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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Jr., Circuit Court Judge
Circuit Court Case No. 2026-CP-42-05667

_____

Appellate Case No. _____

_____

Bruce Wilson — Appellant,

v.

TransForce, Inc. and Averitt Express, Inc. — Respondents.

MOTION OF APPELLANT BRUCE WILSON FOR LEAVE TO PROCEED IN FORMA PAUPERIS ON APPEAL AND TO FILE FINANCIAL AFFIDAVIT UNDER SEAL

Respectfully submitted,

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Appellant, Pro Se

COMES NOW Appellant Bruce Wilson, proceeding pro se, and respectfully moves for leave to proceed in forma pauperis in this appeal. This appeal arises from the denial of Appellant's motion to proceed in forma pauperis in his action under S.C. Code Ann. § 41-1-70 and the resulting dismissal of that action. Appellant asks that the filing fee and motion fees be waived, that his detailed financial affidavit be received under seal, and that this Court retain and decide the appeal.

PRELIMINARY STATEMENT

The circuit court made no finding that Appellant can afford the filing fee. It denied leave to proceed in forma pauperis on a Form 4 Order citing *Ex parte Martin*, 321 S.C. 533, 471 S.E.2d 134 (1995), on the ground that a § 41-1-70 retaliation action falls within no statutory or constitutional exception to the fee requirement.

This appeal presents two related questions. The first is whether *Martin*'s categorical limit on fee waivers survives the 2011 and 2024 amendments to Rule 3(b), SCRCP, which now supply the general, purely financial waiver standard that *Martin* found to be absent. The second, which arises only if *Martin* still controls, is whether the filing fee requirement of S.C. Code Ann. § 8-21-310(C)(1), and Rule 3(b) as construed in *Martin*, may constitutionally be enforced to close the courts to an indigent witness seeking the remedy the General Assembly provided for retaliation against his compliance with a subpoena. Only this Court can answer the first question, and the second is a challenge to the constitutionality of a state law within this Court's appellate jurisdiction under Rule 203(d)(1)(A)(ii), SCACR.

STATEMENT OF THE CASE

A. The Underlying Action

Appellant drove for Respondent Averitt Express, Inc. for more than three years through Respondent TransForce, Inc., a driver staffing company. In 2026, he was subpoenaed and deposed as a witness in a North Carolina workers' compensation proceeding. Appellant alleges that, after he complied with the subpoena and testified, his hours were cut sharply and he was effectively removed from work. On October 15, 2026, he filed this action under S.C. Code Ann. § 41-1-70,

which protects employees from dismissal or demotion for complying with a subpoena to testify. He filed a First Amended Complaint stamped October 28, 2026.

B. The Order Denying Leave to Proceed In Forma Pauperis

Appellant moved for leave to proceed in forma pauperis under Rule 3(b), SCRCP, supported by a sworn financial affidavit. By Form 4 Order dated October 29, 2026, and filed October 30, 2026, the circuit court denied the motion under *Martin*. The order made no finding concerning Appellant's income, assets, or ability to pay, and it did not address the 2024 amendment to Rule 3(b)(1). The order also states that it "does not end the case."

C. The Clerk's Entry of Dismissal

On October 31, 2026, Appellant mailed to the Clerk a Rule 59(e) motion for reconsideration that argued, among other things, that the 2024 amendment to Rule 3(b) controls and that state and federal constitutional guarantees of access to the courts require a waiver in this action. On November 2, 2026, the Public Index reflected the action as dismissed ("Dismissed by Court - not Rule 40J"). Appellant has withdrawn the reconsideration motion, which remains part of the record, and timely noticed this appeal.

D. Appellant's Financial Condition

Appellant is currently unemployed. His income consists of unemployment benefits of approximately $300.00 per week, which he will verify by documentation if the Court deems it necessary. Upon entry of an order sealing it, Appellant will file a detailed affidavit of his financial condition, including his income, debts, assets, and family situation, so that the Court may apply the factors and presumption set out in Rule 3(b)(1), SCRCP. Appellant asks that the affidavit be sealed because it will disclose personal financial and household information that is not otherwise at issue in this action.

ARGUMENT

I. THIS COURT HAS JURISDICTION, AND PROCEEDING IN FORMA PAUPERIS IS APPELLANT'S ONLY MEANS OF PROSECUTING THIS APPEAL.

An order denying leave to proceed in forma pauperis is immediately appealable when it has the effect of discontinuing the action. S.C. Code Ann. § 14-3-330(2)(a). In *Lakes v. State*, 333 S.C. 382, 510 S.E.2d 228 (Ct. App. 1998), the Court of Appeals held that an order denying in forma pauperis status "effectively discontinued the action because Lakes's only means of bringing the action was in forma pauperis." 333 S.C. at 385. The same is true here, and the dismissal that followed confirms it. Appellate courts have granted in forma pauperis status on appeal where the denial below was itself the subject of the appeal. *Harrison v. Harrison*, 373 S.C. 524, 526, 646 S.E.2d 180 (Ct. App. 2007). Requiring Appellant to pay the appellate fee before this Court may decide whether he could be required to pay the trial court fee would decide the appeal against him before it is heard.

