

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2022CP1800388**

James Anthony Primus		Solicitor First Judicial Circuit	Margarette McDonald
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

2022 OCT 19 PM 1:10
 CLERK OF COURT
 DORCHESTER COUNTY
 CERTIFIED COPY

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

<u>Heath Taylor</u>	<u>2775</u>	<u>10/19/2022</u>
Circuit Court Judge	Judge Code	Date

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 NOV 01 2022
 SC Court of Appeals

For Clerk of Court Office Use Only

This judgment was entered on 10/19/2022, and a copy mailed first class or placed in the appropriate attorney's box on 10/19/2022, to attorneys of record or to parties (when appearing pro se) as follows:

James Anthony Primus#252315,
Mcdougall Correctional Institution
1516 Old Gilliard Road
Ridgeville, SC 29472

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

Cheryl Graham - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

James Anthony Primus,)
Plaintiff,)

v.)

Dorchester County Solicitor, David M.)
Pascoe and Margaret M. McDonald,)
Defendants.)

IN THE COURT OF COMMON PLEAS
CASE NO. 2022-CP-18-00388

**ORDER DENYING PLAINTIFF'S
MOTION TO RECONSIDER COURT
ORDER DENYING *IN FORMA*
*PAUPERIS***

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NOV 01 2022

SC Court of Appeals

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DORCHESTER COUNTY
CLERK OF COURT

This matter came before the Court by way of Plaintiff's Motion to Reconsider the Court's September 13, 2022 Order denying leave to proceed *in forma pauperis*. After careful consideration of this matter, Plaintiff's Motion to Reconsider is DENIED.

PROCEDURAL BACKGROUND

This Court believes the procedural history leading up to Plaintiff's current motion warrants clarification. On March 3, 2022, Plaintiff filed a Summons and Complaint, along with a motion to proceed *in forma pauperis*. The Honorable Maite Murphy denied Plaintiff's motion to proceed *in forma pauperis* on May 19, 2022. Following Judge Murphy's denial, Plaintiff timely filed a motion to reconsider on May 27, 2022, in which he alleged "the Honorable Maite Murphy should recuse Herself From and Appearance of Bias Toward Plaintiff and allow another Judge to decide." In response, on June 3, 2022, Judge Murphy issued a Form 4 granting Plaintiff's motion to reconsider, vacating the Court's May 19, 2022 Order, restoring Plaintiff's case, and resubmitting his request to proceed *in forma pauperis* to a different judge for consideration. Subsequently, on June 13, 2022, Plaintiff filed an appeal with the Court of Appeals of the circuit court's original May 19, 2022 Order denying Plaintiff's request to proceed *in forma pauperis*. Given the circuit court's June

Nonetheless, the Court takes this opportunity to address the substance of Plaintiff's Motion to Compel Compliance with Court of Appeals Order filed August 11, 2022.² In his motion, Plaintiff appears to argue that Judge Murphy's June 3, 2022 Order and the Court of Appeals August 11, 2022 Order direct this Court to allow Plaintiff to proceed *in forma pauperis*. He further argues that Judge Taylor's September 13, 2022 Order was a denial of this directive, stemming from fear that the Clerk of Court and Judge Taylor would become defendants in the case. This is simply not the case. Judge Murphy's June 3, 2022 Order vacated the initial denial of Plaintiff's request to proceed *in forma pauperis* and ordered that the request be sent to a different judge for consideration. The August 11, 2022 Court of Appeals Order held that since the original order denying Plaintiff's request to proceed *in forma pauperis* had been vacated, Plaintiff's appeal of that order was now moot. His appeal was therefore dismissed.

