

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Paul M. Burch, Circuit Court Judge

Case No. 2014-CP-23-04140
Appellate Case No. 2016-000919
Court of Appeals Order filed January 13, 2017

John Roe, ...Respondent,

v.

South Carolina Department of Social Services, ...Petitioner.

APPENDIX

James W. Logan, Jr. (SC Bar #3385)
Michael T. Smith (SC Bar #10249)
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Attorneys for Respondent

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

John Roe,

Plaintiffs,

v.

South Carolina Department of Social Services
(SCDSS),

Defendants.

IN THE COURT OF COMMON PLEAS FOR
THE THIRTEENTH JUDICIAL CIRCUIT

Case No.: 2014-CP-23-04140

MOTION TO COMPEL

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENCIMER
2016 FEB 2 AM 10 27

TO: Defendants South Carolina Department of Social Services and its attorneys, James W. Logan and Michael T. Smith:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff will move before the Presiding Judge of the Thirteenth Judicial Circuit on the tenth day after service hereof or at some other time as may be convenient to the Court for an Order pursuant to South Carolina Rules of Civil Procedure Rule 37 compelling the Defendant to answer deposition questions pursuant to the Plaintiff's Rule 30(b)6 notice. The grounds for this motion are as follows:

On November 5, 2015, Plaintiff served a notice to take the deposition of the South Carolina Department of Social Services (SCDSS) pursuant to Rule 30(b)(6), South Carolina Rules of Civil Procedure. In the notice, Plaintiff gave notice that the agency should designate a person to testify about several matters, including the following:

3. The applicable SCDSS policies, practices, and procedures regarding the Central Registry for Abuse and Neglect and in particular, how SCDSS handled the reports against Steven Meek.
5. The number of adult-on-child and child-on-child sexual abuse or sexual touching incidents at BHOTS [Boys Home of the South] reported to Out of Home Abuse and Neglect beginning five years prior to the incidents complained of in the complaint.

ENTERED COMPUTER

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6. The particulars of each adult-on-child and child-on-child sexual abuse or sexual touching incidents at BHOTS [Boys Home of the South] reported to Out of Home Abuse and Neglect, and the outcome of each complaint beginning five years prior to the incidents complained of in the complaint.
(See Exhibit 1).

Defendant SCDSS did not respond with a date until January 21, 2016. In its response, SCDSS objected *in toto* to topics 5 and 6. (See Exhibit 2). The Defendants cited an order issued by this Court denying Plaintiff's motion to compel dated July 27, 2015 as grounds for refusing to answer or respond to questions related to these topics. (See Exhibit 2). Upon a request for clarification, Defendant stated it would instruct its witnesses not to respond to questions related to these two topics. (See Exhibit 3).

Plaintiff asserts that the amount and frequency of sexual assault of foster children by adults and other children at BHOTS is evidence that SCDSS should have placed the group home under better supervision and/or it should have required the agency to shut it down altogether. This pattern and practice of failing to supervise the group home is directly linked to Plaintiff's sexual assault at BHOTS.

Plaintiff asks the Court to compel Defendant SCDSS to answer questions regarding the history and prevalence of sexual assault at BHOTS. The agency does not need to disclose identifying information, such as the names of victims or perpetrators, dates of birth, or where they originally resided. The agency should be required to provide the dates of the incident, what happened, the age of the victims and the ages of the perpetrators, whether the perpetrator was a resident or an employee, a description of the investigation, and the outcome of the investigation. This can all be managed within the parameters of the Court's previous order.

In regard to topic 3, the Defendant presented a witness to testify regarding the topic but at the deposition refused to answer some of the Plaintiff's questions. The Defendant's attorney

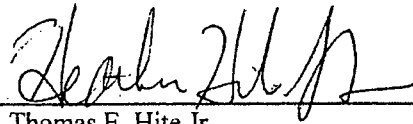
instructed the Defendant to only answer questions regarding Roe and to refuse to answer any questions regarding Meek's other two victims, John Snow and H.V. (See Exhibit 4). Plaintiff's counsel had previously presented defense counsel with releases signed by both John Snow and H.V. (See Exhibit 5). SCDSS had previously produced the SCDSS file of John Snow and plans to produce the SCDSS file of H.V., according to defense counsel. Despite the fact that Plaintiff has the express permission of the other two victims, SCDSS still refuses to testify regarding the reports made against Steven Meek by the other victims. SCDSS has no legal basis whatsoever to refuse to answer these legitimate questions regarding the investigation into Steven Meek. Plaintiff asks this Court to compel the Defendant SCDSS to answer the Plaintiff's questions regarding topic 3.

WHEREFORE, the undersigned is informed and believes he is entitled to the following relief:

1. That the Plaintiff is entitled to an Order of this Court pursuant to South Carolina Rules of Civil Procedure Rule 37 compelling the Defendant to answer the Plaintiff's questions regarding all topics in the 30(b)6 notice.
2. For attorneys fees, costs, and/or sanctions appropriate in this matter.
3. For such other relief as the Court deems necessary and appropriate.

Dated: Abbeville, South Carolina
February 1, 2016

By:



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Attorneys for Plaintiff John Roe

EXHIBIT 1

John Roe

Plaintiff,

v.

South Carolina Department of Social
Services (SCDSS),

Defendant.

In the Court of Common Pleas
Thirteenth Judicial Circuit

Case No.: 2014-CP-23-04140

**Notice of 30(b)(6) Deposition for South
Carolina Department of Social
Services**

**To: James W. Logan Jr., attorney for South Carolina Department of Social
Services (SCDSS)**

PLEASE TAKE NOTICE that under Rule 30(b)(6) of the South Carolina Rules of Civil Procedure, Plaintiff will take the deposition by oral examination of South Carolina Department of Social Services (SCDSS) through its designated agent(s).

The deposition will be conducted on [DATE] at [TIME] at [LOCATION] before a certified court reporter authorized by law to administer oaths. The deposition will be stenographically recorded and videotaped. The deposition will begin at the above date and time and continue from day to day until completed.

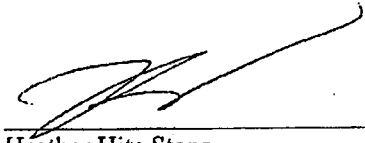
Pursuant to the provisions of Rule 30(b)(6), SCDSS is required to designate one or more officers, directors, managing agents, or other persons who consent to testify on its behalf. The person(s) designated must testify about information known or reasonably available to SCDSS from January 1998 through December of 2010 concerning the following matters:

1. The applicable SCDSS policies, practices, procedures, processes and organizational structure concerning the evaluation, approval, licensing, re-licensing, supervision, monitoring, and contracting of group homes that have contracted with SCDSS to provide placements for children in SCDSS custody, including follow-up measures taken to ensure compliance after initial approval or licensure; and in particular in regards to BHOTS.

2. The applicable SCDSS policies, practices, procedures, processes and organizational structure concerning the investigation, corrective action, and tracking of claims, reports, or findings of abuse, neglect or maltreatment, including child-on-child maltreatment or sexual activity, and adult-on-child sexual activity at the group homes that have contracted with SCDSS; and in particular in regard to BHOTS.
3. The applicable SCDSS policies, practices, and procedures regarding the Central Registry for Abuse and Neglect and in particular, how SCDSS handled the reports against Steven Meek.
4. The applicable SCDSS policies, practices, and procedures regarding recommendations of the Guardian ad Litem, and in particular the recommendations of Cecilia Hall, Roe's Guardian ad Litem.
5. The number of adult-on-child and child-on-child sexual abuse or sexual touching incidents at BHOTS reported to the Out of Home Abuse and Neglect beginning five years prior to the incidents complained of in the complaint.
6. The particulars of each adult-on-child and child-on-child sexual abuse or sexual touching incidents at BHOTS reported to the Out of Home Abuse and Neglect, and the outcome of each complaint beginning five years prior to the incidents complained of in the complaint.
7. The policies and procedures of tracking and data analysis of adult-on-child and child-on-child sexual abuse or sexual touching incidents by OHAN for BHOTS and group or residential homes in general beginning five years prior to the incidents complained of in the complaint.
8. The reporting of adult-on-child sexual abuse incidents, child-on-child sexual abuse incidents or touching, and sexual abuse incidents for out of home children by SCDSS to the United States Department of Health and Human Services and other agencies beginning five years prior to the incidents complained of in the complaint.

Please produce any documents related to these subjects at the time of the deposition. The Plaintiff has no objection to the documents being redacted of confidential identifying information.

DATED: November 5, 2015



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Attorneys for Plaintiff John Roe

EXHIBIT 2



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www.loganjollysmith.com

Michael T. Smith, Esquire
Email: msmith@loganjollysmith.com

January 21, 2016

(Via Electronic Mail and U.S. Mail)

Heather Hite Stone
Hite & Stone
P.O. Box 805
Abbeville, SC 29620

Re: John Roe v. South Carolina Department of Social Services, et al
Case No: 2014-CP-23-04140

Dear Heather:

In connection with the above referenced matter, we enclose and serve Defendant's Objections to the Notice of 30(b)(6) Deposition for South Carolina Department of Social Services. The 30(b)(6) Deposition will take place on January 27, 2016 at the DSS Columbia Office located at 1535 Confederate Avenue, Columbia, SC 29202. The deposition will begin at 10:00am. We will be in Conference Room 627. We will be presenting a number of people to cover each of the deposition topics. If we do not finish on January 27th, we can go over onto January 28th. One of our 30(b)(6) designees, Taron Davis, is not available on January 27th or 28th but she is available on January 29th. Does that date suit you to take her deposition? She is testifying regarding topic #4 regarding the Guardian Ad Litem recommendations.

If you have any questions concerning this matter, please let me know.

With kind regards, I remain

Yours very truly,

LOGAN, JOLLY & SMITH, LLP

Michael T. Smith

Enclosure(s)

cc: Robert J. Butcher, Esquire (with enclosures)

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
C.A. No.: 2014-CP-23-04140

John Roe,)
Plaintiff,)
v.)
South Carolina Department of Social)
Services (SCDSS),)
Defendant.)

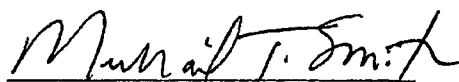
**Defendant's Objections to Notice of 30(b)(6)
Deposition for South Carolina Department of
Social Services**

TO: Heather Hite Stone, and Robert Butcher, Esquire, Attorneys for the Plaintiff

Please take notice that the Defendant hereby objects to the Plaintiff's 30(b)(6) Deposition Notice for the South Carolina Department of Social Services to the extent it seeks discovery and/or information that is confidential in nature and protected from disclosure by S.C. Code Ann. §§63-11-80, 63-7-1990 and 63-7-940. In fact, the release of the information sought by Plaintiff subjects any person disseminating said information to criminal penalties. Defendant further objects to the Plaintiff's 30(b)(6) Deposition Notice to the extent it seeks discovery and/or information that violates the Court's prior Order denying Plaintiff's Motion to Compel dated July 27, 2015 (Exhibit 1). Although Defendant reserves the right to raise the aforementioned objection to each of the 30(b)(6) topics listed by the Plaintiff, Items 5 and 6 expressly seek information that is confidential and not discoverable pursuant to South Carolina statute, South Carolina caselaw and the Court's prior Order in this matter.

Respectfully Submitted,

LOGAN, JOLLY & SMITH, LLP



James W. Logan, Jr. (SC Bar 3385)

Michael T. Smith (SC Bar 10249)

Post Office Box 259 (29622)

Anderson, South Carolina

864-226-1910

Attorneys for Defendant South Carolina

Department of Social Services

Dated: _____

1/21/16



FILED-CLERK OF COURT
STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) C.A. No.: 2014-CP-23-04140

2015 AUG 4 PM 4 31
John Roe,

Plaintiff,

v.

South Carolina Department of Social
Services (SCDSS), Boys Home of
South, Inc., (BHOTS), Jason Mowen,
Steve Meek, Lynn Merrifield,
Wesley Ballard, Glynda Taylor
Caddell, Susan Spitzer, and Lori
Griswold

Defendants.

**ORDER DENYING PLAINTIFF'S
MOTION TO COMPEL**

The above captioned matter is before the Court upon a Motion to Compel that Plaintiff John Roe ("Plaintiff") filed against Defendants South Carolina Department of Social Services ("SCDSS") and Boys Home of the South, Inc. ("BHOTS"), pursuant to which he seeks the disclosure of information and the production of documents related to individuals who, for the time period in question, were minors in SCDSS' custody and residents of BHOTS; who are not parties to this lawsuit; and from whom Plaintiff has not obtained any kind of a release.

The Court held a hearing on the Motion on July 22, 2015.¹ After review of Plaintiff's Motion, SCDSS and BHOTS' Memorandum in Opposition to the Motion, and applicable

¹ Present at the hearing were: Plaintiff's counsel Thomas E. Hite, Jr. and Heather H. Stone of the law firm of Hite and Stone, Abbeville, South Carolina; SCDSS counsel James W. Logan, Jr. of the law firm of Logan, Jolly & Smith, LLP, Anderson, South Carolina; Defendant Steve Meek's counsel Catherine H. Chase of the law firm of Young Clement Rivers, LLP, Charleston, South Carolina; and, BHOTS attorney Catherine F. Wrenn of the law firm of Womble Carlyle Sandridge & Rice, LLC, Greenville, South Carolina.

statutory and case law, and hearing arguments from counsel, the Court **DENIES** Plaintiff's Motion to Compel for the reasons set forth below.

BRIEF FACTUAL BACKGROUND:

Plaintiff, a former foster child within the SCDSS system, was a resident of BHOTS, a SCDSS-licensed group home for boys, for approximately six months. Plaintiff alleges that during his December 29, 2004-June 23, 2005, BHOTS residency, he was sexually assaulted by two individuals: (1) Defendant Steve Meek ("Meek"), who was a BHOTS employee, and (2) "N.M.," who was a minor and a BHOTS resident. Compl., at ¶¶ 22, 49. In regard to "N.M.," Plaintiff contends that SCDSS and BHOTS Defendants "had notice that N.M. had a history of violence and sexual aggression and should not be placed with other children, especially younger, vulnerable children." Id., at ¶ 53. However, Plaintiff admits that, while at BHOTS, he never told anyone about N.M.'s alleged abuse of him, Pl.'s Depo., at 239:22-25, and he has no evidence that N.M. sexually assaulted anyone else, id., at 240:4-6.

Almost a decade after Plaintiff's BHOTS residency, Plaintiff, in his individual capacity, filed the above-captioned lawsuit against SCDSS and BHOTS, who both have denied Plaintiff's allegations against them. By the time Plaintiff filed his Complaint, BHOTS was in the process of dissolving and was no longer functionally operating.

In discovery requests, Plaintiff requested a plethora of information and documents from SCDSS and BHOTS Defendants, including production of: (1) BHOTS' and DSS' file on N.M.; (2) BHOTS' and DSS' information about other minor BHOTS residents who, like N.M., are not parties to this lawsuit and have not provided releases for the production of the requested matter; and (3) BHOTS' file on Plaintiff.²

² BHOTS has represented to Plaintiff and to the Court that it, in good faith, tried to locate its file on Plaintiff, but, due to the long lapse in time between Plaintiff's December 2004-June 2005 residency and

LEGAL ANALYSIS AND FINDINGS

South Carolina law stringently protects from disclosure the exact information that Plaintiff is requesting SCDSS and BHOTS produce about N.M. and other minors who were in SCDSS custody during the time period in question. S.C. Code Ann. § 63-11-80 provides: "No officer, agent or employee of the department or a child welfare agency [like BHOTS] shall directly or indirectly disclose information learned about the children, their parents, or relatives or other persons having custody or control of them." Furthermore, S.C. Code Ann. § 63-7-1990 stipulates that "all reports made and information collected" as part of any child abuse and neglect investigation by SCDSS are "confidential." Section 63-7-1990 even mandates that, except in specified instances in which the statute permits disclosure, any person who disseminates or permits the dissemination of abuse and neglect records and information "is guilty of [a] misdemeanor" and subject to fine and/or imprisonment.

Section 64-7-1990 permits SCDSS, in limited, specified instances, to grant access to the "records of indicated cases" – cases in which SCDSS has determined that a "report of child abuse or neglect [is] supported by facts which warrant a finding by a preponderance of evidence that abuse or neglect is more likely than not to have occurred," S.C. Code Ann. § 63-7-20. (Emphasis added). Two such limited instances are when a "child over fourteen years of age or older who is named in a report as a victim of child abuse or neglect" requests access to indicated case records, or when "parties to a court proceeding" establish that "information in the records is

the 2014 filing of this lawsuit, BHOTS has been unable to do so. BHOTS cannot produce what it does not have in its possession and, in good faith and after diligent effort, cannot locate.

legally relevant and necessary for the determination of an issue before the court.” *Id.* at § 63-7-20(B)(6), (11).³

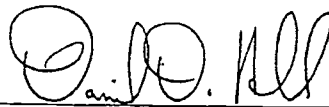
Plaintiff has requested the records of other minors in SCDSS custody who were housed at the BHOTS during times designated, and he purports to need such records in order to determine whether there is evidence that other children, who are not parties to this lawsuit, allegedly were abused at BHOTS and whether SCDSS and BHOTS were on any kind of notice about such abuse prior to, during, and after Plaintiff’s own BHOTS residency.

However, the Court finds that: (1) the information contained in those records is confidential and protected from dissemination pursuant to South Carolina Code Ann. § 63-11-80 and § 63-7-1990, and (2) there has been no showing or evidence that the confidential records Plaintiff seeks about the minors are from or part of any “indicated case” or that they contain legally relevant and necessary information for determining any central issue in this case. Furthermore, the requested information and records involve individuals who were minors at the time in question; who have a “valid and legitimate expectation that [their] medical [and private] information will remain confidential;” *Hollman v. Woolfson*, 384 S.C. 571, 578; 6 83 S.C. 2d 495, 499 (2009); who have not requested access to any indicated case record; who have not provided any party with a release that would allow SCDSS and BHOTS to produce the protected information; and who are not parties to this action.

Accordingly, it is ORDERED, ADJUDGED and DECREED that the Plaintiff’s Motion to Compel the requested information and documents is DENIED.

³ Section 63-7-20(B)(11) provides that, prior to any disclosure under that subsection, the judge must “review[] the records in camera,” determine the “relevancy and necessity of the disclosure,” and limit the disclosure to “legally relevant information under a protective order.”

IT IS SO ORDERED this 27 day of July, 2015.



The Honorable Daniel D. Hall

2018

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
C.A. No.: 2014-CP-23-04140

John Roe,
Plaintiff,

v.

South Carolina Department of Social
Services (SCDSS),
Defendant.

Certificate of Service by Mail

The undersigned does hereby certify that he is one of the attorneys for the Defendant, South Carolina Department of Social Services, and he has this date served a copy of the Defendant's Objection to Notice of 30(b)(6) Deposition for South Carolina Department of Social Services upon the attorneys for the Plaintiff by electronic mail and by placing a copy in the United States Mail at Anderson, South Carolina, with first class pre-paid postage affixed thereto, addressed as follows:

Heather Hite Stone
Hite & Stone
P.O. Box 805
Abbeville, SC 29620

Robert J. Butcher
The Camden Law Firm, PA
P.O. Box 610
Camden, SC 29020

Dated: 1/21/16

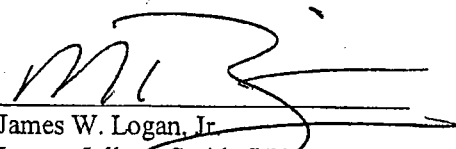

James W. Logan, Jr.
Logan, Jolly & Smith, LLP
Post Office Box 259 (29622)
Anderson, South Carolina
864-226-1910
Attorneys for Defendant South Carolina
Department of Social Services

EXHIBIT 3

Subject: RE: John Roe v. SCDSS
Date: Monday, January 25, 2016 at 9:30:11 AM Eastern Standard Time
From: Mike Smith <msmith@loganjollysmith.com>
To: Robert Butcher <rbutcher@camdensc-law.com>, heather@hiteandstone.com
<heather@hiteandstone.com>
CC: Kim Manley <manley@loganjollysmith.com>, Jim Logan <logan@loganjollysmith.com>

Robert,

The witness that would otherwise respond to these topics will be presented on other topics as well. We will leave it up to you to decide how you wish to proceed. If it helps at all, the witness will be instructed not to answer any questions regarding the particulars of other incidents or numbers of other incidents.

Mike Smith

From: Robert Butcher [mailto:rbutcher@camdensc-law.com]
Sent: Monday, January 25, 2016 8:45 AM
To: Mike Smith; heather@hiteandstone.com
Cc: Kim Manley; Jim Logan
Subject: Re: John Roe v. SCDSS

Are you going to provide a witness to refuse to answer these topics or should I file a motion now?

Robert J. Butcher

221 Glenwood Drive
Manning, South Carolina 29102

Post Office Box 486
Manning, South Carolina 29102

Phone: (803) 432-7599
Facsimile: (803) 432-7466
E-mail: rbutcher@camdensc-law.com
Website: www.camdensc-law.com

From: Mike Smith <msmith@loganjollysmith.com>
Date: Monday, January 25, 2016 at 8:30 AM

To: Robert Butcher <rbutcher@camdensc-law.com>, "heather@hiteandstone.com" <heather@hiteandstone.com>
Cc: Kim Manley <manley@loganjollysmith.com>, James Logan <logan@loganjollysmith.com>
Subject: RE: John Roe v. SCDSS

Subject to any last minute scheduling issue, our plan is to proceed in the order of the 30b6 topics. The one exception will be the GAL topic which will be on Friday morning as previously advised. Per our Objections, we do not anticipate providing any testimony regarding Topics 5 and 6 without a court order. With that said, we would prefer to stay later on Wednesday to finish up or complete them on Friday as opposed to using Thursday as well. We can iron out the schedule of course on Wednesday. Thanks.

