IN THE COURT OF APPEALS FOR THE STATE OF GEORGIA

Karen DUNN, *Appellant*, v. Phillip Lee GREER, *Appellee*.	Appeal No. A26A0088 Superior Court of Oconee County, Georgia Civil Action File No. SUCV2025000146

BRIEF OF APPELLANT KAREN DUNN

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INTRODUCTION

This appeal arises from an unlawful prior restraint imposed on Appellant Karen Dunn by the Superior Court of Oconee County in violation of her rights under the Georgia and United States Constitution and contrary to Georgia law. Dunn and the father of her child, Appellee Philip Greer, have been involved in domestic litigations spanning six years and three civil actions. The parties' disputes came to a head in a petition Greer filed on March 31, 2025, asking the Superior Court to find Dunn in contempt of an order it entered on February 20, 2025. (V2-11-14). The Superior Court entered its Final Order of Contempt on May 5, 2025 (the "May 2025 Order"). (V2-33-35). This order found Dunn in contempt and silenced Dunn's speech based on no more than speculation about possible harm. If it is allowed to stand, she will suffer a permanent violation of her First Amendment rights.

The Superior Court's May 2025 Order that precipitated this appeal enjoins Dunn from "posting or encouraging others to post . . . any negative content about this case or any previous cases between the parties, or any negative content involving the minor child or [Greer]" and requires her to "remove . . . any and all online postings relating thereto *instanter*." (V2-34). This is a textbook prior restraint that the Government bears a heavy burden to justify; it must undertake a balancing test that weighs the evidence of imminent, severe danger against the

interests of free speech, and then narrowly tailor the restraint to achieve a compelling interest. *Baskin v. Hale*, 337 Ga. Ap. 420, 426, 428 (Ga. App. 2016). The Superior Court's May 2025 Order shows none of that careful deliberation by the Superior Court—the order relies on conjecture and conclusory statements instead of evidence, does not make any attempt to balance Dunn's free speech rights with the alleged harms asserted by Greer, and imposes a shockingly broad restraint on Dunn's speech that prohibits her from posting "any negative content" about Greer or the parties' litigations. (V2-33-35).

The May 2025 Order not only violates Dunn's First Amendment rights, but also violates Georgia law. First, the Superior Court's finding that Dunn was in contempt is not supported by evidence. But even if it were, the May 2025 Order's imposition of permanent injunctive relief as a sanction for the unsupported contempt finding violated Georgia law because: (1) the Superior Court failed to provide Dunn with sufficient notice that it was contemplating a permanent injunctive sanction; (2) a permanent injunction is not a proper sanction for contempt; (3) a permanent injunction was not proper because Greer was not at risk of imminent injury and had an adequate remedy at law; and (4) the order does not include sufficient findings of fact to justify the finding of contempt. The May 2025 Order is unlawful many times over, and this Court should vacate it.

JURISDICTIONAL STATEMENT

The Court of Appeals has jurisdiction over this appeal under O.C.G.A. § 5-6-35(a)(2), and because the issues presented are not reserved to the Supreme Court of Georgia. *See* Ga. Const. art. VI, § V, ¶ III; art. VI, § VI, ¶ II.

Appellant timely filed her Application for Discretionary Appeal on May 28, 2025, within thirty days after the entry of the May 5, 2025 Order. [1] *See* O.C.G.A. § 5-6-35(d); Rule 31(a) of the Court of Appeals of the State of Georgia. This Court granted Appellant's Application on June 23, 2025, and Appellant timely filed her Notice of Appeal with the Superior Court on July 2, 2025. (V2-1-3); *see* O.C.G.A. § 5-6-35(g); Rule 31(j) of the Court of Appeals of the State of Georgia. The Court docketed this Appeal on July 31, 2025, and Appellant requested an extension to file her brief within twenty days of that date. *See* Rule 16(b) of the Court of Appeals of the State of Georgia. The Court granted an extension to Appellant to file her brief by September 4, 2025, and Appellant has filed her brief by that date.

ENUMERATION OF ERRORS

The Superior Court's May 2025 Order finding Dunn in contempt and indefinitely restraining and enjoining her from certain speech was reversible error because:

[1] The Superior Court filed this order *nunc pro tunc* to April 28, 2025. (V2-35).

1. The Superior Court erroneously found Dunn in contempt absent supporting evidence.
2. The Superior Court's restraining order and injunction erroneously prevented Dunn from exercising her right to free speech by placing an unjustified, overly broad, and indefinite prior restraint on her speech.
3. The Superior Court erroneously entered a permanent injunction against Dunn without sufficient notice.
4. The permanent injunction entered by the Superior Court was not a permissible sanction for contempt.
5. The permanent injunction was not proper because Greer was not at risk of imminent injury and had an adequate remedy at law.
6. The May 2025 Order lacks sufficient findings of fact to justify the finding of contempt.

