

RECEIVED

Nov 16 2022

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master in Equity Charleston County

Case No. 2017-CP-10-5427  
Appellate Case No. 2021-000793

Family Services, Inc., as Conservator for Muriel W. Clarkin.....Respondent,

v.

Patricia Clarkin Smith and Wells Fargo Bank, NA., Defendants,  
Of whom Patricia Clarkin Smith is the ..... Appellant.

RESPONDENT’S RETURN APPELLANT’S  
MOTION FOR CONTINUANCE AND EXTENDED DEADLINE

Respondent, Family Services, Inc., as Conservator for Muriel W. Clarkin (hereinafter "Respondent") by and through its undersigned counsel, hereby files and serves this Return to Appellant Patricia Clarkin Smith’s Motion emailed to the court on October 31, 2022 (hereinafter "Motion"). Respondent respectfully requests that Appellant's Motion be denied and replies as follows:

- 1) Respondent's counsel was served with the Motion, Appellant's Initial Brief, and Appellant's Designation of Matter on November 3, 2022, by mailing the same on October 31, 2022.

- 2) On July 22, 2021, Appellant filed this appellate matter seeking an appeal of the Master's Order granting summary judgement to Respondent filed on June 21, 2022, based upon the hearing on Respondent's Motion for Summary Judgement held before the Master on May 11, 2021.
- 3) On August 3, 2021, Appellant filed a Notice of Transcript Request requesting a copy of the transcript for the May 11, 2021, hearing from the court reporter Christine Smith (hereinafter "Court Reporter").
- 4) On October 1, 2021, Appellant filed a motion with this Court stating: "I respectfully request an extension of the transcript due date (hereinafter "**Appellant's 1st Request for an Extension**").
- 5) On October 20, 2021, Appellant received a PDF copy of the Transcript from the Court Reporter (See Exhibit "B" attached to Appellant's Return dated April 22, 2022).
- 6) On October 29, 2021, this Court filed and served an Order stating: "Appellant has filed a motion for extension of time to order the transcript. This motion is **Granted**. *Appellant must notify the Court upon receipt of the transcript so that the time for serving and filing the appellant's initial brief and designation of matter may be calculated.*"
- 7) On or around October 29, 2021, upon receipt of this Court's Order, Appellant failed to comply with this Court's Order by sending written notice to the Court that Appellant was in receipt of a certified copy of the Transcript.
- 8) On November 24, 2021, Respondent filed a Motion to Dismiss Appellant's Appeal of this matter, for failure to prosecute.
- 9) On December 6, 2021, Appellant filed an email requesting "a 30-Day Extension of Time to Submit My Return to Motion that is due today. Dec 6, 2021." (hereinafter "**Appellant's 2nd Request for an Extension**").

10) On December 8, 2021, this Court filed an Order stating: “The time for serving and filing the return to motion to dismiss is hereby extended until January 5, 2022. *No further extensions will be granted absent extraordinary circumstances.*”

11) On January 5, 2021, Appellant sent an email to the clerk of court stating: “*Due to Extenuating Circumstances – Medical/Quarantine Covid-19<sup>1</sup>*, I respectfully request a Continuation of the 1<sup>st</sup> 30-Day Extension of Time to submit my Return To Motion that is due today, January 5, 2022. I will provide any medical documentation required. Attorney Keys filed his Motion to Dismiss on November 24, 2021 and stated in his Affidavit that I received a copy of the transcript on October 20, 2021. \*Attorney Keys’ referenced copy was not the official hard copy per Rule 207 and Rule 607; it was a pdf of the transcript that contained a Time Stamp mistake noted in my response to the court reporter.” (hereinafter "**Appellant's 3rd Request for an Extension**").

12) On March 15, 2022, this court sent Appellant a deficiency letter stating: “Upon reviewing your motion for an extension of time to file the return to motion to dismiss, the following deficiency has been noted...[The required filing fee has not been submitted...] any deficiency must be corrected within ten (10) days of the date of this letter or your motion will not be considered.”

13) On March 25, 2022, Appellant emailed the clerk of court noting that she had mailed the required filing fee in response to the Court’s letter and further stated: “I am grateful for the present decision, “held in abeyance.” *As of today, my extenuating circumstances for Return to Dismissal*

---

<sup>1</sup> Appellant has an extensive history of requesting continuances of scheduled motions, at the lower court level, in this matter. A pattern and practice which Appellant has now continued in the appeal of this matter. From November 27, 2019 until May 11, 2021, Appellant made 10 requests to continue two motions scheduled to be heard before the lower court. The reason Appellant routinely cited for the requests was *medical* reasons. The lower court granted the vast majority of Appellant’s continuance requests. See the Order on Appeal in this matter filed by Appellant with this Court on July 22, 2021, pages 2-4.

