

RECEIVED

May 16 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Family Court

The Honorable Daniel E. Martin, Jr., Family Court Judge

Appeal No. 2023-000831

Thomas Ravenel, Appellant,

v.

Kathryn Dennis, Respondent.

FINAL BRIEF OF RESPONDENT



Thomas C. Davis, Esquire
HARVEY & BATTEY, P.A.
1001 Craven Street
Beaufort, South Carolina 29902
843-524-3109 (phone) / 843-524-6401 (fax)
Email: tdavis@harveyandbattey.com

ATTORNEY FOR RESPONDENT

TABLE OF CONTENTS

Table of Authorities	ii
Statement of Issue on Appeal	1
Statement of the Case	1
Standard of Review	3
Argument	4
Conclusion	10

FITSNEWS

TABLE OF AUTHORITIES

CASES

<i>Davis v. Jennings</i> , 304 S.C. 502, 405 S.E.2d 601 (1991)	1
<i>Griffith v. Griffith</i> , 332 S.C. 630, 506 S.E.2d 526 (Ct.App. 1998)	9
<i>Lewis v. Lewis</i> , 392 S.C. 381, 709 S.E.2d 650 (2011)	3
<i>McComb v. Conard</i> , 394 S.C. 416, 715 S.E.2d 662 (Ct.App. 2011)	4
<i>Shainwald v. Shainwald</i> , 302 S.C. 453, 395 S.E.2d 441 (Ct.App. 1990)	6
<i>Simmons v. Simmons</i> , 392 S.C. 412, 709 S.E.2d 666 (2011)	3
<i>Singh v. Singh</i> , 429 S.C. 10, 837 S.E.2d 651 (Ct.App. 2019)	4

RULES

SCRCP Rule 41.1	1,5
-----------------------	-----

STATEMENT OF ISSUE ON APPEAL

1. Did the trial court commit reversible error in denying Plaintiff/Appellant's motion to unseal the record in Family Court case number 2020-DR-10-2681?

STATEMENT OF THE CASE

On October 23, 2020, Appellant instituted the action currently under appeal, seeking a modification of a previous custody order based upon a substantial and material change of circumstances. *See* Pltf's Compl. (R. pp. 53-62). A Consent Order to Seal the Record and For Protective Order was approved and filed with the Court on December 18, 2020. (R. pp. 6-11). In this Consent Order, the Court "notes the requirements of Rule 41.1, SCRPC; and *Davis v. Jennings*, 304 S.C. 502, 405 S.E.2d 601 (1991); and *Ex Parte: Capital U-Drive It, Inc., In Re: Wallace v. Beaver*, Op. No. 26147 (S.C. Sup.Ct. filed May 8, 2006) (Shearhouse Adv.Sh.No. 18 at 16)." (R. p. 7). Whether this record was properly sealed by this Consent Order is not in issue.

On October 13, 2022, Appellant filed a Motion to Unseal the Record with the Court, alleging behavior by Respondent that was inconsistent with any expectation of privacy and statements by Respondent that have defamed the South Carolina Family Court, as well as Appellant and the attorneys and judges involved in this matter. Mot. to Unseal the Record, ¶¶ 5-11 (R. pp. 113-114). A hearing on that motion was held before the Honorable Spiros S. Ferderigos, on November 14, 2022, and the judge denied the motion without prejudice, finding that "a testimonial hearing is necessary to properly adjudicate [Appellant's] request for relief." *See* Order on Pltf's Mot. to Unseal the Record (R. p.17).

A final hearing in this matter was held before the Honorable Daniel E. Martin Jr. on December 12, 13, 14, 15 and 16, 2022. During the final hearing, upon oral motion of

Appellant's counsel, Appellant again moved to unseal the record. Final Order, page 2 (R. p. 48). Judge Martin, after hearing argument from counsel, denied the motion, and subsequently allowed Appellant's counsel to proffer witness testimony in support of the motion. As the principal reason for wanting the record unsealed, Appellant told Judge Martin "I just want the truth to be out there for my own reputational purposes." Tr. Tr. 302: 25 (R. p. 1010, line 25-p.1011, line 1).¹

Judge Martin issued a final order on February 6, 2023. Among other things, the judge declined to change his earlier oral ruling denying Appellant's motion to unseal the record and noted that "witness testimony was proffered by [Appellant] subsequent to the Court's denial of [Appellant's] motion." Final Order, pp. 2-3 (R. p.23).

