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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas, Fifteenth Judicial Circuit
B. Alex Hyman, Circuit Court Judge
Lower Court Case No. 2026CP2605005

Appellate Case No. 2026-001771

Thomas Edward Humphrey, Appellant,

v.

State of South Carolina; Henry Dargan McMaster, Governor of South Carolina; South Carolina Department of Public Safety; Robert G. Woods IV, Director of the South Carolina Department of Public Safety; South Carolina Highway Patrol; Christopher N. Williamson, Colonel and Commander of the South Carolina Highway Patrol; Christopher A. Plyler, Corporal of the South Carolina Highway Patrol — all officials sued in their individual and official capacities; ABC Mobile Auto & RV Repair; and Does 1-20 (unknown agents, officers, or co-conspirators of the State of South Carolina, the South Carolina Department of Public Safety, or the South Carolina Highway Patrol),
Defendants,

of which State of South Carolina is the Respondent.

BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the circuit court err as a matter of law in treating the waiver of filing fees as discretionary, when *Ex parte Martin* holds that where certain fundamental rights are involved the Constitution requires that an indigent be allowed access to the courts?
2. Do Appellant's causes of action — false arrest, false imprisonment, the warrantless seizure of his home and effects, and the deprivation of liberty and property without due process — concern fundamental rights within the meaning of *Ex parte Martin*?
3. Did the circuit court err in denying leave to proceed in forma pauperis without making any factual findings, where *Lakes v. State* reverses such an order for want of findings?
4. Does the due process guarantee of access to the courts, together with the open-courts guarantee of Article I, Section 9 of the South Carolina Constitution, forbid conditioning an indigent litigant's access to the only available forum upon payment of a fee he cannot pay?
5. Did the circuit court err in dismissing the action where the order set no date for payment, the blank provided for that date was never completed, and the only payment deadline communicated to Appellant was stated in a letter from the Clerk's office rather than fixed by the court?

STATEMENT OF THE CASE

This appeal asks whether an indigent litigant may be shut out of the courts of this State because he cannot pay a \$150.00 filing fee, in an action alleging that agents of the State seized his home and restrained his person without process.

On June 23, 2026, Appellant Thomas Edward Humphrey filed a verified petition in equity in the Court of Common Pleas for Horry County against the State of South Carolina; Henry Dargan McMaster, Governor of South Carolina; the South Carolina Department of Public Safety; Robert G. Woods IV, Director of the South Carolina Department of Public Safety; the South Carolina Highway Patrol; Christopher N. Williamson, Colonel and Commander of the South Carolina Highway Patrol; Christopher A. Plyler, Corporal of the South Carolina Highway Patrol, all officials being sued in their individual and official capacities; ABC Mobile Auto & RV Repair; and Does 1-20. Of those defendants, the State of South Carolina is the Respondent on appeal. The petition arises from events of June 24, 2023 which it alleges constituted a warrantless seizure of Appellant's property, including the towing of his mobile home, and pleads false arrest, false imprisonment, trespass to chattels, and conversion, together with the deprivation of liberty and property without due process of law in violation of the Fourteenth Amendment and Article I, Section 3 of the Constitution of this State, and the unreasonable seizure of his person and effects in violation of the Fourth Amendment and Article I, Section 10.

No responsive pleading was filed and no respondent appeared below. No hearing was held — on the motion to proceed in forma pauperis or otherwise — and no trial took place, so there is no transcript of any proceeding. The action was commenced as a jury matter. The amount immediately involved on appeal is the \$150.00 filing fee.

Appellant filed with his petition a Motion and Affidavit to Proceed In Forma Pauperis, docketed the same day. His sworn financial declaration established monthly income of \$1,213 received as donative support, minimal liquid assets, and no source from which the filing fee could be drawn. Nothing in the record disputes that showing. The docket also reflects an entry styled “Filing Fees Wavied” dated June 23, 2026.

