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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge

RECEIVED

AUG 26 2015

Appellate Case No. 2013-23-01762

SC Court of Appeals

Carol Simpson, Appellant,

v.

Frank A. Landgraff, Respondent.

**MOTION FOR EXTENSION OF TIME TO FILE RESPONDENT
FRANK A. LANDGRAFF'S REPLY TO APPELLANT CAROL SIMPSON'S
RETURN TO LANDGRAFF'S MOTION TO DISMISS**

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Attorneys for Respondent
Frank A. Landgraff

Counsel for the Respondent Frank A. Landgraff ("Landgraff") hereby moves for an extension of time in which to serve and file his Reply to Appellant Carol Simpson's ("Simpson") Return to Landgraff's Motion to Dismiss in the present case, if such Return is, in fact, allowed by the Court of Appeals.

On July 16, 2015, Landgraff served his Motion to Dismiss on Simpson seeking to end this appeal. The Court received this motion, along with the proof of service confirming the July 16, 2015 service date on Simpson and the necessary fee, on July 20, 2015.

Pursuant to Rule 240(e), SCACR, "any party opposing a motion or petition shall have ten (10) days from the date of service thereof to file an original and six (6) copies of his return with the clerk and serve on all parties a copy of the return . . ." The rule further provides "[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." *Id.*

Any return by Simpson to the dismissal should have been filed and served by July 27, 2015. As August 5, 2015, Landgraff had not been served with any response of any kind to the motion, and the Court's online portal did not reflect the filing of any response of any kind to the motion. As a result, Landgraff sent a letter to the Court on August 5, 2015 explaining the failure to respond and asking for the matter to be dismissed.

On August 11, 2015, Simpson filed a Motion Requesting An Extension of Time To Answer Defendant's Motion to Dismiss, which sought to allow Simpson until August 17, 2015 to "answer Defendant's Motion to Dismiss" (Motion p. 1). As has become the norm in this case, the Court thereafter had to send a deficiency letter to Simpson for failing to file a proof of service.

Landgraff served a Return opposing Simpson's motion seeking permission to file out of time, and Simpson did not serve a reply to Landgraff's Return. The Court has not acted on Simpson's request to be allowed to file a return to Landgraff's Motion to Dismiss, and Simpson's motion to file out of time remains pending.

Despite having not received any permission from the Court to file late, Simpson served a Return to Landgraff's Motion to Dismiss on August 19, 2015. If this Return were timely and/or allowed, Landgraff would have five days under Rule 240(e), SCACR to file and serve a Reply.

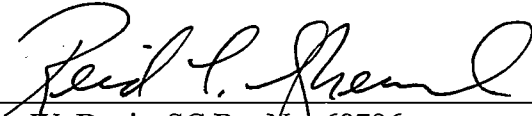
Landgraff continues to oppose Simpson's motion to allow a late filing, and does not consent to any relief by the filing of this motion. Rather, in the abundance of caution, Landgraff seeks to ensure he will have the ability to timely file a Reply to any Return to Motion to Dismiss that may be allowed by the Court at a future date. Stated another way, at this time the Court has not consented for a late Return to be served and filed, and thus there is no need for a Reply to Return to Motion to Dismiss at this time.

The undersigned counsel certifies that this request is not intended to cause undue delay and is necessary to properly prepare and present the case.

Landgraff has not previously requested an extension of time related to this issue in this matter.

If the Court grants Simpson's Motion Requesting An Extension of Time to Answer Defendant's Motion to Dismiss, and further allows the existing Return to Motion to Dismiss to stand, Landgraff moves for the Court to also announce a deadline for Landgraff to file and serve his Reply to Simpson's Return to Motion to Dismiss, which deadline should be at least as much time as is afforded Landgraff under the South Carolina Appellate Court Rules.

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8/24, 2015

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PROOF OF SERVICE

I, the undersigned Attorney of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Respondent, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: MOTION FOR EXTENSION OF TIME TO FILE RESPONDENT FRANK A. LANDGRAFF'S REPLY TO APPELLANT CAROL SIMPSON'S RETURN TO LANDGRAFF'S MOTION TO DISMISS

Counsel Served:

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Reid T. Sherard

August 24, 2015