

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 CA 0957

KEITH J. LABAT

VERSUS

F. HUGH LAROSE

Judgment Rendered: **DEC 21 2011**

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On Appeal from the 17th Judicial District Court
In and for the Parish of Lafourche
Docket No. 116,745

The Honorable A. J. Kling, Judge Ad Hoc Presiding

Keith J. Labat
Thibodaux, Louisiana

Plaintiff/Appellee
Pro Se

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F. Hugh Larose

BEFORE: GAIDRY, McDONALD, AND HUGHES, JJ.

HUGHES, J.

This is an appeal of a judgment issuing a writ of mandamus to a district court judge, ordering him to allow the plaintiff to inspect and copy an audio recording of a hearing in a civil case in which the plaintiff was a party. For the reasons that follow, we amend the judgment and affirm, as amended.

FACTS AND PROCEDURAL HISTORY

On September 9, 2005 a hearing was conducted in **Labat v. Labat**, No. 96,159 (La. 17th J.D.C.), before Judge F. Hugh Larose. An audio recording was made of the hearing, and Keith J. Labat afterward made a request to listen to and/or make a copy of the recording. Mr. Labat's request was denied by the Lafourche Parish Clerk of Court, Vernon H. Rodrigue, who responded that his office did not have custody of the recording.

On November 14, 2010 Mr. Labat forwarded a formal written request to Judge Larose asking that he be allowed to "inspect and copy" the recording "maintained by" Judge Larose's office or "under the custody and control of" his office. Mr. Labat described the recording as follows:

Any and all audio and/or video tapes, c/d, recordings, written, transcribed or otherwise which relate to, in any manner, however slight, to a September 9, 2005 court proceeding in the matter entitled *Jan L. Labat v. Keith J. Labat, bearing docket number 96159, in and for the Parish of Lafourche, State of Louisiana, 17th Judicial District Court.* [Italics original.]

Judge Larose responded to Mr. Labat's request by letter dated November 22, 2010, stating as follows, in pertinent part:

Please be advised that I have no documents responsive to your request. Furthermore, pursuant to La. C.C.P. art. 251 the clerk of court is the legal custodian of all of the court's records. The court reporter, under La. C.C.P. art. 372, has the duty to retain and maintain the notes and tape recordings in civil cases.

Thereafter, on January 3, 2011, Mr. Labat filed the instant action for mandamus against Judge Larose, based on the Public Records Law, LSA-R.S. 44:1 et seq. Additionally, Mr. Labat sought civil penalties and attorney fees, under LSA-R.S. 44:35, and all costs of the proceedings. All of the judges of the 17th JDC recused themselves, and on February 7, 2001, a retired Ascension Parish judge was assigned, *ad hoc*, to hear the case.

Judge Larose, represented by the state attorney general's office, filed an answer on March 24, 2011, contending that the clerk of court is the legal custodian of the court's records, pursuant to LSA-C.C.P. art. 251, and that the duty to maintain the notes and tape recordings in a civil case is imposed on the court reporter, pursuant to LSA-C.C.P. art. 372. It was further asserted that the plaintiff, as a former attorney representing himself, was not entitled to recover attorney fees, and that civil penalties were recoverable "only when a custodian unreasonably or arbitrarily fails to respond to the request," pursuant to LSA-R.S. 44:35(E).

Following an April 6, 2011 hearing, judgment was signed on April 21, 2011 in favor of Mr. Labat, ordering Judge Larose to permit Mr. Labat to inspect and copy the audio recording of the hearing held on September 9, 2005 in **Labat v. Labat**, No. 96,159 (La. 17th J.D.C.), within ten days from the date of the judgment. Mr. Labat's requests for penalties, attorney fees, and/or damages were denied.

Judge Larose filed a suspensive appeal of the April 21, 2011 judgment, asserting the trial court erred: (1) in finding that the Public Records Law was applicable to the court reporter's audio recording of a trial proceeding, and thus, effectively, superseded court procedure that requires a request and payment be made to the official court reporter to transcribe the court proceeding; (2) in finding Judge Larose was the custodian of the audio

recording from the September 9, 2005 court proceeding in **Labat v. Labat**; and (3) alternatively, in not recognizing that a court has the inherent authority to exempt “documents” from the Public Records Law.

