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Nov 14 2023

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 TO FILE OUT OF TIME

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 (“Appellant”) Motion emailed to the court on November 3, 2023 at 4:31p.m. (hereinafter "Motion"). Respondent respectfully requests that Appellant's Motion be denied and replies as follows:

- 1) Appellant filed her notice of appeal in this matter on July 22,2021, and over a year later, after requesting and being granted numerous extensions of time, Appellant filed an initial brief and designation of matter on October 31, 2022. Thereafter, Respondent filed a motion to dismiss or in the alternative an order striking portions of the Appellant’s initial brief and designation of matter which contained records and/or documentation which were not filed or presented to the lower court

in this matter and thus cannot form a part of the Record on Appeal. Appellant responded to Respondent's motion acknowledging that she had not complied with the South Carolina Appellate Court Rules in filing her initial brief and designation of matter. Appellant requested this Court allow her to file an amended brief and designation of matter. By Order dated March 24, 2023, this Court granted Appellant's request and denied Respondent's motion to dismiss stating that Appellant shall file an amended initial brief and amended designation of matter by April 23, 2023. Appellant failed to timely file an amended Initial Brief and amended Designation of Matter.

2) On July 24, 2023, three Months after the due date and over two years after Appellant filed her Notice of Appeal, this Court issued an order dismissing this matter based upon Appellant's failure to file an amended brief and designation of matter, stating "[t]he remittitur will be sent as provided by Rule 221(b), SCACR."

3) On August 9, 2023, sixteen days after the Order, Appellant untimely filed a Motion to Reinstate. This Court granted to the Motion by Order dated October 5, 2023, stating that Appellant's amended initial brief and designation shall be filed and served within 30 days.¹²

4) November 3, 2022, at the close of business, the last day before Appellant's amended initial brief and amended designation of matter were to be filed and served, Appellant made her 10th request for an extension to this Court in regards to this appeal. Appellant now requests a sixty (60) day extension to file Appellant's amended initial Brief and designation of matter, originally due on April 23, 2023. Appellant states the grounds for Appellant' motion are: "Counsel for Appellant

¹ The Order states Respondent did not file a return to Appellant's Motion to Reinstate. Respondent did not file a return to Appellant's Motion to Reinstate the Order Dismissing the Matter because Rule 221, SCACR states: "No return to a petition for rehearing may be filed unless requested by the appellate court. Ordinarily, however, rehearing will not be granted in the absence of such a request." This Court did not request Respondent file a return to Appellant's Motion therefore, Respondent believed respondent was precluded from filing a return pursuant to the rules.

² Contemporaneous with filing Appellant's Motion to Reinstate, Appellant retained her *fourth* counsel in this matter.

has reviewed the lower court's proceedings, *however, the transcripts may be unavailable pertaining to gathering the Designated Matter on Appeal and writing Appellant's initial brief.* Additionally, Appellant initially faced medical issues creating difficulty of coordinating with counsel for Appellant. Subsequently thereafter, counsel for Appellant has faced ongoing medical issues..."