STATEMENT OF THE CASE

Dunn and Greer have been in litigation against one another since 2019. Their first litigation ended with an order entered by the Superior Court on August 19, 2024, awarding physical custody of the parties' minor child to Greer. (V5-1). Then on December 10, 2024, Greer filed a "Petition for Modification and Request for Expedited Relief" requesting that the Superior Court modify the August 2024 Order by requiring Dunn to cease any further communication with Greer and their

minor child. (V5-1, 4-5). Greer later filed two amended petitions requesting that, in addition to modifying the August 2024 order, the court find Dunn in contempt of the Superior Court's Domestic Relations Standing Order and Notice Requirement entered on January 30, 2019. (V5-19-22, 24-25, 29-33). Greer argued that Dunn had made statements, including posts on social media, that violated the Standing Order's prohibition on acts that "injure[ ], maltreat[ ], vilif[y], molest[ ], or harass[] . . . the adverse party." (V5-20-21, 24, 30-31).

The Superior Court entered a "Final Order of Modification and Contempt" on February 20, 2025, ruling on Greer's petitions contempt (the "February 2025 Order"). (V5-37-39). This order did not modify the parties' custody arrangement, but it did find Dunn in contempt. (*Id*.). The Superior Court ordered her to remove "all online postings . . . referencing [Greer] and the minor child" and restrained and enjoined Dunn from "any further online postings . . . referencing [Greer] and the minor child making any allegations of abuse in any manner." (V5-38).

Then on March 31, 2025, Greer filed a "Petition for Citation of Contempt and Request for Emergency Relief" asking the Superior Court to hold Dunn in contempt; this time of its February 2025 Order (the "March 2025 Petition"). (V2-11-14). Greer alleged that a comment Dunn left in a Facebook group titled "One Mom[']s Battle," which criticized the Superior Court and requested people who also felt negatively about their experiences with the Court to contact her, violated

the February 2025 Order.[2] (V2-12-13, 18; Record 2 V-1-1-2, 5-7). Greer also claimed that Dunn "interrogates [their minor child] in an intrusive manner" during calls with the child, and that this interrogation, combined with her post, caused him to "fear for his and his family's safety." (V2-12-13). This time, however, he requested the Superior Court to silence Dunn more permanently by incarcerating her until she "retracts her slanderous/libelous false social media postings." (V2-13).

On April 2, 2025, the Superior Court filed a Rule Nisi notifying the parties of a "HEARING ON PETITION FOR CITATION OF CONTEMPT AND EMERGENY RELIEF," which the Superior Court conducted on April 28, 2025 (the "April 2025 Hearing"). (V2-25; V3-1). The evidence presented at the April 2025 Hearing was sparse—Greer could not point to any particular Facetime call that he claimed violated the February 2025 Order, and his arguments regarding Dunn's social media activity focused on (1) a Facebook comment Dunn made on a

[2] Dunn repeatedly edited her comment, but at the time that Greer filed the March 2025 Petition, the comment stated as follows:

> I am praying for all of the precious and innocent children who have been forced to endure this type of horrific situation. Unfortunately, collusion is extremely unethical, but tragically common in family law; particularly when a tremendous amount of money is involved. My precious little boy is also a victim of this corrupt Judge. It is my sincere hope that each precious and innocent child receives Justice for this injustice and failure of our leaders. If you have had a similar experience with this Judge, please contact me at 706-818-2044.

(V2-18; Record 2 V1-5-7).

Facebook page titled "One Mom[']s Battle" criticizing the Superior Court, and (2) the fact that, by Greer's description, an individual whose profile picture shows "a very, very large man with an AR rifle" had "liked" a post "made . . . on [Dunn's] personal page about . . . Goliath being slayed." When Dunn objected to the profile picture being admitted, the Superior Court stated that it "ha[dn't] really viewed it," and neither the profile picture nor the post about David and Goliath were entered into the record. (V3-2, 23-27). The profile picture was not visible simply by looking at the post on Dunn's Facebook that this person had "liked." (V3-18-25, 36-50; Record 2 V1-1-2, 5-7). Furthermore, Dunn did not provide any explanation about what she intended to communicate by posting the image of David and Goliath, and the Superior Court did not question her to ascertain her intent.

Despite this wholly insufficient evidence, at the conclusion of the April 2025 Hearing the Superior Court found that Dunn's social media activity was in contempt of its February 2025 Order. (V3-54-57). But the Superior Court made no finding that Dunn had posted any allegations of abuse by Greer, which is what the February 2025 Order prohibited. Instead, the Superior Court found that Dunn was "hid[ing] behind innuendos that deliberately invoke other persons . . . to be violent against other people" and expressed "alarm[ ]" that a person whose profile picture showed a "barrel-chested man with an AK-47" was "responding to [her] posts . . . with regard to how [she] feel[s] this [c]ourt has ruled and how [she] feel[s] Mr.

Greer is a terrible person." (V3-56). The Superior Court found that Dunn's Facebook activity was "not acceptable" and that she was "in contempt of [the February 2025 Order]." (*Id*.). On May 5, 2025, the Superior Court entered a "Final Order of Contempt and Restraining Order" finding that Dunn's posts "undermine[d] the safety of the parties' minor child" and were "knowingly provoking third parties to act in a violent manner." (V2-34) The May 2025 Order permanently restrains and enjoins Dunn from posting, or encouraging others to post, anything negative "online . . . about this case or any previous cases between the parties, or . . . involving [Greer]." (V2-33-34). Dunn timely filed her Application of Discretionary Appeal and Notice of Appeal, preserving all the enumerated errors for review, and this Court now has the opportunity to correct the Superior Court's unconstitutional restraint of Dunn's speech by vacating the May 2025 Order.

