

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
Houston Division

DR. STELLA IMMANUEL	)	
	)	
Plaintiff,	)	
	)	
v.	)	<u>Case No. H-22-2031</u>
	)	
	)	
CABLE NEWS NETWORK, INC.	)	
	)	
Defendant.	)	
_____	)	

**MOTION FOR EXTENSION OF TIME**  
**TO FILE NOTICE OF APPEAL**

Plaintiff, Dr. Stella Immanuel (“Plaintiff”), by counsel, pursuant to Rule 4(a)(5) of the Federal Rules of Appellate Procedure, respectfully moves the Court for an extension of time to file her Notice of Appeal.

The grounds for this motion are:

1. Plaintiff commenced this action on July 27, 2021 by filing a multi-count complaint against defendant, Cable News Network, Inc. (“CNN”) for defamation and defamation by implication. CNN filed a motion to dismiss Plaintiff’s complaint pursuant to Rule 12(b)(6) of the Federal Rule of Civil Procedure.

2. On August 1, 2022, the Court granted CNN's motion to dismiss, and entered final judgment.

3. On September 1, 2022, Plaintiff filed notice of appeal pursuant to Fed. R. App. Proc. Rules 3 and 4.

4. On September 27, 2022, the United States Court of Appeals dismissed the appeal for want of jurisdiction because Plaintiff's notice of appeal was filed one day late. [*ECF No. 59*].

5. In this case, the time prescribed by Fed. R. App. Proc. Rule 4(a) for filing a notice of appeal expired on August 31, 2022. In accordance with Fed. R. App. Proc. 4(a)(5)(A)(i), Plaintiff files this motion and moves for an extension to file her notice of appeal no later than 30 days after the time prescribed by this Rule 4(a) expired. This motion is timely.

6. Further, in accordance with Fed. R. App. Proc. 4(a)(5)A(ii), the filing on September 1, 2022 was the result of excusable neglect and there is good cause to permit an extension.

a. Excusable Neglect. Plaintiff's lead counsel, Mr. Biss, started a multi-day jury trial in Richmond, Virginia, on August 29, 2022. Although the notice of appeal was prepared and ready to file, Mr. Biss was out of the office and in Court through September 1, 2022 while the jury deliberated, and was not able to forward the notice of appeal to local counsel

in Texas for filing. Local counsel filed the notice of appeal and paid the \$505 filing fee promptly upon receipt of the notice of appeal. *Compare Roberts v. Yellen*, 858 Fed.Appx. 744, 745-746 (Mem) (5<sup>th</sup> Cir. 2021) (where plaintiff filed a motion for extension of time pursuant to Rule 4(a)(5)(A) and provided a proposed notice of appeal one day after the deadline under Rule 4(a) to file a notice of appeal, the District Court granted the motion for extension of time, and Court of Appeals found that it had jurisdiction to hear the appeal). Plaintiff submits that (a) the length of delay in filing the notice of appeal was minimal (one day); (b) the delay had no impact on these proceedings; (c) the delay in filing the notice of appeal was due to Plaintiff's lead counsel's jury trial unavoidably continuing into a fourth day; (d) Plaintiff and her counsel acted in good faith. *Compare Bates v. Director, TDCJ-CID*, 2014 WL 3868011, at \* (E.D. Tex. 2014) (the defendant was not prejudiced by granting the extension; plaintiff's delay was "brief"; "Finally, the Court presumes Petitioner's good faith. There is no reason not to grant the motion") (citing and quoting *Salts v. Epps*, 676 F.2d 468, 474 (5<sup>th</sup> Cir. 2012)); *Davis v. Valdez*, 2014 WL 684963, at \* 2 (N.D. Tex. 2014) (plaintiff's notice of appeal was filed seven days late); *Richardson v. Quarterman*, 2008 WL 4017259, at \* 2 (S.D. Tex. 2008) (there was no indication that defendant was prejudiced by the delay in letting plaintiff file

a late appeal; Further, there was no indication that plaintiff did not act in good faith; Finally, the impact on the judicial proceedings was negligible).

b. Good Cause. Additionally, there is good cause and it would be equitable to grant a brief extension of time. This case involves complex legal questions of first impression and significant import to both Plaintiff and the broader medical profession. The interests of justice would be well-served by a brief extension of time to file the notice of appeal, so that the Court of Appeals can review the matter on its merits. *Cf. Maypole v. Acadian Ambulance Service, Inc.*, 647 S.W.3d 533, 551 (Tex.App. 2022) (“Affording plaintiffs a reasonable opportunity to have their claims heard on the merits is a bedrock principle of our judicial system.”); *Marino v. King*, 355 S.W.3d 629, 634 (Tex. 2011) (“Constitutional imperatives favor the determination of cases on their merits”). The District Court’s docket and the administration of justice will not be impacted in any way by an extension of time. Plaintiff has not previously sought an extension of any deadline in this action. No harm or prejudice would result to CNN by an extension.

7. Prior to filing this Motion, counsel for Plaintiff conferred with counsel for CNN. CNN opposes any extension.

WHEREFORE, Plaintiff respectfully requests the Court to extend the deadline to file a notice of appeal to and including October 7, 2022 or for a period of three (3) days from entry of an Order granting this motion, which is longer. A proposed Order is attached as Exhibit "A". A proposed Notice of Appeal is attached as Exhibit "B".

DATED: September 30, 2022

DR. STELLA IMMANUEL

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(*Motion for Admission Pro Hac Vice  
To be Filed*)

*Counsel for the Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that on September 30, 2022 a copy of the foregoing was filed electronically using the Court's CM/ECF system, which will send notice of electronic filing to counsel for the Defendant and all interested parties receiving notices via CM/ECF.

By: /s/ Madhu S. Sekharan

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*Counsel for the Plaintiff*