

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

RECEIVED

MAR -3 2017

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

C.C. SUPREME COURT

Paul M. Burch, Circuit Court Judge

Case No. 2014-CP-23-04140  
Appellate Case No. 2017-000256

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

RESPONDENT'S RETURN TO THE PETITION FOR CERTIORARI

Heather Hite Stone (SC Bar #: 72503)  
Hite and Stone  
100 East Pickens Street  
P.O. Box 805  
Abbeville, SC 29620  
[heather@hiteandstone.com](mailto:heather@hiteandstone.com)

Robert J. Butcher (SC Bar #: 74722)  
The Foster Care Abuse Law Firm PA  
P.O. Box 486  
Manning, SC 29102

Attorneys for Respondent

## INTRODUCTION

This Court should deny the Petition for a Writ of Certiorari. Rule 242 of SCACR states that a party does not have a right to a writ of certiorari; rather a writ “will be granted only where there are special and important reasons.” There are no special or important reasons in this case to justify review by this Court. SCACR Rule 242 contains examples of categories of cases that could warrant issuance of a writ of certiorari. None of these factors are present here. There is no novel question of law, there is no dissent in the decision from the Court of Appeals, there is no conflict with this Court’s prior decisions, there are no substantial constitutional issues, and there is no federal question.

In a blatant attempt to hide relevant and damning evidence from the Respondent, Petitioner asserts confidentiality arguments on behalf of other minor children as their reason for refusing to comply with legitimate discovery requests. Respondent fails to believe that Petitioner actually cares about protecting the private information of said minor children. Rather, their petition for a writ of certiorari is another desperate attempt to conceal evidence of the Department’s failure to address rampant sexual abuse of children at Boys Home of the South. Petitioner is twisting the confidentiality statutes to delay discovery and trial in this case. Meanwhile, Respondent is still suffering the effects of the abuse he suffered from being repeatedly raped as a child while in foster care at Boys Home of the South. There is a reason that interlocutory appeals are an unusual and extraordinary procedure. Litigants like Respondent are left in a lurch for months on end during an interlocutory appeal, still waiting for their day in court on the merits.

## COUNTER-STATEMENT OF THE CASE

Respondent John Roe was twelve years old and in the custody of the South Carolina Department of Social Services (SCDSS) at the Boys Home of the South (BHOTS) when he was raped on multiple occasions by Steven Meek, a house parent. SCDSS had notice of and ignored specific dangers to Roe's safety and their grossly negligent conduct resulted in Roe being brutally and repeatedly raped. Unfortunately, the gruesome experience of the Plaintiff was far from isolated. At least two other boys were also raped by Meek at BHOTS while SCDSS did nothing to intervene.

Even after Roe's report of abuse was finally accepted as a report, SCDSS added insult to injury by conducting an extremely poor investigation into Roe's allegations; and despite the fact that Roe named a possible other victim who also disclosed abuse by Meek, ultimately there was no finding of abuse made by SCDSS and Meek was not placed on the Central Registry of Abuse and Neglect. In the aftermath of the SCDSS investigation into Meek, SCDSS made a conscious and deliberate decision not to question each and every other minor who was exposed to him, despite actual knowledge that the majority of child sexual assault victims never report such abuse until adulthood and despite the fact that SCDSS owed a duty to those children because SCDSS had legal custody of said children. In 2009, a third victim bravely came forward on his own and SCDSS's Out of Home Abuse and Neglect division finally made a finding of abuse against Meek and entered his name on the Registry of Abuse and Neglect.

Petitioner's defense in this case is that Roe is fabricating the allegation that he was raped by Meek. SCDSS is on record refusing to admit that Roe was raped by Meek in its answers to Plaintiff's requests to admit. Indeed, this is a curious defense since as stated above SCDSS in 2009 made a finding against Meek for sexual abuse of another child and entered Meek's name on

the Central Registry of Abuse and Neglect, at least partly based on the prior allegations of Roe. Yet, they boldly and unabashedly assert their defense that Roe is making up the fact that he was sexually abused by Meek.

BHOTS contracted with the State of South Carolina to provide congregate care (group home) placement for foster children in the care and custody of the State. SCDSS monitored and supervised the placement and when allegations of abuse and neglect were made against BHOTS, SCDSS's investigators from the Out of Home Abuse and Neglect division investigated the allegations. Over the years, SCDSS compiled a staggering number of investigations of abuse and neglect at BHOTS and failed to intervene as the monitor and supervisor of BHOTS to protect its foster children from being abused.

Petitioner has engaged in a calculated pattern of concealment in this case, attempting to hide information from the Respondent that is both relevant and compelling in proving Respondent's allegations against Meek. In discovery, Respondent's counsel asked whether there were other victims of Meek. SCDSS refused to answer this question, citing confidentiality concerns under S.C. Code Ann. § 63-7-1990. Respondent's counsel found out about the second and third victims through FOIA requests to the Greenville County Sheriff's Department. After Respondent's counsel produced a release for the records of the other two victims, SCDSS produced their files. Yet at the deposition conducted pursuant to 30(b)6, SCDSS refused to answer questions about the other victims. Respondent filed a Motion to Compel on this issue and the Motion was granted by the Honorable Judge Paul M. Burch. Petitioner then filed a Motion to Reconsider which was denied.

