



SUPREME COURT OF GEORGIA
Case No. S17I1834

Atlanta, August 10, 2017

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

**IN RE PETITION OF THE ATLANTA JOURNAL-CONSTITUTION AND
WSB-TV WITH RESPECT TO THE MATTER OF DIANE SMITH
MCIVER, DECEASED**

From the Probate Court of Fulton County.

On April 24, 2017, the probate court entered an order limiting public access to most of the record of In the Matter of Diane Smith McIver, Deceased, Estate No. PC-2016-2606. The Atlanta Journal-Constitution and WSB-TV sought reconsideration of that order, and on May 26, 2017, the probate court denied the motion for reconsideration. Pursuant to Uniform Probate Court Rule 4, the Atlanta Journal-Constitution and WSB-TV then filed an application with this Court, seeking review of the order limiting public access. For the reasons that follow, we GRANT the application, and we DIRECT the probate court to reconsider, and amend or vacate, its order limiting public access.

Uniform Probate Court Rule 4.4 provides that an order limiting access to court records must “specify the part of the file to which access is limited . . . and the reason for limitation,” and Rule 4.5 provides that “[a]n order limiting access shall not be granted except upon a finding that the harm otherwise resulting to the privacy of a person in interest clearly outweighs the public interest.” Here, in its order limiting public access, the probate court found:

Certain portions of the court files in this matter contain information that is confidential in nature and sensitive, such that disclosure presents a risk of harm to the privacy of the individuals and/or entities referenced in those pleadings. Further, it appears that this action is based on a Fulton County District Attorney Investigation. Based on the above, the Court finds that the harm that may result to certain individuals and/or entities clearly outweighs the public interest in having access to court files respecting this action which would otherwise be public.

Based on these findings, the probate court limited access to the entirety of the record, except for the materials filed on October 5, 2016.

As we recently explained in Altman v. Altman, 301 Ga. 211, 216-217 (3) (800 SE2d 288) (2017), “[i]t is not enough for the court simply to recite in the sealing order the standard set out in [the Uniform Rules]. Rather, the court must set forth findings that explain how the invasion of privacy threatened by public access to the sealed materials differs from the type of privacy invasion that is suffered by all parties in civil suits.” The order limiting access at issue here does little more than recite the standard. A conclusory finding that “[c]ertain portions of the court files . . . contain information that is confidential in nature and sensitive” is not sufficient to sustain an order limiting access to any portion of the record, much less an order indiscriminately limiting access to everything filed since October 5, 2016. Likewise, a finding that “this action is based on a Fulton County District Attorney Investigation” does not, without more, justify an order sealing any portion, much less most all, of the record. The findings in the order simply are not sufficient to sustain the limitation of public access that the probate court imposed, and the order is overly broad.

For these reasons, we direct the probate court to reconsider, and amend or vacate, its order limiting public access. Pursuant to Uniform Probate Court Rule 4.7, the probate court should reconsider its order after “notice to all parties of record and after hearing.” For now, we leave the order in place, so as to afford the probate court a reasonable opportunity to reconsider the order. We expect, however, the probate court to set a hearing and commence its reconsideration

promptly and without delay.

All the Justices concur, except Nahmias, J., who is disqualified, and Peterson, J., who is not participating.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I certify that the above is a true extract from the Minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Suzanne C. Fulton, Chief Deputy Clerk