Mike Smith

From: Robert Butcher [<mailto:rbutcher@camdensc-law.com>]
Sent: Monday, January 25, 2016 8:10 AM
To: heather@hiteandstone.com; Mike Smith
Cc: Kim Manley; Jim Logan
Subject: Re: John Roe v. SCDSS

Dear Mr. Smith:

Can you please list the order of the witnesses by subject matter so that the depositions can go smoothly?

Robert J. Butcher

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From: Heather Stone <heatherstone.hiteandstone@gmail.com>

Reply-To: "heather@hiteandstone.com" <heather@hiteandstone.com>
Date: Friday, January 22, 2016 at 8:35 AM
To: Mike Smith <msmith@loganjollysmith.com>
Cc: Kim Manley <manley@loganjollysmith.com>, Robert Butcher <rbutcher@camdensc-law.com>, James Logan <logan@loganjollysmith.com>
Subject: Re: John Roe v. SCDSS

That's fine. See you next week.

On Thu, Jan 21, 2016 at 2:56 PM, Mike Smith <msmith@loganjollysmith.com> wrote:

Heather,

For the 30b6 deposition on Jan 29, we need to start at 8:30am. Taron Davis is not available after 12 noon so that should give you more than enough time on the narrow issue she is being presented on. If we need to discuss, please advise. Thanks.

Mike Smith

From: Heather Stone [mailto:heatherstone.hiteandstone@gmail.com]
Sent: Thursday, January 21, 2016 2:27 PM
To: Kim Manley
Cc: rbutcher@camdensc-law.com; Jim Logan; Mike Smith
Subject: Re: John Roe v. SCDSS

We will plan on being there all three days. Thanks.

On Thu, Jan 21, 2016 at 2:12 PM, Kim Manley <manley@loganjollysmith.com> wrote:
Heather:

Please find attached correspondence from Mike Smith in the above referenced matter.

Thanks.

Kim Manley
Paralegal
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P.O. Box 259
Anderson, SC 29622
(864) 226-1910
(864) 226-1931 (Fax)

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EXHIBIT 4

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) CASE NO. 2014-CP-23-04140

JOHN ROE,)
PLAINTIFF,) VIDEOTAPED RULE 30(b) (6)
vs.) DEPOSITION
SOUTH CAROLINA DEPARTMENT OF) OF
SOCIAL SERVICES (SCDSS),)
DEFENDANT.)
DONNA OUTEN
COPY

Excerpt of the Videotaped Rule 30(b) (6)
Deposition on the oral examination of DONNA OUTEN,
reported by Andrea Shorb, Verbatim Court Reporter and
Notary Public for the State of South Carolina; said
deposition taken pursuant to Notice and in accordance
with the South Carolina Rules of Civil Procedure at the
offices of the South Carolina Department of Social
Services, 1535 Confederate Avenue, Columbia, South
Carolina, on Wednesday, January 27th, 2016, commencing at
1:41 p.m.

Reported by: Andrea Shorb

LAKELANDS REPORTING

Post Office Box 555
Laurans, South Carolina 29360
(864) 575-9942
lakelandsreporting@gmail.com

Lakelands Reporting

(864) 575-9942

(1/27/16 Excerpt of deposition of Donna Outen)

A P P E A R A N C E S

REPRESENTING THE PLAINTIFF:

HEATHER H. STONE, ESQUIRE
Hite & Stone
Post Office Box 805
(100 East Pickens Street)
Abbeville, South Carolina 29620
heatherstone@wctel.net

ROBERT J. BUTCHER, ESQUIRE
DEBORAH J. BUTCHER, ESQUIRE
The Camden Law Firm, P.A.
Post Office Box 610
(509 Walnut Street)
Camden, South Carolina 29021-610
rbutcher@camdensc-law.com

REPRESENTING THE DEFENDANTS:

JAMES W. LOGAN, ESQUIRE
MICHAEL SMITH, ESQUIRE
Logan, Jolly & Smith
Post Office Box 259
(1805 North Boulevard)
Anderson, South Carolina 29622-259
logan@loganjollysmith.com

On behalf of SCDSS

Also Present: Michael Arrison, videographer

(1/27/16 Excerpt of deposition of Donna Outen)

I N D E X

	PAGE
EXCERPT OF DEPOSITION:	4
CERTIFICATE OF REPORTER	5

REPORTER NOTES

Dashes [--] indicates interruption; incomplete phrases; unfinished sentences.

[sic] written as said.

(This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker.)

1 MR. SMITH: This is Mike Smith. We
2 just had a fairly lengthy off-the-record
3 conversation. And it's -- it's DSS's
4 position that this witness and any witness
5 in connection with the John Roe matter is
6 not permitted by Statute to disclose
7 information regarding other children's
8 cases. So, and I've cited those Statutes in
9 our objections that we filed to the 30(b)(6)
10 Notice. And in addition, we have the -- the
11 prior Court Order, which we also thinks --
12 also think makes -- puts that -- puts that
13 off limits as well. But we are -- we are
14 instructing this witness, because of the
15 Statute and because of the prior Court
16 Order, not to answer any questions regarding
17 other children, specifically Mr. DA and Mr.
18 V.

19 (End of excerpt)
20
21
22
23
24
25

Certificate of Reporter

I, ANDREA SHORB, Court Reporter and Notary Public in and for the State of South Carolina, do hereby certify that I reported the deposition of Donna Outen, on Wednesday, the 27th day of January, 2015; that the Deponent was first duly sworn by me and that the foregoing pages constitute a true and correct transcription of my verbatim report of said deposition.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected with this action, nor am I financially interested in said cause.

I further certify that the original of said transcript was thereafter sealed and delivered to Robert Butcher, Esquire, 221 Glenwood Drive, Manning, South Carolina, who will retain this sealed original transcript and shall be responsible for filing same with the court prior to trial or any hearing which might result in a final order on any issue.

In witness whereof, I have set my hand and seal this 28th day of January, 2016.

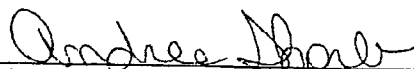

Andrea Shorb, Court Reporter
My commission expires January 12, 2020

EXHIBIT 5

Robert J. Butcher
Deborah J. Butcher

The Camden Law Firm, PA
509 WALNUT STREET
CAMDEN, SOUTH CAROLINA 29020
POST OFFICE BOX 610
CAMDEN, SOUTH CAROLINA 29021

Telephone: 803.432.7599
Facsimile: 803.432.7466

James W. Logan Jr.
Logan, Jolly & Smith
Post Office Box 259
Anderson, SC 29621

Catherine Wrenn
Womble Carlyle Sandridge & Rice, LLP
P.O. Box 10208
Greenville, SC 29603-0208

SUBJECT: DISCLOSURE OF CONFIDENTIAL RECORDS
Roe v. SCDSS, BHOTS, et al., Case No. 2014-CP-23-04140

Dear Mr. Logan and Ms. Wrenn:

I consent to the production of my complete file from Boys Home of the South and my complete SCDSS file to all parties in the above referenced case, to include Out of Home Abuse and Neglect files, Adoption Files, CPS files, Treatment files, Therapeutic Foster Care files, and Medical files.

I consent to the release of my medical records pursuant to HIPAA. The following are acknowledgements of my consent to disclose my medical information:

I understand that the information in these health records may include information relating to sexually transmitted disease, acquired immunodeficiency syndrome (AIDS), or human immunodeficiency virus (HIV). It may also include information about behavioral or mental health services, and treatment for alcohol and drug abuse.

I understand I have the right to revoke this authorization at any time. I understand if I revoke this authorization, I must do so in writing and present my written revocation to the health information management department. I understand the revocation will not apply to information that has already been released in response to this authorization. I understand the revocation will not apply to my insurance company when the law provides my insurer with the right to contest a claim under the policy. Unless otherwise revoked, this authorization will expire when my injury case finishes in a settlement or court proceeding.

I understand that authorizing the disclosure of this health information is voluntary. I can refuse to sign this authorization. I need not sign this form in order to assure treatment. I understand I may inspect or copy the information to be used or disclosed, as provided in CFR 164.524. I understand any disclosure of information carries with it the potential for an unauthorized re-disclosure and the information may not be protected by federal confidentiality rules.

H.V. (Redacted)

10/21/15
Date

Heather Hite Stone

Witness (Print Name)

10/21/15
Date

Heather Hite Stone
Witness (Signature)

Robert J. Butcher
Deborah J. Butcher

The Camden Law Firm, PA
509 WALNUT STREET
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John Snow (redacted) 2/27/15

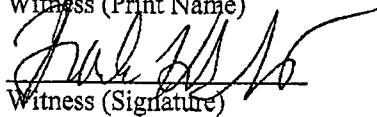
Date

Heather Hite Stone

Witness (Print Name)

2/27/15

Date


Witness (Signature)

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

JOHN ROE)

Plaintiff,)

vs.)

SOUTH CAROLINA DEPARTMENT OF
SOCIAL SERVICES (SCDSS))

Defendant.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE NO.: 2014-CP-23-04140

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS IMMER
2016 FEB 2 AM 10 27

Plaintiff's Attorney:
HEATHER HITE STONE, Bar No. 72503
Address:
PO BOX 805
ABBEVILLE, SC 29620
Phone: 864-366-5400 Fax 864-366-2638
E-mail: heather@hiteandstone.com Other:

Defendant's Attorney:
JIM LOGAN,, Bar No. _____
Address:
PO BOX 259
ANDERSON, SC 29622
Phone: _____ Fax _____
E-mail: _____ Other: _____

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: MOTION TO COMPEL

Estimated Time Needed: ~~15~~ **10** MINS

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

- ☐ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

02.01.2016
Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ 25.00

☐ EXEMPT:

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: SJK Date Filed: 2-2-16

☒ MOTION FEE COLLECTED: \$ 25

☐ CONTESTED - AMOUNT DUE: \$ _____

K # 4919
H. H. Gander

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Case No(s): 2014CP2304140
	)	
John Roe,	)	
	)	
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
South Carolina Department of	)	
Social Services, et al	)	
	)	
Defendant.	)	
	)	

February 12, 2016
Greenville, South Carolina

B E F O R E:

HONORABLE PAUL M. BURCH, Judge.

A P P E A R A N C E S:

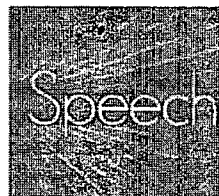
ROBERT J. BUTCHER, Esquire
HEATHER H. STONE, Esquire
THOMAS E. HITE, JR., Esquire
Attorneys for the Plaintiff

JAMES W. LOGAN, JR., Esquire
MICHAEL SMITH, Esquire
Attorneys for Defendant Department of Social Services

BRENDA L. GORSKI, Esquire
Attorney for Defendant SC Guardian ad Litem Program

Teresa B. Johnson, CVR-M
Certified Court Reporter
P.O. Box 2812
Greenville, S.C. 29602

Records are
taken and
produced via



CAT 7

1 schedule, it is Judge Hill and Judge Verdin.

2 **MR. LOGAN:** But we are led to believe
3 that it will be Judge Verdin in the trial.
4 Judge Hall is the one that signed the order
5 that I referred to.

6 **THE COURT:** All right. What else?

7 **MR. BUTCHER:** Your Honor, I believe the
8 next one is a motion to compel.

9 **THE COURT:** Okay.

10 **MR. BUTCHER:** Your Honor, on November 5th
11 of 2015, we sent a notice to DSS requesting --
12 you know, giving the topics and stuff for the
13 30(b)(6) deposition. We finally got a date a
14 couple of weeks ago. We did the -- uh, then we
15 conducted the deposition. DSS objected
16 outright to two topics.

17 One was we requested the number of adult-
18 on-child and child-on-child sexual abuse or
19 sexual touching incidents at Boys Home of the
20 South reported to the Out of Home Abuse and
21 Neglect beginning five years prior to the
22 incidents complained of in the complaint. The
23 reason why is we believe that there was a high
24 frequency of sexual abuse incidents at Boys
25 Home of the South during the time -- we have

1 reason to believe through viewing incident
2 reports from Boys Home of the South.

3 The other reason or the other request was
4 the particulars of each adult-on-child, child-
5 on-child incidents of Boys Home of the South
6 and the outcome beginning five years prior. We
7 have told DSS we don't care about the names of
8 anyone. We just want to know what happened,
9 how often did it happen.

10 The reason why is the licensing agency for
11 Boys Home of the South. There has to be a level
12 when you have 40 boys or 50 boys or five
13 incidents. If there are five incidents of
14 child-on-child, that means possibly up to 10
15 boys could be involved, which would be 20
16 percent of the population. How much is too
17 much to involve or to require the agency to
18 stop everything and require different types of
19 supervision or pull all of the boys out of home
20 because too many kids are having sex? So we
21 believe that is important from the perspective
22 of being able to litigate our case as to
23 whether or not DSS put these boys in dangerous
24 situations and knew whether or not our child --
25 whether it would be likely that our child would

1 be sexually abused. So they objected outright
2 to those topics. We told them we filed a motion
3 to compel. They say go ahead and we will let
4 the court take it up. So here we are with
5 that.

6 Also, additionally, our third topic -- the
7 third topic was the applicable DSS policies,
8 practices and procedures regarding the Central
9 Registry of Abuse and Neglect and, in
10 particular, how DSS handled the reports against
11 Stephen Meek. Your Honor, our client and two
12 other boys have, who signed releases, who were
13 sexually abused by Stephen Meek, all complained
14 at different times for being sexually abused by
15 Stephen Meek. And during the 30(b)(6), we
16 asked about what DSS reactions, whether or not
17 they put Stephen Meek on the Central Registry
18 of Abuse and Neglect. They objected and
19 instructed their client not to answer that. We
20 believe that was fairly within the scope of the
21 30(b)(6) deposition.

22 From that perspective, we believe that all
23 of these topics are relevant to the case. And,
24 of course, DSS when they filed their objection,
25 they filed Judge Hall's order stating that we

1 couldn't have any information related to any of
2 the children that went on. Your Honor, we're
3 fine with protecting those children's identity.
4 But if DSS had a pattern and a practice of
5 having children get sexually abused at the home
6 and doing nothing and continuing to place
7 children at that home, as plaintiffs
8 representing a child who was raped there many,
9 many times by an adult and by another child, I
10 believe that we should have access to that
11 information.

12 I believe that the department should have
13 to have a knowledgeable witness or at least a
14 witness who has learned the facts from the
15 agency and can testify about that. So that's
16 -- Steve Meek was an adult. He was a house
17 parent who raped the child and was the child
18 who conducted the child-on-child rape to our
19 client.

20 **THE COURT:** Was Meek an employee ---

21 **MR. BUTCHER:** Yes, he was an employee ---

22 **THE COURT:** --- of Boys Home?

23 **MR. BUTCHER:** --- of Boys Home of the
24 South.

25 **THE COURT:** Not DSS.

1 **MR. BUTCHER:** Your Honor, the two other
2 boys who have given us releases, one is John
3 Snow. That case is filed in Anderson County.
4 He was sexually abused by Stephen Meek. We
5 have -- already had his file from DSS and we
6 have his file from Boys Home of the South. The
7 other child is initials H.V. He was raped also
8 by Steve Meek. We think we now have his file
9 from DSS.

10 So Your Honor, from the perspective in part
11 three where they refuse to ask him --
12 instructed him not to answer anything about the
13 Registry of Abuse and Neglect, I think it's
14 relevant.

15 Also, we, uh, -- those two boys are going
16 to testify at the trial. Your Honor, under
17 State versus McCombs and State versus Wallace,
18 when you have similar patterns, similar acts, I
19 believe -- they are going to be -- we're going
20 to be allowed to have them come in and testify
21 because DSS is standing on the premise that our
22 client is lying and was never raped. So from
23 the perspective of -- that's everything, Your
24 Honor.

25 **MR. SMITH:** Your Honor, Mike Smith again.

1 If I might, I have a copy of the relevant
2 statutes regarding the confidentiality of
3 records if the court may want that. Judge,
4 this may seem like a little déjà vu from the
5 last hearing, the last motion because, first of
6 all, there are strict confidentiality rules
7 that govern the release of this information.
8 That's the statutes that I just handed up to
9 the court.

10 The second important point on this, Your
11 Honor, is the court, Judge Hall, has already
12 ruled on this issue. This is the second motion
13 to compel. The plaintiffs, previously in this
14 case, asked for other information, information
15 regarding other boys. The judge said no, you
16 cannot have it.

17 The court has already been given a copy of
18 Judge Hall's order. In Judge Hall's order, he
19 cites the statutes I just gave to the court.
20 Primarily, 67 -- 63-7-1990. All reports made
21 and information collected as part of any child
22 abuse and neglect investigation by DSS are
23 confidential. Based on that, Judge Hall
24 already has told the plaintiffs they cannot get
25 information regarding other children.

1 Judge, the, uh, -- it's interesting --
2 well, first of all, the plaintiff argues that
3 because they have a release, they can -- you
4 know, everything is fair game. The release
5 which is attached to the plaintiff's motion to
6 compel is a release that says I consent to the
7 production of my file. That's exactly what we
8 have done. We have given them what this
9 release authorizes us to give. Nowhere in this
10 release does it say, DSS, you can give a
11 deposition and give opinions about my case; you
12 can give your personal observations about my
13 case. No, sir, it authorizes a release of
14 information and we have given that. That is
15 the scope of the release. So to say that that
16 release somehow insulates DSS from potential
17 liability for disseminating information that's
18 confidential, it does not go that far.

19 Judge, the second -- I guess my second main
20 point is you have got Judge Hall saying,
21 Plaintiff, you can't get information regarding
22 other kids. So what does the plaintiff do,
23 they apparently feel like they can ignore that
24 and they serve a 30(b)(6). One of the topics
25 for the 30(b)(6) that we're here about today,

1 they want to know details of other events
2 involving other children. That is --
3 completely flies in the face of Hall's -- Judge
4 Hall's prior order.

5 I think they recognize that that goes too
6 far. What they are doing today is we don't
7 want all of the details, we just want some of
8 the details. They want a description of the
9 incident. They want the outcome of the
10 incident. All of that, Your Honor, I would
11 submit is protected by the statute. It is
12 confidential information.

13 Lastly, the plaintiff is saying that they
14 want numbers, how many incidents have occurred
15 in the past. Well, again, I think that begs
16 the question, if you give any information, then
17 we are in the position of trying to show that
18 it is not relevant, that it is not
19 substantially similar. Once that door is open,
20 I think you have to go into all this
21 information which would then require, according
22 to statute, an in camera review by the court of
23 all of this information regarding potential --
24 potential other incidents.

25 Lastly, what they have asked for in their

1 30(b)(6) are sexual abuse incidents.
2 Potentially, Your Honor, there will be a
3 report. That will be one we will have to
4 disclose. Well, DSS does an investigation. And
5 come to find out, the child or whoever says I
6 lied. I completely made that up. It would be
7 an unfounded case. There's no question that
8 once that door is opened, you've got to
9 investigate other claims, you've got to -- the
10 court's got to do an in camera review.

11 Again, the bottom line is we think that
12 violates Judge Hall's prior order. He's
13 already denied one of their compels in regard
14 to other kids. I think they're asking for the
15 same thing today from Your Honor.

16 **MR. BUTCHER:** Your Honor, a couple of
17 points that were raised. One, if the agency
18 wants, we can have a release saying anything
19 they want from -- anytime during -- you know,
20 by the end of the day. Your Honor, one of the
21 -- as I said earlier, one of the defenses that
22 DSS is using is that our client is lying about
23 being sexually abused by Stephen Meek. What we
24 believe and what we're pretty sure of is
25 although they didn't put Meek on the Registry

1 for Abuse and Neglect from our client's claim,
2 a couple of years later when H.V., that child
3 complained that Steve Meek raped him, part of
4 the reason of placing Stephen Meek on the
5 Registry for Abuse and Neglect was because our
6 client, John Roe said it, John Snow said it and
7 H.V.

8 Your Honor, that is very relevant because
9 if the agency wants to tell a jury we don't
10 believe him, he is a liar, then why did you put
11 someone on the registry of the abuse and
12 neglect using our client's claim? I think,
13 one, that is extraordinarily relevant.

14 Two, I'd like to talk to you about
15 unfounded cases. The South Carolina Department
16 of Social Services, when there is child abuse
17 in a -- in one of their facilities, a foster
18 home, a group home, anyplace like that, OHAN,
19 Out of Home Abuse and Neglect -- it is an
20 investigative arm of DSS -- investigates those
21 cases.

22 Your Honor, if a child has sex with a
23 child, that case is unfounded. The reason why
24 is because no adult caused the sexual harm --
25 caused the child abuse to a child. They screen

1 it out. It's not just -- we're not just
2 looking for founded or unfounded cases. This
3 agency screens out all of these cases of
4 children having sex with each other in their
5 homes and says nothing ever happened because
6 they have a procedure of saying no adult was
7 harmed so there was no child abuse.

8 Your Honor, in a prior case, Mr. Hite
9 deposed Boys Home of the South and, of course,
10 this happened later, but the manager, the
11 director of Boys Home of the South said 75
12 percent of the boys were sexually active at
13 Boys Home of the South. DSS wants to hide all
14 this information.

15 Your Honor, before the state can even get
16 this information to find out how many children
17 get sexually abused in care. We have -- from a
18 policy decision standpoint, these same kids are
19 going to be in your Court of General Sessions.
20 These same kids are going to be in your family
21 court having their children taken away because
22 we are letting these kids get abused and DSS is
23 continuing to hide behind it.

24 The statute, I think, is very clear. It
25 allows -- under 63-7-1990, subsection 11, it

1 allows the court to take these in camera, and I
2 know it is a lot of work for your clerk; and I
3 apologize. But it is very important because if
4 DSS knew that there were 5, 10, 20, in a year,
5 a year and a half, two years beforehand, then I
6 think a jury will be able to say this place
7 should have been shut down, this place should
8 have been re-staffed, something before placing
9 children in there allowing them to get raped by
10 other children.

11 From that perspective, I think you have the
12 mechanism and I would not -- also invite you to
13 read Judge Hill's -- Hall -- I'm sorry, sir --
14 Hall's order very closely. It is very focused
15 on making sure individualized information isn't
16 disclosed.

