

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2019-001175
Case No. 2019-CP-40-2137

RECEIVED
JAN 23 2020
SC Court of Appeals

George M. Adams, #181283, Appellant,

v.

Richland County Sheriff's Department, Respondent.

INITIAL BRIEF OF RESPONDENT

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Cases

Ex Parte: Martin v. State,
321 S.C. 533, 471 S.E.2d 134 (1995).

Fontaine v. Peitz,
291 S.C. 536, 354 S.E.2d 565 (1987).

I'On v. Town of Mt. Pleasant,
338 S.C. 406, 526 S.E.2d 716 (2000).

Jeter v. South Carolina Department of Transportation,
369 S.C. 433, 633 S.E.2d 143 (2006).

Sullivan v. South Carolina Department of Corrections,
355 S.C. 437, 586 S.E.2d 124 (2003).

Rules and Statutes

S.C. Code Ann. § 8-31-210(C)(1).

S.C. Code Ann. § 15-78-10.

S.C. Code Ann. § 15-78-110(b).

S.C. Code Ann. § 15-78-110.

Rule 3(c), SCRCF.

Rule 220(c), SCACR.

Rule 207(b)(2), SCACR.

STATEMENT OF THE CASE

The Appellant George M. Adams is an inmate currently confined within the South Carolina Department of Corrections. The Appellant has filed an appeal from Circuit Court Judge Jocelyn Newman's dismissal of his case for failure to pay the required Circuit Court filing fee. The Appellant's lawsuit alleges claims for false arrest and malicious prosecution against the Richland County Sheriff's Department based on an arrest and prosecution occurring in the 1992-1994 time frame. The lawsuit does not raise any state or federal constitutional claims.

On or about April 8, 2019, the Appellant submitted a Motion and Affidavit to Proceed In Forma Pauperis. That motion was adjudicated by Circuit Court Judge Jocelyn Newman in her role as Chief Administrative Judge. By order filed April 18, 2019, Judge Newman denied in forma pauperis status for this litigation and directed that "Plaintiff shall pay the required filing fee no later than May 31, 2019, or this case will be dismissed." (Order). Thereafter, Judge Newman issued a form order on June 10, 2019, dismissing the action after the Appellant failed to pay the filing fee. That form order states: "Plaintiff had until May 31, 2019 to pay the filing fee or the case would be dismissed. The Clerk's Office has not received any payments as of June 3, 2019." (Form Order). The Plaintiff filed a motion for reconsideration which was denied by Judge Newman by form order filed on June 18, 2019. This appeal follows.

STANDARD OF REVIEW

The standard of review applicable to a circuit court's decision to deny in forma pauperis status and dismiss for failure to pay required filing fees is an abuse of discretion standard. *See generally, Ex Parte: Martin v. State*, 321 S.C. 533, 471 S.E.2d 134 (1995). "An abuse of discretion occurs when the [circuit court's] ruling is based upon an error of law or, when based upon factual conclusions, is without evidentiary support." *Fontaine v. Peitz*, 291 S.C. 536, 354 S.E.2d 565, 566 (1987).

ARGUMENTS

The Appellant George M. Adams has filed an appeal from Circuit Court Judge Jocelyn Newman's dismissal of his case for failure to pay the required Circuit Court filing fee. As indicated, the Appellant's lawsuit alleges claims for false arrest and malicious prosecution against the Richland County Sheriff's Department based on an arrest and prosecution occurring in the 1992-1994 time frame. The lawsuit does not raise any state or federal constitutional claims. Thus, the Appellant's lawsuit is governed by the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq.*

On appeal, based upon the arguments contained in his opening brief, the Appellant appears to challenge the fact that his lawsuit was adjudicated in the Circuit Court rather than in Magistrate's Court. That issue is controlled by S.C. Code Ann. § 15-78-100(b), which provides that "[j]urisdiction for any action brought under this chapter is in the circuit court." *See also, Jeter v. South Carolina Department of Transportation*, 369 S.C. 433, 633 S.E.2d 143, 147 (2006) ("Because there is but one circuit court in South Carolina, with uniform subject matter jurisdiction throughout the state, § 15-78-100(b) establishes subject matter jurisdiction for actions arising under the SCTCA in the circuit court throughout the state"). Thus, jurisdiction for an action brought pursuant to the Tort Claims Act must be in the Circuit Court. Accordingly, it was proper that the Appellant's false arrest and malicious prosecution claims against the Sheriff's Department were adjudicated in

the Circuit Court. The Appellant's assignment of error based on jurisdiction lacks merit.

The Appellant also appears to complain that Judge Newman denied his request for in forma pauperis status, thereby requiring him to pay a filing fee in order to proceed with his lawsuit. The Appellant has not, however, shown that Judge Newman abused her discretion or committed an error of law.

