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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Jessica A. Salvini, Circuit Court Judge

Case No. 2021-CP-39-00329
Court of Appeals Case No. 2025-001327

Michael and Mary Smith

Appellants,

v.

King Asphalt, Inc.

Respondent.

Motion and Affidavit to Proceed IN FORMA PAUPERIS

Michael Smith
Mary Smith
Appellants, pro se
220 Stancil Street
Easley, SC 29640
MichaelDSmith@housemail.com

Opposing Counsel of Record:
Catharine Garbee Griffin Esq.
Baker, Ravenel & Bender LLC
3710 Landmark Drive, Suite 400
Columbia, S.C. 29204
CGriffin@brblegal.com

Motion and Affidavit to Proceed IN FORMA PAUPERIS

Michael and MaryAnne Smith, Appellants pro se, respectfully move for leave to proceed in forma pauperis pursuant to Rule 3(b)(1), SCRPC, S.C. Code Ann. § 15-9-30, and as interpreted by *Ex parte Martin*, 321 S.C. 533 (1995). In support of this motion, Appellants state as follows:

1. Inability to Pay Court Costs and Fees

Appellants are functionally indigent and lack the financial resources to pay the costs of filing, service, transcript preparation, and all additional court-related expenses required for the prosecution of this appeal. Their annual household income is significantly below the federal poverty level, as detailed in the below affidavit and in forma pauperis documentation. Appellants previously sought leave to proceed in forma pauperis from the Circuit Court [Exhibit A], which was denied due to a lack of jurisdiction over appellate fees, as set forth in the attached Circuit Court Order [Exhibit B]. Any imposition of fees would effectively bar them from pursuing their rights in this Court.

2. Good Faith and Non-Frivolous Appeal

This appeal is taken in good faith and is not frivolous. Appellants seek appellate review of substantial legal and factual questions arising from the Circuit Court's rulings, including:

- **Whether the Circuit Court erred in granting summary judgment despite undisputed evidence of statutory and regulatory violations supporting a negligence per se claim; and**
- **Whether the Circuit Court erred in misapplying the legal standard for negligence per se by treating Appellants' claim as one of ordinary negligence; and**

- **Whether the Circuit Court erred in denying Appellants' Rule 59(e) motion without addressing the material factual and procedural issues raised therein.**

These issues are not only substantial but go to the heart of Appellants' right to a fair trial and due process. The appeal presents unresolved questions of law and fact that fall squarely within the jurisdiction of the Court of Appeals.

3. Necessity of IFP Status for Access to Justice

Appellants' indigency and inability to pay court costs, combined with their inability to secure adequate legal representation, create a genuine barrier to meaningful access to the courts. Without leave to proceed in forma pauperis, Appellants would be denied the opportunity to have their appeal heard on the merits. Granting this motion is therefore essential to preserve Appellants' constitutional rights and to ensure that justice is not denied based on financial hardship.

4. Prayer for Relief

For the foregoing reasons, Appellants respectfully request that the Court:

- **Grant leave to proceed in forma pauperis for all purposes in this appeal;**
- **Waive all filing fees, service fees, and related court costs;**
- **Grant such other and further relief as the Court deems just and proper.**

Plaintiffs submit the following financial affidavit in support of this motion. A proposed Order is attached.

| | |
|------------------|--------------------------------------|
| Address | 220 Stancil Street, Easley, SC 29640 |
| Age | 72/54 |
| Occupation | Retired/Disabled |
| Employer | None |
| Employer Address | N/A |

| <u>Gross Monthly Income</u> | <u>Amount:</u> |
|---|-----------------------|
| 1) Earnings (attach recent pay stubs) | -0- |
| 2) Overtime | N/A |
| 3) Social Security, VA Benefits, Workers' Comp or Disability (SSI) | \$1470 |
| 4) Unemployment | N/A |
| 5) Alimony / Child Support (receiving) | N/A |
| 6) Other (Specify) <u>SNAP/EBT</u> | \$156 |
| Total Amount (Add lines 1-6): | \$1626 |

