

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

NATHAN J. WADE,)
)
v.)
) CIVIL CASE NO. 21108166
JOCELYN WADE,)
)
_____)

NON-PARTY MOTION TO UNSEAL

COMES NOW, undersigned counsel, a member of the public and non-party to this action, and hereby respectfully requests this Honorable Court review and remove the order placing a blanket seal on the court records in the above styled case pursuant to Uniform Superior Court (USCR) Rule 21 and Georgia’s common law and constitutional right of access to courts.

USCR 21 governs access to court records and provides that any person, at any time, may challenge an order limiting access to court records by filing an application for review, USCR 21.4-5, *see also* O.C.G.A. Sec. 50-13-19(b) and (h). For good cause shown, this Court may amend the order limiting access to court records, USCR 21.5.

Although court rules indicate that access to court records is presumed, Georgia fierce favor for open courtrooms and records originated with the Georgia Constitution which has been broadly interpreted by our Supreme Court. Because of this constitutional underpinning, the presumption of access to court records has long existed in Georgia’s common law. *Merchant Law Firm, P.C. v. Emerson*, 800 S.E. 2d 557, 561 (2017)(“The right of access to court records under court rule is coextensive with the common law right of access to court proceedings.”).

The presumptive right of access to court records may only be overridden “in cases of clear necessity.” *Atlanta Journal v. Long*, 258 Ga. 410, 413-14 (1988). The constitutional and common law right of access to court records aligns perfectly with the procedural framework of Rule 21.

The issue here, however, is that Rule 21 was ignored when the “Consent Order Sealing Record” was signed by the Honorable Angela Brown. There was no hearing. The Georgia Supreme Court has held that when a court “fails to hold a hearing on whether to seal a record or fails to make findings of fact concerning whether the privacy interests at stake outweigh the public’s interest in access to records, an order sealing a record *must* be reversed on appeal.” *Wall v. Thurman*, 283 Ga. 533, 535 (2008). While only one need be present, both reversible errors are here. No hearing was held and no balancing test where the public’s interests or public benefit was considered was conducted prior to the seal. There is a significant public interest and benefit to this court record being open which can easily be demonstrated should the parties wish to refile seeking the file be resealed. However, because the record was improperly sealed without a hearing, the consent order sealing the record should immediately be reversed.

Should the parties wish to have the record sealed, they should be required to follow the law and file a motion explaining why they wish to have the record sealed, and set this matter down so that the public interest can be heard and considered and weighed by this Court prior to any future orders sealing these records. As it stands now, the order sealing the records is void as it was entered without a hearing and should be immediately vacated by this Court. If the parties file an action to re-seal the record, undersigned counsel will

then advance the arguments against sealing and demonstrate how the public benefit is such that these records and proceedings must remain open to the public.

USCR 22 provides that:

Open courtrooms are an indispensable element of an effective and respected judicial system. It is the policy of Georgia's courts to promote access to and understanding of court proceedings not only by the participants in them but also by the general public and by news media who will report on the proceedings to the public.

Undersigned counsel is seeking to preserve the right to public court proceedings and respectfully requests that this Honorable Court enter the attached proposed order vacating the prior order that was entered without adherence to the rules and is void.

Respectfully submitted this 8th day of January, 2024.

THE MERCHANT LAW FIRM, P.C.

/s/ Ashleigh B. Merchant _____
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the within and foregoing **MOTION**, to counsel of record by filing same with the Court's electronic filing system which will deliver e-mail notification to the following counsel of record for the State of Georgia:

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This 8th day of January, 2024.

THE MERCHANT LAW FIRM, P.C.

/s/ Ashleigh B. Merchant

Ashleigh Merchant

Georgia Bar No. 040474