The South Carolina Supreme Court has held that "[i]n the absence of a statutory provision allowing the general waiver of filing fees, we conclude motions to proceed in forma pauperis may only be granted where specifically authorized by statute or required by constitutional provisions." *Ex parte Martin*, 321 S.C. 533, 535, 471 S.E.2d 134, 135 (1995). While South Carolina state courts have not addressed the issue, the Fourth Circuit and District Court of South Carolina have held that "a . . . court may consider a statute of limitations defense *sua sponte* when the face of the complaint plainly reveals the existence of such defense." *Mikell v. South Carolina*, No. 0:22-1207-JFA-SVH, 2022 WL 2500240 at *3 (D.S.C. April 27, 2022); *Id.* (citing *Nasim v. Warden, Md. House of Correction*, 64 F.3d 951, 953-54 (4th Cir. 1995) ("[T]his screening authority differentiates in forma pauperis suits from ordinary civil suits and justifies an exception

² This Motion was included with Plaintiff's October 3, 2022 Motion to Reconsider; however, it was returned to Plaintiff unfiled since the Clerk's case file was closed after Judge Taylor's September 13, 2022 Order Denying *In Forma Pauperis*.

3, 2022 Order granting Plaintiff's motion to reconsider, the Court of Appeals ruled Plaintiff's appeal was moot and his appeal was dismissed by Order dated August 11, 2022. Plaintiff's motion to proceed *in forma pauperis* was thereafter sent to this Court for consideration and was denied by Order dated September 13, 2022. In the Order, the Court noted:

Plaintiff's Motion to Proceed *In Forma Pauperis* relates to an Assault and Battery High and Aggravated Nature charge he was sentenced to on September 1, 1998. As such, Plaintiff's filing well exceeds the statute of limitations under S.C. Code Ann. §§ 15-78-10 *et seq.* It is therefore ordered that Plaintiff's Motion to Proceed *In Forma Pauperis* is hereby DENIED.

On October 3, 2022, Plaintiff filed the current Motion to Reconsider Judge Taylor's September 13, 2022 Order.¹

DISCUSSION

A. Pursuant to SCRCP Rule 59(e), Plaintiff did not timely file his Motion to Reconsider.

Rule 59(e) provides that “[a] motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order.” Here, the court entered its Order denying leave to proceed *in forma pauperis* on September 13, 2022. A Form 4 indicating service on Plaintiff was filed on the same date. Plaintiff, therefore, had until September 26, 2022, to file his motion. Plaintiff's current Motion to Reconsider was received by the Clerk of Court in Dorchester County on October 3, 2022. Therefore, Plaintiff's Motion to Reconsider is denied as not being timely filed.

B. Plaintiff's request to proceed *in forma pauperis* was properly denied as his Complaint was filed past the statute of limitations and waiver of filing fees in this case was not specifically authorized by statute or required by constitutional provisions.

¹ Plaintiff did not formally file a Motion to Reconsider, he only filed a motion coversheet captioned “Motion to Proceed in forma pauperis Reconsideration.”

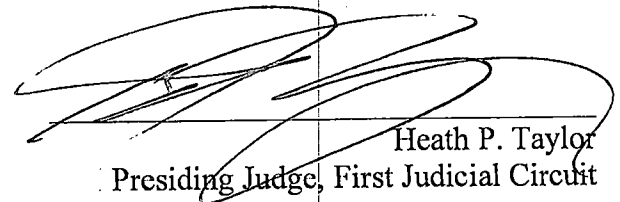
to the general rule that a statute of limitations defense should not be raised and considered sua sponte.”)).

In compliance with Judge Murphy’s June 3, 2022 Order, Plaintiff’s Complaint and request to proceed *in forma pauperis* were submitted to Judge Taylor for his consideration. This Court used its screening authority on September 13, 2022, when it evaluated Plaintiff’s Complaint and denied his request to proceed *in forma pauperis* as exceeding the statute of limitations. Moreover, there is no statute or constitutional provision specifically authorizing that filings fees be waived in civil malpractice lawsuits.

IT IS THEREFORE ORDERED that Plaintiff’s Motion to Reconsider is DENIED.

IT IS SO ORDERED!

October 17, 2022
Orangeburg, South Carolina



Heath P. Taylor
Presiding Judge, First Judicial Circuit