LAW AND ANALYSIS

Louisiana Constitution, Article XII, Section 3, provides: “No person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in cases established by law.” (Emphasis added.) Further, LSA-Const. Art. I, § 22, states: “All courts shall be open, and every person shall have an adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay, for injury to him in his person, property, reputation, or other rights.”

In this case, Mr. Labat does not suggest that he was prohibited from observing the proceeding held on September 9, 2005 in **Labat v. Labat**, No. 96,159 (La. 17th J.D.C.). Rather, he seeks to examine and copy the audio recording made of that proceeding, citing Louisiana’s Public Records Law.

As stated in LSA-R.S. 44:31(A), providing access to public records is a responsibility and duty of the appointive or elective office of a custodian¹ and his employees. Except as otherwise provided by law, any person may *obtain a copy or reproduction* of any public record, and any person of the age of majority may also *inspect* any public record. See LSA-R.S. 44:31(B). The burden of proving that a public record is not subject to inspection, copying, or reproduction rests with the custodian. LSA-R.S. 44:31(B)(3).

The Louisiana Supreme Court has recognized that the public has a right to inspect and copy public court records. **Copeland v. Copeland** 2007-0177, p. 3 (La. 10/16/07), 966 So.2d 1040, 1042-43 (citing **Craig v.**

¹ “Custodian” means “the public official or head of any public body having custody or control of a public record, or a representative specifically authorized by him to respond to requests to inspect any such public records.” LSA-R.S. 44:1(A)(3).

Harney, 331 U.S. 367, 374, 67 S.Ct. 1249, 91 L.Ed. 1596 (1947), and **Nixon v. Warner Communications, Inc.**, 435 U.S. 589, 597, 98 S.Ct. 1306, 55 L.Ed.2d 570 (1978)). See also LSA-R.S. 44:40(E) and (F).²

Louisiana Constitution, Article XII, Section 3 must be construed liberally in favor of free and unrestricted access to public records, and that access can be denied only when a law, specifically and unequivocally, provides otherwise. Whenever there is doubt as to whether the public has the right of access to certain records, the doubt must be resolved in favor of the public's right to see. To do otherwise would be an improper and

² Louisiana Revised Statute 44:40(E) and (F) provide:

E. The several clerks of court, including the clerks of the Criminal or Civil District Courts for the parish of Orleans, shall make and retain in their custody, by means of the microphotographic process, a copy of all original criminal and civil records of every nature and kind, which are deemed permanent under a record retention and disposal schedule adopted by the secretary of state and the clerks of court in accordance with R.S. 44:410, and which have been in their custody for a period of five or more years. The clerks of court may then destroy the original criminal records and any other records, the destruction of which is authorized by R.S. 13:917, which have been so copied and retained. However, all records in suits affecting records relating to immovable property, or adoption, interdiction, successions, trusts, or emancipation, shall be retained in their original form, even though they have been copied as provided herein.

F. Five years after rendition of a final judgment from which no appeal may be taken, in any suit, except suits affecting records relating to immovable property, adoption, interdiction, successions, trusts or emancipation, the clerk of court, including the clerk of the Criminal or Civil District Court in the parish of Orleans, shall transfer at the direction of the state archivist all permanent records in the suit to the Department of State, as custodian of the official archives of the state, for safe and secure storage, service, restoration, and preservation. The state archivist shall establish a schedule by which all suit records heretofore accumulated by various clerks of court shall be transferred. The schedule shall include provisions for transfer from the parishes, in alphabetical order, of records from the years 1699 through 1921, to be completed by December 31, 1980, and for transfer, in the same order, of records from the years since 1921 in which the final judgment was rendered prior to September 8, 1973, to be completed by December 31, 1981. Upon receipt, the department shall make reproductions of the original records by the microphotographic process, retain a master negative thereof, and transmit to the sending clerk a copy of the reproductions of the records. The department shall maintain the confidentiality of any records, or parts thereof, which are so classified by law. Thereafter, notwithstanding the provisions of R.S. 44:421, the department shall not make or authenticate copies or reproductions of those records but, upon receipt of any request for service or of any inquiry relating to those records, the department shall forward the request or inquiry to the appropriate clerk of court, who may render the necessary services and charge the appropriate fees, as provided in R.S. 13:841 or 844, or in Orleans Parish by R.S. 13:1213 or 1381.

