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16 WILLIAM BRADLEY PITT

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18 FOR THE COUNTY OF LOS ANGELES

19 In Re Marriage of
20 Petitioner: ANGELINA JOLIE PITT
21 and
22 Respondent: WILLIAM BRADLEY PITT

CASE No. BD 646 058
Hon. Richard J. Burdge, Jr.
Department: 27

SUPPLEMENTAL MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF RESPONDENT'S RFO
FOR SEALING ORDER

Hearing Date: January 17, 2017
Time: 8:30 a.m.
Dept.: 27

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FILED
Superior Court of California
County of Los Angeles

DEC 21 2016

Sherri R. Carter, Executive Officer/Clerk
By *[Signature]* Deputy
Dolores Galvez

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **THE BEST INTERESTS AND PRIVACY RIGHTS OF THE MINOR CHILDREN**

4 **SUPPORT THE SEALING OF RECORDS AS REQUESTED BY RESPONDENT**

5 On December 7, 2016, Respondent filed an ex parte application requesting that the court hear
6 and grant his request to seal records regarding custody issues in this proceeding, on the ground that
7 such sealing was in the best interest of the parties' six minor children, to protect their privacy and to
8 avoid subjecting them to the negative impact of the media coverage and public scrutiny of this case.

9 Petitioner opposed Respondent's request, claiming she was entitled to "at least 16 court days
10 [sic] notice in order to investigate and understand Respondent's contentions and to put forth her own
11 case." In so doing, Petitioner continued to place her own interests above those of the minor children
12 and to disregard their privacy rights when she believes it may benefit her.

13 The Court's December 7, 2016 minute order expressly recognized the privacy rights of the
14 children, and Respondent's request is scheduled for hearing on January 17, 2017. These supplemental
15 moving pleadings and attached proposed orders are submitted in support of Respondent's request.

16 By way of his Motion, Respondent seeks an order sealing those portions of documents filed in
17 this proceeding which relate to custody issues and orders, or, in the alternative, a protective order
18 requiring that filings containing such information be filed in accordance with C.R.C 2.551 and
19 prohibiting the public dissemination of those portions of documents, pleadings, and records required
20 to be filed under seal.

21 Court records in marital dissolution cases are "presumptively open," to the same extent as
22 other civil cases. *In re Marriage of Burkle* (2006) 135 Cal.App.4th 1045. However, the Legislature
23 and the courts have recognized that the general presumption can be overridden by countervailing
24 considerations in appropriate circumstances.

25 To that end, the Legislature has adopted rules requiring the automatic sealing of certain records
26 and proceedings. For example, statutes provide for the automatic sealing of psychological evaluations
27 of children, the results of parents' alcohol and drug tests, and recommendations regarding custody of,
28

1 or visitation with, a child. Family Code §§ 3041.5; 3025.5. Additionally, adoption records are
2 similarly sealed. Family Code §9200.

3 The foregoing statutes acknowledge specific instances in which publication of personal
4 information by placing it in the public records will not be in the best interests of the children. They
5 recognize that the best interests of the minor children can outweigh the general interest of the public in
6 knowing intimate details relating to custody and visitation disputes.

7 However, it must be stressed that those situations for which the Legislature has provided
8 automatic sealing and/or confidentiality are not exclusive.

9 The Legislature has explicitly not attempted to define every situation in which information
10 disclosed in pleadings relating to custody and visitation of minor children (or regarding other issues in
11 a family law proceeding) can be protected. Thus, the Legislature provided for, and the Judicial
12 Council enacted, a body of rules by which the parties can ask for sealing orders, and pursuant to which
13 a court can exercise its discretion on a case-by-case basis to seal records and proceedings. These rules
14 are California Rules of Court 2.550 and 2.551.

15 C.R.C. Rule 2.550(d) provides that the court “may order that a record be filed under seal if it
16 expressly finds that: “(1) There exists an overriding interest that overcomes the right of public access
17 to the record; (2) The overriding interest supports sealing the record; (3) A substantial probability
18 exists that the overriding interest will be prejudiced if the record is not sealed; (4) The proposed
19 sealing is narrowly tailored; and (5) No less restrictive means exist to achieve the overriding interest.”
20 C.R.C. 2.550(d); *see also McNair v. Nat'l Collegiate Athletic Ass'n*, 234 Cal.App.4th 25, 31 (2015),
21 *rehearing denied* (Feb. 24, 2015). Rules 2.550 and 2.551 vest a trial court with a considerable amount
22 of discretion in deciding whether to seal or unseal portions of a judicial record. *See In re Providian*
23 *Credit Card Cases*, 96 Cal.App.4th 292, 295 (2002).

