted to the Special Referee's Report to place her counterarguments properly before the Court, so the Court should grant Husband's Petition for Rehearing.

A. Wife makes generalized factual statements but provides no support from the record before this Court.

Wife continues to make generalized allegations without supporting evidence. For example, she claims that Husband "enabled audio recording on the" CamDuck. (Resp. at 8.) Wife cites no support for the claim that Husband committed this "overt act." (Resp. at 9.) Husband assumes the un-cited support for this claim comes from her purported expert's Fifth Affidavit: "We know that the Respondent was most likely informed by LUOHE, as was McDougall Self Currence McLeod, about enabling audio on the camera." (Bumgardner's Fifth Supp'l Aff. ¶ 28.) Yet Wife provides no evidence there, or in response to the Petition, to support this generalized claim.[2] There is no evidence to support the allegation that the CamDuck's manufacturer ever communicated with Husband, much less "most likely informed" him about enabling audio on the device, which Wife concedes was advertised on Amazon as lacking audio capabilities altogether.

Wife also makes the generalized claim that she "provided the [CamDuck] Device recordings to the Family Court," meaning the alleged 5,000 recordings. (Resp. at 13.) Husband has no record of those recordings being produced to the Special Referee or his counsel. Wife provided a Cellebrite Report about the file names and some of the matadata from those recordings,

[2] Husband requested all communications from Wife concerning the CamDuck and her allegations in the Amended Motion to Suppress. Husband is not aware of Wife producing any communications between LUOHE and her counsel or purported experts that were including in documents produced in response. Husband is aware, however, that he has never communicated with that company, and Wife provides no evidence of such communications to the Court.

which her purported experts summarized. (Bumgarner's Fifth Supp'l Aff. ¶ 15, Feb. 23, 2024; Abrams Fourth Supp'l Aff. ¶¶ 12–13, March 5, 2024.) Husband objected to this evidence. (Husband's Return at 8, Aug. 12, 2024.) Wife offered to provide a copy of the videos for *in camera* inspection, but never actually filed those videos with the Special Referee or this Court. (Wife's Proposed Findings, ¶ I.k.c. ("Wife will submit this recording either to the court to be review in camera outside the presence of the attorney's or submitted to the Court of Appeals for their review, depending upon the family Court's preference.").) Although the Special Referee's Report states that certain recordings were preserved, (Report at I.n.i.), this is in reference to other, non-actionable devices and not to the CamDuck. The Special Referee and this Court have not been presented with the actual recordings, and Wife provides no citation to the record to show otherwise.

Moreover, Wife's generalized allegations about the number of recordings and the time period for those recordings make little sense. Wife alleges the CamDuck was constantly recording in ten-minute increments and that there are 833 hours (less than 35 days) of recordings. (Wife's Return at 3, July 12, 2024.) That said, Wife also claims the CamDuck was present and recording in the location Wife admits she placed it for eight months. (Bumgarner's Sixth Supp'l Aff. ¶ 13, March 5, 2024.) Wife provided no evidence to support her allegations that this device was recording in the referenced location for eight months, and has provided no *admissible* evidence that any actual communication was intercepted during the less than 35-day period. Wife also has not produced or referenced possessing even a single recording from any location other than the location where Wife admits she placed the CamDuck and plugged in the device. Stated another way, there is no evidence in the record of any interception made by a device placed and installed by Husband that violates the South Carolina Homeland Security Act and has survived to this point.

In the same manner, Wife uses generalizations to ignore the real-world implications of the Court's Suppression Order. She argues that the Court should not be bothered by the impact of the omission of any willfulness analysis in the Suppression Order on other devices like Ring doorbells, home security devices, or baby monitors. (Resp. at 9.) This is curious considering that recent publications on the very issues presented by this Petition have been analyzed by some as violative of the South Carolina Homeland Security Act. *See* Abrams, Whiting, and Bumgarner, Electronic Privacy Protections in South Carolina, *S.C. Lawyer* 48 (Sep. 2025) (analyzing violations of the South Carolina Homeland Security Act arising from "[c]ommercial security cameras, such as Blink and Ring"). The point is that "inadvertent interceptions are not a basis for criminal or civil liability" here, *In re Pharmatrak, Inc*., 329 F.3d 9, 23 (1st Cir. 2003) (citation omitted). Wife's Response fails to address the Petition in this regard or the cases relied on by Husband.

Thus, the Court should grant the Petition for Rehearing to correct this misapprehension of the record and the applicable intent standard arising from any perceived inadvertent recordings.

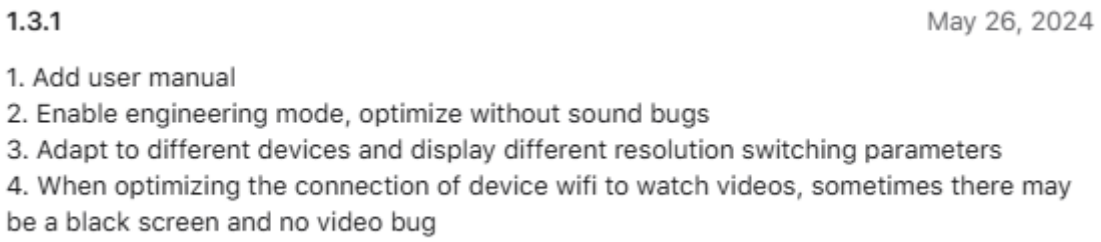
B. When Wife does cite the record, she cites from an affidavit improperly filed that Husband has been given no opportunity to rebut.

