

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, James Spencer, 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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On February 2, 2015, the Appellants filed a Motion to Proceed in *Forma Pauperis*. The motion is identical to the motion by the same name filed by the Appellants on September 19, 2014. The prior motion was denied by this Court in an Order filed November 25, 2014. (See attached Order). This Court ruled as follows: "The motion to proceed in forma pauperis is denied pursuant to *Ex parte Martin*, 321 S.C. 533, 471 S.E.2d 134 (1995)."

There is no basis for the Appellants to re-litigate or otherwise challenge the previous Order of this Court denying *in forma pauperis* status. In fact, Rule 240(i), SCACR, provides that "[t]he court will not entertain petitions for rehearing on a motion or petition unless the action of the court on the motion or petition has the effect of dismissing or finally deciding a party's appeal." See, Rule 240(i), SCACR. Consequently, there is no basis for the Court to re-hear or reconsider its previous Order denying *in forma pauperis* status.

In addition, this Court's previous ruling was correct. As this Court noted, this issue is governed by the case of *Ex Parte: Martin v. State*, 321 S.C. 533, 471 S.E.2d 134 (1995), wherein the Supreme 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.

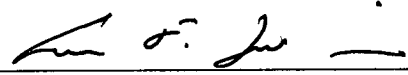
In the present case, there is no statutory provision allowing this Court to waive the payment of a \$100 filing fee as required pursuant to Rule 203(d), SCACR, under the circumstances presented by the Appellants. Rule 203(d), SCACR, provides only two exceptions: (1) for a criminal appeal, and (2) for 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. This is an interpleader action commenced by the Respondent John Rakowsky (the Appellants' prior trial counsel) to distribute the funds that remain in his trust account 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. *See, Lail v. Horry County*, 363 Fed.Appx. 223 (4th Cir. 2010); *Spencer v. Garvin*, 585 Fed. Appx. 851 (4th Cir. 2014).

For all of the foregoing reasons, the Respondent Horry County opposes the Appellants' duplicative and improperly filed motion to proceed *in forma pauperis* with respect to this appeal. The Appellants should be required to pay all filing fees including the filing fee for the recently filed Notice of Appeal as well as all filing fees for the motions that they have filed.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY: 

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Counsel for Respondent Horry County

Columbia, South Carolina

February 12, 2015

The South Carolina Court of Appeals

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 Irene Santacroce, Rodney Keith Lail, and the
Estate of Doris Holt are the Appellants.

Appellate Case No. 2014-002029

ORDER

The motion to proceed *in forma pauperis* is denied pursuant to *Ex parte Martin*,
321 S.C. 533, 471 S.E.2d 134 (1995). The filing fee must be paid within twenty
days of the date of this order.



FOR THE COURT

Columbia, South Carolina

cc: Michael Gordon Sribnick, Esquire
Desa Ballard, Esquire
Andrew F. Lindemann, Esquire

FILED

11/25/14

CERTIFICATE OF SERVICE


The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Respondent Horry County, does hereby certify that service of **Respondent Horry County's Return to Appellants' Motion to Proceed In Forma Pauperis** in the above-captioned matter was made upon Mr. Spencer and all other counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 12th day of February 2015:

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226 State Street
Post Office Box 6338
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7001 Saint Andrews Road
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February 12, 2015

Of Counsel
Kenneth P. Woodington

Writer's Email: alindemann@dml-law.com

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
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 Mr. Spencer and all other counsel of record.

Thank you for your assistance in this matter.

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

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AFL/jmb
Enclosures

The Honorable Jenny Abbott Kitchings
February 12, 2015
Page Two

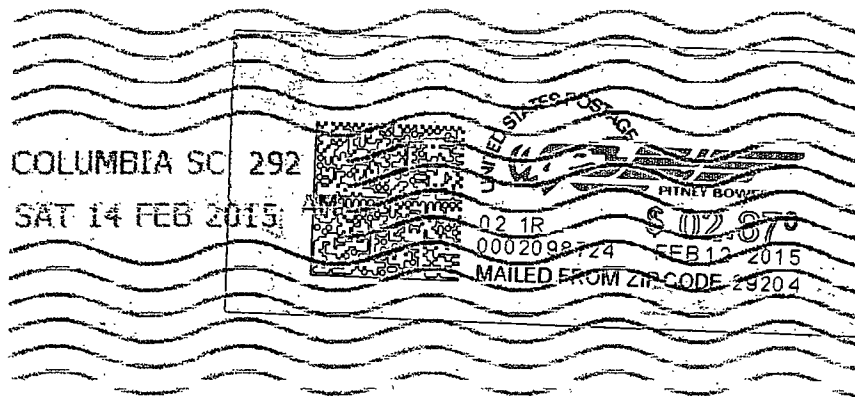
cc: (w/ Enclosure)

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