

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
In the Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

Appellate Case No. 2019-001501

RECEIVED

SEP 24 2019

SC Court of Appeals

James John Todd Kincannon Appellant,

v.

Ashely Suzanne Griffith, Moore Taylor Law
Firm, P.A., Vance Stricklin, and Amber
Fulmer, Respondents.

**APPELLANT'S MOTION FOR LEAVE
TO PROCEED IN FORMA PAUPERIS**

-AND-

**APPELLANT'S MOTION FOR EXTENSION OF TIME
TO FILE MEMORANDUM IN SUPPORT OF MOTION
FOR LEAVE TO PROCEED IN FORMA PAUPERIS**

Appellant James John Todd Kincannon respectfully moves for leave to proceed in forma pauperis and further moves for a fifteen day extension to prepare and file the memorandum supporting the motion for leave to proceed in forma pauperis as required by Rule 240(c)(2), SCACR. The grounds for the relief sought are as follows:

As to the Motion for Leave to Proceed In Forma Pauperis

1. Appellant James John Todd Kincannon, being duly sworn, states that does not have the funds available to pay the costs of filing the instant appeal or any motions that

may be incident to this appeal, including this motion. Appellant hereby requests that the appeal and this motion, and any other necessary motions, be filed without costs.¹

2. Appellant James John Todd Kincannon, being duly sworn, states that his finances are accurately described in the attached Financial Declaration, SCCA Form 430 (12/09), filed in the circuit court in support of Appellant's motion to proceed in forma pauperis in that proceeding, a motion which was granted by the Hon. Alison Renee Lee on March 21, 2019.

3. Appellant James John Todd Kincannon, being duly sworn, states that his financial situation has not changed in any way since executing the Financial Declaration on March 19, 2019 and that all of the information therein remains accurate as of this writing. Appellant does not anticipate his financial situation changing in any material way during the pendency of this appeal.

As to the Motion for Extension of Time to File a Memorandum in Support

1. Rule 240(c)(2), SCACR requires the preparation and filing of a memorandum in support of each motion filed in a South Carolina appellate court that includes citations to authority supporting the relief sought and argument explaining to the appellate court why the authorities cited support the movant's request for relief.

2. Appellant is in the process of preparing a memorandum as required by Rule 240(c)(2) in support of the motion to proceed in forma pauperis and has diligently attempted to complete such memorandum to the best of his ability to file along with this motion but has been unable to complete the memorandum in the time allotted. Although the trial court granted Appellant's motion to proceed in forma pauperis, Appellant first

¹ This language is adapted from Form SCCA 405CP (10/10), the form approved by the South Carolina Supreme Court for applying for leave to proceed in forma pauperis applicable to circuit court proceedings. No in forma pauperis form has been created for appellate proceedings so far as Appellant is aware.

learned of the necessity to file a second, separate motion with the Court of Appeals by letter from the clerk dated September 10, 2019 which granted Appellant ten days to respond. Appellant received the letter the afternoon of September 14, 2019, and since the five mailing days granted by Rule 6(e), SCRCP do not apply to appellate proceedings per Rule 263, SCACR, Appellant has had only five days to prepare this motion and the accompanying memorandum. That five day time period has proved insufficient for Appellant to prepare the memorandum because the law relating to in forma pauperis applications is, unfortunately, rather complicated, particularly with respect to federal constitutional matters which Appellant necessarily must address given the relative paucity of reported cases at the state level and vagueness of the state-level enactments governing in forma pauperis applications.

3. Appellant is further hampered by his disability status. Appellant suffers from untreated and severe attention deficit disorder (“ADD”), which cannot be treated because Appellant also suffers from bipolar disorder and Appellant’s psychiatric treatment providers have determined that ADD medication would dangerously exacerbate Appellant’s bipolar disorder and, therefore, Appellant’s ADD is untreated and causes him to be unable to prepare non-rudimentary legal filings on relatively short notice.

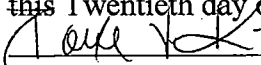
4. Accordingly, Appellant respectfully requests the Court grant him an extension of fifteen days to complete and file the memorandum supporting the motion to proceed in forma pauperis required by Rule 240(c)(2), SCACR. Appellant believes the foregoing constitutes good cause shown and Appellant further requests the extension as a disability accommodation pursuant to the Americans with Disabilities Act, as Appellant’s

psychiatric condition is a qualifying disability and the accommodation requested is reasonable and will in no way prejudice court operations or opposing counsel.²

Verification

Appellant James John Todd Kincannon, first being duly sworn, hereby verifies under oath and penalty of perjury the accuracy of the foregoing statements of fact in this filing, all of which Appellant has personal knowledge of.