In the case of *Ex Parte: Martin v. State*, 321 S.C. 533, 471 S.E.2d 134 (1995), the South Carolina Supreme Court addressed the issue of granting motions to proceed in forma pauperis. The Court explained:

Because of the increasing number of persons seeking to proceed in forma pauperis, we take this opportunity to give guidance as to when it is appropriate to waive filing fees. 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.

471 S.E.2d at 134-135. The Supreme Court then reviewed various statutory provisions that require a waiver of filing fees. There is no provision in the Tort Claims Act or elsewhere in the Code of Laws that mandates a waiver of filing fees for bringing a tort claim against a governmental entity. The Supreme Court then offered the following directive:

[W]hen an indigent litigant files a motion to proceed in forma pauperis pursuant to Rule 3(c), and the complaint does not appear to fit within one of the statutory or

constitutional exceptions to the requirement of a filing fee, the clerk of court must submit the motion to a judge for a ruling as to whether the complaint does fit within one of the statutory exceptions or whether the cause of action concerns a fundamental right that requires waiver of the filing fee.

471 S.E.2d at 135.

Later, in *Sullivan v. South Carolina Department of Corrections*, 355 S.C. 437, 586 S.E.2d 124 (2003), the Supreme Court held that a litigant is not entitled to proceed in forma pauperis in *Al-Shabazz* appeals from the Administrative Law Judge Court. The Court further explained:

The General Assembly is the body charged with the power to waive filing fees, and they have not created a waiver for this set of cases. Further, this is not a case involving "fundamental rights," so access to the courts is not constitutionally required in this case. Therefore, Sullivan is not entitled to proceed in forma pauperis on his appeal from the ALJ's dismissal.

586 S.E.2d at 128.

In the present case, there is no statutory provision allowing this Court to waive the payment of a filing fee as required by S.C. Code Ann. § 8-31-210(C)(1), under the circumstances presented by the Appellant. As indicated, the Appellant's lawsuit alleges claims for false arrest and malicious prosecution which are tort claims. The lawsuit does not raise any constitutional claims nor implicate any "fundamental rights." In short, this action does not require or merit the waiver of filing fees. The denial of in forma pauperis status was a correct ruling and should be affirmed.

Additionally, as an additional sustaining ground,¹ it is abundantly clear from the face of the Complaint that the claims are time-barred. The Appellant's claims arise from his arrest and prosecution occurring in the 1992-1994 time frame. The applicable statute of limitations is two years under the Tort Claims Act. See, S.C. Code Ann. § 15-78-110. There is no question that the Appellant's action would be dismissed on the merits based on a statute of limitations defense even if the filing fee had been waived and he could have proceeded. The Respondent thus asserts the statute of limitations as an additional sustaining ground which is clear on the face of the pleadings.

¹ In the case of *I'On v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000), the Supreme Court explained that a respondent "may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court." 526 S.E.2d at 723. "The appellate court may review respondent's additional reasons and, if convinced it is proper and fair to do so, rely on them or any other reason appearing in the record to affirm the lower court's judgment." *Id.* See also, Rule 220(c), SCACR ("[t]he appellate court may affirm any ruling, order, or judgment upon any ground(s) appearing in the record"); Rule 207(b)(2), SCACR ("[r]espondent's brief may also contain argument asking the court to affirm for any ground appearing on the record as provided by Rule 220(c)").

CONCLUSION

Based on the foregoing discussion and analysis, the Respondent Richland County Sheriff's Department respectfully requests that this Court affirm the orders issued by Circuit Court Judge Jocelyn Newman denying in forma pauperis status to the Appellant and dismissing his lawsuit for failure to pay the required filing fees.

Respectfully submitted,

LINDEMANN, DAVIS & HUGHES, P.A.

BY: 

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January 21, 2020

THE STATE OF SOUTH CAROLINA
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CERTIFICATE OF SERVICE

The undersigned employee of Lindemann, Davis & Hughes, P.A., counsel for the Respondent, does hereby certify that service of the **Initial Brief of Respondent** and **Respondent's Designation of Matter to be Included in the Record on Appeal** was made upon the *pro se* Appellant by placing copies in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 21st day of January 2020:

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RE: George M. Adams, #181283 v. Richland County Sheriff's Department
Court of Appeals Case Number: 2019-001175
Civil Action Number: 2019-CP-40-2137
Claim Number: Risk Management
Our File Number: 314.20191

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SC Court of Appeals

Dear Ms. Kitchings:

Please find enclosed for filing the originals and one copy each of the **Initial Brief of Respondent** and **Respondent's Designation of Matter to be Included in the Record on Appeal** in the above referenced matter. Please file the originals and return a clocked-in copy of each document to me in the enclosed envelope. By copy of this letter, I am serving copies on the *pro se* Appellant.

Thank you for your assistance. If you have any questions, please advise.

Sincerely,

LINDEMANN, DAVIS & HUGHES, P.A.

Andrew F. Lindemann

AFL/jmb

cc: (w/ Enclosures)

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