

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Dale E. Van Slambrook, Circuit Court Judge

Civil Action No. 2023-CP-08-03019
Appellate Case No. 2026-001501

Joy D. Philips individually and
as guardian of Sierra A.
Phillips, and James C. Phillips,

Respondents,

v.

Community Options, Inc., Angela
Stuckey, Shirley Anderson, and Willa
Manigault,

Appellants.

MEMORANDUM IN SUPPORT OF
APPELLANTS' MOTION TO REINSTATE

Community Options Inc., Angela Stuckey, Shirley Anderson, and Willa Manigault (collectively, "Appellants"), by and through their undersigned counsel, respectfully submit this Memorandum in Support of their Motion to Reinstate pursuant to Rules 240 and 260(a) of the South Carolina Appellate Court Rules. The Court should grant the Motion because the appealed orders affect a substantial right that will cause harm incapable of repair after final judgment.

STATEMENT OF FACTS

This case involves the alleged abuse and reports of abuse of Respondent Sierra Phillips

(“Sierra”), a now thirty-year-old female with certain physical and cognitive deficits since birth who previously resided at Thistle, a community training home, level 2, operated by Appellant Community Options, Inc. Community Options, Inc. is a nonprofit corporation that provides housing and other services to its “consumers” who are vulnerable adults with varying disabilities and conditions. Community Options’ employees provide personalized care to consumers living in their homes and facilitate health care with consumers’ providers. Its employees do not receive work phones and therefore communicate, at times, using their personal phones. At issue are orders from the circuit court compelling Community Options employees Angela Stuckey, Shirley Anderson, and Willa Manigault (collectively, “Individual Appellants”) to surrender their personal cell phones for a third party to conduct a forensic retrieval and search for six years of information regarding, inter alia, “text messages . . . and reports of abuse, neglect, or injury of *any resident* of a Community Options facility, including the Thistle Community Training Home.” (Order Granting Resp’t Mot. to Compel Doc. Req. No. 12 (emphasis added); Order Den. Appellants’ Mot. for Recons.). Appellants believe the orders are immediately appealable interlocutory orders; however, the Court dismissed their appeal as interlocutory. Appellants now take the opportunity to explain why reinstatement is warranted.

STANDARD OF REVIEW

An appellate court can grant leave to reinstate an appeal for good cause. Rule 260, SCACR. While an order directing a party to participate in discovery is generally interlocutory and not immediately appealable, *Ex parte Whetstone*, 289 S.C. 580, 580, 347 S.E.2d 881, 881 (1986), an appellate court can allow the immediate appeal of a discovery order that affects a substantial right that cannot be vindicated on appeal when the case ends pursuant to section 14-3-330(2) of the South Carolina Code, *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 93, 529 S.E.2d 11, 13

(2000). Section 14-3-330(2) specifically provides for appellate jurisdiction in cases involving “[a]n order affecting a substantial right made in an action when such order . . . prevents a judgment from which an appeal might be taken.” To determine if an interlocutory order is appealable, an appellate court should look at the effect of the order. *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 304, 705 S.E.2d 475, 479 (Ct. App. 2011). This decision is determined on a case-by-case basis. *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 538, 773 S.E.2d 144, 146 (2015).

ARGUMENT

I. The orders affect a substantial right.

Both state and federal law recognize the importance of privacy rights, particularly regarding medical information. *See Hollman v. Woolfson*, 384 S.C. 571, 578, 683 S.E.2d 495, 499 (2009) (“Both State and Federal government have recognized the importance of the privacy rights of patients.”). The Health Information Portability and Accountability Act (“HIPAA”) is the guiding authority on protecting private health information. HIPAA expressly prohibits disclosing protected health information (“PHI”) without procedural safeguards such as valid authorization or an individual’s guardian’s consent. 42 U.S.C.A. § 1320d-6. PHI encompasses any electronically transmitted or maintained health information that identifies or could reasonably identify the individual to whom it pertains. 45 C.F.R. § 160.103. It includes not only treatment records but also “any information . . . that relates to . . . the individual’s past, present, or future physical or mental health condition,” including identifiers such as names, birth dates, and addresses. 42 U.S.C.A. § 1320d; *see also* 45 C.F.R. § 164.514(b)(2) (listing eighteen specific identifiers).