Appellant then moved to alter or amend Judge Martin's final order as it pertained to the denial of Appellant's request to unseal the record, and that motion was heard by Judge Martin on May 9, 2023. At the hearing Appellant presented a Memorandum of Law which included the evidence and testimony proffered at the final hearing. Mot. to Alter or Amend Tran. 4: 15-25, 5:1-9 (R. pp. 1785-1800); Pltf's Mem. of Law re: Unsealing the Record incl. Exhibits (R. pp. 1479-1494). Judge Martin also heard arguments from the parties' counsel and the Guardian *ad Litem*.

On May 12, 2023, Judge Martin issued an Order Denying the Plaintiff's Motion to Alter or Amend the Final Order, finding, *inter alia*, that the parties' minor children would be "damaged by exposure of the private lives of the parties" if the record was unsealed and

¹ Subsequently, Judge Martin, in a written order denying Appellant's request, replied to Appellant by saying this: "While [Appellant] may argue that he has a legitimate private interest in protecting his reputation, the Court does not find that such interest outweighs that of protecting the minor children from perceived harm that history has already proven is likely to happen again." See, Order Denying the Pltf's Mot. to Alter or Amend the Final Order at page 2 (R. pp. 48-49).

noting that the Guardian appointed to protect the interests of the parties' minor children had expressed similar concerns. The within appeal by Appellant then followed.

STANDARD OF REVIEW

As Appellant argues in his brief, “in appeals from the family court, the Court reviews factual and legal issues de novo.” *Simmons v. Simmons*, 392 S.C. 412, 414, 709 S.E.2d 666, 667 (2011). This bald statement of jurisdictional authority, however, must be supplemented by the fuller exposition of proper appellate review set forth by the Supreme Court of South Carolina in *Lewis v. Lewis*, 392 S.C. 381, 709 S.E.2d 650 (2011):

Nevertheless, this Court and the court of appeals generally sustained (and continue to sustain) family court findings of fact, notwithstanding our constitutional imprimatur for de novo review. The tendency to affirm family court findings of fact may be traced to the two features noted above—the superior position of the trial judge to determine credibility and the appellant's burden to satisfy the appellate court that the preponderance of the evidence is against the finding of the trial court. See *Wilson v. Wilson*, 285 S.C. 481, 483, 330 S.E.2d 303, 304 (1985) (citing *McAlister v. Patterson*, 278 S.C. 481, 299 S.E.2d 322 (1982)) (“Although our scope of review allows us to find the facts in accordance with our view of the preponderance of the evidence, we give broad discretion to the family court judge who has observed the witnesses and is in a better position to judge their demeanor and veracity.”); *Perry v. Perry*, 301 S.C. 147, 149, 390 S.E.2d 480, 481 (Ct.App.1990) (citing *Ray v. Ray*, 296 S.C. 350, 372 S.E.2d 910 (Ct.App.1988)).

Lewis v. Lewis, 392 S.C. at 388, 709 S.E.2d at 653.

Moreover, giving “broad discretion to the family court judge who has observed the witnesses and is in a better position to judge their demeanor and veracity” is especially appropriate here, in that the final hearing in this case was held over the course of five days, providing the judge with an unusually good opportunity to assess the “demeanor and veracity” of Appellant and Respondent, and of the Guardian.

Another aspect of the Court's appellate review in this matter warrants mention. Appellant argues in several instances in his brief that the burden is on Respondent to show this Court that the judge's decision to keep the record sealed was correct; for instance, he states: "It is [Respondent], the party who is seeking to deny the public's right of access, who bears the burden of overcoming this presumption by articulating compelling reasons supported by detailed documentation and factual findings as to why the need for secrecy overcomes the presumption of public access." (Brief of Appellant, page 22.)

Appellant's assertion properly assigns the burden in the first instance, that is, at the trial level, but it does not accurately state where the burden now lies on appeal, in that "the party contesting the family court's decision bears the burden of demonstrating the family court's factual findings are not supported by the preponderance of the evidence." *McComb v. Conard*, 394 S.C. 416, 422, 715 S.E.2d 662, 665 (Ct.App. 2011).²

ARGUMENT

The Best Interest of the Child is the Paramount Consideration

Appellant argues that "the trial court's sole reliance on the best interests of the minor children to deny [Appellant's] request to unseal the record in this matter violates [Appellant's] constitutional right to make decisions concerning the welfare and upbringing of his minor children." However, he misstates the paramount duty of the family court:

