

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

Honorable John C. Hayes III, Circuit Court Judge
Honorable Brian Gibbons, Circuit Court Judge

Appellate Case No: 2019-002115

RECEIVED
APR 18 2019
SC Court of Appeals

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard,Plaintiffs,

Heidi Gersten, Ivanka Ayoub,Appellants.

v.

Kevin Carter, Richard Davis, Joseph Tirbovich, Nationwide Mutual Insurance
Company , Interinsurance Exchange of the Automobile Club, John Ammendola,
Trustgard Insurance Co., Blackwell, SC Department of Public Safety, Chevrolet,
GMC, Unknown John Does,Respondents

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
APPELLANTS' AMEMDED RETURN TO RESPONDENTS CARTER
AND DAVIS' MOTION TO DISMISS APPEAL

Heidi Gersten, Ivanka Ayoub
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Plaintiffs/Appellants

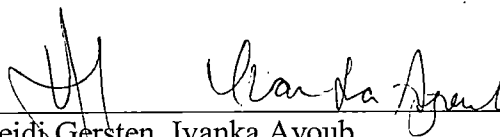
STATEMENT OF FACTS

On March 7, 2019, the Appellants requested an additional ten (10) days to serve and file an amended return to the Respondents Carter and Davis' Motion to Dismiss Appeal. On March 18, 2019 the Appellants, requested an additional 5 days. On March 25, 2019, the Appellants requested an additional ten (10) days. On April 4, 2018, the Appellants requested and additional ten (10) days. Now for good cause shown, an additional ten (10) days is required to complete the Appellants' Return.

Ten (10) days from April 15, 2019 would be April 25, 2019, to sufficiently and adequately address the multiple errors made by the Respondents Carter and Davis. This return in made in a good faith effort to comply with the previously underestimated motion for extension of time and is permitted by Rule 263(b), SCACR.

For these reasons, the reasons in the attached Affidavit of Heidi Gersten and the reasons to be submitted in the forthcoming Appellants' Amended Return and the Appellants' Brief, the Court has jurisdiction as the Notice of Appeal was timely served and filed per SCACR rules.

Respectfully submitted this 15th day of April 2019,



Heidi Gersten, Ivanka Ayoub
Appellants
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Boca Raton, Florida
April 15, 2019

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AFFIDAVIT OF APPELLANT HEIDI GERSTEN

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Appellants

STATE OF FLORIDA,
SS:
COUNTY OF PALM BEACH,

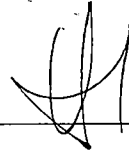
**HEIDI GERSTEN, BEING FIRST DULY CAUTIONED AND SWORN
DEPOSES AND STATES AS FOLLOWS:**

1. I am the Appellant herein, and have read the foregoing Motion for Extension of Time to Amend Appellants' Return to the Respondents Kevin Carter and Richard Davis' Motion to Dismiss Appeal, which includes all pages attached, and know the contents thereof, that the same is true of my own knowledge, except as matters therein stated to be alleged on information and belief; and to those matters, I believe them to be true.
2. The facts stated herein are personally known to me and I have first-hand direct knowledge thereof and to those facts that are in addition stated are based on information and belief.
3. If called upon to do so, I would and could competently testify to hereto under oath in a court of law operating under the laws of the State of South Carolina and the United States Constitution.
4. The Appellants served and filed on March 7, 2019 and attached a U.S.P.S. money order in the amount of \$50.00 payable to the SC Clerk of Court of Appeals, a Return to Respondents Carter and Davis' Motion to Dismiss Appeal and Motion for the Court to Dismiss Appeal and Motion for the Court to Accept This Document as Timely With or Without Leave of Court in anticipation that the requested extension of time to amend it would be on March 17, 2019.
5. Unfortunately during those ten (10) days I was extremely ill and had an unusually painful menstrual cycle followed by the learning of the passing of my father, which created an additional hardship to my already overwhelming daily life, due to being paralyzed.
6. The Appellants served and filed another extension on March 18, 2019 requesting five (5) additional days, as the tenth day was Sunday, March 17, 2019 from the previous request and attached a U.S.P.S. money order in the amount of \$50.00 payable to the SC Clerk of Court of Appeals.
7. The Appellants requested an additional ten (10) days from March 25, 2019, as five (5) days from March 18, 2019 is March 23, 2019, which was a Saturday, bringing it to, March 25, 2019 and ten (10) days from then is April 4, 2019.

