

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION APPELLATE PANEL

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MAR 19 2014

Appellate Case No. 2012-212972

W.C.C. File No. 0905068

SC Court of Appeals

Alison Morrett, Employee, Claimant,Appellant,

v.

Capital City Ambulance of GA, Ltd., and
Companion Property and Casualty Group, Employer, Carrier, Respondents.

RESPONDENTS' RETURN TO
APPELLANT'S MOTION TO SEAL

Pursuant to Rule 240(e) of the South Carolina Appellate Court Rules, Respondents Capital City Ambulance of GA, Ltd., and Company Property and Casualty Group (collectively "Respondents") submit this return in opposition to the Motion to Seal filed by Appellant Alison Morrett ("Morrett"). For the reasons stated herein, Morrett's motion should be denied.

PROCEDURAL BACKGROUND

Morrett initiated these proceedings on or after November 15, 2011, with the filing of her Form 50, Notice of Claim, with the South Carolina Workers' Compensation Commission ("the Commission"). Following an adverse ruling by the single commissioner, Respondents filed a timely Form 30, Request for Commission Review, and Morrett filed her brief in opposition. (R. pp. 45-47; 66-89) Morrett's brief to the

Full Commission is replete with references to her psychological issues, including eating disorders, major depression, borderline personality disorder, voluntary and involuntary commitment to various treatment centers, family and marital discord, and prior sexual trauma. (*Id.*)

In support of her claims, both before the Commission and on appeal, Morrett has filed and relied upon reports prepared by her retained experts, along with voluminous medical and psychological treatment records, all of which reference Morrett's psychological problems and her efforts to overcome them. (*See* Morrett's Designation of Matter to be Included in the Record on Appeal) Her motion, however, represents the first and only attempt in nearly three years of litigation, however, to seal these records. Morrett has failed to meet her burden of showing the need for secrecy trumps the strong presumption in favor of open court records and has waived her argument that filings in this appeal should be sealed by delaying so long in making her request. As such, her motion should be denied.

LEGAL STANDARD

The party seeking an order to seal court records bears the burden of overcoming the strong presumption in favor of access "to show that the interest in secrecy outweighs the presumption." *Ex parte: Capital U-Drive-It, Inc.*, 369 S.C. 1, 12, 630 S.E.2d 464, 470 (2006) (citing *Davis v. Jennings*, 304 S.C. 502, 506, 405 S.E.2d 601, 603 (1991)). Moreover, courts are not without guidance in considering whether to seal or unseal court records and are required to "make specific factual findings, on the record, which weigh the need for secrecy against the right of access." *Ex parte: Capital U-Drive-It, Inc.*, 369 S.C. at 12, 630 S.E.2d at 470. To that end, courts have been instructed to consider the

following factors: “(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 proceedings; (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, including, but not limited to, the public health and safety, is best served by sealing the documents.” *Id.* (citing Rule 41.1, SCRCP). Additionally, the court “*may* consider (8) public interest in the proceeding; (9) the private or public status of the litigants and case generally; (10) whether release would enhance the public’s understanding of an important historical event; (11) whether the public already has access to information contained in the records; (12) whether a particular decision will sustain or offend the fundamental interests of public access, and any other relevant factors.” *Id.* (citing *Davis*, 304 S.C. at 505-506, 405 S.E.2d at 603-604) (emphasis added).

ARGUMENT

A strong presumption in favor of openness is the default setting for all court records in South Carolina. The rule favoring open court records stems from this State’s recognition of its “long history of maintaining open court proceedings and records. . . .” Rule 41.1, SCRCP. The South Carolina Supreme Court has expounded on this concept, observing that “[u]nder the Federal Constitution, our State Constitution, and our common law, court records are presumptively open to the public, and these records may only be sealed by a court based on specific findings that the need for secrecy outweighs the presumption of openness.” *Re: Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings*, 375 S.C. 56, 650 S.E.2d 462

(2007) (citing *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 630 S.E.2d 464 (2006) (additional citation omitted)).

The *Ex parte: Capital U-Drive-It* Court rejected appellant's notion, similar to Morrett's position here, that the privacy rights of family court litigants "outweigh the presumption of access to their files." The same result necessarily militates in favor of the denial of Morrett's motion, particularly where she seeks to seal an *entire* appellate court record without offering *any* guidance relating any *specific* records she believes should be shielded from public view. Going further, her motion fails to reveal how she will be harmed by continued access to documents that have been in the public domain during nearly three years of litigation. Contrary to Morrett's generic assertions in favor of secrecy, and as noted in *Ex parte: Capital U-Drive-It*, "[l]itigants who carry disputes to a publicly funded forum for resolution must necessarily expect to surrender a good measure of their right to privacy. 'A claim that a court file contains extremely personal, private, and confidential matters is generally insufficient to constitute a privacy interest warranting the sealing of the file. Likewise, prospective injury to reputation, an inherent risk in almost every civil lawsuit, is generally insufficient to overcome the strong presumption in favor of public access to court records.'" *Ex parte: Capital U-Drive-It, Inc.*, 369 S.C. at 11, 630 S.E.2d at 470 (quoting *Doe v. Heitler*, 26 P.3d 539, 544 (Colo. App. 2001)) (additional citations omitted).

The record in this case is devoid of evidence demonstrating the parties' reliance upon expectations that these proceedings would remain confidential. Similarly, Morrett "has not shown a perceived harm from disclosure, other than asserting a general right to privacy." *Ex parte: Capital U-Drive-It, Inc.*, 369 S.C. at 13, 630 S.E.2d at 470.

Morrett's generic assertions that this "action is not of public or professional significance" or that denial of her motion "would be very harmful to the claimant" simply fall well short of the showing required to overcome the presumption of access, particularly in light of factor number 11 – the public already has access to information contained in the records. *See Ex parte: Capital U-Drive-It*, 369 S.C. at 8, 630 S.E.2d at 468 ("after a court file is unsealed and the information released, no appellate remedy is likely to repair any damage done by an improper disclosure."). The same rationale applies here with equal force: no appellate remedy is likely to undo any damage done by the long-term exposure of Morrett's medical and psychological treatment records and the reports of experts who have analyzed those records, which have been on file with the Commission without objection since at least the date of the hearing before the single commissioner¹ (R. pp. 5-7) and the filing of the Record on Appeal in this Court on or after January 6, 2014.

In light of Morrett's generic assertions of a general right to privacy, as well as the long-term exposure of records to public view that has already occurred here, her motion lacks merit and should be denied.

CONCLUSION

For the reasons stated herein, Respondents respectfully submit they are entitled to an order denying Morrett's Motion to Seal.

[Signature Page To Follow.]

¹ Indeed, the Full Commission's decision and order is published and widely available to the public. *See Morrett v. Capital City Ambulance of Ga., LTD.*, 2012 S.C. Wrk. Comp. LEXIS 181 (S.C. Wrk. Comp. Comm. 2012).

March 19, 2014

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PROOF OF SERVICE

I certify this 19th day of March 2014 that I have served a copy of
RESPONDENTS' RETURN TO APPELLANT'S MOTION TO SEAL upon other
counsel of record, by mailing same, postage prepaid in the United States mail, addressed
to the following:

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Virginia L. Crocker, Judicial Director
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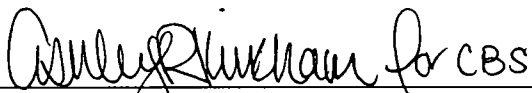
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(Signature page to follow.)

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