

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT  
NO. 17-1322**

MARSHA WETZEL,

Plaintiff-Appellant,

On Appeal From The United States District  
Court For The Northern District Of Illinois

vs.

Case No. 1:16-cv-07598

GLEN ST. ANDREW LIVING  
COMMUNITY, LLC, et al.,

Honorable Judge Samuel Der-Yeghiayan

Defendants-Appellees.

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**PLAINTIFF-APPELLANT'S RESPONSE IN OPPOSITION TO DEFENDANT-  
APPELLEE'S THIRD MOTION FOR EXTENSION OF TIME**

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Plaintiff-Appellant, Marsha Wetzel (“the Appellant”), hereby objects, through her undersigned attorneys, to Defendant-Appellees (the “Appellees”) *third* request for an extension of time to file their appeal brief. Appellees have already sought multiple extensions and now move this Court – unjustifiably and without regard to this Court’s own rules of practice – for yet another extension of time. Granting Appellees’ unmeritorious third extension would result in Appellees receiving an additional 100 days to file their appeal brief beyond their original due date. This excessive amount of time clearly demonstrates that Appellees have not prioritized this case, causing unfair and prejudicial delay to the Appellant, who continues to suffer injury as a result. For these reasons, Appellant respectfully requests that the Court deny Appellees’ third extension request.

In support of this request, Appellant submits the following:

**I. BACKGROUND**

Appellant brings this appeal from the District Court’s dismissal of her complaint alleging that the Appellees, the owners and administrators of the senior living facility where Appellant

resides, denied her equal housing opportunity because of her sex and sexual orientation in violation of the Fair Housing Act and Illinois Human Rights Act. On February 15, 2017, Appellant filed her Notice of Appeal with this Court. (Dkt. 1) Although the original briefing was suspended for a period of time while the parties were engaged in settlement negotiations, on May 12, 2017, the Court set a July 19, 2017, deadline for Appellees to file their brief. (Order, dated May 12, 2017, Dkt. 11)

On June 29, 2017, Appellees filed a motion seeking their *first* thirty-day extension of time to file their brief. (Motion, dated June 29, 2017, Dkt. 22) Prior to filing the motion, Appellees provided neither advance notice of their intent to seek an extension nor a copy of the motion to Appellant. (*See* attached Affidavit of Karen L. Loewy) In support of this request for an extension, Appellees asserted that additional counsel had just been retained in this case on June 26, 2017, and needed time to familiarize themselves with the record and briefs, but said counsel was preoccupied with other matters. (Motion, dated June 29, 2017, Dkt. 22) At no time did Appellees' attorneys provide an explanation of why these other matters were given priority over their appeal brief in this matter. Indeed, Appellees' supporting affidavit indicated the contrary – some of these preoccupying matters had deadlines occurring after Appellees' *original* July 19, 2017, briefing deadline. (*Id.*) Appellant did not object to Appellees' June 19, 2017 request, and the Court granted Appellees' first extension, giving Appellees until August 18, 2017, to file their brief. (Order, dated June 29, 2017, Dkt. 23)

Eight days before the new August 18 deadline, Appellees requested a *second* extension for an additional thirty-five days. (Motion, dated August 10, 2017, Dkt. 26) Again, Appellees did not provide advance notice or a copy of their motion to Appellant in advance of filing the second extension request with the Court. (*See* attached Affidavit of Karen L. Loewy) In support

of their request, Appellees again claimed that their attorneys needed additional time to familiarize themselves with the record and briefs in this case – despite having been retained for well over a month – and that the assigned attorneys were still preoccupied with other cases. (*Id.*) Despite asserting that this case is of “national importance,” Appellee provided no explanation for why other matters were prioritized over this case. (*Id.*) Again, Appellant did not object to Appellees’ request, and the Court granted their second extension, giving Appellees a September 27, 2017, briefing deadline. (Order, dated August 10, 2017, Dkt. 27)