"Our supreme court, quoting *Tillman*, proclaimed, "The rights of the father and mother are both subject to the still higher right of the child to have its welfare safeguarded. [Citations omitted.] Likewise, our supreme court recognized as a part of *parens patriae*, the "[f]amily [c]ourt is vested with

² Another point regarding the burden of proof: Appellant concedes in his brief that the judge's findings re: harm to the parties' minor children potentially resulting if the record is unsealed are supported by testimony given at trial but says "this testimony was given by [Appellant] in support of unsealing the record, *not* sealing the record." (Brief of Appellant, page 23). The argument that the judge's ruling in favor of Respondent is in error because it is supported by testimony provided by Appellant, not Respondent, is without merit.

the exclusive jurisdiction to ensure that, *in all matters concerning a child, the best interest of the child is the paramount consideration.*”

Singh v. Singh, 429 S.C. 10, 24, 837 S.E.2d 651, 659 (Ct.App. 2019). (Emphasis provided.)

This fundamental statement of the family court’s duty merits repeating: In all matters concerning a child, the best interest of the child is the paramount consideration. It bears repeating because Appellant’s entire argument is predicated upon an assumption that what is in the parties’ minor children’s best interests must yield to two superior rights: 1) the public’s constitutional right to public access; and 2) the father’s constitutional right to parent. This assumption is incorrect. The best interest of the child is paramount, and the public’s right to access and the father’s right to parent must yield to those best interests.

Therefore, the appropriate inquiry and dispositive question in this appeal is this: Can Appellant discharge his burden of demonstrating to the Court that Judge Martin’s factual findings regarding potential harm to the parties’ minor children if the record is unsealed are not supported by the preponderance of the evidence? And if the answer to that inquiry is “no,” then Appellant’s arguments about the public’s constitutional right to public access and Appellant’s constitutional right to parent, which constitute the overwhelming majority of Appellant’s brief, are irrelevant.³

The Parties’ Minor Children are Parties to this Proceeding

Appellant argues that Respondent, because of her bad behavior⁴, cannot now insist that the terms of the parties’ consent order to seal the record be enforced; he argues, in

³ Notwithstanding this paramount inquiry and to ensure the public’s right to access was not improperly abrogated, a plain reading of the Order Denying the Pltf’s Mot. to Alter or Amend the Final Order clearly shows that Judge Martin complied with the requirements of Rule 41.1 of the South Carolina Rules of Civil Procedure regarding the sealing of documents.

⁴ “[Respondent] has made significant public mistruths related to this matter and has defamed the South Carolina Family Court, as well as attorneys and judges involved in this matter, and [Respondent’s] mistruths and defamatory comments, which have been circulated online and on social media, have

essence, that the consent order is a bilateral agreement entered into by two contracting parties that was subsequently breached by one of those parties. But as Judge Martin noted in his order denying Appellant's request that the record be unsealed, "the parties' minor children are also parties to this action." *See*, Order Denying the Pltf's Mot. to Alter or Amend the Final Order at page 2 (R. p. 48). Irrespective of whether Respondent has behaved badly⁵, "the Court must weigh the perceived harm that may come to the children if the Court were allowed the record to be unsealed." *Id.*, at page 2.

The Guardian ad Litem is Charged with Protecting the Children

As parties to the action with a material interest in whether the record remains sealed, Appellant's and Respondent's minor children were represented by a Guardian *ad Litem*, "a representative of the court appointed to assist it in properly protecting the interests of an incompetent person. [Citations omitted.]" *Shainwald v. Shainwald*, 302 S.C. 453, 457, 395 S.E.2d 441, 444 (Ct.App. 1990). Further to the role of the Guardian:

"The requirement that the children have independent legal representation does not in any way suggest that the parents or the trial court were unmindful of the children's welfare. Rather, it reflects the conviction that the children are best served by the presence of a vigorous advocate free to investigate, consult with them at length, marshal evidence, and to subpoena and cross-examine witnesses. The judge cannot play this role. Properly understood, therefore, the guardian ad litem does not usurp the judge's function; he aids it."

Id., 302 S.C. at 457, 395 S.E.2d at 444, citing *Bahr v. Galonski*, 80 Wis.2d 72, 83, 257 N.W.2d 869, 874 (1977).

affected both [Father's] reputation and public trust in the South Carolina judicial system." (Brief of Appellant, page 4).

⁵ In his brief, Appellant sets forth in exhaustive detail the specific findings by Judge Martin regarding Respondent's flaws as a human being and, more specifically, the mother of the parties' minor children. None of these findings have any bearing on whether the preponderance of the evidence supports Judge Martin's factual findings regarding potential harm to the parties' minor children if the record is unsealed.