17 Your Honor, we just want to know if
18 children were getting raped. I think it is
19 important; I think it is important for the
20 jury; and I think it is important for justice.
21 I think this court has the vehicle -- has the
22 statutory vehicle to be able to order DSS to
23 give us that information.

24 **THE COURT:** Okay. What else?

25 **MR. LOGAN:** Your Honor, the last motion

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP2304140

IN THE COURT OF COMMON PLEAS

FILED-CLERK OF COURT

John Roe

GREENVILLE CO. S.C.
PAUL B. WICKENS

Social Services South
Carolina Department Of
SCDSS

2016 FEB 16 AM 11 07

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

1. Defendant SCDSS's motion to strike is granted.
2. Brenda L. Gorski's motion to quash is granted.
3. Plaintiff's motion to compel is granted, however said material is under protective order in that said material will be presented to trial Judge under seal for further determination of admissibility by the trial court.
4. Proposed Orders to come on 5/5 motion.

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

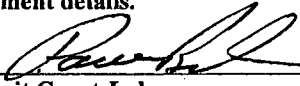
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**


Circuit Court Judge

2048

Judge Code

2/12/2016

Date

For Clerk of Court Office Use Only

This judgment was entered on 2/16/16, and a copy mailed first class or placed in the appropriate attorney's box on 2/16/16, to attorneys of record or to parties (when appearing pro se) as follows:

Heather Hite Stone PO Box 805 100 East Pickens Street
Abbeville, SC 29620
Robert J. Butcher The Camden Law Firm, PA P.O. Box 610
Camden, SC 29021

James W. Logan Jr. Logan, Jolly & Smith PO Box 259
Anderson, SC 29622
Brenda L. Gorski South Carolina Guardian Ad Litem
Program 1205 Pendleton St., Room 447 Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of
Court - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No.: 2014-CP-23-04140
COUNTY OF GREENVILLE	)	
John Roe,	)	
	)	
Plaintiff,	)	
	)	
v.	)	DEFENDANT'S MOTION TO RECONSIDER
	)	
South Carolina Department of Social	)	
	)	
Defendant.	)	

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSINER
2016 FEB 17 PM 2 10

Pursuant to S.C.R.C.P. 59, Defendant South Carolina Department of Social Services ("SCDSS") hereby moves the Court to reconsider its Order filed on February 16, 2016 granting Plaintiff's Motion to Compel (Exhibit A). The basis for the Defendant's Motion to Reconsider is three-fold:

- (1) The subject Order granting Plaintiff's Motion to Compel and expanding discovery to include confidential information regarding other minor children is contrary to the prior order of Judge Hall (Exhibit B) in this case denying Plaintiff's Motion to Compel on the same issue,
- (2) In requiring the disclosure of confidential information (in cases that are not "indicated" and conducting an *in camera* review after disclosure of confidential information, the subject Order violates S.C. Code Ann. §64-7-1990 and §63-7-20(B)(11), and
- (3) At a minimum, a revised Order setting out the Court's rationale for its decision is respectfully requested in the event the Defendant determines that an immediate appeal of the Court's ruling is necessary.¹

¹ "If an order requires a party to turn over documents, which the party feels are privileged or contain proprietary or confidential matters, compliance with the order without the ability to seek immediate appeal renders the

A. Plaintiff's continued efforts to obtain confidential and statutorily protected information regarding other children violates Judge Hall's prior order and has now resulted in inconsistent rulings from the court.

The issue at the heart of Plaintiff's Motion to Compel is the disclosure of confidential and statutorily protected information regarding minor children that are neither parties to this action, nor signed a release allowing access to indicated case records. By Order dated July 27, 2015, the Honorable Daniel D. Hall denied Plaintiff's Motion to Compel seeking the disclosure of this confidential information (Exhibit B). Undeterred by Judge Hall's Order, Plaintiff's counsel continued their efforts to conduct discovery in violation of the Court's Order and issued a 30(b)(6) Deposition Notice which again sought the disclosure of confidential information regarding other children.² In reliance upon Judge Hall's Order and S.C. Code Ann. §§63-11-80 and 63-7-1990, Defendant objected to the 30(b)(6) Deposition Notice. Plaintiff again filed a Motion to Compel and asked this Court to provide the very information that Judge Hall ruled should not be disclosed.

A review of Judge Hall's Order clearly demonstrates that the Plaintiff sought identical information in both instances – confidential and statutorily protected information regarding other children that were residents at Boys Home of the South. Judge Hall's Order provides, in relevant part, as follows:

South Carolina law stringently protects from disclosure the exact information that Plaintiff is requesting SCDSS and BHOTS produce about N.M. and other minors who were in SCDSS custody during the period of time in question. ... Plaintiff has requested the records of other minors in SCDSS custody who were housed at the BHOTS during times designated, and he purports to need such records in order to determine whether there is evidence that other children, who are not parties to this lawsuit, allegedly were abused at BHOTS and whether SCDSS and BHOTS were on any kind of notice about such abuse prior to, during, and after Plaintiff's own BHOTS residency. (Order, Page 3-4).

protections afforded by the privilege or confidentiality a nullity." Appellate Practice in South Carolina, Chapter 4: Appealability of Judgments and Orders, Page 101 (Justice Toal, 1999). (Exhibit C).

² Judge Hall's Order rejected Plaintiff's efforts to obtain confidential information contained in documents. The fact that the current disclosure would occur in a deposition, as opposed to documents, is of no legal significance. It is the actual disclosure of confidential information that this material, not the manner in which the disclosure takes place.

In denying Plaintiff's prior Motion to Compel, Judge Hall concluded that Plaintiffs were not entitled to confidential information regarding other children because "(1) the information contained in those records is confidential and protected from the dissemination pursuant to S.C. Code Ann. §63-11-80 and §63-7-1990, and (2) There has been no showing or evidence that the confidential records Plaintiffs seek about the minors are from or part of any "indicating case" or that they contain legally relevant and necessary information for determining any central issue in this case." (Order, Page 4)

In *State ex rel. Medlock v. Love Shop, Ltd.*, 286 S.C. 486, 334 S.E. 2d 528 (Ct. App. 1985), the Court held that "it is settled that one circuit court judge does not have the power to review, modify, affirm or reverse the findings of another circuit judge. *Cook v. Taylor*, 272 S.C. 536, 252 S.E.2d 923 (1970); *Sheppard v. Kimbrough*, 282 S.C. 348, 318 S.E.2d 573 (Ct.App.1984)." Defendant respectfully submits that Judge Hall's prior Order governs Plaintiff's ongoing efforts to receive the identical information and that Plaintiff's tactic of seeking confidential information via a deposition, as opposed to documents, does not change the legal analysis or the impact of Judge Hall's Order. Accordingly, Defendant requests that the Court reconsider its ruling and deny Plaintiff's Motion to Compel which is consistent with the discovery parameters regarding confidential information established earlier in this case by Judge Hall.

B. In the alternative, should the Court affirm the granting of Plaintiff's Motion to Compel, (a) the disclosure of confidential information should be limited to "indicated" cases per S.C. Code Ann. §64-7-1990, and (b) the disclosure of information in any "indicated" cases should occur after an *in camera* review as required by S.C. Ann. §63-7-20(B)(11).

The prior Order of Judge Hall, which Plaintiff attempts to ignore, likewise addresses the limited circumstances in which confidential information can be disclosed and the procedure to

utilize if there is an actual disclosure of this information. While ultimately denying Plaintiff's Motion to Compel, Judge Hall held as follows:

Section 64-7-1990 permits SCDSS, in limited, specified instances, to grant access to the "records of indicated cases" – cases in which SCDSS has determined that a "report of child abuse or neglect [is] supported by facts which warrant a finding by a preponderance of evidence that abuse or neglect is more likely than not to have occurred," S.C. Code Ann. § 63-7-20. (Emphasis added). Two such limited instances are when a "child over fourteen years of age or older who is named in a report as a victim of child abuse or neglect" requests access to indicated case records, or when "parties to a court proceeding" establish that "information in the records is legally relevant and necessary for the determination of an issue before the court." *Id.* at §63-7-20(B)(6), (11).³

³ Section 63-7-20(B)(11) provides, that, prior to any disclosure under that subsection, the judge must "review[] the records in camera" determine the "relevancy and necessity of the disclosure," and limit the disclosure to "legally relevant information under a protective order." (Emphasis added).

After reviewing the relevant statutes concerning the disclosure of confidential information, Judge Hall found that the Plaintiff had made "no showing or evidence that the confidential records (he) seeks about the minors are from or part of any "indicated case" or that they contain legally relevant and necessary information for determining any central issue in this case" (Order, Page 4).

³Judge Hall further held that the Plaintiffs were not entitled to any confidential information regarding a child who had not provided any party with a release and are not parties to this action. The exact same analysis applies here.

Based on the clear language contained in the Order of Judge Hall and the foregoing South Carolina statutes, the Defendant respectfully submits that it should only be required to disclose information regarding other children involved in "indicated cases". Furthermore, if any such "indicated cases" exist, the Court must review this information *in camera* prior to any disclosure

³ Significantly, the court rejected Plaintiff's identical argument that these other cases were relevant on the issue of whether the Defendant had notice of any problems at Boys Home of the South.

as required by S.C. Code Ann. §63-7-20(B)(11). Under the Court's current Order, the procedure outlined mandates the disclosure of confidential information followed by an *in camera* review - which is the exact opposite procedure outlined by South Carolina statute.

As a practical matter, the Plaintiff is seeking to obtain confidential information through a deposition of Defendant's representatives. In order to comply with the statutory requirements of an *in camera* review prior to disclosure of confidential information, Plaintiff's counsel may submit written deposition questions in a sealed envelope to the court reporter. The court reporter may then read Plaintiff's written questions to the deponent, the deponent would respond to the questions, and then a sealed deposition transcript would be presented to the Court for an *in camera* review. In the alternative, Defendant could submit documents, if any exist, of any "indicated" cases to the Court for an *in camera* review. Then if the Court determines that any of these "indicated" cases for the time period requested are relevant, a deposition could occur in a manner consistent with the Court's ruling. There is no exception in the South Carolina statutes or case law which allow disclosure of confidential information regarding other children before an *in camera* review.

CONCLUSION

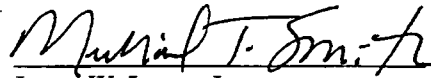
Judge Daniel D. Hall denied Plaintiff's prior Motion to Compel in which Plaintiff sought confidential and statutorily protected information regarding other children. Plaintiff's current Motion to Compel is a backdoor attempt to obtain the same restricted information from another judge. Defendant respectfully submits that Plaintiff's attempt at a second bite at the same apple from another judge should not be rewarded and that this Court should reconsider its ruling which granted Plaintiff's Motion to Compel so that it is constant with the discovery parameters established by the prior Court's Order.

In the alternative, should this Court require disclosure of any confidential information regarding other children, then the disclosure must be limited, as addressed by Judge Hall, to "indicated cases" as required by S.C. Code Ann. §64-7-1990 and the *in camera* review of the confidential information should occur prior to disclosure as set forth in S.C. Code Ann. §63-7-20(B)(11).

The statutory scheme protecting confidential information regarding children and outlining the procedures to be utilized in those limited instances when disclosure is allowed is complex. It is also of unquestioned importance to ensure that confidential and extremely sensitive information about children is shielded and requests for disclosure of this information must be closely scrutinized.⁴ At the time of this hearing, this case was scheduled to be tried the following week. Now, however, this case is set for a date certain on May 23, 2015 and there is time for the Court to reconsider its ruling, analyze how the aforementioned statutes apply, and request proposed orders from the parties. Finally, defendant may consider an immediate appeal of this ruling and the current order does not provide any rationale for the decision which may prove problematic on appeal.

⁴ Indeed, individuals that impermissibly disclose confidential information regarding children are subject to criminal penalties. S.C. Code Ann. §63-7-1990.

Respectfully submitted,



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Attorneys for Defendant South Carolina

Department of Social Services



FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLEJUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP2304140

IN THE COURT OF COMMON PLEAS

John Roe

GREENVILLE CO.
PAUL B. TONER

2016 FEB 16 AM 11 07

Social Services South
Carolina Department Of
SCDSS

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

1. Defendant SCDSS's motion to strike is granted.
2. Brenda L. Gorski's motion to quash is granted.
3. Plaintiff's motion to compel is granted, however said material is under protective order in that said material will be presented to trial Judge under seal for further determination of admissibility by the trial court.
4. Proposed orders to come on 5/5 motion.

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____



STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
C.A. No.: 2014-CP-23-04140

John Roe,)
Plaintiff,)

v.)

South Carolina Department of Social)
Services (SCDSS), Boys Home of)
South, Inc., (BHOTS), Jason Mowen,)
Steve Meek, Lynn Merrifield,)
Wesley Ballard, Glynda Taylor)
Caddell, Susan Spitzer, and Lori)
Griswold)

Defendants.)

ORDER DENYING PLAINTIFF'S
MOTION TO COMPEL

FILED-CLERK OF COURT
JUL 23 4 31 PM '15

The above captioned matter is before the Court upon a Motion to Compel that Plaintiff John Roe ("Plaintiff") filed against Defendants South Carolina Department of Social Services ("SCDSS") and Boys Home of the South, Inc. ("BHOTS"), pursuant to which he seeks the disclosure of information and the production of documents related to individuals who, for the time period in question, were minors in SCDSS' custody and residents of BHOTS; who are not parties to this lawsuit; and from whom Plaintiff has not obtained any kind of a release.

The Court held a hearing on the Motion on July 22, 2015.¹ After review of Plaintiff's Motion, SCDSS and BHOTS' Memorandum in Opposition to the Motion, and applicable

¹ Present at the hearing were: Plaintiff's counsel Thomas E. Hite, Jr. and Heather H. Stone of the law firm of Hite and Stone, Abbeville, South Carolina; SCDSS counsel James W. Logan, Jr. of the law firm of Logan, Jolly & Smith, LLP, Anderson, South Carolina; Defendant Steve Meek's counsel Catherine H. Chase of the law firm of Young Clement Rivers, LLP, Charleston, South Carolina; and, BHOTS attorney Catherine F. Wrenn of the law firm of Womble Carlyle Sandridge & Rice, LLC, Greenville, South Carolina.

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statutory and case law, and hearing arguments from counsel, the Court **DENIES** Plaintiff's Motion to Compel for the reasons set forth below.

BRIEF FACTUAL BACKGROUND:

Plaintiff, a former foster child within the SCDSS system, was a resident of BHOTS, a SCDSS-licensed group home for boys, for approximately six months. Plaintiff alleges that during his December 29, 2004-June 23, 2005, BHOTS residency, he was sexually assaulted by two individuals: (1) Defendant Steve Meek ("Meek"), who was a BHOTS employee, and (2) "N.M.," who was a minor and a BHOTS resident. Compl., at ¶¶ 22, 49. In regard to "N.M.," Plaintiff contends that SCDSS and BHOTS Defendants "had notice that N.M. had a history of violence and sexual aggression and should not be placed with other children, especially younger, vulnerable children." Id., at ¶ 53. However, Plaintiff admits that, while at BHOTS, he never told anyone about N.M.'s alleged abuse of him, Pl.'s Depo., at 239:22-25, and he has no evidence that N.M. sexually assaulted anyone else; id., at 240:4-6.

Almost a decade after Plaintiff's BHOTS residency, Plaintiff, in his individual capacity, filed the above-captioned lawsuit against SCDSS and BHOTS, who both have denied Plaintiff's allegations against them. By the time Plaintiff filed his Complaint, BHOTS was in the process of dissolving and was no longer functionally operating.

In discovery requests, Plaintiff requested a plethora of information and documents from SCDSS and BHOTS Defendants, including production of: (1) BHOTS' and DSS' file on N.M.; (2) BHOTS' and DSS' information about other minor BHOTS residents who, like N.M., are not parties to this lawsuit and have not provided releases for the production of the requested matter; and (3) BHOTS' file on Plaintiff.²

² BHOTS has represented to Plaintiff and to the Court that it, in good faith, tried to locate its file on Plaintiff, but, due to the long lapse in time between Plaintiff's December 2004-June 2005 residency and

LEGAL ANALYSIS AND FINDINGS

South Carolina law stringently protects from disclosure the exact information that Plaintiff is requesting SCDSS and BHOTS produce about N.M. and other minors who were in SCDSS custody during the time period in question. S.C. Code Ann. § 63-11-80 provides: "No officer, agent or employee of the department or a child welfare agency [like BHOTS] shall directly or indirectly disclose information learned about the children, their parents, or relatives or other persons having custody or control of them." Furthermore, S.C. Code Ann. § 63-7-1990 stipulates that "all reports made and information collected" as part of any child abuse and neglect investigation by SCDSS are "confidential." Section 63-7-1990 even mandates that, except in specified instances in which the statute permits disclosure, any person who disseminates or permits the dissemination of abuse and neglect records and information "is guilty of [a] misdemeanor" and subject to fine and/or imprisonment.

Section 64-7-1990 permits SCDSS, in limited, specified instances, to grant access to the "records of indicated cases" – cases in which SCDSS has determined that a "report of child abuse or neglect [is] supported by facts which warrant a finding by a preponderance of evidence that abuse or neglect is more likely than not to have occurred," S.C. Code Ann. § 63-7-20. (Emphasis added). Two such limited instances are when a "child over fourteen years of age or older who is named in a report as a victim of child abuse or neglect" requests access to indicated case records, or when "parties to a court proceeding" establish that "information in the records is

the 2014 filing of this lawsuit, BHOTS has been unable to do so. BHOTS cannot produce what it does not have in its possession and, in good faith and after diligent effort, cannot locate.

WCSR 34570471v1

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legally relevant and necessary for the determination of an issue before the court." Id. at § 63-7-20(B)(6), (11).³

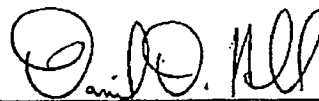
Plaintiff has requested the records of other minors in SCDSS custody who were housed at the BHOTS during times designated, and he purports to need such records in order to determine whether there is evidence that other children, who are not parties to this lawsuit, allegedly were abused at BHOTS and whether SCDSS and BHOTS were on any kind of notice about such abuse prior to, during, and after Plaintiff's own BHOTS residency.

However, the Court finds that: (1) the information contained in those records is confidential and protected from dissemination pursuant to South Carolina Code Ann. § 63-11-80 and § 63-7-1990, and (2) there has been no showing or evidence that the confidential records Plaintiff seeks about the minors are from or part of any "indicated case" or that they contain legally relevant and necessary information for determining any central issue in this case. Furthermore, the requested information and records involve individuals who were minors at the time in question; who have a "valid and legitimate expectation that [their] medical [and private] information will remain confidential;" Hollman v. Woolfson, 384 S.C. 571, 578; 6 83 S.C. 2d 495, 499 (2009); who have not requested access to any indicated case record; who have not provided any party with a release that would allow SCDSS and BHOTS to produce the protected information; and who are not parties to this action.

Accordingly, it is ORDERED, ADJUDGED and DECREED that the Plaintiff's Motion to Compel the requested information and documents is DENIED.

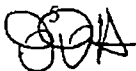
³ Section 63-7-20(B)(11) provides that, prior to any disclosure under that subsection, the judge must "review[] the records in camera," determine the "relevancy and necessity of the disclosure," and limit the disclosure to "legally relevant information under a protective order."

IT IS SO ORDERED this 27 day of July, 2015.



The Honorable Daniel D. Hall

WCSR 34570471v1



STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

FILED - CLERK OF COURT
JUDGMENT IN A CIVIL CASE

CASE NO: 2014CR2304140

2015 AUG 4 PM 4 31

John Roe vs. Social Services South Carolina Department OF SCUSS

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☐ See attached order;

☐ Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the 4th day of August, 2015, and a copy mailed first class this 4th day of August, 2015, to attorneys of record or to parties (when appearing pro se) as follows:

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Abbeville, SC 29620

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Rice, LLP 550 S. Main Street, Suite 400 Greenville, SC
29601

James W. Logan Jr. Logan, Jolly & Smith PO Box 259
Anderson, SC 29622

Duke Raleigh Highfield PO Box 993 Charleston, SC
29402

Catherine Holland Chase PO Box 993 Charleston, SC
29402-0993

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court - Clerk of
Court

Appellate Practice in South Carolina

Jean H. Toal
Shahin Vafai
Robert A. Muckenfuss



South Carolina Bar
Continuing Legal Education Division
PO Box 608, Columbia, South Carolina 29202-0608

CHAPTER 4: APPEALABILITY OF JUDGMENTS & ORDERS

D. DISCOVERY

1. Generally: Once a final order on the merits is issued, the prior discovery orders become appealable. *Hamm v. South Carolina Pub. Serv. Comm'n*, 312 S.C. 238, 439 S.E.2d 852 (1994).

2. Compelling Discovery: An order refusing to compel discovery is interlocutory and not immediately appealable. *Lowndes Prods., Inc. v. Brower*, 262 S.C. 431, 205 S.E.2d 184 (1974). An order compelling discovery is also interlocutory and not immediately appealable. *Patterson v. Specter Broadcasting Corp.*, 287 S.C. 249, 335 S.E.2d 803 (1985); *Waddell v. Kahdy*, 309 S.C. 1, 419 S.E.2d 783 (1992) (order requiring a party to submit to deposition is not immediately appealable); see *Wallace v. Interamerican Trust Co.*, 246 S.C. 563, 144 S.E.2d 813 (1965) (order requiring the defendant to make books and records available for examination, inspection and audit by the plaintiffs in connection with their preparation for trial is an interlocutory decision and not immediately appealable).

An order permitting the oral, pretrial examination of defendant is not appealable before final judgment. *Kemmerlin v. Bloom*, 251 S.C. 49, 159 S.E.2d 910 (1968). An order overruling objections to the requests for admissions is also not appealable before final judgment. *Jacobs v. Harman*, 282 S.C. 17, 316 S.E.2d 146 (1984). An order granting an extension of time in which to answer a request for admissions is not immediately appealable. *Pendergrass v. Martin*, 275 S.C. 413, 272 S.E.2d 172 (1980).

