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Sep 27 2021
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Casey Manning, Circuit Court Judge

Appellate Case No. 2021 – 00502
Case No. 2017-CP-40-6773

Nancy Morris, as Assignee of Andrew J.
Bland, PFC; Leemon E. Carner, PFC; Jerry
Speissegger, Jr., PFC; Priscilla Garrett, SGT; Appellant,
and Richard T. Burkholder, SGT;

v.

South Carolina Insurance
Reserve Fund

Respondent.

**MOTION FOR EXTENSION OF TIME TO FILE REPLY
BRIEF OF APPELLANT**

The Appellant (“Appellant”) respectfully moves this Court for an additional extension of time until October 27, 2021, by which to file and serve her Reply Brief.

The Appellant's motion is based on the following grounds:

1. The Appellant's Reply Brief is currently due to be filed and served on September 27, 2021.

2. The undersigned counsel requires additional time to complete the Appellant's Reply Brief because the undersigned counsel has had numerous other deadlines that prevented him from completing the Appellant's Reply Brief by the current deadline.

3. The undersigned has consulted with Andrew Lindemann, counsel for the Respondent, and he consented to the requested extension by email (copy attached).

WHEREFORE, the Appellant respectfully requests that she be allowed until Wednesday, October 27, 2021, by which to file and serve her Reply Brief.

September 27, 2021

s/Garrett B. Johnson
Garrett B. Johnson, SC Bar #81105
ELROD POPE LAW FIRM
212 E. Black Street
P.O. Box 11091 (29731)

Rock Hill, South Carolina 29730
(803) 324-7574
Attorney for Appellant

Andrew F. Lindemann
LINDEMANN, DAVIS, & HUGHES, P.A.
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920
Attorney for Respondent

Kathy Zumbro

From: Andrew Lindemann <Andrew@ldlawsc.com>
Sent: Wednesday, September 22, 2021 2:55 PM
To: Garrett Johnson
Cc: Kathy Zumbro; Zach Griffin; DavidWoodsZ9304967@projects.filevine.com
Subject: RE: Morris v. IRF Appeal - Case Number 2021-00502

Garrett:

Thanks. I can prepare a short consent order to allow the Amended DOM. You will also need to file an Amended Initial Brief that removes the references to those materials. That will probably stay the deadlines, but otherwise I have no problem with your request for a 30 day extension for the reply brief.

Andrew

From: Garrett Johnson <gjohnson@elrodpope.com>
Sent: Wednesday, September 22, 2021 2:42 PM
To: Andrew Lindemann <Andrew@ldlawsc.com>
Cc: Kathy Zumbro <kathy@elrodpope.com>; Zach Griffin <zach@elrodpope.com>;
DavidWoodsZ9304967@projects.filevine.com
Subject: RE: Morris v. IRF Appeal - Case Number 2021-00502

Speaking of which, would you consent to a 30-day extension?

From: Garrett Johnson
Sent: Wednesday, September 22, 2021 2:39 PM
To: Andrew Lindemann <Andrew@ldlawsc.com>
Cc: Kathy Zumbro <kathy@elrodpope.com>; Zach Griffin <zach@elrodpope.com>;
DavidWoodsZ9304967@projects.filevine.com
Subject: RE: Morris v. IRF Appeal - Case Number 2021-00502

Hey Andrew,

I agree and will file an amended DOM without those items. I will also be asking the Court for an extension on the reply brief

From: Andrew Lindemann <Andrew@ldlawsc.com>
Sent: Wednesday, September 22, 2021 2:17 PM
To: Garrett Johnson <gjohnson@elrodpope.com>
Subject: Re: Morris v. IRF Appeal - Case Number 2021-00502

Any word on this. I do have a motion ready to go. I wanted to get this filed before your reply brief is due. Let me know. I am in trial next week and want to get this off my plate. Thanks

Sent from my iPhone

On Sep 21, 2021, at 5:40 PM, Andrew Lindemann <Andrew@ldlawsc.com> wrote:

Ok thanks.