When asked whether the record should be unsealed, the Guardian in this case – the “vigorous advocate free to investigate, consult with them at length, marshal evidence, and to subpoena and cross-examine witnesses” on behalf of the parties’ minor children – unequivocally answered: “Your Honor, I stand by what I stated earlier in the hearing as far as only in a therapeutic setting would I want these children exposed to litigation.” Mot. to Alter or Amend Tran. 11:14-17 (R. p. 1794, lines 9-11). And in his ruling Judge Martin took specific note of the Guardian’s reservations about unsealing the record: “[Respondent] objects to the Court vacating its order to seal the record and maintains that the children would be harmed by allowing the record to be unsealed. The Guardian expresses similar concerns.” (R. p. 47).

Evidence the Parties’ Minor Children Would Be Harmed if the Record is Unsealed

Appellant argues that there is already a considerable amount of information about the lives of the parties and their minor children in the public domain: “Much of the minor children’s lives and their parents’ lives have been documented on Southern Charm, [Respondent’s] social media accounts, and numerous online forums and media articles. [Citations omitted.] Sensitive information regarding the minor children and the parties has been and remains available to the public in the unsealed cases from the parties’ previous two custody cases. [Citations omitted.]” (Brief of Appellant, pages 23-24). In other words, Appellant argues, there is already a wealth of material in the public domain for the parties to use against each other, so no possible harm could come to the parties’ minor children by unsealing the record and giving their parents a few more clubs to hit each other with. He argues that this Court should allow an increased amount of harm to the children in the future because a substantial amount of harm has already occurred to them in the past.

This cynical argument should be rejected on its face. There is no doubt whatsoever of Appellant's intent: as noted by Judge Martin, he "is prepared to disclose to the world of social media all of the Court's findings relative to [Appellant and Respondent]." *See*, Order Denying the Pltf's Mot. to Alter or Amend the Final Order at page 2 (R. p. 48). The record in the present case contains testimony and evidence adduced over the course of a five-day trial, whereas the two previous custody cases were resolved by settlement agreements.⁶ Appellant's claim that sensitive information regarding the minor children and their parents is available in the unsealed cases from the previous two custody cases is disingenuous. To argue by analogy, not content with the existing conventional arms, Appellant now seeks nuclear weapons to destroy Respondent. How in the world, as Appellant argues, would providing him that access benefit the parties' minor children? Judge Martin was correct in finding it would not.

Appellant argues in his brief, as he testified during the final hearing, that "the minor children deserve that the record to be unsealed so that the public knows that they are being cared for by a good Father." Brief of Appellant, page 30. Judge Martin correctly rejected this argument, finding that "it would be unfair to the children to allow others to reach certain conclusions about them because of the reputation of their parents." *See*, Order Denying the Pltf's Mot. to Alter or Amend the Final Order at page 2. (R. p. 48).

Appellant concurred with this view when he consented to the following findings of fact in the Consent Order to Seal Record and for Protective Order: "there is perceived harm to the parties from the disclosure of the file in this matter" and "the issues raised in the pleadings relate to sensitive issues of the parties and outweighs the public access to the

⁶ Case No. 2016-DR-10-1687 was resolved by way of a Complete Custody Agreement and Case No. 2018-DR-10-3671 was resolved by way of a Complete Settlement Agreement.

file.” *Id.*, at 2. Again, as Judge Martin noted in his order denying Appellant’s request that the record be unsealed, “the parties’ minor children are also parties to this action.” *See*, Order Denying the Pltf’s Mot. to Alter or Amend the Final Order at page 2. (R. p. 48).

In an attempt to escape Appellant’s admission that harm would result to the parties’ minor children if the record were unsealed, Appellant argues in his brief that the fact that the parties previously agreed to the sealing of the record is irrelevant and “is not a consideration in determining whether the record should be unsealed,” citing a 5th Circuit case for the proposition that “a sealing agreement by the parties should not bind a court.” (Brief of Appellant, page 16). That case, however, considered the public’s right of access to court proceedings and records and whether private litigants should be able to contract that right away. That is of course a correct statement of the law, and Respondent does not argue that the record should remain sealed because she and Appellant stipulated in a consent order that it should be, but because unsealing the record would harm the parties’ minor children.

