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Jan 29 2025

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master in Equity

Case No. 2021-CP-10-2661
Appellate Case No. 2024-001312

Jason Loy Harn.....Respondent,

v.

Mary Nicole Reavis f/k/a Mary Nicole Harn.....Appellant.

**APPELLANT’S MOTION FOR LEAVE
TO FILE APPELLANT’S INITIAL BRIEF
AND DESIGNATION OF MATTER
OUT OF TIME**

Appellants Mary Nicole Reavis (“Appellant”) by and through her undersigned counsel, hereby moves before this Court for an order permitting Appellant to file her Initial Brief and Designation of Matter out of time. Appellants moves pursuant to Rules 208, 240, 260 and 263 SCACR. The grounds for the motion are as follows:

“The time prescribed by [the Appellate Court Rules] for performing any act except the time for serving the notice of appeal under Rules 203 and 243 may be extended or shortened by the appellate court, or by any judge or justice thereof.” Rule 263, SCACR. “Upon the failure of the Appellant to file and serve his brief within the time prescribed, the clerk of the appellate court shall sign an order dismissing the appeal, and the appeal shall not be reinstated except as provided in

Rule 260.” Rule 208, SCACR. “Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court. A case shall not be reinstated except by leave of the court, upon good cause shown...” Rule 260, SCACR. “When by these rules or by notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the time may be extended by...the court for cause shown may at any time in its discretion (1) with or without written motion or notice order the period enlarged if request therefor is made before the expiration of the period as originally prescribed or extended or (2) upon motion made after the expiration of the specified period, for good cause shown, permit the act to be done.” Rule 6(b), SCRCPP. “This [Rule] authorizes the court to permit an act to be done after the expiration of time upon a showing of good cause. This is the standard applied by courts in practice and is found in Rule 55(c) for relief from entry of default.” Note to 1986 Amendment of Rule 6(b) SCRCPP.

“Rule 55(c) permits a party to move to set aside the entry of default. The standard for granting relief from an entry of default under Rule 55(c) is mere "good cause." Rule 55(c), SCRCPP. This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice. Once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted. The trial court need not make specific findings of fact for each factor if there is sufficient evidentiary support on the record for the finding of the lack of good cause. A motion under Rule 55(c) is addressed to

the sound discretion of the trial court. *Sundown Operating Company, Inc. v. Intedge Industries, Inc.*, 383 S.C. 601, 607-608, 681 S.E.2d 885 (2009) (Citations Omitted).

In this Case Appellant filed second or subsequent notice of appeal regarding the lower court's order of bond filed in October of 2024. On November 18, 2024, this Court sent Appellant a correspondence stating: "The Court received multiple notices of appeal in this case. The notices of appeal have been consolidated for consideration by the Court, and we anticipate receiving one record on appeal. The times for perfecting the appeal will run from the date of service of the last notice of appeal." On December 5, 2024, Appellant sent this court a correspondence stating that on November 19, 2024, Appellant received the transcript of hearing for the second or subsequent order Appellant appealed and therefore pursuant to the applicable rules Appellant's initial brief and designation of matter would be due to be filed and served on December 19, 2024. Appellant's Initial Brief and Designation of Matter was filed and served on January 28, 2025.

At the outset the undersigned counsel states the delay in filing Appellant's initial brief and designation of matter is not the fault of Appellant, but solely the fault of Appellant's undersigned counsel. For the past month and a half, I have been overwhelmingly busy with both personal and work activities and events. On the personal side I have had children's holiday and school functions to attend and out of town family coming for the holidays. At the same time my case load has resulted in multiple hearings, mediations and deadlines in cases before the lower court as well as multiple case deadlines for briefs and obligations due before this court. I have undertaken to accomplish all these acts while dealing with a personal health issue.

I should have moved for an extension of time at the outset when it became apparent, I was not going to be able to timely file Appellant's initial brief and Designation of Matter but did not do so. Now, I humbly request this Court not punish my client for my own error.

Appellant would respectfully assert, as noted above the lower court issued an order requiring appellant to post a bond during the pendency this appeal only in October and this appeal has not experienced protracted delays at this time. Appellant affirmatively believes she has a likelihood to prevail upon the merits of her appeal as set forth in detail in her initial brief. Appellant would assert given the time period involved and the fact a bond is already in place to protect Respondent from potential waste during the pendency of the appeal, that Respondent will not be prejudiced if this Court were to grant this Motion.

Therefore, the undersigned counsel for Appellant, for the reasons stated herein above and good cause shown respectfully requests this Court Grant Appellant's Motion to File Appellant's Initial Brief and Designation of Matter out of Time and accept Appellant's untimely filed initial brief and designation of matter, rather than dismissing Appellant's appeal.

January 29, 2025.

RESPECTFULLY SUBMITTED,

THE LAW OFFICE OF
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CERTIFICATE OF SERVICE

I certify that on this 29th day of January 2025, I have served Appellant’s Motion to file Appellant’s Initial Brief and Designation of Matter out of Time upon all other counsel of record at the email address listed for said counsel on AIS as follows:

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Jenny Abbott Kitchings
Clerk of Court, Court of Appeals
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RE: Jason Loy Harn v Mary Nicole Reavis f/k/a Mary Nicole Harn
Case No. 2021-CP-10-2661
Appellate Case No. 2024-001312

Madam Clerk:

Enclose please find for filing:

- 1) Appellant's Motion to File Appellant's Initial Brief and Designation of Matter out of time;
- 2) a Certificate of Service for the Motion; and
- 3) a check for the motion fee.

I kindly request that you file the same.

With kind regards,

RESPECTUFLY SUBMITTED,

THE LAW OFFICE OF
DAVID CONOR KEYS, LLC



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CC: Justin M. McGee;
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