The provisions of this Subsection shall not apply to any records, the destruction of which is authorized by Subsection E of this section or by R.S. 13:917.

arbitrary restriction on the public's constitutional rights. **Copeland v. Copeland**, 2007-0177 at pp. 4-5, 966 So.2d at 1043-44 (citing **In re Doe**, 96-2222 (La. 9/13/96), 679 So.2d 900, 901 (per curiam), and **Title Research Corporation v. Rausch**, 450 So.2d 933, 936 (La. 1984)).

However, the fact that a document is filed in a court record does not necessarily mean that it will be accessible by the public. The right to inspect and copy judicial records is not absolute. Every court has supervisory power over its own records and files. Access may be denied when court files might become a vehicle for improper purposes. Discretion as to access is best left to the sound discretion of the trial court, a discretion to be exercised in light of the relevant facts and circumstances of the particular case. See **Copeland v. Copeland**, 2007-0177 at pp. 5-6, 966 So.2d at 1044. See also **Bester v. Louisiana Supreme Court Committee on Bar Admissions**, 2000-1360 (La. 2/21/01), 779 So.2d 715.

A trial court's discretion in exercising this right often comes in the form of sealing all or part of a court record. Although Louisiana has no specific statutory provision allowing trial courts to seal court records, general provisions exist under which trial courts exercise this power. For instance, LSA-C.C.P. art. 191 provides that "a court possesses inherently all of the power necessary for the exercise of its jurisdiction even though not granted expressly by law." In addition, LSA-C.C.P. art. 1631(A) provides that "[t]he court has the power to require that the proceedings shall be conducted with dignity and in an orderly and expeditious manner, and to control the proceedings at the trial, so that justice is done." **Copeland v. Copeland**, 2007-0177 at pp. 6-7, 966 So.2d at 1045.

For example, with respect to divorce actions, no state statute excepts divorce proceedings from either Louisiana's constitutional open courts

provision (LSA-Const. Art. I, § 22,) or its constitutional public records provision (LSA-Const. Art. XII, § 3). While LSA-Ch.C. art. 407 provides that proceedings before the juvenile court, with certain exceptions, “shall not be public,” the law contains no such provisions with regard to divorce or child custody proceedings that would take such proceedings outside the scope of Art. I, § 22 or Art. XII, § 3. Likewise, LSA-C.C. art. 135, which provides that “[a] custody hearing may be closed to the public,” provides no basis for closing the courts in a case where there is no “custody hearing” involved. Thus, the constitutional right of access extends to civil divorce proceedings. **Copeland v. Copeland**, 2007-0177 at p. 8, 966 So.2d at 1045.

However, that being said, even without a statute exempting certain court proceedings and documents from public review, the constitutional right of access is not unlimited. Article I, § 5 of the Louisiana Constitution, which provides, in part, that “[e]very person shall be secure in his person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or invasions of privacy,” protects certain documents and information from disclosure. The supreme court has defined the right to privacy as the right to be “let alone” and to be free from “unnecessary public scrutiny.” In addition to the specific statutory exceptions found elsewhere, the protection provided by Article I, § 5 has prevailed over the public’s right to know and has protected certain documents and information from disclosure.³ **Copeland v. Copeland**, 2007-0177 at p. 8, 966 So.2d at 1045-46.