By order dated June 25, 2026 and filed July 1, 2026, the circuit court denied leave to proceed *in forma pauperis*. The order is a preprinted form, SCCA 405.1 (Rev. 06/2024), containing four checkboxes. The court checked one: “Leave is Denied to proceed *in forma pauperis* pursuant to *Ex parte Martin*.” (Order In Forma Pauperis p. 1.) The court did not check the separate box providing that leave is denied because the plaintiff “has failed to establish compliance with the Poverty Guidelines pursuant to Rule 3(b)(1), SCRCF.” The order contains no findings of any kind. It does not find that Appellant is able to pay. It does not find the action frivolous. It does not identify any respect in which the petition falls outside the constitutional exception *Martin* recognizes.

The form order further provides that, “[i]f denied, this case will be dismissed without further order of the court if the filing fee and associated costs are not paid on or before _____, 20____.” The blank was never completed. The court set no date.

The only payment deadline communicated to Appellant was contained in a letter dated July 1, 2026 from the Common Pleas Division of the Horry County Clerk of Court, stating that Appellant had ten days from the date of that letter to pay the \$150.00 filing fee or the case would be dismissed. (Letter to Plaintiff Regarding Denied In Forma Pauperis, July 1, 2026, p. 1.) The letter was mailed from Conway, South Carolina to Appellant's residence in Waltham, Massachusetts, and was delivered on July 6, 2026. Appellant telephoned the Clerk's office that

same day and explained that he could not pay. He was unable to pay within the period stated in the letter, and he remains unable to pay.

The case was not dismissed when the period stated in the Clerk's letter expired. No dismissal was entered until August 4, 2026 — more than three weeks later — when an Order of Dismissal was entered, docketed as “Order/Electronic Form 4 — Case Dismissal.”

Appellant served and filed his Notice of Appeal on August 5, 2026, within thirty days of his July 6, 2026 receipt of written notice of entry of the order denying *in forma pauperis* status, and within thirty days of the August 4, 2026 dismissal. The appeal was docketed as Appellate Case No. 2026-001771. Appellant's motion to proceed *in forma pauperis* on appeal remains pending.

Both orders are properly before this Court. The August 4, 2026 dismissal is a final judgment disposing of the action. The antecedent order denying leave to proceed *in forma pauperis* was itself immediately appealable. In *Lakes v. State*, 333 S.C. 382, 510 S.E.2d 228 (Ct. App. 1998), this Court held that “[t]he trial judge's order denying Lakes's request to proceed *in forma pauperis* effectively discontinued the action because Lakes's only means of bringing the action was *in forma pauperis*.” *Id.* at 385, 510 S.E.2d at 229. The order therefore falls within S.C. Code Ann. § 14-3-330(2)(a) as an order having the effect of discontinuing the action. Service and filing were complete upon mailing on August 5, 2026. Rule 262, SCACR; *see* Rule 203(b)(1), SCACR.

Appellant withdraws ground (e) of his Notice of Appeal, which asserted that the order under review miscited the year of *Ex parte Martin*. That assertion was mistaken: Appellant took the year from the publication date of the reporter volume in which the decision appears rather than from the date of decision. The order's citation is correct. *Martin* was decided May 5, 1995, and is

properly cited as 321 S.C. 533, 471 S.E.2d 134 (1995). Appellant does not press that ground, and it is abandoned. No other ground stated in the Notice of Appeal is affected.

STANDARD OF REVIEW

The controlling question is one of law: whether *Ex parte Martin*, 321 S.C. 533, 471 S.E.2d 134 (1995), permits a circuit court to deny an indigent leave to proceed *in forma pauperis* in an action concerning fundamental rights. This Court decides questions of law de novo, with no particular deference to the court below.