This Court has jurisdiction because the appeal challenges the constitutionality of a state law as applied, Rule 203(d)(1)(A)(ii), SCACR, and because the controlling question concerns the continuing force of this Court's own precedent. The same reasons satisfy the grounds for certification in Rule 204(b), SCACR: the case involves "an issue of significant public interest or a legal principle of major importance." If the Court concludes the constitutional issue is not significant, Appellant respectfully asks that it retain the appeal on those grounds rather than transfer it to the Court of Appeals, which is bound by *Martin*.

II. RULE 3(B), SCRCP NOW SUPPLIES THE GENERAL WAIVER STANDARD THAT EX PARTE MARTIN FOUND ABSENT, AND S.C. CODE ANN. § 8-21-310(C)(1) EXPRESSLY YIELDS TO IT.

A. Martin's limit was conditional by its own terms.

Martin held: "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 535, 471 S.E.2d at 134-35. The Court stressed that its examples "are not exhaustive" and that "[o]ther statutory exceptions and other fundamental rights may require the waiver of filing fees for indigents." 471 S.E.2d at 135 n.1. In *Sullivan v. South Carolina Department of Corrections*, 355 S.C. 437, 446, 586 S.E.2d 124, 128 (2003), the Court applied *Martin* and observed that the General Assembly is the body charged with the power to waive filing fees.

B. Rule 3(b) now provides a uniform, purely financial standard adopted through the constitutional process that includes the General Assembly.

When *Martin* was decided in 1995, Rule 3 provided a procedure for filing a motion but no standard for deciding it. That is no longer true. In 2011, Rule 3(b)(2) was added to waive filing fees, "without the necessity of a motion and court approval," for any party represented by a legal aid society, legal services or nonprofit organization, or the South Carolina Bar Pro Bono Program, in any civil action and without limitation by type of claim. In 2024, this Court amended Rule 3(b)(1) to direct how every in forma pauperis motion is to be decided:

> In determining whether the plaintiff is unable to pay the fee required to file the action, all factors concerning the plaintiff's financial condition should be considered including income, debts, assets, and family situation. A presumption that the plaintiff is unable to pay the fee required to file the action shall be created if the plaintiff's net household income is less than or equal to the Poverty Guidelines established and revised annually by the United States Department of Health and Human Services and published in the Federal Register.

Rule 3(b)(1), SCRCP. The Note to the 2024 Amendment states that the amendment was adopted "to provide guidance and create uniformity regarding who may proceed in forma pauperis." The standard is financial. It contains no exclusion for any category of civil claim.

The amendment was adopted under Article V, Section 4A of the South Carolina Constitution, submitted to the General Assembly on January 31, 2024, and became effective by order dated April 30, 2024, after ninety days passed without rejection. It therefore answers both *Martin* and *Sullivan*. It supplies the general waiver standard whose absence *Martin* made the premise of its holding, and it does so through the constitutional rulemaking process in which the

General Assembly participates and in which it declined to intervene. A rule that tells courts how to decide whether a plaintiff "is unable to pay," and that presumes inability at the poverty line, would serve no purpose if the answer outside *Martin*'s categories were already fixed at "no."

C. The filing fee statute expressly accommodates a waiver granted under Rule 3(b).

Section 8-21-310(C)(1) requires the clerk to collect one hundred dollars for filing a first complaint or petition, but the subsection opens with the words "Except as otherwise expressly provided." Rule 3(b)(1) expressly provides that, if a motion for leave to proceed in forma pauperis is granted, the plaintiff "may proceed without further application and file the complaint in the court without payment of filing fees." Read together, the statute and the rule are consistent: the fee is owed unless the court, applying Rule 3(b)'s financial standard, grants a waiver. Appellant asks this Court to reconsider *Martin* and hold that Rule 3(b)(1), as amended, governs every in forma pauperis motion in a civil action. That holding would decide this appeal without reaching any constitutional question.

III. IF MARTIN STILL CONTROLS, S.C. CODE ANN. § 8-21-310(C)(1) AND RULE 3(B), AS CONSTRUED IN MARTIN, ARE UNCONSTITUTIONAL AS APPLIED TO APPELLANT.

If the Court concludes that *Martin* still bars a waiver here, then the fee requirement, enforced without any inquiry into Appellant's ability to pay, violates the South Carolina and United States Constitutions as applied to an indigent plaintiff who seeks the remedy the General Assembly provided for retaliation against compliance with compulsory process. Appellant raised constitutional access-to-courts grounds in his Rule 59(e) motion, and the challenge arises from the categorical application of *Martin* in the order itself.

