

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Appellate Case No. 2013-001622

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AUG 07 2013

SC Court of Appeals

Derick Ward,

Appellant,

v.

Margaret H. Ashbaugh,

Respondent.

MOTION TO PROCEED *IN FORMA PAUPERIS*

The Appellant, through his undersigned attorney, hereby moves to have this honorable Court allow him to proceed *in forma pauperis*.

To begin, the Appellant would show that he is indigent. Appellant earns his income as a self-proprietor, providing local homes and businesses with pest control services and performing any supplementary odd jobs he can find. His monthly income fluctuates from \$500 to \$2,000. He and his girlfriend also support their two small children. Appellant would show that paying \$100 to this Court would be a substantial hardship on him and his family.

In the absence of a statutory provision allowing the general waiver of filing fees, the South Carolina Supreme Court has concluded that 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, 471 S.E.2d 134 (1995). In the case at hand, no statute or constitutional provision requires the requested fee waiver, but a recent amendment to the South Carolina Rules of Civil Procedure does outline that "fees related to the filing of the action shall be waived without the necessity of a motion and court approval." Rule 3(b)(2) SCRPC. This amendment to Rule 3 of the SCRPC took effect on April 28, 2011, and though

admittedly Rule 3 of the SCRCP governs the “commencement of an action” rather than the “commencement of an appeal.” Appellant here believe the spirit, intent, and purpose of the 2011 amendment to Rule 3 supports his *in forma pauperis* request. South Carolina Legal Services (SCLS) has extremely limited public funding with which to represent civil litigants like Appellant and, thus, this fee waiver would help further the access to the court and proceed to the substance of the appeal for Appellant and other similarly-situated SCLS-represented parties.

Furthermore, here Appellant seeks to file an appeal concerning his housing. No South Carolina case has categorically concluded that housing is considered a fundamental right under constitutional analysis in fee waiver litigation (*see Ex parte Cauthen*, 291 S.C. 465, 354 S.E. 2d 381 (1987), *Thompson v. State*, 325 S.C. 58, 479 S.E.2d 808 (1997)), but housing undoubtedly is a critical issue for all South Carolinians and worthy of the properly limited availability of a fee waiver.

For these reasons, the Appellant requests the Court allow him to proceed *in forma pauperis*, and waive the initial filing fee.

I SO MOVE,

Date: August 6, 2013



D. Elliott Tait
SC Bar No.: 100772
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Florence, SC 29501
843-413-9500
843-413-1013 (fax)
ATTORNEY FOR APPELLANT

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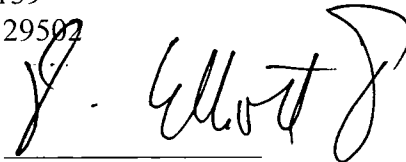
Margaret H. Ashbaugh,

Respondent.

CERTIFICATE OF MAILING

I, D. Elliott Tait, do hereby certify that I have this date served one (1) copy of the Motion to Proceed *In Forma Pauperis* upon the Respondent through her counsel by causing said copy to be deposited with the US Postal Service, first class postage prepaid, properly affixed hereto and addressed as follows:

Karl A. Folkens
PO Box 6139
Florence, SC 29502



D. Elliott Tait
Attorney for Petitioner
320 South Coit Street
Florence, South Carolina 29501
(843) 413-9500 (843) 413-1013 (fax)

Signed in Florence, South Carolina

Aug. 6, 2013



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August 6, 2013

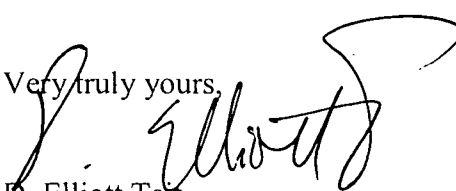
Jenny Abbott Kitchings
Clerk of Court
1015 Sumter Street
Columbia, South Carolina 29201

Re: Ashbaugh v. Ward
Case No. 2013-CP-21-00927

Dear Ms. Kitchings:

I hope this letter finds you well. Attached please find the original and seven (7) copies of my Motion to Proceed *In Forma Pauperis*. Please file the original and six copies, and return the seventh copy to me in the envelope provided. Also, please find the original and one (1) copy of the Certificate of Service for the Motion to Proceed *In Forma Pauperis*. Please file the original and return the copy to me.

Very truly yours,


D. Elliott Taft
Staff Attorney

Enclosures

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