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V I R G I N I A

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

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 :
 ELIZABETH D. SEALE-SCOTT, :
 :
 Complainant, :
 :
 -vs- : CHANCERY NO. 182107
 :
 GEORGE R. SCOTT, :
 :
 Defendant. :
 :
 ----- x

Circuit Courtroom 4C
Fairfax County Courthouse
Fairfax, Virginia

Friday, June 27, 2003

The above-entitled matter came on to be heard before the HONORABLE ROBERT W. WOOLDRIDGE, JR., Judge, in and for the Circuit Court of Fairfax County, in the Courthouse, Fairfax, Virginia, beginning at 12:30 o'clock p.m.

APPEARANCES:

On Behalf of the Complainant:

KATHARINE W. MCGREGOR, ESQUIRE

On Behalf of the Defendant:

RAYMOND B. BENZINGER, ESQUIRE

P R O C E E D I N G S

(Whereupon, the Court Reporter was sworn by the Clerk of the Court.)

THE COURT: Ms. McGregor and Mr. Benzinger, good afternoon. Ms. McGregor go ahead.

MS. MCGREGOR: Thank you, Your Honor.

We're here today to ask the Court to seal the entire case file in this divorce matter. This Court has authority to do so pursuant to Code 20-124, as well as the Rules of the Supreme Court of Virginia, Rule 4.1 which allows this case file to be sealed for good cause.

In addition, the Virginia Supreme Court has affirmed that this Court has the power to seal files, specifically pre-trial motions, such as depositions.

This case is called Shenandoah Publishing House versus Fanning. This case quoted a United States Supreme Court case, Seattle Times Company versus Rhinehart.

The quotations that the Virginia Supreme Court relied on focused on the fact that depositions can be especially susceptible to abuse by either party, or information therein can be damaging to the parties reputation and privacy.

Therefore all Courts have the equitable and inherent power to seal case files.

THE COURT: Why are you asking me to seal the whole file as opposed to sealing the deposition?

MS. MCGREGOR: Because if there is further hearings in this matter, if this case goes to a Commissioner's Hearing or an E/D Hearing, I think information that came out in the deposition will also come out in the final hearing.

If that's not sealed as well, it will be just as damaging to my client's reputation as the information contained in the deposition. So that's why we're asking for the entire case to be sealed, because we don't know what else might happen.

We know what questions opposing counsel has asked in the past, and we suspect those questions will come up again in the future.

The good cause in this case arises from the fact of questions asked during a deposition on May 28th. Mr. Benzinger questioned Ms. Seale extensively about her relationship with Mr. Scott prior to her marriage to him. Part of that relationship was during a time when she was married to somebody else.

*THIS IS AN
ADMISSION TO
A 4 YR. + AFFAIR*

SHE DID THIS
INTEVIEW FOR BUSH
AROUND HER AFFAIR

Ms. Scott was appointed by President Bush as director for a center of a faith based community initiative.

In addition to the recent political appointment by Governor Ehrlich -- which as you probably know is a very conservative administration -- the people within the organization and administration were to learn of her past indiscretions with Mr. Scott, it's very likely that it would immediately lead to the termination of her employment.

In addition to the new path of her employment, it would have devastatingly personal implications as well. Her ex-husband does not know that she had an affair and she has a good relationship with him in co-parenting their three children. This would devastate that relationship.

Her children would lose trust in her. It would cause her a great amount of humiliation and embarrassment with regard to her children. So her career is on the line and her ability to earn income is on the line.

She hasn't had other jobs except for these political appointments. And her ability to generate income for herself relies on the political connections in

SO LET'S RUIN MR. SCOTT'S LIFE
& PROTECT THE REPUBLICAN, BUSH APPOINTEE.

a conservative administration.

We thought this case was settled and that no one was going to be ordering the transcripts. However, after the depositions, when we thought the case was settled, we found out from Rudiger and Green that the transcript had been ordered by Mr. Scott.

We asked that they sign a consent order sealing the files and the transcript would not be sent. That offer was refused.

I think the testimony will be today that Mr. Scott believes that Ms. Seale has smeared his name for the Bill of Complaint, and that he wants to somehow clear his name through use of her deposition testimony.

The evidence will be that it won't serve to clear his name. It will only serve a purpose a revenge. When the transcript was ready, we attempted to have the transcript held until after today's hearing so that we could have a Court ruling on this issue.

However, we were not successful in that, and as soon as the transcript was ready, either Mr. Scott or someone on Mr. Benzinger's behalf immediately went to Rudiger and Green and got the transcript on Wednesday.