STANDARD OF REVIEW

The Court of Appeals must affirm the Superior Court's finding that Dunn was in contempt of its February 2025 Order if "there is any evidence to support a . . . determination that its order has been willfully violated." *Vaughn v. Vaughn*, 365 Ga. App. 195, 198 (2022) (quoting *Sutherlin v. Sutherlin*, 301 Ga. 581, 582 (2017)). The Superior Court's contempt finding does not meet this threshold for affirmance.

Meanwhile, "the standard of review [for a permanent injunction] on appeal is whether or not the trial court manifestly abused its discretion," which occurs where the court "grants an injunction adverse to a party without any evidence to support such judgment and contrary to the law and equity." *Smith v. DeKalb Cty.*, 288 Ga. App. 574, 576 (2007) (quoting *City of Atlanta v. S. States Police Benevolent Ass'n, etc.*, 276 Ga. App. 446, 458 (2005)). The Superior Court's May 2025 Order constitutes an abuse of discretion under this standard.

SUMMARY OF ARGUMENT

In her first enumeration of error, Dunn asks the Court to find that the Superior Court's May 2025 Order erroneously held her in contempt of its February 2025 Order without any evidence to support such a finding.

The second through sixth enumerations of error explain why the Court should vacate the Superior Court's May 2025 Order even if it defers to the Superior Court's finding of contempt. The May 2025 Order imposes an unconstitutional prior restraint on Dunn's speech by prohibiting her from posting anything negative about Greer or her experience in litigation. Every day that Dunn is prohibited—under threat of incarceration—from speaking represents an irreparable injury to her First Amendment rights. While the constitutional injury alone requires the Court to vacate the May 2025 Order, the Court is also required to vacate the Order because it violates Georgia law. First, permanent injunctions

can only be imposed with prior notice, which the Superior Court did not provide in this case. Second, a permanent injunction is not a permissible sanction for contempt. Third, an injunction was improper because Greer was not at risk of imminent injury and had an adequate remedy at law. And finally, the May 2025 Order does not contain sufficient findings of fact to support the finding of contempt or the permanent injunction.

ARGUMENT AND CITATION OF AUTHORITY

I. The Superior Court's finding of contempt was not supported by the evidence presented at the April 2025 Hearing.

Greer argued in his March 2025 Petition that Dunn's social media activity, and her conduct on video calls with the parties' minor child, were in contempt of the Superior Court's February 2025 Order preventing her from making "any further online postings . . . referencing the Petitioner and the minor child *making any allegations of abuse in any manner."* (V2-12-13) (emphasis added). Greer claimed that Dunn's actions not only violated the Superior Court's February 2025 Order, but caused him to be "in fear for his and his family's safety." (V2-13). But to prevail in a contempt action, Greer had to provide more than mere assertions—he needed to provide evidence that Dunn violated the express terms of the February 2025 Order. *See Farris v. Farris*, 285 Ga. 331, 333 (2009) (finding that a trial court "abused its discretion" in finding that a party was in contempt of its

order where the party did not, in fact, violate the order's terms). A review of the record shows that Greer failed to satisfy this burden.

The Superior Court agreed that Greer did not show that Dunn's activity on video calls constituted contempt. (V3-54-55). It based its finding that Dunn was in contempt of its February 2025 Order solely on Dunn's social media activity, (V3-55-56), which is where this appeal will focus as well. Greer's argument that Dunn's social media activity violated the February 2025 Order focused on two Facebook posts: a comment Dunn made accusing the Superior Court of "collusion" and "corruption" and soliciting comment from people claiming similar experiences with the Superior Court, and a post Dunn shared of David and Goliath that was "liked" by someone whose profile picture showed a "barrel-chested man with an AK-47." (V2-12; V3-20-28, 30-36, 55-56; Record 2 V1-1-2, 5-7). Neither provides any evidence to support the finding that Dunn violated the express terms of the February 2025 Order.

First, The Superior Court never entered the David and Goliath post or the profile picture into the record—in fact, when responding to Dunn's objection as to the foundation of the profile picture, the Superior Court stated that it "ha[dn']t really viewed" the picture. (V3-2, 23-29). Yet the Superior Court's statements in its verbal ruling and the May 2025 Order show that it based its ruling almost entirely on those two documents. (V3-55-56; V2-33-35). These documents should

not have been considered by the Superior Court, and this Court should not consider them as evidence to support the Superior Court's May 2025 Order.[3] *See Ashe v. Clayton Cty. Cmty. Serv. Bd.*, 262 Ga. App. 738, 239 n.1 (2003) (evidence that was not entered into the record at the trial court "is not part of the record considered by the trial court . . . [and] cannot be considered evidence on appeal.").

Even if this Court is inclined to consider the David and Goliath picture and the third-party profile picture, they do not support a finding of contempt because Greer never alleged that the David and Goliath post, or the fact that the post was liked by an individual whose profile picture shows a man with a rifle, constituted a "posting" by Dunn that "referenc[ed Greer] and the minor child making any allegations of abuse in any manner." (V3-20-28, 30-36). Greer only alleged that the pictures made him "feel[ ] very much like [Dunn is] seeking vigilantes to harm [him and his family]." (V3-26). But Greer's fear does not determine whether the post Dunn shared of David and Goliath violated the February 2025 Order by "referencing [Greer] and the minor child making any allegations of abuse in any manner." (V2-12). And the fact that someone else "liked" the post has even less relevance because the "like" is the speech of a third party, not Dunn.