Petitioner then filed an interlocutory Notice of Appeal and Respondent filed a Motion to Dismiss the appeal. The Court of Appeals granted the Motion to Dismiss the appeal and denied

the Petition for Rehearing. Petitioner then filed a Petition for a Writ of Certiorari. Respondent renews his Motion to Dismiss and requests that the case be remanded to the trial court.

## ARGUMENT

The Court of Appeals was correct in dismissing the Petitioner's appeal as interlocutory. 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 trial court's order compelled cooperation in discovery. The trial 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. 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.

Petitioner goes to great lengths to emphasize that the trial court ordered the release of the documents ***prior*** to an *in camera* review as delineated in S.C. Code Ann. § 63-7-1990. The trial judge here had the option of reviewing the presumably thousands and thousands of pages of records at issue here to determine the "relevancy and necessity of the disclosure." Obviously the information requested was relevant and necessary in this case—Respondent already knows about

two other victims. Clearly the trial court did not believe that an *in camera* review was necessary because of the confidentiality order that was already in place. There is no reason for the trial court to take the time to review these documents when all identifying information would be redacted. Moreover, SCDSS did not even proffer the documents for the trial court's review in the first place. If they wanted the trial court to do an *in camera* review of the documents they should have been presented to the trial court promptly so that the parties could continue in discovery. Their failure to even proffer these documents to the trial court reveals their true motivation in seeking to conceal their own negligence in allowing children to be sexually abused at Boys Home of the South.

Petitioner's petition also takes great pains to emphasize that the release of this information supposedly subjects them to criminal penalties. The code section at issue here sets up criminal penalties for the wrongful release of information protected under the terms of the statute, which was a legitimate concern of the legislature and necessary to fully protect confidential information from release except in certain circumstances. But the idea that SCDSS could somehow risk criminal prosecution for releasing redacted records after having been ordered to do so by a judge is frankly ridiculous.

Petitioner relies on the case of *Ex Parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 630 S.E. 2d 464 (2006) for support for their proposition that they are entitled to seek an immediate appeal. This case is distinguishable because it involved release of records from divorce proceedings in family court and the name of the individual in question was already known. In that case, the Court did find that the order was immediately appealable but then affirmed the trial court's decision to release the information. Here, the names of any individuals involved are not known and will not be released. Similarly, the *Laffitte* case involving disclosure of trade secrets is also

distinguishable. Trade secrets are not at all similar to records involving child abuse. A trade secret cannot be redacted but the names and identifying information of minors can be redacted from the records at issue here.

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 a much more similar factual situation to the case at bar than the cases that Petitioner cites. 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. He 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, 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 deny the Petition and remand this case back to the trial court for further proceedings.

In their Petition, SCDSS 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.

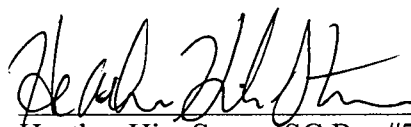
SCDSS and its OHAN investigators knew in real time that BHOTS was a house of horrors and Respondent believes that these records will show that the agency knowingly threw our most vulnerable children into an unsafe, unsupervised, and dangerous environment.

Lastly, Respondent would ask the Court to strike SCDSS's exhibits. Some of these exhibits were not presented to the Court of Appeals and were not part of the record there. More importantly, in some of the exhibits SCDSS has failed to redact the last name of one of the other victims, who has filed under a fictitious name in order to protect his anonymity and privacy. Respondent would contend that this is in violation of the very statute the agency is purported to be concerned about. Again, Respondent asserts that SCDSS's true motive behind this petition is to conceal evidence, rather than protecting confidentiality.

#### CONCLUSION

For the foregoing reasons, the Court of Appeals was correct. This appeal is interlocutory and should be dismissed. This Court should deny the Petition for a Writ of Certiorari.

February 28, 2017

  
Heather Hite Stone (SC Bar #72503)  
Hite and Stone  
100 East Pickens Street  
P.O. Box 805  
Abbeville, SC 29620  
[heather@hiteandstone.com](mailto:heather@hiteandstone.com)

Robert J. Butcher (SC Bar #74722)  
The Foster Care Abuse Law Firm PA  
P.O. Box 486  
Manning, SC 29102

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

RECEIVED

MAR - 3 2017

S.C. SUPREME COURT

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

Case No. 2014-CP-23-04140  
Appellate Case No. 2017-000256

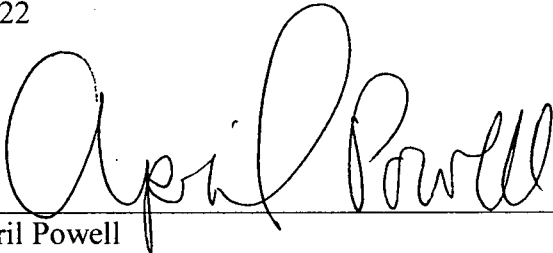
John Roe,.....Respondent,  
v.  
South Carolina Department of Social Services,.....Appellant.

**PROOF OF SERVICE**

I, the undersigned employee 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 Return to the Petition for Certiorari

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

  
\_\_\_\_\_  
April Powell

February 28, 2017