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SC Court of Appeals

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
Appellate Case No 2014-002029

John R Rakowsky Respondent

v

Adrian I. Falgione, James Spencer,
Estate of Doris Holt, Irene
Santacroce, and Rodney Keith Lail, Defendants
Of whom, Estate of Doris Holt, Irene Santacroce, and Rodney
Lail, are Appellants

**APPELLANTS REPLY TO Horry COUNTY'S OPPOSITION TO
APPELLANTS' MOTION TO PROCEED
IN FORMA PAUPERIS**

Appellants, Estate of Doris Holt, Irene Santacroce, and Rodney Lail, by and through the undersigned, file this Reply to Horry County's Opposition to Appellants' Motion to Proceed *In Forma Pauperis*

BASELESS ASSERTIONS

Defendant Horry County has wrongfully asserted that the Appellants are not appealing this case based on fundamental constitutional rights and therefore are not entitled to *in forma pauperis status*. However, this assertion is based on nothing substantive as Defendant's counsel, as of this time, is not a counsel for the Appellants and has no knowledge of the basis of the Appellants' appeal

In the case at bar the Appellants are challenging the denial of their fundamental Constitutional rights to due process via the XIV and V Amendment to the United States Constitution Horry County cites "Ex Parte Martin v. State 321 S C 533, 471 S.E.2d 134 (1995) in their opposition. The Appellants agree with the case cited but the words are taken out of context to suit Defendant Horry County's opposition In its conclusion in that case The Supreme Court went on to state

"Further, where certain fundamental rights are involved, the Constitution requires that an indigent be allowed access to the courts Id At 535 471 S.E 2d at 135 (citing as an example Boddie v Connecticut, 401 U S 371, 91 S Ct 780, 28 LEd.2d 113 (1971) (an indigent must be given access to courts in divorce action)) The United States Supreme Court stated in Boddie "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, 407 U S at 377

Furthermore, in *Harrison v Harrison*, the South Carolina Court of Appeals noted ""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 " *Id* at 535, 471 S E 2d at 134-35 (citations omitted) The supreme court went on to state: "Further, where certain fundamental rights are involved, the Constitution requires that an indigent be allowed access to the courts *Id* at 535, 471 S E 2d at 135 (citing as an example *Boddie v Connecticut*, 401 U S 371, 91 S Ct 780, 28 L Ed 2d 113 (1971)

In the case at bar, the Appellants are obviously indigent Ms Santacroce, is disabled and on food stamps, Appellant, Estate of Doris Holt, has no money; and Appellant, Rodney Keith Lail is so impoverished as to require food stamps.

Defendant Horry County (hereinafter "Defendant") tries to mislead this Honorable Court in its opposition when it stated that fees were paid in another case these three Appellants are Plaintiffs in Civil Action Number 3 11-977-MGL-PJG. The Defendant fails to state another Plaintiff in that case does not qualify as an indigent so that party paid the fees Furthermore, Defendant attempts to again deceive this Honorable Court by stating that in a case from the year 2010 these three Appellants (Doris Holt was alive back then) were denied in *forma pauperis status* However, as pointed out herein above the Defendant once again uses a half-truth to mislead the Court Half a decade ago the individual who paid the fees in the case cited above by the Defendant was ruled not to be indigent and had to pay the fees in that case, it had nothing to do with the indigent status of the Appellants in this case

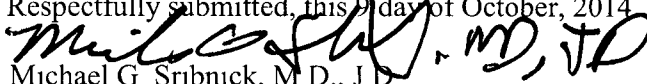
The Defendant has demonstrated in its motion it will use a person's poverty and present half-truths to the Court to deny the Appellants access to this Honorable Court This Honorable Court deserves the answer as to why a Defendant will attempt to intervene to prevent the presentation of the truth by the indigent Appellants by denying the Defendants motion as baseless

DISCUSSION

Appellants have not named Defendant in the Appeal to this Honorable Court. Therefore, Defendant appears to have not gained standing in this case to oppose this motion. Thus, even if Defendant has standing in this case, Defendant is incorrect in its interpretation of both what is being appealed and the grounds for the appeal. In the case at bar the Appellants are challenging the denial of their constitution rights to due process via the XIV and V Amendment to the United States Constitution. Thus, even if Horry County has standing in this case, Horry County is incorrect in its interpretation of basis of the appeal. The appeal is on the basis of a terminal decision made by the Court being in violation of the Appellants' constitutional rights including the Appellants right to due process of law under the V and XIV Amendments to the United States Constitution.

CONCLUSION

For all of the foregoing reasons, Appellants pray this Honorable Court will grant the indigent Appellants in *forma pauperis* status so they can pursue their fundamental constitutional rights guaranteed by the United States Constitution. The undersigned is representing these Appellants *pro bono* in the name of justice on the same basis.

Respectfully submitted, this 9 day of October, 2014

Michael G. Sribnick, M.D., J.D.
3 Kenilworth Avenue
Charleston, South Carolina 29403
Phone: (843) 789-3504
Fax: (843) 720-8907
Email: michael.g.sribnickmdjdlc@gmail.com

Certificate of Service

I certify that I have sent copies via U S. Mail to the following:

Andrew Lindemann, Esq
Davidson & Lindemann, P A
1611 Devonshire Drive, Second Floor
Columbia, S C 29202-8568

Desa Ballard, Esq
226 State Street
West Columbia, SC 29169



Michael G Sribnick, M D , J.D.
3 Kenilworth Avenue
Charleston, S C 29403
Phone (843) 789-3504
Fax (843) 720-8907
Email michael.g.sribnickmdjdlc@gmail.com

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Michael G. Sribnick, M.D., J.D., LLC



3 Kenilworth Avenue
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