

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Apr 12 2021

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Family Court

Family Court Case No. 2020-DR-10-2130

Appellate Case No. 2021-000278

Jennifer Renee McMaster,

Petitioner,

v.

James Michael McMaster,

Respondent.

PETITIONER'S REPLY TO RESPONDENT'S RETURN

Petitioner, pursuant to SC Code § 17-30-170, has moved before this Court to suppress certain intercepted communications between Petitioner and certain non-parties. Respondent has filed his Return to Petitioner's Motion wherein Respondent admits secretly installing/placing a visual recording device and an audio recording device in the residence occupied by Petitioner and the parties minor (16-year-old) child and allowing the devices to continuously record visual and oral communications, movement, and other activities by Petitioner, the parties' 16-year-old child, and others Petitioner is informed and believes. Respondent goes on to clearly outline that these recording devices were placed in the home without the

knowledge or consent of Petitioner and were allowed to record for an extensive period of time. See page 5 of Respondent's Return to Petitioner's Motion to Suppress wherein Respondent states, "When I recalled that the camera was installed, I reviewed recordings from the January-February 2021 time frame. ..."

Not only has Respondent intercepted certain conversations between Petitioner and non-parties but has now in his Return otherwise used and disclosed contents of those unlawful intercepted conversations. Respondent states that, "In all the recordings at issue Respondent's daughter is present." (See page 6 of Respondent's Return.) Respondent immediately thereafter states that his review of the "tapes" uncovered "multiple, routine, and extensive conversations between the minor child, mother, the maternal grandmother, and the maternal step-grandfather." However, none of these "tapes" have been made available to Petitioner or her attorneys for examination nor can they be examined without a court order allowing for said examination. What other conversations have been recorded are at this point unknown.

Attached hereto as Exhibit A are the written correspondences from Respondent to Petitioner which were delivered along with the "trojan horse" aerogarden light which contained the visual and audio recorder thus demonstrating that at the time these devices were placed in the home with the sole intent and purpose to illegally intercept conversations between whoever was in the home that Respondent represented his marriage and relationship between himself and

Petitioner was one of loving and caring. In no manner has Respondent set out that he was concerned about what was going on between himself and any of Petitioner's family members and the parties' child prior to installing these devices in the home. The Guardian ad Litem, who is extremely experienced in this area as setout herein, indicated to both counsel for Petitioner and counsel for Respondent that "unless I have missed something, there has been no finding of alienation." (See attached Exhibit B for the complete email sent by the Guardian ad Litem on April 6, 2021 to both attorneys of record.)

Petitioner draws the Court's attention to page 7 of Respondent's Return wherein Respondent goes on to set out the lengths of times that the recordings were reviewed by him and, clearly, portions of the alleged recordings have been utilized by Respondent in his correspondent to this Honorable Court. This is again a repeat of Respondent's prior conduct where he attempted to utilize the content of unlawfully recorded conversations before the Honorable Daniel E. Martin, Jr. in the Charleston County Family Court as set out further in Petitioner's Motion to Suppress.

As contained in the last paragraph on page 2 of Respondent's Return, Respondent alleges that "All recording[s] at issue before the court are from a spy camera purchased on September 1, 2020...." Petitioner is informed and believes that this is not correct. From the research done by Petitioner's counsel, this is not possible. The spycam appears to be only capable of visual recording. However, in December 2020 the aero-garden light was delivered to the home by Respondent's

co-worker. In this grow light, only discovered when Petitioner had her home swept on March 15, 2021, Petitioner discovered that the base of the grow light contained two (2) recording devices (a camera and a microphone). The aero-garden was delivered to the home allegedly as an anniversary gift from Respondent to Petitioner. Respondent had relinquished use and possession of the former marital residence on or about September 2, 2020 when he signed a lease on an apartment which he moved into.

At paragraph 2 on page 5 of Respondent's Return, Respondent states that he was rushed to move out while working and "forgot about the recording device" he had placed in the residence. This is obviously a falsehood as, again, Respondent has signed a lease on an apartment on September 2, 2020 and that apartment came fully furnished. There was no rush for Respondent to move out of the home.

The Respondent did not raise any issue of alienation until February 2021 although the recording devices were installed in September 2020.

In support of his position that he acted in the best interest of the minor child in placing these devices in the residence, Respondent delivers to this Court an Affidavit signed by Dr. Marcino. At one point Dr. Marcino's Affidavit states, "...it is certainly out of the ordinary to have not made any progress after seven months of time." To be clear, at the time of Dr. Marcino's written statement he had only conducted six therapy sessions with Respondent and the parties' daughter. Additionally, the child was not allowed to have any contact with her father until

January 2021 when the DSS case was resolved by Respondent agreeing to accept a finding of Substantial Risk of Physical Abuse. When the DSS case was resolved, reunification therapy began. However, this was before there was any discovery made of the recording devices. It must be further noted that Dr. Marcino is the family therapist for Respondent and the child, but also worked one-on-one with the Respondent. The daughter has a separate therapist as chosen by the child's Guardian ad Litem, who assisted with the clarification between Respondent and child. The child did disclose to her therapist, Davis Henderson, physical abuse by Respondent towards her which was addressed by DSS.