*Motion continuance due to Jan 5, 2022, quarantine remain unchanged – medical release date remains unknown.”*

14) On March 30, 2022, this Court issued an order stating: “The time for serving and filing the return to motion to dismiss is hereby extended until April 25, 2022. *No further extensions will be granted absent extraordinary circumstances.*”

15) On April 22, 2022, Appellant emailed the Clerk of Court a copy of Appellant’s Return to Respondent’s Motion to Dismiss which states: “Attorney Keys filed his Motion to Dismiss on November 24, 2021, and he wrote that I received a “copy” of the transcript on October 20, 2021. Attorney Keys failed to note whether that “copy” was a pdf file or the official hard copy. Attorney Keys’ referenced “copy” was not the official hard copy as stated on the Transcript Order Form, “Pursuant to Rule 207 and 607 of the South Carolina Appellate Court Rules...*On October 20, 2021, I received a pdf file of the transcript that contained a Time Stamp error as an attachment to an email from the court reporter...I, Patricia Clarkin Smith, respectfully request the South Carolina Court of Appeals to Deny Attorney Keys’ Motion for Dismissal...*”

16) On May 24, 2022, this Court filed an Order denying Respondent's Motion to Dismiss filed November 24, 2021, and further stating that Appellant shall file and serve her initial brief and designation of matter within thirty days of the date of the order, or June 23, 2022.

17) On June 16, 2022, Appellant emailed the clerk of court stating: "*Extenuating Circumstances, COVID-19 POSITIVE...Due to Extenuating Circumstances (medical), Appellant Patricia Clarkin Smith requests an Extension of the June 23, 2022 Due Date for my Initial Brief and Designation of Matter.*" **Appellant's 4th Request for an Extension**").

18) On June 17, 2022, this Court filed an Order granting Appellant's Request for an Extension and further stating that Appellant shall file and serve her initial brief and designation of matter by July 25, 2022.

19) On July 11, 2022, Appellant emailed the clerk of court stating: "*My medical condition remains ongoing. My July 6, 2022, MUSC Test Result COVID-19 POSITIVE is attached. I respectfully request a 30 day extension from July 25, 2022, to file my initial brief and designation of matter to be included in the record on appeal.*" **Appellant's 5th Request for an Extension**").

20) On July 14, 2022, this Court filed an Order granting Appellant's Request for an Extension and further stating that Appellant shall file and serve her initial brief and designation of matter by August 24, 2022.

21) On August 22, 2022, Appellant emailed the clerk of court stating: "*I, Patricia Clarkin Smith, humbly request this filing be protected from public record at this time due to the nature of my medical condition and present treatment at MUSC Hospital...Appellant Patricia Clark Smith respectfully request a 30-day extension on my August 14, 2021 due date for filing my Initial Brief and Designation of Matter.*" (**Appellant's 6th Request for an Extension**").

22) Respondent filed a return to the Motion on August 30, 2022, requesting the motion be denied.

23) On September 2, 2022, this Court is an order stating: The time for serving and filing the appellant's initial brief and designation of matter is hereby extended until September 23, 2022. No further extensions will be granted absent extraordinary circumstances.

24) Appellant failed to file and serve upon Respondent by September 23, 2022, Appellant's Initial Brief and Designation of matter.

25) On October 19, 2022, this Court sent a letter to Appellant stating: "Dear Ms. Smith: Our records reflect that the time for serving and filing the appellant's initial brief and designation of matter has expired. Within (10) days of the date of this letter, you must serve and file the appellant's initial brief and designation of matter, along with a motion requesting permission to serve and file the appellant's initial brief and designation of matter outside the filing deadlines set by Rules 208 and 209 and this Court's order dated September 2, 2022. Your appeal will be dismissed if no motion is motion is made within ten (10) days of the date of this letter."

26) On October 31, 2022, Appellant, acting pro se filed by email a Motion for Continuance and Extended Deadline, along with an initial brief, designation of matter, and certificate of service of the same upon Respondent dated October 31, 2022 (**Appellant's 7th Request for an Extension**).<sup>2</sup> The original mailed copy of the Initial Brief and Designation of Matter was not received by this Court until November 2, 2022<sup>3</sup>.

27) The motion states "This motion is based on exceptional circumstances of technical computer failure. I humbly share that I was truly unaware of this delivery failure of my emailed Initial Brief and Designation of Matter, thus this inadvertently missed the deadline." The Motion contains no memorandum with citation of authorities in support of the Motion nor an affidavit in support of the Motion.

28) Rule 240(c), SCACR, states:

Form and Content of Motions and Petitions. All motions or petitions filed in an appellate court shall be in writing, shall state the grounds thereof, and shall comply with the requirements of Rule 267. The pages of the motion or petition and all supporting documents shall be consecutively numbered. Each motion or petition shall include the following:

---

<sup>2</sup> Pursuant to the applicable rules and/or court orders, electronic filing is a method reserved for licensed attorney's not pro se parties.