8. During those last five (5) days, my computer crashed, causing me to be unable to obtain stored information and print documents.
9. The Appellants requested an additional ten (10) days from April 4, 2019, which is April 14, 2019, which is a Sunday, permitting Monday, April 15, 2019 to be the service and filing deadline of the request.
10. During these last ten (10) days, my computer was fixed, permitting me to obtain stored information and print documents however other unexpected events occurred that prevented the anticipated return of the Defendants Kevin Carter and Richard Davis' Motion to Dismiss Appeal.
11. I had an unexpected visit from a good friend, who once was a Marine, and when he learned I hadn't had a bath or a shower for 7 months, proceeded to place me into the tub, which I was in for nearly 3 hours, experiencing horrors and joys simultaneously as I was excited to wash myself clean however frightened by how crooked my body had become due to the lack of affordable care required for me to have the fundamental basics of living, such as eating and other things taken for granted as able-bodied beings.
12. My friend also observed the reasons why I could not get into the tub or even use a shower chair and transfer in on my own like I had in other situations.
13. I gave permission to my friend to remove the toilet so I may have room to wheel myself next to the tub, which took several days.
14. My manual wheelchair has been fixed from when the wheel fell off while I was sitting in it on Thanksgiving and I'm using it inside now after being without it for over 3 months.
15. I had food poisoning, which resulted in diarrhea explosions that took me days to clean up, coupled with a migraine from hell.
16. It may be hard to imagine for some, the enormous amount of effort it takes to do simple things that able-bodied people can do, such as use a toilet.
17. I live under extraordinary circumstances.
18. After 7 months or more of living without a caregiver, I interviewed several caregivers recently however the best qualified happened to be a convicted child molester.
19. I'm currently still without a caregiver.
20. A good day starts when I haven't urinated on myself and surprisingly those popular "Depends" don't always work as well as advertised, it all depends on the flow of the urine.

21. Another 10 days is required to finish the hundreds of copies of documents and information required to prove that this appeal indeed is timely.
22. Included in these documents will be proof that:
 - A. April 26, 2018 - Unsigned order(s), Judge Gibbons
 - B. May 8, 2018 - Claimants' served and filed notice of motion and motion to alter or amend a judgment or relief from judgment of order pursuant to Rules 59(e), 60(4), SCRPC, and request for oral hearing.
 - C. August 25, 2018 - Claimants served and filed an amended with or without leave motion to alter or amend a judgment or relief from judgment or order pursuant to Rules 59(e), 60(4), SCRPC, and request for oral hearing.
 - D. September 5, 2018 - Oral hearing with Judge Hayes.
 - E. September 17, 2018 - Claimants/Plaintiffs served and filed second amended complaint and demand for jury trial with leave.
 - F. September 18, 2018 - Unsigned order(s), Judge Hayes
 - G. October 1, 2018 - Plaintiffs served and filed notice of motion and motion to alter or amend a judgment or relief from judgment or order pursuant to Rules 52, 59(e), 60(4), SCRPC, and request for oral hearing plus exhibits 1-9.
 - H. October 16, 2018 - Unsigned order(s), Judge Gibbons
 - I. November 15, 2018 - Appellants notice of appeal
23. Appellants' motions were not ruled on and orders were not made.
24. Given the complexity of this matter, with numerous respondents and excessive documents to deal with, there is good cause shown for additional time to provide the information that will prove the Appellants' timeliness in serving and filing the notice of appeal.
25. According to the **SCACR**, the Appellants should not be subjected to serving and filing a return when the Respondents Carter and Davis' Motion to Dismiss does not have the correct case number, along with the burden of sorting through 64 un-paginated pages.
26. The date the Notice of Appeal was timely served and filed on Respondents Kevin Carter and Richard Davis was November 15, 2018.
27. The motions for reconsideration were timely filed according to court rules.
28. The Appellants are hereby requesting an additional ten (10) days to accurately and understandably present proof to the timeliness of this appeal, which is now April 25, 2019.

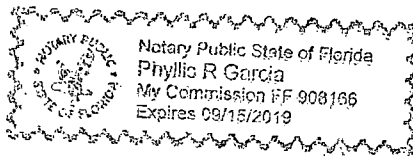
29. I was paralyzed as a result of the collision in controversy with the Respondent Kevin Carter and the Respondent Richard Davis co-owned the vehicle involved.
30. It is unfair to hold me to the same standards as able-bodied people.
31. The **American Disabilities Act**, An agency of the US Department of Justice Civil Rights Division, applies to and protects me.
32. **Title II of the American Disabilities Act** permits modifications to court rules to accommodate my situation due to my disability.
33. The **Doctrine of Equitable Tolling** may also be applied to my circumstances.
34. I urge the Court to allow an additional ten (10) days, which would be April 25, 2019, to complete an accurate amended Return of the Appellants to the Motion to Dismiss Appeal made by the Respondents Kevin Carter and Richard Davis in light of the good cause shown.
35. This extension is not for the purpose of delaying. It is for the furtherance of justice and to prevent its miscarriage.

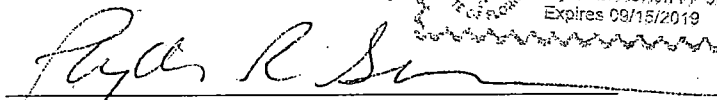


Heidi Gersten
 1438 W. Lantana Rd. #330,
 Lantana, FL 33462

Subscribed and sworn to before me, this 15th day of April 2019.