[3] Dunn has not supplemented the record on appeal by entering the David and Goliath post or the relevant profile picture into the record because they were not admitted by the trial court and therefore should not be considered on appeal. Dunn is happy to supplement the record with copies of these documents at the Court's request.

Second, Dunn's comment accusing the Superior Court of "corruption" and "collusion" (Record 2 V1-5-7) does not violate the February 2025 Order. Greer argued at the April 2025 Hearing that the comment violated the order because the comment's references to "collusion" and "money" were clear references to Greer, while the comment's references to "my precious boy" were references to the parties' minor child. (V3-30-36). Even if this verbiage refers to Greer and the parties' minor child, Dunn's post still did not violate the February 2025 Order because the order did not merely prohibit Dunn from referencing Greer and the minor child—it prohibited Dunn from referencing Greer and the minor child "*making any allegations of abuse*." (V2-12) (emphasis added). Dunn edited her comment about the Superior Court several times, and while some versions of the comment referred to the parties' minor child as a "victim," she never alleged that anyone abused the child. (Record 2 V1-5-7). Greer therefore did not provide evidence that Dunn violated the express terms of the February 2025 Order.

Yet, despite this lack of evidence, the Superior Court erroneously found that Dunn's "social media behavior" was in contempt of its February 2025 Order. (V3-55). It found that Dunn's speech was "designed specifically to incite violence" and stated that it was "very alarm[ing]" that the "barrel-chested man with an AK-47" was "responding to [Dunn's] posts . . . with regard to how you feel this [c]ourt has ruled and how you feel Mr. Greer is a terrible person," and found that all this

together was "not acceptable and you are in contempt of this order." (V3-56). Neither the Superior Court nor Greer ever questioned Dunn about her intent behind the post. (V3-38-52). But even accepting the Superior Court's findings, these findings do not show that Dunn made a post that violated the February 2025 Order's prohibition on making posts "referencing [Greer] and the minor child *making any allegations of abuse in any manner*." (V2-12). And the May 2025 Final Order, which also relied on findings that Dunn's posts "undermine[d] the safety of the parties' minor child" and were "knowingly provoking third parties to act in a violent manner,"[4] also does not establish that Dunn violated the specific terms of the February 2025 Order. (V2-34).

Because there is no evidence to support the Superior Court's finding of contempt, this Court should vacate it. *Farris*, 285 Ga. at 333.

II. The Superior Court erroneously imposed a prior restraint on Dunn's speech by failing to properly balance Dunn's First Amendment rights with the alleged harm the Superior Court sought to prevent.

Both the United States and Georgia's constitutions protect freedom of speech. U.S. Const. amend. I.; Ga. Const. art. I, § I, ¶ V. The Superior Court's May 2025 Order is a prior restraint on Dunn's speech because it indefinitely prohibits her from speaking on certain topics. (V2-34) *See WXIA-TV v. State*, 303 Ga. 428,

[4] Posting an image of a story that has, for millennia, represented obtaining victory against the odds is not a call for violence, nor does liking such a post constitute a violent act.

434 n.7 (2018) ("[T]he term 'prior restraint' is used to describe . . . judicial orders forbidding certain communications when issued in advance of the time that such communications are to occur[.]") (quoting *Alexander v. United States*, 509 U.S. 544, 550 (1993)). Prior restraints are presumptively unconstitutional—they are "the most serious and the least tolerable infringement on First Amendment rights." *Id.* at 434 (quoting *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976)). A court issuing a prior restraint "bears 'a heavy burden of showing justification for the imposition of such a restraint.'" *Id.* (quoting *Org. for a Better Austin v. Keefe*, 402 U.S. 415, 419 (1971)). The Superior Court's May 2025 Order cannot satisfy that heavy burden, and therefore this Court should vacate it.

a. The Court has vacated similar prior restraints.

In *Baskin v. Hale*, the trial court enjoined the parties in a child custody dispute from "directly or indirectly[ ] putting, placing, or causing to be placed any disparaging or derogatory comments about the opposite party upon or in any social media, website, or other public medium," and the terms of the order provided that the prohibition continued for ten years—until the child turned eighteen. 337 Ga. App. at 420, 422, 428. The Court of Appeals vacated the injunction. *Id.* at 428. It affirmed that trial courts are empowered to restrict parties' communications and social media posts in divorce or custody proceedings *during the pendency of the proceeding*, *id.* at 428 (emphasis added) (citing *Lacy v. Lacy*, 320 Ga. App. 739,

752 (2013)), but held that an injunction restricting the parties' ability to speak for ten years after the litigation ended was improper. *Id.* The Court found that the injunction was a type of prior restraint and explained that, because prior restraints face a "heavy presumption against [their] constitutional validity," *id.* at 426 (quoting *New York Times Co. v. United States*, 403 U.S. 713, 714 (1971)), the government must show, under "exacting scrutiny," how the restraint is justified. *Id.* (quoting *Smith v. Daily Mail Publ'g Co.,* 443 U.S. 97, 102 (1979)). A court evaluating whether the government has made such a showing must

> make its own inquiry into the imminence and magnitude of the danger said to flow from the particular utterance and then . . . balance the character of the evil, as well as its likelihood, against the need for free and unfettered expression. The possibility that other measures will serve the State's interests should also be weighed.