<sup>3</sup> Upon information and belief the Motion was never mailed to the Court.

(1) A certificate or affidavit of service reflecting the date of service upon all parties. The original certificate or affidavit of service must be filed with the original motion or petition.

(2) A memorandum with citation of authorities in support of the motion.

(3) Where the Record on Appeal or Appendix has not been filed, or where the facts relied upon in support of the motion are not contained in the Record on Appeal or Appendix, the parties shall file affidavits and other documents in support of their positions.

28) Rule 260(a), SCACR, states: "Involuntary Dismissal and Reinstatement. Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court. A case shall not be reinstated except by leave of the court, upon good cause shown, after notice to all parties. The clerk shall remit the case to the lower court or administrative tribunal in accordance with Rule 221 unless a motion to reinstate the appeal has been actually received by the court within fifteen (15) days of filing of the order of dismissal (the day of filing being excluded)."

29) Appellant never attempted to serve Respondent Appellant's Initial Brief and Designation of Matter by September 23, 2022, nor within ten days of October 19, 2022 as twice ordered by the Court, nor did Appellant file a motion within fifteen days of September 23, 2022.

30) "It is a fundamental principle of law that everyone is charged with or deemed to have knowledge of the law. The legal axiom that ignorance of the law is no excuse has long been the law of this nation and state." *Gregory v Gregory*, 292 S.C. 587, 589-90, 358 S.E.2d 144 (Ct. App. 1987)

31) As noted above in footnote 1, Appellant has a history in this matter (a history which predates the pandemic) at the lower court level (and now at the appellate level) of evidencing a modus operandi of requesting continuances or extensions of time based upon alleged medical

conditions and/or other excuses (*See* the Order on Appeal in this matter filed by Appellant with this Court on July 22, 2021, pages 2-4.).

32) It has now been over a year since Appellant filed this appeal Respondent would respectfully assert that Respondent is being prejudiced by Appellant's continued delays and the unwillingness of Appellant to prosecute this appeal.

WHEREFORE, based on the grounds stated herein above, Respondent requests that this Court issue an order denying Appellant's Motion for Continuance and Extended Deadline and dismiss this appeal.

November 16, 2022.

THE LAW OFFICE OF  
DAVID CONOR KEYS, LLC  
*s/ D. Conor Keys*  
D. Conor Keys (100148)  
P.O. Box 14225  
Charleston, SC 29422  
Phone: 843-906-3998  
[conor@dconorkeyslaw.com](mailto:conor@dconorkeyslaw.com)  
*Attorney for Respondent*

RECEIVED

Nov 16 2022

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master in Equity Charleston County

Case No. 2017-CP-10-5427  
Appellate Case No. 2021-000793

Family Services, Inc., as Conservator for Muriel W. Clarkin.....Respondent,

v.

Patricia Clarkin Smith and Wells Fargo Bank, NA., Defendants,  
Of whom Patricia Clarkin Smith is the ..... Appellant.

CERTIFICATE OF SERVICE

I certify that on this 16<sup>th</sup> day of November 2022, I have served Respondent’s Return to Appellant’s Motion by first class mail addressed as follows:

Patricia Clarkin Smith  
602 Atlantic St.  
Mount Pleasant, SC 29464

THE LAW OFFICE OF  
DAVID CONOR KEYS, LLC  
s/ D. Conor Keys  
D. Conor Keys (100148)  
P.O. Box 14225  
Charleston, SC 29422  
Phone: 843-906-3998  
[conor@dconorkeyslaw.com](mailto:conor@dconorkeyslaw.com)  
*Attorney for Respondent*

THE LAW OFFICE OF  
**DAVID CONOR KEYS LLC**  
PO Box 14225 CHARLESTON, SC 29422  
CONOR@DCONORKEYSLAW.COM  
843-906-3998

November 16, 2022

Jenny Abbott Kitchings  
Clerk of Court, Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211  
[ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org)

**RECEIVED**  
**Nov 16 2022**  
**SC Court of Appeals**

**RE: Family Services, Inc., Conservator for Muriel W. Clarkin v. Patricia  
Clarkin Smith, Et al.  
App. Case No. 2021-000793**

Madam Clerk:

Enclosed please find in regard to the above referenced matter the following:  
1) Respondent's Return to Appellant's Motion for Continuance and Extended  
Deadline  
2) Proof of Service for the Return; and

I kindly request that you file the same

With kind regards,

RESPECTUFLY SUBMITTED,

THE LAW OFFICE OF  
DAVID CONOR KEYS, LLC



---

D. Conor Keys (100148)  
P.O. Box 14225  
Charleston, SC 29422  
Phone: 843-906-3998  
[conor@dconorkeyslaw.com](mailto:conor@dconorkeyslaw.com)  
*Attorney for Respondent*

Enclosures:  
(as stated)  
CC:  
Patricia Clarkin Smith