So we thing that the potential for abuse has

ALL THE MORE
REASON FOR A
POLITICAL APPROPRIATES
SCRUTINY

already occurred. We think that it's possible that copies may have already been made and disseminated to third parties.

This case file contains enormous potential to end her employment and to harm her family. This is exactly the situation that the Virginia Code and the Rules of the Supreme Court of Virginia and case law is designed to prevent against.

Accordingly, I ask this Court to seal the entire file and to order that any and all copies of the deposition testimony and all exhibits thereto previously released to anyone but counsel for the parties be destroyed or immediately returned to counsel for the parties.

And I ask this Court to reserve the powers of contempt if any part of this order is violated, because damages will not be enough to make Ms. Seale whole if this order is violated if entered today.

Thank you, Your Honor.

THE COURT: Let me be sure that I understand. Ms. Seale-Scott, who holds these political positions that you have described to me, alleges that her marriage to Mr. Scott -- alleges in her Bill of Complaint that her

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marriage to Mr. Scott was procured by him as part of a campaign of intimidation against her, and that by his treatment of her she felt powerless to say no to him and that's part of the reason they got married?

MS. MCGREGOR: That is part of the reason they got married. Her specific fear is not about the reasons they got married, but rather about the premarital relationship while she was --

THE COURT: I understand that's not the subject of the motion today. That's not the reasons that you're asking me to have it sealed.

MS. MCGREGOR: It's my understanding that it's been an emotionally abusive relationship throughout. And at such point as she got strong and said she was going to end the relationship, the testimony will be that he threatened her and he threatened to destroy her career and destroy her family.

That's what our evidence will be.

THE COURT: Thank you. Mr. Benzinger?

MR. BENZINGER: Good afternoon, Your Honor.

THE COURT: Good afternoon, sir.

MR. BENZINGER: Your Honor has apparently read at least part of the Bill of Complaint.

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MEANING
THERE IS NO PROOF

ADmits THE JUDGE
ALwARE TO NOT BEING
of THE FACTS,

THE COURT: Well just now I was sitting here reading it. I haven't read any more than that.

MR. BENZINGER: All right. And I'm sure that Your Honor has not had the opportunity to read the huge volume of responses to interrogatories that were sent to me in response to my interrogatories.

THE COURT: No, I have not.

MR. BENZINGER: And I know that I'm in capable of conveying to you the theme of that volume of declamation of my client.

But let me ask this. What innocent is being protected by this so-called sealing of the case, or suppression of my client's right to defend himself?

THE COURT: How is sealing the file affecting your client's right to defend himself?

MR. BENZINGER: I'll tell you. It's like putting the toothpaste back in the tube, Your Honor. Ms. Seale-Scott has had eight to ten months -- let's see, I guess it's seven months since her Bill of Complaint was filed.

You'll note the only cross bill we filed was for separate maintenance. We did not cross bill or attempt to further aggravate these allegations by cross

billing on grounds.

It was frankly the hope that this would resolve itself and that some of these false allegations would go away. They have not. And I'd proffer to this Court that Mr. Scott's reluctance and resistance to the sealing of this case emanates from the fact he's heard back from Texas.

He hasn't been back to Texas since they separated, but the word's coming back from Texas to him that what she's accused him of is circulating among their mutual friends in Texas.

So I'm asking the Court just exactly what is intended to be protected here? The only person who intended to be protected here is Mrs. Scott.

Now, in her motion papers, Your Honor, she says that she has a career in politics. She came to Washington in the faith-based initiative. She is now on the staff of the Governor of Maryland in a similar capacity, not faith-based, but family services.

And I can see her apprehension. But, Your Honor, she started it and she's got the word spread. And the only way my client's going to be able to defend himself is by showing -- because remember, the word

started with a Bill of Complaint verified under oath of all these awful things that Mr. Scott has allegedly done to Mrs. Scott.

And in paragraph six, she asserts that it would be against her beliefs that to cohabit with him without the benefit of marriage.

What we developed in the deposition of course was that it wasn't against her moral beliefs to have a three year long adulterous affair, all the while teaching in Sunday School with her cuckolded husband as the co-teacher teaching young couples -- married couples -- in Sunday School.

So she has a strange view of what moral beliefs are. Again, in paragraph eight, she literally accuses my client of suggesting group sex and sadomasochism, something of which of course would be absolutely private among the parties.

And if it had happened, it should remain private among the parties. But now, under oath, she's exposed that accusation and says she finds it offensive and immoral.

And therefore, I spent some time during her deposition exploring that. And I think that she responded

under oath honestly, Your Honor, and now she doesn't want those honest answers spread on the public record. I don't blame her. I wouldn't either.

