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Jan 22 2024

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

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

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 (“ADA”) 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 February 21, 2024.

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

Respectfully submitted this 22nd of January 2024,

_____/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 February 21, 2024

1. On December 27, 2023, this Court issued an order stating, “The time for serving the record on appeal is hereby extended until January 22, 2024.

2. This request and motion are made before the expiration of time permitted under said order.

3. “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

Other Counsel of Record

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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 ORIGINAL RECORD on APPEAL And/or FINAL BRIEF, and Cover Sheet (Total of Nine (9) Pages including Cover Sheet) in the above-captioned cases was made upon all parties and counsel of record by email on January 22, 2024:

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Respectfully submitted this 22nd day of January 2024

_____/S/Heidi Gersten_____

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The Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
1220 Senate St.
Columbia, SC 29301
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 ORIGINAL RECORD ON APPEAL AND/OR FINAL BRIEF

Dear Ms. Kitchings and/or 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 original record on appeal and/or final brief. Pursuant to Rule 24(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 January 22, 2024, place in the court file, and email me a time-stamped copy.

Please call the above number or email me if you have any questions.

Thank you for your time and assistance regarding this matter.

Kind regards,

_____/S/Heidi Gersten_____
Heidi Gersten, Appellant/Petitioner

HG/Enclosures/Title II of the ADA Reasonable Accommodation Request to Accept and Grant Motion for Extension of Time

Total Pages: (9) including this cover sheet