

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT COURT

COUNTY OF RICHLAND)

Therl Taylor,)

Plaintiff,)

**ORDER DENYING PLAINTIFF'S
MOTION TO PROCEED IN
FORMA PAUPERIS**

v.)

Charles Brooks, John & Jane Doe;)

Defendant.)

This matter is before the Court on the Plaintiff's Motion to proceed *in forma pauperis*. Plaintiff, Therl Taylor, submits that he is unable to pay costs for filing fees and service in pursuing his Petition for Summons and Complaint. Plaintiff provides the Court a Motion and Affidavit to Proceed in Forma Pauperis, along with his Summons and Complaint.

In *Martin v. State*, 321 S.C. 533, 535-536, 471 S.E.2d 134, 134-135 (1995), the South Carolina Supreme Court:

[gave] 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. See *Tahtinen v. Superior Court, Pinal County*, 130 Ariz. 513, 637 P.2d 723 (1981); *Steinkamp v. Jacque*, 36 Conn.Sup. 37, 410 A.2d 489 (1979); 1986 Op.S.C.Att'y Gen. No. 86-44 at 131.

Among the statutory provisions allowing or requiring waiver of filing fees are S.C.Code Ann. §§ 8-21-310(11)

(Supp.1994) (no fee must be paid to appeal from a conviction in magistrate's or municipal court); 17-27-60 (1985) (no fee required of indigent filing a post-conviction relief action); 20-4-40(e) (1985) (clerks of court must assist persons seeking an order of protection from domestic abuse by giving them forms to proceed *in forma pauperis*); 20-7-1440 (Supp.1994) (no court fee may be charged in delinquency and neglect actions); 41-39-30 (1986) (fee waived in a proceeding involving a claim for benefits from the Employment Security Commission); and, 44-41-34(B) (Supp.1994) (a minor may file an action seeking consent for an abortion without paying any filing fee). Further, where certain fundamental rights are involved, the Constitution requires that an indigent be allowed access to the courts. Compare *Boddie v. Connecticut*, 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971) (an indigent must be given access to courts in divorce action) and *Smith v. Bennett*, 365 U.S. 708, 81 S.Ct. 895, 6 L.Ed.2d 39 (1961) (an indigent prisoner may not be required to pay a filing fee for petitioning for a writ of habeas corpus) with *Ortwein v. Schwab*, 410 U.S. 656, 93 S.Ct. 1172, 35 L.Ed.2d 572 (1973) (no constitutional violation in requiring payment of appellate filing fee by indigents seeking review of an adverse welfare decision) and *United States v. Kras*, 409 U.S. 434, 93 S.Ct. 631, 34 L.Ed.2d 626 (1973) (no constitutional violation in requiring payment of filing fee by indigent in bankruptcy action).

Id. Accordingly, indigents have been allowed to proceed *in forma pauperis* in various actions since *Martin v. State* was decided. See *Harrison v. Harrison*, 373 S.C. 524, 646 S.E.2d 180 (Ct. App. 2007) (allowing inmate to file divorce action *in forma pauperis*); *Ex parte Rice*, 307 S.C. 469, 415 S.E.2d 819 (1992) (inmate allowed to proceed with divorce action *in forma pauperis* where his net income was \$1.50 per month and filing fee was \$55.00); *Lakes v. State*, 510 S.E.2d 228, 333 S.C. 382, (S.C.App. 1998) (inmate was entitled to proceed *in forma pauperis* with petition for writ of habeas corpus, despite numerous previous requests for relief, in absence of factual findings that requests rose to the level of

X

repetitive and abusive filings pursuant to § 17-27-60). *Compare with Sullivan v. South Carolina Dept. of Corrections*, 355 S.C. 437, 586 S.E.2d 124, (S.C. 2003) (access to the courts was not constitutionally required, as prison inmate's grievance request for immediate enrollment in second phase of sex offender treatment program did not involve fundamental rights) and thus, inmate was not entitled to proceed *in forma pauperis* on his appeal from an ALJ decision dismissing his grievance against the Department of Corrections).

