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Jul 24 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas
C/A No. 2021-CP-39-00329
Jessica A. Salvini, Circuit Judge

Appellate Case No. 2025-001327

Michael and Mary Smith..... Appellants,

v.

King Asphalt, Inc.,..... Respondent,

**RESPONDENT’S RETURN
TO APPELLANTS’
MOTION TO PROCEED
*In Forma Pauperis***

The respondent King Asphalt, Inc. opposes the appellants Michael and Mary Smith’s (“the Smiths” or “Appellants”) motion to proceed *in forma pauperis* and asks this Court to deny it.

The South Carolina Appellate Court Rules do not provide for filing of an appeal and proceeding *in forma pauperis* independent of the circuit court’s order under Rule 3(b) of the South Carolina Rule of Civil Procedure. Under that rule, “a plaintiff who desires to file an action *in forma pauperis* shall file in the court a motion for leave to proceed *in forma pauperis*, together with the complaint proposed to be filed and an affidavit showing the plaintiff’s inability to pay the fee required to file the action.” Rule 3(b), SCRPC. Thus, a plaintiff must file the motion at the outset of the case and not once he or she seeks to appeal the final judgment on the

merits. Here, the Smiths did not do so. Accordingly, they should be precluded from proceeding *in forma pauperis* at the appellate stage of this case.

If this Court, in its discretion, can nevertheless allow for an appeal *in forma pauperis*, see *Quillian v. Evatt*, 308 S.C. 555, 419 S.E.2d 783 (1992), such permission may not entail completely cost-free proceedings for the appellant. This is because “the scope of a grant to proceed *in forma pauperis* extends only to those fees associated with filing the appeal and related motions with this Court. The costs of the court reporter’s transcript and of copying the record and brief remain the responsibility of the appellant.” *Id.* Furthermore, “motions to proceed in forma pauperis may only be granted where specifically authorized by statute or required by constitutional provisions.” *Martin v. State*, 321 S.C. 533, 535, 471 S.E.2d 134, 135 (1995).

Here, the Smiths claim to “lack the financial resources to pay the costs of filing, service, transcripts preparation, and all additional court-related expenses required for the prosecution of this appeal.” (Mot. and Aff. at 2) Even if they are in fact without adequate resources, despite having collected significant sums in settlement of their claims against King Asphalt’s co-defendant, Themistoklis Economou, they have no grounds to support their motion. The Smiths neither cite a statute authorizing or requiring waiver of the court fees nor do they argue that their constitutionally-protected fundamental rights are implicated in this case.

WHEREFORE, the respondent King Asphalt, Inc. asks this Court to deny the Smiths’ motion to proceed *in forma pauperis* in this appeal.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

/s/Catharine Garbee Griffin

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PROOF OF SERVICE

I certify that on July 24, 2025, I served the respondent King Asphalt’s Return to Appellants’ Motion and Affidavit to Proceed *in Forma Pauperis* by email and US Mail on the *pro se* appellants Michael and Mary Smith, addressed as follows:

Michael and Mary Smith
220 Stancil Street
Easley, SC 29640
MichaelDSmith@housemail.com

s/Teresa Kowalewski

Columbia, South Carolina
July 24, 2025