

THE STATE OF SOUTH CAROLINA  
In The 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. 2016-000919  
Court of Appeals Order filed January 13, 2017

RECEIVED

MAR 14 2017

S.C. SUPREME COURT

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

PETITIONER'S REPLY TO RETURN TO THE PETITION  
FOR A WRIT OF CERTIORARI

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 Petitioner

Other Counsel of Record:

Heather Hite Stone  
Hite & Stone  
P.O. Box 805  
Abbeville, SC 29620  
(864) 366-5400

Robert J. Butcher  
The Foster Care Abuse Law Firm, PA  
P.O. Box 486  
Manning, SC 29102  
(803) 432-7599  
Attorneys for Respondent

## STATEMENT OF THE CASE

South Carolina Appellate Court Rule 242(d)(3) provides that the Petition shall contain “a concise statement of the case, containing the facts material to the consideration of the questions presented.” While Petitioner gave a concise recitation of the facts pertaining to the issues on appeal, Respondent chose to give his jury argument to the Court. Without responding to each and every irrelevant and disputed jury argument presented by Respondent, the Petitioner briefly replies to a couple of the more egregious statements contained in Respondent’s Counter-Statement of the Case. First, Respondent argues that Petitioner “had notice of and ignored specific dangers to Roe’s safety....” (Return, p. 3). Respondent bases his notice argument on a Guardian Ad Litem report prepared shortly after Roe’s arrival at the group home. Respondent, however, fails to include in his Counter Statement of the Case that this same Guardian Ad Litem report states that Roe is doing well at the group home. Respondent also fails to advise the Court that the Guardian Ad Litem in a subsequent affidavit provides that her statement regarding possible sexual abuse was a reference to Roe’s father prior to placement and, thus, could not have possibly placed the Petitioner on notice of any specific danger at the group home. <sup>1</sup>

In addition, Respondent grossly misstates the scope of the issue on appeal. In his Counter Statement of the Case, Respondent erroneously characterizes Respondent’s requests and Petitioner’s objections to questions of “whether there were other victims of Meek.” (Return, p. 4). Far beyond simply seeking information regarding other victims of Meek, the Respondent seeks disclosure of “the particulars of each adult-on-child and child-on-child sexual abuse or sexual touching incidents at BHOTS....” (See Respondent’s 30(b)(6) Deposition Notice, Appendix, p. 7). In this matter, Respondent alleges that he was sexually assaulted by an adult. In true fishing

---

<sup>1</sup> Petitioner will supplement the Appendix with the subject Guardian Ad Litem Report and Affidavit if the Court determines that Respondent’s jury arguments are even remotely relevant to the issues on appeal.

expedition fashion, however, Respondent also seeks disclosure of child-on-child incidents which underscores the need for an in-camera review to determine the relevancy of this statutorily protected material prior to disclosure. Petitioner submits that this case presents the exact scenario that the Legislature envisioned when it enacted S.C. Code Ann. §63-7-1990.

### ARGUMENT

Prior to the disclosure of confidential information regarding the alleged sexual conduct or abuse of minors, the South Carolina Legislature has clearly mandated that the Court must first 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. S.C. Code Ann. §63-7-1990. In his Return, however, the Respondent takes the extraordinary position that compliance with § 63-7-1990 is optional. More specifically, Respondent inexplicably argues that the “trial judge here had the option of reviewing” documents and that “clearly the trial court did not believe that an in-camera review was necessary....” (Return, pp. 5-6). With all due respect, Respondent’s suggestion that Petitioner or the Court do not have to follow the clear statutory directives surrounding the disclosure of these incredibly sensitive and confidential documents involving minors is absurd. Furthermore, Respondent’s contention that “redaction” of statutorily protected documents may be arbitrarily substituted for an in-camera review, a judicial determination of relevancy and necessity, and a narrowly tailored disclosure is without merit. It is incumbent upon the parties and the Court to follow § 63-7-1990 – not re-write it.