In one paragraph of her Response, Wife includes some citations to her purported expert's *seventh* supplemental affidavit to justify some of her assertions. (Resp. at 9–10.) Yet her reliance on this affidavit actually proves Husband's point in the Petition that he has had no meaningful opportunity to rebut the allegations made in this proceeding.[3] (*See* Husband's Return at 7 n.6, Aug. 12, 2024.) This is especially true given that the Court went from requesting briefing on Wife's improper motion seeking a stay of the Special Referee's order seeking to appoint another

[3] Husband also has not been afforded his right to a jury. After all, the South Carolina Homeland Security Act "provides the right for jury trials on these civil causes of action." Abrams, Whiting, and Bumgarner, Electronic Privacy Protections in South Carolina, *S.C. Lawyer* 50 (Sep. 2025).

special referee, (Order, July 22, 2024), all the way to deciding the merits of Wife's Amended Motion roughly a year later with no notice to the parties and no opportunity for briefing on the merits of Wife's supplemental allegations. But that is not all that Husband has not been afforded the chance to rebut. For example, Wife makes the claim that both the "audio and video data could be accessed remotely using Wi-Fi and CIXICM" for the CamDuck. (Resp. at 8.) In referring to CIXICM, Wife is referring to the use of "engineering mode" on the CamDuck smartphone application. (*See* Bumgarner's Seventh Supp'l Aff. ¶ 12, April 18, 2024.) Wife filed this affidavit after the parties had completed the proposed-findings process imposed by the Special Referee and on the eve of the Special Referee's Report, without seeking leave to file the affidavit.

Husband has since learned that the version changes for the CamDuck app did not include the infamous "engineering mode" until update 1.3.1 released May 26, 2024:



1.3.1 May 26, 2024

1. Add user manual
2. Enable engineering mode, optimize without sound bugs
3. Adapt to different devices and display different resolution switching parameters
4. When optimizing the connection of device wifi to watch videos, sometimes there may be a black screen and no video bug

See Apple App Store, Version History: CamDuck (last accessed October 13, 2025), available at https://apps.apple.com/us/app/camduck/id1568241852. This is long *after* Wife claims to have found and disabled the device on November 1, 2023. (*See* Wife' Supp'l Reply Aff. ¶ 2, Nov. 17, 2023.) The addition of "engineering mode" on May 26, 2024, is also more than two years after Wife claims the device was unplugged and no longer used: "The device had been unplugged and out of use since October 2022 . . . ." (*Id.* ¶ 8.)

Had Husband been afforded the chance to oppose this claim, he could have done so. Had his assets not been frozen as a result of the stay of these proceedings, perhaps he could have

retained an expert to oppose these new allegations. This is especially true given the ever-evolving claims Wife has raised. (None of her original claims have survived to this point.) Regardless, Mother waited until *after* Husband filed his rebuttal to her proposed findings to supplement the already bloated record with this new affidavit, at least the fourteenth that her two purported experts have filed in the two years this case has been pending.

Usual appellate practice confirms that the record should not be expanding before an appellate court. This usual practice should also ring true in proceedings under the South Carolina Homeland Security Act. Otherwise, all respondents in these kinds of proceedings risk engaging in a game of whack-a-mole, responding to the newest facts or arguments caused by an ever-developing record. The Court should grant Husband's Petition for Rehearing and sustain his objections to the ever-shifting record in this case.

C. Wife has still failed to establish that this Court has subject matter jurisdiction or that her arguments are properly before this Court.

Husband continues to maintain that this Court lacks subject matter jurisdiction. While Wife is correct that our Supreme Court has made a reference to motions to suppress in *State v. Whitner*, it did so there only in recounting the procedural history of the unpublished proceedings before this Court. *See* 399 S.C. 547, 551–52, 732 S.E.2d 861, 863 (2012). This procedural dictum does not address the jurisdictional issues Husband raises, so it is not binding on the Court in resolving the Petition for Rehearing. *See Gordon v. Lancaster*, 425 S.C. 386, 395, 823 S.E.2d 173, 177 (2018) (Few, J., concurring) (explaining that "dictum is a statement on a matter not necessarily involved in the case, is not binding as authority, and is not the court's decision." (citations, quotations, and alterations omitted). In any event, *Whitner* is a criminal case, which actually reenforces Husband's argument that motions to suppress filed with this Court in the first instance under the South Carolina Homeland Security Act should be limited to criminal cases. *Cf. State v.*

Guerrero-Flores, 402 S.C. 530, 533–34, 741 S.E.2d 577, 579–80 (Ct. App. 2013) (addressing motion to suppress in published order arising from criminal proceedings).

