

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Shirley C. Robinson, Administrative Law Judge

Appellate Case No. 2017-000066

RECEIVED

APR 24 2017

SC Court of Appeals

Pickens County,

Appellant,

vs.

South Carolina Department of Health and Environmental and
MRR Pickens, LLC,

Respondents.

**APPELLANT'S REPLY IN SUPPORT OF MOTION
FOR EXTENSION OF
TIME FOR FILING INITIAL BRIEF AND
DESIGNATION OF MATTER**

TO: THE COURT OF APPEALS AND ALL PARTIES AND THEIR ATTORNEYS

YOU WILL PLEASE TAKE NOTICE that the Appellant Pickens County hereby replies in response to Respondents' Responses in Opposition to Appellant's Motion for Extension.

The inclusion or exclusion of parties to a case has a great impact on the case. Whether this Court allows the proposed intervenors to participate in the appeal will change the content of the Appellant's (or Appellants') initial brief, as laid out in the motion for extension.

MRR argues that intervenors could simply file a separate brief if their motion to be included is granted. While this may be true, part of the reasoning in the motion to intervene for including them is that it saves judicial resources. Judicial economy is mandated "to secure the just, speedy, and

inexpensive determination of every action.” Rule 1, S.C. R. Civ. Pro. Intervenor, if allowed, would have the same counsel as Pickens County and be able to share in the same briefs, so as to secure this Court’s determination in the most efficient manner possible. The judicial efficiencies arguments in intervenors’ motion to be included would be moot if separate briefing schedules and documents were required to be filed for intervenors and Pickens County. It would also require a greater expenditure of resources for all parties involved.

Both MRR and DHEC assert that there are no extraordinary circumstances. MRR cites to no case law in support of this assertion. DHEC cites to a rule from the Second Circuit Court of Appeals, which is of course inapplicable to the Appellant’s request, and to a case out of the Eastern District of Virginia which found that an attorney who cared for his sick sister did not excuse failure to timely file a complaint. Blakes v. Gruenberg, No. 1:14-CV-1652-GBL/IDD, 2015 WL 9274919, at *7 (E.D. Va. Dec. 18, 2015). This case is inapposite because the reason for requesting an extension, before the deadline, was to give this Court time to consider including other parties to the appeal, and not due to any emergency on the part of counsel.

The inclusion or exclusion of parties to a case is an important consideration for which the District Court of South Carolina has found “extraordinary circumstances” to extend deadlines. In re Hayden, 246 B.R. 795, 800 (Bankr. D.S.C. 1999) (using equitable powers under extraordinary circumstances to extend the deadline for a debtor to be included in a bankruptcy proceeding). Although the case law is scant on the subject of what constitutes extraordinary circumstances, it is clear that this Court has broad discretion to construe its own order seeking such justification to include circumstances such as this one, where the content of the brief that is due could change significantly based upon the

outcome of a pending motion. Appellant is not in the position of seeking equitable tolling after the deadline passed to file a complaint, as was the case in both Blakes and Hayden, but is merely seeking an extension filed before the deadline for a brief having demonstrated extraordinary circumstances as required by this Court's Order. (See Motion for Extension; March 15, 2017, Order).

Counsel for Pickens County is mindful that this Court has already granted two extensions, and expressed that the previous extension would be the final one, absent "extraordinary circumstances." (March 15, 2017, Order). Therefore, this motion is not made lightly, but only after carefully considering the best interests of our clients and the judicial efficiencies to be gained from submitting the most pertinent initial brief possible.

WHEREFORE, the Pickens County requests that this Court issue an order extending the time to file their Initial Brief and Designation of Matter until May 12, 2017, or until after such time as Intervenors' Motion to be Included has been decided. The Appellant further requests that the briefing deadline be held in abeyance pending a decision on this motion. If this Court denies the motion, Appellant respectfully requests guidance on whether the content of the brief may include arguments on behalf of proposed intervenors.

Respectfully submitted,



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Attorneys for the Appellant

April 20, 2017
Georgetown, South Carolina

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South Carolina Department of Health and Environmental and
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Respondents.

CERTIFICATE OF SERVICE

I hereby certify that on this date I served the foregoing Reply in Support of Motion for Extension of Time on Respondents SCDHEC and MRR Pickens, LLC, by placing copies of same in the U.S. Mail addressed to:

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Amelia A. Thompson

April 20, 2017

Georgetown, SC



South Carolina Environmental Law Project

Lawyers for the Wild Side of South Carolina

o 501c3
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April 20, 2017

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The Honorable Jenny Abbott Kitchings
Clerk of Court, SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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Re: Pickens County v. SCDHEC
Appellate Case No. 2017-000066

SC Court of Appeals

Dear Ms. Kitchings:

I am enclosing for filing Appellant's Reply in Support of Motion for Extension of Time, along with my certificate of service in the above-captioned case. I am also enclosing seven copies of the reply and request that you kindly return a clocked-in copy in the enclosed pre-paid envelope.

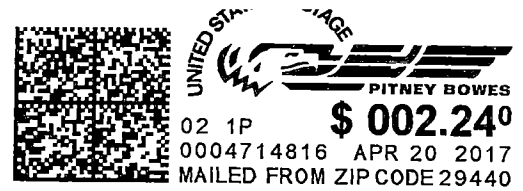
Thank you very much for your kind cooperation and assistance.

Yours very truly,

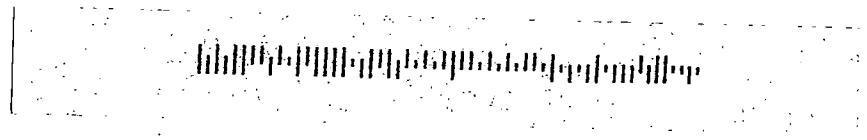

Amelia A. Thompson

cc: Etta R. Linen, Esquire
Robert F. Goings, Esquire
Jessica J. O. King, Esquire
Gary Poliakoff, Esquire

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