3. FOIA & Discovery of Confidential Matters: An order allowing discovery of documents that a newspaper ultimately sought disclosed as the subject of Freedom of Information Act (FOIA) action was immediately appealable because it in effect determined the action and prevented an appealable judgment. *Knight Publishing Co. v. University of South Carolina*, 295 S.C. 31, 367 S.E.2d 20 (1988), *overruled on other grounds*, *Simpson v. Sanders*, 314 S.C. 413, 445 S.E.2d 93 (1994). Naturally, if the discovery had been allowed in *Knight Publishing* over the appellant's objection, the merits of whether the newspaper was entitled to receive the documents under the FOIA would have become moot because it would

CHAPTER 4: APPEALABILITY OF JUDGMENTS & ORDERS

already have had the documents.

Likewise, if an order requires a party to turn over documents, which the party feels are privileged or contain proprietary or confidential matters, compliance with the order without the ability to seek immediate appeal renders the protections afforded by the privilege or confidentiality a nullity. Hence, where the appealed order has the effect of revealing the very thing the appellant is claiming should remain confidential, an immediate appeal may well be warranted and allowed. *Cf. City of Columbia v. A.C.L.U. of South Carolina, Inc.*, 323 S.C. 384, 388, 475 S.E.2d 747, 749 (1996) ("Not only is the report relevant to the subject matter involved in this case, it is the subject matter of the case itself."). There may be other means by which discovery orders may be reviewed, such as through the vehicle of extraordinary writs. *E.g., McGee v. Bruce Hosp. Sys.*, 312 S.C. 58, 439 S.E.2d 257 (1993) (Supreme Court granted a writ of certiorari to consider whether certain matters were immune from discovery).

4. Discovery Involving Non-Parties: An order directing a non-party to submit to discovery is not immediately appealable. Instead of appealing immediately, a non-party has two alternatives. He may either comply with the discovery order and waive any right to challenge it on appeal, or refuse to comply with the order and appeal after he is held in contempt for his failure to comply. *Ex parte Whetstone*, 289 S.C. 580, 347 S.E.2d 881 (1986). *But see State v. Register*, 308 S.C. 534, 419 S.E.2d 771 (1992) (Supreme Court addressed an immediate appeal of a discovery order because it involved a novel issue and the rights of a minor).

E. REFERENCE & MODE OF TRIAL

1. Order of Reference: Ordinarily, the granting or denying an order of reference is not immediately appealable unless the result deprives a party of a mode of trial to which he is entitled by law, or the trial judge, in refusing a reference, did so upon the erroneous belief that the cause of action was a legal one. *Mountain Lake Colony v. McJunkin*, 308 S.C. 202, 417 S.E.2d 578 (1992); *Williford v. Downs*, 265 S.C. 319, 218 S.E.2d 242 (1975). An order denying a compulsory reference of the issues affects the mode of

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
C.A. No.: 2014-CP-23-04140

John Roe,)
Plaintiff,)
v.)
South Carolina Department of Social)
Services (SCDSS),)
Defendant.)

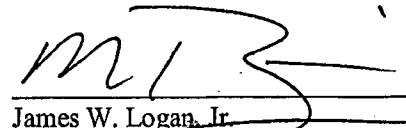
Certificate of Service by Mail

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2016 MAR 1 PM 2 10

The undersigned does hereby certify that he is one of the attorneys for the Defendant, South Carolina Department of Social Services, and he has this date served a copy of the Defendant's Motion for Reconsideration upon the attorneys for the Plaintiff by electronic mail and by placing a copy in the United States Mail at Anderson, South Carolina, with first class pre-paid postage affixed thereto, addressed as follows:

Heather Hite Stone
Hite & Stone
P.O. Box 805
Abbeville, SC 29620

Robert J. Butcher
The Camden Law Firm, PA
P.O. Box 610
Camden, SC 29020


James W. Logan, Jr.
Michael T. Smith
Logan, Jolly & Smith, LLP
Post Office Box 259 (29622)
Anderson, South Carolina
864-226-1910
Attorneys for Defendant South Carolina
Department of Social Services

Dated: 2/26/16

ENTERED COMPUTER

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
FILED - CLERK OF COURT
GREENVILLE CO. 9.C.
PAUL B. WICKENSIMER

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE NO.: 2014-CP-23-04140

John Roe

2016 MAR 1 PM 2 10

Plaintiff,

vs.

South Carolina Department of Social Services

Defendant.

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: Heather Hite Stone, Bar No. _____ Address: P.O. Box 805, Abbeville, SC 29620 Phone: 864-366-5400 Fax 864-366-2638 E-mail: _____ Other: _____		Defendant's Attorney: James W. Logan, Jr., Bar No. 3385 Address: 1805 North Boulevard, Anderson Phone: 864-226-1910 Fax 864-226-1931 E-mail: logan@loganjollysmith.com Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Motion for Reconsideration Estimated Time Needed: 30 min Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. Signature of Attorney for ☐ Plaintiff / ☒ Defendant 2/26/2016 Date submitted			
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$ ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ Sexually Violent Predator Act ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____ ☐ State Agency v. Indigent Party ☐ Post-Conviction Relief ☐ Motion for Execution (Rule 69, SCRCP)			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: <u>[Signature]</u> Date Filed: <u>25.00</u> # <u>20435</u> Logan, Jolly... ☒ MOTION FEE COLLECTED: \$ ☐ CONTESTED - AMOUNT DUE: \$			

SCCA 233 (11/2003)

Copy Forwarded to

Judge BURCH

Original kept In Clerk's Office.

3/3/16

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

John Roe,

Plaintiff,

v.

South Carolina Department of Social Services
(SCDSS),

Defendant.

IN THE COURT OF COMMON PLEAS FOR

THE THIRTEENTH JUDICIAL CIRCUIT

Case No.: 2014-CP-23-04140

**RESPONSE TO DEFENDANT'S
MOTION TO RECONSIDER**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENHAUS
FEB 11 7 AM 9 00

Plaintiff responds to Defendant South Carolina Department of Social Services (SCDSS) motion to reconsider and asserts the following:

1. Background.

Plaintiff first sent a notice of deposition pursuant to 30(b)(6) on November 5, 2015. Exhibit 1. Plaintiff sent several follow up emails asking for the status of the designation of witnesses and the execution of the deposition. Exhibit 2. Plaintiff also contacted Defendant by telephone on several occasions to ask when SCDSS would make itself available for a deposition. Seventy-five days later, more or less, Defendant SCDSS sent a letter with their objections to Plaintiff's 30(b)(6) topics and proposed dates. Exhibit 3. Plaintiff and Defendant then scheduled the 30(b)(6) depositions.

The depositions were conducted on January 27 and 29 of 2016. Following the depositions, Defendant SCDSS failed to file for a protective order with the Court regarding the topics and questions it refused to answer. Plaintiff asserts that its objections are waived pursuant to Rule 30(j)(3). *Crawford v. Henderson*, 356 S.C. 389, 589 S.E.2d 204 (Ct. App. 2003). A motion to compel was filed by Plaintiff and was granted by the Court on February 16, 2016. Exhibit 4.

In the relief requested in the motion to compel the Court granted, Plaintiff asked that he be allowed to question SCDSS about the following topics:

3. The applicable SCDSS policies, practices, and procedures regarding the Central Registry for Abuse and Neglect and in particular, how SCDSS handled the reports against Steven Meek.
5. The number of adult-on-child and child-on-child sexual abuse or sexual touching incidents at BHOTS [Boys Home of the South] reported to Out of Home Abuse and Neglect beginning five years prior to the incidents complained of in the complaint.
6. The particulars of each adult-on-child and child-on-child sexual abuse or sexual touching incidents at BHOTS [Boys Home of the South] reported to Out of Home Abuse and Neglect, and the outcome of each complaint beginning five years prior to the incidents complained of in the complaint.

Here, the agency attempts to rehash old arguments and it misstates the applicable statute and Court order in an effort to avoid accountability and prevent the disclosure of the numerous sexual assaults that occurred at Boys Home of the South prior to Plaintiff's placement at the group home.

2. Two wrongs do not make a right.

This Court issued an order denying Plaintiff's request to order SCDSS to produce (1) the file on N.M., a boy who sadistically sexually abused Plaintiff at Boys Home of the South (BHOTS); and (2) the files of boys who were sexually abused or who sexually abused other children at Boys Home of the South. Defendant's Exhibit B.

Plaintiff respectfully argues that the Court's August 4, 2015 order is incorrect. Plaintiff's complaint specifically alleged SCDSS's failure to supervise BHOTS and through its policy of ignoring and failing to act in light of reports of serial sex abuse at the home, it allowed Plaintiff to be raped by N.M. The statute cited by Defendant SCDSS specifically allows the Court to review confidential information in camera and allow the relevant information to be released its released. South Carolina Code Ann. § 63-7-1990 states:

"[t]he department is authorized to grant access to the records of indicated case to the following persons, agencies, or entities:

...
(11) the parties to a court proceeding in which information in the records is legally relevant and necessary for the determination of an issue before the court, if before the disclosure the judge has reviewed the records in camera, has determined the relevancy and necessity of the disclosure, and has limited disclosure to legally relevant information under a protective order."

South Carolina Code Ann. § 63-7-2000 also states that,

"(E) Notwithstanding other provisions of the law affecting confidentiality of child protective services records and use and disclosure of records of unfounded cases, a court conducting civil or criminal proceedings resulting from disclosures authorized by this section may order the department to release the record to any party to the case or the law enforcement."

Plaintiff is not seeking the names of these children or any identifying information about them. The sole purpose is to establish Defendant's practice of turning a blind eye to the unchecked pattern of sexual assault at BHOTS. Defendant SCDSS is relying on the force of the previous order to encourage the Court to make the same error.

SCDSS is required to submit an annual report to the Governor and the General Assembly about the "incidence and prevalence of child abuse and neglect in South Carolina..." South Carolina Code Ann. § 63-7-2010 states:

"The Department of Social Services must furnish annually to the Governor and the General Assembly a report on the incidence and prevalence of child abuse and neglect in South Carolina, the effectiveness of services provided throughout the State to protect children from this harm, and any other data considered instructive."

Plaintiff is asking for the same information, except for a smaller sub-class, the children who were forced to endure life at BHOTS -- and this includes Plaintiff. SCDSS will do anything to keep from having to disclose this shameful information.

3. The majority of the information Plaintiff seeks is allowed by S.C. Code Ann. § 63-7-2000.

When a child-on-child sex abuse case is reported to SCDSS, the agency will not indicate the case unless it has conclusive evidence that an adult allowed the sexual abuse to happen. Therefore, the majority of the child-on-child sex abuse reports are not indicated by SCDSS and therefore, they fall under the second, more lenient statute, S.C. Code Ann. § 63-7-2000.

4. There is no need for the Court to review SCDSS files in camera if it is not releasing personally identifying information.

If SCDSS is testifying about the prevalence of sexual assault at its licensed group home, BHOTS, there is no need for the Court to have to make an in camera review of the information since no children's names or personally identifying information will become part of the record or even disclosed to Plaintiff or the general public. SCDSS can legally keep this shameful information confidential and still testify about licensing, monitoring and allowing BHOTS to operate a cesspool of child on child sexual assault.

5. SCDSS has refused to answer questions about prior abuse that are allowed by the order.

The Court did acknowledge during the hearing that it would allow discovery of the records of children who provided a release. Defendant's Exhibit B, #4. Despite Plaintiff obtaining releases from these children, Defendant refused to answer questions related to those children in its 30(b)(6) deposition. SCDSS then failed to provide a timely objection. Plaintiff asserts that SCDSS should be required to sit for another deposition and answer these questions.

6. Relief requested.

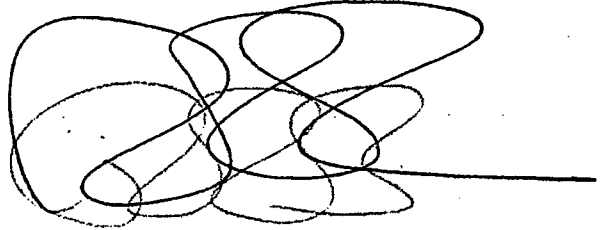
Plaintiff asks the Court to order Defendant SCDSS nominate a designee to appear for a deposition to be conducted within the next thirty days and testify about the following:

3. The applicable SCDSS policies, practices, and procedures regarding the Central Registry for Abuse and Neglect and in particular, how SCDSS handled the reports against Steven Meek.
5. The number of adult-on-child and child-on-child sexual abuse or sexual touching incidents at BHOTS [Boys Home of the South] reported to Out of Home Abuse and Neglect beginning five years prior to the incidents complained of in the complaint.

6. The particulars of each adult-on-child and child-on-child sexual abuse or sexual touching incidents at BHOTS [Boys Home of the South] reported to Out of Home Abuse and Neglect, and the outcome of each complaint beginning five years prior to the incidents complained of in the complaint.

Respectfully Submitted,

Dated: Manning, South Carolina
March 1, 2016



By: _____

Heather Hite Stone
Thomas E. Hite, Jr.
Hite & Stone
100 East Pickens Street
P.O. Box 805
Abbeville, SC 29620
Telephone: (864) 366-5400
Facsimile: (864) 366-2638

Robert J. Butcher
Deborah J. Butcher
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Camden, South Carolina 29020
P.O. Box 610
Camden, South Carolina 29021
Telephone: (803) 432-7599
Facsimile: (803) 432-7499

Attorneys for Plaintiff John Roe

EXHIBIT 1

John Roe

Plaintiff,

v.

South Carolina Department of Social
Services (SCDSS),

Defendant.

In the Court of Common Pleas
Thirteenth Judicial Circuit

Case No.: 2014-CP-23-04140

**Notice of 30(b)(6) Deposition for South
Carolina Department of Social
Services**

**To: James W. Logan Jr., attorney for South Carolina Department of Social
Services (SCDSS)**

PLEASE TAKE NOTICE that under Rule 30(b)(6) of the South Carolina Rules of Civil Procedure, Plaintiff will take the deposition by oral examination of South Carolina Department of Social Services (SCDSS) through its designated agent(s).

The deposition will be conducted on [DATE] at [TIME] at [LOCATION] before a certified court reporter authorized by law to administer oaths. The deposition will be stenographically recorded and videotaped. The deposition will begin at the above date and time and continue from day to day until completed.

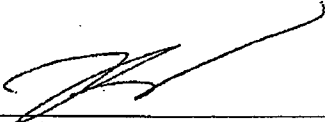
Pursuant to the provisions of Rule 30(b)(6), SCDSS is required to designate one or more officers, directors, managing agents, or other persons who consent to testify on its behalf. The person(s) designated must testify about information known or reasonably available to SCDSS from January 1998 through December of 2010 concerning the following matters:

1. The applicable SCDSS policies, practices, procedures, processes and organizational structure concerning the evaluation, approval, licensing, re-licensing, supervision, monitoring, and contracting of group homes that have contracted with SCDSS to provide placements for children in SCDSS custody, including follow-up measures taken to ensure compliance after initial approval or licensure; and in particular in regards to BHOTS.

2. The applicable SCDSS policies, practices, procedures, processes and organizational structure concerning the investigation, corrective action, and tracking of claims, reports, or findings of abuse, neglect or maltreatment, including child-on-child maltreatment or sexual activity, and adult-on-child sexual activity at the group homes that have contracted with SCDSS; and in particular in regard to BHOTS.
3. The applicable SCDSS policies, practices, and procedures regarding the Central Registry for Abuse and Neglect and in particular, how SCDSS handled the reports against Steven Meek.
4. The applicable SCDSS policies, practices, and procedures regarding recommendations of the Guardian ad Litem, and in particular the recommendations of Cecilia Hall, Roe's Guardian ad Litem.
5. The number of adult-on-child and child-on-child sexual abuse or sexual touching incidents at BHOTS reported to the Out of Home Abuse and Neglect beginning five years prior to the incidents complained of in the complaint.
6. The particulars of each adult-on-child and child-on-child sexual abuse or sexual touching incidents at BHOTS reported to the Out of Home Abuse and Neglect, and the outcome of each complaint beginning five years prior to the incidents complained of in the complaint.
7. The policies and procedures of tracking and data analysis of adult-on-child and child-on-child sexual abuse or sexual touching incidents by OHAN for BHOTS and group or residential homes in general beginning five years prior to the incidents complained of in the complaint.
8. The reporting of adult-on-child sexual abuse incidents, child-on-child sexual abuse incidents or touching, and sexual abuse incidents for out of home children by SCDSS to the United States Department of Health and Human Services and other agencies beginning five years prior to the incidents complained of in the complaint.

Please produce any documents related to these subjects at the time of the deposition. The Plaintiff has no objection to the documents being redacted of confidential identifying information.

DATED: November 5, 2015



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Thomas E. Hite, Jr.
Hite & Stone
100 East Pickens Street
P.O. Box 805
Abbeville, SC 29620
Telephone: (864) 366-5400
Facsimile: (864) 366-2638
Email: heather@hiteandstone.com

Robert J. Butcher
Deborah Butcher
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Camden, South Carolina 29020
P.O. Box 610
Camden, South Carolina 29021
Telephone: (803) 432-7599
Facsimile: (803) 432-7499
Email: rbutter@camdensc-law.com

Attorneys for Plaintiff John Roe

EXHIBIT 2

Wednesday, February 17, 2016 at 4:44:55 PM Eastern Standard Time

Subject: Fwd: Roe v. SCDSS
Date: Wednesday, February 17, 2016 at 4:44:23 PM Eastern Standard Time
From: Heather Stone
To: Robert Butcher
Category: Lawyers

----- Forwarded message -----

From: Kim Manley <manley@loganjollysmith.com>
Date: Wed, Dec 2, 2015 at 11:52 AM
Subject: Roe v. SCDSS
To: "heather@hiteandstone.com" <heather@hiteandstone.com>

Heather:

Please ask Denise Crockett if there are any additional records for Roe since Jim last deposed her to please send those to us for Jim's review prior to her deposition next Wednesday.

Also, I am working the getting a time frame for Vipperman's file to be produced. Mike and Jim are meeting with DSS representatives later this week and should be able to identify the 30(b)(6) designee early next week.

Thanks.

Kim Manley
Paralegal
Logan, Jolly & Smith, LLP
P.O. Box 259
Anderson, SC 29622
(864) 226-1910
(864) 226-1931 (Fax)

Confidentiality Notice: This electronic mail transmission has been sent by a lawyer. It may

Page 1 of 2

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Heather Hite Stone
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heather@hiteandstone.com

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Wednesday, February 17, 2016 at 4:45:55 PM Eastern Standard Time

Subject: Fwd: Roe v. SCDSS
Date: Wednesday, February 17, 2016 at 4:45:11 PM Eastern Standard Time
From: Heather Stone
To: Robert Butcher
Category: Lawyers

----- Forwarded message -----

From: Heather Stone <heatherstone.hiteandstone@gmail.com>
Date: Tue, Nov 17, 2015 at 4:24 PM
Subject: Re: Roe v. SCDSS
To: Kim Manley <manley@loganjollysmith.com>

I am fine with December 9th. Did Jim ever find out about the 30(b)(6)? I would like to get that scheduled too. Also, when can we expect the Viperman file?

On Tue, Nov 17, 2015 at 3:45 PM, Kim Manley <manley@loganjollysmith.com> wrote:

Heather:

Jim would like to reconvene the deposition of Denise Crockett. Can you please let me know if December 9th or 11th would work?

Thanks!

Kim Manley

Paralegal

Logan, Jolly & Smith, LLP

P.O. Box 259

Anderson, SC 29622

(864) 226-1910

(864) 226-1931 (Fax)

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--
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heather@hiteandstone.com

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--
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Wednesday, February 17, 2016 at 4:43:52 PM Eastern Standard Time

Subject: Fwd: Roe v. SCDSS - 30(b)(6) Notice
Date: Wednesday, February 17, 2016 at 4:42:33 PM Eastern Standard Time
From: Heather Stone
To: Robert Butcher
Category: Lawyers

----- Forwarded message -----

From: Kim Manley <manley@loganjollysmith.com>
Date: Thu, Dec 17, 2015 at 9:44 AM
Subject: Roe v. SCDSS - 30(b)(6) Notice
To: "heather@hiteandstone.com" <heather@hiteandstone.com>
Cc: Mike Smith <msmith@loganjollysmith.com>, Jim Logan <logan@loganjollysmith.com>

(email sent on behalf of Michael T. Smith)

Heather:

I need to speak with you about a couple of your 30(b)(6) topics as I am not sure I understand what you are looking for. In #2, you indicate that you want information concerning the "organizational structure" concerning a number of issues. I am not sure what you mean if it is something other than the basic organizational structure of DSS itself. Can you clarify?

Item #7 regarding policies and procedures of tracking and data analyses is vague and ambiguous to me. I am not certain what you are asking for in this item and would appreciate clarification.

I look forward to hearing from you.

With kind regards,

Mike

Kim Manley

Paralegal

Page 1 of 2

Logan, Jolly & Smith, LLP

P.O. Box 259

Anderson, SC 29622

(864) 226-1910

(864) 226-1931 (Fax)

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Wednesday, February 17, 2016 at 4:44:12 PM Eastern Standard Time

Subject: Fwd: Roe depositions
Date: Wednesday, February 17, 2016 at 4:43:24 PM Eastern Standard Time
From: Heather Stone
To: Robert Butcher
Category: Lawyers

----- Forwarded message -----

From: Mike Smith <msmith@loganjollysmith.com>
Date: Mon, Dec 28, 2015 at 1:50 PM
Subject: Roe depositions
To: "heather@hiteandstone.com" <heather@hiteandstone.com>
Cc: Jim Logan <logan@loganjollysmith.com>, Kim Manley <manley@loganjollysmith.com>

Heather—we are targeting the last 2 weeks of January for the SCDSS 30b6 depositions in Columbia. Are there any dates that week that don't work for you ?

