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Sep 08 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

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 GRANT APPELLANT’S MOTION FOR
EXTENSION OF TIME TO SERVE AND FILE THE APPELLANT’S REPLY BRIEF
PERTAINING TO RESPONDENT KEVIN CARTER

Heidi Gersten, Appellant
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The Appellant Heidi Gersten (“GERSTEN”) in the above-captioned case, hereby requests this South Carolina Court of Appeals (“Court”), pursuant of/to Title II of the Americans with Disabilities Act Reasonable Accommodation Request, and Rules 240 and 263, SCACR, seeking a grant of her motion for extension of time to serve and file her reply brief pertaining to the Respondent Kevin Carter (“CARTER”) before or on November 7, 2023.

The reasons for this motion are set forth in the attached memorandum in support.

Respectfully submitted this 8th of September 2023,

_____/S/Heidi Gersten
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MEMORANDUM OF POINTS And AUTHORITIES in 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 BRIEF PERTAINING to RESPONDENT KEVIN CARTER “CARTER” before or on November 7, 2023

1. On August 29, 2023, “CARTER” served his response to “GERSTEN’s” initial brief via email.

2. Rule 208 (a)(3), SCACR states:

- **“Reply Brief.** An appellant may file and serve a brief in reply to the brief of respondent. If a reply brief is prepared, appellant shall, within ten (10) days after service of respondent's brief, serve one copy of the reply brief on all parties to the appeal and file with the clerk of the appellate court one copy of the reply brief with proof of service.”

3. This request and motion are made before the expiration of time permitted under Rule 208 (a)(3), SCACR.

4. “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, personal aid, or assistance to help her with daily functions. She lives under extreme hardship and extraordinary circumstances.

5. 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)).

6. 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), in addition to her latest one located on her right foot's big toe, and bowels she has no control over, in which she experiences frequent diarrhea attacks, explosions, and accidents, as it takes "GERSTEN" between two to five hours to perform the task of extracting at least one bowel movement daily, using the digital stimulation technique, which often leaves her fingers pruned and numb; she has been diligently working on perfecting her appeal. "CARTER'S" response is massive in information that will take "GERSTEN" extra time to process. 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 file her reply brief.

7. "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.

8. "GERSTEN" has spent the majority of her devoted time to this instant appeal producing documents for her recently filed 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 60(b), SCRCR, and its amendments, which were voluminous and required her to scan thousands of documents, research, and type information into comprehensible and acceptable formats, which is challenging between lacking technological resources and a proper wheelchair to sit in and use, in addition to the litany of other previously stated misfortunes "GERSTEN" lives with, as she navigates through on her journey towards a single step; vindicating her rights in response to her

victimization of paralysis and its secondary complications, including, but not limited to, her claims against “CARTER”.

9. In addition to “GERSTEN’s” health crisis, she has other court matters in other states with deadlines within proximity of this case here; one of which is due on September 11, 2023. It took her months to finish and more days to recover, as sitting for extended periods of time in the borrowed wheelchair she’s currently using, as her wheelchair is in need of repair, aggravates her wounds more so than her own wheelchair did because it’s designed for a quadriplegic and she’s a paraplegic. “GERSTEN’s” current secondary complication revolves around the newest wound on her right foot’s big toe. (Pictures available upon request as an offer of proof.)

10. “GERSTEN’s” hopeful that her reply brief will be finished on or before November 7, 2023.

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

THEREFORE, having shown more than good cause; extraordinary circumstances, and for the previous reasons, the Appellant Heidi Gersten (“GERSTEN”) respectfully requests this “Court” to grant her Title II of the Americans with Disabilities Reasonable Accommodation Request to grant her motion for extension of time to serve and file her reply brief pertaining to the Respondent Kevin Carter (“Carter”) before or on November 7, 2023.

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

Respectfully submitted this 8th. day of September 2023,

/S/Heidi Gersten
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PROOF OR CERTIFICATE OF SERVICE

I hereby certify that service of a true and accurate copy of the Appellant’s TITLE II OF THE AMERICANS WITH DISABILITIES ACT (“ADA”) REASONABLE ACCOMMODATION REQUEST to GRANT APPELLANT’S MOTION FOR EXTENSION OF TIME TO SERVE AND FILE THE APPELLANT’S REPLY BRIEF PERTAINING TO RESPONDENT KEVIN CARTER (Total Ten (10) Pages including Cover Sheet) in the above-captioned cases was made upon all parties and counsel of record by email on September 8, 2023:

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Respectfully submitted this 8TH day of September 2023

_____/S/Heidi Gersten_____
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SC Court of Appeals

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The Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
1220 Senate St.
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ctappfilings@sccourts.org

Re: 2022-001312; 2022-001390

TITLE II OF THE AMERICANS WITH DISABILITIES ACT (“ADA”) REASONABLE ACCOMMODATION REQUEST to GRANT APPELLANT’S MOTION FOR EXTENSION OF TIME TO SERVE AND FILE THE APPELLANT’S REPLY BRIEF 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 grant the said motion of extension of time to serve and file the Appellant’s reply brief.

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 II of the “ADA’s” Reasonable Accommodation Request.

Please file stamp the documents with today’s date of September 8, 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_____
Heidi Gersten, Appellant/Petitioner All Rights Reserved

HG/Enclosures/Title II “ADA” Request/Motion for Extension of Time
Total pages: Nine (9) including this cover sheet