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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.

Of whom Kevin Carter is the Respondent.

AMENDED with LEAVE of COURT
APPELLANT'S INITIAL REPLY BRIEF
PERTAINING TO RESPONDENT KEVIN CARTER

Heidi Gersten
1438 W. Lantana Rd. #330
Lantana, FL 33462
323-245-6142
hanginhangout@gmail.com
Appellant
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Wesley Brian Sawyer, Esquire
Murphy & Grantland, P.A.
4406-B Forest Drive
Columbia, SC 29206
(803) 782-4100
wsawyer@murphygrantland.com
(Attorney for Respondents Kevin Carter and Richard Davis)

Other Counsel of Record

Pamela J. Larson, Esquire
WOMBLE BOND DICKINSON (US) LLP
PO Box 999
Charleston, SC 29402
(Attorney for Respondent Nationwide Mutual Insurance Company and Joseph Tirbovich)
(843) 213-5519

Shelley S. Montague, Esquire
Jessica W. Laffitte, Esquire
Gallivan, White & Boyd, P.A.
P.O. Box 7368
Columbia, SC 29202
(Attorneys for Trustgard Insurance Company and John Ammendola)

William H. Davidson, II, Esquire
Davidson, Wren & Plyler, P.A.
P.O. Box 8568
Columbia, SC 29202
(Attorney for Respondents SC Dept. of Public Safety and Herbert Blackwell)

Reynolds Williams
P.O. Box 1909
Florence, SC 29503-1909
(Attorney for Respondent Interinsurance Exchange of the Automobile Club)
(843) 662-3258

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Respondent presents two statements of issues on appeal.	
1. Whether the Circuit Court acted within its discretion by dismissing Appellant’s claims under Rule 41 for failure to prosecute in this five-and-a-half-year-old case where she had failed to provide initial discovery responses.	
2. Whether the Circuit Court acted within its discretion by dismissing Appellant’s claims under Rule 37 as a discovery sanction where she had failed to respond to initial discovery requests for multiple years.	
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REPLY

The Respondent attempts to describe the Appellant as an uncooperative litigant, complaining of multiple extensions requested by her and alleged disregard for this Court’s orders, claiming, “...utter disregard for her responsibilities as a Plaintiff in this lawsuit...” The Respondent is responsible for the paralysis suffered by the Appellant and all of the secondary complications that come from being paralyzed, like total loss of bowel control and deadly noncontagious pressure wounds, as an example. The Appellant lives alone and has no caregiver, aid, or assistance with her daily life of extreme hardship. The Appellant is now a qualified individual of and protected under the Americans with Disabilities Act. The Respondent plead guilty to reckless driving in a plea deal for his DUI charge, that the Appellant objected to, filed a writ of mandamus, yet to be determined, and witnessed his sentencing. The evidence is overwhelming and the process to present this evidence is challenging for the Appellant, to say the least.

The decision to dismiss the Appellant’s claim against the Respondent is in error for a variety of reasons. The Appellant did not receive the discovery requests. She learned of them shortly prior to the hearing. The Appellant may be slow to act, not in an effort to cause delay, slow due to her disability of being paralyzed. There may have been years of time from the initial court filing to this moment; however much of the time between hearings is made by the court and not in the control of the Appellant. When she first filed, she was told that it could be up to a year

before a hearing could be scheduled. Chester County Courthouse is located in a town of population of approximately 5000 people. Cases move very slow there. Explaining all of the nuances in this complex matter requires time and patience. The Appellant provided the court with most of her evidence upon initial filing. For some unknown reason, it does not show up on the trial court's website, only the listing entry does. The Appellant filed her discovery requests with her summons and complaint. The pages are voluminous, and the Appellant is still making copies. The time to reply to each of the Respondent's statements is time consuming. Most of this can be remedied with her 60 (b), SCRCP, motion.

CONCLUSION

For these reasons and more, the Appellant should be permitted to file her Rule 60 (b), SCRCP, motion, remand back to the lower court and its rulings should be reversed, discovery requests accepted, and the matter should move towards trial by jury.

Respectfully submitted this 23rd day of October 2023

_____/S/Heidi Gersten_____

Heidi Gersten

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1438 W. Lantana Rd. #330

Lantana, FL. 33462

(323) 245-6142

hanginhangout@gmail.com

PROOF OR CERTIFICATE OF SERVICE

I hereby certify that service of a true and accurate copy of the AMENDED with LEAVE of COURT APPELLANT'S INITIAL REPLY BRIEF PERTAINING TO RESPONDENT KEVIN CARTER in the above-captioned cases was made upon all parties and counsel of record by email on October 23, 2023:

Wesley Brian Sawyer, Esquire
wsawyer@murphygrantland.com
(Attorney for Respondents Kevin Carter and Richard Davis)

Pamela J. Larson, Esquire
pamela.larson@wbd-us.com
(Attorney for Respondent Nationwide Mutual Insurance Company and Joseph Tirbovich)

Shelley S. Montague, Esquire
Jessica W. Laffitte, Esquire
smontagure@gwblawfirm.com
jlaffitte@gwlawfirm.com
(Attorneys for Trustgard Insurance Company and John Ammendola)

William H. Davidson, II, Esquire
wdavidson@dml-law
(Attorney for Respondents SC Dept. of Public Safety and Herbert Blackwell)

Reynolds Williams
reynolds@willcoxlaw.com
(Attorney for Respondent Interinsurance Exchange of the Automobile Club)

Email addresses listed sent by ctappfilings@sccourts.org
jcobb@gwblawfirm.com
pholland@gwblawfirm.com
dblack@murphygrantland.com
thumphries@willcoxlaw.com
carla.cerchione@wbe-us.com
nbouknight@dml-law.com

Respectfully submitted this 23rd day of October 2023

October 23, 2023

_____/s/Heidi Gersten_____
Heidi Gersten, Appellant
All Rights Reserved
1438 W. Lantana Rd. #330
Lantana, FL 33462
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hanginhangout@gmail.com