

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

J. Ernest Kinard, Jr., Circuit Court Judge

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APR 07 2014
SC Court of Appeals

Case No. 2007-CP-07-02373

Court of Appeals Tracking No. 2010167969

Matthew S. McAlhaney, Respondent,

v.

Richard K. McElveen a/k/a Richard K.
McElveen, Sr., Individually and d/b/a
Battery Creek Marina, The Great
Pumpkin, LLC, Linda McElveen, Richard
K. McElveen, Jr., and Billy Joe Byrd, Defendants,

Of whom Richard K. McElveen, Sr., is the Appellant.

**NOTICE OF MOTION AND MOTION TO
EXTEND TIME AND MEMORANDUM**


The Respondent, Matthew S. McAlhaney, by and through his undersigned attorney, pursuant to Rule 240, SCACR, moves the Court of Appeals for an order extending the time for Respondent to file and serve his Initial Brief and Designation of Matter through and including Monday, May 5, 2014.

As appears from the affidavit of Respondent's counsel, which is attached to this motion, counsel has recently undergone hip replacement surgery and physical therapy that have undermined his ability complete the brief.

Three previous extensions have been sought by the Respondent.

Upon information and belief, the attorney for the Appellant will consent to this motion.

Respectfully Submitted,

By: 
Robert V. Mathison, Jr.
Attorney for the Respondent
Matthew S. McAlhaney

MATHISON & MATHISON
Post Office Box 5271
Hilton Head Island
South Carolina 29938-5271
Telephone: (843) 785-6503
Facsimile: (843) 785-6170
Email: rmathlaw@aol.com

April 2, 2014

Hilton Head Island, South Carolina.

MEMORANDUM

The relief requested in the motion set forth above is authorized by Rule 240, SCACR.

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Of whom Richard K. McElveen, Sr., is the Appellant.

AFFIDAVIT
(Robert V. Mathison, Jr.)

PERSONALLY appeared before me Robert V. Mathison, Jr. (herein sometimes
"the Affiant"), who, first being duly sworn, says under oath the following:

1. My name is Robert V. Mathison, Jr., and I am an attorney licensed to
practice law by the state of South Carolina.

2. I am the attorney for the Respondent, Matthew S. McAlhaney, and I reside
at 21 Bateau Road at Hilton Head Island, in Beaufort County South Carolina.

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3. I am 67 years of age, of sound mind, and I make this Affidavit of my own personal knowledge.

4. The Affiant's work generally, and, particularly his work on the Respondent's Initial Brief, has been significantly impaired by a chronic hip condition that recently became acute.

5. The earliest possible date that the Affiant could obtain an appointment to have his condition examined by a specialist was February 4, 2014.

6. The examination and, specifically, the x-rays taken of the Affiant's right hip joint, revealed that it had degraded to the point of needing imminent replacement.

7. The Affiant underwent surgery (total hip arthroplasty) by Dr. James Karegeannes at Memorial Mission Hospital in Asheville, North Carolina, on Friday, March 14, 2014, after which the Affiant undertook to convalesce and to undergo physical therapy through and including today's date.

8. This period of limited mobility, which the Affiant believed would afford sufficient time to complete the Respondent's Brief and Designation in this matter, proved to be a good deal more grueling than the Affiant anticipated, and the Affiant has been able to do little, if any, written work.

9. The Affiant has an appointment with his physician scheduled for tomorrow, April 3, 2014, at 2:45 p.m., at which time he hopes to be cleared to drive and to return to work.

10. The Respondent's Initial Brief and Designation of Matter would otherwise be due on April 4, 2014.

11. The Affiant has requested the consent to this Motion to Extend Time by the Appellant's counsel, who has heretofore been most accommodating in this matter.

FURTHER THE AFFIANT SAYETH NOT.



Robert V. Mathison, Jr.

SWORN to before me this
3rd day of ~~March~~, 2014.
April mw



Notary Public for North Carolina
My Commission Expires ~~March 2014~~ 12/9/18 mw

MORGAN E WATERFIELD
Notary Public
Buncombe Co., North Carolina
My Commission Expires Dec. 9, 2018

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K. McElveen, Jr., and Billy Joe Byrd, Defendants,

Of whom Richard K. McElveen, Sr., is the Appellant.

PROOF OF SERVICE

I, Robert V. Mathison, Jr., hereby certify that on April 3, 2014, I filed and served by mail, the originals and copies of the Notice of Motion and Motion to Extend Time and Memorandum and the Affidavit of Robert V. Mathison, Jr., both dated April 2, 2014, by depositing same, with first class postage prepaid, at the United States Post Office at Asheville, North Carolina, addressed as follows:

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court
of Appeals
Post Office Box 11629
Columbia, SC 29211

Blake A. Hewitt, Esquire
Bluestein Nichols Thompson &
Delgado
Post Office Box 7965
Columbia, SC 29202

A handwritten signature in cursive script, appearing to read "R. Mathison, Jr.", written in black ink.

Robert V. Mathison, Jr.
Attorney for the Respondent

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ROBERT V. MATHISON, JR.

KERRY F. MATHISON

April 3, 2014

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court
Of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: Matthew S. McAlhaney v. Richard K. McElveen, Sr., et al.
Case No. 2007-CP-07-02373
Tracking No. 2010167969

Dear Ms. Kitchings:

Enclosed for filing please find the originals and six copies each of the following documents:

- 1. Respondent's Notice of Motion and Motion to Extend Time to file the Respondent's Initial Brief and Memorandum dated April 2, 2014.
- 2. The Affidavit of Robert V. Mathison, Jr., dated April 2, 2014.

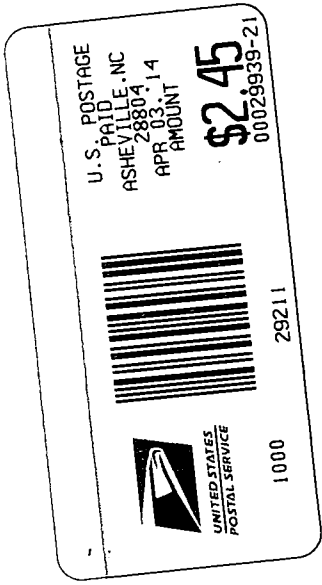
Also enclosed are the original Proof of Service and our check in the amount of \$25.00 to pay the filing fee.

With kind regards, I am

Sincerely,


Robert V. Mathison, Jr.

RVM:bh
Enclosures
cc: Blake A. Hewitt, Esquire
Mr. Matthew S. McAlhaney.



LAW OFFICES
MATHISON & MATHISON
POST OFFICE BOX 5271
HILTON HEAD ISLAND S.C. 29938-5271

*The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court
of Appeals
Post Office Box 11629
Columbia, SC 29211*