On September 19, 2017, Appellees filed their *third* extension, seeking *another thirty-five day* delay. (Motion, dated September 19, 2017, Dkt. 29) Yet again, Appellees failed to provide advance notice or a copy of the motion to Appellants. In fact, to date, Appellant’s counsel has received no direct communication of any kind from Appellees’ later-appointed appellate counsel. (*See* attached Affidavit of Karen L. Loewy) In support of this third request, Appellees claimed that, although attorney Lisa Hausten had been working “diligently” on the brief, they were not able to finish by the deadline because this appeal raises a number of “complex” issues that require “extensive consideration.” (Motion, dated September 19, 2017, Dkt. 29) Appellees again supported their request by claiming that this matter is of “national importance”; that their counsel was not retained until June 26, 2017; and that Appellees’ attorneys continue to be preoccupied with other matters. (*Id.*) Appellees again failed to explain why these other matters were given priority over this case. (*Id.*)

## II. DISCUSSION

“Extensions of time to file briefs are not favored.” Rule 26 of the United States Court of Appeals for the Seventh Circuit (the “Circuit Rules”). To obtain an extension, the party must “establish to the satisfaction of the court that with due diligence, and giving priority to the preparation of the brief, it will not be possible to file the brief on time.” *Id.* In addition, the

party must give notice to opposing counsel and a copy of the motion prior to filing. *Id.* Here, Appellees have failed to comply with either of these requirements. Indeed, not only does Appellees' request for a third extension fail to comply with Circuit Rule 26, but the requested extension will significantly prejudice Appellant.

**A. The Appellees' Third Extension Request Fails To Establish That They Have Prioritized This Appeal Brief.**

Circuit Rule 26 mandates that the affidavit supporting Appellees' motion for extension “*must disclose facts which establish to the satisfaction of the court that with due diligence, and giving priority to the preparation of the brief, it will not be possible to file the brief on time.*” *Id.* (emphasis added).

Appellees' third extension plainly does not disclose any facts as to why Appellees' other matters are prioritized over this cases. Moreover, the request quite literally establishes the opposite – that Appellees and their counsel have *not* given priority to this case. This lack of priority is evidenced by the fact that the supporting affidavit filed with the third extension request cites preoccupying cases that were previously relied on in Appellees' prior requests, as well as some that were cited for the first time, and whose deadlines expired well before, or which will expire, sometime after the September 27, 2017, deadline. Appellees cannot have it both ways by claiming, on the one hand, that this matter is of “national importance” (indeed, it is), yet then, on the other hand, place their other matters ahead of this appeal.

Further, Appellees' claim that their newly retained counsel needed time to familiarize themselves with the record and briefs is no longer tenable after nearly three months have elapsed since their retention. (Dkt. 20) In addition, Appellees' original attorneys are still counsel of record and could presumably educate the new counsel about the issues on appeal. And quite frankly, the record is not at all extensive, as the only matter on appeal is the District Court's

Order denying Appellant's Motion to Dismiss, which it decided without oral argument. In short, Appellees have not demonstrated that they are giving priority to the preparation of the brief and, therefore, their request for a third extension should be denied.

**B. Appellees Failed To Provide Advance Notice of a Copy of Their Motion to Appellant.**

Appellees further failed to provide the required “[n]otice of the fact that an extension will be sought ... to [counsel for Appellant] together with a copy of the motion *prior to* the filing thereof.” Cir. R. 26. (emphasis added). Appellees have utterly disregarded this obligation, and have not once notified Appellant's counsel that they intended to seek an extension or provided a copy of any of their extension requests in advance of filing the same.<sup>1</sup> Despite these procedural shortcomings, Appellant has been extremely accommodating by not objecting to the first two extension requests. Appellees' failure to do so prior to filing the instant request, however, begs Appellant's response and objection to the same for failure to follow the applicable Circuit Rules or even extend a professional courtesy to counsel for Appellant.

**C. Granting Appellees' Third Extension Request Will Prejudice Appellant**

Appellant brought her case in the district court on July 27, 2016, alleging that the Appellees denied her equal housing opportunities at her residence at Glen St. Andrew Living Community (“GSALC”) because of her sex and sexual orientation. As discussed in Appellants' Brief, filed on June 12, 2016, Appellant has been subjected to a pattern of discriminatory harassment at the hands of other residents of GSALC since about April 2015. They have called her countless profanities, subjected her to sexist and homophobic slurs, taunted her about her deceased partner and their son, and assaulted her, among other forms of harassment. The

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<sup>1</sup> Notably, the affidavit supporting the current motion fails to provide the filing date of Appellees' two prior extension requests in further violation of Circuit Rule 26.

Appellees have failed to take any meaningful action to stop this harassment, and, in fact, have taken action that ratified and condoned this behavior.

