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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
Court of Common Pleas

J. Derham Cole, Jr., Circuit Court Judge

Case No. 2026-CP-42-01716
Appellate Case No. 2026-001145

Steve Emerson, #89994,

Appellant,

v.

Robert Strehlow, VI, MD,

Respondent.

INITIAL BRIEF OF RESPONDENT

Joshua T. Thompson (SC Bar No. 79137)
BOULIER THOMPSON & BARNES, LLC
101 W. St. John Street, Suite 300
Spartanburg, South Carolina 29306
P.O. Drawer 6470 (29304)
jthompson@btblawfirm.com
(864) 606-9610

Attorneys for Respondent

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STATEMENT OF ISSUES ON APPEAL

I. **The trial court correctly exercised its discretion in denying Appellant's Motion to Proceed *In Forma Pauperis* and dismissing his case because Appellant's lawsuit does not fit within a statutory exception or concern a fundamental right requiring waiver of a filing fee.**

II. **Alternatively, and as an additional sustaining ground, dismissal should be affirmed based upon Appellant's failure to comply with the statutory requirements for medical negligence actions.**

III. **Alternatively, and as an additional sustaining ground, the trial court's dismissal of Appellant's Complaint should be affirmed because the appeal contains conclusory arguments which are deemed abandoned.**

STATEMENT OF THE CASE

Appellant Steve Emerson ("Appellant") is an inmate currently confined within the South Carolina Department of Corrections at Perry Correctional Institution. (April 14, 2026 Complaint, p. 6.) Appellant has filed an appeal of the trial court's May 1, 2026 Order denying Appellant's Motion to Proceed *In Forma Pauperis* and dismissing his case for failure to pay the required filing fee. (May 1, 2026 Cover Letter and Order.)

On April 14, 2026, Appellant filed a lawsuit alleging "medical negligence" claims against Robert Strehlow VI, MD of Spartanburg Medical Center's Medical Group of the Carolinas. (April 14, 2026 Complaint, p. 1). Appellant alleges that Dr. Strehlow performed a urological surgery on March 27, 2024 with "bad pain" that is the basis of his lawsuit beginning "a few week's [sic] into April 2024." (April 14, 2026 Complaint, p. 1.) Appellant alleges one cause of action for the tort of "medical

negligence." (April 14, 2026 Complaint, pp. 1, 4 – 5.) The lawsuit does not raise any state or federal constitutional claims.

On April 14, 2026, Appellant submitted a Motion and Affidavit to Proceed *In Forma Pauperis*. (April 14, 2026 Motion.) That motion was adjudicated by the appropriate Chief Administrative Judge. By Order and cover letter filed May 1, 2026, Judge Cole denied *in forma pauperis* status for this litigation pursuant to Ex Parte Martin, 321 S.C. 533, 471 S.E.2d 134 (1995), and Appellant was informed that his case was dismissed. (May 1, 2026 Cover Letter and Order.) Appellant did not file any motion to alter or amend. This appeal follows.

STANDARD OF REVIEW

The standard of review applicable to a circuit court's decision to deny *in forma pauperis* status and dismiss for failure to pay required filing fees is an abuse of discretion standard. See, generally, Ex Parte: Martin v. State, 321 S.C. 533, 471 S.E.2d 134 (1995). "An abuse of discretion occurs when the [circuit court's] ruling is based upon an error of law or, when based upon factual conclusions, is without evidentiary support." Fontaine v. Peitz, 291 S.C. 536, 354 S.E.2d 565, 566 (1987).

ARGUMENTS

I. The trial court correctly exercised its discretion in denying Appellant's Motion to Proceed *In Forma Pauperis* and dismissing his case because Appellant's lawsuit does not fit within a statutory exception or concern a fundamental right requiring waiver of a filing fee.

Appellant has filed an appeal from the trial court's Order denying his Motion to Proceed *In Forma Pauperis* and dismissing his case for failure to pay the required Circuit Court filing fee.

As indicated, the Appellant's lawsuit alleges a sole claim against Dr. Strehlow of Spartanburg Medical Center's Medical Group of the Carolinas for medical negligence. The lawsuit does not raise any state or federal constitutional claims. (April 14, 2026 Complaint, pp. 1, 4 – 5.)

Appellant appears to complain that Judge Cole denied his request for *in forma pauperis* status, thereby requiring him to pay a filing fee in order to proceed with his lawsuit. Appellant has not, however, shown that Judge Cole abused his discretion.