| <u>Assets</u> | <u>Amount:</u> |
|--|-----------------------------|
| 1) Cash | \$320 |
| 2) Money in Bank Accounts (Checking & Savings) | \$35 |
| 3) IRA / 401k / Pensions | N/A |
| 4) Other (Specify) <u> </u> | <u> </u> |
| Total Amount (Add lines 1-4): | \$355 |

| <u>Monthly Expenses</u> | <u>Amount:</u> |
|--|-----------------------|
| 1) Rent / Mortgage | \$300 |
| 2) Utilities | \$150 |
| 3) Cell phone / Phone | N/A |
| 4) Food | \$450 |
| 5) Child Support / Alimony (Paying) | N/A |
| 6) Child Care | N/A |
| 7) Car Payment | N/A |
| 8) Car Operating Expenses (Insurance, gas, maintenance) | N/A |
| 9) Clothing | \$150 |
| 10) Cable / Satellite TV / Internet | \$30 |
| 11) Medical / Dental / Vision Expenses | N/A |
| 12) Medical / Dental / Vision Insurance | N/A |
| 13) Credit Card / Loan Payments | \$186 |

14) Other (Specify) _____
Total Amount (Add lines 1-14): \$1266

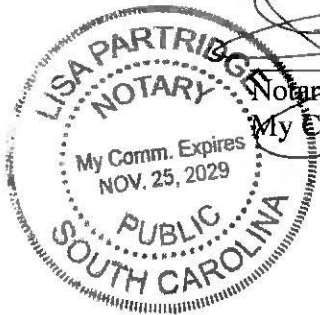
We declare under penalty of perjury that the above information is true and correct.

Michael Smith July 14, 2025
Michael Smith, Appellant pro se Date
Mary Smith July 14, 2025
Mary Smith, Appellant pro se Date

Attachments:

- Proposed Order to Proceed In Forma Pauperis
- **Exhibit A:** Circuit Court Motion to Proceed In Forma Pauperis (Case No. 2021-CP-39-00329)
- **Exhibit B:** Circuit Court Form 4 Order Denying Motion to Proceed In Forma Pauperis (Judge Perry Gravely - Dated 06/24/2025)

Sworn to before me this 14th day
Of July, 2025



Notary Public for South Carolina
My Commission Expires: 11/25/2029

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Pickens
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP3900329

Michael Smith et al
PLAINTIFF(S)

King Asphalt Inc
DEFENDANT(S)

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.
- 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

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:

The Plaintiffs have filed a Motion to Proceed In Forma Pauperis regarding the appeal of the Order granting Summary Judgment and Order denying the Motion to Reconsider which was filed on May 27, 2025. First, the Notice of Appeal should comply with Rule 203, S.C. Appellate Court Rules ("SCACR"). Upon compliance with Rule 203, this appellate court has exclusive jurisdiction over the appeal. See Rule 205, SCACR. Any Motions regarding the Appeal shall comply with Rule 240, SCACR. The basis for Plaintiffs' Motion does not appear to fall within the general outline provided by Ex Parte Martin v. State, 321 S.C. 533 (Sup 1995). Further, this Court is not aware of any authority allowing a Circuit Court to waive the fees payable to the South Carolina Court of Appeals. Therefore, the Plaintiffs' Motion is denied.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/24/2025 .

Mary Ann Smith for Mary Ann Smith
Mary Ann Smith for Mary Ann Smith
Michael Smith for Michael Smith
Michael Smith for Michael Smith

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: 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 judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Pickens Common Pleas

Case Caption: Michael Smith , plaintiff, et al VS Themistoklis Economo , defendant,
et al

Case Number: 2021CP3900329

Type: Order/Electronic Form 4

So Ordered

Hon Perry H. Gravely, Chief Administrative
Judge-Civil

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Jessica A. Salvini, Circuit Court Judge

Case No. 2021-CP-39-00329
Court of Appeals Case No. 2025-001327

Michael and Mary Smith

Appellants,

v.

King Asphalt, Inc.

Respondent.