In addition, we have decided to depose the GAL. I called Brenda Gorski last week but have not heard back from her. I expect she will object based on her prior comments. I will most likely pick an arbitrary date and then reschedule if need be. Again, any dates to avoid for you ?

Thanks.

Mike Smith

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Wednesday, February 17, 2016 at 4:49:58 PM Eastern Standard Time

Subject: Fwd: Roe depositions
Date: Wednesday, February 17, 2016 at 4:47:51 PM Eastern Standard Time
From: Heather Stone
To: Robert Butcher
Category: Lawyers

----- Forwarded message -----

From: Heather Stone <heatherstone.hiteandstone@gmail.com>
Date: Mon, Dec 28, 2015 at 3:35 PM
Subject: Re: Roe depositions
To: Mike Smith <msmith@loganjollysmith.com>
Cc: Jim Logan <logan@loganjollysmith.com>, Kim Manley <manley@loganjollysmith.com>

The 20th, 25th, and 26th I have court already scheduled. I can work around anything else. Just let me know what dates work for you all.

On Mon, Dec 28, 2015 at 1:50 PM, Mike Smith <msmith@loganjollysmith.com> wrote:

Heather—we are targeting the last 2 weeks of January for the SCDSS 30b6 depositions in Columbia. Are there any dates that week that don't work for you ?

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Thanks.

Mike Smith

Heather Hite Stone
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Page 1 of 2

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heather@hiteandstone.com

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Wednesday, February 17, 2016 at 4:50:11 PM Eastern Standard Time

Subject: Fwd: Roe depositions
Date: Wednesday, February 17, 2016 at 4:48:07 PM Eastern Standard Time
From: Heather Stone
To: Robert Butcher
Category: Lawyers

----- Forwarded message -----

From: Mike Smith <msmith@loganjollysmith.com>
Date: Mon, Dec 28, 2015 at 3:37 PM
Subject: RE: Roe depositions
To: "heather@hiteandstone.com" <heather@hiteandstone.com>
Cc: Jim Logan <logan@loganjollysmith.com>, Kim Manley <manley@loganjollysmith.com>

Will do. Please hold the 27th for now. That's the date I am shooting for. Thanks.

Mike Smith

From: Heather Stone [mailto:heatherstone.hiteandstone@gmail.com]
Sent: Monday, December 28, 2015 3:35 PM
To: Mike Smith
Cc: Jim Logan; Kim Manley
Subject: Re: Roe depositions

The 20th, 25th, and 26th I have court already scheduled. I can work around anything else. Just let me know what dates work for you all.

On Mon, Dec 28, 2015 at 1:50 PM, Mike Smith <msmith@loganjollysmith.com> wrote:

Heather—we are targeting the last 2 weeks of January for the SCDSS 30b6 depositions in Columbia. Are there any dates that week that don't work for

you ?

In addition, we have decided to depose the GAL. I called Brenda Gorski last week but have not heard back from her. I expect she will object based on her prior comments. I will most likely pick an arbitrary date and then reschedule if need be. Again, any dates to avoid for you ?

Page 1 of 2

Thanks.

Mike Smith

Heather Hite Stone
Attorney at Law
100 East Pickens Street
P.O. Box 805
Abbeville, SC 29620
864-366-5400 (phone)
864-366-2638 (fax)
heather@hiteandstone.com

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Page 2 of 2

EXHIBIT 3



Michael T. Smith, Esquire
Email: msmith@loganjollysmith.com

January 21, 2016

(Via Electronic Mail and U.S. Mail)

1805 North Boulevard
Anderson, SC 29621
Telephone: 864-226-1910
Facsimile: 864-226-1931

Mailing Address
Post Office Box 259
Anderson, SC 29622

www.loganjollysmith.com

Heather Hite Stone
Hite & Stone
P.O. Box 805
Abbeville, SC 29620

Re: John Roe v. South Carolina Department of Social Services, et al
Case No: 2014-CP-23-04140

Dear Heather:

In connection with the above referenced matter, we enclose and serve Defendant's Objections to the Notice of 30(b)(6) Deposition for South Carolina Department of Social Services. The 30(b)(6) Deposition will take place on January 27, 2016 at the DSS Columbia Office located at 1535 Confederate Avenue, Columbia, SC 29202. The deposition will begin at 10:00am. We will be in Conference Room 627. We will be presenting a number of people to cover each of the deposition topics. If we do not finish on January 27th, we can go over onto January 28th. One of our 30(b)(6) designees, Taron Davis, is not available on January 27th or 28th but she is available on January 29th. Does that date suit you to take her deposition? She is testifying regarding topic #4 regarding the Guardian Ad Litem recommendations.

If you have any questions concerning this matter, please let me know.

With kind regards, I remain

Yours very truly,

LOGAN, JOLLY & SMITH, LLP

Michael T. Smith

Enclosure(s)

cc: Robert J. Butcher, Esquire (with enclosures)

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
C.A. No.: 2014-CP-23-04140

John Roe,)
Plaintiff,)

v.)
South Carolina Department of Social)
Services (SCDSS),)
Defendant.)

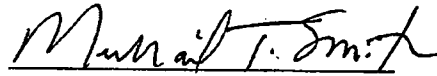
**Defendant's Objections to Notice of 30(b)(6)
Deposition for South Carolina Department of
Social Services**

TO: Heather Hite Stone, and Robert Butcher, Esquire, Attorneys for the Plaintiff

Please take notice that the Defendant hereby objects to the Plaintiff's 30(b)(6) Deposition Notice for the South Carolina Department of Social Services to the extent it seeks discovery and/or information that is confidential in nature and protected from disclosure by S.C. Code Ann. §§63-11-80, 63-7-1990 and 63-7-940. In fact, the release of the information sought by Plaintiff subjects any person disseminating said information to criminal penalties. Defendant further objects to the Plaintiff's 30(b)(6) Deposition Notice to the extent it seeks discovery and/or information that violates the Court's prior Order denying Plaintiff's Motion to Compel dated July 27, 2015 (Exhibit 1). Although Defendant reserves the right to raise the aforementioned objection to each of the 30(b)(6) topics listed by the Plaintiff, Items 5 and 6 expressly seek information that is confidential and not discoverable pursuant to South Carolina statute, South Carolina caselaw and the Court's prior Order in this matter.

Respectfully Submitted,

LOGAN, JOLLY & SMITH, LLP



James W. Logan, Jr. (SC Bar 3385)

Michael T. Smith (SC Bar 10249)

Post Office Box 259 (29622)

Anderson, South Carolina

864-226-1910

Attorneys for Defendant South Carolina

Department of Social Services

Dated: 1/21/16



FILED-CLERK OF COURT
STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE C.A. No.: 2014-CP-23-04140

2015 AUG 4 PM 4 31
John Roe,

Plaintiff,

v.

South Carolina Department of Social
Services (SCDSS), Boys Home of
South, Inc., (BHOTS), Jason Mowen,
Steve Meek, Lynn Merrifield,
Wesley Ballard, Glynda Taylor
Caddell, Susan Spitzer, and Lori
Griswold

Defendants.

**ORDER DENYING PLAINTIFF'S
MOTION TO COMPEL**

The above captioned matter is before the Court upon a Motion to Compel that Plaintiff John Roe ("Plaintiff") filed against Defendants South Carolina Department of Social Services ("SCDSS") and Boys Home of the South, Inc. ("BHOTS"), pursuant to which he seeks the disclosure of information and the production of documents related to individuals who, for the time period in question, were minors in SCDSS' custody and residents of BHOTS; who are not parties to this lawsuit; and from whom Plaintiff has not obtained any kind of a release.

The Court held a hearing on the Motion on July 22, 2015.¹ After review of Plaintiff's Motion, SCDSS and BHOTS' Memorandum in Opposition to the Motion, and applicable

¹ Present at the hearing were: Plaintiff's counsel Thomas E. Hite, Jr. and Heather H. Stone of the law firm of Hite and Stone, Abbeville, South Carolina; SCDSS counsel James W. Logan, Jr. of the law firm of Logan, Jolly & Smith, LLP, Anderson, South Carolina; Defendant Steve Meek's counsel Catherine H. Chase of the law firm of Young Clement Rivers, LLP, Charleston, South Carolina; and, BHOTS attorney Catherine F. Wrenn of the law firm of Womble Carlyle Sandridge & Rice, LLC, Greenville, South Carolina.

statutory and case law, and hearing arguments from counsel, the Court **DENIES** Plaintiff's Motion to Compel for the reasons set forth below.

BRIEF FACTUAL BACKGROUND:

Plaintiff, a former foster child within the SCDSS system, was a resident of BHOTS, a SCDSS-licensed group home for boys, for approximately six months. Plaintiff alleges that during his December 29, 2004-June 23, 2005, BHOTS residency, he was sexually assaulted by two individuals: (1) Defendant Steve Meek ("Meek"), who was a BHOTS employee, and (2) "N.M.," who was a minor and a BHOTS resident. Compl., at ¶¶ 22, 49. In regard to "N.M.," Plaintiff contends that SCDSS and BHOTS Defendants "had notice that N.M. had a history of violence and sexual aggression and should not be placed with other children, especially younger, vulnerable children." Id., at ¶ 53. However, Plaintiff admits that, while at BHOTS, he never told anyone about N.M.'s alleged abuse of him, Pl.'s Depo., at 239:22-25; and he has no evidence that N.M. sexually assaulted anyone else, id., at 240:4-6.

Almost a decade after Plaintiff's BHOTS residency, Plaintiff, in his individual capacity, filed the above-captioned lawsuit against SCDSS and BHOTS, who both have denied Plaintiff's allegations against them. By the time Plaintiff filed his Complaint, BHOTS was in the process of dissolving and was no longer functionally operating.

In discovery requests, Plaintiff requested a plethora of information and documents from SCDSS and BHOTS Defendants, including production of: (1) BHOTS' and DSS' file on N.M.; (2) BHOTS' and DSS' information about other minor BHOTS residents who, like N.M., are not parties to this lawsuit and have not provided releases for the production of the requested matter; and (3) BHOTS' file on Plaintiff.²

² BHOTS has represented to Plaintiff and to the Court that it, in good faith, tried to locate its file on Plaintiff, but, due to the long lapse in time between Plaintiff's December 2004-June 2005 residency and

LEGAL ANALYSIS AND FINDINGS

South Carolina law stringently protects from disclosure the exact information that Plaintiff is requesting SCDSS and BHOTS produce about N.M. and other minors who were in SCDSS custody during the time period in question. S.C. Code Ann. § 63-11-80 provides: "No officer, agent or employee of the department or a child welfare agency [like BHOTS] shall directly or indirectly disclose information learned about the children, their parents, or relatives or other persons having custody or control of them." Furthermore, S.C. Code Ann. § 63-7-1990 stipulates that "all reports made and information collected" as part of any child abuse and neglect investigation by SCDSS are "confidential." Section 63-7-1990 even mandates that, except in specified instances in which the statute permits disclosure, any person who disseminates or permits the dissemination of abuse and neglect records and information "is guilty of [a] misdemeanor" and subject to fine and/or imprisonment.

Section 64-7-1990 permits SCDSS, in limited, specified instances, to grant access to the "records of indicated cases" – cases in which SCDSS has determined that a "report of child abuse or neglect [is] supported by facts which warrant a finding by a preponderance of evidence that abuse or neglect is more likely than not to have occurred," S.C. Code Ann. § 63-7-20. (Emphasis added). Two such limited instances are when a "child over fourteen years of age or older who is named in a report as a victim of child abuse or neglect" requests access to indicated case records, or when "parties to a court proceeding" establish that "information in the records is

the 2014 filing of this lawsuit, BHOTS has been unable to do so. BHOTS cannot produce what it does not have in its possession and, in good faith and after diligent effort, cannot locate.

WCSR 34570471v1

3
PDA

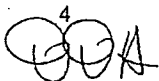
legally relevant and necessary for the determination of an issue before the court." Id. at § 63-7-20(B)(6), (11).³

Plaintiff has requested the records of other minors in SCDSS custody who were housed at the BHOTS during times designated, and he purports to need such records in order to determine whether there is evidence that other children, who are not parties to this lawsuit, allegedly were abused at BHOTS and whether SCDSS and BHOTS were on any kind of notice about such abuse prior to, during, and after Plaintiff's own BHOTS residency.

However, the Court finds that: (1) the information contained in those records is confidential and protected from dissemination pursuant to South Carolina Code Ann. § 63-11-80 and § 63-7-1990, and (2) there has been no showing or evidence that the confidential records Plaintiff seeks about the minors are from or part of any "indicated case" or that they contain legally relevant and necessary information for determining any central issue in this case. Furthermore, the requested information and records involve individuals who were minors at the time in question; who have a "valid and legitimate expectation that [their] medical [and private] information will remain confidential;" Hollman v. Woolfson, 384 S.C. 571, 578; 6 83 S.C. 2d 495, 499 (2009); who have not requested access to any indicated case record; who have not provided any party with a release that would allow SCDSS and BHOTS to produce the protected information; and who are not parties to this action.

Accordingly, it is ORDERED, ADJUDGED and DECREED that the Plaintiff's Motion to Compel the requested information and documents is DENIED.

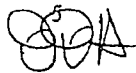
³ Section 63-7-20(B)(11) provides that, prior to any disclosure under that subsection, the judge must "review[] the records in camera," determine the "relevancy and necessity of the disclosure," and limit the disclosure to "legally relevant information under a protective order."

4


IT IS SO ORDERED this 27 day of July, 2015.


The Honorable Daniel D. Hall

WCSR 34570471v1



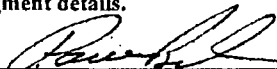
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge

2048

Judge Code

2/12/2016

Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

Heather Hite Stone PO Box 805 100 East Pickens Street
Abbeville, SC 29620
Robert J. Butcher The Camden Law Firm, PA P.O. Box 610
Camden, SC 29021

James W. Logan Jr. Logan, Jolly & Smith PO Box 259
Anderson, SC 29622
Brenda L. Gorski South Carolina Guardian Ad Litem
Program 1205 Pendleton St., Room 447 Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of
Court - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

John Roe,

Plaintiff,

v.

South Carolina Department of Social Services
(SCDSS),

Defendant.

IN THE COURT OF COMMON PLEAS FOR
THE THIRTEENTH JUDICIAL CIRCUIT

Case No.: 2014-CP-23-04140

**RESPONSE TO DEFENDANT'S
MOTION TO RECONSIDER**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENHUIS
JAN 7 PM 9 00

Plaintiff responds to Defendant South Carolina Department of Social Services (SCDSS) motion to reconsider and asserts the following:

1. Background.

Plaintiff first sent a notice of deposition pursuant to 30(b)(6) on November 5, 2015. Exhibit 1. Plaintiff sent several follow up emails asking for the status of the designation of witnesses and the execution of the deposition. Exhibit 2. Plaintiff also contacted Defendant by telephone on several occasions to ask when SCDSS would make itself available for a deposition. Seventy-five days later, more or less, Defendant SCDSS sent a letter with their objections to Plaintiff's 30(b)(6) topics and proposed dates. Exhibit 3. Plaintiff and Defendant then scheduled the 30(b)(6) depositions.

The depositions were conducted on January 27 and 29 of 2016. Following the depositions, Defendant SCDSS failed to file for a protective order with the Court regarding the topics and questions it refused to answer. Plaintiff asserts that its objections are waived pursuant to Rule 30(j)(3). *Crawford v. Henderson*, 356 S.C. 389, 589 S.E.2d 204 (Ct. App. 2003). A motion to compel was filed by Plaintiff and was granted by the Court on February 16, 2016. Exhibit 4.

In the relief requested in the motion to compel the Court granted, Plaintiff asked that he be allowed to question SCDSS about the following topics:

3. The applicable SCDSS policies, practices, and procedures regarding the Central Registry for Abuse and Neglect and in particular, how SCDSS handled the reports against Steven Meek.
5. The number of adult-on-child and child-on-child sexual abuse or sexual touching incidents at BHOTS [Boys Home of the South] reported to Out of Home Abuse and Neglect beginning five years prior to the incidents complained of in the complaint.
6. The particulars of each adult-on-child and child-on-child sexual abuse or sexual touching incidents at BHOTS [Boys Home of the South] reported to Out of Home Abuse and Neglect, and the outcome of each complaint beginning five years prior to the incidents complained of in the complaint.

Here, the agency attempts to rehash old arguments and it misstates the applicable statute and Court order in an effort to avoid accountability and prevent the disclosure of the numerous sexual assaults that occurred at Boys Home of the South prior to Plaintiff's placement at the group home.

2. Two wrongs do not make a right.

This Court issued an order denying Plaintiff's request to order SCDSS to produce (1) the file on N.M., a boy who sadistically sexually abused Plaintiff at Boys Home of the South (BHOTS); and (2) the files of boys who were sexually abused or who sexually abused other children at Boys Home of the South. Defendant's Exhibit B.

Plaintiff respectfully argues that the Court's August 4, 2015 order is incorrect. Plaintiff's complaint specifically alleged SCDSS's failure to supervise BHOTS and through its policy of ignoring and failing to act in light of reports of serial sex abuse at the home, it allowed Plaintiff to be raped by N.M. The statute cited by Defendant SCDSS specifically allows the Court to review confidential information in camera and allow the relevant information to be released its released. South Carolina Code Ann. § 63-7-1990 states:

"[t]he department is authorized to grant access to the records of indicated case to the following persons, agencies, or entities:

...
(11) the parties to a court proceeding in which information in the records is legally relevant and necessary for the determination of an issue before the court, if before the disclosure the judge has reviewed the records in camera, has determined the relevancy and necessity of the disclosure, and has limited disclosure to legally relevant information under a protective order."

South Carolina Code Ann. § 63-7-2000 also states that,

"(E) Notwithstanding other provisions of the law affecting confidentiality of child protective services records and use and disclosure of records of unfounded cases, a court conducting civil or criminal proceedings resulting from disclosures authorized by this section may order the department to release the record to any party to the case or the law enforcement."

Plaintiff is not seeking the names of these children or any identifying information about them. The sole purpose is to establish Defendant's practice of turning a blind eye to the unchecked pattern of sexual assault at BHOTS. Defendant SCDSS is relying on the force of the previous order to encourage the Court to make the same error.

SCDSS is required to submit an annual report to the Governor and the General Assembly about the "incidence and prevalence of child abuse and neglect in South Carolina..." South Carolina Code Ann. § 63-7-2010 states:

"The Department of Social Services must furnish annually to the Governor and the General Assembly a report on the incidence and prevalence of child abuse and neglect in South Carolina, the effectiveness of services provided throughout the State to protect children from this harm, and any other data considered instructive."

Plaintiff is asking for the same information, except for a smaller sub-class, the children who were forced to endure life at BHOTS – and this includes Plaintiff. SCDSS will do anything to keep from having to disclose this shameful information.

3. The majority of the information Plaintiff seeks is allowed by S.C. Code Ann. § 63-7-2000.

When a child-on-child sex abuse case is reported to SCDSS, the agency will not indicate the case unless it has conclusive evidence that an adult allowed the sexual abuse to happen. Therefore, the majority of the child-on-child sex abuse reports are not indicated by SCDSS and therefore, they fall under the second, more lenient statute, S.C. Code Ann. § 63-7-2000.

4. There is no need for the Court to review SCDSS files in camera if it is not releasing personally identifying information.

If SCDSS is testifying about the prevalence of sexual assault at its licensed group home, BHOTS, there is no need for the Court to have to make an in camera review of the information since no children's names or personally identifying information will become part of the record or even disclosed to Plaintiff or the general public. SCDSS can legally keep this shameful information confidential and still testify about licensing, monitoring and allowing BHOTS to operate a cesspool of child on child sexual assault.

5. SCDSS has refused to answer questions about prior abuse that are allowed by the order.

The Court did acknowledge during the hearing that it would allow discovery of the records of children who provided a release. Defendant's Exhibit B, *4. Despite Plaintiff obtaining releases from these children, Defendant refused to answer questions related to those children in its 30(b)(6) deposition. SCDSS then failed to provide a timely objection. Plaintiff asserts that SCDSS should be required to sit for another deposition and answer these questions.

6. Relief requested.

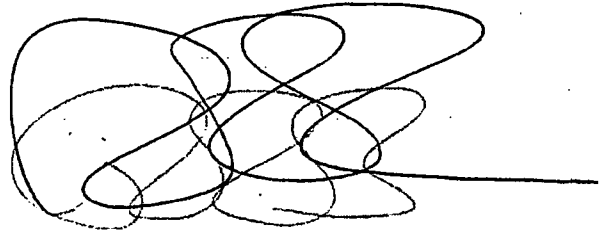
Plaintiff asks the Court to order Defendant SCDSS nominate a designee to appear for a deposition to be conducted within the next thirty days and testify about the following:

3. The applicable SCDSS policies, practices, and procedures regarding the Central Registry for Abuse and Neglect and in particular, how SCDSS handled the reports against Steven Meek.
5. The number of adult-on-child and child-on-child sexual abuse or sexual touching incidents at BHOTS [Boys Home of the South] reported to Out of Home Abuse and Neglect beginning five years prior to the incidents complained of in the complaint.

6. The particulars of each adult-on-child and child-on-child sexual abuse or sexual touching incidents at BHOTS [Boys Home of the South] reported to Out of Home Abuse and Neglect, and the outcome of each complaint beginning five years prior to the incidents complained of in the complaint.

Respectfully Submitted,

Dated: Manning, South Carolina
March 1, 2016



By: _____

Heather Hite Stone
Thomas E. Hite, Jr.
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100 East Pickens Street
P.O. Box 805
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106
Ex
7
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P

Robert J. Butcher
Deborah J. Butcher
The Camden Law Firm, PA
509 Walnut Street
Camden, South Carolina 29020
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Camden, South Carolina 29021
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Facsimile: (803) 432-7499

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Ex

Attorneys for Plaintiff John Roe

EXHIBIT 1

John Roe

Plaintiff,

v.

South Carolina Department of Social
Services (SCDSS),

Defendant.