From: Garrett Johnson <gjohnson@elrodpope.com>
Sent: Tuesday, September 21, 2021 4:44 PM
To: Andrew Lindemann <Andrew@ldlawsc.com>
Subject: RE: Morris v. IRF Appeal - Case Number 2021-00502

Hey Andrew,

I'm looking into it and will get back to you shortly

From: Andrew Lindemann <Andrew@ldlawsc.com>
Sent: Sunday, September 19, 2021 3:32 PM
To: Garrett Johnson <gjohnson@elrodpope.com>
Cc: Kathy Zumbro <kathy@elrodpope.com>
Subject: Morris v. IRF Appeal - Case Number 2021-00502
Importance: High

Garrett:

While I was preparing the IRF's Response Brief this past week, I did see some issues with the Appellant's Designation of Matter to be Included in the Record on Appeal that I need to address with you in hopes that we can resolve that without having to seek clarification from the Court of Appeals.

I have carefully reviewed the Circuit Court file on this case (Civil Action No. 2017-CP-40-6773) and I do not see that the following were ever filed with or submitted to the Court:

1. U.S. District Court Order Granting Stay of Execution
2. Fourth Circuit Opinion
3. Notice of Appeal to the Fourth Circuit
4. Defendant's Responses to Plaintiff's Discovery Requests
5. Complaint filed 01-23-15 in Civil Action No. 2015-CP-40-0619 (the correct filing date is 01-29-15)
6. Defendant's Memorandum in Opposition to Plaintiff's MSJ filed in Civil Action No. 2015-CP-40-0619 (note that the Plaintiff never filed a MSJ in this case – the Complaint in this case was filed in November 2017)

As you know, Rule 209(b), SCACR, provides that "the Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [See Rule 210(c)]." Rule 210(c), SCACR, then provides that "[t]he Record shall not, however, include matter which was not presented to the lower court or tribunal."

Thus, the items as identified above, which were never presented to or considered by the lower court, may not be included in the Record on Appeal for this appeal.

Please let me know if you will agree to file an Amended Designation that removes those six items from the Record on Appeal. Otherwise, I will need to get a motion filed to clarify what was properly part of the lower court record.

Thanks.

Andrew

Andrew F. Lindemann
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Columbia, South Carolina 29260
Direct Dial: 803-881-8921
Email: andrew@ldlawsc.com

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Appellate Case No. 2021 – 00502
Case No. 2017-CP-40-6773

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing **Motion for Extension of Time to File Reply Brief of Appellant** has been served upon opposing counsel by electronic mail this 27th day of September, 2021, using the following addresses:

Andrew F. Lindemann
Lindemann, Davis & Hughes, P.A.
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
Email: andrew@ldh-law.com



Kathy Zumbro, Paralegal

Thomas E. Pope
Jack G. Leader
David V. Benson
Circuit Court Mediator
Luther C. Elrod, III
Founding Member 1980-2013



Harold C. Staley, Jr.
Licensed in SC & NC
Andrew W. Creech
Garrett B. Johnson
Ben P. Leader
Licensed in SC & NC

September 27, 2021
Via electronic mail: ctapp@filings@sccourts.org
Honorable Jenny Abbott Kitchings, Clerk of Court
SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211
RE: Appellate Case No. 2021 – 00502
Case No. 2017-CP-40-6773

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Dear Ms. Kitchings:

Please find attached Appellant's Motion for Extension of Time to File Appellant's Reply Brief for filing with the court along with Mr. Lindemann's consent.

By copy of this letter, I am further serving the represented Defendant by and through its counsel, Andrew Lindemann.

Please feel free to contact me if you have questions or require anything additional; direct by phone 803.324.6136, or email, kathy@elrodpope.com.

With kind regards,
s/Kathy Zumbro
Kathy Zumbro
Paralegal

Enclosures
Cc: Andrew Lindemann, Esq. w-enclosures

Helping Injured People