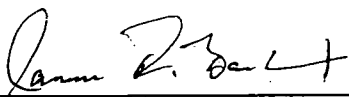
In *Martin v. State, supra*, the South Carolina Supreme Court directed:

... when an indigent litigant files a motion to proceed in forma pauperis pursuant to Rule 3(c), [SCRCP] 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.

Pursuant to the foregoing, the Court has reviewed the pleadings and finds that Plaintiff's Petition does not appear to fit within any statutory exceptions and does not involve a (Constitutionally protected fundamental right) that requires a waiver of the filing fee.

Therefore, the Plaintiff's Motion to Proceed *In Forma Pauperis* is **DENIED**.

IT IS SO ORDERED.



JAMES R. BARBER, III
Chief Judge for Administrative Purposes
Fifth Judicial Circuit

November 5, 2012
Columbia, South Carolina

received 11/9/12

RECEIVED INMATE TRUST FUND ACCOUNT REPORT for SOUTH CAROLINA COURT FILING FEES

Alendale

RECEIVED

MAR 0 INSTRUCTIONS TO INMATE: Complete top portion then give to your mailroom. When returned from Accounting, you must mail this form with any payment to the Court. DEC 0 8 2012

By signing my name below, I am asking the Financial Accounting Office of the South Carolina Department of Corrections to complete this report. In accordance with SC Code of Laws §24-27-100 and 150, I authorize payment of the full filing fee. If I have insufficient funds in my account at this time to pay the court's full filing fee, I authorize SCDC to deduct the initial and subsequent payments until payment is completed.

SCDC-FINANCIAL ACCOUNTING 2012 MAR 7

INMATE NAME (print): Therl Taylor Submitted on March 6th, 2012

SCDC# 260,961 - INMATE SIGNATURE: Therl Taylor hand delivered to [unclear]

I plan to file this action in the SC County of Richland or other

The section below is for SCDC - Financial Accounting Branch's use ONLY.

- (1) Total deposits to inmate's account for preceding six months' period* \$ 125.58
- (2) Twenty percent (20%) of line 1 \$ 25.12
- (3) Account balance - current date \$ 15.37
- (4) PAYMENT AMOUNT ** (lesser of line 2 or line 3) Enclosed check # \$ 0

**NOTE to COURT: If payment is for partial fee, Court must notify SCDC once case is accepted and filed. Send notice with case # and balance owed to address below. SCDC will NOT process any additional payments until notification is received from Court.

South Carolina Department of Corrections
Financial Accounting - Room 234
PO Box 21787
Columbia, SC 29221-1787

SCDC-FINANCIAL ACCTG. 2012 MAR -8 PM 2:34

Received 3/13/12

*Admission date is noted here if inmate incarcerated less than six months 1/1

[Signature]

3/13/12 Date

Attachment 'A.1'

UNITED STATES POSTAL SERVICE

260961 F4B43



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

Ther L TAYLOR
ALlendake Institution
1057 Revolutionary
PO Box 1157

RECEIVED

Fairfax SC 29827

OCT 31 2012

MAILROOM

Rec
11/1/12
done
for

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

The Richland Co Court of
Common Pleas
The Honorable Jaxett McBride
Att Ms Judy Davis Civil Recor
PO Box 2166
Columbia SC 29202-2766

2. Article Number
(Transfer from service label)

COMPLETE THIS SECTION ON DELIVERY

A. Signature
Maria Starnes Agent
 Addressee

B. Received by (Printed Name)
Maria Starnes

C. Date of Delivery
10/29/12

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below No

OCT 29 REC'D

3. Service Features
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

Mr. TherL Taylor
ALLENDALE CHARACTER HOUSING UNIT
PO BOX 1151
FAIRFAX, SC 29827

Attachment "B"

RICHLAND COUNTY
COURT OF COMMON PLEAS
MS. JUDY DAVIS, SUPERVISOR
PO BOX 2766
COLUMBIA, SC 29202-2766

RE: TherL Taylor- Plaintiff vs. Charles Brooks, John & Jane
Doe, et al Defendant[s] November 13, 2012

Dear Ms. Davis:

My twenty (20) page Legal Malpractice lawsuit was improperly returned. This is Not a Fraud Cause of Action. My extra photocopy initially submitted for filing was Not returned. As a result this incurred additional cost and time.

