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Aug 15 2023

SC Court of Appeals

THE STATE of SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTER 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

Case No. 2018-CP-12-00117
2028-AP-12-00074

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 Co, John Ammendola, Trustgard Insurance Company, Blackwell, SC Department of Public Safety, Chevrolet, GMC, Unknown John Does, Respondents.

TITLE II OF THE AMERICANS WITH DISABILITIES ACT (ADA) REASONABLE ACCOMMODATION REQUEST to ACCEPT APPELLANT'S MOTION FOR EXTENSION OF TIME TO SERVE AND FILE THE APPELLANT'S REPLY TO MOTION for LEAVE to FILE RULE 60 (b), SCRCP, MOTION And PETITION for LIFT of AUTOMATIC STAY, REMAND And STAY of APPEAL PENDING TRIAL COURT RULING on RULE 60 (b), SCRCP, MOTION And INITIAL BRIEF And APPENDIX And DESIGNATION OF MATTER with LEAVE TO AMEND PERTAINING TO RESPONDENT KEVIN CARTER

Heidi Gersten, Appellant
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The Appellant Heidi Gersten (hereinafter “GERSTEN”) in the above-captioned case, hereby requests this Court, pursuant of/to Title II of the Americans with Disabilities Act Reasonable Accommodation Request, and Rules 240 and 263, SCACR, seeking a grant accepting her motion for extension of time to serve and file her reply to MOTION for LEAVE to FILE RULE 60 (b), SCRCR, MOTION And PETITION for LIFT of AUTOMATIC STAY, REMAND And STAY of APPEAL PENDING TRIAL COURT RULING on RULE 60 (b), SCRCR, MOTION And INITIAL BRIEF And APPENDIX And DESIGNATION OF MATTER with LEAVE TO AMEND PERTAINING TO RESPONDENT KEVIN CARTER before or on August 25, 2023. The reasons for this motion are set forth in the attached memorandum in support.

Respectfully submitted this 15th of August 2023,

_____/S/Heidi Gersten_____
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MEMORANDUM OF POINTS AND AUTHORITIES IS SUPPORT OF GERSTEN'S TITLE II OF THE AMERICANS WITH DISABILITIES ACT (ADA) REASONABLE ACCOMMODATION REQUEST to ACCEPT APPELLANT'S MOTION FOR EXTENSION OF TIME TO SERVE AND FILE THE APPELLANT'S REPLY TO MOTION FOR LEAVE TO FILE RULE 60 (b), SCRPC, MOTION And PETITION for LIFT of AUTOMATIC STAY, REMAND And STAY of APPEAL PENDING TRIAL COURT RULING on RULE 60 (b), SCRPC, MOTION And INITIAL BRIEF And APPENDIX And DESIGNATION OF MATTER with LEAVE TO AMEND PERTAINING TO RESPONDENT KEVIN CARTER before or on August 25, 2023.

1. GERSTEN is paralyzed disabled as a result of the collision in controversy in this matter which causes her to be substantially limited on one or more of her major life activities and is now a qualified individual of and protected under the Americans with Disabilities Act (ADA). She has no caregiver, aid, or assistance to help her with daily functions. She lives under extreme hardship and extraordinary circumstances. 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 [42 U.S.C. § 12131\(2\)](#)).

3 Despite the previous and managing secondary complications of paralysis, such as, an illness of multiple pressure wounds, one of which is located on her left buttocks that prevents her from sitting down for extended periods of time without further injury, and bowels she has no control over, in which she experiences frequent diarrhea attacks and explosions, to which it takes her between two to five hours to perform the task of extracting one bowel movement, using the digital stimulation technique, which often leaves her fingers pruned and numb; she has been diligently working on perfecting her appeal and has already prepared a significant part of her brief. It takes her approximately 52 times longer to perform functions an abled body can do. For these reasons and more, additional time is required for her to finish her initial brief and designation of matter.

4 GERSTEN's disability of being paralyzed renders her incapable of asserting her claims or defenses in a timely manner. Under South Carolina law, GERSTEN is a "vulnerable adult"; defined, in part, as a person eighteen years of age or older who has a physical or mental condition which substantially impairs the person from adequately providing for his or her own care or protection.

5 In addition to her health crisis, she has other court matters

with deadlines within proximity of this case here.

6 The Respondent Kevin Carter and other Respondents are not prejudiced.

7 This request is made before the expiration of the time the reply is due.

THEREFORE, having shown more than good cause; extraordinary circumstances, and for the previous reasons, the Appellant GERSTEN respectfully requests this Court to grant her extension of time to serve and file her reply before or on August 25, 2023.

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

Respectfully submitted this 15th. day of August 2023,

_____/S/Heidi Gersten_____
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(Attorney for Respondent Nationwide Mutual Insurance Company and Joseph Tirbovich)

PROOF OR CERTIFICATE OF SERVICE

I hereby certify that service of the Appellant's TITLE II OF THE AMERICANS WITH DISABILITIES ACT (ADA) REASONABLE ACCOMMODATION REQUEST to ACCEPT APPELLANT'S MOTION FOR EXTENSION OF TIME TO SERVE AND FILE THE APPELLANT'S REPLY TO MOTION for LEAVE to FILE RULE 60 (b), SCRPC, MOTION And PETITION for LIFT of AUTOMATIC STAY, REMAND And STAY of APPEAL PENDING TRIAL COURT RULING on RULE 60 (b), SCRPC, MOTION And INITIAL BRIEF And APPENDIX And DESIGNATION OF MATTER within the above-captioned cases was made upon all parties and counsel of record by email on August 15, 2023, to:

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August 15, 2023

_____/S/Heidi Gersten_____

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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: 2022-001312; 2022-001390

TITLE II OF THE AMERICANS WITH DISABILITIES ACT (ADA) REASONABLE ACCOMMODATION REQUEST to ACCEPT APPELLANT'S MOTION FOR EXTENSION OF TIME TO SERVE AND FILE THE APPELLANT'S REPLY TO MOTION for LEAVE to FILE RULE 60 (b), SCRPC, MOTION And PETITION for LIFT of AUTOMATIC STAY, REMAND And STAY of APPEAL PENDING TRIAL COURT RULING on RULE 60 (b), SCRPC, MOTION And INITIAL BRIEF And APPENDIX And DESIGNATION OF MATTER with LEAVE TO AMEND PERTAINING TO RESPONDENT KEVIN CARTER

Dear Ms. Kitchings and to ALL CONCERNED:

Good day to you!

Enclosed for filing, please find a copy of the above stated Title II of the ADA Reasonable Accommodation Request to accept the said motion of extension of time to serve and file initial brief and designation of matter. Pursuant to Rule 240(d), which states in part, "...In extraordinary cases, the appellate court may relieve a party from paying the filing fee." please waive any filing fee, as a Title of the ADA's Reasonable Accommodation Request.

Please file stamp the documents with today's date of August 15, 2023, place in the court file, and email me a copy.

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

Thank you for your time and assistance regarding this matter.

Respectfully submitted,

_____/S/_____
Heidi Gersten, Appellant/Petitioner

HG/Enclosures/ Title II ADA Request and Motion for Extension of Time

Total pages: Ten (10) including this cover sheet