

THE STATE of SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court
Brian M. Gibbons, Circuit Court Judge
J. Mark Hayes, II, Circuit Court Judge

RECEIVED
Dec 21 2023
SC Court of Appeals

Appellate Case Nos. 2022-001312 and 2022-001390

Trial Court Case Nos. 2018CP1200117 and 2018CP1200074

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard, Plaintiffs,

Of whom Heidi Gersten is the 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.

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 ORIGINAL RECORD on APPEAL
And/or FINAL BRIEF
Exhibits A, B

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 original record on appeal and/or final brief before or on January 21, 2024.

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

Respectfully submitted this 21st of December 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 GRANT APPELLANT’S MOTION for EXTENSION of TIME to SERVE And FILE the ORIGINAL RECORD on APPEAL And/or FINAL BRIEF before or on January 21, 2024

1. On November 21, 2023, this Court issued an order and wrote a letter.
2. The said order stated in part, “...The record on appeal is to be served within 30 days from the date of this order...” (Exhibit A)
3. The said letter listed detailed instructions for perfecting the said record and/or final brief. (Exhibit B)
4. This request and motion are made before the expiration of time permitted under Rule 208 (a)(3), SCACR.
5. “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 she 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.
6. 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)).
7. 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, as well as other toes that have lost their nailbeds, coupled with bowels and incontinence issues that she has no control over, in which she experiences frequent diarrhea attacks, explosions, and accidents that include multiple unexpected bouts of urination throughout the day 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, and causes her to often feel exhausted afterwards, as she changes her diaper multiple times a day, she has been diligently working on perfecting her appeal as best as she can. 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 original record on appeal and/or final brief.

8. "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.

9. "GERSTEN" has spent much time on this instant appeal producing information which was 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 Respondent Kevin Carter.

10. In addition to “GERSTEN’s” health crisis, she has other court matters in other states with deadlines within proximity of this case here.

11. Public policy advocates for appeals to be tried on their merits and the appellate courts often grant extensions of time at various stages. “GERSTEN’s” hopeful that her original record on appeal and/or final brief will be filed on or before January 21, 2024.

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

13. This request and motion is not made for the purposes of delay; rather in the interest and furtherance of justice and to prevent and avoid its miscarriage.

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 Act Reasonable Accommodation Request to grant her motion for extension of time to serve and file her original record on appeal and/or final brief before or on January 21, 2024.

Respectfully submitted this 21st day of December 2023,

/S/Heidi Gersten
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Dec 21 2023

SC Court of Appeals

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 ORIGINAL RECORD on APPEAL And/or FINAL BRIEF, Exhibits A, B and Cover Sheet (Total of Sixteen (16) Pages including Cover Sheet) in the above-captioned cases was made upon all parties and counsel of record by email on December 21, 2023:

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

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Respectfully submitted this 21st day of December 2023

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EXHIBIT A

November 21, 2023, Order

The South Carolina Court of Appeals

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard, Plaintiffs,

Of whom Heidi Gersten is the Appellant,

v.

Kevin Carter, Richard Davis, Joseph Tirbovich,
Nationwide Insurance Company, Interinsurance
Exchange of the Automobile Club, John Ammendola,
Trustguard Insurance Company, SC Department of
Public Safety, Chevrolet, GMC, Unknown John Does,
Respondents.

Appellate Case No. 2022-001312

The Honorable Brian M. Gibbons,
The Honorable John C. Hayes, III,
The Honorable J. Mark Hayes, II,
Chester County

Trial Court Case No. 2018CP1200117, 2018CP1200074

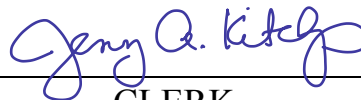
ORDER

Appellant filed a motion to allow late filing of the appellant's initial reply brief. No return has been filed and the appellant's initial reply brief has been served and filed. This motion is granted.

The record on appeal is to be served within 30 days from the date of this order.

FOR THE COURT

BY



CLERK

FILED
Nov 21 2023

Columbia, South Carolina

cc:

Heidi Gersten

Wesley Brian Sawyer, Esquire

EXHIBIT B

November 21, 2023, Letter



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

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November 21, 2023

Heidi Gersten
1438 W. Lantana Rd., #330
Lantana FL 33462

Re: Heidi Gersten v. Kevin Carter (2)
Appellate Case No. 2022-001312

Dear Ms. Gersten and Counsel:

Our records reflect the time is approaching to file the record on appeal and final briefs. The Supreme Court issued an order reducing the number of copies required in appellate matters. See *Re: Reduced Number of Copies Required in Appellate Matters* (S.C. Sup. Ct. Order dated August 25, 2021). As permitted by the order, the Court of Appeals has determined a need exists for one additional bound copy of the record on appeal and all final briefs. The additional copies must comply with any binding or cover color requirements specified by Rule 267 of the South Carolina Appellate Court Rules (SCACR).

Accordingly, each party must file an original record on appeal and/or final brief, in either electronic or unbound paper form, as well as one bound paper copy, at the time the record on appeal and final briefs are due to be served and filed in accordance with the SCACR.

Additionally, please review the following guidelines as you prepare your record on appeal and final briefs:

Pursuant to Rules 209, 210, and 267, SCACR, the record on appeal must include the following:

1. The correct case title (provided below) and caption as set forth in Rules 210(d) and 267, SCACR.
2. The name and contact information for all counsel representing the parties to the appeal. Please do not include names of counsel that have not previously made an appearance in this case.
3. A certificate of counsel, pursuant to Rule 210(g), SCACR.
4. A proof of service of the record on appeal, if one has not already been filed with this Court.
5. All matters designated by the parties pursuant to Rule 209, SCACR, in compliance with Rule 210(c) and (e), SCACR.
6. The binding for the copies of the record on appeal must be in compliance with Rule 267(d), SCACR.

Pursuant to Rules 211 and 267, SCACR, all final briefs must include the following:

1. The correct case title (provided below) and caption as set forth in Rules 210(d) and 267, SCACR.
2. The name and contact information for counsel filing the brief. If you are filing your final brief pro se, you must include your name and contact information on the cover of the brief.
3. The signature of the person filing the brief should be on the conclusion page.
4. A certificate of counsel for the final brief, pursuant to Rule 211, SCACR.
5. A proof of service of the final brief. Mail receipts will not be accepted in lieu of proper proof of service.
6. The binding for the copies of all final briefs must be in compliance with Rule 267(d), SCACR.

According to our records, the correct caption for this appeal should read as follows on the record on appeal and all final briefs:

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard, Plaintiffs,

Of whom Heidi Gersten is the Appellant,

v.

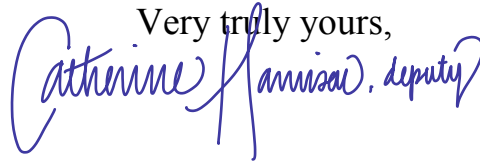
Kevin Carter, Richard Davis, Joseph Tirbovich, Nationwide Insurance Company, Interinsurance Exchange of the Automobile Club, John

Ammendola, Trustguard Insurance Company, SC Department of Public Safety, Chevrolet, GMC, Unknown John Does, Defendants,

Of whom Kevin Carter is the Respondent.

We request large parcels such as bound paper copies of final briefs and the record on appeal be sent directly to the Court via the street address: 1220 Senate Street, Columbia, S.C. 29201. Thank you for your attention. If you have any questions, please do not hesitate to contact this office.

Very truly yours,

A handwritten signature in blue ink that reads "Catherine Hamison, deputy". The signature is written in a cursive style with a large initial "C".

CLERK

cc: Wesley Brian Sawyer, Esquire