

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM BERKELEY COUNTY  
Family Court

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Family Court Case No. 2019-DR-08-1653

Appellate Case No.

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**RECEIVED**

**Aug 05 2020**

**SC Court of Appeals**

Ryan E. Terrell,

Petitioner,

v.

Bryan R. Terrell,

Respondent.

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**MOTION TO SUPPRESS RECORDED COMMUNICATIONS**

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This matter comes before the Court on behalf of Petitioner (Defendant in the pending action before the Family Court for Berkeley County) by and through her undersigned counsel, who would show unto this Court, pursuant to Rule 240, SCACR, and Court News as posted and denoted as 2020-03-20-01, and S. C. Code Ann. § 17-30-110, Petitioner moves this Court for an Order to suppress intercepted communications between Petitioner and non-parties by the Respondent (Plaintiff in the pending action before the Family Court for Berkeley County).

Petitioner makes this Motion on the following grounds:

1. Petitioner was made aware of intercepted communications between herself and non-parties as evidenced by Respondent's attorney's representation to the Court on November 6, 2019, appearing before The Honorable Randall E. McGee, presiding judge. Respondent's attorney stated, "My client found on his sons' cell phone which first was taken into his home without even knowledge that a new phone was in existence – he found a cell phone or he put up his child's cell phone for the evening, and it began binging late at night. He looked at it, and it was text messages between mother and mother's boyfriend; and all sorts of nudity pictures being exchanged. It is just beyond crass. I think it's undisputed what was on that phone, actually, did occur on the phone. I have the affidavit of the man who made a carbon copy of the phone. We released the complete portal of the entire phone to opposing counsel, and then we began trying to negotiate a resolution." (Transcript of Record, Page 4, Lines 12 through 23.) Further, Respondent's attorney indicated that additional monitoring took place as evidenced by the attorney's statement, "she (Petitioner) continues in her own email to say, ..." (Transcript of Record, Page 8, Line 1. A copy of that Transcript of Record is attached hereto as Exhibit "A".) This clearly is evidence of an interception of Petitioner's text messages being ongoing. Further, pursuant to Respondent's "expert" witness, Jeremy Gilbert of Dixon Hughes Goodman, LLP, Respondent gave to this individual the iPhone which Respondent had taken

from the parties' son and falsely represented to Mr. Gilbert that the iPhone belonged to the child (age 14 at the time) of the parties, providing to Mr. Gilbert the login information which allowed for information "including pictures, video and text messages" to be placed in a portal for Respondent and his attorney.

2. Petitioner's counsel has attempted to reach an agreement with Respondent's counsel which would assure that none of the information that was unlawfully obtained by the interception of these communications or any evidence obtained subsequent to the interception of these communications would be utilized in any court proceeding; however, Petitioner's counsel has now been advised by Respondent's counsel that Respondent and his attorney intend to utilize said information at future upcoming proceedings.

3. Counsel for Petitioner would submit that on its face the actions of Respondent in intercepting text messages between Petitioner and non-parties is in violation of federal law, specifically U.S. Code Ann., 18 U.S.C.A. § 2511 (1) which subject the violator to both criminal and civil sanctions as provided in those code provisions, thereby subjecting the violator and/or anyone who further transmits the information up to five (5) years imprisonment or a fine. Further, 18 U.S.C.A. § 2515 specifically prohibits the use of any evidence of intercepted wire or oral communications in "... any trial, hearing, or other proceeding in or before any Court, ... of the United States, a state, or a political subdivision

thereof if the disclosure of that information would be in violation of this chapter” as well as the corresponding state statute as addressed hereinbelow.

4. South Carolina law similarly forbids under S.C. Code Ann. § 17-30-20 the intentional interception, attempt to intercept, or disclosure to any person the contents of any wire, oral, or electronic communication knowing or having reason to know that the information was obtained to the interception to be punishable by a fine of up to \$5,000.00 and imprisonment of not more than five (5) years. South Carolina law similarly under S.C. Code Ann. § 17-30-65 forbids the admissibility or use of the contents of such intercepted communication.

