

STATE OF NORTH CAROLINA
WAKE COUNTY

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IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. 04 CVD 9869

CHARLES C. COUCH

Plaintiff

v.

TARA C. POOLE

Defendant.

WAKE COUNTY, C.S.C.

BY _____

ORDER

This matter came on for hearing before the Honorable Lori Christian, District Court Judge Presiding, on February 15, 2011, on Movant News and Observer Publishing Company's Motion For Leave To Intervene And To Vacate Sealing And Protective Orders. Plaintiff appeared through Stephanie Jenkins of the law firm Gailor Wallis & Hunt, PLLC. Defendant appeared through John McNeil of The McNeil Law Firm, PLLC. Intervenors News and Observer Publishing Company appeared through C. Amanda Martin of the law firm Stevens Martin Vaughn & Tadych, PLLC. After considering the pleadings and arguments of the parties, the Court makes the following findings:

1. On July 7, 2010, this Court conducted open court proceedings in the above-styled matter. No motion was made to close the courtroom, and no order was entered closing the courtroom. Subsequent to the hearing, no motion was made to seal the transcript of the open court proceedings of July 7.
2. On or about December 8, 2010, prior to entry of any sealing order in this matter, a representative of Movant made a request for access to a copy of the audio recording of the July 7, 2010, proceedings in this matter.
3. On December 8, 2010, *sua sponte* the Court entered an order sealing the audio recording of the July 7 proceedings.

4. Following a request by defense counsel to receive a copy of the audio recording of the July 7 proceedings, on January 12, 2011, the Court entered a Protective Order permitting defense counsel access to the audio recording but prohibiting release of the recording and purporting to bind anyone in possession of the audio recording to the terms of the Protective Order. The Protective Order further directs the Clerk of Court to release a copy of the audio recording to defense counsel and to otherwise maintain the recording under seal.

5. On February 3, 2011, the News and Observer Publishing Company moved for leave to intervene under G.S. § 1-72.1 for the limited purpose of objecting to the sealing orders entered by the Court.

6. North Carolina court records are public records that must be open to public inspection absent extraordinary circumstances.

Each clerk shall maintain such records, files, dockets and indexes as are prescribed by rules of the Director of the Administrative Office of the Courts. Except as prohibited by law, these records shall be open to the inspection of the public during regular office hours, and shall include civil actions, special proceedings, estates, criminal actions, juvenile actions, minutes of the court, judgments, liens, lis pendens, and all other records required by law to be maintained. G.S. § 7A-109.

7. The North Carolina Public Records Law provides the public a right of access to public records. "Every custodian of public records shall permit any record in the custodian's custody to be inspected and examined at reasonable times and under reasonable supervision by any person, and shall, as promptly as possible, furnish copies thereof upon payment of any fees as may be prescribed by law." G.S. § 132-6(a).

8. Our courts have interpreted a liberal right of access to court records and court proceedings, including in the context of custody proceedings. *Raper v. Berrier*, 246 N.C. 193, 195, 97 S.E.2d 782, 784 (1957); *Virmani v. Presbyterian Health Services Corp.*, 350 N.C. 449, 476, 515 S.E.2d 675, 693 (1999). Most recently, in the appeal of a domestic case, the North Carolina Court of Appeals issued an opinion underscoring the importance of open courts and reiterating that court proceedings are properly closed in only the most extraordinary and narrow

circumstances. In that domestic court context, the Court wrote, "[W]e can find no case supporting the closing of an entire proceeding merely because some evidence relating to a minor child would be admitted. ... In most instances, a proceeding will only be closed during the testimony of the minor child." *France v. France*, 2011 WL 294051, *8 (N.C. App. 2011).

9. The duty of this Court, therefore, is to balance the public's right of access against the parties' rights and interests. The court proceedings in this matter have been entirely open, and no party has asked for sealing of any proceedings.

10. Having considered the arguments of counsel, this Court finds that continuing the sealing orders previously entered by the Court would disclose to the public the outcome of the Court's decision without permitting the public access to the rationale for that decision, and the public's confidence in the judicial process likewise must be balanced in the equation.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Court hereby WITHDRAWS the Sealing Order signed December 8, 2010, and the Protective Order signed January 12, 2011, and declares that such recording is a public record under G.S. § 123-1, available for public inspection and copying.

This the 21 day of February, 2011.



The Honorable Lori Christian
District Court Judge