More to the point here, though, that case does not lessen that salience of Appellant’s admission in the consent order that harm would result to the parties’ minor children if the record were unsealed. In the Consent Order to Seal Record and for Protective Order, Appellant and Respondent stipulated as to certain findings of fact, and among those findings was that harm would result to the parties’ minor children if the record were unsealed. This is significant because “[a] stipulation is an agreement, admission or concession made in judicial proceedings by the parties thereto or their attorneys. Stipulations ... are binding upon those who make them. [Citations omitted.]” *Griffith v. Griffith*, 332 S.C. 630, 644, 506 S.E.2d 526, 533 (Ct.App. 1998). Judge Martin was correct

to note that “the parties stipulated that there was perceived harm to the parties from any disclosure of the case record.” *See*, Order Denying the Pltf’s Mot. to Alter or Amend the Final Order at page 2. (R. p. 48). Appellant should not now be allowed to argue against a fact to which he has previously stipulated.

CONCLUSION

Appellant has not met his burden of demonstrating to the Court that Judge Martin’s factual findings regarding potential harm to the parties’ minor children if the record is unsealed are not supported by the preponderance of the evidence, and the obligation of Judge Martin to protect the children is paramount and entitled to greater weight than Appellant’s constitutional right to parent. Further, Judge Martin complied with the requirements of Rule 41.1 of the South Carolina Rules of Civil Procedure regarding the sealing of documents and did not improperly abrogate the public’s constitutional right to public access. Therefore, Judge Martin’s ruling denying Appellant’s motion to unseal the record should be upheld.



Thomas C. Davis, Esquire
HARVEY & BATTEY, P.A.
1001 Craven Street
Beaufort, South Carolina 29902
843-524-3109 (phone) / 843-524-6401 (fax)
Email: tdavis@harveyandbattey.com
Attorney for Respondent

Beaufort, South Carolina
May 16, 2024

May 16, 2024

Ms. Jenny Abbott Kitchings
Clerk of Court
Post Office Box 11629
Columbia, South Carolina 29211
ctappfilings@sccourts.org

Via Email and Regular Mail

RECEIVED

May 16 2024

SC Court of Appeals

Re: Thomas Ravenel v. Kathryn Dennis – Appellate Case No. 2023-000831

Ms. Kitchings:

Regarding the referenced appeal, enclosed is an original and one copy of the Respondent's Final Brief and Certificate of Compliance With Rule 211(b), together with a Proof of Service.

Sincerely,

HARVEY & BATTEY, P.A.

Thomas C. Davis

cc: Kelley D. Andrews-Edwards – kelley@mandrewsmediation.com
Elizabeth J. Stringer – liz@stringerlaw.us
Kathryn Dennis – kathryndennis@ymail.com

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

May 16 2024

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Family Court

The Honorable Daniel E. Martin, Jr., Family Court Judge

Appeal No. 2023-000831

Thomas Ravenel, Appellant,

v.

Kathryn Dennis, Respondent.

CERTIFICATE OF COMPLIANCE WITH RULE 211(b)

I certify that the Respondent's Final Brief in the within appeal complies with Rule 211(b) of the South Carolina Appellate Court Rules.

Thomas C. Davis, Esquire
HARVEY & BATTEY, P.A.
1001 Craven Street
Beaufort, South Carolina 29902
843-524-3109 (phone) / 843-524-6401 (fax)
Email: tdavis@harveyandbattey.com

ATTORNEY FOR RESPONDENT

May 16, 2024
Beaufort, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

May 16 2024

APPEAL FROM CHARLESTON COUNTY
Family Court

SC Court of Appeals

The Honorable Daniel E. Martin, Jr., Family Court Judge

Appeal No. 2023-000831

Thomas Ravenel, Appellant,

v.

Kathryn Dennis, Respondent.

PROOF OF SERVICE

I certify that I have on May 16, 2024, served Respondent's Final Brief and Certificate of Compliance with Rule 211(b) on Kelley Dupre Andrews-Edwards, Esquire, the attorney for Thomas Ravenel, the Appellant herein, by email and U.S. Mail addressed as follows:

Kelley Dupre Andrews-Edwards, Esquire
Andrews Mediation & Law Firm, P.A.
755 Johnnie Dodds Boulevard, Suite #100
Mount Pleasant, South Carolina 29464
kelley@mandrewsmediation.com
ATTORNEY FOR APPELLANT



Thomas C. Davis, Esquire
HARVEY & BATTEY, P.A.
1001 Craven Street
Beaufort, South Carolina 29902
843-524-3109 (phone) / 843-524-6401 (fax)
Email: tdavis@harveyandbattey.com

ATTORNEY FOR RESPONDENT