

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.

APPELLANT’S TITLE II of the AMERICANS with DISABILITIES ACT (“ADA”) REASONABLE ACCOMMODATION REQUEST to ACCEPT And GRANT APPELLANT’S MOTION for EXTENSION of TIME to RESPOND and MAKE a RETURN to RESPONDENT KEVIN CARTER’S MOTION TO DISMISS APPEAL OR, IN THE ALTERNATIVE, MOTION TO REQUIRE APPELLANT TO PROMPTLY CORRECT THE RECORD ON APPEAL and Exhibit A

Heidi Gersten, Appellant
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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 ACCEPT And GRANT
APPELLANT’S MOTION for EXTENSION of TIME to RESPOND and MAKE a RETURN to
RESPONDENT KEVIN CARTER’S MOTION TO DISMISS APPEAL OR, IN THE
ALTERNATIVE, MOTION TO REQUIRE APPELLANT TO PROMPTLY CORRECT THE
RECORD ON APPEAL

1. On June 26, 2024, The South Carolina Court of Appeals “Court” issued an order stating, “The time for serving and filing the return to the motion to dismiss is hereby extended until July 5, 2024.”

2. This request and motion are made before the expiration of time permitted under the said order in item #1. Title II of the Americans with Disabilities Act Reasonable Accommodation Request, the Golden Rule, and Rules 263 and 240 (e), SCACR, permit this “Court” to enlarge the time for filing.

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.

4. 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)).

5. Despite the previous, “GERSTEN” has been diligently working on perfecting her appeal

as best as she can, while coping with 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, [Exhibit A (More pictures and video available upon request; this is an offer of proof of evidence.)]; in addition to others; as well as toes that have lost their nailbeds; coupled with managing bowels and incontinence issues that she has no control over. 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 or longer to perform the task of extracting at least one bowel movement daily and cleanup. Using the digital stimulation technique often leaves her fingers pruned and numb and causes her to feel exhausted following, as she often loses sensation in her hands afterwards. She changes her own diapers multiple times a day. It takes her approximately fifty-two (52) times longer to perform simple basic daily functions an abled body can do. For these reasons and more, additional time is required for her to file and serve her return and respond to the Respondent Carter’s said motion to dismiss appeal or, in the alternative to promptly correct the record on appeal.

6. “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.

7. “GERSTEN” has spent much time on this instant appeal producing information which was voluminous, and required her to scan thousands of documents, research, redact personal data according to law, 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. “GERSTEN” is nearly finished with her return and response.

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

9. Public policy advocates for appeals to be tried on their merits and the appellate courts often grant extensions of time at various stages.

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

11. This request and motion are 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 accept and grant her motion for extension of time to serve and file her response and return to the Respondent Carter’s Motion to Dismiss Appeal or, in the alternative, Motion to Require Appellant to Promptly Correct the Record on Appeal before or on July 15th, 2024.

Respectfully submitted this 5th day of July 2024,

/S/Heidi Gersten
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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 ACCEPT And GRANT APPELLANT’S MOTION for EXTENSION of TIME to RESPOND and MAKE a RETURN to RESPONDENT KEVIN CARTER’S MOTION TO DISMISS APPEAL OR, IN THE ALTERNATIVE, MOTION TO REQUIRE APPELLANT TO PROMPTLY CORRECT THE RECORD ON APPEAL and Exhibit A, and Cover Sheet [Total of Twelve (12) Pages including Cover Sheet] in the above-captioned cases was made upon all parties and counsel of record by email per court order on July 5, 2024:

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Exhibit A

Picture of Appellant Heidi Gersten's wound located on her left buttocks, a secondary complication to paralysis.



July 5, 2024
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The Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
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Re: 2022-001312; 2022-001390

APPELLANT'S TITLE II of the AMERICANS with DISABILITIES ACT ("ADA") REASONABLE ACCOMMODATION REQUEST to ACCEPT And GRANT APPELLANT'S MOTION for EXTENSION of TIME to RESPOND and MAKE a RETURN to RESPONDENT KEVIN CARTER'S MOTION TO DISMISS APPEAL OR, IN THE ALTERNATIVE, MOTION TO REQUIRE APPELLANT TO PROMPTLY CORRECT THE RECORD ON APPEAL and Exhibit A, Proof or Certificate of Service, and Cover Sheet

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 accept and grant the said motion of extension of time until July 15, 2024 to serve and file a response and return to the Respondent Kevin Carter's motion to dismiss appeal or, in the alternative, motion to require appellant to promptly correct the record on appeal and Exhibit A, proof or Certificate of Service, along with this cover letter. Pursuant to Rule 240(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 July 5, 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

HG/Enclosures/APPELLANT'S TITLE II of the AMERICANS with DISABILITIES ACT ("ADA") REASONABLE ACCOMMODATION REQUEST to ACCEPT And GRANT APPELLANT'S MOTION for EXTENSION of TIME to RESPOND and MAKE a RETURN to RESPONDENT KEVIN CARTER'S MOTION TO DISMISS APPEAL OR, IN THE ALTERNATIVE, MOTION TO REQUIRE APPELLANT TO PROMPTLY CORRECT THE RECORD ON APPEAL and Exhibit A, Proof or Certificate of Service, and Cover Sheet

Total Pages: twelve (12) including this cover sheet