Id. (quoting *Landmark Commc'ns, Inc. v. Virginia*, 435 U.S. 829, 842-43 (1978)).

In *Baskin*, the trial court claimed to have balanced the parties' speech rights with the "rights of the children not to have derogatory . . . comments posted in a public forum concerning their parents" and found that the parties' derogatory remarks on social media were "detrimental to the . . . minor children and intimidating to the parties." *Id*. at 426-27. But the Court of Appeals held that the injunction was nonetheless improper because the trial court "failed to share the basis of such a conclusion, pointing to no evidence regarding the negative effect that such speech had on the children, and it made no attempt to find that the

injunction was narrowly tailored to protect any compelling interest." *Id*. at 427. The Court of Appeals further held the injunction was unsupported by evidence of "imminent danger to a compelling interest" and that the trial court failed to properly balance the parties' First Amendment rights with the alleged danger. *Id*.

Similarly, here, the Superior Court's prior restraint on Dunn is unsupported by evidence—i.e., the David and Goliath post and the third-party "like," on which the Superior Court largely based its contempt finding, were not entered into the record. Further, the prior restraint is not narrowly tailored and fails to properly balance Dunn's First Amendment rights with the alleged dangers to Greer and the minor child. The Superior Court permanently enjoined Dunn from "post[ing] on social media or online any negative content about this case or any previous cases between the parties, or any negative content involving the minor child or [Greer]," and it ordered her to "remove . . . all online postings relating thereto *instanter*." (V2-34). The language enjoining Dunn from speaking negatively about Greer, or any litigation between the parties, prohibits speech before it occurs, making the May 2025 Order a presumptively unconstitutional prior restraint that must be evaluated under "exacting scrutiny" to determine whether it meets the "heavy burden of showing justification for the imposition of such a restraint." *Baskin*, 337 Ga. App. at 426 (quoting *New York Times Co.*, 403 U.S. at 714; and *Daily Mail Publ'g Co.,* 443 U.S. at 102)). In reviewing the prior restraint, the Court of

Appeals must "make its own inquiry into the imminence and magnitude of the danger said to flow from [Dunn's] particular utterance and then . . . balance the character of the evil, as well as its likelihood, against the need for free and unfettered expression," considering whether other, less restrictive measures would be sufficient to accomplish the Superior Court's interest in entering the Order. *Baskin*, 337 Ga. App. at 426 (quoting *Landmark Commc'ns, Inc.*, 435 U.S. at 842-43)). Under this inquiry, the May 2025 Order is unlawful.

b. The Superior Court did not properly balance the alleged harm against Dunn's First Amendment rights.

Because the contempt proceeding underlying this appeal is outside the context of an ongoing divorce or child custody proceeding, the requirements articulated in *Baskin* apply, and neither the findings of fact in the May 2025 Order nor the evidence presented at the April 2025 Hearing are sufficient to show that the Superior Court properly "balance[d] the danger flowing from the prohibited speech with [Dunn's] . . . First Amendment rights." *Id*. The Superior Court found in the May 2025 Order that Dunn's "postings, which she defends as 'free speech[,]' undermine the safety of the parties' minor child." (V2-34). The Superior Court also found that Dunn was "knowingly provoking third parties to act in a violent manner," was "hid[ing] behind innuendoes that deliberately invoke other persons to be violent," and expressed concern that "a non-party responded to [Dunn's] online posts insinuating that [Greer] is a terrible person and/or that the minor child

is in danger." (*Id*.). But the May 2025 Order "fail[s] to share the basis of such . . . conclusion[s], pointing to no evidence regarding the negative effect that such speech had on the child[or Greer]." *Baskin*, 337 Ga. App. at 427. The Superior Court failed to engage with Dunn's First Amendment argument, only flippantly acknowledging that Dunn "defends [the posts] as 'free speech,'" (V2-34), and making "no attempt to find that the injunction was narrowly tailored to protect any compelling interest." *Baskin*, 337 Ga. App. at 427.

Furthermore, to the extent that this Court must review the evidence presented at the April 2025 Hearing to effectively "make its own inquiry" into the propriety of the May 2025 Order, *Baskin*, 337 Ga. App. at 426 (internal quotations omitted), it will find that Greer did not provide sufficient evidence to justify the contempt finding that resulted in the prior restraint. As discussed above, Greer took issue with two posts on Dunn's social media. The first was a comment by Dunn on a third party's Facebook post about the Superior Court where Dunn solicited input from others about experiences with the court. (V2-11-14, 18; Record 2 V1-1-7). The second was a post of a picture of David and Goliath, which was improperly considered by the Superior Court because it was not entered into evidence, that was "liked" by a third party. (V3-20-28, 30-36). Neither can support the prior restraint that the Superior Court imposed.

Regarding Dunn's criticism of the Superior Court, wherein Dunn states that her son has been "a victim of this corrupt Judge," (V2-18), "the law gives judges as persons, or courts as institutions no greater immunity from criticism than other persons or institutions." *Baskin*, 337 Ga. App. at 427-28 (quoting *Landmark Commc'ns, Inc.*, 435 U.S. at 839). Indeed, the Superior Court's May 2025 Order recognizes this where it states: "[t]his Court is not . . . overly concerned about what [Dunn] posts about the Court itself." (V2-34). The Court addresses nothing more about Dunn's critical comment, proceeding instead to focus the rest of its May 2025 Order on Dunn's David and Goliath post.