- 5) Appellant has previously been allowed the following extensions of time during this Appeal:
1. 10/1/21: Motion, extension of time to procure Transcript; Motion Granted by Order 10/29/21 (Time extension afforded roughly **60 days**)
 2. 12/6/21: Motion, 30 day extension of time to file a return to Respondent's Motion to Dismiss filed 11/24/21; Motion granted by Order 12/8/21, due 1/5/22; (Time extension afforded **30 days**)
 3. 1/6/22: 2nd Motion, extension of time to file a return to Respondent's Motion to Dismiss filed 11/24/21 (reason alleged medical); Motion granted by Order 3/30/22, due 4/25/22; (Time extension afforded roughly **110 days**)
 4. 6/16/22: Motion, extension of time to file Initial Brief & DOM due 6/23 pursuant to Order filed 5/24/22 (reason alleged, medical); Motion granted by Order 6/17/22, due 7/25/22; (Time extension afforded roughly **32 days**)
 5. 7/11/22: 2nd Motion, extension of time to file Initial Brief & DOM due 6/23 pursuant to Order filed 5/24/22 (reason alleged, medical); Motion granted by Order 7/14/22, due 8/24/22; (Time extension afforded roughly **30 days**)
 6. 8/23/22: 3rd Motion, extension of time to file Initial Brief & DOM due 6/23, pursuant to Order filed 5/24/22 (reason alleged, medical); Motion granted by Order 9/2/22, due 9/23/22; (Time extension afforded roughly **30 days**)
 7. 10/19/22: Court Letter to Appellant, failure to timely file Initial Brief & DOM due 9/23 pursuant to Order filed 9/2/22, must file along with a motion to file out of time by 10/29/22 (filed 10/31/22, order granting late filing 12/20/22) (Time extension afforded roughly **38 days**)
 8. 2/10/23: Motion extension of time to file Return to Respondents Motion to Dismiss/Strike filed 2/3/23; Motion granted by Order 2/20/23, due 2/23/23, filed 2/27/23 (Time extension afforded roughly **24 days**)
 9. 3/24/23: Order denying Respondent's Motion to Dismiss and ordering Appellant to file an amended brief and designation of matter by 4/23/23; followed by a letter of

the Court dated 5/22/23, sua sponte extending the deadline to 6/21/23, followed by an Order of the Court dismissing the matter filed 7/25/23 (Time extension afforded roughly **124 days**)

10) 8/9/23: Appellant's Motion to Reinstate; Granted by Order filed 10/5/23 (Time extension afforded to file Appellant's Initial Brief and Designation of Matter roughly **87 days**)

6) Now, at the last minute, Appellant is seeking another extension of time to file Appellant's Amended Initial Brief and Designation of Matter, again asserting as the reasoning for the request medical issues, and additionally asserting as a basis for the motion that Appellant is not in possession of the transcript of the hearing from which the order being appealed was heard. However, appellant previously stated before this Court that Appellant was in possession of said transcript on October 20, 2021 (Appellant's Return filed 4/22/22 Exhibit "B").³

7) Appellant's amended initial brief and amended designation of matter were originally due on April 23, 2023. Appellant has had 6 ½ months to draft and file an amended initial brief and designation of matter but has not done so. Since, Appellant retained her fourth counsel in this matter at the beginning of August, Appellant's counsel has now had 3 months to draft Appellant's amended initial brief and amended designation of matter but has not done so. Appellant now requests an additional 60 days to do so. Rule 240(b), SCACR states: "Unless otherwise provided by these Rules, or ordered by the appellate court, the time limits imposed by these Rules shall not be stayed by the filing of a motion or petition."

8) As noted above, Appellant has now had over two years to file an initial brief and designation of matter, which complies with the rules. This Court has been more than forgiving with Appellant for failing to comply with ordered due dates and has granted Appellant numerous extensions of time affording Appellant more than adequate time to accomplish the objective of

³ Additionally, a copy of said transcript is already filed with this Court in this Appeal (Exhibit 5 attached to Respondent's Affidavit filed with and in support of Respondent's Motion to Dismiss filed 2/2/23).

filing a rule compliant initial brief and designation of matter. Appellant has a history in this matter (a history which predates the pandemic) at the lower court level (and now at the appellate level) 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.).

9) It has been nearly two and a half years 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.

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WHEREFORE, based on the grounds stated herein above, Respondent requests that this Court issue an order denying Appellant's Motion to File Out of Time and dismissing this appeal for a second time.

November 14, 2023.

THE LAW OFFICE OF
DAVID CONOR KEYS, LLC
s/ D. Conor Keys

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Of whom Patricia Clarkin Smith is the Appellant.

CERTIFICATE OF SERVICE

I certify that on this 14th day of November 2023, I have served Respondent’s Return to Appellant’s Motion upon counsel for Appellant at the email address list for said counsel on AIS as follows:

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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 to File Out of Time; and
- 2) Proof of Service for the Return.

I kindly request that you file the same

With kind regards,

RESPECTUFLY SUBMITTED,

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Enclosures:
(as stated)
CC:
Deborah D. Davis