

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

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Michael Davis and Kimberly Davis,

Plaintiffs,

v.

Mercy Medical Center d/b/a CHI St. Alexius  
Health Williston; and Cherise Norby, N.P., and  
David Keene, M.D.,

Defendants,

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Supreme Court No. 20220325

Civil No. 53-2019-CV-00589

**Motion for Extension of Time  
to File Opening Brief**

[¶ 1] Appellants Mercy Medical Center d/b/a CHI St. Alexius Health Williston and David Keene, M.D., through undersigned counsel, move the Court, under Rules 26(b), 27, and 31(a) of the North Dakota Rules of Appellate Procedure, for a 30-day extension of time to file Appellants' opening brief from February 14, 2023, to March 16, 2023.

[¶ 2] Appellants submit that good cause for an extension exists and that this motion is made in good faith and not for the purpose of delay. As the basis for this motion, Appellants state as follows.

[¶ 3] Julia J. Nierengarten is an attorney with Meagher & Geer, P.L.L.P. Ms. Nierengarten is appellate counsel for Appellants Mercy Medical Center d/b/a CHI St. Alexius Health Williston and David Keene, M.D., in the above-captioned case. Ms. Nierengarten is admitted *pro hac vice* on this matter.

[¶ 4] In addition to the present matter, Ms. Nierengarten is also responsible for briefing in several other matters with deadlines in February and March. Even with due diligence and after giving reasonable priority to the preparation of the opening brief in this matter, multiple

deadlines in the next several weeks in other matters preclude Ms. Nierengarten from the ability to file Appellants' opening brief on time. (*Id.*). These matters are as follows:

- a. Ms. Nierengarten currently has a deadline of Friday February 10, 2023, for an opening memorandum of law in support of her client's motion for summary judgment in Minnesota state court, in the Hennepin County District Court Case of *Shannon Miller v. Dan Siegel and Siegel, Yee, Bruner, & Mehta and Donald Chance Mark, Jr. and Fafinski Mark & Johnson, P.A.*, Civil File 27-cv-22-5657. The hearing on the parties' cross motions for summary judgment is scheduled for March 10, 2023, in compliance with the district court's scheduling order mandate that dispositive motions in the case be heard by March 15, 2023. Ms. Nierengarten has been solely responsible for all motion practice in this matter.
- b. On January 25, 2023, the Minnesota Supreme Court granted a petition for review Ms. Nierengarten filed on behalf of her client in *City Bella Commercial, L.L.C., et al. v. City Bella on Lyndale*, File No. A22-0288. The opening brief in this matter is due February 24, 2023. Ms. Nierengarten is the sole appellate attorney in this matter.
- c. Ms. Nierengarten is appellate counsel in *James Prisk v. Travelers Indemnity Company of America*, Case No. 22-2769, a matter pending before the Eighth Circuit, and her reply brief will be due on or around March 10, 2023. Ms. Nierengarten is the primary briefing attorney in this appeal.

[¶ 5] In addition to the workload matters discussed above, Ms. Nierengarten's father entered hospice care on January 18, 2023. The need to provide support to him as he reaches the end of

his life has impacted her ability to meet existing deadlines, and will further limit her ability to properly brief this matter by the current deadline.

[¶ 6] For these reasons, Appellants Mercy Medical Center d/b/a CHI St. Alexius Health Williston and David Keene, M.D., respectfully request that this Court grant their motion and extend the deadline for their opening brief from February 14, 2023, to March 16, 2023.

Respectfully submitted,

Dated this 27<sup>th</sup> day of January, 2023.

By: /s/ Julia J. Nierengarten  
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[1] I hereby certify that on January 27, 2023, a true and correct copy of **Motion for Extension of Time to File Opening Brief**, and this **Certificate** were filed electronically with the Court and served electronically by email on the following:

**Plaintiffs Attorney**

Mark V. Larson	larslaw@srt.com
Jed Kurzban	jed@kktplaw.com
Lauren Gallagher	lgallagher@kktplaw.com

[2] I further certify that a copy of these documents will be served under N.D.R.Civ.P.5(b)(3) on the following persons who are exempt from electronic service by email:  
  
None

Dated this 27<sup>th</sup> day of January, 2023.

/s/ Tracy Vigness Kolb

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