

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge
Civil Action No. 2015-CP-40-02011

Appellate Case No. 2015-02177

RECEIVED

JUL 11 2016

SC SUPREME COURT

Dennis M. Gallipeau, Petitioner,

v.

Carnaby Square Horizontal Property Regime; Stephanie Carol Trotter; D. Ryan McCabe; McCabe, Trotter, Gambrell & Beverly, P.C.; Rogers Townsend & Thomas, PC; McCabe, Trotter & Beverly, P.C.; and John and Jane Doe(s)

Of Whom Stephanie Carol Trotter; D. Ryan McCabe; McCabe, Trotter, Gambrell & Beverly, P.C.; Rogers Townsend & Thomas, PC; and McCabe, Trotter & Beverly, P.C. are Respondents.

RETURN OF RESPONDENTS MCCABE TROTTER & BEVERLY, PC AND MCCABE TROTTER
GAMBRELL & BEVERLY, PC TO PETITION FOR WRIT OF CERTIORARI

Stephanie C. Trotter (SC Bar No. 77680)
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*Attorney for Respondents McCabe Trotter & Beverly, PC and
McCabe Trotter Gambrell & Beverly, PC*

Petitioner, Dennis M. Gallipeau, has petitioned this court for a writ of certiorari to review a decision by the South Carolina Court of Appeals dismissing his appeal because he failed to pay his filing fee. The basis for his petition is that he should have been allowed to proceed *in forma pauperis*.

Because Petitioner did not present these issues first to the Court of Appeals and because there are no special or important reasons for this Court to issue a writ of certiorari, the petition should be denied.

Procedural Background

Petitioner filed suit in the Court of Common Pleas alleging “state law claims including malicious prosecution, abuse of process, conspiracy and fraud, intentional infliction of emotional distress, unfair trade practices and cloud on the title to Plaintiff’s Homestead property” against his horizontal property regime (Carnaby Square Horizontal Property Regime) and the attorneys who filed a lien for unpaid assessments and filed a foreclosure action against him. Petitioner himself moved to dismiss his causes of action for abuse of process, unfair trade practices, and fraud, and the Circuit Court dismissed the remainder of his causes of action against the attorney defendants and their law firms under the doctrine of attorney immunity (citing Gaar v. North Myrtle Beach Realty, 287 S.C. 525, 339 S.E.2d 887 (Ct. App. 1986) and absolute immunity (citing Pond Place Partners, Inc. v. Poole, 351 S.C. 1, 567 S.E.2d 881 (Ct App. 2002)). Petitioner later voluntarily dismissed all of his claims against Carnaby Square Horizontal Property Regime.

Petitioner filed a notice of appeal without paying a filing fee. Instead, he filed what he called a “motion/affidavit to proceed *in forma pauperis*.” In it he stated in a conclusory fashion that he was unable to pay any fee or cost associated with the appeal; that he is a 63-year-old disabled man whose income is \$753/month; that he has under \$250 cash available to him; that he

was going to have to pay for the transcript from the hearing; and that his state of impecuniosity should not mean that he is not entitled to the same right to access to [the Court of Appeals] as any other litigant who is capable of paying the fees and costs associate with prosecuting an appeal in this Court.” He did not submit an affidavit with his motion; he did not attach any backup documents to his “motion/affidavit”; and he did not mention the South Carolina Constitution, the United States Constitution, his right to petition for redress of grievances, his denial of equal protection of the laws, or the abandonment of the Constitution by anyone. And he did not ask the Court of Appeals to revisit, overrule, set aside, or even distinguish the controlling case on motions to appear *in forma pauperis*, Ex parte Martin, 321 S.C. 533, 471 S.E.2d 134 (1995).

The Court of Appeals denied his motion to appear *in forma pauperis*. Its order dated January 7, 2016, reads:

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 fifteen days of the date of this order.

Petitioner filed a petition for rehearing and did not pay his filing fee. In his petition he argued, in conclusory fashion and for the first time, that his appeal concerned “fundamental rights” and that henceforth, attorneys would be able to invoke attorney immunity to “forever shield them for such acts as conspiring among themselves and their clients to commit willful and premeditated fraud.” He claimed, again for the first time, that he was denied his constitutional right of access to the courts and denied his constitutional right of notice and opportunity to defend against a lawsuit or foreclosure action.

