

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

No. 2004-14710

Section "E-16"

JOHN W. HOUGHTALING, II

VS.

CANDYCE C. GAGNARD

FILED: _____
DEPUTY CLERK

**CANDYCE PERRETT'S EXCEPTIONS TO MOTION TO
UNSEAL PLEADINGS, ORDERS AND JUDGMENTS,
AND REQUEST FOR EXPEDITED HEARING**

NOW INTO COURT, through undersigned counsel, and without waiving any other rights and solely to urge the exceptions herein, comes Candyce Perrett (formerly, Candyce C. Gagnard), and respectfully submits that the Motion to Unseal Pleadings, Orders and Judgments filed by The Independent Weekly in the instant matter is procedurally defective and should not be entertained by this Court unless and until such defects are cured. Although not served with the subject Motion or any Order in accordance with the provisions of the Louisiana Code of Civil Procedure, Mrs. Perrett has learned that the Court has scheduled a hearing on the subject Motion for March 23, 2017, at 9:00 a.m. Accordingly, Mrs. Perrett prays that these exceptions be scheduled for hearing on an expedited basis, on March 23, 2017 at 9:00 a.m., before the hearing on the subject Motion.

Pursuant to Article 927 of the Louisiana Code of Civil Procedure, Mrs. Perrett urges the exception of Nonjoinder of a Party Under Articles 641 and 642, on the grounds that she is a party who must be joined under Article 641 of the Louisiana Code of Civil Procedure, all for the reasons set forth in the accompanying memorandum in support filed herewith.

Pursuant to Article 925 of the Louisiana Code of Civil Procedure, Mrs. Perrett urges the exception of Insufficiency of Service, on the grounds that she was never served the Motion or Order setting the Motion for hearing in accordance with the Louisiana Cod of Civil Procedure, all for the reasons set forth in the accompanying memorandum in support filed herewith.

Pursuant to Article 926 of the Louisiana Code of Civil Procedure, Mrs. Perrett urges the exception of Unauthorized Use of Summary Proceedings, on the grounds that action sought to be commenced by The Independent Weekly through its Motion is not permitted to occur via summary proceeding, all for the reasons set forth in the accompanying memorandum in support filed herewith.

Pursuant to Article 926 of the Louisiana Code of Civil Procedure, Mrs. Perrett urges the exception of Vagueness or Ambiguity, on the grounds that the Motion filed by The Independent Weekly is impermissibly vague and ambiguous, all for the reasons set forth in the accompanying memorandum in support filed herewith.

Mrs. Perrett prays that these exceptions be scheduled for hearing on an expedited basis, on March 23, 2017 at 9:00 a.m., before the hearing on the subject Motion.

Respectfully submitted,



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Attorneys for Candyce Perrett

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading has been served on all counsel of record in these proceedings via email, this 22 day of March, 2017.



CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

No. 2004-14710

Section "E-16"

JOHN W. HOUGHTALING, II

VS.

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FILED: _____

DEPUTY CLERK

**MEMORANDUM OF CANDYCE PERRETT IN SUPPORT
OF EXCEPTIONS TO MOTION TO UNSEAL PLEADINGS, ORDERS AND
JUDGMENTS, AND REQUEST FOR EXPEDITED CONSIDERATION**

MAY IT PLEASE THE COURT:

Without waiving any other rights and solely to urge the exceptions discussed herein, Candyce C. Perrett (formerly, Candyce C. Gagnard), who is referred to herein as "Mrs. Perrett", respectfully submits that the Motion filed by The Independent Weekly in the instant matter is procedurally defective and should not be entertained by this Court unless and until such defects are cured. Although not served with the subject Motion or Order in accordance with the provisions of the Louisiana Code of Civil Procedure, Mrs. Perrett has learned that the Court has scheduled a hearing on the subject Motion for March 23, 2017, at 9:00 a.m.

Accordingly, Mrs. Perrett prays that her exceptions be scheduled for hearing on an expedited basis, on March 23, 2017 at 9:00 a.m., before the hearing on the subject Motion, and that, after due proceedings had, her exceptions be maintained and the Motion filed by The Independent Weekly be dismissed.

