

NO. 02-19-00394-CV

IN THE COURT OF APPEALS
FOR THE SECOND APPELLATE DISTRICT OF TEXAS AT FORT WORTH
~~2nd COURT OF APPEALS
FORT WORTH, TEXAS~~

VICTOR MIGNOGNA
Appellant/Cross-Appellee

9/2/2022 1:13:59 PM
DEBRA SPISAK
Clerk

v.

FUNIMATION PRODUCTIONS, LLC, JAMIE MARCHI, MONICA RIAL,
AND RONALD TOYE
Appellees/Cross-Appellants

FROM 141ST DISTRICT COURT
TARRANT COUNTY, TEXAS
CAUSE NO. 141-307474-19

**JOINT RESPONSE TO MIGNOGNA'S MOTION FOR EXTENSION OF
TIME BY MONICA RIAL, RONALD TOYE, AND FUNIMATION
PRODUCTIONS, LLC**

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LLC**

**ATTORNEYS FOR APPELLEES/
CROSS-APPELLANTS**

SUMMARY OF RESPONSE

Mignogna has not provided reasonable explanation for his request to extend the deadline for any potential post-appeal motions for an additional 45 days. Though the Court may deny Mignogna the right to file any post-appeal motions, should the Court permit the filing, it should confine any extension of the deadline to fourteen-days to minimize the delay and harm imposed on Appellees.

ARGUMENT AND AUTHORITIES

A. Mignogna Has Not Provided a Reasonable Explanation for his Unreasonable Extension of Time to File Briefs Challenging the Memorandum Opinion.

Appellees and Cross-Appellants Monica Rial and Ronald Toye, jointly with Appellee Funimation Productions, LLC (“Funimation”) respectfully request that the Court deny Appellant, Cross-Appellee Victor Mignogna’s Motion for Extension of Time to File Motion for Rehearing and/or En Banc Reconsideration (the “Motion for Extension”).¹ Mignogna has not provided this Court with a reasonable explanation for his unreasonable request to take an additional 45 days to file one or both of a motion for rehearing or a motion for en banc reconsideration.

As a preliminary matter, the Court need not permit Mignogna to file his post-appeal motions, at all. Mignogna’s appeal was accelerated because it was an appeal

¹ Rial and Toye file this Response jointly with Appellee Funimation Productions, LLC. Appellee Jamie Marchi will file a separate opposition to Mignogna’s Motion for Extension in conjunction with this Response.

from the trial court's order granting three motions to dismiss under the Texas Citizens Participation Act. *See* Tex. Civ. Prac. & Rem. Code Ann. § 27.008(b) (“An appellate court shall expedite an appeal or other writ, whether interlocutory or not, from a trial court order on a motion to dismiss a legal action under Section 27.003 or from a trial court's failure to rule on that motion in the time prescribed by Section 27.005.”). As this was an accelerated appeal, “the appellate court may deny the right to file a motion for rehearing or en banc reconsideration....” Tex. R. App. P. 49.7. This promotes the purposes of the TCPA by expediting the disposition of abusive suits such as Mignogna's. *See Van Der Linden v. Khan*, 535 S.W.3d 179, 188 (Tex. App.—Fort Worth 2017, pet. denied). The further delay sought in the Motion for Extension not only frustrates the purpose of the TCPA, but it also permits Mignogna to delay resolution of this matter and expend further of his targets' resources.

Moreover, Mignogna has not reasonably explained his need for an extension of 45 days on an expedited appeal. Mignogna asserts that he and his counsel have not had adequate time to analyze the Court's Memorandum Opinion delivered on August 18, 2022, but provides no explanation for this. To justify his request to extend a fifteen-day deadline by an *additional* 45 days, Mignogna lists various commitments of two senior attorneys representing him, Ty Beard of Beard & Harris Attorneys at Law and Michael Martinez of Martinez Hsu, P.C. Mr. Beard and Mr. Martinez list various conferences, hearings, trials, and mediations to justify delay, but most of these commitments do not overlap, and Mignogna's lead counsel, Mr.

Beard, only lists four commitments spanning the period August 24, 2022 through September 27, 2022. Mignogna has not provided a reasonable explanation for why he is entitled to an extension of his deadline to file post-appeal motions, and certainly has not justified such an unreasonable delay.

Lastly, a delay would cause material harm to all Appellees in this matter. This Court affirmed the dismissal of Mignogna's underlying lawsuit and remanded for determination of Rial's and Toye's attorneys' fees. A delay would unreasonably hinder Rial and Toye's adjudication and ultimate recovery of the fees they have incurred in this matter.

Accordingly, should the Court determine that Mignogna may file a motion for rehearing or a motion for en banc reconsideration, and should the Court grant him an extended deadline, Rial, Toye, and Funimation respectfully request that the Court minimize the harm to Appellees and allow for only a fourteen-day extension of Mignogna's deadline. An extension to September 16, 2022 should be adequate to allow for Mignogna's counsel to analyze the Memorandum Opinion and present the court with their motion(s).

CONCLUSION AND PRAYER

WHEREFORE, Appellees Monica Rial, Ronald Toye, and Funimation Productions, LLC respectfully pray for the reasons stated herein that this Court deny Mignogna's Motion for Extension as to his requested extension to October 17, 2022, and instead permit Mignogna to extend his deadline to September 16, 2022.

Respectfully submitted,

/s/ Rusty J. O’Kane

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CERTIFICATE OF SERVICE

I hereby certify that on September 2, 2022, a true and correct copy of the foregoing document was served on counsel of record for all parties through the Court’s e-filing system.

/s/ Rusty J. O’Kane

Rusty J. O’Kane