Sworn to and subscribed before me
this Twentieth day of September, 2019


Notary Public for South Carolina
My commission expires: 6/2/2025

September 20, 2019

Other Counsel of Record:
WARD BRADLEY
MOORE TAYLOR LAW FIRM, P.A.
1700 Sunset Boulevard
West Columbia, SC 29169
Phone: 803.796.9160
Fax: 803.791.8410
Email: ward@mttlaw.com
Attorneys for Respondent


JAMES JOHN TODD KINCANNON

Respectfully submitted,


JAMES JOHN TODD KINCANNON
216 Jones Avenue
Simpsonville, SC 29681
Phone: 864.963.4374
Email: ToddKincannon@gmail.com
Appellant Pro Se

² Should the Court require any sort of documentation verifying that Appellant suffers from untreated attention deficit disorder and bipolar disorder, Appellant will arrange for his treatment providers to provide such documentation as quickly as possible upon receiving notice that the Court wishes the same to be provided.

Exhibit

Appellant's Financial
Declaration

2019CP3201168

STATE OF SOUTH CAROLINA,)
)
COUNTY OF LEXINGTON)
)
James John Todd Kincannon)
)
Plaintiff)
)
vs.)
)
Ashely Suzanne Griffith et al.)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT
**MOTION AND AFFIDAVIT TO
PROCEED IN FORMA PAUPERIS**

ORIGINAL

FILE NO

LISA M. COOPER
CLERK OF COURT
LEXINGTON, SC

2019 MAR 21 AM 11:09

FILED

I, James John Todd Kincannon, being duly sworn, state that I am the Plaintiff and that I do not have the funds available to pay the costs of filing and service in the present matter. I hereby request that the complaint be filed and service made without costs.

Sworn to and Subscribed before me
this 23rd day of February, 2019.

Robert K.
Notary Public for South Carolina

My Commission expires 6/2/25

[Signature]
Signature of Plaintiff or
Person Filing Complaint on Behalf of
Plaintiff

ORDER

Leave is granted to proceed in forma pauperis without payment of the filing fee.

Leave is granted to proceed in forma pauperis without payment of the service cost.

Leave is denied to proceed in forma pauperis.

Dated: *March 21*, 2019
Lexington, South Carolina

[Signature]
JUDGE/CLERK OF COURT

LISA M. COOPER
CLERK OF COURT
LEXINGTON, SC

2019 MAR 21 PM 2:49

FILED

NOTICE TO PLAINTIFF: The Court may assess costs against either party at hearing.

2019 CP3201168

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

James John Todd Kincannon)
Plaintiff,)

Ashley S. Griffith et. Al)
Defendant.)

IN THE CIVIL COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

FINANCIAL DECLARATION
OF James John Todd Kincannon

Docket No. _____

HUSBAND/FATHER		WIFE/MOTHER	
Address	216 Jones Ave, Simpsonville, SC 29681	Address	
Age	37	Age	
Occupation	None	Occupation	NA
Employer	None	Employer	
Employer Address		Employer Address	

Gross Monthly Income	Husband/Father	Wife/Mother
Principal Earnings from Employment ¹	0	
Overtime, Tips, Commission, Bonuses ²	0	
Pensions, Retirement, and Annuities income	0	
Additional Employment income	0	
Social Security Benefits (SSA) and VA Benefits	0	
Disability and Worker's Compensation Benefits	0	NA
Unemployment and AFDC	0	
Spousal or Child Support (from other marriage/relationship)	0	
Dividends, Interest, Trust Income, and Capital Gains	0	
Rental Income and Business Profits	0	
Other (Specify):	0	
TOTAL GROSS MONTHLY INCOME	0	

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CLERK OF COURT
JUDICIAL CIRCUIT
ELEVENTH

Payroll Deductions from Monthly Income	Husband/Father	Wife/Mother
Federal Income Tax ³	0	
State Income Tax	0	
Social Security and Medicare Tax (FICA)	0	
Self-Employment Tax	0	
Health and Dental Insurance (Adult)	0	NA
Health and Dental Insurance (Child)	0	
Union Dues	0	
Voluntary Retirement Contribution (401(k), 457, IRA)	0	
Mandatory Retirement Contribution	0	
Savings Plan	0	
Other (Specify):	0	
TOTAL MONTHLY DEDUCTIONS	0	
NET MONTHLY INCOME ⁴	0	

