

November 2, 2018

Judicial Merit Selection Commission
Post Office Box 142
Columbia, SC 29202



Re: Affidavit of Mr. Younginer

Dear Chairman Rankin and Commission Members:

Please accept my response to Mr. Younginer's Affidavit. In preparation for this response, I reviewed the Affidavit filed by Mr. Younginer and I reviewed the entire original court file.

Mr. Younginer first appeared before me at a temporary hearing scheduled on August 25, 2014 in docket number 14-DR-40-3025 in the matter of *Caroline Hilliard Donaldson v. Matthew Todd Younginer*. The case was filed on August 4, 2014. This was a high conflict case.

Prior to this action, the parties had an extensive history in family court. This case involved a modification of custody action filed by Ms. Donaldson regarding the parties' two minor children.

The hearing was scheduled for 30 minutes. The parties were present and represented by very competent counsel who practice exclusively in Family Court. Counsel submitted voluminous documents for my review. The documents from this hearing are almost 2 inches thick. I went well beyond the 30 minutes allotted and took more than hour to review documents and hear from counsel on the record. I took the matter under advisement in order to thoroughly review the documents submitted and to consider my ruling. I telephoned the attorneys of record and, via conference call, gave my oral ruling essentially granting the temporary relief requested by the Plaintiff, Ms. Donaldson. Prior to issuing my written order, a second attorney for Mr. Younginer filed a Notice of Appearance and also filed an emergency Motion to Stay Decision (Supersedeas) or Reopen Record. I delayed signing my temporary order, held another conference call with all attorneys of record and scheduled an emergency hearing for September 10, 2014 to give the parties and their counsel an additional opportunity to be heard.

At the September 10, 2014 hearing, the attorneys presented additional documents for my review. These documents were 3 inches thick. In addition, I allowed the attorneys to submit additional documents *after* the conclusion of the hearing, to respond to certain issues raised during the hearing. This hearing was scheduled for an hour. I took more than the allotted time scheduled to review the documents and hear oral arguments of counsel. The record also contained several audio tape recordings which I listened to in chambers before issuing my order.

I granted Mr. Younginer's motion to reopen the record and considered all information provided to me (except certain documents excluded based on objections by counsel). I denied Mr. Younginer's motion to stay (For Supersedeas). I granted a majority of the temporary relief requested by Ms. Donaldson. My Temporary Order filed on September 15, 2014 was issued based on the record before me and I believed it to be in the best interest of the minor children.

A handwritten signature in blue ink, consisting of a large, stylized 'C' shape with a smaller mark inside.

I know Mr. Younginer was extremely upset by my Temporary Order and he believed I made the wrong decision. After I denied his Motion to stay my order, he filed an emergency appeal of my Temporary Order with the Appellate Court. Justice Few (at the time Justice Few was on the Appellate Court), presided over the appeal and after review, Justice Few denied Mr. Younginer's supersedeas appeal on September 23, 2014 and allowed my Temporary Order to remain in effect. The case moved forward from that point to a final resolution five (5) months later.

The case was concluded by settlement of the parties. I presided over the hearing approving the Agreement on February 13, 2015. After questioning the parties on the record, the Agreement was approved and made into a Final Order and Judgment filed on February 13, 2015. Mr. Younginer understood he was waiving his right to a trial in his case by entering into his agreement. He acknowledged this in his written agreement and on the record.

I issued an Order Sealing Record on April 1, 2015 *at the request of both parties*. I made independent findings pursuant to Rule 41.1 of the S.C. Rules of Civil Procedure regarding the parties' joint request to seal the record before issuing the order.

Mr. Younginer dismissed his pending appeal. An Order dismissing the appeal was entered by the Court of Appeals on August 28, 2015.

In conclusion, I'd like to address some specific allegations raised in Mr. Younginer's affidavit. I deny acting unethically in this case. The matter was randomly scheduled before me and all matters were held on the record unless the attorneys agreed otherwise (i.e. the two conference calls). I handled the temporary and subsequent motions properly under the rules of court.

As to my working behind the scenes to subvert justice by sealing records, as stated above, the record in this matter was sealed at the joint request of the parties after I independently reviewed the Rule. I did not raise the issue of sealing the record in this matter *sua sponte*.

The expert that I eventually appointed in this case was proposed by counsel for Ms. Donaldson. I did not independently research and find experts to appoint. I have no friendship or social relationship with the expert appointed in this matter.

I did not take Mr. Younginer's children away from him for six (6) months as he alleged. Mr. Younginer's case was finalized in five (5) months wherein the parties settled on a week to week rotation. My Temporary Order suspended visitation for a period of ninety (90) days in order for reunification therapy and intervention to be initiated and occur. This was not a random number of days. I reviewed the Affidavits and documents presented to me at the hearings on this matter and adopted a revised version of one of the reunification plans presented to me.

I did not deny Mr. Younginer due process. I explained in detail above the amount of time I gave the litigants to argue their motions, the amount of documents I allowed them to submit and the voluminous record Mr. Younginer was permitted to make. Temporary hearings are not final hearings and while a litigant can't cross-examine witnesses at temporary hearings, Mr. Younginer was afforded multiple opportunities to present reply and/or rebuttal affidavits and documents before I issued my Temporary Order. He also appealed my order and was heard on

his appeal. Further, Mr. Younginer waived his right to a trial where he could have cross-examined witnesses by settling his case and he acknowledged this voluntary waiver at the final hearing.

To reiterate, I understand Mr. Younginer's deep dissatisfaction with my Temporary Order. The nature of Family Court requires judges who don't know children to make difficult and sometimes life changing decisions about children. It's a great responsibility that I take very seriously and after reviewing his Affidavit and the file in its entirety, it's clear I did not make my temporary decision in this case lightly or without intense deliberation. I am truly sorry Mr. Younginer feels the way he does and that he had a negative experience in Family Court, but I strongly disagree with Mr. Younginer's characterization of me as a Family Court Judge.

If I can provide the Commission with any additional information or documents, please let me know.

With Highest Regards,



Monet S. Pincus