

# The Supreme Court of South Carolina

Theodore Wagner, Appellant,

v.

Designa Print and Mike Davis, including anyone who is  
Complicit or Enabled protecting Mike Davis,  
Respondents.

Appellate Case No. 2018-001106

Lower Court Case No. 2015CP1004166

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## ORDER

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This appeal arises out of a tort action. By order dated May 8, 2018, the circuit court dismissed this tort action under Rule 41(b) of the South Carolina Rules of Civil Procedure.

Appellant has now filed a notice of appeal with this Court, and asks this Court to allow him to proceed *in forma pauperis*. This motion is denied,<sup>1</sup> and the filing fee required by Rule 203(d)(1)(B)(iii) of the South Carolina Appellate Court Rules (SCACR) shall be paid within ten (10) days of the date of this order.

Appellant asks this Court to appoint counsel for him in this appeal. This motion is denied.

Finally, appellant asserts that this case involves a constitutional challenge to a state law, and therefore, this appeal has been properly filed with this Court under Rule 203(d)(1)(A)(ii) of the South Carolina Appellate Court Rules (SCACR). The order on appeal does not contain any ruling on such a challenge, and such a challenge is not preserved for appellate review unless it has been ruled on by the lower court.

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<sup>1</sup> *Ex Parte Martin*, 321 S.C. 533, 471 S.E.2d (1995) ("motions to proceed *in forma pauperis* may only be granted where specifically authorized by statute or required by constitutional provisions").

*In Re McCracken*, 346 S.C. 87, 551 S.E.2d 235 (2001) ("A constitutional claim must be raised and ruled upon to be preserved for appellate review.").

Within ten (10) days of the date of this order, appellant shall provide this Court with a copy of the order or other decision of the circuit court that ruled on the constitutionality of a state law in this case. Failure to make a sufficient showing may result in the transfer of this appeal to the South Carolina of Appeals under Rule 204(a), SCACR.

  
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FOR THE COURT C.J.

Columbia, South Carolina  
June 19, 2018

cc: Kenneth George Goode, Jr., Esquire  
Mr. Theodore Wagner