Husband has also attacked whether Wife's claims are even properly before this Court given her failure to file exceptions to the Special Referee's Report. Wife claims that the Special Referee was not appointed under S.C. Code Ann. § 14-11-60, so the exception requirement does not apply. (Resp. at 14.) But the statute under which this Court appointed Judge Ferderigos was not S.C. Code 14-11-60—it was S.C. Code Ann. § 14-8-280, which only provides two options: (1) "[T]he court may frame an issue therein and certify such issue to the *circuit court* for the county in which the cause originated or in case of original jurisdiction to the circuit court of the county in which the cause of action has arisen." (2) "The Court shall also have the same powers as are *now possessed* by the circuit courts of the State for the appointment of referees to take testimony and report thereon, under such instructions as may be prescribed by the court, in any cases arising in the Court where issues of fact shall arise." S.C. Code Ann. § 14-8-280 (emphasis added).[4] This Court could only have appointed Judge Ferderigos as a special referee under option two because he is *not* a Circuit Court Judge. The Court's Order also supports this reading, as it directed the Special Referee "to issue a report" after overseeing discovery. (*See* Order at 1, Dec. 5, 2023.)

As a result, the Court's appointment was subjected to the same process and procedures for referral to the special referees, which includes the requirement that any exceptions to that special referee's report be filed or deemed waived. The Court should grant Husband's Petition for Rehearing on this basis as well.

[4] When this statute was passed in 1979, the "same powers . . . now possessed" by the circuit courts related to appointing special referees to report on discrete issues, after which parties were required to file exceptions to those reports. (*See* Husband's Exceptions (citing S.C. Cir. Ct. R. 16 (1977).)

II. The Court should also reject Wife's procedural points relying on page limits and a mistaken understanding of the court rules applicable to these proceedings.

Wife's procedural points also do not provide the Court with grounds to reject Husband's Petition for Rehearing. As an initial matter, there is uncertainty about the court rules applicable to this matter because our Supreme Court has not addressed the propriety of motions to suppress filed in a civil matter before this Court in the first instance in any published opinion. Our Supreme Court's dictum in *State v. Whitner* is not much value in resolving this procedural issue. *See Gordon*, 425 S.C. at 395, 823 S.E.2d at 177 (Few, J., concurring).

There is also very little guidance on how these matters should be adjudicated in in the South Carolina Code of Laws. The South Carolina Homeland Security Act does not set forth the procedural rules to apply, except to apply our evidentiary rules. S.C. Code Ann. § 17-30-110 ("Unless otherwise provided by federal law or Rules of Court, all South Carolina Rules of Evidence apply."). The Court's orders in this matter to date only add to the confusion. Also, the Court has characterized these proceedings in the Suppression Order as being "original" rather than appellate. *See* Suppression Order at 1 n.1 (Aug. 20, 2025). Yet in all of Wife's filings, she has referred in the caption to this matter being an "APPEAL FROM CHARLESTON COUNTY FAMILY COURT." (*See* Am. Mot. to Suppress, Sep. 1, 2023.) Moreover, this Court has applied both the Rules of Civil Procedure and the Rules of Appellate Procedure. So there is no definitive indication that the Court's Suppression Order is not subject to rehearing under Rule 221(a), SCACR.

In any event, Rule 221 makes specific references to other types of orders that may not be the subject of a rehearing petition, specifically omitting suppression orders from that list. Because court rules should be interpreted like statutes, *see Garrison v. Target Corp.*, 435 S.C. 566, 576–77, 869 S.E.2d 797, 803 (2022), our Supreme Court's omission of suppression orders from the

exceptions in Rule 221 counsels in favor of allowing the Court to entertain petitions to rehear them, *see Isaac v. Onions*, 445 S.C. 525, 536, 915 S.E.2d 492, 498 (2025) (relying on the canon of construction "expressio unius est exclusio alterius").[5]

All of that is to say that the procedural points Wife makes should not distract the Court from the merits of the arguments in the Petition for Rehearing. The Court's Suppression Order may very well have important implications for the parties' divorce and custody proceedings and Wife's civil action pending in federal court, all based on this defective, summary proceeding. Thus, all involved would be best served by addressing the merits of Husband's Petition through whatever procedural vehicle this Court finds best suited for this unique process.

Conclusion

For the reasons set forth above and in Husband's Petition, the Court should grant rehearing, rehearing *en banc*, or reconsideration. It should vacate its Suppression Order, lift its two-year stay of the divorce and custody action, and dismiss these proceedings. Alternatively, it should stay its Suppression Order pending further appellate proceedings.

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October 14, 2025

[5] Wife's claim that Husband has exceeded the 15-page limit of Rule 221, SCACR—a new limitation passed during the pendency of these proceedings—should not impact the merits of the arguments Husband makes. To the extent Rule 221 applies and the Court does not treat Husband's Petition as one for reconsideration or a stay, he seeks leave of the Court to exceed that 15-page limit by the roughly 5.5 substantive pages previously submitted.

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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's Reply to his Petition for Rehearing and Rehearing En Banc**
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