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**Jan 09 2023**

**SC Court of Appeals**

THE STATE of SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CHAPTER COUNTY  
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge  
Brian M. Gibbons, Circuit Court Judge  
J. Mark Hayes, II, Circuit Court Judge

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Case No. 2018—CP—12---00117  
2018---AP—12—00074

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Appellate Case Nos. 2022-001312 and 2022-001390

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard, Plaintiffs,

Of whom Heidi Gersten is Appellant,

v.

Kevin Carter, Richard Davis, Joseph Tirbovich, Nationwide Insurance  
Company, Interinsurance Exchange of the Automobile Club, John  
Ammendola, Trustgard Insurance Company, Blackwell, SC Department of  
Public Safety, Chevrolet, GMC, Unknown John Does,

Respondents.

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MOTION TO STRIKE OR IN THE CONTRA  
MOTION FOR EXTENSION OF TIME TO FILE RETURN TO  
NATIONWIDE INSURANCE COMPANY AND JOSEPH TIRBOVICH'S  
MOTION TO DISMISS APPEAL  
AND TITLE II OF THE AMERICANS WITH DISABILITIES ACT  
REASONABLE ACCOMMODATIONS REQUEST

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Heidi Gersten, All Rights Reserved  
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Appellant

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The Appellant Heidi Gersten moves this Court, pursuant of/to Rule 240 and Title II of the Americans with Disabilities Act Reasonable Accommodations Request, for an order granting her motion to strike the Respondents Nationwide Insurance Company and Joseph Tirbovich's motion to dismiss or in the contra an order granting the appellant's motion for an extension of time of ten (10) days after the Respondent Joseph Tirbovich's substituted counsel of record motion of Pamela J. Larson has been approved by this court, a day to be determined or at least until and including January 19, 2023, to file her return to the Respondents Nationwide Insurance Company and Joseph Tirbovich's motion to dismiss filed on December 28, 2022.

The basis or grounds for this motion is that this Court approved Pamela J. Larson to be Nationwide Insurance Company's counsel of record, however, on the same day as filing the said motion to dismiss, Pamela J. Larson amended her motion to substitute counsel to include the Respondent Joseph Tirbovich. This Court approved her as counsel of record for Nationwide Insurance Company on December 7, 2022 however she has not received an approval from this Court for her amended motion for substitution of Respondent Nationwide Insurance Company and Joseph Tirbovich's counsel. This Court approved the withdrawal of David Sligh, however, Alexander S. Gogsette, who was listed as Joseph Tirbovich's counsel from the trial court, has not been withdrawn nor has this court approved Pamela J. Larson to be substituted in a court order. For these reasons, the motion to dismiss the Respondents Nationwide Insurance Company and Joseph Tirbovich should be stricken.

The Appellant is paralyzed disabled as a result of the collision in controversy in this matter. She suffers from numerous secondary complications from being paralyzed disabled that include, but are not limited to, a pressure wound located on her left buttocks that prevents her from sitting down for very long without further injury to it. In addition, she has no control over her bowel movements and frequently experiences diarrhea "attacks" or "explosions". Mostly recently she

occurred. She has no caregiver or aid or assistant. She lives under extreme hardship.

For the previous reasons, she's a qualified individual of and protected under the Americans with Disabilities Act (ADA}. ' A qualified individual with a disability' is defined as "an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." *United States v. Georgia*, 546 U.S. at 153—54, 126 S.Ct. 877 (quoting 42U.S.C. §12131(2)).

The Appellant simply is unable to perform at the level of able bodies. It takes her approximately fifty-two (52} times longer to complete basic daily functions or tasks than an able body.

