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Oct 24 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.

APPELLANT'S TITLE II of the AMERICANS with DISABILITIES ACT ("ADA")
REASONABLE ACCOMMODATION REQUEST to ACCEPT And GRANT
APPELLANT'S REQUEST and MOTION for an EXTENSION OF TIME to FILE
RULE 221 SCACR and RULE 260 SCACR
PETITION for REHEARING AND MOTION for REINSTATEMENT
REQUEST and MOTION to Accept as Timely Filed with Leave of Court

Heidi Gersten, Appellant
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The Appellant Heidi Gersten (“GERSTEN”) in the above-captioned case, hereby requests and moves this South Carolina Court of Appeals (“Court”), pursuant of/to The Golden Rule, Title II of the ADA Reasonable Accommodation Request, and Rules 240 and 263, SCACR, as well as any and all applicable law, seeking a grant of her request and motion to accept this instant document as timely filed and grant the request and motion for an extension of time of an additional fifteen (15) days, up until and including November 8, 2024, to file her petition for rehearing and motion for reinstatement, pursuant to Rules 221 and 260, SCACR, contained in it.

The grounds, reasons, and basis for this request and motion are set forth in the attached memorandum in support.

Respectfully submitted this 23rd of October 2024,

_____/S/Heidi Gersten_____
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APPELLANT’S TITLE II of the AMERICANS with DISABILITIES ACT (“ADA”) REASONABLE ACCOMMODATION REQUEST to ACCEPT And GRANT APPELLANT’S REQUEST and MOTION for an EXTENSION OF TIME to FILE RULE 221 SCACR and RULE 260 SCACR PETITION for REHEARING AND MOTION for REINSTATEMENT REQUEST and MOTION to Accept as Timely Filed with Leave of Court

1. On October 9, 2024, this Court issued an order stating, “The time for serving and filing the appellant’s petition for rehearing is hereby extended until October 24, 2024.”
2. This request and motion are made before the expiration of time permitted under The Golden Rule, Title II of the ADA Reasonable Accommodation Request, and Rules 221 and 260, SCACR.
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 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 and composing and producing her petitions for rehearing and reinstatement 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. Just this week, GERSTEN noticed two new large Phase 1 pressure wounds underneath her breasts. (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 to perform the task of extracting at least one bowel movement daily. Using the digital stimulation technique often leaves her fingers pruned and numb and causes her to feel exhausted afterwards. She changes her diaper multiple times a day. It takes her approximately fifty-two (52) times longer to perform functions an abled body can do. Due to the years of paralysis, the weight of her upper body crushing down on her lower half, especially while sitting, prolapse has occurred. GERSTEN must periodically push organs that protrude from her vagina and anus back into place. For these reasons and more, additional time is required for her to file her Rule 221 SCACR and Rule 260 SCACR, petition for rehearing and motion for reinstatement.

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, and type information into comprehensible and acceptable formats, and redact personal information required to do so

under privacy law, which is challenging, to state the least. GERSTEN lacks technological resources and a proper wheelchair to sit in and use, in addition to the litany of other previously stated misfortunes she 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.

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. A grant of this ADA request and motion does not fundamentally alter this Court's policies, practices, or procedures, nor does it create any undue burden.

11. This Court has previously granted GERSTEN rehearing and reinstatement in this matter.

12. A remittitur should not be issued at this time.

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

14. This reasonable 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, GERSTEN respectfully requests this Court to grant her Title II of the Americans with Disabilities Act Reasonable Accommodation Request to accept this filing as timely and grant her request and motion for extension of time to file her petition for rehearing and motion for reinstatement, up until and including November 8, 2024, using The Golden Rule.

Respectfully submitted this 23rd day of October 2024,

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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 ACCEPT And GRANT APPELLANT’S REQUEST and MOTION for an EXTENSION OF TIME to FILE RULE 221 SCACR and RULE 260 SCACR PETITION for REHEARING AND MOTION for REINSTATEMENT REQUEST and MOTION to Accept as Timely Filed with Leave of Court , and Cover Sheet [Total of 11 Pages including Cover Sheet] in the above-captioned cases was made upon all parties and counsel of record by email, per Court order, on October 23, 2024:

Wesley Brian Sawyer, Esquire
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Respectfully submitted this 23rd day of October 2024

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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

APPELLANT'S TITLE II of the AMERICANS with DISABILITIES ACT ("ADA") REASONABLE ACCOMMODATION REQUEST to ACCEPT And GRANT APPELLANT'S REQUEST and MOTION for an EXTENSION OF TIME to FILE RULE 221 SCACR and RULE 260 SCACR PETITION for REHEARING AND MOTION for REINSTATEMENT REQUEST and MOTION to Accept as Timely Filed with Leave of Court and PROOF OR CERTIFICATE OF SERVICE and Cover Letter

Dear Ms. Kitchings and/or to ALL CONCERNED:

Good day to you!

Enclosed for filing, please find a copy of the above stated APPELLANT'S TITLE II of the AMERICANS with DISABILITIES ACT ("ADA") REASONABLE ACCOMMODATION REQUEST to ACCEPT And GRANT APPELLANT'S REQUEST and MOTION for an EXTENSION OF TIME to FILE RULE 221 SCACR and RULE 260 SCACR PETITION for REHEARING AND MOTION for REINSTATEMENT REQUEST and MOTION to Accept as Timely Filed with Leave of Court and PROOF OR CERTIFICATE OF SERVICE and 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 October 23, 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 REQUEST and MOTION for an EXTENSION OF TIME to FILE RULE 221 SCACR and RULE 260 SCACR PETITION for REHEARING AND MOTION for REINSTATEMENT REQUEST and MOTION to Accept as Timely Filed with Leave of Court and PROOF OR CERTIFICATE OF SERVICE and Cover Letter

Total Pages: 11 including this cover letter