The distinction is not academic. If *Martin* conferred discretion, the order would stand absent an abuse of it. But *Martin* confers no discretion over a qualifying claim; it states a constitutional command. In *Lakes*, the respondents likewise argued that the trial judge “acted within his discretion in denying Appellant's request to proceed *in forma pauperis*.” 333 S.C. at 385, 510 S.E.2d at 229. This Court reversed notwithstanding that argument, because the order lacked the findings that would support it. Whether Appellant's causes of action fall within the constitutional exception is a question of law, and if they do, waiver follows as a matter of law.

ARGUMENT

I. The Order Rests on a Misreading of *Ex parte Martin*: Where Fundamental Rights Are Involved, Waiver Is Required, Not Discretionary.

The order on appeal rests on a single authority, and treats it as a grant of discretion to withhold fee waiver. *Martin* says the opposite.

The Supreme Court first 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.” 321 S.C. at 535, 471 S.E.2d at 134–35. That sentence identifies two independent sources of authority for waiver — statute and constitution. Appellant does not contend that any of the statutory exceptions catalogued in *Martin* applies to his petition. He relies on the second source, which the Court addressed in the next breath:

Further, where certain fundamental rights are involved, the Constitution requires that an indigent be allowed access to the courts. 321 S.C. at 535, 471 S.E.2d at 135.

The operative verb is “requires.” Where the condition is satisfied, the Constitution commands access. A court presented with such a motion is not choosing among permissible outcomes; it is applying a constitutional requirement, and it has no discretion to withhold what the Constitution requires.

The Court's footnote confirms the mandatory character of the rule. Describing the examples it had given, the Court explained that they “are not exhaustive but are illustrations of when a motion to proceed *in forma pauperis* must be granted by a judge,” and added that “[o]ther statutory exceptions and other fundamental rights may require the waiver of filing fees for

indigents.” *Id.* at 536 n.1, 471 S.E.2d at 135 n.1. Two points follow. The categories are a floor, not a ceiling. And within them, waiver is not permitted but required.

The Court's closing directive assigns the roles. When an indigent files such a motion and the complaint “does not appear to fit within one of the statutory or constitutional exceptions,” the clerk “must submit the motion to a judge for a ruling as to whether the complaint does fit within one of the statutory exceptions or whether the cause of action concerns a fundamental right that requires waiver of the filing fee.” *Id.* at 536, 471 S.E.2d at 135. The clerk screens; the judge decides. That allocation matters to Argument V below.

One further feature of *Martin* bears on this appeal's posture. The Supreme Court dismissed Martin's own appeal as premature, because he sought review of the clerk's action “without first making a motion to have a circuit judge rule on his request to proceed without costs.” *Id.* at 534, 471 S.E.2d at 134. Here a circuit judge did rule. The defect that barred review in *Martin* is absent, and the merits are squarely presented.

II. Appellant's Claims Fall on the *Boddie–Smith* Side of the Line Martin Drew, Not the *Kras–Ortwein* Side.

Martin did not leave the fundamental-rights category undefined. Immediately after stating the rule, the Court marked its boundaries by comparison, contrasting *Boddie v. Connecticut*, 401 U.S. 371 (1971) (an indigent must be given access to courts in a divorce action), and *Smith v. Bennett*, 365 U.S. 708 (1961) (an indigent prisoner may not be required to pay a filing fee for petitioning for a writ of habeas corpus), with *Ortwein v. Schwab*, 410 U.S. 656 (1973) (no constitutional violation in requiring an indigent to pay an appellate filing fee to seek review of an adverse welfare decision), and *United States v. Kras*, 409 U.S. 434 (1973) (no constitutional

violation in requiring an indigent to pay a filing fee in bankruptcy). 321 S.C. at 535, 471 S.E.2d at 135.

The line those four cases draw is between liberty and personal security on one side and economic interests on the other. Divorce and habeas corpus lie on the protected side. A welfare-benefits appeal and a bankruptcy petition lie on the other. Appellant's claims lie on the protected side, and not marginally.