5. Petitioner would submit that prior to the review, dissemination, or any use of such unlawfully obtained information, Petitioner may move before this Court, and hereby does, for this Court to hold an expedited hearing before an appropriate panel, to make a factual finding, not only as to whether or not the communication violates the law, meets any exception to the federal and state laws as to the applicability of the appropriate statutes, but also as to the other general admissibility issues relating to the admissibility of such communications such as authenticity and accuracy.

6. Petitioner would submit that under both statutes, the only applicable exception would be an implied consent exception as specified in *State v. Whitner*, 399 S.C. 547, 732, S.E. 2d 861 (2012), also interpreting and relying upon *Pollock v. Pollock*, 154 F.3d 601 (6<sup>th</sup> Cir. 1998). Petitioner would submit

that only after the hearing mandated by S. C. Code Ann. § 17-30-110 and U.S. Code Ann., 18 U.S.C.A. § 2511 may such a determination be made, and that the subsequent case law is extremely fact specific and determinative as to the outcomes of those cases as to whether or not any exception exists for the intercepted communications in question under state and/or federal law.

For these reasons and such further reasons as may appear at any hearing to be set on the matter, Petitioner hereby moves for a hearing to be held by this Court as required by S. C. Code Ann. § 17-30-110, *et seq*, and U. S. Code Ann., 18 U.S.C.A. § 2511, *et seq*, and appropriate rulings made as to the intercepted communication(s) and that in the interim, any action by the trial court below be stayed in addition to an Order requiring the immediate listing of and disclosure of all documents and/or records concerning the interception of conversations of Petitioner, plus, such other action, rulings, and other relief as may be appropriate in this matter, including but not limited to, an award of attorney's fees, costs and expenses. Counsel verifies that he attempted in good faith to resolve this matter prior to filing this Motion to no avail. Counsel also affirms to this Court that he has, by copy of this Motion, notified opposing counsel, the Guardian ad Litem, and the Court below of this Motion.

Petitioner also moves for an order of this Court requiring the lower Court to segregate and seal the unlawfully obtained electronic communication and any evidence that has been gleaned from the use of said communication. Petitioner

believes that information should be bifurcated in the Court's file prohibiting review of said information by the Court, either party, or the public.

Respectfully submitted,



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August 4, 2020

STATE OF SOUTH CAROLINA        )  
  )  
COUNTY OF BERKELEY            )        IN THE FAMILY COURT  
  )        2019-DR-08-1653

BRYAN R. TERRELL,                )  
  PLAINTIFF,)        )  
  )        )  
  VS.                )        TRANSCRIPT OF RECORD  
  )        )  
RYAN E. TERRELL,                )        )  
  DEFENDANT.)

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November 6, 2019  
Moncks Corner, South Carolina

B E F O R E:

THE HONORABLE RANDALL E. MCGEE, Judge

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

MARY J. MURRAY, ESQ.  
Attorney for the Plaintiff

F.P. SEGARS-ANDREWS, ESQ.  
Attorney for the Defendant

BONNIE M. BRITT  
Official Court Reporter

EXHIBIT "A"

1 (The following hearing was held on November 6, 2019.)

2 THE COURT: All right. This is the case of Bryan -- is  
3 it Terrell?

4 MR. TERRELL: Terrell.

5 THE COURT: Terrell vs. Ryan Terrell, 2019-DR-08-1653.  
6 This matter is set before the Court today, I believe, for a  
7 temporary hearing. Apparently, it was originally scheduled  
8 for an emergency hearing back on August 29th, but for some  
9 reason it was continued and reset for today. I do have both  
10 of the parties present in the courtroom; plaintiff  
11 represented by Ms. Murray, and the defendant represented by  
12 Ms. Segars-Andrews. I have received packages for both  
13 parties which I will, of course, make part of the record  
14 here today. I'll give y'all about five minutes a piece to  
15 give me some oral argument as to the relief you are  
16 requesting in this matter.

17 And then, Ms. Murray, I'll give you the last argument  
18 since you carry the burden of proof with the motion here  
19 today. I'll be glad to hear from you.