24 In the case at bar, the overriding interests are the best interests of the minor children and their
25 rights to privacy and it is clear under the facts of this case and case law that such overriding interest
26 justifies the sealing of records as requested by Respondent.

27 In certain instances, the Legislature has already acknowledged that the best interests of minor
28 children and their rights to privacy require the sealing of all records related to an action, including

1 those records not related to custody issues. In cases brought under the Uniform Parentage Act
2 (beginning with Family Code §7600) (the "UPA"), i.e., cases in which the children are not born
3 during marriage, "all papers and records," other than the final judgment, are confidential and are not
4 subject to inspection or copying by the public except upon an express order of court "for good cause
5 shown." Family Code §7643. Thus, all pleadings relating to disputes over custody and visitation in
6 proceedings held under the UPA are confidential.¹ All six of the children in this case were born prior
7 to the parties' marriage. In a proceeding for dissolution of marriage the petition may list children born
8 before the marriage, as Petitioner did, and, in that event, pursuant to the terms of the UPA, a
9 determination of paternity may be made in the action. Family Code §2330.1.

10 The foregoing protection under the UPA clearly establishes that the Legislature recognizes that
11 disclosure of information, and claims made by one parent about the other relevant to custody and
12 visitation, as well as information concerning the children themselves, such as their therapists,
13 activities, and whereabouts, overrides the public's interest in such private information, and that public
14 dissemination of such information would be damaging to the child or children.

15 The courts also recognize that information that would harm the best interests of the children if
16 publicly disclosed may be protected from disclosure. *See, e.g., In re Marriage of Nicholas*, 186 Cal.
17 App. 4th 1566, 1568 (2010) ("trial courts may redact or seal particular documents to protect private
18 information concerning an overriding privacy interest, *including matters pertaining to the custody and*
19 *visitation of minor children.*") (emphasis added); *see also NBC Subsidiary (KNBC-TV), Inc. v. Super.*
20 *Ct.*, 20 Cal. 4th 1178, 1223, fn.46 (1999) (listing examples of overriding interests justifying sealing).

21 As noted in the Declaration of Phillip M. Stahl filed with Respondent's moving papers, it is
22 important to protect the children from being exposed to sensitive information about their parents and
23 their parents' conflicts. That is a reason that child custody evaluations may not be made part of a

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25 ¹ This raises an equal protection issue as discussed in Section III below, as it creates and then
26 discriminates against different classes of children (children who are not born during a marriage
27 whose custody rights are being determined in a UPA proceeding versus children who are not born
28 during a marriage whose custody rights are being determined in a dissolution proceeding, and
children who are born during a marriage whose custody rights are being determined in a
dissolution proceeding).

1 public court file. It is harmful to children to be exposed to their parents' conflict and to the "adult
2 details" of a dissolution. Trial courts in family law cases are well aware that the best interests of the
3 children require that the children not be exposed to the details of the conflict of their parents
4 surrounding custody and visitation disputes. *See In re Marriage of Nicholas*, 186 Cal. App. 4th at
5 1568. Thus, parents are routinely ordered not to make disparaging comments about the other parent to
6 the children or in their presence. *In re Marriage of Candiotti*, 34 Cal. App. 4th 718, 725 (1995).

7 For the same reasons, courts typically will order parents not to discuss details of their marital
8 dispute and not to discuss the litigation with the children. However, whereas in most cases the facts of
9 those disputes are contained in court files that will not be seen by the children – until they are adults
10 and seek them out if they choose to do so – in the case at bar those details can be expected to be
11 publically spread and become unavoidable by the parties' children.

12 In this case, in which the parents are famous, and in which it is self-evident (as established by
13 the exhibits to Respondent's moving papers), that any information relating to the children, such as
14 their daily activities, where their activities take place, any therapies they are undergoing, as well as
15 any allegations concerning the activities or relationship of their parents as relevant to custody, will
16 become public information that can be used, whether intentionally or not, to embarrass the children, to
17 cause them humiliation, or even to endanger them. Respondent submits that the overriding interest of
18 the children's welfare and their rights of privacy overcome the right of public access to information
19 and that the children's privacy rights support the request to seal the record.