A. The Remedy Clause of Article I, Section 9.

Article I, Section 9 of the South Carolina Constitution provides: "All courts shall be public, and every person shall have speedy remedy therein for wrongs sustained." The General Assembly has defined the wrong at issue. Section 41-1-70 provides that an employer who dismisses or demotes an employee because the employee complies with a valid subpoena to testify "is subject to a civil action in the circuit court," so the remedy for that wrong lies only in the courts. This Court recognized the strength of the underlying public policy four decades ago. In *Ludwick v. This Minute of Carolina, Inc.*, 287 S.C. 219, 337 S.E.2d 213 (1985), an employee was told she would be fired if she obeyed a subpoena issued under a statute that made failure to obey a crime. The Court held that the public policy exception to at-will employment applies when an employer requires an employee to violate the law as a condition of keeping her job, and that the threat of retaliation for refusing is "intolerable and impermissible." *Id.* at 225. The General Assembly enacted § 41-1-70 the following year, in 1986, to give witnesses a statutory remedy. A fee that an indigent plaintiff cannot pay, enforced without any finding that he can pay it, does not regulate access to that remedy. It eliminates it.

B. Due process and equal protection under Article I, Section 3 and the Fourteenth Amendment.

Article I, Section 3 provides that no person shall "be deprived of life, liberty, or property without due process of law," nor "be denied the equal protection of the laws." The Fourteenth Amendment provides the same protections. The United States Supreme Court has held that due process requires, at a minimum, that "absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard." *Boddie v. Connecticut*, 401 U.S. 371, 377 (1971). *Martin* itself recognized that "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. Appellant acknowledges that *Boddie* expressly declined to hold that access to the courts is

guaranteed for all individuals in all circumstances, 401 U.S. at 382-83, that *Martin* also cited federal decisions declining to require fee waivers in other settings, including bankruptcy and review of welfare decisions, and he does not contend that the federal Constitution requires a waiver in every civil action.

Appellant's claim is narrower. The State compelled his participation in the judicial process by subpoena; the General Assembly then created a statutory right protecting him for obeying it; and the only forum for that right is a court whose door is closed to him solely because of poverty. The sole interest served by the fee in these circumstances is revenue, and the State's own rule, Rule 3(b)(1), already defines when a litigant is unable to pay. Denying access by checking a box, without applying that standard and without any finding about the applicant's finances, draws a line based on wealth alone and serves no interest of overriding significance. Appellant relies on Article I, Sections 3 and 9 of the South Carolina Constitution independently of the federal Constitution.

C. The Court need not reach the constitutional question if it adopts the reading in Point II.

Because Rule 3(b)(1) and § 8-21-310(C)(1) can be read together as set out in Point II, the Court can resolve this appeal without deciding the constitutional question. Appellant presents the constitutional challenge as an alternative ground, to be reached only if the Court concludes that *Martin* still forecloses a waiver in this action.

IV. APPELLANT'S DETAILED FINANCIAL AFFIDAVIT SHOULD BE RECEIVED UNDER SEAL.

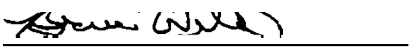
Appellant has stated his present income above and will verify it if the Court requires. A full affidavit addressing the Rule 3(b)(1) factors will disclose personal financial and household information unrelated to the merits of this retaliation claim. Appellant respectfully requests an order permitting him to file that affidavit under seal, and he will file it promptly upon entry of the order.

CONCLUSION AND PRAYER FOR RELIEF

WHEREFORE, Appellant respectfully requests that this Court enter an order:

1. Granting Appellant leave to proceed in forma pauperis in this appeal without payment of the filing fee, and relieving him of the fees for motions filed in this appeal as an extraordinary case under Rule 240(d), SCACR;
2. Permitting Appellant to file a detailed affidavit of his financial condition under seal, and directing that it remain sealed;
3. In the alternative, suspending any requirement to pay the filing fee, and directing that the appeal not be dismissed for nonpayment under Rule 203(d)(3), SCACR, until the Court has received the sealed affidavit and ruled on this motion;
4. Retaining this appeal in this Court under Rule 203(d)(1)(A)(ii), SCACR or, if the Court finds the constitutional issue not significant, on the grounds set out in Rule 204(b), SCACR;
5. Noting that Appellant has expressly requested that *Ex parte Martin* be reconsidered in light of Rule 3(b), SCRCP, as amended in 2011 and 2024, and that he challenges S.C. Code Ann. § 8-21-310(C)(1) as unconstitutional as applied; and
6. Granting such other relief as the Court deems just.

Respectfully submitted,



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