As set forth in the accompanying affidavit, Appellant continues to reside at GSALC and continues to be subjected to harassment by other residents, which Appellees, apparently emboldened by the district court's ruling, continue to trivialize and disregard (*See* attached Affidavit of Karen L. Loewy) Further extensions in this matter – particularly extensions that do not appear on their face to be well-founded – not only deny Appellant her right to a reasonably timely resolution of her claims, but also perpetuate the discriminatory hostile living arrangement created by Appellees' failure to take responsibility for ending this persistent harassment – a deprivation of Appellant's right to equal housing opportunity that she sought to redress over a year ago when she filed her Complaint.

Furthermore, Appellant's counsel –who, like all attorneys, are also busy with other matters yet able to meet their deadlines – have been forced to repeatedly shift their workloads on other cases to accommodate Appellees' multiple extension requests. Appellees have plainly failed to meet their obligations in this appeal, and their most recent request for an extension should be denied.

### **III. CONCLUSION**

Appellees cannot have it both ways. Appellees cannot simultaneously claim that that this case is of “national importance,” while clearly and utterly failing to prioritize it over their other matters without any explanation. And they have done so with complete disregard for the notice requirements of Circuit Rule 26. Appellant has been more than patient, but allowing Appellees to unjustifiably extend their briefing deadline 100 days beyond the original briefing date is excessive and prejudicial to Appellant, who continues to remain at GSALC subject to harassment without sufficient response by Appellees and who is entitled to a prompt resolution of her appeal.

For these reasons, Appellant respectfully requests that the Court deny Appellees' third request for an extension.

Dated: September 22, 2017

Lambda Legal Defense and Education Fund, Inc.  
Foley & Lardner LLP

*/s/ Karen L. Loewy* \_\_\_\_\_

Karen L. Loewy

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*Counsel for Plaintiff-Appellant*

**CERTIFICATE OF SERVICE**

I hereby certify that on September 22, 2017, I caused a true and correct copy of the foregoing Plaintiff-Appellant's Response In Opposition To Defendant-Appellee's Third Motion For Extension Of Time to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: September 22, 2017

/s/ Karen L. Loewy

Karen L. Loewy

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**AFFIDAVIT OF KAREN L. LOEWY**

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STATE OF NEW YORK    )  
                                  )    SS  
COUNTY OF NEW YORK )

Karen L. Loewy, being first duly sworn upon oath, deposes and states that she has knowledge of the following facts and would be competent to testify thereto if called as a witness:

1. I am one of the attorneys representing Plaintiff-Appellant, Marsha Wetzel (“Appellant”) in the above-captioned matter.
2. Counsel for Defendant-Appellees (“Appellees”) have not provided advance notice of any intention to seek an extension from this Court to me or, to my knowledge, any of the other attorneys representing Appellant. Counsel for Appellees have not provided a copy of any motion for extension to me or, to my knowledge, any of the other attorneys representing Appellant, prior to the filing of such motions. To date, I have received no direct communication of any kind from Appellees’ later-obtained appellate counsel, and have not communicated with Appellees’ trial and original appellate counsel since on or about May 31, 2017, and, to my knowledge, neither have any of the other attorneys representing Appellant.

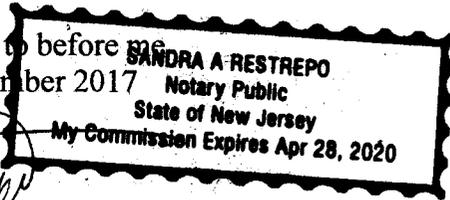
3. Appellant continues to reside at Glen St. Andrew Living Community (“GSALC”), the property owned and managed by Appellees. Since filing this matter in District Court, Appellant has reported to Appellees numerous incidents of ongoing harassment inflicted upon her by other residents of GSALC due to her sex and sexual orientation. Appellant has reported additional slurs, threats, harassment, and intimidation by some of the same perpetrators whose actions are set forth in the original Complaint, as well as by other residents, and has either received no response from Appellees or responses trivializing or dismissing each incident, simply accepting the denials of the perpetrators.

FURTHER AFFIANT SAYETH NOT.

By: \_\_\_\_\_

*Karen L. Loewy*  
 Karen L. Loewy

Subscribed and sworn to before me  
 this 22nd day of September 2017



*Sandra A. Restrepo*  
 Notary Public