But after all, it's her actions -- her actions in Texas prior to her appointment, her actions in Texas after she'd been appointed to a state equivalent of the faith-based initiative where she literally used the State of Texas's funds to promote her affair.

THE COURT: Excuse me a second.

(Brief pause.)

THE COURT: Go ahead.

MR. BENZINGER: So the rhetorical question, Your Honor, is what public interest is promoted by inhibiting Mr. Scott's ability to defend himself against these false accusations that are made under oath.

And now we have contradictory evidence by that same accuser that were made under oath. He should have the right, if confronted, to use that. And if this case is sealed, he's going to have to stand mute and the folks are --

THE COURT: If I seal the file, what does that preclude him from saying whatever he wants to say?

MR. BENZINGER: Well he can say what he wants,

but she's been spreading under oath the Bill of Complaint. There's a piece of a paper. There's evidence. And he would say oh, I deny that.

Well, that's not going to help him much to someone who is at least persuaded that he's done what Ms. Seale has accused him of in her Bill of Complaint. But if he has information developed during discovery under oath that says no, that's not exactly true or my strong moral standard I took in the Bill of Complaint wasn't exactly so, then he's got a better defense.

And I think he'll be able to persuade some of these folks who are now thinking that he's a bad guy and that he's doing all of this weird stuff.

THE COURT: We don't try cases in the Court of Public Opinion. If people want to try them there, that's their own business. My interest is in the file and in the proceedings in the Court, not what people may call and tell their friends back in Texas on either side of this case.

MR. BENZINGER: I understand that, Your Honor. But she's coming in here and asking the Court in equity to seal this file for no other reason than she wants to protect herself against Mr. Scott's defensive maneuvers,

if he takes them.

Now, some of the things that were said in this motion are among us. This case was settled. We had a signed Property Settlement Agreement signed by Mrs. Scott. However, it had additional things in there that we had not agreed to, including the sealing of the file and prohibition of Mr. Scott talking about the case. And we didn't agree.

So the allegation that it was signed by both parties is not so. We never did sign it and of course we got a subsequent letter when we said we weren't going to sign it, withdrawing the signature of Mrs. Scott. So that allegation is not so.

She cancelled her signature when we wouldn't agree to this afterthought of sealing the record. And I don't think the sealing of the record is going to induce a settlement.

I think this case has gone so far that Mr. Scott feels he has the right to defend himself and to preserve the right to defend himself with something more than merely a denial of these allegations that have reached as far as Texas.

Ms. Seale is a public servant. I don't think

she deserves special treatment because of it. And that's what she's saying. Because I'm a public servant and because -- I would think just the opposite. If you're a public servant, you shouldn't have anything to hide and you shouldn't be sealing records.

Your Honor, I think that this is a clear case of merely trying to cover up immoral, perhaps illegal, activity that this public servant doesn't want to see the light of day.

But she has no -- repeat no -- information that Mr. Scott has done that. All she has is her supposition that he might. And he might if this accusation against him in this Bill of Complaint continues to be filtered down to his friends, his relatives, the folks he left in Texas to marry this lady.

When he goes back to Texas, he's going to have to confront these accusations and these attacks of his character. And if you seal this record, he's going to be severely hampered in that effort and in that right, I think, to clear his name.

So I would ask the Court to deny the request to seal the file, and further deny the request to inhibit the use of the deposition. As a matter of fact, I believe

the equity rules says that the deposition can be used for all purposes.

I know that rule doesn't anticipate using it to defend one's self against attacks on his character. But on the other hand, that I think is an indication of the Supreme Court's intent that these depositions are to be available for whatever purposes, even I would suppose outside of the courtroom.

But certainly this effort is solely to protect Ms. Seale because of her prior misdeeds and not because of any harm to children or something like that that might in fact justify this Court in sealing the record.

Now, I will, as an Officer of the Court, proffer to this Court my agreement to a limited restriction on the use of this information. That is, not to tell her ex-husband or her children.

If she has that fear, that's fine. But she's a public servant, she should be subject to public scrutiny and should not have this public record sealed solely for her own protection.

Thank you, Your Honor.

THE COURT: All right. Thank you.

MS. MCGREGOR: I have copies of the cases that

I referenced, if that's what you're looking for.

THE COURT: I'm looking for some particular language. I'm familiar with the case. I actually have a matter on Mandamas (ph) now before the Supreme Court that involves that matter.

MS. MCGREGOR: Okay.

MR. BENZINGER: I don't have copies. If you want to offer it to me, I would appreciate it if you have a spare.