Freedom from restraint of the person. Appellant pleads false arrest and false imprisonment. *Smith v. Bennett* holds that an indigent may not be charged a filing fee to litigate the lawfulness of his confinement. Appellant seeks to litigate the lawfulness of his restraint by agents of the State. The interest is identical in kind. If a filing fee may not stand between an indigent and a habeas petition, it may not stand between an indigent and an action for false imprisonment.

The home. The seizure at issue was of Appellant's mobile home — his dwelling. *Boddie* rested on the intersection of a fundamental interest with a forum the State monopolizes. The security of the home against warrantless seizure is protected by the Fourth Amendment and by Article I, Section 10 of the Constitution of this State, and no forum but a court can redress its loss.

Deprivation of liberty and property without due process. Appellant pleads the deprivation of both, in violation of the Fourteenth Amendment and Article I, Section 3. This is the interest on which *Boddie* itself rests.

Kras and *Ortwein* do not reach this case. Bankruptcy relief and welfare-benefit review are economic adjustments; neither involved a claim that the government had taken the claimant's home or held his body. Appellant's common-law counts for trespass to chattels and conversion do not convert this action into an economic one: they arise from the same seizure and vindicate

the same constitutionally protected security in person, home, and effects. The gravamen is not a debt. It is a dwelling taken and a person restrained, both without process.

Because no findings accompany the order, the circuit court never explained why this action was thought to sit with *Kras* rather than with *Smith*. On the face of the petition it cannot.

III. *Lakes v. State* Requires Reversal: An Order Denying In Forma Pauperis Status Cannot Stand Without Factual Findings.

This Court has already reversed an order materially like the one on appeal, and for a reason that applies with greater force here. In *Lakes*, an inmate petitioned for habeas corpus and moved to proceed *in forma pauperis*; the trial judge denied the motion. The State defended the denial as an exercise of discretion, relying on *In re Maxton*, 325 S.C. 3, 478 S.E.2d 679 (1996), in which an inmate had filed sixty-four pro se petitions in three years, all summarily dismissed as frivolous. 333 S.C. at 385–86, 510 S.E.2d at 229–30.

This Court reversed. Although the litigant in *Lakes* had filed a direct appeal, three PCR applications, two certiorari petitions, a federal habeas petition, and numerous other writs and grievances, the order could not stand: “the trial judge failed to make factual findings to show the requests rise to the level of repetitive and abusive filings as in *Maxton* or those cases cited in *Maxton*.” *Id.* at 386, 510 S.E.2d at 230. The Court reversed and remanded while expressly declining to comment on the merits of the underlying claims.

The Supreme Court has since followed that reasoning. In *Williams v. State*, 354 S.C. 630, 583 S.E.2d 52 (2003), the Court vacated a *Maxton* order restricting an indigent's future filings, holding the factual basis insufficient. *Lakes* has not been narrowed; it has been ratified.

The comparison to this case is stark. The litigant in *Lakes* had a long filing history and still prevailed, because the order lacked findings. Appellant has no filing history at all. This is a single petition, filed once, in a case that has never been heard. The order denying him waiver contains no findings whatever — not on ability to pay, not on frivolousness, not on the nature of his claims. The box that would have rested the denial on the poverty guidelines of Rule 3(b), SCRCF, was left unchecked, so the record affirmatively forecloses that ground. If the order in *Lakes* could not survive review, this one cannot.

Nor can the denial rest on an unstated view that the petition is frivolous. *Maxton* addressed a litigant who had filed sixty-four petitions, every one dismissed. Nothing remotely comparable appears here, and no finding was made. The petition pleads long-recognized causes of action — false arrest, false imprisonment, trespass to chattels, conversion — arising from a specific, dated event. A pleading that states cognizable claims grounded in concrete facts is not frivolous, whatever its ultimate merit.

IV. Due Process and the Open-Courts Guarantee Independently Require Access.

The authority *Martin* invoked supplies an independent ground for reversal. *Boddie* holds that due process bars a State from denying, solely because of inability to pay, access to its courts to one seeking judicial resolution of a fundamental interest, where the State holds a monopoly over the means of resolution.