In the Court of Common Pleas
Thirteenth Judicial Circuit

Case No.: 2014-CP-23-04140

**Notice of 30(b)(6) Deposition for South
Carolina Department of Social
Services**

**To: James W. Logan Jr., attorney for South Carolina Department of Social
Services (SCDSS)**

PLEASE TAKE NOTICE that under Rule 30(b)(6) of the South Carolina Rules of Civil Procedure, Plaintiff will take the deposition by oral examination of South Carolina Department of Social Services (SCDSS) through its designated agent(s).

The deposition will be conducted on [DATE] at [TIME] at [LOCATION] before a certified court reporter authorized by law to administer oaths. The deposition will be stenographically recorded and videotaped. The deposition will begin at the above date and time and continue from day to day until completed.

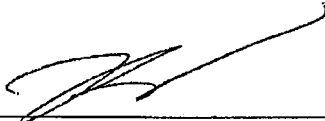
Pursuant to the provisions of Rule 30(b)(6), SCDSS is required to designate one or more officers, directors, managing agents, or other persons who consent to testify on its behalf. The person(s) designated must testify about information known or reasonably available to SCDSS from January 1998 through December of 2010 concerning the following matters:

1. The applicable SCDSS policies, practices, procedures, processes and organizational structure concerning the evaluation, approval, licensing, re-licensing, supervision, monitoring, and contracting of group homes that have contracted with SCDSS to provide placements for children in SCDSS custody, including follow-up measures taken to ensure compliance after initial approval or licensure; and in particular in regards to BHOTS.

2. The applicable SCDSS policies, practices, procedures, processes and organizational structure concerning the investigation, corrective action, and tracking of claims, reports, or findings of abuse, neglect or maltreatment, including child-on-child maltreatment or sexual activity, and adult-on-child sexual activity at the group homes that have contracted with SCDSS; and in particular in regard to BHOTS.
3. The applicable SCDSS policies, practices, and procedures regarding the Central Registry for Abuse and Neglect and in particular, how SCDSS handled the reports against Steven Meek.
4. The applicable SCDSS policies, practices, and procedures regarding recommendations of the Guardian ad Litem, and in particular the recommendations of Cecilia Hall, Roe's Guardian ad Litem.
5. The number of adult-on-child and child-on-child sexual abuse or sexual touching incidents at BHOTS reported to the Out of Home Abuse and Neglect beginning five years prior to the incidents complained of in the complaint.
6. The particulars of each adult-on-child and child-on-child sexual abuse or sexual touching incidents at BHOTS reported to the Out of Home Abuse and Neglect, and the outcome of each complaint beginning five years prior to the incidents complained of in the complaint.
7. The policies and procedures of tracking and data analysis of adult-on-child and child-on-child sexual abuse or sexual touching incidents by OHAN for BHOTS and group or residential homes in general beginning five years prior to the incidents complained of in the complaint.
8. The reporting of adult-on-child sexual abuse incidents, child-on-child sexual abuse incidents or touching, and sexual abuse incidents for out of home children by SCDSS to the United States Department of Health and Human Services and other agencies beginning five years prior to the incidents complained of in the complaint.

Please produce any documents related to these subjects at the time of the deposition. The Plaintiff has no objection to the documents being redacted of confidential identifying information.

DATED: November 5, 2015



Heather Hite Stone
Thomas E. Hite, Jr.
Hite & Stone
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P.O. Box 805
Abbeville, SC 29620
Telephone: (864) 366-5400
Facsimile: (864) 366-2638
Email: heather@hiteandstone.com

Robert J. Butcher
Deborah Butcher
The Camden Law Firm, PA
509 Walnut Street
Camden, South Carolina 29020
P.O. Box 610
Camden, South Carolina 29021
Telephone: (803) 432-7599
Facsimile: (803) 432-7499
Email: rbutter@camdensc-law.com

Attorneys for Plaintiff John Roe

EXHIBIT 2

Wednesday, February 17, 2016 at 4:44:55 PM Eastern Standard Time

Subject: Fwd: Roe v. SCDSS
Date: Wednesday, February 17, 2016 at 4:44:23 PM Eastern Standard Time
From: Heather Stone
To: Robert Butcher
Category: Lawyers

----- Forwarded message -----

From: Kim Manley <manley@loganjollysmith.com>
Date: Wed, Dec 2, 2015 at 11:52 AM
Subject: Roe v. SCDSS
To: "heather@hiteandstone.com" <heather@hiteandstone.com>

Heather:

Please ask Denise Crockett if there are any additional records for Roe since Jim last deposed her to please send those to us for Jim's review prior to her deposition next Wednesday.

Also, I am working the getting a time frame for Vipperman's file to be produced. Mike and Jim are meeting with DSS representatives later this week and should be able to identify the 30(b)(6) designee early next week.

Thanks.

Kim Manley
Paralegal
Logan, Jolly & Smith, LLP
P.O. Box 259
Anderson, SC 29622
(864) 226-1910
(864) 226-1931 (Fax)

Confidentiality Notice: This electronic mail transmission has been sent by a lawyer. It may

Page 1 of 2

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Heather Hite Stone
Attorney at Law
100 East Pickens Street
P.O. Box 805
Abbeville, SC 29620
864-366-5400 (phone)
864-366-2638 (fax)
heather@hiteandstone.com

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Wednesday, February 17, 2016 at 4:45:55 PM Eastern Standard Time

Subject: Fwd: Roe v. SCDSS
Date: Wednesday, February 17, 2016 at 4:45:11 PM Eastern Standard Time
From: Heather Stone
To: Robert Butcher
Category: Lawyers

----- Forwarded message -----

From: Heather Stone <heatherstone.hiteandstone@gmail.com>
Date: Tue, Nov 17, 2015 at 4:24 PM
Subject: Re: Roe v. SCDSS
To: Kim Manley <manley@loganjollysmith.com>

I am fine with December 9th. Did Jim ever find out about the 30(b)(6)? I would like to get that scheduled too. Also, when can we expect the Viperman file?

On Tue, Nov 17, 2015 at 3:45 PM, Kim Manley <manley@loganjollysmith.com> wrote:

Heather:

Jim would like to reconvene the deposition of Denise Crockett. Can you please let me know if December 9th or 11th would work?

Thanks!

Kim Manley

Paralegal

Logan, Jolly & Smith, LLP

P.O. Box 259

Anderson, SC 29622

(864) 226-1910

(864) 226-1931 (Fax)

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Page 1 of 2

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--
Heather Hite Stone
Attorney at Law
100 East Pickens Street
P.O. Box 805
Abbeville, SC 29620
864-366-5400 (phone)
864-366-2638 (fax)
heather@hiteandstone.com

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--
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Wednesday, February 17, 2016 at 4:43:52 PM Eastern Standard Time

Subject: Fwd: Roe v. SCDSS - 30(b)(6) Notice
Date: Wednesday, February 17, 2016 at 4:42:33 PM Eastern Standard Time
From: Heather Stone
To: Robert Butcher
Category: Lawyers

----- Forwarded message -----

From: Kim Manley <manley@loganjollysmith.com>
Date: Thu, Dec 17, 2015 at 9:44 AM
Subject: Roe v. SCDSS - 30(b)(6) Notice
To: "heather@hiteandstone.com" <heather@hiteandstone.com>
Cc: Mike Smith <msmith@loganjollysmith.com>, Jim Logan <logan@loganjollysmith.com>

(email sent on behalf of Michael T. Smith)

Heather:

I need to speak with you about a couple of your 30(b)(6) topics as I am not sure I understand what you are looking for. In #2, you indicate that you want information concerning the "organizational structure" concerning a number of issues. I am not sure what you mean if it is something other than the basic organizational structure of DSS itself. Can you clarify?

Item #7 regarding policies and procedures of tracking and data analyses is vague and ambiguous to me. I am not certain what you are asking for in this item and would appreciate clarification.

I look forward to hearing from you.

With kind regards,

Mike

Kim Manley

Paralegal

Page 1 of 2

Logan, Jolly & Smith, LLP

P.O. Box 259

Anderson, SC 29622

(864) 226-1910

(864) 226-1931 (Fax)

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Wednesday, February 17, 2016 at 4:44:12 PM Eastern Standard Time

Subject: Fwd: Roe depositions
Date: Wednesday, February 17, 2016 at 4:43:24 PM Eastern Standard Time
From: Heather Stone
To: Robert Butcher
Category: Lawyers

----- Forwarded message -----

From: Mike Smith <msmith@loganjollysmith.com>
Date: Mon, Dec 28, 2015 at 1:50 PM
Subject: Roe depositions
To: "heather@hiteandstone.com" <heather@hiteandstone.com>
Cc: Jim Logan <logan@loganjollysmith.com>, Kim Manley <manley@loganjollysmith.com>

Heather—we are targeting the last 2 weeks of January for the SCDSS 30b6 depositions in Columbia. Are there any dates that week that don't work for

you ?

In addition, we have decided to depose the GAL. I called Brenda Gorski last week but have not heard back from her. I expect she will object based on her prior comments. I will most likely pick an arbitrary date and then reschedule if need be. Again, any dates to avoid for you ?

Thanks.

Mike Smith

Heather Hite Stone
Attorney at Law
100 East Pickens Street
P.O. Box 805
Abbeville, SC 29620
864-366-5400 (phone)
864-366-2638 (fax)
heather@hiteandstone.com

Page 1 of 2

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Wednesday, February 17, 2016 at 4:49:58 PM Eastern Standard Time

Subject: Fwd: Roe depositions
Date: Wednesday, February 17, 2016 at 4:47:51 PM Eastern Standard Time
From: Heather Stone
To: Robert Butcher
Category: Lawyers

----- Forwarded message -----

From: Heather Stone <heatherstone.hiteandstone@gmail.com>
Date: Mon, Dec 28, 2015 at 3:35 PM
Subject: Re: Roe depositions
To: Mike Smith <msmith@loganjollysmith.com>
Cc: Jim Logan <logan@loganjollysmith.com>, Kim Manley <manley@loganjollysmith.com>

The 20th, 25th, and 26th I have court already scheduled. I can work around anything else. Just let me know what dates work for you all.

On Mon, Dec 28, 2015 at 1:50 PM, Mike Smith <msmith@loganjollysmith.com> wrote:

Heather—we are targeting the last 2 weeks of January for the SCDSS 30b6 depositions in Columbia. Are there any dates that week that don't work for you ?

In addition, we have decided to depose the GAL. I called Brenda Gorski last week but have not heard back from her. I expect she will object based on her prior comments. I will most likely pick an arbitrary date and then reschedule if need be. Again, any dates to avoid for you ?

Thanks.

Mike Smith

Heather Hite Stone
Attorney at Law
100 East Pickens Street
P.O. Box 805
Abbeville, SC 29620
[864-366-5400](tel:864-366-5400) (phone)

Page 1 of 2

864-366-2638 (fax)
heather@hiteandstone.com

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--
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Wednesday, February 17, 2016 at 4:50:11 PM Eastern Standard Time

Subject: Fwd: Roe depositions
Date: Wednesday, February 17, 2016 at 4:48:07 PM Eastern Standard Time
From: Heather Stone
To: Robert Butcher
Category: Lawyers

----- Forwarded message -----

From: Mike Smith <msmith@loganjollysmith.com>
Date: Mon, Dec 28, 2015 at 3:37 PM
Subject: RE: Roe depositions
To: "heather@hiteandstone.com" <heather@hiteandstone.com>
Cc: Jim Logan <logan@loganjollysmith.com>, Kim Manley <manley@loganjollysmith.com>

Will do. Please hold the 27th for now. That's the date I am shooting for. Thanks.

Mike Smith

From: Heather Stone [mailto:heatherstone.hiteandstone@gmail.com]
Sent: Monday, December 28, 2015 3:35 PM
To: Mike Smith
Cc: Jim Logan; Kim Manley
Subject: Re: Roe depositions

The 20th, 25th, and 26th I have court already scheduled. I can work around anything else. Just let me know what dates work for you all.

On Mon, Dec 28, 2015 at 1:50 PM, Mike Smith <msmith@loganjollysmith.com> wrote:

Heather—we are targeting the last 2 weeks of January for the SCDSS 30b6 depositions in Columbia. Are there any dates that week that don't work for

you ?

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Page 1 of 2

Thanks.

Mike Smith

--
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Page 2 of 2

EXHIBIT 3



Michael T. Smith, Esquire
Email: msmith@loganjollysmith.com

January 21, 2016

(Via Electronic Mail and U.S. Mail)

1805 North Boulevard
Anderson, SC 29621
Telephone: 864-226-1910
Facsimile: 864-226-1931

Mailing Address
Post Office Box 259
Anderson, SC 29622

www.loganjollysmith.com

Heather Hite Stone
Hite & Stone
P.O. Box 805
Abbeville, SC 29620

Re: John Roe v. South Carolina Department of Social Services, et al
Case No: 2014-CP-23-04140

Dear Heather:

In connection with the above referenced matter, we enclose and serve Defendant's Objections to the Notice of 30(b)(6) Deposition for South Carolina Department of Social Services. The 30(b)(6) Deposition will take place on January 27, 2016 at the DSS Columbia Office located at 1535 Confederate Avenue, Columbia, SC 29202. The deposition will begin at 10:00am. We will be in Conference Room 627. We will be presenting a number of people to cover each of the deposition topics. If we do not finish on January 27th, we can go over onto January 28th. One of our 30(b)(6) designees, Taron Davis, is not available on January 27th or 28th but she is available on January 29th. Does that date suit you to take her deposition? She is testifying regarding topic #4 regarding the Guardian Ad Litem recommendations.

If you have any questions concerning this matter, please let me know.

With kind regards, I remain

Yours very truly,

LOGAN, JOLLY & SMITH, LLP

Michael T. Smith

Enclosure(s)

cc: Robert J. Butcher, Esquire (with enclosures)

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
C.A. No.: 2014-CP-23-04140

John Roe,)
Plaintiff,)

v.)

South Carolina Department of Social)
Services (SCDSS),)

Defendant.)

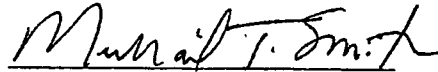
**Defendant's Objections to Notice of 30(b)(6)
Deposition for South Carolina Department of
Social Services**

TO: Heather Hite Stone, and Robert Butcher, Esquire, Attorneys for the Plaintiff.

Please take notice that the Defendant hereby objects to the Plaintiff's 30(b)(6) Deposition Notice for the South Carolina Department of Social Services to the extent it seeks discovery and/or information that is confidential in nature and protected from disclosure by S.C. Code Ann. §§63-11-80, 63-7-1990 and 63-7-940. In fact, the release of the information sought by Plaintiff subjects any person disseminating said information to criminal penalties. Defendant further objects to the Plaintiff's 30(b)(6) Deposition Notice to the extent it seeks discovery and/or information that violates the Court's prior Order denying Plaintiff's Motion to Compel dated July 27, 2015 (Exhibit 1). Although Defendant reserves the right to raise the aforementioned objection to each of the 30(b)(6) topics listed by the Plaintiff, Items 5 and 6 expressly seek information that is confidential and not discoverable pursuant to South Carolina statute, South Carolina caselaw and the Court's prior Order in this matter.

Respectfully Submitted,

LOGAN, JOLLY & SMITH, LLP



James W. Logan, Jr. (SC Bar 3385)

Michael T. Smith (SC Bar 10249)

Post Office Box 259 (29622)

Anderson, South Carolina

864-226-1910

Attorneys for Defendant South Carolina

Department of Social Services

Dated: _____

1/21/16



FILED-CLERK OF COURT
STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE C.A. No.: 2014-CP-23-04140

2015 AUG 4 PM 4 31
John Roe,

Plaintiff,

v.

South Carolina Department of Social
Services (SCDSS), Boys Home of
South, Inc., (BHOTS), Jason Mowen,
Steve Meek, Lynn Merrifield,
Wesley Ballard, Glynda Taylor
Caddell, Susan Spitzer, and Lori
Griswold

Defendants.

**ORDER DENYING PLAINTIFF'S
MOTION TO COMPEL**

The above captioned matter is before the Court upon a Motion to Compel that Plaintiff John Roe ("Plaintiff") filed against Defendants South Carolina Department of Social Services ("SCDSS") and Boys Home of the South, Inc. ("BHOTS"), pursuant to which he seeks the disclosure of information and the production of documents related to individuals who, for the time period in question, were minors in SCDSS' custody and residents of BHOTS; who are not parties to this lawsuit; and from whom Plaintiff has not obtained any kind of a release.

The Court held a hearing on the Motion on July 22, 2015.¹ After review of Plaintiff's Motion, SCDSS and BHOTS' Memorandum in Opposition to the Motion, and applicable

¹ Present at the hearing were: Plaintiff's counsel Thomas E. Hite, Jr. and Heather H. Stone of the law firm of Hite and Stone, Abbeville, South Carolina; SCDSS counsel James W. Logan, Jr. of the law firm of Logan, Jolly & Smith, LLP, Anderson, South Carolina; Defendant Steve Meek's counsel Catherine H. Chase of the law firm of Young Clement Rivers, LLP, Charleston, South Carolina; and, BHOTS attorney Catherine F. Wrenn of the law firm of Womble Carlyle Sandridge & Rice, LLC, Greenville, South Carolina.

statutory and case law, and hearing arguments from counsel, the Court DENIES Plaintiff's Motion to Compel for the reasons set forth below.

BRIEF FACTUAL BACKGROUND:

Plaintiff, a former foster child within the SCDSS system, was a resident of BHOTS, a SCDSS-licensed group home for boys, for approximately six months. Plaintiff alleges that during his December 29, 2004-June 23, 2005, BHOTS residency, he was sexually assaulted by two individuals: (1) Defendant Steve Meek ("Meek"), who was a BHOTS employee, and (2) "N.M.," who was a minor and a BHOTS resident. Compl., at ¶¶ 22, 49. In regard to "N.M.," Plaintiff contends that SCDSS and BHOTS Defendants "had notice that N.M. had a history of violence and sexual aggression and should not be placed with other children, especially younger, vulnerable children." Id., at ¶ 53. However, Plaintiff admits that, while at BHOTS, he never told anyone about N.M.'s alleged abuse of him, Pl.'s Depo., at 239:22-25, and he has no evidence that N.M. sexually assaulted anyone else, id., at 240:4-6.

Almost a decade after Plaintiff's BHOTS residency, Plaintiff, in his individual capacity, filed the above-captioned lawsuit against SCDSS and BHOTS, who both have denied Plaintiff's allegations against them. By the time Plaintiff filed his Complaint, BHOTS was in the process of dissolving and was no longer functionally operating.

In discovery requests, Plaintiff requested a plethora of information and documents from SCDSS and BHOTS Defendants, including production of: (1) BHOTS' and DSS' file on N.M.; (2) BHOTS' and DSS' information about other minor BHOTS residents who, like N.M., are not parties to this lawsuit and have not provided releases for the production of the requested matter; and (3) BHOTS' file on Plaintiff.²

² BHOTS has represented to Plaintiff and to the Court that it, in good faith, tried to locate its file on Plaintiff, but, due to the long lapse in time between Plaintiff's December 2004-June 2005 residency and

LEGAL ANALYSIS AND FINDINGS

South Carolina law stringently protects from disclosure the exact information that Plaintiff is requesting SCDSS and BHOTS produce about N.M. and other minors who were in SCDSS custody during the time period in question. S.C. Code Ann. § 63-11-80 provides: "No officer, agent or employee of the department or a child welfare agency [like BHOTS] shall directly or indirectly disclose information learned about the children, their parents, or relatives or other persons having custody or control of them." Furthermore, S.C. Code Ann. § 63-7-1990 stipulates that "all reports made and information collected" as part of any child abuse and neglect investigation by SCDSS are "confidential." Section 63-7-1990 even mandates that, except in specified instances in which the statute permits disclosure, any person who disseminates or permits the dissemination of abuse and neglect records and information "is guilty of [a] misdemeanor" and subject to fine and/or imprisonment.

Section 64-7-1990 permits SCDSS, in limited, specified instances, to grant access to the "records of indicated cases" – cases in which SCDSS has determined that a "report of child abuse or neglect [is] supported by facts which warrant a finding by a preponderance of evidence that abuse or neglect is more likely than not to have occurred," S.C. Code Ann. § 63-7-20. (Emphasis added). Two such limited instances are when a "child over fourteen years of age or older who is named in a report as a victim of child abuse or neglect" requests access to indicated case records, or when "parties to a court proceeding" establish that "information in the records is

the 2014 filing of this lawsuit, BHOTS has been unable to do so. BHOTS cannot produce what it does not have in its possession and, in good faith and after diligent effort, cannot locate.

WCSR 34570471v1

3
PDA

legally relevant and necessary for the determination of an issue before the court." Id. at § 63-7-20(B)(6), (11).³

Plaintiff has requested the records of other minors in SCDSS custody who were housed at the BHOTS during times designated, and he purports to need such records in order to determine whether there is evidence that other children, who are not parties to this lawsuit, allegedly were abused at BHOTS and whether SCDSS and BHOTS were on any kind of notice about such abuse prior to, during, and after Plaintiff's own BHOTS residency.

However, the Court finds that: (1) the information contained in those records is confidential and protected from dissemination pursuant to South Carolina Code Ann. § 63-11-80 and § 63-7-1990, and (2) there has been no showing or evidence that the confidential records Plaintiff seeks about the minors are from or part of any "indicated case" or that they contain legally relevant and necessary information for determining any central issue in this case. Furthermore, the requested information and records involve individuals who were minors at the time in question; who have a "valid and legitimate expectation that [their] medical [and private] information will remain confidential;" Hollman v. Woolfson, 384 S.C. 571, 578; 6 83 S.C. 2d 495, 499 (2009); who have not requested access to any indicated case record; who have not provided any party with a release that would allow SCDSS and BHOTS to produce the protected information; and who are not parties to this action.

Accordingly, it is ORDERED, ADJUDGED and DECREED that the Plaintiff's Motion to Compel the requested information and documents is DENIED.

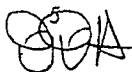
³ Section 63-7-20(B)(11) provides that, prior to any disclosure under that subsection, the judge must "review[] the records in camera," determine the "relevancy and necessity of the disclosure," and limit the disclosure to "legally relevant information under a protective order."