PROPOSED ORDER TO PROCEED IN FORMA PAUPERIS

Michael Smith
Mary Smith
Appellants, pro se
220 Stancil Street
Easley, SC 29640
MichaelDSmith@housemail.com

Opposing Counsel of Record:
Catharine Garbee Griffin Esq.
Baker, Ravenel & Bender LLC
3710 Landmark Drive, Suite 400
Columbia, S.C. 29204
CGriffin@brblegal.com

PROPOSED ORDER TO PROCEED IN FORMA PAUPERIS

Upon consideration of Appellants Michael and Mary Smith's Motion and Affidavit to Proceed in Forma Pauperis, and it appearing to the Court that Appellants are unable to pay the costs and fees of this appeal without undue hardship, and that the affidavit of indigency submitted by Appellants is sufficient, and for good cause shown, it is hereby:

ORDERED that Appellants Michael and Mary Smith are granted leave to proceed in forma pauperis in the above-captioned appeal, pursuant to Rule 3(b)(1), SCRCP and S.C. Code Ann. § 15-9-30, and as interpreted by *Ex parte Martin*, 321 S.C. 533 (1995).

IT IS FURTHER ORDERED that the Clerk of the Court of Appeals shall:

1. File Appellants' Notice of Appeal and all subsequent appellate filings without prepayment of the filing fee or any other Court of Appeals costs.
2. Accept all necessary filings from Appellants without demanding fees typically associated with such filings (e.g., motion fees, copying fees for court use, etc.).

IT IS FURTHER ORDERED that the Clerk of the Pickens County Court of Common Pleas shall:

1. Prepare and transmit the Record on Appeal, including all designated portions, to the Clerk of the Court of Appeals without demanding payment of any transcription, copying, or preparation fees from Appellants Michael and Mary Smith.
2. Provide Appellants Michael and Mary Smith with any necessary copies of documents from the lower court file that they may reasonably require for this appeal without charging associated fees, upon proper request.

IT IS FURTHER ORDERED that all officers of the Court involved in this appeal, including the Clerk of the Court of Appeals and the Clerk of the Pickens County Court of Common Pleas, shall perform all duties required by law in the same manner as if all fees had been paid by Appellants.

IT IS FURTHER ORDERED that Appellants are exempt from paying any other court costs or fees associated with this appeal, including but not limited to, fees for the preparation of the Record on Appeal, motion fees, and any other administrative charges, unless otherwise specifically ordered by this Court.

SO ORDERED this ____ day of _____, 2025.

JUDGE, SOUTH CAROLINA COURT OF APPEALS

| | | |
|----------------------------|---|----------------------------------|
| STATE OF SOUTH CAROLINA |) | |
| |) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF Pickens |) | |
| |) | THIRTEENTH JUDICIAL CIRCUIT |
| Michael and MaryAnne Smith |) | |
| Plaintiffs, |) | MOTION AND AFFIDAVIT TO |
| |) | <u>PROCEED IN FORMA PAUPERIS</u> |
| vs. |) | |
| |) | |
| King Asphalt, Inc. |) | |
| Defendant. |) | FILE NO. 2021-CP-39-00329 |

Clerk of Court Pickens County, SC
 JUN 23 25 PM 12:03

Motion and Affidavit to Proceed IN FORMA PAUPERIS

We, Michael and MaryAnne Smith, Plaintiffs pro se, are unable to pay the costs of filing, service, and all additional court-related expenses associated with the action and appeal. We respectfully request leave to proceed in forma pauperis, pursuant to **Rule 3(b)(1), SCRPC** and **S.C. Code Ann. § 15-9-30**, and as interpreted by **Ex parte Martin, 321 S.C. 533 (1995)**.

Plaintiffs respectfully assert that this appeal is taken in good faith and is not frivolous. The issues on appeal include whether the Circuit Court committed legal error by:

1. Granting summary judgment despite undisputed evidence of a statutory and regulatory violation supporting a negligence per se claim; and
2. Denying Plaintiffs' Rule 59(e) motion without addressing material factual and procedural issues raised therein.

Plaintiffs believe the Court of Appeals has jurisdiction to correct these errors and that substantial questions of law and fact remain unresolved. Plaintiffs are functionally indigent and unable to secure adequate legal representation without in forma pauperis status, and therefore request permission to proceed accordingly.