Vicarious consent, Respondent's defense, cannot not be utilized to justify indiscriminate recording of a household and the guests of the household for literally months until the wrongdoer comes up with something that he or she believes he or she can use to support his or her theory of the case. The *Whitner* case was a one-time phone call and is clearly distinguishable.

Respondent has failed to identify all of the other conversations he has intercepted, including the possible attorney/client privileged conversations between Petitioner and her counsel.

As set out herein, this Court should also take notice that in the Family Court case the child has a very seasoned Guardian ad Litem who previously served as a licensed therapist and who also recently participated in the Parental Alienation Study Group, (See link to Parental Alienation Study Group:

<https://pasg.info/app/uploads/2020/08/PASG-Members-2021-03-08.pdf>) The Guardian ad Litem has been a member of the Parental Alienation Study Group since 2019 which is an exclusive international group (approximately 100 members) that requires a stringent application and approval process, the applicants must be voted in by fellow members. As previously stated, the Guardian ad Litem has not once mentioned any concern of alienation throughout this litigation and has in fact praised the Petitioner for being so agreeable to unification therapy and a graduated visitation schedule.

Respondent has admitted to serious violations of both state and federal statutes. By his own admission, Respondent has unlawfully recorded many conversations, again possibly even between Petitioner and her attorney, which should result in all conversations recorded by him through this surreptitious means to be not allowed into evidence in any forum.

Respectfully submitted,



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April 8, 2021

Jennifer,

Happy Anniversary -

Massage was sent to let you enjoy and relax; I know that you love the massages and how they make you feel. You have two sessions on cards included. Please enjoy- you deserve. Please relax and take that time to reflect and cherish.

Candle was sent to make the house smell good and brighten up the evening charm with a little light.

Herb garden can fill the space next on countertop next to the kitchen table, and will let you enjoy fresh herbs for your cooking delight. I know every time you buy these at grocery store the herbs don't last long. Reviews say they grow fast- better than the last time we had one for tomatoes.

Gift box is Lavender which I know that you like and hopefully enjoy the smell and we'll use.

Just thinking of Jennifer on our Anniversary, that is our **Special Day**. We made it too our 16th anniversary, I know how I fell and hope more than anything that we can celebrate the next one together again. I know that I didn't purchase a purse this year; however I tried to put thought into your gifts for that day. Again Happy Anniversary from your loving husband Jim.

You know how I feel about you Jennifer and **I MISS YOU & LOVE YOU**.

Happy Anniversary,

Thanks for putting up
with me over all
the years.

Reese's for your hunger
as throw-in.

Love,
Jim

Jenny,

I've already set up herd garden and programmed for use.

ONLY thing that needs done is to add water and plug in.

Water level needs filled to mark inside tank.

Love
Jim

From: Maria Averill <maria@averilllawfirm.com>
Sent: Tuesday, April 6, 2021 2:47 PM
To: Melissa Simondi <msimondi@bleeckerfamilylaw.net>
Cc: Rhett D. Klok <rklok@kloklaw.com>; Annie Walton <awalton@kloklaw.com>; Betty Branton <bbranton@bleeckerfamilylaw.net>
Subject: RE: Interim Visitation Order (By Consent)

All,

Unless I have missed something, there has been no finding of alienation.

I was contacted by Dr. Marcino last week regarding Spring Break. He asked if I was okay with the daughter having Spring Break week off, as she requested it. He said he believed it was perfectly reasonable. I agreed.

I would be glad to have a call to discuss a new visitation schedule.

Maria Averill, Esq.
Averill Law Firm, LLC
528 Johnnie Dodds Blvd., Suite 102
Mt. Pleasant, SC 29464
(843) 998-4583
(800) 743-1965 fx
Please note our new address

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v.

James Michael McMaster,

Respondent.

PROOF OF SERVICE

I certify that I have served the foregoing Petitioner's Reply to
Respondent's Return via email on April 12, 2021, to the following addresses:

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Melissa E. Simondi, Esquire
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Honorable Julie J. Armstrong
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Charleston, SC 29401-2210
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VIA EMAIL ONLY

The Honorable Jenny Abbot Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: James Michael McMaster v. Jennifer Renee McMaster
Civil Action No. 2020-DR-10-2130

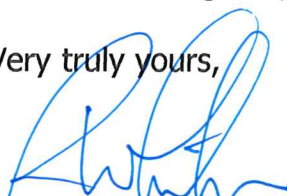
Dear Ms. Kitchings:

Enclosed for filing please find Petitioner's Reply to Respondent's Return and Proof of Service. By copy of this correspondence, I am also serving copies of this motion on the Family Court attorney for Petitioner, attorney for Respondent, and the trial court.

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 (2)

cc: Melissa E. Simondi, Esquire
Rhett D. Klok, Esquire
Charleston County Clerk of Court