

GateHouse Media and *Fayetteville Observer* Win 2-Year Battle to Unseal Files in Abuse Case

By Jon Buchan

On September 13, 2019, the two-year battle by GateHouse Media and *The Fayetteville Observer* to unseal a North Carolina state court civil file ended with the court-ordered unsealing of every document in the file, redacting only the identities of the three juvenile plaintiffs who had brought claims of sexual abuse against a politically prominent North Carolina car dealership owner.

The unsealed “Confidential Settlement Agreement” revealed that the defendant Michael Lallier and/or his related businesses had paid \$1.9 million to settle the case. It also revealed that the plaintiffs, through their guardians *ad litem* and families, had agreed that the settlement could be revealed to the prosecutor in the South Carolina criminal case in which Lallier has been charged with felony sexual misconduct with one of the three minor plaintiffs in the civil case. That minor plaintiff and his family agreed in an affidavit made part of the settlement agreement that they would “not challenge or object to the Solicitor’s decision to resolve” that criminal case “in whatever way the Solicitor deems appropriate.” The criminal case, brought in September, 2016, is still pending in the South Carolina trial court. The unsealed civil complaint and amended complaint disclosed the minors’ detailed allegations against Lallier.

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Case History

The North Carolina Court of Appeals in December 2018 vacated the two original orders entered in 2016 that sealed the civil case in its entirety, and reversed the August 2017 trial court order denying the newspaper’s motion to unseal the file. (See [MLRC MediaLawLetter, December, 2018](#); *Doe v. Doe*, 823 S.E. 2d 583 (N.C. App. 2018)). The two sealing orders hid from public view every document in the file, including the summons and complaints, the names of the defendants, the two orders sealing the file, the names of counsel for plaintiffs and defendants and the name of the trial judge. The Court of Appeals remanded the case to the trial court to unseal most of the file in a redacted form to protect the identities of the juveniles, but instructed the trial court to consider two core issues.

First, the Court of Appeals directed the trial court to consider on remand any argument that might be made by Lallier that disclosure of the complaints could harm his right to a fair trial in the S.C. criminal case. That issue had never been raised by defendants when the newspaper moved in 2017 in the trial court to unseal the file, was not mentioned in the trial court’s 2017 order denying the newspaper’s motion to unseal, and was never raised in the briefing and argument to the Court of Appeals. The Court of Appeals, nonetheless, directed that Lallier could raise the issue on remand. On remand, counsel for Lallier submitted only a conclusory affidavit from Lallier’s S.C. criminal attorney asserting that disclosure of the allegations in the complaints prior to resolution of the criminal case would harm his fair trial rights.

Second, the Court of Appeals directed the trial court to determine whether the confidential settlement agreement should remain sealed forever, “considering the subject matter of the Agreement and the ‘facts of

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this specific case,” noting that the trial court should consider “the public policy factors of encouraging settlement of litigation and freedom of contract.”

The Plot Thickens on Remand

Lallier’s counsel seized on that strong language, and argued that if this had not been a case involving the settlement of minors’ claims requiring judicial approval, the settlement agreement would not have been filed with the court and would have remained undisclosed. Lallier’s counsel also argued to the trial court that confidentiality was naturally part of the consideration bargained for by defendants in making the settlement payments, and that North Carolina public policies of encouragement of the settlement of litigation and the right of “freedom of contract” supported permanent sealing of the settlement agreement.

Counsel for the newspaper countered that there was no North Carolina case law suggesting that the state has a public policy of encouraging settlement that is strong enough to constitute a compelling public interest in sealing court-approved and filed settlement agreements. Counsel also pointed to courts – such as the United States District Court of South Carolina – that have made the sealing of court-filed settlement agreements permissible only in extraordinary circumstances.

Counsel for the newspaper, who had been permitted by the trial court to review the sealed material under an Attorneys’ Eyes Only limitation, drew the court’s attention to the specific portions of the settlement agreement that allowed the defendant Lallier to present the settlement documents to the S.C. prosecutor. This provision allows Lallier to argue that the minor plaintiff in the S.C. criminal case and his family had agreed that they had no objection to whatever resolution of the case the prosecutor decided upon, possibly opening the door to a dismissal or significant reduction of the charges based on this then-non-public agreement. Counsel for the newspaper asked the court to review those specific provisions and argued that not only was there not a compelling public interest in keeping the agreement sealed, such continued sealing was actually contrary to the public interest.

After extensive briefing and oral argument of these issues, the trial court – the same judge who had sealed the file in 2016 and rejected the newspaper’s motion to unseal in 2017 – on August 15, 2019 ordered that the entire file, including the complaints and settlement agreement, be unsealed, redacting only the names of the minors and their families and any other specific identifying information. (*John Doe 15 v. Lallier et al*, 2019 N.C.Super. LEXIS 117) The trial court specifically ruled that Lallier had not met the First Amendment standard for maintaining the complaints under seal, finding that there were adequate alternatives to sealing, such as *voir dire*, that would protect his right to a fair trial.

But the fight was not over. Defendant Lallier filed notice of appeal and asked the trial court to stay the order as to the complaints and settlement agreement pending appeal of the August 15 order, arguing that unsealing the complaints and settlement agreement would moot their appeal. The newspaper opposed that motion, and

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the trial court denied it. Lallier then filed a petition for writ of supersedeas with the Court of Appeals seeking to have it stay the August 15 order pending appeal.

The newspaper vigorously opposed that petition, arguing: (1) that Lallier should not be rewarded for passing on the opportunity to present the fair trial issue to the Court of Appeals in the first appeal and for offering no competent evidence on that issue on remand, and, (2) that the trial court had on remand ruled on the unsealing of the settlement agreement considering “the facts of this specific case,” as directed by the Court of Appeals. Therefore, the newspaper argued, the Court of Appeals had no new issue of law before it.

On September 13, 2019 the Court of Appeals denied Lallier’s petition for writ of supersedeas, and later that day the Cumberland County Clerk of Court released redacted copies of the complaints and the settlement agreement.

Jonathan E. Buchan, Natalie D. Potter, and Caitlin Walton of Essex Richards, P.A. in Charlotte N.C. represented The Fayetteville Observer, a GateHouse Media, Inc. newspaper, throughout this dispute. The defendant Michael G. Lallier was represented in the trial court on remand by H. Gerald Beaver of Fayetteville, N.C. and by Joshua Davey of McGuire Woods, LLP. In Charlotte, N.C. Plaintiffs were represented by Michael Porter, of The Michael Porter Law Firm, in Fayetteville, N.C.

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