

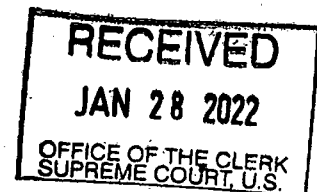
IN THE
SUPREME COURT OF THE UNITED STATES

BRITTANY BUDLOVE
Petitioner,

vs.

SCFL No.: 21-1364
Florida Supreme Court Case
No.: SC21-1364
Lower Tribunal No(s): 2D21-
357;
512019DP000262DPAXWS

DEPT. OF CHILDREN & FAMILIES, and
GUARDIAN AD LITEM PROGRAM,
Respondents.



MOTION TO DIRECT THE CLERK TO FILE AN OUT OF TIME
PETITION

Petitioner, BRITTANY BUDLOVE, Pro Se, requests this Honorable Court to reconsider its default judgement of January 14, 2022, not to review the petition for a writ of certiorari. Although the lack of diligence in handling this case is not condoned, Petitioner has established excusable neglect and a showing that substantial

prejudice would not result to the Respondents. Rule 6(b) allows courts to grant relief by finding that an inadvertent late filing, while negligent, constitutes "excusable neglect." *Pincay v. Andrews*, 389 F.3d 853, 860 (9th Cir. 2004). Therefore, given circumstances in this case, the Petitioner requests that the Motion to Direct the Clerk to File an Out of Time Petition be GRANTED.

DISCUSSION

In the matter at hand, the date of the lower court judgement denying a timely petition for rehearing was September 28, 2021. The petition for a writ of certiorari was due on or before December 27, 2021. It is undisputed that Petitioner did not file said petition with the Court at the required time. The delay occurred due to:

1. Petitioner's innocent lack of understanding, as a Pro Se litigant, that the 90-day deadline was strictly calendar days.
2. Petitioner inadvertently misread the filing date, believing the due date was 90 business days following September 28, 2021.
3. Petitioner's accidental belief that the petition could be e-filed with the court.
4. Petitioner's slow recovery after contracting the Covid-19 virus in November 2021.

In addition, since this motion is made expeditiously, the

Respondents will not be prejudiced by the Court granting Petitioner's motion. Being in accordance with Federal Rule of Civil Procedure 6(b), Petitioner respectfully ask that the Court relieve Petitioner from the default judgement based on their excusable neglect and mistake.

I. LEGAL STANDARD

Federal Rule of Civil Procedure 6(b)(1) provides: (1) In General. When an act may or must be done within a specified time, the court may, for good cause, extend the time: (A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires, or (B) on motion made after the time has expired if the party failed to act because of excusable neglect."

Upon motion made, Rule 6(b)(1)(B) permits a post-deadline filing extension "for good cause," if the party failed to act because of "excusable neglect." *Lujan v. Nat'l Wildlife Fed'n*, 498 U.S. 871, 896 (1990). Excusable neglect requires "a demonstration of good faith ... and some reasonable basis for noncompliance within the specified period of time." *Kimberg v. Univ. of Scranton*, 411 Fed. Appox. 473, 477 (3rd Cir. 2010) (quoting *Petrocelli v. Bohringer & Ratzinger*, 46 F.3d 1298, 1312 (3rd Cir. 1995).

After a deadline has expired, Rule 6 requires a showing of both “good cause” and “excusable neglect.” *Brosted v. Unum Life Ins. Co. of Am.*, 421 F.3d 459, 464 (7th Cir. 2009).

II. GOOD CAUSE

Turning to the first requirement, “good cause” for setting aside a default judgment can include “excusable neglect,” which encompasses “both simple, faultless omissions to act and, more commonly, omissions caused by carelessness.” *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 388 (1993). Excusable neglect has been explained as “requires something more compelling than ordinary lapses of diligence or simple neglect to justify disturbing” the default judgment. *Jones v. Phipps*, 39 F.3d 158, 162 (7th Cir. 1994). Good cause is not a rigorous or high standard under Rule 6(b), and courts have construed it broadly. *Ahanchion v. Kenan Pictures*, 624 F.3d 1253 (9th Cir. 2010); *Venegas-Hernandez v. Sonolux Records*, 370 F.3d 183, 187 (1st Cir. 2004). It imposes a “light burden.” Moore’s Federal Practice § 6.06 [2] p. 6-32. Matthew Bender 3rd ed. 2013.

Once the mistake was discovered, Petitioner took quick action in correcting the problem. “What constitutes quick action varies from case to case” and relies heavily upon the specific circumstances of the case. *Trade Well Int’l v. United Cent. Bank*, 825 F.3d 854, 861 (7th Cir.

