

The South Carolina Court of Appeals

Justin McGee, Appellant,

v.

Lindsay F. McGee, Respondent.

Appellate Case No. 2026-000472

ORDER

A pretrial motion to suppress electronic communications intercepted in violation of the South Carolina Homeland Security Act (Wiretap Act) is properly made in the original jurisdiction of the Court of Appeals. *See* S.C. Code Ann. § 17-30-10 to -145 (2014).¹ This matter came before the reviewing authority by operation of section 17-30-110(A) of the South Carolina Code (2014). "Reviewing authority" means a panel of three judges of the South Carolina Court of Appeals designated by the Chief Judge of the South Carolina Court of Appeals." S.C. Code Ann. § 17-30-15(9) (2014). A panel of three judges of the Court of Appeals issued an order granting Wife's motion to suppress and directing any further motions be addressed to the family court. *McGee v. McGee*, Appellate Case No. 2023-001376, S.C. Ct. App. Order dated August 20, 2025. Husband filed a petition for rehearing and rehearing en banc claiming, among other things, that section 17-30-110 does not apply because this is a domestic relations dispute and not a criminal matter. The Court of Appeals denied the petition for rehearing and rejected the suggestion for rehearing en banc pursuant to Rule 219 of the South Carolina Appellate Court

¹ "Our Wiretap Act parallels the Federal Act passed by Congress in 1968" *State v. Whitner*, 399 S.C. 547, 553, 732 S.E.2d 861, 864 (2012) (referencing 18 U.S.C.A. §§ 2510-2522 (2006) (Federal Act)); *see also Pritchard v. Pritchard*, 732 F.2d 372, 374 (4th Cir. 1984) (finding the Federal Act prohibits all wiretapping activities unless specifically excepted, to include interspousal wiretapping); *Kempf v. Kempf*, 868 F.2d 970, 973 (8th Cir. 1989) (holding the conduct of a spouse in wiretapping telephone communications of the other spouse falls within the purview of the Federal Act).

Rules (SCACR). *McGee v. McGee*, S.C. Ct. App. Order dated January 21, 2026. Husband filed a notice of appeal from the order granting the motion to suppress, as well as several other interlocutory orders issued by the Court of Appeals and the family court during the pendency of the motion to suppress.

The order granting the motion to suppress, as well as the other orders on appeal, are interlocutory and are not immediately appealable. Pursuant to section 17-30-110, a direct appeal of an order involving the Wiretap Act may be taken by the State in two situations: (1) the State has the right to appeal an order granting a motion to suppress; and (2) the State has the right to appeal the denial of an application for authorization for the interception of electronic communications. §§ 17-30-110(B)-(C). Neither of these situations apply to the present matter, which arises out of a domestic dispute between Husband and Wife, where Husband purchased a hidden camera and placed it in Wife's bedroom and the reviewing authority granted Wife's motion to suppress. Thus, Husband's appeal is not permissible under the Wiretap Act. *cf.* § 17-30-110(B) ("The State has the right to appeal an order granting a motion to suppress under subsection (A). . . All other appellate procedures remain in force and effect."); § 17-30-110(C) ("For purposes of the aggrieved person, an order granted pursuant to this subsection is considered interlocutory."). This result is analogous to appeals taken pursuant to the Federal Act. *See United States v. Kahn*, 415 U.S. 143, 149 n.6 (1974) (noting the Federal Act "gives the United States the right to take an interlocutory appeal from an order granting a motion to suppress intercepted wire communications"); *State v. Guerrero-Flores*, 402 S.C. 530, 534, 741 S.E.2d 577, 580 (Ct. App. 2013) (observing the Wiretap Act is patterned after the Federal Act and "federal cases analyzing comparable provisions of the Federal Act are persuasive in interpreting the provisions of the [Wiretap Act].")

In the absence of an applicable and more specialized statute, this appeal must fall within one of the categories set forth in section 14-3-330 of the South Carolina Code (2017) in order to be immediately appealable. *See Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 6, 630 S.E.2d 464, 467 (2006). Husband's appeal from the order of the reviewing authority granting the motion to suppress is not immediately appealable because it is a preliminary ruling not involving the merits or affecting a substantial right. *See Ex parte Wilson*, 367 S.C. 7, 13, 625 S.E.2d 205, 208 (2005) ("Absent some specialized statute, the immediate appealability of an interlocutory or intermediate order depends on whether the order falls within § 14-3-330."); *id.* (noting a discovery order "is not a final order because it leaves some further act to be done by the court before the rights of the parties . . . are determined."); *Mid-State Distribs., Inc. v. Century Importers, Inc.*, 310 S.C. 330, 334, 426 S.E.2d 777,

780 (1993) (defining an order "involving the merits" for purposes of appealability under §14-3-330 as an order that finally determines some substantial matter forming the whole or a part of a cause of action or defense); *State v. Looper*, 421 S.C. 384, 387, 807 S.E.2d 203, 204 (2017) (setting forth the limited instance where the State may appeal an interlocutory order granting the suppression of evidence which significantly impairs prosecution of a criminal case); *id.* at 390, 807 S.E.2d at 206 ("Whether based on statute or case law, the overarching point remains—absent the presence of an exception to the final judgment rule, appealability is determined by a final judgment and an aggrieved party."); *Shields v. Martin Marietta Corp.*, 303 S.C. 469, 470, 402 S.E.2d 482, 483 (1991) ("Avoidance of trial is not a 'substantial right' entitling a party to immediate appeal of an interlocutory order."). All of the orders on appeal involve pretrial questions regarding the admissibility of evidence or scheduling matters—none involve the merits of the action or invoke a substantial right.

For the foregoing reasons, this appeal is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.


_____ J.

Columbia, South Carolina

cc:

Matthew A. Abee, Esquire
Jerry Nicholas Theos, Esquire
Brittany Michele Point, Esquire
Peter George Currence, Esquire
Richard Giles Whiting, Esquire
Brandon Robert Gottschall, Esquire
Elizabeth J. Stringer, Esquire
The Honorable Patricia A. Howard

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