A. Exception of Nonjoinder of a Party Under Articles 641 and 642.

The Independent Weekly has made no showing, nor can it, that it has attempted to join Mrs. Perrett as a party to its Motion. Mrs. Perrett is not identified or named as a defendant to The Independent Weekly's Motion. Instead, she is merely identified as someone "who has not responded to is presumed to object." And The Independent Weekly has made no showing that it

has served Mrs. Perrett either its Motion or the Order setting the subject matter of its Motion for hearing (which is the subject of an exception of insufficiency of service, *infra*.)

Article 927 of the Louisiana Code of Civil Procedure is the source for the exception of nonjoinder of a party under Articles 641 and 642. Article 641 of the Louisiana Code of Civil

Procedure provides that a person “shall be joined as a party in the action” when:

- (1) In his absence complete relief cannot be accorded among those already parties;
- (2) He claims an interest relating to the subject matter of the action and is so situated that the adjudication of the action in his absence may either:
 - (a) As a practical matter, impair or impede his ability protect that interest....

According to the Louisiana Fourth Circuit Court of Appeal, a party should be deemed needed for a just adjudication when absolutely necessary to protect substantial rights. *Two Canal Street Investors, Inc. v. New Orleans Building Corp.*, 2016-0825 (La.App. 4 Cir. 9/23/16), 202 So.3d 1003, 1011-12. Courts must determine whether a party should be joined and whether the action should proceed in his absence by a factual analysis of all the interest involved. *See id.* An action without joining a party described in Article 641 is an absolute nullity. *See id.*

Mrs. Perrett was a party to the captioned lawsuit when the Court rendered an order to seal the record. If that alone does not create in her an interest in the subject matter of the Motion filed by The Independent Weekly, she certainly has an interest in preserving her privacy (and the privacy of others) to the fullest extent permitted by law. Even the case cited by The Independent Weekly in support of its Motion, *Copeland v. Copeland*, 2007-0177, pp. 5-6 (La. 10/16/07), 966 So.2d 1040, 1044, acknowledges that “the fact that a document is filed in the record does not necessarily mean that it will be accessible to the public” and that “the right to inspect and copy judicial records is not absolute.” (quoting *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597, 98 S.Ct. 1306, 55 L.Ed.2d 570 (1978)). The *Copeland* Court also reiterated that Louisiana residents enjoy a right to privacy and to be “‘let alone,’ ... and to be free from ‘unnecessary public scrutiny.’” *Copeland*, 966 So.2d at 1046. The *Copeland* Court further acknowledged that certain rights of the divorcing parties outweighed the public’s right to access and that redaction

fo certain court records can and should properly be redacted. 966 So.2d at 1048. Thus, notwithstanding The Independent Weekly's contention to the contrary, Ms. Perrett has a right to privacy under Louisiana law; the right to access court records is not absolute; and circumstances can indeed exist which require shielding portions of court records from public view. The only persons capable of asserting the aforementioned rights are the parties to the action, including Ms. Perrett. Because Ms. Perrett has rights and interest that would be affected by a decision on the merits of The Independent Weekly's Motion, she is a person who "claims an interest relating to the subject matter of the action and is so situated that the adjudication of the action in [her] absence may... [a]s a practical matter, impair or impede [her] ability protect that interest...." Accordingly, Mrs. Perrett is a party who must be joined under Article 641 of the Louisiana Code of Civil Procedure.

B. Exception of Insufficiency of Service

Article 925 of the Louisiana Civil Code is the source of the exception of insufficiency of service. Article 1313 of the Louisiana Code of Civil Procedure requires service of every pleading subsequent to a petition by mail, actual delivery, or electronic means to every party or counsel of record for a party. However, Under Article 1313(B) when service is made by mail, delivery or electronic means, the party or counsel making such service "shall file in the record a certificate of the manner in which service was made." Moreover, if a pleading or order sets a court date, it must be served by certified or registered mail, by actual delivery by commercial courier, or by the sheriff under Article 1314. See La. Code Civ. Proc. Art. 1313(C) (West 2017).