IT IS SO ORDERED this 27 day of July, 2015.



The Honorable Daniel D. Hall

WCSR 34570471v1



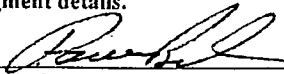
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

 _____ Circuit Court Judge	2048 Judge Code	2/12/2016 Date
---	--------------------	-------------------

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

Heather Hite Stone PO Box 805 100 East Pickens Street
 Abbeville, SC 29620
 Robert J. Butcher The Camden Law Firm, PA P.O. Box 610
 Camden, SC 29021

ATTORNEY(S) FOR THE PLAINTIFF(S)

James W. Logan Jr. Logan, Jolly & Smith PO Box 259
 Anderson, SC 29622
 Brenda L. Gorski South Carolina Guardian Ad Litem
 Program 1205 Pendleton St., Room 447 Columbia, SC 29201

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of
 Court - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

John Roe,

Plaintiff,

v.

South Carolina Department of Social Services,

Defendant.

) IN THE COURT OF COMMON PLEAS
) THIRTEENTH JUDICIAL CIRCUIT
)
)
)

Case Number: 2014-CP-23-04140

ORDER

ENTERED COMPUTER

FILED - CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2016 APR 4 AM 11 50

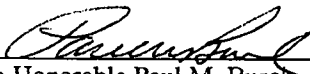
This matter is before the Court on Defendant's Motion to Reconsider this Court's Order granting Plaintiff's Motion to Compel pursuant to Rule 59, SCRCP. After reviewing the memoranda and other documents submitted to the Court, and the applicable authority, the Court hereby denies Defendant's Motion.

Defendant requests the Court's rationale for its decision in granting Plaintiff's Motion to Compel, with the qualification that the material sought be under protective order in that said material will be presented to the trial judge under seal for further determination of admissibility by the trial court. That rationale is based upon review of the testimony presented to the Court, the documents presented to the Court, as well as review of S.C. Code Ann. § 63-7-1990, which allows for further review by the trial judge in camera to determine the "relevancy and necessity of the disclosure," and also to limit that disclosure to "legally relevant information under a protective order." S.C. Code Ann. § 63-7-1990(B)(11).

THEREFORE, Defendant's Motion to Reconsider is DENIED.

AND IT IS SO ORDERED!

PMB


The Honorable Paul M. Burch
Presiding Judge

Chesterfield, South Carolina
March 25, 2016

CLERK OF COURT

OFFICE

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2014CP2304140

John Roe vs. Social Services South Carolina Department Of SCSS

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:
Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE - Paul M Burch

This judgment was entered on the , and a copy mailed first class this , to attorneys of record or to parties (when appearing pro se) as follows:

Heather Hite Stone PO Box 805 100 East Pickens
Street Abbeville, SC 29620
Robert J. Butcher PO Box 486 Manning, SC 29102

James W. Logan Jr. Logan, Jolly & Smith PO Box
259 Anderson, SC 29622
Brenda L. Gorski South Carolina Guardian Ad
Litem Program 1205 Pendleton St., Room 447
Columbia, SC 29201
Michael T. Smith PO Box 259 Anderson, SC 29622

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

Case No. 2014-CP-23-04140

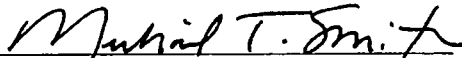
RECEIVED
MAY 02 2016
SC Court of Appeals

John Roe, ...Respondent,
v.
South Carolina Department of Social Services, ...Appellant.

NOTICE OF APPEAL

South Carolina Department of Social Services appeals the Order of the Honorable Paul M. Burch dated February 16, 2016. South Carolina Department of Social Services filed a timely Motion to Reconsider which was denied by Judge Burch on April 4, 2016 and received by Appellant on April 7, 2016. South Carolina Department of Social Services appeals both Orders.

April 28, 2016


James W. Logan, Jr. (SC Bar #3385)
Michael T. Smith (SC Bar #10249)
Logan, Jolly & Smith, LLP
P.O. Box 259
Anderson, SC 29622
(864) 226-1910
Attorneys for Appellant

Other Counsel of Record:

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P.O. Box 805
Abbeville, SC 29620
Attorneys for Respondent

Robert J. Butcher
The Foster Care Abuse Law Firm, PA
P.O. Box 486
Manning, SC 29102
Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

Case No. 2014-CP-23-04140

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John Roe, ...Respondent,
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CERTIFICATE OF SERVICE

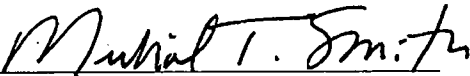
The undersigned hereby certifies that a copy of the Notice of Appeal was served by first class
mail, postage prepaid this 28th day of April, 2016, upon the following:

The Honorable Paul B. Wickensimer
Greenville County Clerk of Court
305 E. North Street
Greenville, SC 29601

Heather Hite Stone
Hite & Stone
P.O. Box 805
Abbeville, SC 29620
Attorneys for Respondent

Robert J. Butcher
The Foster Care Abuse Law Firm, PA
P.O. Box 486
Manning, SC 29102
Attorneys for Respondent

April 28, 2016


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April 28, 2016

RECEIVED

MAY 02 2016

SC Court of Appeals

Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeal
P.O. Box 11629
Columbia, SC 29211

Re: John Roe v. South Carolina Department of Social Services
Civil Action No.: 2014-CP-23-04140

Dear Ms. Kitchings:

Please find enclosed for filing a Notice of Appeal in the above referenced matter and the Certificate of Service in the above referenced matter. Please return a clocked in copy of the same to me in the enclosed self-addressed stamped envelope.

If you have any questions, please do not hesitate to contact me.

With kind regards, I remain,

Yours very truly,

Logan, Jolly & Smith, LLP

Michael T. Smith

MTS:krm
Enclosure(s)

cc: Heather Hite Stone, Esquire (with enclosures)
Robert J. Butcher, Esquire (with enclosures)
The Honorable Paul B. Wickensimer (with enclosures)



Post Office Box 259
Anderson, SC 29622

Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeal
P.O. Box 11629
Columbia, SC 29211

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SC Court of Appeals

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

Case No. 2014-CP-23-04140
Appellate Case No. 2016-000919

John Roe,.....Respondent,
v.
South Carolina Department of Social Services,.....Appellant.

RESPONDENTS' MOTION TO DISMISS

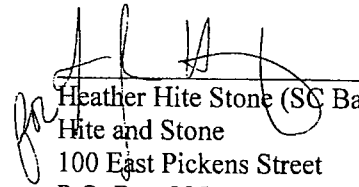
John Roe, the Respondent above named, hereby moves the Court to dismiss the Appeal filed by the South Carolina Department of Social Services and remand the case to the trial court upon the following:

South Carolina law and civil procedure dictates that an order is not immediately appealable if it “is not final in that it does not ‘finally dispose of the whole subject matter in litigation.’” *Bolding v. Bolding*, 283 S.C. 501, at 502, 323 S.E.2d 535, at 536 (Ct. App. 1984) (quoting 4 Am.Jur.2d *Appeal and Error* § 53 at 575 (1962)). S.C. Code Ann. §14-3-330 gives this court jurisdiction to allow interlocutory appeals from orders and judgments that may affect the merits of the case or the substantial rights of a party. Here, the lower court’s order compelled cooperation in discovery. The lower court’s order does not affect: (1) any of Appellant’s claims or defenses; (2) the merits of

the action; or (3) any substantial right of Appellant. Appellant claims to be concerned about the confidentiality of the records of minor children who are not parties to this action, but their identities are protected by the Confidentiality Order already in effect which requires that names and identifying information be redacted.

The recent case of *Wieters v. Bon-Secours-St. Francis Xavier Hospital, Inc. et al*, 378 S.C. 160, 662 S.E.2d 430 (Ct. App. 2008), 381 S.C. 332, 673 S.E.2d 417 (S.C. 2009) is directly on point although it involved a different confidentiality statute. In that case, the Plaintiff was a physician who sued the Hospital where he was formerly employed for defamation and civil conspiracy relating to his termination. Plaintiff was seeking confidential documents from the Hospital regarding the suspensions of other physicians. The Hospital refused to release this information, citing confidentiality concerns under South Carolina's Peer Review Statute, §40-71-20 of the South Carolina Code. The trial court ordered the Defendant to release the information to the Plaintiff, noting that "the plaintiff has not requested identifying information, only the nature of the circumstances that gave rise to other applications of summary suspension and no privilege prohibits that information being provided." *Id.* at 164, 432. The Hospital filed an interlocutory appeal. The Court of Appeals found that the Hospital's refusal to answer the questions was justified because of the protections of confidentiality provided in the Peer Review Statute. The Supreme Court of South Carolina, in its unanimous opinion, summarily vacated the opinion of the Court of Appeals and held that the trial court's discovery order was not immediately appealable. Similarly here, this Court should find that the order of the trial court is not immediately appealable and should remand this case back to the trial court for further proceedings.

May 12, 2016



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

Case No. 2014-CP-23-04140
Appellate Case No. 2016-000919

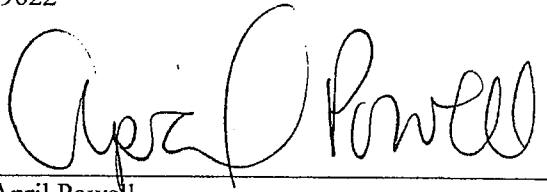
John Roe,.....Respondent,
v.
South Carolina Department of Social Services,.....Appellant.

PROOF OF SERVICE

I, the undersigned attorney with the law offices of Hite and Stone, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) herein below specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: Motion to Dismiss

Counsel Served: James W. Logan, Jr., Esquire
Mike Smith, Esquire
Logan, Jolly & Smith
P.O. Box 259
Anderson, SC 29622



April Powell

May 12, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
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Paul M. Burch, Circuit Court Judge

Case No. 2014-CP-23-04140

RECEIVED

MAY 25 2016

SC Court of Appeals

John Roe, ...Respondent,
v.
South Carolina Department of Social Services, ...Appellant.

APPELLANT'S RETURN TO RESPONDENT'S
MOTION TO DISMISS

Appellant South Carolina Department of Social Services (SCDSS) submits this Return to Respondent's Motion to Dismiss the instant appeal. Appellant has appealed the lower court Order which requires Appellant to disclose confidential information¹ regarding alleged sexual abuse of other minor children not a party to this action in a manner that violates the express language of S.C. Code Ann. §63-7-1990. Recognizing the extraordinarily sensitive nature of information concerning alleged sexual abuse of minors, the South Carolina Legislature has very clearly stated that appellant can only release this information "if before the disclosure the judge has reviewed the records in camera, has determined the relevancy and necessity of the disclosure, and has limited disclosure to legally relevant information under a protective order." S.C. Code Ann. §63-7-1990(B)(11). (Emphasis added). Furthermore, the Legislature has taken the drastic measure of

¹ §63-7-1990(A) 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."

attaching potential criminal penalties to the improper disclosure of confidential information by providing that any person who discloses this information “except as authorized by statute” is guilty of a misdemeanor and subject to fines, imprisonment, or both. §63-7-1990(A). The subject lower court Order violates the procedure set forth in §63-7-1990 by requiring disclosure of confidential information before an in camera review and before the Court has examined the material to limit disclosure to legally relevant and necessary information. The lower court Order has placed Appellant in the untenable position of (a) choosing to follow the lower court’s ruling and in turn violating the clear language of §63-7-1990 while subjecting its employees to fines and/or imprisonment or (b) choosing to disregard the Order and being held in contempt of court. Appellant respectfully submits that the subject Order is immediately appealable pursuant to S.C. Code Ann. §14-3-330 and South Carolina caselaw.

1. The lower court’s Order is a final determination of Appellant’s rights and liabilities under §63-7-1990 and is, therefore, immediately appealable.

As set forth above, §63-7-1990(B)(11) provides that Appellant can only disclose confidential information regarding the alleged sexual abuse of minors “if before the disclosure the judge has reviewed the records in camera, has determined the relevancy and necessity of the disclosure, and has limited disclosure to legally relevant information under a protective order.”² Failure to comply with this statutory scheme of disclosure subjects Appellant’s employees to criminal prosecution and, if convicted, to fines and/or imprisonment. In violation of §63-7-1990, the lower court Order requires Appellant to disclose confidential information prior to an in camera review. If Appellant complies with the court’s Order, the risk of criminal prosecution immediately attaches upon the disclosure of confidential information and the ability to appeal at a later time is

² Appellant respectfully submits that the lower court erred in first ordering the disclosure of this confidential information and then providing for a later in camera review to determine the relevancy or admissibility of this information at trial. §63-7-1990 requires an in camera review before any disclosure whatsoever.

an absolutely meaningless remedy. The right of appeal after the payment of fines and/or service of a prison sentence is nonsensical. Thus, in terms of Appellant's rights and liabilities pursuant to §63-7-1990, the lower court's Order is a final determination and is immediately appealable.

In *U-Drive-It, Inc., v. Beaver*, 369 S.C. 1, 630 S.E. 2d 464 (2006), the South Carolina Supreme Court determined that an order requiring the production of certain sealed records was immediately appealable. In that case, the Supreme Court concluded that once these records were improperly disclosed there was no way to undo the damage if an immediate appeal was not allowed. More specifically, the Court provided that:

Moreover, we agree with courts which have been inclined to find such an order immediately appealable because, after a court file is unsealed and the information released, no appellate remedy is likely to repair any damage done by improper disclosure. "Compelling a party that disputes an unsealing order to forego an appeal until the conclusion of the underlying litigation would let the cat out of the bag, without any effective way of recapturing it if the district court's directive was ultimately found to be erroneous." *Siedly v. Putnam Investments, Inc.*, 147 F. 3d 7, 9 (1st Cir. 1998)(quoting *Irons v. FBI*, 811 F. 2d 681, 683, (1st Cir. 1987)).

In our case, there will be no way to undo the damage of an improper disclosure of confidential information regarding allegations of sexual abuse of other unrelated minors if there is no right to an immediate appeal.

2. The lower court's Order is immediately appealable pursuant to S.C. Code Ann. §14-3-330.

The determination of whether a party may immediately appeal an order issued before or during trial is governed primarily by S.C. Code Ann. §14-3-330. An order "involves the merits" of a case as that term is used in §14-3-330(1) and is immediately appealable when it finally determines some substantial matter forming the whole or part of some cause of action or defense. *Peterkin v. Brigman*, 319 S.C. 367, 461 S.E. 2d 809 (1995); *Knowles v. Standard Savings & Loan*

Assn., 274 S.C. 58, 261 S.E. 2d 49 (1979). S.C. Code Ann. §14-3-330(2) also permits an immediate appeal from an order that affects a substantial right of the parties.

In his Motion to Dismiss, Respondent has provided no factual or evidentiary basis for this Court to determine if the Order affects the merits of the case or any substantial rights of the parties. However, it is difficult to imagine an order that affects the substantial rights of Appellant more than the instant order which requires the Appellant to violate a confidentiality statute and subjects Appellant to criminal penalties for said violation. In addition, Respondent's claims and Appellant's defenses are substantially impacted by a ruling which opens the door to unfettered discovery on issues of alleged sexual abuse involving other minors who are not parties to this action prior to an in camera review and a threshold determination of relevancy. Appellant submits that these issues should be fully briefed and the record on appeal fully developed in order for this Court to determine the appealability of the subject Order.

In *Laffitte v. Bridgestone Corporation*, 381 S.C. 460, 674 S.E. 2d 154 (2009), the South Carolina Supreme Court held that a discovery order pertaining to trade secrets was immediately appealable. In *Laffitte*, the Court held that:

The instant case presents such exceptional circumstances as it involves a novel question of law in a matter that has been the subject of numerous claims in state and federal courts. A decision by this Court at this time best serves the interest of judicial economy by eliminating the numerous inevitable appeals raising this novel issue of significant public interest.

Appellant submits that the potential improper disclosure of confidential information regarding alleged sexual abuse of minors not parties to this litigation constitutes an "exceptional circumstance" warranting an immediate appeal. This appears to be a novel issue of law as there is no case law interpreting the proper procedure of disclosure of confidential information pursuant to § 63-7-1990. Further, the disclosure of confidential records of minors who are not parties to litigation is an issue in other cases currently pending involving Respondent's counsel and will also

arise in future litigation. The interests of judicial economy would be served by avoiding the numerous appeals in other cases which would most likely occur if this Court does not provide an immediate appellate review of this extraordinarily sensitive matter. Finally, the criminal penalties which may result from the Appellant's violation of § 63-7-1990, is further evidence of the exceptional circumstances which necessitate an immediate appeal.

Respondent erroneously argues in his Motion to Dismiss that the redaction of the minor's names and other identifying information satisfies confidentiality concerns and the mandates of §63-7-1990. However, §63-7-1990(A) expressly provides that "all reports made and information collected...are confidential." (Emphasis added). Thus, redaction of the minor's name while still disclosing other confidential information violates §63-7-1990 and subjects Appellant to potential criminal penalties.

Finally, Respondent's reliance upon the case of *Wieters v. Bon-Secours – St. Francis Xavier Hospital, Inc.*, 378 S.C. 160, 662 S.E. 2d 430 (Ct. App. 2008), 381 S.C. 332, 673 S.E. 2d 417(S.C. 2009) is misplaced as the underlying factual scenario and associated statutes are distinguishable. First, doctor's records are a far cry from records regarding alleged sexual abuse of minors and the increased level of scrutiny applicable to minor's records is self-evident. Second, the statute protecting doctor's records does not subject the disclosing party to criminal penalties as does §63-7-1190 in the instant matter.

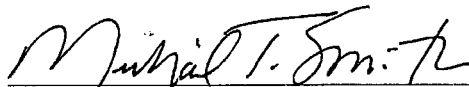
CONCLUSION

Based upon the foregoing, Appellant respectfully requests that Respondent's Motion to Dismiss be denied. The subject lower court Order is immediately appealable pursuant to §14-3-330 as the merits of the case and the substantial rights of the Appellant are impacted. Furthermore, the subject lower court Order is a final determination of the Appellant's rights and liabilities pursuant to §63-7-1990. Thus, this final Order is appealable. In addition, the imposition of

criminal penalties for disclosure of confidential information regarding allegations of sexual abuse for minors who are not parties to this action in violation of §63-7-1990 presents an exceptional circumstance for which an immediate appeal provides the only effective remedy.

Respectfully submitted,

May 23, 2016



James W. Logan, Jr. (SC Bar #3385)

Michael T. Smith (SC Bar #10249)

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P.O. Box 259

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Attorneys for Appellant

Other Counsel of Record:

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Attorneys for Respondent

Robert J. Butcher

The Foster Care Abuse Law Firm, PA

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Manning, SC 29102

Attorneys for Respondent

2

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

Case No. 2014-CP-23-04140
Appellate Case No. 2016-000919

RECEIVED
JUL 05 2016
SC Court of Appeals

John Roe, ... Respondent,
v.
South Carolina Department of Social Services, ... Appellant.

APPELLANT'S AMENDED RETURN TO
RESPONDENT'S MOTION TO DISMISS

Appellant South Carolina Department of Social Services (SCDSS) submits this Return to Respondent's Motion to Dismiss the instant appeal. Appellant has appealed the lower court Order which requires Appellant to disclose confidential information¹ regarding alleged sexual abuse of other minor children not a party to this action in a manner that violates the express language of S.C. Code Ann. §63-7-1990. Recognizing the extraordinarily sensitive nature of information concerning alleged sexual abuse of minors, the South Carolina Legislature has very clearly stated that appellant can only release this information "if before the disclosure the judge has reviewed the records in camera, has determined the relevancy and necessity of the disclosure, and has limited disclosure to legally relevant information under a protective order." S.C. Code Ann. §63-7-1990(B)(11). (Emphasis added). Furthermore, the Legislature has taken the drastic measure of

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attaching potential criminal penalties to the improper disclosure of confidential information by providing that any person who discloses this information "except as authorized by statute" is guilty of a misdemeanor and subject to fines, imprisonment, or both. §63-7-1990(A). The subject lower court Order violates the procedure set forth in §63-7-1990 by requiring disclosure of confidential information before an in camera review and before the Court has examined the material to limit disclosure to legally relevant and necessary information. The lower court Order has placed Appellant in the untenable position of (a) choosing to follow the lower court's ruling and in turn violating the clear language of §63-7-1990 while subjecting its employees to fines and/or imprisonment or (b) choosing to disregard the Order and being held in contempt of court. Appellant respectfully submits that the subject Order is immediately appealable pursuant to S.C. Code Ann. §14-3-330 and South Carolina caselaw.

1. The lower court's Order is a final determination of Appellant's rights and liabilities under §63-7-1990 and is, therefore, immediately appealable.

As set forth above, §63-7-1990(B)(11) provides that Appellant can only disclose confidential information regarding the alleged sexual abuse of minors "if before the disclosure the judge has reviewed the records in camera, has determined the relevancy and necessity of the disclosure, and has limited disclosure to legally relevant information under a protective order."² Failure to comply with this statutory scheme of disclosure subjects Appellant's employees to criminal prosecution and, if convicted, to fines and/or imprisonment. In violation of §63-7-1990, the lower court Order requires Appellant to disclose confidential information prior to an in camera review. If Appellant complies with the court's Order, the risk of criminal prosecution immediately attaches upon the disclosure of confidential information and the ability to appeal at a later time is

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an absolutely meaningless remedy. The right of appeal after the payment of fines and/or service of a prison sentence is nonsensical. Thus, in terms of Appellant's rights and liabilities pursuant to §63-7-1990, the lower court's Order is a final determination and is immediately appealable.

