

## File of sex assault lawsuit against businessman must be unsealed

By: Bill Cresenzo January 3, 2019

A superior court judge went too far when he issued an order completely sealing the file of a sexual assault lawsuit against a prominent Fayetteville car dealership owner, the North Carolina Court of Appeals has ruled.

"We have been unable to find any other case in North Carolina in which the entire court file, including the court orders sealing the file, has been sealed," Judge Donna Stroud wrote for a unanimous Court of Appeals panel ordering that the file be unsealed. "This level of protection from public access is unprecedented in North Carolina and has occurred in only very few cases throughout the United States."

Mike Lallier, who owns Reed-Lallier Chevrolet in Fayetteville, was arrested at Darlington Raceway in South Carolina in 2016 for allegedly sexually assaulting a 15-year-old. That criminal case is pending. Meanwhile, multiple juveniles filed a civil lawsuit against him in North Carolina, alleging sexual assault. Lallier settled the case, and Judge William Pittman sealed the entire case file.

Cumberland County Chief Superior Court Judge Jim Ammons later confirmed to the Fayetteville Observer that the suit involved Lallier, and that he had appointed Pittman, a Wake County superior court judge, to preside over the case to avoid any appearance of a conflict of interest. The newspaper said that Lallier, the former chairman of the Fayetteville Public Works Commission, is a prominent figure in Fayetteville who is "well known to judges, politicians and other prominent people in the city."

The newspaper filed suit to unseal the file. On Dec. 18, the Court of Appeals vacated Pittman's order and remanded the case back to Cumberland County, ordering the trial court to consider the correct extent of redaction and sealing, and enter a new order unsealing the file with limited redaction.

"The public and press enjoy a presumptive right of access to civil proceedings and documents filed therein, notwithstanding the negative publicity those documents may shower upon a company or individuals associated with a criminal defendant," Stroud wrote. "The trial court erred to the extent it relied upon the interest of protection of the defendants or innocent third parties from embarrassment, trauma, or economic loss in sealing any portion of the court file."

Jon Buchan, Natalie Potter, and Caitlin Walton of Essex Richards in Charlotte and John Korzen of Wake Forest University School of Law in Winston-Salem represented the newspaper. Buchan called the case "an extraordinary event" in that the entire case file was sealed.

"There was no public record that the claims had been filed with the court, and no public record of the names of the defendants, the nature of the claims, the name of the judge, the names of the parties' lawyers," Buchan said. "Even the two initial orders sealing the files were under seal."

The Court of Appeals ruled that the trial court erred in sealing its own orders. It said that protecting the identities of the juveniles named in the lawsuit was proper, but sealing the rest of the case was not.

"The trial court's sealing orders go far beyond the usual statutory protections granted to juvenile victims of sexual abuse in juvenile or criminal proceedings," Stroud wrote. "Sealing the entire file, even including names of attorneys, names of defendants, and sealing orders, cannot be justified by the interest in protecting the juvenile plaintiffs. The trial court should – and did – use pseudonyms for the juvenile plaintiffs, and on remand should redact specific identifying information any documents which include this information."

Buchan called the opinion "a powerful signal to our trial courts that both the First Amendment and the North Carolina constitution set an extraordinarily high bar to sealing court records and closing court proceedings."

“Any trial judge asked by lawyers to keep civil cases or records hidden from public view will surely give this opinion a close read when considering such a request,” he said.

James McLean III of Player McLean; Richard Wiggins of McCoy, Wiggins Cleveland & McLean; and Gerald Beaver and David Courie of Beaver, Courie, Sternlicht, Hearp & Broadfoot; all in Fayetteville, represented the defendant, identified only as “John Doe” in the court’s opinion. Attempts to reach the defense for comment were unsuccessful.

The 51-page decision is *Doe v. Doe* (Lawyers Weekly No. 011-375-18). The full text of the opinion is available online at [nclawyersweekly.com](http://nclawyersweekly.com).

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