

NO. 02-19-00394-CV

**IN THE COURT OF APPEALS
SECOND JUDICIAL DISTRICT
FORT WORTH, TEXAS**

FILED IN
2nd COURT OF APPEALS
FORT WORTH, TEXAS
9/2/2022 4:47:26 PM
DEBRA SPISAK
Clerk

VICTOR MIGNOGNA, Appellant,

v.

JAMIE MARCHI, FUNIMATION PRODUCTIONS, LLC, MONICA RIAL and

RONALD TOYE, Appellees

On Appeal from the 141st District Court
of Tarrant County, Texas
Honorable John P. Chupp, Presiding
Trial Court No. 141-307474-19

**APPELLEE JAMIE MARCHI'S RESPONSE TO MIGNOGNA'S MOTION
FOR EXTENSION OF TIME TO FILE MOTION FOR REHEARING
AND/OR EN BANC RECONSIDERATION**

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SUMMARY OF RESPONSE

Yet again, Appellant/Cross-Appellee Victor Mignogna (“Appellant”) asks for additional time to meet his burden in this case. Without justification or any showing of material need, Appellant asks this Court for two months to file a motion the *Texas Rules of Appellate Procedure* afford him fifteen days to prepare and file. He should be held to that timeframe to prevent additional delay and control over Appellee Jamie Marchi (“Marchi”), who therefore asks this Court to deny Appellant’s request for an extension.

ARGUMENT & AUTHORITIES

A. Procedural Background

Appellant initiated the underlying lawsuit on April 18, 2019, nearly three and a half years ago. After an appropriate, swift dismissal granting Marchi’s Motion to Dismiss Pursuant to the Texas Citizens Participation Act (the “TCPA”), Appellant commenced this appeal, suspending Marchi’s rights under the Trial Court’s judgment.

This Court issued its Memorandum Opinion on August 18, 2022 upon due consideration and deliberation for more than two years after briefing was completed. Such briefing consisted of Appellant’s initial brief, responsive briefing by Marchi, and a reply brief filed by Appellant. The parties have researched and briefed the issues in this case *ad nauseum*.

B. Appellant Offers No Explanation for the Requested Delay

A week after this Court's opinion was issued, Appellant's attorneys apparently had not even read it yet.¹ The decision whether or not to grant Appellant's requested relief pursuant to TEX. R. APP. P. 49.9 is in the discretion of this Court.

Many attorneys in Texas have busy dockets coupled with other competing obligations and commitments. Appellant offers no specific bases why, among the various lawyers at his disposal from his legal team, allegedly none of them can review and put together the motion they seek additional time to file. Appellant offers no justification why his attorneys are unable to do so on the many days in between their other commitments.

The parties have courteously agreed to multiple extensions in this case, both in the Trial Court and in this Court, but the time for further delay is at an end. Aside from busy schedules likely mirrored by attorneys across the State of Texas, Appellant has not offered a compelling reason why he requires additional time.

C. This Court Is Expressly Permitted to Deny Appellant's Right to File a Motion At All

In addition to the Court's inherent discretion under TEX. R. APP. P. 49.9 by virtue of the permissive "may" therein, this Court may render a wholesale denial of Appellant's ability to seek rehearing or en banc reconsideration whatsoever. Being

¹ "...Appellant's counsel have not had sufficient time to analyze the Court's Memorandum Opinion and evaluate the merit of pursuing a motion for rehearing or reconsideration." Appellant's Mtn., p. 4.

an accelerated appeal under the TCPA pursuant to TEX. CIV. PRAC. & REM CODE §27.008(b), TEX. R. APP. P. 49.7 gives the Court such authority, just as it gives this Court the authority to *shorten* Appellant’s time to file. The public policy supporting this rare authority sounds in justice, equity, and moral balance: to expedite and close lawsuits such as Appellant’s which are aimed at silencing their victims. Indeed, the TCPA exists to “encourage and safeguard the constitutional rights of persons to...speak freely, associate freely...to the maximum extent permitted by law.” TEX. CIV. PRAC. & REM. CODE §27.002. It “protects citizens who...speak on matters of public concern from retaliatory lawsuits that seek to intimidate or silence them.” *In re Lipsky*, 450 S.W.3d 579, 584 (Tex. 2015). Not only should this Court deny Appellant’s request, it should deny Appellant the right to file a motion for rehearing or en banc reconsideration altogether.

D. Marchi Will Be Harmed by Further Delay

As established in the record from the Trial Court and affirmed by this Court, Marchi has endured not only years of abuse and ridicule at the hands of Appellant and his followers, but also the monetary cost and emotional expense of attorney’s fees she should never have had to incur. Each day Appellant succeeds in delaying finality of the many rulings against him in this case is a day Marchi is prevented from collecting on the judgment to undo the financial harm occasioned upon her by Appellant’s lawsuit. Understanding that there are some things that time cannot

mend, Marchi's emotional recovery also depends on reaching a conclusion in this case.


CONCLUSION

Since he initiated this case, Appellant has sought to delay the inevitable result that he now faces from the Trial Court's judgment and this Court's opinion. Today Appellant asks for additional time to file a motion that this Court can, and should, prevent him from filing at all. Of course, this Court has discretion to permit Appellant to do so but, at a minimum, should confine him to the traditional timeline under TEX. R. APP. P. 49.9. Pursuant to that rule this Court should deny Appellant's request for an extension.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Appellee Jamie Marchi respectfully prays that this Court of Appeals deny Appellant's Motion for Extension of Time to File Motion for Rehearing and/or En Banc Reconsideration, and grant Marchi such other and further relief, both at law and equity, to which she may be justly entitled.

Respectfully submitted,



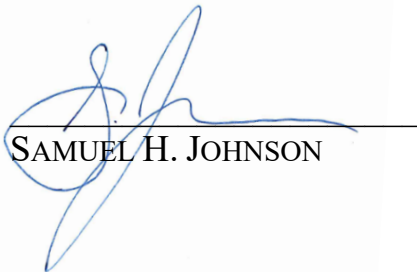
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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this brief was delivered to counsel of record for all parties via electronic service in accordance with the *Texas Rules of Appellate Procedure* on this 2nd day of September, 2022:



SAMUEL H. JOHNSON