20 MS. MURRAY: Yes, Your Honor. May it please the Court.  
21 We're here seeking a change of custody. Quite frankly,  
22 these parties have been working under a joint custody  
23 arrangement since 2012. It has had its share of  
24 difficulties, but as of late it is getting worse and worse.

25 Not included in my affidavits before the Court is some

1 information I just learned this morning that mother,  
2 unilaterally, signed the oldest son up for football; did not  
3 even consult with father; did not even tell father that  
4 happened. He had to learn it from her son. This same child  
5 has now had his phone taken away. Mother did not bother to  
6 tell father.

7 It seems that mother is trying to set father up. And  
8 why we're here and why we were originally here as an  
9 emergency, but we thought we would try to negotiate and get  
10 it resolved; but negotiations broke down at the last moment  
11 is I think because my client is child focused.

12 My client found on his son's cell phone which first was  
13 taken into his home without even knowledge that a new phone  
14 was in existence -- he found a cell phone or he put up his  
15 child's cell phone for the evening, and it began binging  
16 late at night. He looked at it, and it was text messages  
17 between mother and mother's boyfriend; and all sorts of  
18 nudity pictures being exchanged. It is just beyond crass.  
19 I think it's undisputed what was on that phone, actually,  
20 did occur on the phone. I have the affidavit of the man who  
21 made a carbon copy of the phone. We released the complete  
22 portal of the entire phone to opposing counsel, and then we  
23 began trying to negotiate a resolution.

24 We've been unable to negotiate a resolution because  
25 mother is insistent on wanting the schedule to somehow track

1 her new boyfriend or new husband -- I believe, he's a common  
2 law husband. We haven't seen a marriage certificate, yet --  
3 but track his schedule as opposed ---

4 THE COURT: We don't have common law marriage anymore,  
5 Counsel.

6 MS. MURRAY: I believe, if ---

7 MS. SEGARS-ANDREWS: Your Honor, they're married.

8 MS. MURRAY: Okay. Well, then, so that eliminates that  
9 issue. But at the time we were negotiating, it was about  
10 Mr. Crawford. It was in June -- I believe, late June before  
11 our opinion came down about common law. So our initial  
12 agreement acknowledged a common law marriage. But in any  
13 event, despite what -- what the important thing about what  
14 is on that phone is not so much the crass language; the  
15 pictures; whether the son saw it or not, I think that  
16 remains to be seen. I think there's evidence that it will  
17 take many years, probably, to get to the truth of exactly  
18 how much this child saw if anything.

19 What that phone does is it shows us a glimpse into  
20 mother's heart and her husband's heart, and to what kind of  
21 people they are; that they spend their days, hours at a time  
22 with neither of them working, texting and bashing everyone  
23 and everything; plotting the demise of my client; bashing  
24 his spouse. Just talking about an incident set forth in my  
25 affidavit for example on Thanksgiving, mother says, laughing

1 with Mr. Crawford, The children -- one of the children is  
2 sick. I'm not going to send the doctor's note over. I  
3 think I'll save that little splendor until they're on the  
4 road on their road trip; that she sent them with a sick  
5 child without the doctor's note; more disgusting  
6 conversations about withholding his time and setting him up.

7 At Christmas, she acknowledges Christmas vacation. He  
8 shows up on Christmas morning, and they seem to be laughing  
9 about the fact that, Yeah, I didn't come to the door until  
10 after 9:00. Now, that we're married, we're going to get a  
11 big new house with a gate; and make him wait outside and  
12 ring the bell all day, and not let him trespass.

13 It just shows just blackness. And this is what the  
14 children are being exposed to. So mother's going around  
15 doing ---

16 THE COURT: Well, how do you know the children are  
17 being exposed to that if it's communications between her and  
18 her husband? They don't sound like they're nice or, maybe,  
19 even appropriate, but if they're confined to the two of them  
20 talking, how do you know that's been relayed to the  
21 children?

22 MS. MURRAY: Well, through the children's therapist, we  
23 know that the children are saying, Mama says, Mama says; and  
24 constantly criticizing father that you don't have this at  
25 your house, or you don't have this at your house. So

1 there's things being shared, and I think that's why we need  
2 a guardian ad litem. And I think -- we have agreed to the  
3 guardian ad litem. And I think in my packet I sent the  
4 consent order appointing her.

