

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

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 Wednesday, August 6, 2014.

As appears from the affidavit of Respondent's counsel, which is attached to this motion, counsel was out of his office for hip replacement surgery on March 14, 2014, as well as for the ensuing physical therapy, leading, upon his return, to a deluge of work.

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In addition, on May 18, 2014, Respondent's counsel was in a serious traffic accident in Sullivan County, Tennessee, which resulted in multiple injuries and legal machinations that prevented counsel's return to his office for ten days, thereby undermining counsel's ability to complete the brief.

Respondent's counsel continued to experience debilitating pain from his accident injuries until shortly after June 24, 2014, when a metal pin was removed from counsel's left wrist, allowing him some freedom to pronate his wrist without pain thereafter.

Six 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
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Facsimile: (843) 785-6170
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July 5, 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.

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. As a consequence, 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.

6. The Affiant was cleared to drive and to return to work during the week commencing on April 7, 2014.

7. During the nearly four weeks that ensued thereafter, the Affiant was required to confront a backlog of cascading obligations in multiple cases, and the Affiant's opponent, as well as the Court of Appeals, proved to be accommodating .

8. On Sunday, May 18, 2014, at shortly before 3:00 p.m., while driving South on Interstate 81 near Mile Marker 63 in Sullivan County, Tennessee, the Respondent's counsel ("the Affiant") was involved in an accident that resulted in the total loss of his truck, a 2007 GMC Yukon XL.

9. The truck hit an abutment and then an adjoining guardrail, so that no other vehicle was directly involved, and the Affiant, who was alone in his truck, was the only person who was injured.

10. The Affiant was treated at the emergency room at Holton Valley Medical Center in Kingsport, Tennessee, for multiple injuries, including the compound fracture of his left arm and lacerations to his head, which required more than 20 staples to close.

11. After the Affiant was admitted to the hospital, a team of physicians led by Tiffany M. Laskey, D.O., and Melissa M. Lawrence, D.O., performed surgery on the Affiant's arm, inserting what the Affiant is informed and believes is a plate and nine screws into the injured area of the arm, with the surgery concluding after midnight on Monday, May 19, 2014.

12. The Affiant was discharged from the hospital on the afternoon of the following day, but was required to remain in the area for possible treatment, as well as to recover certain personal property, such as his wallet, computer and legal papers, all of which appeared to have gone missing at the accident scene.

13. As a consequence of the accident, due to his injuries, as well as the pain and fatigue resulting therefrom, the Affiant was not cleared to drive and was unable to return to work until May 29, 2014.

14. Although the Affiant had not theretofore been aware of it, when the hard cast was initially removed from his arm on June 11, 2014, he discovered that, in addition to the items described in paragraph 11 above, a metal pin had been placed in his arm to secure the fragment of the Radius between the two fractures, which pin ran past the Affiant's Ulna and out through a weep hole in the skin at the base of his wrist.

15. The metal pin had been the cause of considerable pain to the Affiant, who, having been advised to work through the pain or to medicate with hydrocodon (thereby

presenting a choice between working while burdened with pain or while stupefied), chose the former course, except at bed time.

16. Advised that the metal pin had been inserted to prevent the Affiant from pronating his wrist until the bone had kneded, upon the recommendation of his local physician, the Affiant agreed to the pin remaining in his arm under a partial cast for two more weeks, that is, until Tuesday, June 24, 2014.


17. Not until a day or two after the removal of the metal pin on that date was the Affiant able to work free of pain, and his typical efficiency was compromised until then.

18. In the interim the Affiant attempted to employ someone to assist him in completing the brief, but he was unable to interest the persons that he approached.

19. The Respondent's Initial Brief and Designation of Matter would otherwise be due on July 7, 2014.


20. The Affiant is requesting the consent to this Motion to Extend Time by the Appellant's counsel.

FURTHER THE AFFIANT SAYETH NOT.



Robert V. Mathison, Jr.

SWORN to before me this
7th day of July, 2014.



Notary Public for South Carolina
My Commission Expires 8-6-2023.

LAW OFFICES
MATHISON & MATHISON
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HILTON HEAD ISLAND, S.C. 29938-5271
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ROBERT V. MATHISON, JR.

KERRY F. MATHISON

July 7, 2014
HAND DELIVERED

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court
Of Appeals
1015 Sumter Street
Columbia, SC 29201

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 July 5, 2014.
2. The Affidavit of Robert V. Mathison, Jr., dated July 7, 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.

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SC Court of Appeals

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PROOF OF SERVICE

I, Robert V. Mathison, Jr., hereby certify that on July 7, 2014, I filed and served the originals and copies of the Notice of Motion and Motion to Extend Time and Memorandum and the Affidavit of Robert V. Mathison, Jr., dated July 5 and July 7, 2014, respectively, by delivering same to the South Carolina Court of Appeals and to counsel for the Appellant at the following addresses:

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court
of Appeals
1015 Sumter Street
Columbia, SC 29201

Blake A. Hewitt, Esquire
Bluestein Nichols Thompson &
Delgado
1614 Taylor Street
Columbia, SC 29202

A handwritten signature in black ink, appearing to read "R. Mathison, Jr.", written over a horizontal line.

Robert V. Mathison, Jr.
Attorney for the Respondent

LAW OFFICES

MATHISON & MATHISON

POST OFFICE BOX 5271

HILTON HEAD ISLAND S.C. 29938-5271

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