³ The Public Records Law contains numerous exceptions that serve to protect the confidentiality of a variety of records. Among the exceptions are the following: LSA-R.S. 44:2 (records involving preliminary legislative investigations); LSA-R.S. 44:3 (certain records of prosecutive, investigative, law enforcement agencies, and communications districts); LSA-R.S. 44:3.1 (certain records pertaining to terrorist-related activities); LSA-R.S. 44:3.2 (documents regarding proprietary and trade secret information); LSA-R.S. 44:10 (documents and proceedings of the Louisiana Judiciary Commission); LSA-R.S. 44:11 (certain personnel records), and LSA-R.S. 44:13 (certain library registration records). Additionally, LSA-R.S. 44:4 contains over forty

The supreme court has also defined the limits on the right to privacy as follows: the right to privacy is not absolute; it is qualified by the rights of others. The right of privacy is also limited by society's right to be informed about legitimate subjects of public interest. As the supreme court has recognized, individuals involved in civil litigation may be compelled to give evidence which tends to embarrass them or to produce documents of a confidential nature. **Copeland v. Copeland**, 2007-0177 at p. 9, 966 So.2d at 1046.

Using the example of divorce proceedings again, we note that commentators have indicated that other state courts have handled access to divorce proceedings in different ways. Some courts have applied the common-law rule to prevent those not having a legitimate interest in the divorce proceedings from having access to the entire record, while other courts cited statutes mandating the sealing of divorce records. In some cases involving the custody of children, courts have denied access to the divorce records to protect the children. Courts have also held a number of documents and types of information not to be subject to disclosure in relation to divorce proceedings, including financial information and paternity results. Furthermore, a state court may seal the record until the divorce decree has been entered in order to encourage conciliation. Recently, however, the practice of closing divorce proceedings has changed to allow the public more access in divorce cases. Privacy interests no longer

additional categories of exemptions from disclosure and addresses the records of a number of different agencies. In LSA-R.S. 44:4.1(B), the legislature, recognizing that there exists exceptions, exemptions, and limitations to the laws pertaining to public records throughout the revised statutes and codes of this state, provided a list of more than thirty categories of documents, citing to the specific revised statutes and codal articles that provide exemption from disclosure. See **Henderson v. Bigelow**, 2007-1441, p. 12 (La. App. 4 Cir. 4/9/08), 982 So.2d 941, 948, writ denied, 2008-1025 (La. 6/27/08), 983 So.2d 1292. The Fourth Circuit's review, in **Henderson v. Bigelow**, of each of the categories of documents specifically exempted or otherwise excepted from disclosure revealed that there was no general express exemption for documents of the judiciary. See **Id.**

mandate closure of these proceedings in many jurisdictions, although they are still relevant in balancing the interests involved in disclosure. When all factors are equal, the right of access will prevail despite the parties' privacy interests. Several courts have also permitted access to records obtained in divorce proceedings, including financial information. Moreover, the salaciousness of the details in the divorce records has not been sufficient by itself to prevent disclosure in some states. **Copeland v. Copeland**, 2007-0177 at p. 9, 966 So.2d at 1046.

Based on these precepts, we must conclude that, unless some valid reason to the contrary has been shown, the records of state court cases are subject to inspection, copying, and/or reproduction, as decreed by the Public Records Law. No valid and applicable exception to the Public Records Law has been demonstrated in this case. Nor is there any indication in this appellate record that any part of the **Labat v. Labat**, No. 96,159 (La. 17th J.D.C.), record was ordered sealed or that there was ever a request by a party-in-interest to have any part of that record sealed.

On appeal, the defendant judge further asserts that the application of the Public Records Law in this case inappropriately supercedes "the procedure mandated by courts which require request and payment be made to the official reporter who will transcribe the court proceeding." The defendant contends that LSA-C.C.P. art. 372 and/or LSA-R.S. 13:961 govern the plaintiff's request in this case.

Louisiana Code of Civil Procedure Article 372 provides, in pertinent part:

A. The court reporter of a trial court, when directed by the court, shall report verbatim in shorthand by stenography or stenotype, or by voice recording or any other recognized manner when the equipment therefor has been approved by the court, the testimony of all witnesses, the other evidence

introduced or offered, the objections thereto, and the rulings of the court thereon, on the trial of any appealable civil case or matter.