20 Furthermore, because any information concerning these parties and relating to custody will
21 become widely disseminated in the public media, absent a protective order the overriding interest in
22 protecting best interests of the children and the children's right of privacy will be prejudiced, which is
23 a criterion of Rule 2.550(d).

24 Respondent submits that the strictures of the [Proposed] Order submitted herewith are
25 narrowly tailored and that no less restrictive means exist to achieve the overriding interest – which is
26 the protection of the children's right to privacy and their best interests.

27 This Court's Minute Order of December 7, 2016 noted that "... The Court recognizes the
28 privacy rights of the minor children and will be guided by what is in the minor children's best

1 interest.”

2 It is in the best interests of the six minor children involved in this case that the Court grant the
3 requested sealing order. In the alternative, if the Court determines it wishes to review each pleading
4 individually, then Respondent requests that the Court enter the alternative provision of the [Proposed]
5 Order.

6 II.

7 **THE ACTIONS OF PETITIONER TO DATE ESTABLISH THAT A SEALING ORDER**
8 **SHOULD BE PUT IN PLACE TO PROTECT THE CHILDREN**

9 The actions of Petitioner herself establish the need for the requested sealing and protective
10 order. Petitioner appears to be determined to ignore even agreed upon standards relating to the
11 children’s best interest, and she is attempting to clear the way to put in the public eye any allegations
12 she can, without regard to the impact on the minor children.

13 On October 26, 2016, the parties entered into a Stipulation re child custody and therapy in this
14 proceeding. That Stipulation identifies by name various mental health professionals who are working
15 with the parties and the children, including the children’s own therapists. In signing the Stipulation,
16 even Petitioner recognized the privacy concerns and rights of the children.

17 Paragraph 10 of that Stipulation provides:

18 “In the interest of privacy of the parties and their minor children, this
19 Stipulation and Order is not being submitted to the Court for entry at
20 this time.”

21 The Stipulation also expressly provides:

22 “Either party may file this Stipulation and Order with the Court as
23 necessary to enforce any term contained herein.” [Emphasis added].

24 In complete disregard of the terms of the Stipulation (which pursuant to paragraph 10 was
25 “effective between the parties as a valid and binding agreement, whether or not it was ever entered by
26 the Court”), Petitioner publically revealed the terms of the Stipulation by submitting it to the Court for
27 filing on December 2, 2016. No action requiring enforcement was pending to justify the filing of that
28 document with the Court (and its consequent public dissemination) on December 2, 2016. By her
actions, Petitioner not only breached the contractual agreement between the parties, but violated and

1 waived the acknowledged privacy rights of the children. She exposed the children by making public
2 the names of their therapists and other mental health professionals.² The Stipulation, which the parties
3 had agreed should remain private and confidential for the purpose of protecting the privacy of the
4 children, immediately found its way into the press, internet and social media.

5 Shortly thereafter, in her opposition to Respondent's application for a sealing order, on
6 December 7, 2016 Petitioner violated *Evidence Code* § 1152 and made public letters between counsel
7 in this proceeding containing detailed discussions about visitations, custody evaluations, the parents'
8 conflicting contentions about what is in the children's best interests, proposals for therapy including
9 frequency and timing, and the names of therapists. Petitioner's Exhibit F even indicated the proposed
10 location of a therapy session where the children would be.

11 Petitioner apparently has no self-regulating mechanism to preclude sensitive information from
12 being placed in the public record, or she has other motives pursuant to which she seeks to disseminate
13 information in this proceeding which will be immediately made public, where the children can access
14 it or where people in the general public will have access to it for their own uses, and who will not use
15 such information in the best interests of the children.

16 Then, after Respondent filed his Request to Seal, Petitioner compounded her actions in
17 disregard of the best interests of the children by filing a "redacted" Request For Order to which she
18 again attached the same letters that are attached to her opposition to Respondent's ex parte application
19 (Petitioner's Exhibits D – I.) Although she had already made them public, she did it again.

20 Pursuant to the Stipulation executed in October, 2016, Petitioner agreed that all
21 communications between the parties and the mental health professionals are privileged. Paragraph 8
22 of the Stipulation that Petitioner made public provides that "all communications by and between the
23 parties and the mental health professionals [and all five are explicitly named] shall be considered 'safe
24 harbor therapy' and protected by the psychotherapist-patient privilege (*Evidence Code* §§1012-
25 1015)."

26
27 ² Potentially compromising the therapists' ability to provide unbiased, uninfluenced and private
28 mental health care.