2016). This motion to direct the default judgment followed roughly one week after the judgement was received. There is no reason to think that the Respondents have been prejudiced by the (in total) approximate four-week delay in filing. So, the quick-action requirement has also been met. In applying the *Pioneer-Briones* analysis, courts have found that inadvertent calendaring mistakes, while they may be negligent, constitute “good cause” under Rules 6(b) and 60(b) to entitle relief for late filings. *Pincay*, 389 F.3d at 860.

III. EXCUSABLE NEGLECT

The Supreme Court has designated four factors for determining when a late filing may constitute “excusable neglect.” *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993). These factors include: “(1) the danger of prejudice to the [opposing party], (2) the length of delay and its potential impact on judicial proceedings, (3) the reason for the delay, including whether it was within the reasonable control of the movant, and (4) whether the movant acted in good faith.” *In re Vitamins Antitrust Class Action*, 327 F.3d 1207, 1209 (D.C. Cir. 2003) (citing *Pioneer*, 507 U.S. at 395). The determination of whether a party's neglect is excusable “is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission.” *Pioneer*, 507 U.S. at 395.

At least three of the four Pioneer factors favor the Petitioner. First, Respondents would not be prejudiced if the petition were to be accepted. Second, the length of the delay – approximately 4 days – would not have an impact on judicial proceedings. See, e.g., *Cryer v. InterSolutions, Inc.*, No. 06-cv-2032, 2007 WL 1191928, at *6 (D.D.C. April 20, 2007) (length of delay was “not great” where motion for extension of time to file for class certification was filed 22 days after deadline). Finally, there is no reason to believe that Petitioner acted in bad faith.

The excusable neglect doctrine exists, at least in part, to prevent victories by default. *Newgen, LLC v. Safe Cig. LLC*, 840 F.3d 606, 616 (9th Cir. 2016) (observing that it is “the general rule that default judgments are ordinarily disfavored.”) If the petition is not accepted, then the Petitioner does not get the opportunity to argue the proposed constitutional violations, essentially giving the Respondents a victory by default. Litigation in the federal civil procedure system should be decided on the merits and not on technicalities. *Rodriguez v. Village Green Realty, LLC*, 788 F.3d 31, 47 (2nd Cir. 2015) (citing *Cargill, Inc. v. Sears Petroleum & Transp. Corp.*, 334 F. Supp. 2d 197, 247 (NDNY 2014))

IV. FAULT/MISTAKE

Nevertheless, the remaining Pioneer factor – fault – is “perhaps the most important single factor.” *Webster v. Pacesetter, Inc.*, 270 F. Supp. 2d 9, 14-15 (D.D.C. 2003) (internal quotations and citations omitted). See also *Wilson v. Prudential Fin.*, 218 F.R.D. 1, 3 (D.D.C. 2003) (fault is the “key factor” in excusable neglect analysis). Petitioner explains its delay in filing the petition. The Petitioner is not an attorney and still attempted to follow the rules and procedures to that capacity. Decisions in cases involving self-represented litigants are usually handled differently by, affording self-represented litigants’ latitude and making allowances, being lenient and solicitous, or giving them every consideration. Petitioner asks fair treatment though unaided and unable to obtain the services of a lawyer. The missed deadline, though the responsibility of the Petitioner, should be reconsidered as the Petitioner endeavored in the process to negotiate a thicket of legal formalities at peril of losing the right to be heard. This mistake could not have been simply remedied since there was no docket and Petitioner does not have access to ECF notifications or access to other court systems. Unlike an attorney, Petitioner cannot view a docket in an instant at anytime from anywhere using the electronic case filing. The

health-related issues also contributed significantly in the delay as Petitioner was navigating through recovery from the Covid-19 virus, which has caused a global pandemic with little understanding of treatment. Rule 6(b), like all the Federal Rules of Civil Procedure, "[is] to be liberally construed to effectuate the general purpose of seeing that cases are tried on the merits." *Rodgers v. Watt*, 722 F.2d 456, 459 (9th Cir. 1983); *Wong v. Regents of the Univ. of Calif.*, 410 F.3d 1052, 1060 (9th Cir. 2005) ("Of course, courts should not mindlessly enforce deadlines.") Petitioner's failure to timely file the petition was in fact the result of excusable neglect.

CONCLUSION

Missing of the deadline was inadvertent. Petitioner has acted expeditiously and in good faith to get the petition submitted, and the respondents have not been prejudiced. For the reasons explained above, the Petitioner respectfully ask that the Court relieve the Petitioner from its January 14, 2021 judgement by filing the out of time petition.

Respectfully submitted this 24th of January, 2022.

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