Greer asserted in the April 2025 Hearing that, based on this post and the "like" it received from a third party whose profile photo includes a rifle, he was afraid for his safety and the safety of the parties' child. (V3-23). Greer felt that this person liking Dunn's David and Goliath post was "threatening" and indicative that this person—or someone—might harm him or the parties' child. (V3-25-26). This is pure speculation. Nothing in Dunn's Goliath post references Geer or their child, or makes any entreaty for others to take action against them. The well-known David and Goliath story is commonly understood as a metaphor for the weak defeating the strong, or good overcoming evil, or the underdog achieving an unlikely victory. There is no evidence in the record to support that Dunn intended the post to be anything other than a metaphor, and a metaphor as to what, is

completely unelucidated in the record. Therefore, the speculative possibility of harm that Greer claims to have perceived based on Dunn's post ant the "like" it received from a third party does not outweigh Dunn's and the public's interest in "free and unfettered expression." *Baskin*, 337 Ga. App. at 426 (quoting *Landmark Commc'ns, Inc.*, 435 U.S. at 843)).

Additionally, the Superior Court cannot justify a prior restraint on the possibility of harm alone; it must balance the harm's "imminence[,] magnitude[, and] . . . likelihood, against the need for free and unfettered expression." (*Id.*) The United States Supreme Court explained in *Landmark* that speech only rises to a problematic level if "the substantive evil [is] extremely serious and the degree of imminence extremely high," and that a "solidity of evidence . . . [is] necessary to make the requisite showing of imminence." *Landmark Commc'ns, Inc*, 435 U.S. at 845 (first quoting *Bridges v. California*, 314 U.S. 252, 263 (1941); then *Pennekamp v. Florida*, 328 U.S. 331, 347 (1946)). "The danger must not be remote or even probable; it must immediately imperil." *Id.* (quoting *Craig v. Harney*, 331 U.S. 367, 376 (1947)). "Fear of serious injury cannot alone justify suppression of free speech[;]. . . [t]o justify suppression of free speech there must be reasonable ground to fear that serious evil will result if free speech is practiced." *United States v. Nat'l Treasury Emps. Union*, 513 U.S. 454, 475 (1995). To restrain Dunn's speech because she posted an image of a time-worn allegory which can be

interpreted a number of different ways—none of which have anything to do with actual physical violence—introduces a framework for evaluating the propriety of a prior restraint on speech that is alien to the First Amendment.

The Superior Court nonetheless proceeded to base its finding of contempt on sheer speculation that Dunn's David and Goliath post was intended to be a call for physical violence against Greer or her son. The May 2025 Order, which parallels the Court's verbal ruling at the April 2025 Hearing (V3-56-57), finds that Dunn's posts "undermine the safety of the parties' minor child," that she was "knowingly provoking third parties to act in a violent manner," and it expresses "alarm[ ] that a non-party responded to [Dunn's] online posts insinuating that [Greer] is a terrible person and/or that the minor child is in danger." (V2-34). These findings are a far leap from what Dunn actually posted, and the Court cites no evidence to support that leap.

Instead of engaging in the careful balancing required by *Baskin* of actual evidence of harm (which does not exist here) and free speech rights, the May 2025 Order accuses Dunn of "hiding behind innuendos that deliberately invoke other persons to be violent" (V2-34) without explaining what the "innuendos" are, how they could reasonably be interpreted as a call for violence, or what factual basis there is for concluding that Dunn's post put Greer and the parties' child in danger. The Superior Court abused its discretion by prioritizing Greer's speculation over

Dunn's First Amendment rights, and this Court should therefore vacate the prior restraint enjoining Dunn's speech.

III. Dunn was not given sufficient notice that permanent injunctive relief would be considered at the April 2025 Hearing

"Before a court enters a permanent injunction, it must give notice of a hearing at which permanent injunctive relief will be considered, unless the parties agree otherwise." *Wang v. Liu*, 292 Ga. 568, 572 (2013) (citing *Smith v. Guest Pond Club*, 277 Ga. 143, 144-45 (2003)); O.C.G.A. § 9-5-10. The May 2025 Order states that Dunn is "RESTRAINED AND ENJOINED" from posting negatively about Greer and any litigation between them, and from encouraging others to do the same. (V2-34). It also requires Dunn to remove "all online postings relating thereto *instanter*." (*Id*.). These prohibitions are unconditional and do not include an end date. The Superior Court's prohibition thus qualifies as a permanent injunction because it contains no temporal limit to its requirements. *State Rd. & Tollway Auth. v. Elec. Transaction Consultants Corp.*, 306 Ga. App. 487, 487 n.1 (2010).

