

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Doyet A. Early, III, Circuit Court Judge

Case No. 2008-CP-40-6656

John R. Rakowsky, Respondent,

v.

Law Offices of Adrian L. Falgione, LLC, James Spencer,
Estate of Doris Holt, Nick Williamson, on behalf of RSC,
Irene Santacroce, Rodney Keith Lail, Marguerite Stephens
and Ricky Stephens, Michael Hartness, Horry County, S.C.,
Eugene Chewing, and Glenn W. Harrison, Defendants,

Of whom, Estate of Doris Holt, Irene Santacroce, and
Rodney Lail, are Appellants.

And, Horry County, S.C., is a Respondent.

**RESPONDENT HORRY COUNTY'S RETURN TO
APPELLANTS' MOTION TO PROCEED
IN FORMA PAUPERIS**

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The Appellants Estate of Doris Holt, Irene Santacroce, and Rodney Lail have filed a motion and declaration of their counsel requesting that the Court allow this appeal to be filed and proceed without the payment of costs. The Respondent Horry County opposes that motion and any request seeking to proceed in forma pauperis on appeal.

The Appellants' request to avoid the filing fee requirement and the payments of any costs on appeal is not permitted under South Carolina law. In the case of *Ex Parte: Martin v. State*, 321 S.C. 533, 471 S.E.2d 134 (1995), the South Carolina Supreme Court addressed the issue of granting motions to proceed in forma pauperis. The Court 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." 471 S.E.2d at 134-135.

Later, in *Martin v. South Carolina Department of Corrections*, 350 S.C. 196, 565 S.E.2d 756 (2001), the Supreme Court required full payment of appellate filing fees by an indigent prisoner. The Court concluded that the statutes allowing a partial payment of the filing fees when an indigent prisoner brings a civil action do not apply to appellate filing fees incurred at either the Supreme Court or the Court of Appeals.

In the present case, there is no statutory provision allowing this Court to waive the payment of a \$100 filing fee as required pursuant to Rule 203(d), SCACR, under the circumstances presented by the Appellants. Rule 203(d), SCACR, provides only two exceptions: (1) for a criminal appeal, and (2) for an appeal by the State of South Carolina or its departments or agencies. Neither exception is applicable here.

Moreover, the Appellants do not enjoy a constitutional right to an appeal nor does their appeal involve the type of "fundamental rights" for which a waiver of the filing fee is appropriate. The Appellants have appealed from an Order Granting Partial Relief, whereby Judge Early ordered the distribution of litigation funds that remained in the trust account of the Respondent John Rakowsky (the Appellants' prior trial counsel) following the settlement of a federal court action (Civil Action Number 4:02-1859-RBH), a settlement which the Appellants have attempted to repudiate but which has been repeatedly held valid and enforceable by the federal courts to date. *See, Lail v. Horry County*, 363 Fed.Appx. 223 (4th Cir. 2010). This is an interpleader action commenced by Rakowsky to distribute the funds that remain in his trust account following that federal court litigation. The interpleader action on appeal does not involve any constitutional claims brought by any of the parties and certainly does not involve any "fundamental rights" as identified by this Court or the Supreme Court.

In his supporting Declaration, the Appellants' counsel, Michael Sribnick, offers the following sworn testimony: "All three Appellants in this action have filed financial papers with the Federal Courts and have been granted in forma pauperis standing both collectively and individually without exception." In response, the Respondent Horry County submits that any prior determinations of in forma pauperis status by other courts is not material to whether in forma pauperis status should be granted on appeal under existing South Carolina Supreme Court precedent. Nonetheless, the declaration is also false. In fact, in *Lail v. United States Government*, Civil Action Number 3:11-977-MGL-PJG, which is currently pending in the United States District Court, in which the three Appellants are all Plaintiffs, the docket reflects that the filing fee of \$350.00 was paid upon filing of that action (receipt number SCX3000039083). These three Appellants also filed suit in the United States District Court for the District of Columbia in 2010 against numerous South Carolina parties including the undersigned counsel, and they did seek in forma pauperis status in that case. That was denied. The district judge wrote: "As for the plaintiffs' motion for leave to proceed *in forma pauperis*, the Court finds that the plaintiffs have failed to demonstrate that they qualify for such relief." *See, Lail v. United States Government*, 771 F.Supp.2d 49, 62 (D.D.C. 2011). In short, Sribnick's declaration is patently false.

For all of the foregoing reasons, the Respondent Horry County opposes the Appellants' request to proceed in forma pauperis or waive the requirement that the \$100 filing fee be paid to proceed with his appeal.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY:  _____

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Counsel for Respondent Horry County

Columbia, South Carolina

September 29, 2014

CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Respondent Horry County, does hereby certify that service of the **Respondent Horry County's Return to Appellants' Motion to Proceed In Forma Pauperis** in the above-captioned matter was made upon all counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelope this the 29th day of September 2014:

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SC Court of Appeals

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September 29, 2014

Of Counsel
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The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: John R. Rakowsky v. Adrian L. Falgione, James Spencer, Doris Holt, Rodney Keith Lail, Irene Santacroce, Marguerite Stephens and Ricky Stephens, Michael Hartness, Horry County, S.C., Eugene G. Chewning, and Glenn W. Harrison
Appellate Tracking Number: 2014-002029
Civil Action Number: 2008-CP-40-6656
IRF Claim Number: 01806
Our File Number: 103.7905

Dear Ms. Kitchings:

Please find enclosed for filing the originals and seven copies of the **Respondent Horry County's Return to Appellants' Motion to Proceed In Forma Pauperis** with regard to the above referenced matter. Please file the original and return a clocked-in copy to me in the enclosed envelope.

By copy of this letter, I am serving copies on all counsel of record.

Thank you for your assistance in this matter.

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

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AFL/
Enclosures

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The Honorable Jenny Abbott Kitchings
September 29, 2014
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cc: (w/ Enclosure)

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