Plaintiffs submit the following financial affidavit in support of this motion. A proposed Order is attached.

| | |
|------------------|--------------------------------------|
| Address | 220 Stencil Street, Easley, SC 29640 |
| Age | 72/54 |
| Occupation | Retired/Disabled |
| Employer | None |
| Employer Address | N/A |

| <u>Gross Monthly Income</u> | <u>Amount:</u> |
|---|----------------|
| 1) Earnings (attach recent pay stubs) | -0- |
| 2) Overtime | N/A |
| 3) Social Security, VA Benefits, Workers' Comp or Disability (SSI) | \$1470 |

| | |
|--|---------------|
| 4) Unemployment | N/A |
| 5) Alimony / Child Support (receiving) | N/A |
| 6) Other (Specify) <u>SNAP/EBT</u> | \$156 |
| Total Amount (Add lines 1-6): | \$1626 |

| | |
|--|-----------------------|
| <u>Assets</u> | <u>Amount:</u> |
| 1) Cash | \$20 |
| 2) Money in Bank Accounts (Checking & Savings) | \$35 |
| 3) IRA / 401k / Pensions | N/A |
| 4) Other (Specify) <input type="text"/> | <input type="text"/> |
| Total Amount (Add lines 1-4): | \$55 |

| | |
|--|-----------------------|
| <u>Monthly Expenses</u> | <u>Amount:</u> |
| 1) Rent / Mortgage | \$300 |
| 2) Utilities | \$150 |
| 3) Cell phone / Phone | \$32 |
| 4) Food | \$450 |
| 5) Child Support / Alimony (Paying) | N/A |
| 6) Child Care | N/A |
| 7) Car Payment | N/A |
| 8) Car Operating Expenses (Insurance, gas, maintenance) | N/A |
| 9) Clothing | \$150 |
| 10) Cable / Satellite TV / Internet | \$30 |
| 11) Medical / Dental / Vision Expenses | N/A |
| 12) Medical / Dental / Vision Insurance | N/A |
| 13) Credit Card / Loan Payments | \$186 |
| 14) Other (Specify) <input type="text"/> | <input type="text"/> |
| Total Amount (Add lines 1-14): | \$1298 |

We declare under penalty of perjury that the above information is true and correct.

Michael D. Smith 6/23/25
 Michael D. Smith, Plaintiff pro se Date

MaryAnne Smith 6/23/25
 MaryAnne Smith, Plaintiff pro se Date

Sworn to before me this 23rd day
 Of June, 2025

Kendra Taylor
 Notary Public for South Carolina
 My Commission Expires: 07/07/2032



paid \$25.00 cash for motion fee
 msroom 6/23/25

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Michael and Mary Smith

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CERTIFICATE OF SERVICE

Michael Smith
Mary Smith
Appellants, pro se
220 Stancil Street
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MichaelDSmith@housemail.com

Opposing Counsel of Record:
Catharine Garbee Griffin Esq.
Baker, Ravenel & Bender LLC
3710 Landmark Drive, Suite 400
Columbia, S.C. 29204
CGriffin@brblegal.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the

1. **Motion and Affidavit to Proceed IN FORMA PAUPERIS (with attachments),**
2. **PROPOSED ORDER (IN FORMA PAUPERIS),**

in **Smith v. King Asphalt, Inc.**, Case No. 2021-CP-39-00329 **Court of Appeals Case No. 2025-001327** was served upon the following counsel of record:

Catharine Garbee Griffin, Esq.
Baker, Ravenel & Bender, LLP
3710 Landmark Drive, Suite 400
Columbia, SC 29204
CGriffin@brblegal.com

The document was served via the following methods:

By Email to: CGriffin@brblegal.com
Date of email service: July 14, 2025

To the above address by U.S. Mail with correct postage attached,
Date of Mailing: July 14, 2025

Respectfully submitted,

s/ Michael Smith July 14, 2025
Michael Smith Date
Pro Se Plaintiff
220 Stancil Street
Easley, S.C. 29640
MichaelDSmith@housemail.com