However, in contravention of *Wang*, 292 Ga. at 572, Dunn never received notice that the Superior Court was considering imposing a permanent injunction, nor did she enter into any agreement to waive notice. The March 2025 Petition included nine different prayers for relief did not request a permanent injunction. (V2-11-14). The Rule Nisi filed by the Superior Court to notify the parties of the hearing on the March 2025 Petition also did not provide Dunn with notice that the

Superior Court might enter a permanent injunction, as it only stated that there would be a "HEARING ON PETITION FOR CITATION OF CONTEMPT AND EMERGENCY RELIEF." (V2-25). Because Dunn did not receive the required notice before the April 2025 Hearing, the Superior Court was not allowed to enter a permanent injunction against her, and this Court should therefore vacate the injunction. *See Wang*, 292 Ga. at 572-73 (vacating a permanent injunction where the trial court did not give proper notice to the party against whom it entered the injunction).

IV. The permanent injunction entered by the Superior Court was not a permissible sanction for contempt.

Even if the May 2025 Order was without any of the above defects, it should still be vacated because a permanent injunction is not a proper sanction for contempt. Georgia courts have recognized two types of contempt: civil and criminal. "The distinction between the two is that criminal contempt imposes unconditional punishment for prior acts of contumacy, whereas civil contempt imposes conditional punishment as a means of coercing future compliance with a prior court order." *Grantham v. Universal Tax Sys., Inc.*, 217 Ga. App. 676, 677 (1995) (quoting *Carey Can., Inc. v. Hinely,* 257 Ga. 150, 150, cert. denied, 484 U.S. 898 (1987)). Courts enjoy fairly broad discretion in the context of civil contempt, while O.C.G.A. § 15-6-8(5) provides for only two types of sanctions that

courts can impose for criminal contempt. [5] *Grantham*, 217 Ga. App. at 677; *Smith v. Smith*, 293 Ga. 563, 564 (2013) (quoting *Hughes v. Dep't of Human Res.*, 269 Ga. 587, 587 (1998)).

The Superior Court in this case did not have the authority to impose a sanction for contempt that was not authorized by law. In *Am. Med. Sec. Grp., Inc. v. Parker*, 284 Ga. 102, 104–05 (2008), the Supreme Court held that a trial court's ostensible contempt sanction—dismissal of an appellant's answer and entering default judgment—did not constitute a proper sanction for contempt. It deviated from the two sanctions permitted for criminal contempt because it did not abide by the limitations outlined in O.C.G.A. § 15-6-8(5). *Id.* The sanction also did not constitute a punishment for civil contempt because it was unconditional and was not intended to coerce the appellant to comply with the court's order. *Id*. at 105. The Supreme Court held that the sanction therefore did not constitute a punishment for contempt, and thus it was not directly appealable as a civil or criminal contempt order under O.C.G.A. § 5-6-34(a)(2). *Id*. at 102, 104-05.

This case presents a sanction—a permanent injunction restraining Dunn's speech—that is similarly impossible to categorize as a sanction for either civil or criminal contempt. The February 2025 Order provides that the Superior Court can

[5] O.C.G.A. § 15-6-8(5) permits no more than $1,000 in fines or imprisonment for no more than twenty days (or both).

hold Dunn in civil contempt for violating its order. (V5-38). But the prior restraint imposed by the Court's May 2025 Order is not a proper civil contempt sanction because it is an unconditional sanction that cannot coerce Dunn's compliance with the February 2025 Order. As in *Parker*, the May 2025 Order imposes an unconditional permanent injunction that cannot coerce Dunn's compliance because it gives no conditions under which Dunn could purge the contempt and cause the injunction to be removed. *See In re Harris*, 299 Ga. App. 216, 218 (2009) (finding that a contempt sanction constituted civil contempt because the person held in contempt could fulfill certain conditions to purge herself of the contempt). The May 2025 Order also does not coerce Dunn's compliance with the February 2025 Order because it imposes a different and broader prohibition on her speech than that prior order. (Compare the May 2025 Order's prohibition on posting anything negative about Greer, (V2-34), with the February 2025 Order's prohibition only on making posts referencing Greer "and the minor child making any allegations of abuse in any manner." (V5-38)). The May 2025 Order was therefore not a proper sanction for contempt, and the Court should vacate it.

V. Permanent injunctive relief was not proper because Greer was not at risk of imminent harm and had an adequate remedy at law.

"Courts of equity will not exercise the power of injunctive relief to allay mere apprehensions of injury, but only where the injury is imminent and irreparable and there is no adequate remedy at law." *Lue v. Eady*, 297 Ga. 321, 329

(2015) (quoting *Morton v. Gardner,* 242 Ga. 852, 856 (1979)). Appellees in *Lue* obtained an injunction that, in part, prevented a mayor from terminating employees without due process. *Id*. at 322, 329. This Court reversed that portion of the injunction, reasoning that, while appellees were "concerned [the mayor] may have plans to [improperly terminate an employee]," they did not allege that the mayor had done so or threatened to do so. *Id*. *See also Rosser v. Clyatt*, 348 Ga. App. 40, 55-56 (2018) (physical precedent only) (reversing an injunction where "there were no allegations, much less evidence," that appellee would "imminently suffer an injury" because of appellant's actions).

This case is similar in that, as discussed above, Greer may fear harm from Dunn or a third party, but he has not alleged that she has harmed him or plans to harm him, nor has he provided any evidence that Dunn or anyone else is planning to harm him or the child. Nor has he provided evidence that he is in danger of an imminent injury. Furthermore, anyone allegedly aggrieved by Dunn's statement has an adequate remedy at law.[6] The Court must therefore vacate the injunction imposed by the May 2025 Order.