The record here is devoid of any service of the Motion by The Independent Weekly. This is so because Mrs. Perrett was never served as much. Likewise, the record is devoid of service of the Order scheduling the Independent Weekly's Motion for hearing on Mrs. Perrett. This is because she never received service of that Order in accordance with Article 1313(C) or Article 1314 of the Code of Civil Procedure. Accordingly, service has not been effected in accordance with the relevant provisions of the Louisiana Code of Civil Procedure. And until such time as

Mrs. Perrett is properly serviced in accordance with the Louisiana Code of Civil Procedure, a hearing on the Motion filed by The Independent Weekly cannot go forward.

C. Exception of Unauthorized Use of Summary Proceedings

The source of the exception of unauthorized use of summary proceedings is Article 926 of the Louisiana Code of Civil Procedure.

A summary proceeding is only allowed in certain matters, including “incidental questions arising in the course of a judicial proceeding”; and application for new trial; an action which may be raised via exception or motion, an action on a surety bond; the homologation of a judicial partition, tableau of distribution, or accounting; a habeas corpus, mandamus or quo warranto proceeding; the determination of the rank of mortgages, liens, etc.; child support, custody or visitation matters; actions to compel an accounting; actions to annul a probated testament; actions to enforce the right to an accounting; actions related to compromise agreements; and matters in which the law permits summary proceedings. La. Code Civ. Proc. Art. 2592 (West 2017).

Here, The Independent Weekly seeks to intervene in the captioned matter and move the court to unseal certain records by *ex parte* motion. Such an action is not expressly permitted to take place in the form of a summary proceeding under Article 2592. An intervention, such as this, is permitted after answer to the principle action only with leave of court. See La. Code Civ. Proc. art. 1033 (West 2017). An intervention must be “commenced by petition.” See La. Code Civ. Proc. art. 1032 (West 2017). And a defendant in an incidental action may file exceptions and objections enumerated in Articles 925-927.

The Independent Weekly has not filed a Petition of Intervention, nor has it sought leave of court to do so. But that is the procedural device available to it for intervening and seeking to unseal certain court records. Instead, it seeks to impermissibly circumvent those provisions of the Code of Civil Procedure and proceed in summary fashion. Mrs. Perrett respectfully submits that the Motion filed by The Independent Weekly may not proceed in summary fashion, and that she should be afforded service and the opportunity to except and answer the action, as with any

other ordinary proceeding. The fact that The Independent Weekly waited so long before pursuing the relief it seeks is of no moment and does not excuse the fact that it must proceed by ordinary proceeding and file a Petition of Intervention.

That this matter must proceed in ordinary fashion, by contradictory hearing, and that Mrs. Perrett should be afforded an opportunity to except and answer the allegations, is bolstered by the Louisiana Supreme Court's recognition of competing interests in the subject matter of the Motion, as well as its recognition that such actions should proceed in contradictory fashion. *See Copeland, supra.*

In addition, The Independent Weekly's claim that is entitled to relief *ex parte* is wholly unsupported. *Ex parte* motions are permitted only when the movant is clearly entitled to relief without written proof. *See* La. Code Civ. Proc. art. 963 (West 2017). Such motions are typically for things such as extensions of time or an uncontested judgment of possession. The action filed by the Independent Weekly does not qualify as such. And the fact that it attached documents to its Motion completely undermines any contention that it is entitled to relief without written proof.

In addition, Rule 9.9 of the Louisiana District Court Rules requires all motions to be accompanied by a supporting memorandum that is served on all parties and the judge. Mrs. Perrett was never served with any such supporting memorandum by The Independent Weekly. Not only is The Independent Weekly not entitled to proceed in summary fashion, but it has not even complied with the rules necessary for supporting its Motion.