A format style letter from this office stated a Trust Fund Account Report was not included initially. This is NOT true. Enclosed is another Page 15 again for filing in the above case. Attachment "A"

This case should be filed and served within 120 days. The \$150.00 filing fee should be taken in installments from my Trust Fund Account as provisioned by S.C. Code of Laws §24-27-100 & 150, as initially requested by Certified Mail Return Receipt Requested, Article Number: 7006 2150 004 8717-7227. This appears a deliberate delay by an employee that represents the Richland County Court of Common Pleas.

As a courtesy, please provide a list of the full names or identities and titles of the individuals that worked last month and this month, particularly through the 1st week of November when this lawsuit was initially submitted for proper filing.

The envelope utilized by this office misspelled my only known (Government) name by adding a "y". Never, have I utilized a "y". Please spell my name correctly as depicted above herein. Always use the SCDC, IDENTIFICATION NUMBER AND HOUSING UNIT & ROOM NUMBER clearly depicted on this mailing envelope.

Based upon the specific findings of fact thus far relating to or connected with the simple filing of this particular case, please forward an itemized Index of all documents submitted for filing the case at hand.

Return a clocked stamp copy of this document please. Thank you.

Very truly,

cc: File

Mr. TherL Taylor
ALLENDALE CHARACTER HOUSING UNIT
PO BOX 1151
FAIRFAX, SC 29827

Attachment "C"

RICHLAND COUNTY COURT OF COMMON PLEAS
CHIEF ADMINISTRATIVE JUDGE, JAMES BARBER
PO BOX 2766
COLUMBIA, SC 29202-2766

RE: TherL Taylor- Plaintiff vs. Charles Brooks, John & Jane Doe, et al
Defendant[s] November 13, 2012
Clarity Findings of Fact- Reconsideration

Your Honor:

On Friday, November 9th, 2012, I received by personal signature within the Institutional ["Isnt."] Mail Room [MR] Legal LOG Entry an improper decision (dated Nov. 5th) or by clerical error denying my pro se state lawsuit to declare in forma pauperis. The absolute Truth is that I am extremely very poor with no income nor even an opportunity to generate any funds. I have no assests.

For primarily informational purposes, said opinion dated Nov. 5th, Federal Postal Meter dated 7th Nov. and Institutional time date stamped Nov. 8th.

The "Caption" decisively omits to depict defendant[s]- plurality.

Strikingly, the first general paragraph states, " Plaintiff provides *the* Court a Motion & Affidavit to process In Forma Pauperis ("IFP"), along with his Summons & Complaint," and ... unusually omits the crucial submitted document labeled as page and number #15 within this Pro Se Plaintiff's original twenty (20) page State lawsuit, forwarded by Certified Mail, Return Receipt Requested, Article Number: 7006 2150 004 8717-7227, with delivery received date as "October 29th, 2012".

The circumstance that this suit against an attorney ended on the Chief Judge's desk without the [T]rust Fund Account Report document to consider is now significant. Upon information and strong belief defendants have likely been alerted.

In reply thereto ... a degree find enclosed again, the original Trust Fund Financial document previously submitted. See Attachment "A".

On November 13th at the first opportunity another even more current Trust Fund Report was time stamped and forwarded for Agency-Department processing. This one will also be immediately forwarded to you sir as soon as I receive such. I promise.

November 13th, 2012

Another glaring fact, [s]ome one within the Richland County Clerk's Office inappropriately wrote on my Legal Material that I was commencing suit because defendant... [an unwanted nor requested incompetent attorney] committed "FRAUD". Was your decision based upon this fact? This is not [t]rue. I never argued "Fraud" as a Tort or otherwise Cause of Action. [M]y litigation consciously avers three (3) solid, concise state torts for Legal Malpractice, Civil Conspiracy and Infliction of Emotional Distress, commonly termed "Outrage".

In light of specific factual assertions above, supporting document re-enclosed and new current Trust Account Document Forthcoming, please reconsider my PROVERTY STATUS in order to Waive filing fee and service.

Lastly, kindly provide an official (informal or formal) acknowledgment that have received this document in reply to your denial requesting reconsideration and grant the inform pauperis. I do not wish to pursue an appeal if possible.

Very truly,



cc: CA

SCSC
Esquire

File