In Ex Parte Martin v. State, 321 S.C. 533, 471 S.E.2d 134 (1995), the South Carolina Supreme Court expressly clarified when motions to proceed *in forma pauperis* should be granted. The Court explained:

> Because of the increasing number of persons seeking to proceed in forma pauperis, we take this opportunity to give guidance as to when it is appropriate to waive filing fees. In 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 534, 471 S.E.2d at 134-135 (emphasis added). The Supreme Court reviewed various statutory provisions that require a waiver of filing fees. Id. at 535 – 536, 471 S.E.2d at 135. The Supreme Court did not cite any statute requiring

waiver of filing fees for medical negligence claims. Id. The Supreme Court then offered the following directive:

> [W]hen an indigent litigant files a motion to proceed in forma pauperis pursuant to Rule 3(c), and the complaint does not appear to fit within one of the statutory or constitutional exceptions to the requirement of a filing fee, the clerk of court 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.

321 S.C. at 536, 471 S.E.2d at 135.

Since the South Carolina Supreme Court addressed *in forma pauperis* motions in Ex Parte: Martin v. State, decisional courts have consistently followed the guidelines set forth in the case. For example, in Sullivan v. S.C. Dept. of Corrections, 355 S.C. 437, 586 S.E.2d 124 (2003) (abrogated on other grounds), the South Carolina Supreme Court reiterated that where the General Assembly has not created a statutory waiver of filing fees and the case does not involve fundamental rights, access to courts is not constitutionally required and an inmate is not entitled to proceed *in forma pauperis*. In Sullivan, the SCDC denied the plaintiff's grievances concerning his inability to be admitted into step two of the SCDC's sex offender treatment program. The plaintiff then sought Administrative Law Court review which was denied due to lack of jurisdiction. Id. at 440 – 441, 586 S.E.2d at 125.

On appeal, the plaintiff filed a motion to proceed in forma pauperis. The Supreme Court noted that there was no statutory provision permitting waiver of the required filing fee pursuant to S.C. Code Ann. § 8-21-310(11) to bring an appeal under the Administrative Procedures Act. Further, the Supreme Court noted that there was no fundamental constitutional right at issue requiring access to the courts. Applying Ex Parte Martin v. State, the Court denied the plaintiff's motion to proceed *in forma pauperis*. Id. at 445 – 446, 586 S.E.2d at 128.

Just like in Sullivan, the Spartanburg County Clerk of Court is required by S.C. Code Ann. § 8-21-310(C)(1) to collect a filing fee in this matter. Appellant has not contested this baseline proposition.

The burden then shifts to Appellant to explain why that filing fee should be waived and he should be permitted to proceed *in forma pauperis*. Again just like Sullivan, Appellant has not identified any statutory provision enacted by the General Assembly that would have allowed the trial court to waive payment of the filing fee based upon a tort claim for medical negligence. Also like Sullivan, the lawsuit does not raise any constitutional claims nor implicate any "fundamental rights." Pursuing a tort action, most certainly, is not a fundamental right. In short, this action does not require or merit the waiver of filing fees. The denial of *in forma pauperis* status was a correct ruling. The trial court did not abuse its discretion, and its ruling denying Appellant's Motion and dismissing his case should be affirmed.

II. Alternatively, and as an additional sustaining ground[1], dismissal should be affirmed based upon Appellant's failure to comply with the statutory requirements for medical negligence actions.

Within Appellant's Complaint, he makes it expressly clear that he is alleging a sole cause of action for "medical negligence." (April 14, 2026 Complaint, pp. 1, 4 – 5.) In fact, Appellant's very first sentence of his Complaint begins, "I the Plaintiff in this Complaint of *medical negligence*…." (April 14, 2026 Complaint, p. 1.) (Emphasis added.)

Prior to filing a medical malpractice complaint in South Carolina, "the plaintiff shall contemporaneously file a Notice of Intent to File Suit and an affidavit of an expert witness, subject to the affidavit requirements established in Section 15-36-100." S.C. Code Ann. § 15-79-125(A). Appellant also was required to comply with all other requirements of Section 15-79-125, including serving certain discovery disclosures and participating in a presuit mediation. Id.