D. Exception of Vagueness or Ambiguity

The source for the exception of vagueness or ambiguity is Article 926 of the Louisiana Code of Civil Procedure. "The purpose of the exception of vagueness is to place the defendant on notice of the nature of the facts sought to be proved so as to enable him generally to prepare his defense, as well as additionally by a formal pleading to identify the cause of action so as to bar it future re-litigation after determination of the present suit." *Spellman v. Discount Zone Gas*

Station, 07-496, p.4 (La.App. 5 Cir. 12/27/07), 975 So.2d 44, 46; *Smart v. Gold, Weems, Brusser,*

Sues & Rundell, 2006-1414 (La.App. 3 Cir. 4/4/07), 955 So.2d 263). Of course, a defendant is not entitled, through the vagueness or ambiguity exception, to “require exactitude and detail of pleading beyond those necessary for these aims.” *Spellman, supra*. However, Article 854 of the Louisiana Code of Civil Procedure requires “all allegations of fact” to be set forth in numbered paragraphs. The Code also requires a petition to contain “a short, clear, concise statement of...the material facts of, the transaction or occurrence that is the subject matter of the litigation....” La. Code Civ. Proc. art. 891(A) (West 2016).

In paragraph 1 of its Motion, The Independent Weekly references “two lawsuits captioned above,” but there is no caption provided for any lawsuit other than the case at bar. Without the necessary information regarding the second lawsuit, Mrs. Perrett has no way of knowing to what The Independent Weekly is referring in paragraph 1 of its Motion. In addition, The Independent Weekly asserts at paragraph 9 of the Motion that “the only records sought by this *ex parte* motion are the pleadings (petition, answer, exceptions, motions, oppositions) and orders or judgments granted. Article 852 of the Louisiana Code of Civil Procedure does not include in its definition of “pleadings” memoranda. The Motion is ambiguous, because it is not clear whether The Independent Weekly is seeking only pleadings, orders and judgments (which would not include memoranda), or whether it is also seeking memoranda in addition to pleadings, orders and judgments. In light of the foregoing defects, The Independent Weekly should be ordered to amend to clarify before Mrs. Perrett must respond.

CONCLUSION

Mrs. Perrett prays that her exceptions be scheduled for hearing on an expedited basis, on March 23, 2017 at 9:00 a.m., before the hearing on the subject Motion. In addition, because Ms. Perrett has rights and interest that would be affected by a decision on the merits of The Independent Weekly’s “Motion”, she is a party who must be properly joined under Article 641 of the Louisiana Code of Civil Procedure. Her exception of nonjoinder should be maintained, and The Independent Weekly should be ordered to properly name Mrs. Perrett as a party before further proceedings are had. Because the “Motion” and Order setting it for hearing

were never properly served on Mrs. Perrett, her exception of insufficiency of service should be maintained, and The Independent Weekly should be ordered to cure such defects by properly serving Mrs. Perrett before any further proceedings are had. Because the action set forth in the "Motion" of Independent Weekly may not take place via summary proceedings, the exception of unauthorized use of summary proceedings should be maintained, and The Independent Weekly should be ordered to file a petition and serve it upon Mrs. Perrett before any further proceedings are had. Lastly, because the Motion is impermissibly vague and ambiguous, the exception of vagueness and ambiguity should be maintained, and The Louisiana Weekly should be ordered to cure such defects when it prepares its petition for service on Mrs. Perrett.

Respectfully submitted,



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Attorneys for Candyce Perrett

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading has been served on all counsel of record in these proceedings via email, this 22 day of March, 2017.



CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

No. 2004-14710

Section "E-16"

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RULE TO SHOW CAUSE

Considering the foregoing, Candyce Perrett's Exceptions to Motion to Unseal Pleadings, Orders, and Judgments, and Request for Expedited Hearing:

IT IS HEREBY ORDERED that Movant, The Independent Weekly, appear before this Court on the 23rd day of March, 2017, at 9:00 o'clock a.m. and show cause, if any it can, why Candyce Perrett's Exceptions to Motion to Unseal Pleadings should not be granted, why the Motion should not be dismissed.

Signed at New Orleans, Louisiana, this _____ day of _____, 201y.

HONORABLE CLARE JUPITER

Please Prepare Certified Copy of Rule to Show Cause
for Service on Counsel for Movant

Pursuant to La. Code Civ. Proc. art. 1313