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Dec 14 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Chief Justice (Ret.) Jean H. Toal, Circuit Court Judge

Appellate Case No. 2023-001789

J. Bradford McIlvain,Appellant,

v.

The Town of Kiawah Island,Respondent.

**MOTION FOR EXTENSION OF TIME TO FILE INITIAL RESPONSE BRIEF AND
DESIGNATION OF MATTER**

Respondent Town of Kiawah Island by and through its undersigned counsel, respectfully moves this Court, pursuant to Rules 240 and 263, SCACR, for entry of an order extending the time by which Respondent must file its Initial Response Brief and Designation of Matter until thirty (30) days after the Court of Appeals rules on Respondent’s Motion to Dismiss Appeal for Lack of Jurisdiction. Respondent’s Initial Response Brief and Designation of Matter is currently due January 10, 2024, pursuant to Rules 208(a)(2) and 209(a), SCACR. The grounds for this motion are as follows:

1. On November 10, 2023, Appellant J. Bradford McIlvain (“Appellant”) attempted to serve the Notice of Appeal to the Respondent’s counsel by email, which is not in compliance with Rule 262(c), SCACR.

2. On November 13, 2023, Appellant's Notice of Appeal was filed in the South Carolina Court of Appeals.

3. On November 17, 2023, the Court of Appeals sent a Deficiency Letter to the Appellant informing him that he could not serve his Notice of Appeal by email since he is a *pro se* non-attorney.

4. On December 6, 2023 the Court of Appeals sent a letter informing the Appellant that the time for ordering a transcript had expired.

5. On December 11, 2023 Appellant filed his Designation of Matter and Initial Brief. Pursuant to Rules 208(a)(2) and 209(a), SCACR, Respondent's Initial Response Brief and Designation of Matter are due on January 10, 2024.

6. On December 13, 2023, Respondent filed a Motion to Dismiss Appeal for Lack of Jurisdiction. This Motion, which is incorporated herein by reference, is based on Appellant's failure to perfect his appeal by timely serving the Notice of Appeal, which is a jurisdictional requirement.

7. Pursuant to Rules 240 and 263, SCACR Respondent seeks an Order extending the time by which Respondent must file its Initial Response Brief and Designation of Matter until thirty (30) days after the Court of Appeals rules on Respondent's Motion to Dismiss Appeal for Lack of Jurisdiction. If the Court of Appeals grants Respondent's Motion to Dismiss, there will be no need for further briefing in this appeal.

8. This extension is also requested to allow Respondents' counsel adequate time to prepare and file its Initial Response Brief and Designation of Matter.

9. This is Respondent's first request for an extension of time within which to file its Initial Response Brief and Designation of Matter. This request is supported by good cause and is not made to unnecessarily delay these proceedings.

10. Respondent respectfully requests this Court enter an Order extending the deadline by which Respondent must file its Initial Response Brief and Designation of Matter until thirty (30) days after the Court of Appeals rules on Respondent's Motion to Dismiss Appeal for Lack of Jurisdiction. Granting this extension would promote the interests of justice as well as preserve Court resources.

11. This Motion is supported by the grounds set forth herein and the South Carolina Appellate Court Rules.

Respectfully submitted,

/s/ Ross A. Appel
Ross A. Appel
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Attorneys for Respondent Town of Kiawah Island

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PROOF OF SERVICE

I, Elizabeth M. Lademan, paralegal at McCullough Khan Appel hereby certify that a true and correct copy of Respondent's Petition for Extension of Time to File Initial Response Brief and Designation of Matter was served upon the Appellant in the above-captioned matter, via email and U.S. Mail this 14th day of December, 2023, addressed as follows:

J. Bradford McIlvain
146 Blue Heron Pond Road
Kiawah Island, SC 29455
bradmilvain@comcast.net


Elizabeth M. Lademan,
Paralegal

December 14, 2023
Mount Pleasant, South Carolina



Ross A. Appel
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ross@mklawsc.com

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VIA E-MAIL AND U.S. MAIL

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201
ctappfilings@sccourts.org

**Re: J. Bradford McIlvain v. Town of Kiawah Island
Appellate Case No. 2023-001789**

Dear Ms. Kitchings:

I hope this finds you well. Enclosed please find the Respondent Town of Kiawah Island's Petition for Extension of Time to File Initial Response Brief and Designation of Matter. Please find a check in the amount \$50.00 payable to the South Carolina Court of Appeals, for payment of this petition.

If you have any questions or need anything further from our office, please do not hesitate to contact me. Thank you for your assistance in this matter.

With kind regards,

MCCULLOUGH • KHAN • APPEL

Ross A. Appel

cc: J. Brad McIlvain (via Email)
Enclosures