B. When the court so directs, or the fees therefor have been paid or secured, or when an appeal has been granted in cases in which a party has been permitted to litigate without the payment of costs, he shall transcribe verbatim in a manner approved by the supreme court, all of his notes taken at the trial, or such portion thereof as is designated. He shall file one copy of the transcript in the trial court; shall deliver a copy thereof to each of the parties who has paid therefor; and, when an appeal has been granted, he shall furnish to the clerk of the trial court the number of copies of the transcript required by law.

C. The court reporter shall retain all notes and tape recordings in civil cases for a period of not less than five years after the end of the trial. However, if the record of the trial is fully transcribed, the court reporter shall retain all notes and tape recordings which have been fully transcribed for a period of not less than two years after transcription is completed. The court reporter shall destroy any notes and tape recordings of any matter upon order of a court of competent jurisdiction.

D. The notes and tape recordings of any civil case which are retained by a court reporter pursuant to the provisions of this Article shall be the property of the court in which the case was heard. The court reporter shall have the duty to retain and maintain all such notes and tape recordings pursuant to the provisions of this Article, although the notes and tape recordings shall remain the property of the court.

* * *

(Emphasis added.)

Louisiana Revised Statute 13:961 provides, in pertinent part:

A. In any judicial district there may be appointed as many official court reporters as there are district judges in said judicial district. Each district judge may appoint one court reporter who shall hold office until it is declared vacated by the judge making the appointment. In judicial districts having more than one district judge, the judges, sitting en banc, with the approval of each police jury, may appoint such additional court reporters as in their discretion are required, who shall serve at the pleasure of the court en banc and may be assigned to the various divisions of the court, or to the grand jury, as the court en banc may direct.

* * *

C. (1) The duties of the official court reporter shall be to report in shorthand, stenotype, or any other recognized manner, and transcribe into longhand by typewriting all the testimony taken in all civil appealable cases tried in the judicial district served by the court reporters, when ordered so to do by the presiding judge, and to furnish for the purpose of appeal the necessary copies of the testimony required by law for such appeal. In criminal cases tried in the judicial districts, the official court reporter shall record all portions of the proceedings required by law or the court and shall, when required by law or the court, transcribe those portions of the proceedings required, which shall be filed with the clerk of court in the parish where the case is being tried.

(2) The official reporters appointed under Subsection A of this Section shall work concurrently under the direction and supervision of the judges appointing them, according to the needs and requirements in the various parishes comprising the district, in the interest of expediting the business before the judges of the court in said judicial district.

* * *

(Emphasis added.)

Our review of LSA-C.C.P. art. 372 and LSA-R.S. 13:961 does not lead us to conclude that there is any conflict between these provisions and the mandates of the Public Records Law, as it relates to the particular facts and circumstances presented in the instant case. The plaintiff in this case has requested to inspect (i.e. listen to) and copy the audio recording of the September 9, 2005 hearing in a civil case in which he was a party. He has not asked for a transcript,⁴ and there is no indication that the matter was appealed.⁵ Therefore, the provisions mandating a litigant pay transcription fees have not been triggered.

⁴ “When a transcript is requested by a litigant, the court reporter or deputy court reporter shall be paid in advance and shall furnish such transcript within thirty days of payment.” LSA-R.S. 13:961.2(B)(1) (emphasis added).

⁵ “The clerk of the court from which an appeal is taken is not required to deliver the transcript of the record of the case before his fees for preparing the same have been paid.” LSA-R.S. 13:4532 (emphasis added). “In all civil and criminal cases a fee not to exceed one dollar and fifty cents per thirty-one-line page and twenty-five cents per copy reported and transcribed shall be charged by and be paid to the court reporter who reported and transcribed the testimony . . . In the Seventeenth Judicial District such fee shall not exceed two dollars and fifty cents for each thirty-one line page and fifty cents for each copied page. LSA-R.S. 13:961(F)(1)(a) and (c).

