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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Court of Common Pleas

Eugene P. Warr, Jr., Circuit Court Judge

Appellate Case No. 2026-000211

Circuit Court Case No. 2025-CP-10-03621

Joel Ndunda,

Appellant,

v.

Brandi Pfeil, LP-A, Crisis Intervention Employee, individually and officially; Caitlin McGarty, Crisis Intervention Employee, individually and officially; South Carolina Department of Behavioral and Developmental Disabilities, Office of Mental Health; and Charleston Dorchester Mental Health Center,

Defendants,

Of which Brandi Pfeil, Caitlin McGarty, and Charleston Dorchester Mental Health Center are the Respondents.

APPELLANT'S RETURN IN OPPOSITION TO RESPONDENTS' SECOND MOTION FOR EXTENSION OF TIME TO FILE RETURN TO APPELLANT'S MOTION FOR SUMMARY REVERSAL AND VACATUR

TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS:

Appellant Joel Ndunda, appearing pro se, respectfully submits this return in opposition to Respondents' Second Motion for Extension of Time to File Return to Appellant's Motion for Summary Reversal and Vacatur, filed July 27, 2026. Appellant does not seek to deny Respondents a reasonable opportunity to respond. Appellant opposes this request because it is the fourth extension Respondents have sought in this appeal, because it is supported by no specific cause, because it continues a pattern of deferring engagement with the dispositive documentary question, and because it specifically defers Respondents' response to a motion demonstrating that the document on which their entire defense depends does not exist.

I. THIS IS THE FOURTH EXTENSION REQUEST, AND STATES NO SPECIFIC CAUSE.

Rule 263(b), SCACR, permits extensions for cause shown. Respondents have now sought four extensions in this appeal: two directed to their initial brief, and two, including the present motion, directed to their return to Appellant's Motion for Summary Reversal and Vacatur. Each has rested on the identical ground, "work-related and other time commitments," recited word for word. A generic recitation of professional busyness, offered a fourth time in the same words, states a conclusion rather than the specific cause from which this Court can evaluate whether good cause exists.

II. THE MOTION DEFERS, SPECIFICALLY, RESPONDENTS' RESPONSE TO THE FRAUD SHOWING.

The motion Respondents seek more time to answer is not an ordinary one. Appellant's Motion for Summary Reversal and Vacatur demonstrates, through the admitting facility's own

records custodian, that the M-130 Affidavit for Emergency Detention, the statutory foundation under S.C. Code § 44-17-410 for any lawful involuntary detention, does not exist, and that the Charleston County Probate Court has confirmed no Order of Detention exists in its records. That custodian certification was placed before this Court on April 10, 2026. Respondents represented to the trial court, across four separate documents, that the Order existed and was "undisputed." They have now had more than three months since written notice that the foundational document is certified absent, and, faced with a motion requiring them to answer that showing, they have twice sought more time rather than produce the document, certify its non-existence, or respond on the merits. A party able to produce the Order it repeatedly represented as existing, or able to state plainly that it exists, would not require successive extensions to respond to a motion about its absence. The repeated deferral is itself consistent with the motion's central premise.

III. RULE 240(e) PROVIDES THAT FAILURE TO TIMELY FILE A RETURN MAY BE DEEMED CONSENT TO THE RELIEF SOUGHT.

Rule 240(e), SCACR, provides that "[f]ailure of a party to timely file a return may be deemed a consent by that party to the relief sought in the motion or petition." Appellant served the Motion for Summary Reversal and Vacatur on July 6, 2026. By Respondents' own account, their return was "presently due on July 16, 2026," under Rule 240(e). Respondents' first motion to extend that deadline, seeking to move it to July 27, 2026, has not been ruled upon. Rather than file their return by the date they themselves proposed, Respondents filed a second request for additional time on July 27, 2026, seeking to extend the deadline to August 6, 2026. As matters stand, the original return deadline has passed by more than two weeks, no return has been filed, and Respondents rely solely on two unruled requests to hold that deadline in abeyance. Appellant does not ask this Court to deem consent summarily; Appellant notes only that continued and

stacked deferral is precisely the circumstance Rule 240(e) addresses, and that the longer the foundational motion goes unanswered, the more the record reflects an inability or unwillingness to respond to the showing that the detention order does not exist.

IV. ANY EXTENSION SHOULD BE CONDITIONED ON A WRITTEN STATEMENT AS TO THE ORDER'S EXISTENCE.

Appellant's pending Motion for Summary Reversal and Vacatur already requests, in the alternative under Rule 212, SCACR, that this Court direct Respondents to produce the M-130 and the Probate Court Order of Detention, or to certify their non-existence. The repeated requests for delay make that relief more pressing, not less. If this Court is inclined to grant Respondents further time, Appellant respectfully requests that any extension be conditioned upon Respondents stating, in writing, whether the M-130 Affidavit and the Probate Court Order of Detention exist and are within their possession, custody, or control. That condition imposes no hardship: a party that has represented across four documents that the Order exists can state whether it possesses that Order. If Respondents possess it, they can produce it. If they cannot, that fact is dispositive of this appeal and no further briefing is required to resolve it.

V. CONTINUED DELAY PREJUDICES APPELLANT BY LEAVING A DISPOSITIVE QUESTION UNRESOLVED.

Respondents assert that the extension "will not work any undue prejudice upon Appellant." That assertion does not account for the nature of the question their repeated delay leaves open. The existence or non-existence of the M-130 Affidavit and the Order of Detention is the dispositive fact on which this appeal turns, and it is a fact Respondents could resolve in a single sentence by stating whether they possess the Order. Each successive extension prolongs the period during which that dispositive question remains suspended, to the prejudice of a pro se Appellant who has

diligently pursued its resolution. That the same certified absence is also material to related proceedings only underscores that the question is concrete and ripe, not one that can be indefinitely deferred. The prejudice to Appellant lies in the continued suspension of a question that is answerable now and dispositive of this appeal.

CONCLUSION

Appellant does not oppose a reasonable opportunity for Respondents to respond. Appellant opposes a fourth, unsupported extension that continues a pattern of deferring engagement with the one document on which the entire defense depends. Appellant respectfully requests that this Court deny the motion for extension or, in the alternative, grant it only on the condition that Respondents state in writing whether the M-130 Affidavit and Probate Court Order of Detention exist and are within their possession, custody, or control.

Respectfully submitted,

s/ Joel Ndunda
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Date: July 27, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on the date indicated below, a true and correct copy of the foregoing Appellant's Return in Opposition to Respondents' Second Motion for Extension of Time was served upon counsel for Respondents by first-class United States Mail, postage prepaid, addressed to:

Zachary Meade Kern, Esquire
Brian Lee Quisenberry, Esquire
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Date: July 28, 2026

s/ Joel Ndunda
Joel Ndunda, Pro Se Appellant