In *U-Drive-It, Inc., v. Beaver*, 369 S.C. 1, 630 S.E. 2d 464 (2006), the South Carolina Supreme Court determined that an order requiring the production of certain sealed records was immediately appealable. In that case, the Supreme Court concluded that once these records were improperly disclosed there was no way to undo the damage if an immediate appeal was not allowed. More specifically, the Court provided that:

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As set forth in Justice Toal's treatise on appellate practice in South Carolina, "if an order requires a party to turn over documents, which the party feels are privileged or contain proprietary or confidential matters, compliance with the order without the ability to seek immediate appeal renders the protections afforded by the privilege or confidentiality a nullity." Appellate Practice in South Carolina, Justice Toal, Chapter 4: Appealability of Judgments & Orders, Page 101. In our case, there will be no way to undo the damage of an improper disclosure of confidential information regarding allegations of sexual abuse of other unrelated minors if there is no right to an immediate appeal.

2. The lower court's Order is immediately appealable pursuant to S.C. Code Ann. §14-3-330.

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In his Motion to Dismiss, Respondent has provided no factual or evidentiary basis for this Court to determine if the Order affects the merits of the case or any substantial rights of the parties. However, it is difficult to imagine an order that affects the substantial rights of Appellant more than the instant order which requires the Appellant to violate a confidentiality statute and subjects Appellant to criminal penalties for said violation. In addition, Respondent's claims and Appellant's defenses are substantially impacted by a ruling which opens the door to unfettered discovery on issues of alleged sexual abuse involving other minors who are not parties to this action prior to an in camera review and a threshold determination of relevancy. Appellant submits that these issues should be fully briefed and the record on appeal fully developed in order for this Court to determine the appealability of the subject Order.

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The instant case presents such exceptional circumstances as it involves a novel question of law in a matter that has been the subject of numerous claims in state and federal courts. A decision by this Court at this time best serves the interest of judicial economy by eliminating the numerous inevitable appeals raising this novel issue of significant public interest.

Appellant submits that the potential improper disclosure of confidential information regarding alleged sexual abuse of minors not parties to this litigation constitutes an “exceptional circumstance” warranting an immediate appeal. This appears to be a novel issue of law as there is no case law interpreting the proper procedure of disclosure of confidential information pursuant to § 63-7-1990. Further, the disclosure of confidential records of minors who are not parties to litigation is an issue in other cases currently pending involving Respondent’s counsel and will also arise in future litigation. The interests of judicial economy would be served by avoiding the numerous appeals in other cases which would most likely occur if this Court does not provide an immediate appellate review of this extraordinarily sensitive matter. Finally, the criminal penalties which may result from the Appellant’s violation of § 63-7-1990, is further evidence of the exceptional circumstances which necessitate an immediate appeal.

Respondent erroneously argues in his Motion to Dismiss that the redaction of the minor’s names and other identifying information satisfies confidentiality concerns and the mandates of §63-7-1990. However, §63-7-1990(A) expressly provides that “all reports made and information collected...are confidential.” (Emphasis added). Thus, redaction of the minor’s name while still disclosing other confidential information violates §63-7-1990 and subjects Appellant to potential criminal penalties.

Finally, Respondent’s reliance upon the case of *Wieters v. Bon-Secours – St. Francis Xavier Hospital, Inc.*, 378 S.C. 160, 662 S.E. 2d 430 (Ct. App. 2008), 381 S.C. 332, 673 S.E. 2d 417(S.C. 2009) is misplaced as the underlying factual scenario and associated statutes are distinguishable. First, doctor’s records are a far cry from records regarding alleged sexual abuse of minors and the increased level of scrutiny applicable to minor’s records is self-evident. Second, the statute protecting doctor’s records does not subject the disclosing party to criminal penalties as does §63-7-1190 in the instant matter.

CONCLUSION

Based upon the foregoing, Appellant respectfully requests that Respondent's Motion to Dismiss be denied. The subject lower court Order is immediately appealable pursuant to §14-3-330 as the merits of the case and the substantial rights of the Appellant are impacted. Furthermore, the subject lower court Order is a final determination of the Appellant's rights and liabilities pursuant to §63-7-1990. Thus, this final Order is appealable. In addition, the imposition of criminal penalties for disclosure of confidential information regarding allegations of sexual abuse for minors who are not parties to this action in violation of §63-7-1990 presents an exceptional circumstance for which an immediate appeal provides the only effective remedy.

Respectfully submitted,

June 30, 2016



James W. Logan, Jr. (SC Bar #3385)

Michael T. Smith (SC Bar #10249)

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Attorneys for Respondent

Robert J. Butcher

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Manning, SC 29102

Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
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APPEAL FROM GREENVILLE COUNTY
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Case No. 2014-CP-23-04140
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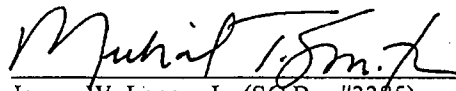
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Appellant's Amended Return to
Respondent's Motion to Dismiss was served by electronic mail and first class mail, postage
prepaid this 30th day of June, 2016, upon the following:

Heather Hite Stone
Hite & Stone
P.O. Box 805
Abbeville, SC 29620
Attorneys for Respondent

Robert J. Butcher
The Foster Care Abuse Law Firm, PA
P.O. Box 486
Manning, SC 29102
Attorneys for Respondent

June 30, 2016

A handwritten signature in black ink, appearing to read "Michael T. Smith".

James W. Logan, Jr. (SC Bar #3385)

Michael T. Smith (SC Bar #10249)

Logan, Jolly & Smith, LLP

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Attorneys for Appellant



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Facsimile: 864-226-1931

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www.loganjollysmith.com

Michael T. Smith, Esquire
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June 30, 2016

RECEIVED
JUL 05 2016
SC Court of Appeals

Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

Re: John Roe v. South Carolina Department of Social Services
Appellate Case No.: 2016-000919

Dear Ms. Kitchings:

In response to the Court's letter dated June 24, 2016 regarding the appealability of the subject lower court's Order, we enclose for filing Appellant's Amended Return to Respondent's Motion to Dismiss. The issue of the Order's appealability has been raised and briefed by the parties in the context of the Respondent's Motion to Dismiss and Appellant's Return. Appellant's Amended Return includes additional authority from Justice Toal in support of its position that the instant appeal is properly before this Court.

If the Court has any questions or requires any additional information, please do not hesitate to contact me. With kind regards, I remain

Yours Very Truly,

LOGAN, JOLLY & SMITH, LLP

Michael T. Smith

MTS:krm
Enclosures

cc: Heather Stone, Esquire (with enclosures)
Robert J. Butcher, Esquire (with enclosures)

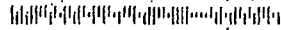
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Anderson, SC 29622

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JUL 03 2016
SC Court of Appeals

Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

Case No. 2014-CP-23-04140
Appellate Case No. 2016-000919

John Roe,.....Respondent,
v.
South Carolina Department of Social Services,.....Appellant.

RESPONDENTS' RESPONSE TO APPELLANT'S AMENDED RETURN

John Roe, the Respondent above named, moved on May 12, 2016 to dismiss the Appeal filed by the South Carolina Department of Social Services and remand the case to the trial court. In response to a letter from the Clerk of the Court of Appeals, the Appellant filed an Amended Return. The Respondent hereby renews his Motion to Dismiss and notes the following:

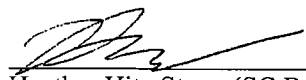
South Carolina law and civil procedure dictates that an order is not immediately appealable if it "is not final in that it does not 'finally dispose of the whole subject matter in litigation.'" *Bolding v. Bolding*, 283 S.C. 501, at 502, 323 S.E.2d 535, at 536 (Ct. App. 1984) (quoting 4 Am.Jur.2d *Appeal and Error* § 53 at 575 (1962)). S.C. Code Ann. §14-3-330 gives this court jurisdiction to allow interlocutory appeals from orders and judgments that may affect the merits of the case or the substantial rights of a party. Here, the lower court's order compelled cooperation in discovery. The lower court's order does not affect: (1) any of Appellant's claims

or defenses; (2) the merits of the action; or (3) any substantial right of Appellant. Appellant claims to be concerned about the confidentiality of the records of minor children who are not parties to this action, but their identities are protected by the Confidentiality Order already in effect which requires that names and identifying information be redacted.

The recent case of *Wieters v. Bon-Secours-St. Francis Xavier Hospital, Inc. et al*, 378 S.C. 160, 662 S.E.2d 430 (Ct. App. 2008), 381 S.C. 332, 673 S.E.2d 417 (S.C. 2009) is directly on point although it involved a different confidentiality statute. In that case, the Plaintiff was a physician who sued the Hospital where he was formerly employed for defamation and civil conspiracy relating to his termination. Plaintiff was seeking confidential documents from the Hospital regarding the suspensions of other physicians. The Hospital refused to release this information, citing confidentiality concerns under South Carolina's Peer Review Statute, §40-71-20 of the South Carolina Code. The trial court ordered the Defendant to release the information to the Plaintiff, noting that "the plaintiff has not requested identifying information, only the nature of the circumstances that gave rise to other applications of summary suspension and no privilege prohibits that information being provided." *Id.* at 164, 432. The Hospital filed an interlocutory appeal. The Court of Appeals found that the Hospital's refusal to answer the questions was justified because of the protections of confidentiality provided in the Peer Review Statute. The Supreme Court of South Carolina, in its unanimous opinion, summarily vacated the opinion of the Court of Appeals and held that the trial court's discovery order was not immediately appealable. Similarly here, this Court should find that the order of the trial court is not immediately appealable and should remand this case back to the trial court for further proceedings.

In their return to the Motion to Dismiss, Appellant attempts to distinguish the *Wieters* case, arguing that records regarding sexual abuse of minors are different than doctor's records. This is a distinction without a difference. Both doctor's records and records regarding sexual abuse of minors are protected under state and federal law. Here, the confidentiality of the records has been more than adequately protected by the trial court in compliance with the statute.

July 5, 2016


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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

Case No. 2014-CP-23-04140
Appellate Case No. 2016-000919

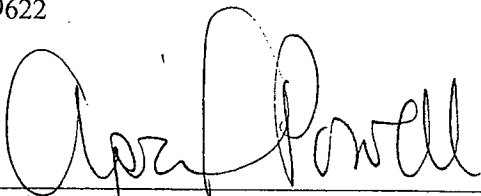
John Roe,.....Respondent,
v.
South Carolina Department of Social Services,.....Appellant.

PROOF OF SERVICE

I, the undersigned attorney with the law offices of Hite and Stone, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) herein below specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

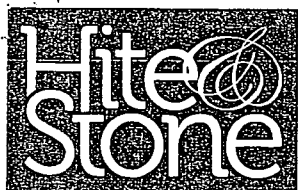
Pleadings: Respondent's Response to Appellant's Amended Return

Counsel Served: James W. Logan, Jr., Esquire
Mike Smith, Esquire
Logan, Jolly & Smith
P.O. Box 259
Anderson, SC 29622



April Powell

July 5, 2016



ATTORNEYS AT LAW

Thomas E. Hite, Jr.* | Heather Hite Stone | Thomas E. Hite, III | Anne Marie Hempy

July 5, 2016

The Honorable Jenny Abbott Kitchings
Clerk of Court
The South Carolina Court of Appeals
1015 Sumter Street, 5th Floor
Columbia, SC 29201

RE: *John Roe vs. South Carolina Department of Social Services*
Appellate Case No. 2014-00946

Dear Ms. Kitchings:

Enclosed for filing please find the original and six copies of the Respondent's Respondents' Response to Appellant's Amended Return, along with the Certificate of Mailing.

By copy of this letter to counsel of record, we are serving them with copies of these pleadings. Thank you for your attention to this matter.

With kind regards, I am,

Very truly yours,

A handwritten signature in black ink that reads "Heather Hite Stone/aap". The signature is written in a cursive, flowing style.

Heather Hite Stone/aap
Attorney for Respondent

Enclosures

cc: Jim Logan, Esquire

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*American Board of Trial Advocates

Personal Injury - Family Law - Real Estate

The South Carolina Court of Appeals

John Roe, Respondent,

v.

South Carolina Department of Social Services,
Appellant.

Appellate Case No. 2016-000919

ORDER

Respondent has filed a motion to dismiss this appeal, contending the underlying discovery order is an interlocutory order that is not immediately appealable. Appellant has filed a return opposing the motion and asserting this appeal should proceed because "the potential improper disclosure of confidential information regarding alleged sexual abuse of minors not parties to this litigation constitutes an 'exceptional circumstance.'"

Respondent's motion is granted, and this appeal is dismissed. *See Ex parte Whetstone*, 289 S.C. 580, 580, 347 S.E.2d 881, 881 (1986) ("An order directing a party to participate in discovery is interlocutory and not directly appealable under S.C. Code Ann. § 14-3-330 (1976)."). Further, after reviewing the circuit court's orders, the parties' filings, and section 63-7-1990(B)(11) of the South Carolina Code (2010), we find exceptional circumstances do not exist to warrant this court's review of these discovery orders. *See Laffitte v. Bridgestone Corp.*, 381 S.C. 460, 471, 674 S.E.2d 154, 160 (2009) ("Ordinarily, an order compelling discovery is not directly appealable. Nevertheless, a writ of certiorari may be issued when exceptional circumstances exist." (citation omitted)). The remittitur will be sent as required by Rule 221 of the South Carolina Appellate Court Rules.



FOR THE COURT

FILED

August 8, 2016

Columbia, South Carolina

cc: James W. Logan, Jr., Esquire
Michael T. Smith, Esquire
Heather Hite Stone, Esquire
Robert J. Butcher, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

Case No. 2014-CP-23-04140
Appellate Case No. 2016-000919

RECEIVED
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SC Court of Appeals

John Roe, ...Respondent,
v.
South Carolina Department of Social Services, ...Appellant.

APPELLANT'S PETITION FOR REHEARING

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Manning, SC 29102
Attorneys for Respondent

APPELLANT'S PETITION FOR REHEARING

Appellant South Carolina Department of Social Services ("SCDSS") files this Petition for Rehearing in response to the Court of Appeals' Order dated August 8, 2016 dismissing the instant appeal as interlocutory. Appellant respectfully submits that the Court of Appeals erred in dismissing this appeal on the following grounds: (a) the subject lower court Order is appealable because it is a final determination requiring the disclosure of extraordinarily sensitive and confidential information involving sexual abuse allegations of non-party minors prior to an in camera review in direct violation of §63-7-1990 for which an immediate appeal is the only effective remedy, and (b) in the alternative, if not final, the subject lower court Order requiring the disclosure of confidential information involving sexual abuse allegations for non-party minors prior to an in camera review in violation of §63-7-1990 is immediately appealable because it presents "exceptional circumstances" of causing irreparable harm to the confidentiality rights of minors and of subjecting the Appellant to criminal penalties.

- I. The Court of Appeals erred in not concluding that the lower court's Order is a final determination of the rights and liabilities of non-party minors and Appellant under §63-7-1990 and is, therefore, immediately appealable¹.

The disclosure of information regarding the alleged sexual conduct or abuse of any child — especially children who have nothing to do with the subject litigation — is of paramount importance to Appellant. More importantly for purposes of this appeal, it is also of paramount concern to the South Carolina Legislature. Recognizing the extraordinarily sensitive nature of this information and the potential to "re-victimize" children, the South Carolina Legislature has very clearly set

¹ In its Order, the Court of Appeals focused exclusively on the Appellant's position that the disclosure of information regarding sexual conduct or abuse of non-party minors constitutes an "exceptional circumstance" and failed to address Appellant's first argument that the lower court's Order was a final ruling and, therefore, immediately appealable.

forth the procedure to be followed by litigants and the court before any disclosure of this information can be made. S.C. Code Ann. §63-7-1990(B)(11) expressly provides that the Appellant can only disclose confidential information regarding the alleged sexual conduct or abuse of minors “if before the disclosure the judge has reviewed the records in camera, has determined the relevancy and necessity of the disclosure, and has limited disclosure to legally relevant information under a protective order.” (Emphasis added). Appellant respectfully submits that the lower court erred by first ordering the disclosure of this confidential information and then providing for a subsequent in camera review to determine the relevancy or admissibility of this information at trial. By its own terms, Section 63-7-1990 requires an in camera review before any disclosure whatsoever. By requiring an in camera review on the front end, the Legislature has attempted to curtail fishing expeditions by attorneys in the area of sexual abuse allegations involving minors and to ensure that the confidentiality rights of the most vulnerable members of our society are protected by the courts. If Appellant complies with the lower court Order, the confidentiality rights of non-party minors are instantly violated and this violation cannot be cured by a subsequent appeal.

Furthermore, failure to comply with this statutory scheme of disclosure subjects Appellant’s employees to criminal prosecution and, if convicted, to fines and/or imprisonment. In violation of §63-7-1990, the lower court Order requires Appellant to disclose confidential information prior to an in camera review. If Appellant complies with the court’s Order, the risk of criminal prosecution immediately attaches upon the disclosure of confidential information and the ability to appeal at a later time is an absolutely meaningless remedy. The right of appeal after the payment of fines and/or service of a prison sentence is nonsensical. Thus, in terms of

Appellant's rights and liabilities pursuant to §63-7-1990, the lower court's Order is a final determination and is immediately appealable.

In *U-Drive-It, Inc., v. Beaver*, 369 S.C. 1, 630 S.E. 2d 464 (2006), the South Carolina Supreme Court determined that an order requiring the production of certain sealed records was immediately appealable. In that case, the Supreme Court concluded that once these records were improperly disclosed there was no way to undo the damage if an immediate appeal was not allowed. More specifically, the Court provided that:

Moreover, we agree with courts which have been inclined to find such an order immediately appealable because, after a court file is unsealed and the information released, no appellate remedy is likely to repair any damage done by improper disclosure. "Compelling a party that disputes an unsealing order to forego an appeal until the conclusion of the underlying litigation would let the cat out of the bag, without any effective way of recapturing it if the district court's directive was ultimately found to be erroneous." *Siedly v. Putnam Investments, Inc.*, 147 F. 3d 7, 9 (1st Cir. 1998)(quoting *Irons v. FBI*, 811 F. 2d 681, 683, (1st Cir. 1987)).

As set forth in Justice Toal's treatise on appellate practice in South Carolina, "if an order requires a party to turn over documents, which the party feels are privileged or contain proprietary or confidential matters, compliance with the order without the ability to seek immediate appeal renders the protections afforded by the privilege or confidentiality a nullity." Appellate Practice in South Carolina, Justice Toal, Chapter 4: Appealability of Judgments & Orders, Page 101. In our case, there will be no way to undo the damage of an improper disclosure of confidential information regarding allegations of sexual abuse of other unrelated minors if there is no right to an immediate appeal.

II. The Court of Appeals erred in concluding that requiring Appellant to disclose confidential information regarding the alleged sexual conduct/abuse of non-party minors prior to an in camera review and in violation of §63-7-1990 is not an “exceptional circumstance” warranting an immediate appeal.

As recognized by this Court’s Order of August 8, 2016, an immediate appeal is permitted in instances when “exceptional circumstances exist.” This Court concluded, however, that the disclosure of confidential information involving alleged sexual conduct/abuse of non-party minors did not constitute an “exceptional circumstance.” Appellant respectfully submits that the matter before the Court is far from an ordinary discovery issue. Perhaps the best evidence that the disclosure of information regarding the alleged sexual conduct/abuse of non-party minors is “exceptional” is the fact that the Legislature has directed the court to review this information prior to any disclosure whatsoever. Even more extraordinary is the Legislature’s imposition of criminal penalties for any entity that discloses this type of information before the court reviews it, makes the determination that it is relevant, and then further limits the disclosure of this information under a protective order. The general rule that discovery orders are interlocutory and not immediately appealable simply does not apply here.

There does not appear to be a bright line test for determining when “exceptional circumstances exist.” While Appellant strongly believes that information involving alleged sexual conduct/abuse of minors is exceptional by its very nature, this case also presents exceptional circumstances because of the trial court’s failure to follow the procedure outlined by the Legislature and to protect the statutory confidentiality rights of minors. The confidentiality rights for children who disclose alleged sexual conduct/abuse must be maintained to encourage the initial disclosure and cooperation of all individuals involved in these traumatic events. Failure to safeguard this information via an in camera review sets a dangerous precedent and subjects minors to an unwarranted and unwanted disclosure of alleged sexual conduct/abuse information and

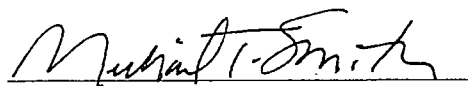
jeopardizes the entire investigative process which is designed to prevent future occurrences of abuse. It is instructive that the South Carolina Supreme Court has determined that a discovery order pertaining to trade secrets is immediately appealable. *Laffitte v. Bridgestone Corporation*, 381 S.C. 460, 674 S.E. 2d 154 (2009). Certainly, an in camera review of documentation regarding an alleged rape of a minor stands on at least equal footing to a corporation's trade secret.

CONCLUSION

The South Carolina Legislature has directed that records involving alleged sexual conduct/abuse of minors must be reviewed by the court before disclosure. The lower court Order disregards this statutory procedure and, as a result, causes immediate harm to the confidentiality rights of non-party minors and subjects Appellant to criminal penalties. Accordingly, Appellant requests that this Court deny the Respondent's Motion to Dismiss. In the alternative, Appellant requests that this Court order the lower court to conduct an in camera review of information regarding alleged sexual conduct/abuse of minors prior to disclosure as required by S. C. Code Ann. §63-7-1990.

Respectfully submitted,

August 22, 2016


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Attorneys for Appellant

The South Carolina Court of Appeals

John Roe, Respondent,

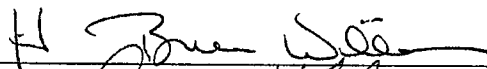
v.

South Carolina Department of Social Services,
Appellant.

Appellate Case No. 2016-000919

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. *See Tucker v. Honda of S.C. Mfg., Inc.*, 354 S.C. 574, 577, 582 S.E.2d 405, 406-07 (2003) ("[A]n order compelling discovery may be appealed only after the trial court holds a party in contempt."). Accordingly, the petition for rehearing is denied.

 J.

 J.

 J.

Columbia, South Carolina

FILED

January 13, 2017

cc: James W. Logan, Jr., Esquire
Michael T. Smith, Esquire
Heather Hite Stone, Esquire
Robert J. Butcher, Esquire