THE COURT: Well, the only one I'm referring to is the Shenandoah case. That's the only one I'm referring to.

MS. MCGREGOR: Thank you, Your Honor.

Ms. Seale is not asking for special treatment. She's asking for what Virginia code provides for her, what the Rules of the Supreme Court provide for her.

THE COURT: What is in these pleadings that is so unusual that -- am I going to start sealing every file in which there are allegations of adultery or allegations of sexual conduct that's outside of some norm, or whatever it is? Is that's what's going to cause me to seal every file in this courthouse?

MS. MCGREGOR: No. I don't think there will

be cause to every time there's allegations of adultery. What you've heard here though is not that someone might find out somehow, but he might -- and think the indication was he probably will -- show other people these deposition transcripts.

He specifically said she's a public servant, she should be held to a higher standard.

Well, whatever your personal view is on that, that's not what the code says. The code says if it's likely to cause embarrassment or harm or annoyance, that's cause.

THE COURT: Where does it say that?

MS. MCGREGOR: I'm sorry. That's the Supreme Court ruling. I'm getting confused. I apologize.

Rule 4.1(C) of the Rules of the Supreme Court of Virginia says that the Court can seal a deposition and provide other protective relief for good cause shown when there is danger of annoyance, embarrassment and the like.

I believe I have a copy of that.

THE COURT: I have it.

MS. MCGREGOR: Okay. In this case there is a danger of embarrassment, annoyance and the like. He has said that he will agree to a limited sealing where he

won't tell her ex-husband or her children.

Well, if other people know, they probably will tell her ex-husband and her children. So a limited sealing of the file won't even help there.

The implication is that they're going to tell her employers, that they are going to ruin her career. She has no income outside of these political connections. The harm to her is greater than your average divorce case, because she does work in a very conservative administration.

If you would like me to present evidence, I have the --

THE COURT: I don't need evidence that the administration in Maryland and the First Administration tends to be a conservative administration.

MS. MCGREGOR: The evidence would be that she doesn't have a work history that would allow her to get a job somewhere else, that she'd be able to continue to generate income at the current level for herself if her employers were to find out about her affair with Mr. Scott.

In addition, there's other parts of this deposition that are very humiliating and embarrassing.

It's not just allegations of adultery and whatever they may have done behind closed doors.

He submitted, as part of his discovery, as well as the deposition exhibits, a picture of the two of them when they were playful. They were outside, they were playing on their lawn, where she's wearing a bra, but she's flashing him.

That's the kind of deposition exhibit that he wants to show people to protect his reputation. In terms of protecting his reputation, this is not going to help him protect his reputation. The only purpose can be for revenge, because it's not going to help him with his reputation.

In addition, there is no evidence that she's told other people. And I will proffer on behalf of my client that the only person she showed the Bill of Complaint to, besides her attorneys and filing it with the Court, is her sister who is her closest confidante in life, and whose shoulder she -- she goes to her sister when she's having a troubled time.

Her sister is the only person that's seen the Bill of Complaint. If someone in Texas knows what's going on, they don't know it from her because she hasn't told

UNTRUE.
PHOTOS WERE TAKEN
@ FT. WASHINGTON
A PUBLIC HISTORIC
PARK IN FRONT OF
DOZENS OF FAMILIES
ON A SUNDAY IN
JULY 2001.
MR. SCOTT'S REP.
S PROTECTED BY
HOWING MS.
SEALIE - SCOTT'S
ABILITY TO LIE
DOWNHILL TIMES
EFFORTLESSLY.

people in Texas what's going on.

Mr. Scott has stated that he wants -- you know, he's concerned because some people are seeing this Bill of Complaint. Well, if the file is sealed, that would help him, not hurt him.

Because if they haven't already seen it, they won't be able to see it after today.

THE COURT: What notice do I have to give to the press before I seal a file?

MS. MCGREGOR: I wasn't aware that Your Honor had to give notice to the press.

THE COURT: Maybe I don't. I'm asking you.

MS. MCGREGOR: I don't think the rules require any notice to be given to the press. I don't think the Virginia code provides for that. I don't think the Rules of the Supreme Court provide that notice must be given.

If I'm incorrect in my understanding, I apologize to Your Honor.

THE COURT: Anything else?

MS. MCGREGOR: Mr. Benzinger stated that he doesn't think that signing an order to seal the file will induce settlement.

THE COURT: I don't care whether --

MS. MCGREGOR: That's not our purpose here today.

THE COURT: If that's some of the grounds, that's not anything I'm taking into account.