On December 1, 2022, the Appellant filed and served a Title II of the Americans with Disabilities Act Reasonable Accommodations Request, that has not been ruled on by this Court yet, to permit her to serve the Respondents by email. As in this filing served by regular mail, because of this, she was discriminated against and prejudiced due to her disability of being paralyzed. Most of the attorneys for the Respondents are already serving the Appellant by email without her written or oral consent. It is undisputed that she was paralyzed as a result of the collision is controversy. The amount of extra work required of her, such as making copies, handwriting envelopes, and trips to the post office in her wheelchair, given her health conditions on top of her disability of being paralyzed, is a shock to the conscience. She suffers and endures great pain in order to complete her redress of grievances and not being able to serve the Respondents by email is simply unfair, especially when most of the Respondents' attorneys are serving her via email.

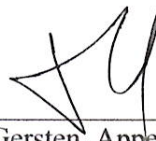
This is a complex matter and there are numerous respondents. This request is made before the expiration of the time due.

for an order granting her motion to strike the Respondents Nationwide Insurance Company and Joseph Tirbovich's motion to dismiss or in the contra an order granting the Appellant's motion for an extension of time of ten (10) days after the Respondent Joseph Tirbovich's substituted counsel of record motion of Pamela J. Larson has been approved by this court, a day to be determined or at least until and including January 19, 2023, to file her return to the Respondents Nationwide Insurance Company and Joseph Tirbovich's motion to dismiss filed on December 28, 2022.

This does not prejudice any of the Respondent's, especially since the case is currently in abeyance.

This is not made to cause delay, rather, in the furtherance of justice and to prevent its miscarriage.

Respectfully submitted this 9<sup>th</sup> day of January 2023



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January 9, 2023

4/087

Other Counsel of Record

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(Attorney for Respondent Joseph Turbovich)

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PROOF OR CERTIFICATE OF SERVICE

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I hereby certify that service of the Appellant's MOTION TO STRIKE OR IN THE CONTRA MOTION FOR EXTENSION OF TIME TO FILE RETURN TO NATIONWIDE INSURANCE COMPANY AND JOSEPH TIRBOVICH'S MOTION TO DISMISS APPEAL AND TITLE II OF THE AMERICANS WITH DISABILITIES ACT REASONABLE ACCOMMODATIONS REQUEST WITH DISABILITIES in the above-captioned cases was made upon all parties and counsel of record by depositing a copy of it in the United States Mail, postage prepaid, and return address clearly marked on January 9, 2023 to:

Wesley Brian Sawyer, Esquire  
Murphy & Grantland, P.A.  
P.O. Box 6648  
Columbia, SC 29260  
(Attorney for Respondents Kevin Carter and Richard Davis)

William H. Davidson, II, Esquire  
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January 9, 2023



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January 9, 2023  
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The Honorable Jenny Abbott Kitchings  
Clerk of Court  
SC Court of Appeals  
1220 Senate St.  
Columbia, SC 29201  
ctappfilings@sccourts.org

Re: MOTION TO STRIKE OR IN THE CONTRA MOTION FOR EXTENSION OF TIME TO FILE RETURN TO NATIONWIDE INSURANCE COMPANY AND JOSEPH TIRBOVICH'S MOTION TO DISMISS APPEAL AND TITLE II OF THE AMERICANS WITH DISABILITIES ACT REASONABLE ACCOMMODATIONS REQUEST

Dear Ms. Kitchings and to ALL CONCERNED:

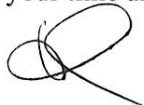
Good day to you!

Enclosed for filing, please find a copy of the above stated motion and ADA request, along with proof or certificate of service and a cover letter sent by email. The \$50.00, which is questionable to pay, as this is primarily a Title II ADA Reasonable Accommodation Request, will be sent via US mail and a tracking # will be provided once obtained and another email will be sent to follow up shortly.

Please call the above number or email me if you have any questions.

Thank you for your time and assistance regarding this matter.

Respectfully,



Heidi Gersten, Appellant

HG/Enclosures/ Motion to Strike or Motion for Extension of Time and ADA Request / Proof or Certificate of Service

Total pages: 8 including this cover sheet.