The defendant judge also contends that the trial court erroneously determined that he was the custodian of the September 9, 2005 audio recordings. We note that the parish clerk of court has been denominated by the legislature as the “legal custodian” of all of “its” records, as stated in LSA-C.C.P. art. 251(A), which provides:

The clerk of court is the *legal custodian* of all of *its* records and is responsible for their safekeeping and preservation. He may issue a copy of any of these records, certified by him under the seal of the court to be a correct copy of the original. Except as otherwise provided by law, he shall permit any person to examine, copy, photograph, or make a memorandum of any of these records at any time during which the clerk’s office is required by law to be open. However, notwithstanding the provisions of this Paragraph or R.S. 44:31 et seq., the use, placement, or installation of privately owned copying, reproducing, scanning, or any other such imaging equipment, whether hand-held, portable, fixed, or otherwise, within the offices of the clerk of court is prohibited unless ordered by a court of competent jurisdiction.

However, in this case the clerk of court, Mr. Rodrigue, testified that his office did not have custody of the audio recording of the September 9, 2005 **Labat v. Labat** hearing. Both Judge Larose and his court reporter, Renee Matherne, testified that the September 9, 2005 audio recording (which was in the form of a compact disc) was stored in a closet in Judge Larose’s office suite. Ms. Matherne also testified that she had been instructed to present any requests for access to court recordings to the judge,⁶ who was her “boss,” that she did so in this case, and that Judge Larose responded to Mr. Labat’s request.

⁶ In her testimony, Ms. Matherne referenced a “memo” that she said instructed court reporters not to let “anybody come in and listen” to court recordings; however, that memo was not made a part of the record. Further, a review of the Rules for Louisiana District Courts does not reveal the existence of a statewide rule to that effect, nor do the published rules of the 17th JDC contain such a rule.

The “custodian” of a public record is defined by LSA-R.S. 44:1(A)(3) as the public official who has “custody or control of a public record.” Therefore, under the specific facts of this case, we can find no error in the trial court’s finding that Judge Larose had custody and control over the recording.

Judge Larose additionally argues on appeal that Mr. Labat is not entitled to receive the records sought in the “specific medium” requested, when the court has in place a procedure whereby a transcript can be obtained from the court reported. We disagree.

Louisiana Revised Statute 44:31 gives to “any person of the age of majority” the right to choose from four options: he may inspect the records; he may copy the records; he may reproduce the records; or he may obtain, from the custodian, a reproduction of the records. The statute is clear and unambiguous in its grant of these alternate rights, and it also is clear that the choice of which optional right to exercise rests with the one requesting the records and not with the custodian. **Title Research Corporation v. Rausch**, 450 So.2d at 937.

Louisiana Revised Statute 44:32 provides the manner in which a public records custodian must respond to a public records request and states, in pertinent part: “The custodian shall present any public record to any person of the age of majority who so requests . . . and shall extend to the person all reasonable comfort and facility for the full exercise of the right granted” LSA-R.S. 44:32(A). Further, no fee shall be charged to any person to *examine* or *review* any public records (unless otherwise provided

in the Public Records Law). LSA-R.S. 44:32(C)(3).⁷

When a “copy or reproduction of any public record” is requested, as authorized by LSA-R.S. 44:31(B)(2), LSA-R.S. 44:32(C)(1)(a) requires the custodian to “provide copies to persons so requesting.” See also LSA-R.S. 44:32(C)(1)(d). A “recording” is a public record, pursuant to LSA-R.S. 44:1(A)(2)(a).⁸ Mr. Labat has requested a copy of a public recording, and he is entitled to be provided with such.

We further note that although, generally, the custodian may establish and collect reasonable fees for making copies of public records, copies of records may be furnished “without charge or at a reduced charge to indigent citizens of this state.” LSA-R.S. 44:32(C)(1)(a). Mr. Labat petitioned to proceed in forma pauperis in this litigation, and the minutes of the trial court reflect that his motion was granted on April 21, 2011. Thus, we conclude that he is entitled to a copy of the public record without charge.