Several state statutes confirm, complement and expand upon the rights and protections afforded by HIPAA. *See, e.g.*, S.C. Code Ann. § 19-11-95 (relating to mental illness or emotional conditions); S.C. Code § 40-75-190 (relating to counseling services); S.C. Code Ann. § 44-29-135

(relating to sexually transmitted diseases); S.C. Code Ann. § 44-44-80 (relating to birth defects); S.C. Code Ann. § 44-22-100 (relating to mental illness and substance abuse); S.C. Code Ann. § 44-53-1650 (relating to prescriptions); S.C. Code Ann. § 44-115-40 (relating to physicians' services). Both the Constitution of the United States and the Constitution of the State of South Carolina protect from unreasonable invasions of privacy as well. *See Griswold v. Connecticut*, 381 U.S. 479 (1965) (explaining that the Constitution of the United States creates a penumbral right to privacy); S.C. Const. art. I, § 10 ("The right of the people to be secure . . . against . . . unreasonable invasions of privacy shall not be violated."). These state and federal protections clearly establish a substantial right within the meaning of section 14-3-330(2).

Here, Individual Appellants' phones may contain (1) medical appointment reminders; (2) communications with consumers' case workers and/or families regarding care and treatment; (3) communications with providers regarding consumers' medical and/or mental health care; and (4) other PHI of consumers, not just Sierra.¹ These providers include but are not limited to counselors, pharmacists, and physicians. The broad discovery orders on appeal pertain to *any* consumer of Community Options. They are devoid of any of the required procedural safeguards to protect the confidential and sensitive information of vulnerable nonparty consumers. Instead, they require a *carte blanche* forensic collection and review of communications on Individual Appellants' cell phones. Appellants are unable to provide notice to the consumer and the opportunity to object pursuant to section 164.512(e) of Title 45 of the Code of Federal Regulations prior to a third party receiving and reviewing the protected PHI. Accordingly, the orders affect these consumers' substantial rights.

¹ The orders include retrieval of deleted information if recoverable.

II. Compliance with the orders will cause irreparable harm and will moot any claim Appellants could raise on appeal that the discovery was erroneously allowed.

The Supreme Court of South Carolina permits appellate review of a discovery order when the subject of the discovery order is sensitive, private information that may be irreversibly compromised upon disclosure. For example, in *Hollman*, the Supreme Court of South Carolina granted a writ of certiorari to review an order allowing the respondents to interview nonparty patients of the appellants because “[a]llowing the interviews will moot any claim petitioners could raise on appeal that the discovery was erroneously allowed [and] the privacy rights of patients is an issue of significant public interest.” 384 S.C. at 577, 683 S.E.2d 495, 498. Similarly, in *Ex parte Capital U-Drive-It, Inc.*, the Supreme Court of South Carolina held that an order unsealing a court record was immediately appealable because “after a court file is unsealed and the information released, no appellate remedy is likely to repair any damage done by an improper disclosure.” 369 S.C. 1, 8, 630 S.E.2d 464, 468 (2006). In other words, requiring the appellant to wait until the end of the case to appeal the lower court’s order “would let the cat out of the bag, without any effective way of recapturing it if the . . . court’s directive was ultimately found to be erroneous.” *Id.* (quoting *Siedle v. Putnam Inv., Inc.*, 147 F.3d 7, 9 (1st Cir. 1998)). Finally, in *Oncology and Hematology Associates of S.C. v. South Carolina Department of Health and Environmental Control*, the Supreme Court of South Carolina granted a writ of certiorari to review discovery orders requiring a healthcare provider to respond to overly broad discovery requests. 387 S.C. 380, 387, 692 S.E.2d 920, 924 (2010).

Here, if Appellants are required to wait until final judgment, it will be too late for this Court to repair the damage done by any improper disclosure that results from the forensic collection and review of Individual Appellants’ cell phones. Even if this Court found the orders were erroneous after final judgment, it would not be able to recapture the PHI already disclosed or restore the

confidentiality of said information. The right to keep PHI private will be permanently extinguished by then. To comply with the orders, Appellants would be knowingly and intentionally allowing a third party to access protected PHI of a nonparty, thereby exposing Appellants to civil and criminal penalties. If the appeal remains dismissed and the case is remitted, Appellants will be in the untenable position of having to decide between being held in contempt or risk violating consumers' substantial right to privacy. Accordingly, an immediate appeal is necessary.

CONCLUSION

Based on the foregoing, Appellants respectfully request that the Court reinstate its appeal.

July 23, 2026

SIGNATURE ON FOLLOWING PAGE

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