Each element is present. The interest is fundamental: freedom from restraint, and the security of the home. The forum is exclusive: Appellant seeks redress against the State and its agents, and only a court can give it. The inability to pay is established and undisputed, and the circuit court

made no finding to the contrary. Where a litigant genuinely cannot pay, a filing fee is not a toll but a bar; the consequence here was not delay but closure.

Article I, Section 9 of the Constitution of this State compels the same result on independent state grounds. It provides that all courts shall be public, and every person shall have speedy remedy therein for wrongs sustained. A guarantee of a speedy remedy is not satisfied by a courthouse open only to those who can pay to enter.

V. The Court Set No Payment Date, and the Dismissal Rested on a Deadline Supplied by the Clerk.

Even if the denial were sustainable, the dismissal that followed was not. The form order recites that the case “will be dismissed without further order of the court if the filing fee and associated costs are not paid on or before _____, 20____.” The blank was never completed. The court fixed no date. An order that purports to operate automatically cannot so operate by reference to a deadline the court never set.

The only deadline that reached Appellant came from the Clerk's office. Fixing the date on which a litigant's case will be extinguished is a judicial act. Under *Martin*, the clerk's function in these matters is to submit the motion “to a judge for a ruling” — the clerk screens, the judge decides. 321 S.C. at 536, 471 S.E.2d at 135. A deadline the judge never set is not made judicial by a clerk's letter announcing it.

The subsequent history confirms the defect rather than curing it. The case was not dismissed when the period in the Clerk's letter expired. No dismissal was entered until August 4, 2026, more than three weeks later, and then only by a separate judicial act. The dismissal therefore did

not occur “without further order of the court,” as the form recited, and it did not occur on any date the court had set, because the court set none.

Appellant does not contend that the additional time was improperly extended to him, and he is grateful for it. His point is narrower and purely legal: the order under review never fixed the date on which his rights would be extinguished.

Finally, the record is inconsistent on the very question the order purported to resolve. The docket contains an entry styled “Filing Fees Wavied” dated June 23, 2026 — eight days before entry of the order denying waiver. Appellant does not claim that entry granted him relief. It is a further reason the matter should be returned for a reasoned determination.

CONCLUSION

The right to seek redress in the courts of this State is not a privilege the State may sell. *Ex parte Martin* holds that where fundamental rights are involved the Constitution requires that an indigent be allowed access, and the rights Appellant asserts — freedom from restraint of his person, and the security of his home — sit squarely within the category *Martin* drew from *Boddie* and *Smith v. Bennett*.

Independently, *Lakes v. State* forbids sustaining an order of this kind on a record without findings. The order here contains none, and Appellant — unlike the litigant in *Lakes* — has no filing history at all. On this record, an indigent whose financial showing was undisputed and unaddressed was turned away from the only forum available to him, and his case was then dismissed on a deadline no judge ever set.

Appellant respectfully requests that this Court reverse the order denying leave to proceed *in forma pauperis*, vacate the Order of Dismissal entered August 4, 2026, and remand with instructions that Appellant be permitted to proceed *in forma pauperis* upon his verified petition.

Respectfully submitted,

s/ Thomas Edward Humphrey

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Dated: September 2, 2026

PROOF OF SERVICE

I, Thomas Edward Humphrey, Appellant, certify that I have served a copy of the foregoing Brief of Appellant upon all parties to this appeal by depositing the same in the United States Mail, first-class postage prepaid, addressed as follows:

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I further certify that the foregoing has been filed with the Clerk of the South Carolina Court of Appeals by electronic mail, together with this Proof of Service, pursuant to Rule 262(a)(3), SCACR, and the Order of the Supreme Court of South Carolina dated April 24, 2024 governing the electronic filing of documents in the appellate courts, and as required by Rules 208(a)(1) and 262(b), SCACR.

s/ Thomas Edward Humphrey
Thomas Edward Humphrey, *In Propria Persona*
Appellant

Dated: September 2, 2026