5 THE COURT: Who did you agree to?

6 MS. MURRAY: Maria Averill.

7 THE COURT: Is that correct, Counsel?

8 MS. SEGARS-ANDREWS: That's correct, Your Honor.

9 THE COURT: She's a fine guardian. I have no problem  
10 with appointing her.

11 MS. SEGARS-ANDREWS: Your Honor, we have also disclosed  
12 that there are some -- she -- I was, actually her mentor  
13 when she first started practicing; and my client years ago  
14 rented space, but...

15 THE COURT: And y'all have talked about that?

16 MS. MURRAY: We've discussed that, and it's the  
17 therapist's recommendation is who this guardian is for us.  
18 Because we also believe that there's parental alienation  
19 going on with some of the things that mother is saying. So,  
20 also, we've had -- mother just keeps shutting father  
21 completely -- or doing her best to shut the father  
22 completely out. This summer, after we thought we had an  
23 agreement to go week on week off -- and they discussed it  
24 with the therapist -- the children were quite happy.  
25 Knowing a lawsuit was coming, mother hasn't changed her

1 behavior. She continues in her own email to say, Well,  
2 here's what I really said about the new schedule. It's  
3 because if Daddy has his way, he'll hardly ever see Drew.

4 My client acknowledges Drew is a problem. They are  
5 letting the children -- and they are talking to the children  
6 about vote -- there's four step parents; who do you like the  
7 best, vote. I'd like to have him spend the night with me  
8 when we go on holiday; do you children approve of it?

9 That's just not child-focused behavior. And so that's  
10 why we're here. We tried to ---

11 THE COURT: So what is your client looking for? You're  
12 running out of time.

13 MS. MURRAY: My client is looking for sole custody; mom  
14 to have every other weekend, Friday to Monday. And because  
15 there are activities that mother wants the child -- the  
16 children to have -- let her also have each and every  
17 Wednesday. That would still allow mother's new husband to  
18 spend time with the children if the Court deems it  
19 appropriate. We're also looking for mother to advance the  
20 guardian ad litem and all the therapy fees since, I believe,  
21 we're here as a result of her conduct. Thank you.

22 THE COURT: Thank you.

23 Ms. Segars-Andrews, be glad to hear from you.

24 MS. SEGARS-ANDREWS: Thank you, Your Honor. Your  
25 Honor, my client made a technical mistake that allowed her

1 I-Cloud information to download to her son's phone. So  
2 they, now, have her past, present, and innermost thoughts.  
3 She admits that mistake. Fortunately, according to the  
4 child's therapist, Dr. Henderson, the child, Henry, didn't  
5 see anything.

6 Since that time, my client has talked with an IT  
7 expert, and has learned how this might have happened; and  
8 it's explained in our affidavit to assure that this never  
9 happens again. But, unfortunately, Mr. Terrell downloaded  
10 everything. And he is using her innermost thoughts against  
11 her. And he has even provided that information to the  
12 children's therapist.

13 Mr. Terrell states everything he feels that Ryan has  
14 done wrong in paragraph nine of his complaint. Ryan, my  
15 client, through her answer and verified counterclaim,  
16 through paragraph four and 24, explains the text messages  
17 and things. And most of what he says is taken out of  
18 context. Ryan did talk poorly about Mr. Terrell in her  
19 texts to her husband and friends -- her husband and  
20 girlfriend. But, Your Honor, who else do you vent to? She  
21 didn't talk bad about him to the children. But you vent to  
22 your husband and you vent to your girlfriends.

23 Mr. Terrell is angry at Ryan to the point that he  
24 cannot put his love for his children above his anger towards  
25 Ryan. You will see that in the affidavits, Your Honor. He

1 can't stand being in the same room with her. And the  
2 children feel it. When they're at plays together,  
3 children's events, the children are afraid to speak to my  
4 client if their father brings them. He disciplines the  
5 children inappropriately to the point some time they don't  
6 want to go over there; and that's been a big problem.