Estimate monthly expenses: (Specify which party is the custodial parent and list name and relationship of all members of household whose expenses are included.) \$2,100

MONTHLY EXPENSES ⁵	Husband/Father	Wife/Mother
Residential Rent Payment	XXXXXX	
Note or Mortgage Payment on Residence(s)	\$1,399	
Food and Household Supplies ⁶	\$400	
Utilities, Water, and Garbage Collection	\$150	
Telephone and Cellular Phone	\$50	
Medical, Dental and Disability Insurance Premiums (not deducted from paycheck)		NA
Life Insurance Premiums (not deducted from paycheck)		NA
Child Support (from other relationship)		
Work Related Day Care		
Spousal Support (from prior marriage)		
Auto Payment		
Auto Insurance, taxes, gasoline, and maintenance ⁷	\$100	
SUBTOTAL:		
\$2,100		
Real Property Tax on Residence(s)		
Maintenance for household ⁸		
Adult Clothing		
Children's Clothing ⁹		
Cable Television, Satellite, and Internet/Online Services		
Laundry and Dry Cleaning ¹⁰		NA
Medical and Dental Expenses (not paid by insurance)		NA
Prescriptions, Glasses, and Contacts (not paid by insurance)		NA
Children's incidental expenses ¹¹		
School lunches, supplies, field trips, and fees ¹²		
Entertainment ¹³		
Adult Incidental expenses ¹⁴		
All Installment payments ¹⁵		
Other (Specify):		
SUBTOTAL:		
\$2,100		
TOTAL MONTHLY EXPENSES	\$2,100	NA

Installment Loan Payments Section

Creditor	For	Monthly Payment	Balance	Owed by ¹⁶
U.S. Bank ↳ Disputed	Mortgage	\$1,399	~ \$380,090	MC
Parents	Living Expenses	\$600 ~ \$1200	~ \$35,000	MC
Miscellaneous Smaller Debts			~ \$20,000	MC

Other Debts and Obligations *not* payable in monthly installments

Creditor	For	Date Payable	Balance	Owed by ¹⁶
U.S. Bank & Disputed	Mortgage	Arrears	N \$300,000	MC

Are you currently in Bankruptcy? YES NO

Are any obligations listed above, including mortgage and note payments, in arrears? YES NO

If yes, please list the obligations in arrears.

Obligation to U.S. Bank / Obligation to Parents

All Marital Property Known to Parties

Assets	Husband/Father	Wife/Mother	Joint
Cash and Money in Checking Account(s)	0		
Money in Savings Account(s), Credit Union, Money Market, or Cert. of Dep.	0		
Value of Voluntary Retirement Account(s)	0		
Value of Pension Account	0		
Value of Publicly Held Stocks, Bonds, Securities, Mutual Funds	0	NA	NA
Value of Privately Held Stocks and Other Business	0		
Value of Real Estate - Net of Mortgage Balances	0		
Value of All Other Property ¹⁷	0		
TOTAL ASSETS	0		

Any Non Marital Property Known to Parties

Description of Asset	Title Owner	Date of Acquisition	Source of Funds to Acquirer	Estimate Present market Value
None				

If total assets are less than \$300,000.00, sign and have notarized.

If total assets are greater than \$300,000.00, itemize assets by completing additional sections below and sign and have notarized.

Financial Accounts Section ¹⁸

Owner	Name of Institution	Type of Account	Balance
None			

Voluntary Retirement Accounts and Pension Accounts Section

Type of Account	Value
None	

Publicly Held Stocks, Bonds, Securities, Mutual Funds Section (Non-Retirement)¹⁹

Name of Company	Number of Shares/Type of Account	Value
None		


Real Estate Section²⁰ of my interest

Owner	Address	Value	Mortgage Balance	Mortgage Equity
Parents + me	3105 Palmetto Blvd	\$5 ← Nominal	~\$50,000	\$0

Other Property Section²¹

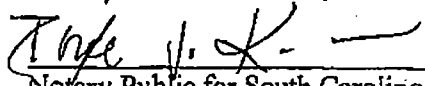
In foreclosure at present

Owner	Description of Asset	Value	Loan Balance	Equity
me	Chase In Action Asserted in this case	3	—	—
me	Related chases in action	?	—	—

Signature 

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2019 MAR 21 PM 4:20
USA HONORARY CLERK OF COURT
T. RAYMOND SC

Sworn to before me this 19th of March 2019.