[Notary Seal:]




 [signature of Notary]

Phyllis R Garcia
 [typed name of Notary]

NOTARY PUBLIC

My commission expires: 09/15/2019

89582

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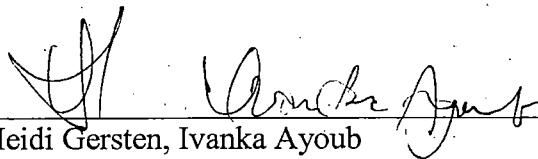
APPELLANTS' NOTICE OF MOTION AND MOTION FOR
EXTENSION OF TIME TO SERVE AND FILE AMENDED RETURN
TO RESPONDENTS CARTER AND DAVIS' MOTION TO DISMISS
APPEAL AND AFFIDAVIT OF HEIDI GERSTEN

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Appellants

The Appellants, Heidi Gersten, Ivanka Ayoub ('Appellants') move this Court for an extension of time to serve and file an amended return of the Respondents Carter and Davis' motion to dismiss appeal pursuant to SCACR 263(b) on the grounds of good cause shown as evidenced by the attached Affidavit of Heidi Gersten. Previous extensions were requested on March 7, 2019 March 18, 2019, March 25, 2019, and April 4, 2019. In light of the good cause shown, an additional ten (10) days is required to accurately and sufficiently submit an amended return.

The Appellants' argument will be more fully addressed in the attached Memorandum of Points and Authorities in Support.

Respectfully submitted this 15th day of April 2019,



Heidi Gersten, Ivanka Ayoub
Appellants
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Boca Raton, Florida
April 15, 2019

CERTIFICATE OF SERVICE
(Appellate Case No: 2019-002115)

The undersigned, over 18 years of age and not a party to the said action, hereby certifies that (s)he has served the following named individuals with a copy of the foregoing: : Appellate Case No: 2019-002115 APPELLANTS' NOTICE OF MOTION AND MOTION FOR EXTENSION OF TIME TO FILE APPELLANTS' AMENDED RETURN OF RESPONDENT CARTER AND DAVIS' MOTION TO DISMISS ALONG WITH A MORE DETAILED RESPONSE TO THIS COURT'S LETTER DATED FEBRUARY 15, 2019 along with letter to the Court dated April 15, 2019, and AFFIDAVIT OF APPELLANT HEIDI GERSTEN and, MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPELLANTS' MOTION FOR EXTENSION OF TIME, by mailing a copy of same to them in the U. S. Post Office mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

Wesley Brian Sawyer, Esquire
Murpy & Grantland, P.A.
4406 Forest Drive #B
Columbia, SC 29206
(Attorney for Kevin Carter and Richard Davis)

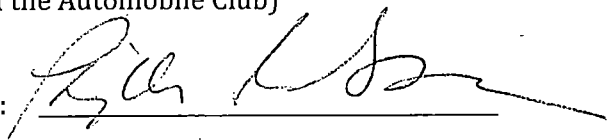
David R. Sligh
P.O. Box 2116
Myrtle Beach, SC 29578
(Attorney for Nationwide Mutual Ins. Co)

Peter H. Dworjanyn, Esquire and
Michael R. Burchstead, Esquire
Collins & Lacy, PC
1330 Lady Street, 6th Floor (29201)
Post Office Box 12487
Columbia, SC 29211
(Attorneys for Trustguard Insurance Company)

William H. Davidson II, Esquire
Davidson & Lindemann, PA
P.O. Box 8568
Columbia, SC 29202
(Attorney for SC Dept. of Public Safety
and Trooper Herbert Blackwell)

Reynolds Williams
P.O. Box 1909
Florence, SC 29503-1909
(Attorney for Defendant Interinsurance Exchange of the Automobile Club)

Alexander S. Gogsette
P.O. Box 5478
Florence, SC 29502
(Attorney for Joseph Tirbovich)

By: 

Boca Raton, Florida
April 15, 2019

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APR 18 2019

SC Court of Appeals

April 15, 2019
1438 W. Lantana Rd., #330
Lantana, FL 33462

Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211
(843)662-3258 Fax (843)662-1342

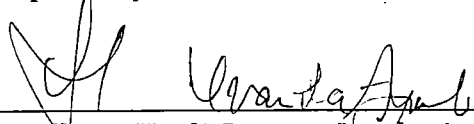
RE: Appellate Case No.: 2018-002115

Dear Ms. Kitchings:

Good day to you.

Please find an enclosed U.S. postal money order in the amount of \$50.00 for the enclosed original NOTICE OF MOTION AND MOTION FOR EXTENSION OF TIME TO FILE APPELLANTS' AMENDED RETURN OF RESPONDENT CARTER AND DAVIS' MOTION TO DISMISS along with a more detailed response to this Court's letter dated February 14, along with 7 copies. Please file the original and return a file-stamped copy in the pre-paid postage envelope provided. Thank you for your time regarding this matter.

Respectfully submitted,


Appellants Heidi Gersten, Ivanka Ayoub
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HG/Enclosures

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SC Court of Appeals

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STEW, IVANKA AYOUB
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LANTANA, FL 33462

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OF THE RETURN ADDRESS FOR ALL POSTED LETTERS

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APR 18 2019

SC Court of Appeals

Honorable Jenny Abbott Kitchings
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P.O. Box 11629
Columbia, SC 29211