The April 21, 2011 trial court judgment at issue herein stated: “IT IS ORDERED, ADJUDGED[,] AND DECREED that a Writ of Mandamus issue herein to Judge F. Hugh Larose, ordering him to permit Keith J. Labat to inspect and copy the audio tape of a hearing held on September 9, 2005 in

⁷ We also note that balanced against the public's rights of access, it is the duty of the custodian to preserve the public records, and to ensure that nobody alters or destroys the records. This “vigilance” by the custodian, however, must be reasonable, and it must be by those means that are least intrusive on the right of access. Any restriction or limitation imposed by the custodian places the burden on the custodian to justify the restriction or limitation. **Title Research Corporation v. Rausch**, 450 So.2d at 937-38. See also LSA-R.S. 44:32(A), providing that nothing in the Public Records Law “shall prevent the custodian from maintaining such vigilance as is required to prevent alteration of any record while it is being examined.”

⁸ Except as otherwise provided in the Public Records Law or the Constitution of Louisiana, “public records” are “[a]ll books, records, writings, accounts, letters and letter books, maps, drawings, photographs, cards, tapes, *recordings*, memoranda, and papers, and all copies, duplicates, photographs, including microfilm, or other reproductions thereof, or any other documentary materials, regardless of physical form or characteristics, including information contained in electronic data processing equipment, having been used, being in use, or prepared, possessed, or retained for use in the conduct, transaction, or performance of any business, transaction, work, duty, or function which was conducted, transacted, or performed by or under the authority of the constitution or laws of this state, or by or under the authority of any ordinance, regulation, mandate, or order of any public body or concerning the receipt or payment of any money received or paid by or under the authority of the constitution or the laws of this state.” LSA-R.S. 44:1(A)(2)(a) (emphasis added).

the case of Labat v. Labat, civil docket # 96 159, 17th Judicial District Court, Parish of Lafourche, within ten (10) days from date, in the office of Judge Larose, Court House, Thibodaux, Louisiana.”

The order entitled Mr. Labat to listen to the audio recording in a facility of the 17th Judicial District Court suitable “for the full exercise of the right granted” and with “all reasonable comfort,” as stated in LSA-R.S. 44:32(A). However, Mr. Labat is not entitled to remove the original audio recording from the courthouse. Nor may Mr. Labat use or place on the courthouse premises any “mechanical reproduction, microphotographic reproduction, or any other such imaging, reproduction, or photocopying equipment, unless otherwise ordered by a court of competent jurisdiction.” See LSA-R.S. 44:32(C)(1)(c).

Because Mr. Labat is not authorized under the Public Records Law to make an audio copy of the recording himself, Judge Larose must provide an audio copy in the same format as the original recording (the testimony of record indicated this format was a compact disc) or other comparable audio format agreeable to all parties. See, e.g. St. Tammany Parish Coroner v. Doe, 2010-0946, p. 7 (La. App. 1 Cir. 10/29/10), 48 So.3d 1241, 1246.

Accordingly, we hereby amend the trial court judgment to read: “IT IS ORDERED, ADJUDGED, AND DECREED that a Writ of Mandamus issue herein to Judge F. Hugh Larose, ordering him to permit Keith J. Labat to inspect the audio tape of a hearing held on September 9, 2005 in the case of Labat v. Labat, civil docket # 96 159, 17th Judicial District Court, Parish of Lafourche, on the premises of the Court House, Thibodaux, Louisiana, in a facility suitable ‘for the full exercise of the right granted’ and with ‘all reasonable comfort;’ Judge Larose is further ordered to provide to Mr. Labat an audio copy of the recording, either in the form of a compact disc or some

other comparable audio format agreeable to Mr. Labat, and without cost to Mr. Labat; all within ten (10) days from the date of this judgment.”

CONCLUSION

For the reasons assigned herein, the judgment of trial court is amended, as stated hereinabove, and affirmed as amended. All costs of this appeal are to be borne by the appellant.

AMENDED, AFFIRMED AS AMENDED.