 (SEAL)
Notary Public for South Carolina
My commission expires: 6/2/2025

Custodial Parent (if applicable): NA

1. A recent paystub should be attached to the Financial Declaration. To compute Principal Earnings from Employment, first determine whether you are paid semi-monthly, biweekly, or weekly. If you are paid semi-monthly, multiply the gross amount of your pay check by two. If you are paid biweekly, multiply the gross amount of your pay check by 26 and then divide by 12. If you are paid weekly, multiply the amount of your paycheck by 52 and divide by twelve. Round to the nearest whole dollar.
2. To compute Overtime, Tips, Commission, and/or Bonuses, take an average of your monthly earnings from overtime, tips, commission, bonuses, etc. from the past three years or the length of employment if employed less than three years (including this year).
3. To compute State, Local, and Social Security Tax deductions, use the same formula used to compute principal earnings in endnote 1 above, or consult or have your attorney consult an accountant.
4. Net monthly Income is equal to Total Gross Monthly Income minus Total Monthly Deductions.
5. Do not include any expense in the Monthly Expenses section that has already been included in the Deductions from Gross Monthly Income on page one of the Declaration.
6. Food Expense is to include the cost of groceries, toiletries, cleaning supplies, and casual eating out.
7. Auto Expenses are to include gasoline, oil changes, tune-ups, tire replacement, maintenance, and related items.
8. Maintenance for Household is to include appliance and household repairs, landscaping, house cleaning, pest control, pool service, alarm service, and other related items.
9. Clothing Expense is to include shoes and clothing purchases, clothing repair and alterations, and related items.
10. Laundry Expense is to include the cost of laundry service, dry cleaning, and related items.
11. Children's Incidental Expenses are to include allowance, summer camp, baby sitters, lessons, activities, participatory sports, and related items.
12. School Expense is to include tuition, supplies, field trips, dues, tutors, locker rentals, school lunches, and other related items.
13. Entertainment is to include movies, theater, vacations, sporting events, compact discs, digital video discs, and related items.
14. Adult Incidental Expenses are to include cosmetics, hair and nail care, books, magazines, newspapers, business dues, memberships, pets, charity, religious dues or tithes, gifts, bank charges, hobbies, and related items.
15. All Installment Loan Payments is the total amount itemized in Installment Loan Payments Section, which should include all loan payments not already listed as a monthly expense. Examples: home equity loan, credit cards, etc.
16. Indicate which spouse legally owes the payment (husband, wife, or joint).
17. Other property is to include automobiles (minus loan balance), boats (minus loan balance), furniture, furnishings, china, silver, jewelry, collectibles, and other personal property.
18. Itemize Financial Accounts such as checking, savings, credit union, money market, or certificate of deposit accounts in the Financial Accounts Section.
19. Itemize Publicly Held Stocks, Bonds, Securities, Stock Options and Mutual Funds (excluding retirement accounts) in the Publicly Held Stocks, Bonds, Securities, Mutual Funds Section.
20. Itemize each parcel of Real Estate in the Real Estate Section.

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APPEAL FROM LEXINGTON COUNTY
In the Court of Common Pleas

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Robin B. Stilwell, Circuit Court Judge

SEP 24 2019

SC Court of Appeals

Appellate Case No. 2019-001501

James John Todd Kincannon..... Appellant,

v.

Ashely Suzanne Griffith, Moore Taylor Law
Firm, P.A., Vance Stricklin, and Amber
Fulmer,..... Respondents.

CERTIFICATE OF SERVICE

I, the undersigned James John Todd Kincannon, the Appellant Pro Se, certify that I have on the date below indicated served Respondents with the foregoing and this proof of service by first class mail to Respondents' counsel of record at the address indicated below. I further certify that this service has been made in accordance with the South Carolina Appellate Court Rules and any other legal rules that govern this matter.

WARD BRADLEY
MOORE TAYLOR LAW FIRM, P.A.
1700 Sunset Boulevard
West Columbia, SC 29169

September 20, 2019



JAMES JOHN TODD KINCANNON
Appellant Pro Se



Greenville P.O. 296
SAT 21 SEP 2019 PM

S.C. Court of Appeals
Clerk's Office
P.O. Box 11629
Columbia, SC 29211

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