

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2012-212686

Marsha Temples,

Appellant,

v.

Neil O. Plush,

Respondent.

RESPONDENT'S RETURN IN OPPOSITION TO
APPELLANT'S MOTION FOR EXTENSION OF TIME
TO FILE REPLY BRIEF OF APPELLANT

Now comes the Respondent in the above matter and submits this Return In Opposition to Appellant's Motion for Extension of Time to File Reply Brief of Appellant.

The trial court dismissed the Plaintiff-Appellant's case on statute of limitations grounds, and the primary issue on appeal concerns the correctness of the trial court's conclusion that the Plaintiff-Appellant's nearly five-year delay in restoring her case to the docket pursuant to Rule 40(j), SCRCP, precluded the court from adjudicating the merits of Plaintiff-Appellant's claims. On appeal, Appellant sought and was granted three extensions to submit the Initial Brief of Appellant and Appellant's Designation of Matter to be Included in the Record on Appeal, the last of which specifically ordered that "[n]o further extensions will be granted absent a showing of extraordinary circumstances."

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SC Court of Appeals

Order, 2/1/2013. Even absent further extensions at this juncture, the case at bar has already seen plenty of delay, both below and on appeal.

Following Appellant's service of her Initial Brief, Respondent timely served and filed his Initial Brief on Monday, April 1, 2013. On the same date, Respondent served and filed his Motion to Strike Appellant's Designation of Matter to be Included in the Record on Appeal and Corresponding Portions of Appellant's Initial Brief. With citation to governing South Carolina Appellate Court Rules, Respondent's motion argued that Appellant's attempt to include in the record and reference on appeal matters which were not presented to the lower court was improper. See generally Rules 208(b)(4) & 210. Pursuant to Rule 208(a)(3), SCACR, Appellant had ten days to file and serve any Reply Brief in this matter; similarly, pursuant to Rule 210(e), Appellant had ten days to file and serve her return to Respondent's Motion to Strike. Thus, Appellant had until Thursday, April 11, 2013, to file and serve a Reply Brief as well as any return to Respondent's Motion.

Appellant neither filed nor served any reply or response in that time frame. Rather, on Friday, April 12, 2013, Appellant filed and served two documents: (1) her Motion for Extension of Time to File Reply Brief of Appellant; and (2) her Objection to Respondent's Motion to Strike Appellant's Designation of Matter to be Included in the Record on Appeal and Corresponding Portions of Appellant's Initial Brief and Appellant's Motion for Extension to File a return to Respondent's Motion. Neither document was timely, and each requests additional time to submit further merits

briefing.¹ Appellant's requests are procedurally and substantively misplaced.

Procedurally, Appellant failed to submit her request prior to the expiration of the governing deadline. Substantively, Appellant provides virtually no explanation necessitating more time to file a timely reply; Appellant's vague and now well-worn reference to her counsel's "trial and hearing schedule" provides no cause to warrant a re-opening of the briefing schedule in this matter.² See Appellant's 4/12/2013 Motion for Extension of Time at 2.

At some point, this belatedly prosecuted damages case must end. Contrary to Appellant's representation to the Court, the deadline for Appellant to file her Reply Brief expired prior to Appellant's submission of her Motion for Extension. And Appellant's most recent request for an additional *thirty* days to submit a reply does not even attempt to justify such an extraordinary request. Accordingly, Respondent respectfully opposes

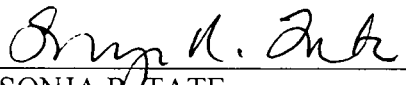
¹ Appellant's recent Objection criticizes Respondent's Motion to Strike for failing to include a separate supporting memorandum. See Appellant's 4/12/2013 Objection at 1. Disregarding momentarily that Appellant failed to file and serve her Objection in a timely manner, her criticism is meritless, as Respondent's Motion to Strike quoted and cited governing authorities. Moreover, Appellant's criticism is especially curious given her prior filings. Appellant has now filed no less than *four* conclusory motions absent supporting memoranda—including the one seeking additional time to file her reply brief filed contemporaneously with Appellant's Objections.

² Contrary to Appellant's suggestion, twenty-two pages does not constitute an overly burdensome memorandum. Cf. Rule 208(b)(5), SCACR.

Appellant's Motion for Extension of Time to File Reply Brief of Appellant and requests that it be denied.

I certify that I have served the Return In Opposition to Appellant's Motion for Extension of Time to File Reply Brief of Appellant on Marsha Temples by depositing a copy of it in the United States Mail, postage prepaid, and via facsimile, on April 17, 2013, addressed to her attorney of record, John W. Carrigg, 137 E. Butler Street, Suite 6, Lexington, South Carolina 29072.

April 17, 2013


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PROOF OF SERVICE

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