Naturally, the Court of Appeals dismissed his appeal (by order dated May 12, 2016), concluding it was unable to discover any material fact or principle of law that had been overlooked or disregarded, so there was no basis to grant a rehearing or reinstate his appeal.

This petition followed.

Argument

1. Procedural Posture Deficient for Review (Rule 242(d)(2), SCACR)

Petitioner has raised issues not considered by the Court of Appeals in his petition for writ of certiorari. “An argument not made to an intermediate appellate court and ruled on by that court is not preserved for review in this Court.” See Linda Mc Co., Inc. v. Shore, 390 S.C. 543, 558, 703 S.E.2d 499, 506-07 (2010) (citing City of Columbia v. Ervin, 330 S.C. 516, 519–20, 500 S.E.2d 483, 485 (1998)). For that reason alone, the petition should be denied under Rule 242(d)(2), SCACR.

2. No Novel Issues of Law (Rule 242(b)(1))

Petitioner does not present a novel issue of law. The Supreme Court spoke clearly in Ex parte Martin when it wrote, “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.” Ex parte Martin, 321 S.C. 533, 471 S.E.2d 134 (1995). Constitutional provisions are limited to those involving fundamental rights, such as access to appellate courts in divorce actions (Ex parte Martin), writs of habeas corpus (Ex parte Martin), and review of welfare decisions (Ex parte Martin). Courts do not consider bankruptcy actions (Ex parte Martin) or appeals from Administrative Law Judges (Sullivan v. South Carolina Dep’t of Corrections, 355 S.C. 437, 586 S.E.2d 124 (2003)) to involve fundamental rights.

Here, the General Assembly has not created a fee waiver for this sort of case, and Petitioner's case does not involve fundamental rights.

3. No Dissent in the Court of Appeals (Rule 242(b)(2))

The ruling from the Court of Appeals was unanimous.

4. No Conflict with Prior Decisions of the Supreme Court (Rule 242(b)(3))

The Court of Appeals' ruling does not conflict with any case we could find, and Petitioner has not pointed to any.

5. No Substantial Constitutional Issues (Rule 242(b)(4))

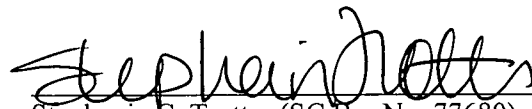
Petitioner has not submitted a substantial Constitutional issue. The only issue he has presented is frivolous.

6. No Federal Question (Rule 242(b)(5))

Petitioner has not submitted a question of federal law.

Conclusion

The writ should be denied.



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PC and McCabe Trotter Gambrell & Beverly, PC*

July 11, 2016

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Of Whom Stephanie Carol Trotter; D. Ryan McCabe; McCabe Trotter, Gambrell & Beverly, P.C.; Rogers Townsend & Thomas, PC; and McCabe, Trotter & Beverly, P.C. are.....Respondents.

CERTIFICATE OF SERVICE

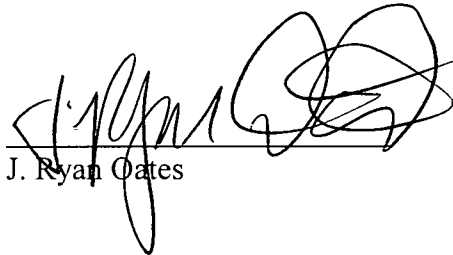
I, J. Ryan Oates, of McCabe Trotter & Beverly, attorneys for Respondents McCabe Trotter & Beverly, PC and McCabe Trotter Gambrell & Beverly, PC, do hereby certify that a copy of the foregoing documents have been served upon the below named individual and/or counsel on the 11th day of July, 2016, via U.S. Mail, addressed as follows:

DOCUMENTS SERVED

**RETURN OF RESPONDENTS MCCABE TROTTER & BEVERLY PC
AND MCCABE TROTTER GAMBRELL & BEVERLY, PC TO
PETITION FOR WRIT OF CERTIORARI**

PARTIES SERVED

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J. Ryan Oates

Columbia, South Carolina