[6] "Generally an injunction will not be granted to restrain the torts of slander or libel." *Bryan v. MBC Partners, L.P.*, 246 Ga. App. 549, 552 (2000) (citing *Singer Mfg. Co. v. Domestic Sewing Machine Co.*, 49 Ga. 70, 73-74 (1873)); *see also* Ga. Const. art 1, § I, ¶ V ("Every person may speak, write, and publish sentiments on all subjects but shall be responsible for the abuse of that liberty.").

VI. The May 2025 Order does not include sufficient findings of fact.

Even if the Court declines to vacate the May 2025 Order, the Court must remand it because it does not include sufficient findings of fact. The Order, which is stylized as a "FINAL ORDER OF CONTEMPT" but never explicitly finds Dunn in contempt (V2-33-35), does not "contain sufficient facts to show the party is in contempt of court" as required by the Supreme Court. *Gay v. Gay*, 268 Ga. 106, 106-07 (1997) (citing *Floyd v. Floyd,* 247 Ga. 551, 552-53 (1981)) (affirming that "findings of fact and conclusions of law" are not generally required in contempt orders, yet remanding a contempt order that did not contain sufficient findings of fact to show that the party was actually in contempt).

The May 2025 Order refers only to Dunn's "postings" without specifying their contents or context, and it does not identify specific language in the February 2025 Order that the Superior Court deemed to have been violated by Dunn's posts. (V2-33-35). There is no indication of how, exactly, Dunn violated the February 2025 Order's prohibition against making "online postings . . . referencing [Greer] and the minor child making any allegations of abuse in any manner," (V2-12), and therefore no explanation of how Dunn was in contempt. The Superior Court therefore failed to include sufficient facts to show that Dunn was in contempt of its February 2025 Order, and if the Court is unwilling to vacate the May 2025 Order, it must remand it.

VII. Dunn has been harmed by the May 2025 Order.

"[T]o prevail on appeal, [Dunn] must show that the alleged error was harmful." *Bullard v. Bouler*, 272 Ga. App. 397, 398 (2005) (quoting *Brown v. Brewer*, 237 Ga. App. 145, 147 (1999)). Here, Dunn has suffered direct harm by the permanent injunction improperly imposed by the May 2025 Order, which restrains her from "posting . . . any negative content about this case or any previous cases between the parties, or any negative content involving the minor child or [Greer]." (V2-34). But the Superior Court does not define what constitutes "negative content" or explain who determines whether any given content is "negative." In the absence of clear guidance, and considering that the Order provides that Dunn will be "subject to immediate incarceration" if she violates its terms, she has been forced to deactivate her personal social media accounts for fear that any past or future posts may violate the Superior Court's prior restraint.

Dunn's speech is not "chilled"; it is frozen entirely. *Nebraska Press Ass'n*, 427 U.S. at 559. She has been muzzled and cannot exercise her right to share her experiences and opinion about this case and the persons involved in it, a situation this Court found to be intolerable when it vacated the injunction in *Baskin*. 337 Ga. App. at 428. *See Great Am. Dream, Inc. v. DeKalb Cty.*, 290 Ga. 749, 752 (2012) ("[T]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.") (quoting *Elrod v. Burns*, 427 U.S.

347, 373 (1976)). The May 2025 Order is legally erroneous and harms Dunn, and this Court should follow its precedent in *Baskin* and vacate it.[7]

CONCLUSION

The May 2025 Order is unlawful several times over. It rests on an erroneous finding of contempt that is unsupported by evidence. It imposes a permanent injunction that prior restrains Dunn from speaking, trampling on her First Amendment rights. And the Superior Court imposed this permanent injunction, which is not a permissible sanction for contempt, without proper notice, without sufficient findings of fact, and despite the fact that Greer is not in danger of imminent injury and has an adequate remedy at law. Dunn has been so fearful of incarceration that she has taken down her social media altogether since the Superior Court entered the Order. The Court cannot allow the deprivation of Dunn's First Amendment rights to stand. For the reasons stated above, Dunn requests that this Court vacate the May 2025 Order.

Respectfully submitted, this 3rd day of September, 2025.

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[7] The May 2025 Order was entered in the context of a contempt action, not in an "action[ ] for divorce, alimony, separate maintenance, or custody of children." O.C.G.A. § 9-11-65(e). The Superior Court therefore did not have the expansive discretion afforded by O.C.G.A. § 9-11-65(e) in issuing the permanent injunction. Moreover, even if applicable, O.C.G.A. § 9-11-65(e) would not legitimize the May 2025 Order because, as this Court held in *Yntema v. Smith*, O.C.G.A. § 9-11-65(e) cannot justify an unending "facially overbroad restriction that is not calibrated with 'the danger said to flow from the particular utterance.'" 371 Ga. App. 19, 23-24 (2024) (quoting *Baskin*, 337 Ga. App. at 426).

This submission does not exceed the word count limit imposed by Rule 24 of the Court of Appeals of the State of Georgia.

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CERTIFICATE OF SERVICE

I hereby certify that I have, this day, served a true and correct copy of the foregoing **Brief of Appellant Karen Dunn** upon all parties by transmitting a copy of the same via email contemporaneously with the filing of the same. I certify that there is a prior agreement with Appellee Greer to allow documents in a PDF format sent via email to suffice for service.

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