7 He doesn't put the children first. If any of the  
8 children's activities interfere at all with his schedule,  
9 the children miss their events. It appears that his anger  
10 has also spilled over to his wife, because his wife has  
11 called my client "trash," and the children have come home  
12 and told her that. That will be the woman who takes care of  
13 these children if he gets custody, the step-mother who  
14 thinks my client is trash.

15 Your Honor, contrast his behavior with Ryan's. My  
16 client is child centered. You will see from the affidavit  
17 that we were able to put into evidence because of the time,  
18 that she goes to every appointment; every game; every school  
19 event; she has been present for everything. Look at  
20 Stephanie Blunt's affidavit. You will see she's present for  
21 everything. And in three years that her son has been best  
22 friends with one of these children, he's been present one  
23 time.

24 My client is the one that picks them up when they're  
25 sick. She has a good relation with her children's friends

1 and her children's friends' parents, unlike the father. She  
2 has encouraged the father to spend time with these children.  
3 He went for years where he wouldn't take his Tuesday nights.  
4 She constantly was encouraging him to do that.

5 My client is a stay-at-home mom. These children are  
6 doing well. There are some issues, and, Your Honor, it's  
7 because of his anger. If we're here to punish my client  
8 because she's not technologically savvy, and she vented to  
9 her friends about her ex-husband, then Mr. Terrell should  
10 get custody. However, if we're here for the best interest  
11 of these children, they should remain with my client who has  
12 been their primary caretaker since they were born, and who  
13 has done a good job.

14 Your Honor, these children are all making great grades.  
15 Your Honor, I sent Ms. Murray an email on October 20th  
16 requesting we get a guardian -- I'm sorry, October 3rd, a  
17 month ago. So that we could have a guardian investigate  
18 before we come here today. She didn't respond. If a  
19 guardian investigates this, Your Honor, they will never  
20 recommend that my client lose custody. This man is angry  
21 and the children feel it.

22 Your Honor, we're asking that the October 2012 order  
23 remain in effect until the guardian -- at least until the  
24 guardian has investigated, and looked at -- they can look at  
25 everything this man has produced on this phone because his

1 texts to my client are awful. You can feel his anger.

2 Thank you, Your Honor.

3 THE COURT: Thank you.

4 You've got two minutes.

5 MS. MURRAY: Yes, Your Honor. This is the first I've  
6 heard that Mr. Terrell is angry. If Mr. Terrell was angry  
7 he certainly would not have tried to work this out and reach  
8 a fifty-fifty agreement -- which they did and then acted on  
9 until the start of the school year much to the happiness of  
10 the children and the therapist.

11 After the fifty-fifty agreement went away because  
12 Ms. Terrell wanted to switch the weekends completely around  
13 to accommodate her husband, things started again  
14 deteriorating. It's because, I think, Ms. Terrell -- the  
15 former Ms. Terrell has a burning desire to make sure her new  
16 husband is accommodated; nobody else, but her new husband  
17 which is why we're asking that the rotation that's been in  
18 place for seven years accommodate the only man who's  
19 working; who has a job; the only step-parent -- he's the  
20 breadwinner for the family. So that's why I think it's  
21 deteriorated.

22 But to say that my client gave the therapist the  
23 information on the phone, that's not true. He shared with  
24 the therapist what the children may have seen. But he did  
25 not share what was -- anything regarding that phone. The

1 therapist were requesting the complaint which was given, but  
2 that's all that has been done. And I think the complaint  
3 speaks for itself. Talking with an eight-year-old saying,  
4 I'm going to let you know one day that he's not your real  
5 dad, because your dad adopted him because during the  
6 marriage I stepped out and had a child with somebody else.

7 And this angry man has adopted this child, and has kept  
8 this child as his own. This is not an angry man. This is a  
9 mother who wants something better for herself, not her  
10 children. Thank you.

11 THE COURT: All right. Thank you.

12 MS. SEGARS-ANDREWS: Your Honor, we do have one  
13 agreement that we would agree to.

14 THE COURT: What is that?

15 MS. SEGARS-ANDREWS: If the husband would agree to get  
16 the children to their extracurricular activities and events,  
17 we would -- my client would agree to a week-on-week-off  
18 schedule.