Respondent advances several additional arguments that Petitioner will address in short order. First, Respondent’s contention that Petitioner should have proffered the subject documents is erroneous. Petitioner requested an in-camera review of the subject documents as required by statute and the Court declined. A proffer would constitute just another request for the court to

review the documents that it has already declined to review. Respondent fails to cite any authority in support of its position regarding the necessity of a proffer. Second, Respondent scoffs at the notion that the Petitioner should be concerned about the risk of criminal penalties or fines. Of course, this is an easy position for the Respondent to take. Again, South Carolina law requires an in-camera review and a determination of relevance and necessity prior to any disclosure of information regarding sexual conduct/abuse of minors. Disclosing these confidential documents without ensuring that the statutory procedures are followed subjects the Petitioner to the risk of criminal penalties. With respect, in the clear absence of a judicial review of these documents as mandated by state law, Petitioner does not wish to test the defense that it acted pursuant to a court order.<sup>2</sup>

Finally, the Respondent has the audacity to complain that the Petitioner failed to redact a minor's name in documents contained in the Appendix. (Return, p. 8). Incredibly, the document(s) that contain the unredacted name of the minor was put into the record by the Respondent himself. In preparing the Appendix, the Petitioner included the relevant lower court filings to enable this Court to consider the questions presented. In so doing, it never occurred to Petitioner that the Respondent would raise a privacy concern when it was in fact the Respondent who failed to redact the minor's name in the first place. With that said, if the Respondent wishes for the Petitioner to correct his mistake and redact Respondent's own pleading, Petitioner will be happy to do so.<sup>3</sup>

#### CONCLUSION

In summary, state law expressly prohibits the disclosure of confidential information unless and until the requirements of § 63-7-1990 are met. Petitioner steadfastly maintains that compliance

---

<sup>2</sup> Equally objectionable is the notion that Petitioner could be faced with the decision to be held in contempt of court if the procedures mandated by § 63-7-1990 are not followed prior to the disclosure of confidential information.

<sup>3</sup> Counsel for Respondent also represent the minor whose name they failed to redact.

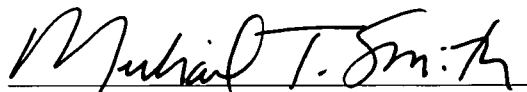
with § 63-7-1990 is mandatory. Respondent, on the other hand, contends that adherence to § 63-7-1990 is purely optional. Further, Respondent's accusations that compliance with state law prior to the disclosure of confidential information and the pursuit of an in-camera review constitute efforts to "conceal" evidence are nonsense. (Return, p. 6, 8).

Typically, the decision to conduct an in-camera review is left to the sound discretion of the trial court. In this instance, however, the South Carolina Legislature has stepped in and set forth the procedures which must be followed before the Petitioner can disclose confidential information regarding the alleged sexual conduct/abuse of minors. Petitioner respectfully submits that the lower court erred in ordering the disclosure of confidential information in a manner that violated § 63-7-1990 and that the Court of Appeals erred in dismissing the appeal as interlocutory. The Legislature's enactment of § 63-7-1990 removes this appeal from one that can be classified as a mere discovery dispute and this appeal is properly before this Court.

Based on the arguments contained in the Petition and in this Reply, Petitioner renews its request that the court grant the Petition for a Writ of Certiorari.

Respectfully submitted,

March 10, 2017



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 Petitioner South Carolina Department  
of Social Services

THE STATE OF SOUTH CAROLINA  
In The 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. 2016-000919  
Court of Appeals Order filed January 13, 2017

---

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

---

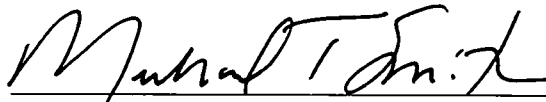
CERTIFICATE OF SERVICE

---

The undersigned hereby certifies that a copy of the Petitioner's Reply to Return to the Petition For A Writ Of Certiorari was served by first class mail, postage prepaid this 10<sup>th</sup> day of March, 2017, 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



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 Petitioner