[1] A respondent "may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court." I'On v. Town of Mt. Pleasant, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000). "The appellate court may review respondent's additional reasons and, if convinced it is proper and fair to do so, rely on them or any other reason appearing in the record to affirm the lower court's judgment." Id. See also Rule 220(c), SCACR ("[t]he appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the record"); Rule 208(b)(2), SCACR ("[r]espondent's brief may also contain argument asking the court to affirm for any ground appearing on the record as provided by Rule 220(c)").

The record demonstrates that Appellant did not file a Notice of Intent to File Suit or otherwise comply with any part of S.C. Code Ann. § 15-79-125. Because Appellant failed to comply with Section 15-79-125 in any way before filing his Complaint, his Complaint would also have been subject to dismissal based upon failure to state a claim, and pursuant to SCRCP Rule 12(b)(6), S.C. Code Ann. § 15-79-125, and S.C. Code § 15-36-100(F).

Pursuant to I'On, addressed in Footnote 1, Appellant's failure to comply with S.C. Code Ann. § 15-79-125 may serve as an additional ground for affirming the trial court's dismissal of Appellant's case.

III. Alternatively, and as an additional sustaining ground[2], the trial court's dismissal of Appellant's Complaint should be affirmed because the appeal contains conclusory arguments which are deemed abandoned.

The assertions in Appellant's brief are conclusory and provide this Court with no substantive or valid basis for determining that the trial court abused its discretion in denying Appellant's Motion to Proceed *In Forma Pauperis* and dismissing his case.

Appellant's entire brief cites to and quotes one statute, S.C. Code § 24-27-400. However, Appellant does not explain how or why the United States or South Carolina Constitutions require him to be allowed access to the Courts. The "Argument" Section of Appellant's Brief is two sentences. There is no citation to

[2] See Footnote 1, incorporated herein.

any legal authority challenging the trial court's Order, reasoning why the trial court abused its discretion, or attempting to argue that Appellant's claims somehow invoke a statutory or constitutional waiver of fees. In fact, the "Argument" section of Appellant's brief contains no citation to any authority.

It is well-settled that short, conclusory arguments are deemed abandoned on appeal and not presented for appellate review. See Glasscock, Inc. v. U.S. Fidelity and Guar. Co., 348 S.C. 76, 81, 557 S.E.2d 689, 691-92 (Ct. App. 2001) ("South Carolina law clearly states that short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review."); Fields v. Melrose Ltd. Partnership, 312 S.C. 102, 106, 439 S.E.2d 283, 285 (Ct. App. 1993) ("An issue raised on appeal but not argued in the brief is deemed abandoned and will not be considered by the appellate court."); Brown v. Theos, 338 S.C. 305, 309 n. 2, 526 S.E.2d 232, 235 n. 2 (Ct. App. 1999), aff'd, 345 S.C. 626, 550 S.E.2d 304 (2001) (a one sentence paragraph raised in an appellant's brief was insufficient to preserve an issue for appeal); State v. Tyndall, 336 S.C. 8, 518 S.E.2d 278 (Ct.App.1999) (conclusory arguments constitute an abandonment of the issue on appeal); State v. Colf, 332 S.C. 313, 504 S.E.2d 360 (Ct.App.1998) (issue is deemed abandoned if argument in brief is merely conclusory); State v. Black, 319 S.C. 515, 462 S.E.2d 311 (Ct.App. 1995) (a conclusory argument of an issue by appellant amounts to an abandonment of the issue).

Pursuant to I'On, addressed in Footnote 1, Appellant's conclusory arguments should be deemed abandoned on appeal, providing alternative grounds to affirm the trial court's dismissal of Appellant's case.

CONCLUSION

The trial court appropriately denied Appellant's Motion to Proceed *In Forma Pauperis* because his sole cause of action for medical negligence requires a filing fee. Appellant has failed to in any way establish that the trial court abused its discretion. Alternatively, and as additional sustaining grounds, the trial court's dismissal of Appellant's Complaint is appropriate because he failed to comply with any of the statutory prerequisites for maintaining a medical negligence action and because his conclusory arguments are deemed abandoned on appeal.

[Signature block on next page.]

Respectfully submitted,

By: s/Joshua T. Thompson

Joshua T. Thompson (SC Bar No. 79137)
BOULIER THOMPSON & BARNES, LLC
101 W. St. John Street, Suite 300
Spartanburg, South Carolina 29306
P.O. Drawer 6470 (29304)
jthompson@btblawfirm.com
(864) 606-9610

Attorneys for Respondent

Spartanburg, South Carolina

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