19 THE COURT: Did y'all agree to that?

20 MS. MURRAY: We had agreed to a week-on-week-off  
21 schedule, but then they wanted to flip flop when the weeks  
22 changed to change it to an exchange on a Monday after we  
23 went through a mediation exchanging it on a Friday. So  
24 they're ---

25 MS. SEGARS-ANDREWS: Your Honor, when we didn't have an

1 agreement, I told my client to go back to the only order  
2 that was in place.

3 THE COURT: All right. I'm going to take the matter  
4 under advisement. If y'all reach some agreement before I  
5 send out a memo of decision to you by email, please let me  
6 know; and you can submit a consent order to me. Otherwise,  
7 you've made your arguments; you've presented your packages  
8 to the Court. Just for edification of the parties, this is  
9 how I do this. When I take a matter under advisement, I  
10 take notes on the legal arguments that are made in the  
11 courtroom, and then I read these outside of the courtroom,  
12 because your lawyers have worked very hard to prepare these  
13 for me, for me to review in a fashion in which I can take it  
14 all in. Fifteen minutes in the courtroom, I don't think is  
15 sufficient for me to do it. I'm not saying other judges  
16 can't do it, but I can't do it. I'll be the first one to  
17 tell you. So I'm going to take these and I'm going to read  
18 them. And after I read them, then I'm going to come to a  
19 conclusion; I'll make a decision, and I'll let your  
20 attorney's know; and I'll direct one of them to prepare the  
21 temporary order. Again, if you reach some sort of an  
22 agreement before that time, y'all let me know just as  
23 quickly as you can. Thank you.

24 MS. MURRAY: Thank you, Your Honor.

25 MS. SEGARS-ANDREWS: Thank you,

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CERTIFICATE OF REPORTER

I, the undersigned BONNIE M. BRITT, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Family Court for Berkeley County, South Carolina, on the 6th day of November 2019.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

July 12, 2020

\_\_\_\_\_  
Official Court Reporter

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY  
Family Court

**RECEIVED**

**Aug 05 2020**

**SC Court of Appeals**

Family Court Case No. 2019-DR-08-1653

Appellate Case No.

Ryan E. Terrell,

Petitioner,

v.

Bryan R. Terrell,

Respondent.

**PROOF OF SERVICE**

I certify that I have served the foregoing Motion to Suppress Recorded Communications (with attachment) via email and via U. S. Postal Service, postage prepaid, on August 5, 2020, to the following addresses:

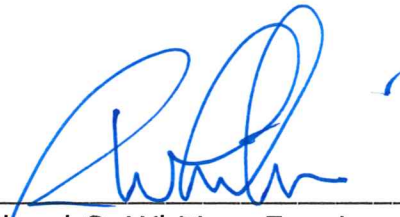
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August 5, 2020

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August 5, 2020

**VIA MICROSOFT ONE DRIVE AND U. S. MAIL**

The Honorable Jenny Abbot Kitchings  
South Carolina Court of Appeals  
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Columbia, SC 29211

**RECEIVED**  
**Aug 05 2020**  
**SC Court of Appeals**

RE: Bryan R. Terrell v. Ryan E. Terrell  
Civil Action No. 2019-DR-08-1653

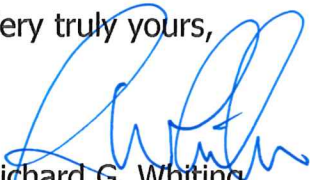
Dear Ms. Kitchings:

Enclosed please find Petitioner's Motion to Suppress Recorded Communications between Petitioner and non-party individuals. By copy of this correspondence via email I am also serving copies of this motion on attorney for Respondent, the Guardian ad Litem, co-attorneys for Petitioner, and the trial court. Also enclosed is a check for the filing fees for this Motion.

If anything else is needed, please do not hesitate to contact my office.

With kindest regards, I am,

Very truly yours,



Richard G. Whiting

/klh

enclosures

cc: Mary J. Murray, Esquire, Attorney for Respondent (via email)  
Maria Averill, Esquire, Guardian ad Litem (via email)  
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