MS. MCGREGOR: I just wanted to state that that was not our purpose to induce settlement. But that's sort of evidence of why the file should be sealed, so that anything that happens hereafter is also not released to her employers and other people that can harm her career and harm her personally.

Thank you, Your Honor.

THE COURT: All right. Thank you.

MR. BENZINGER: Your Honor, I need to add one more thing.

THE COURT: All right.

MR. BENZINGER: And this was what really caused my concern. Ex parte communications from Ms. Seale to federal officials caused Mr. Scott, without a hearing, to be excluded from four federal buildings because of her accusations of her fear for him.

All of these accusations were totally untrue. It came out in the deposition that much of what she was saying wasn't so. And so now we have a verified Bill of

Complaint that has been spread across the universe --

THE COURT: How long is this deposition?

MR. BENZINGER: It was limited to two hours.

THE COURT: In pages?

MR. BENZINGER: I don't know.

THE COURT: A hundred?

MR. BENZINGER: I don't know.

THE COURT: Okay.

MR. BENZINGER: I ordered it. I had it delivered to a colleague across the street so that they couldn't inhibit the court reporter, but I have not seen it myself.

THE COURT: Okay.

MS. MCGREGOR: May I respond to that one point? And I'll limit it to that one point.

THE COURT: No. Thank you.

(Brief pause.)

THE COURT: From the case law, there is a rebuttable presumption of public access to judicial records.

Therefore, Ms. Seale-Scott bears the burden of establishing an interest -- if I read the Shenandoah Publishing case correctly -- so compelling that there's no

reasonable way to protect that interest other than by sealing the Court's file.

It's also clear from Shenandoah that it's not sufficient -- it's not a sufficient basis for sealing the file that it be the desire of the parties. It's not a sufficient basis for sealing the file that there be some risk of damage to professional reputation, emotional damage or financial harm stated in the abstract.

In this instance, I'm going to grant her motion for these reasons; I don't believe that the risk of professional damage that she has referenced is an abstract risk. I find that it's one that has been -- by counsel's proffer -- shown to have some basis.

Second, Section 20-124 of the Code of Virginia, specifically in regard to domestic relations cases, recognizes that the Court may order the public records sealed upon the motion of one of the parties. It doesn't even give a good cause standard, but I would assume that that's what I would apply and I am applying today.

I also finally find there's no harm to Mr. Scott in my sealing this record. He can defend himself in this litigation and that's all that I'm interested in, the

*JUSTICE WOODRUFF
IS A REPUBLICAN*

confines of this litigation.

What the parties, either Ms. Seale-Scott or Mr. Scott, choose to tell their friends or their colleagues or their Texas cohorts, it really doesn't interest me. What interests me is the appropriate handling of this case in this Court and I find that sealing the file is the best way to meet that interest.

Therefore, I'll grant your motion. Give me an order before you leave.

MS. MCGREGOR: Thank you, Your Honor. I have an order prepared that I need to show to defense counsel.

THE COURT: Okay. Just pass it up with Mr. Benzinger before you go, please.

MS. MCGREGOR: Will Your Honor be here for a while if he's not able to agree to the language of the order?

THE COURT: Yes. Well, for ten or fifteen minutes maybe.

MS. MCGREGOR: Thank you.

(Brief pause.)

MR. BENZINGER: Does this all include what happens in the future?

THE COURT: The entire file is sealed. That

would include what happens in the future.

MS. MCGREGOR: Your Honor, I had asked -- and I'm not sure that you addressed it -- that any copies that have already been disseminated be destroyed or returned to counsel for each party.

THE COURT: Of what? Copies of --

MS. MCGREGOR: The transcript of the deposition.

THE COURT: Mr. Benzinger says he doesn't even has it yet.

MS. MCGREGOR: He hasn't, he's delivered it to a third party.

MR. BENZINGER: No. A third party has it, I've never seen it.

THE COURT: He told me he'd never seen it. I don't know if that means he had it in his hand and he didn't read it, he gave it to a third party, I don't know what that means.

MR. BENZINGER: No, I had to call and pick it up yesterday.

THE COURT: All right. There are no copies that have been made?

MR. BENZINGER: Not that I know of.

THE COURT: Or that your --

MR. BENZINGER: I didn't order anybody to make any copies.

THE COURT: Or that your client knows of?

MR. BENZINGER: No. He hasn't seen it. He hasn't --

THE COURT: You can include language that represents that to the best of Mr. Benzinger's knowledge, no copies have been made by him or his client of the deposition.

MS. MCGREGOR: Okay. Thank you.

THE COURT: Thank you.

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(Whereupon, at approximately 1:05 o'clock p.m., the hearing in the above entitled matter was concluded.)