

In the State of South Carolina

In the Court of Appeals

Appeal from Richland County

Court of Common Pleas

Honorable James R. Bonbr, III, Circuit Court Judge

Case No. 2010-CP-40-05896

Appellate Case No. 2012-211917

Stewart Buchanan,, Appellant,

v.

Robert Brown, in his individual capacity; [First Name Unknown] Bowie, in her individual capacity; and,
David Totansky, in his individual capacity,, Respondents.

Motion for Rehearing

Rules 221(c) & 240(c)

SCACR

To: The Appellate Court:

Personally appears Appellant Stewart Buchanan who moves this Court for a rehearing of the April 10, 2013 order by the Court dismissing this appeal. In support of this motion, Appellant would respectfully show this court:

I. Facts

Appellant is indigent and unable to pay the filing fees as now required. Appellant motioned for leave to proceed In Forma Pauperis. The "Amended Complaint" presents several issues involving the deprivation of Appellant's fundamental rights.

On January 30, 2013 the Honorable John C. Few denied Appellant leave to proceed In Forma Pauperis pursuant to Ex Parte Martin, 321 S.C. 533, 471 S.E.2d 134 (1995).

On April 10, 2013, this appeal was dismissed due to Appellant's failure to pay the filing fees.

II. Statement of the Case

As a participant in the SCDC Hobby Craft Program, Appellant enjoyed a state-created liberty interest to purchase hobby craft tools, supplies and materials from his own personal financial resources. (SCDC Policy and Procedures PS-10.06, R.p. 16, pgs. 7-9.)

Appellant was illegally deprived of more than three-thousand dollars (\$3,000.00) in personal property by Defendant Brown. (R.p. 17, pgs. 14.) Appellant was deprived this state-created liberty or property interest in violation of the due process procedures afforded him by SCDC Policy and Procedures PS-10.06. (R.p. 17, pgs. 15-16.)

Appellant filed four (4) grievances with SCDC against Defendant Brown's actions: Grievances Numbered Lee CI 1383-08, Lee CI 1693-08, Lee CI 1694-08, and Lee CI 1695-08. (R.pgs. 36-42.)

Defendants Bowie and Tatansky have both acted in violation of Appellant's procedural safeguards provided by SCDC Policies and Procedures to prevent, and have prevented until this day, Appellant having received a final agency decision to any of the above four (4) grievances. Five (5) years have passed without the grievances being answered. (R.p. 18, pgs. 19-24, R.pgs. 19-22, pgs. 26-37.)

Appellant complains of three (3) constitutional violations, resulting from twelve (12) separate causes of action. ("Amended Complaint", R.p. 23, pgs. 38-40.)

Appellant could not perfect an appeal to the administrative Law Court after waiting for more than two (2) years for a final agency decision, so he filed his case in the Circuit Court.

II. Questions Presented

I. Whether review pursuant to *Ex Parte Martin*, 321 S.C. 533, 471 S.E.2d 134 (1995) of a motion for leave to proceed *In Forma Pauperis* is a ministerial function?

II. Whether the grant of leave to proceed without payment of fees is automatic when the complaint presents issues involving the appellant's fundamental rights?

III. Whether the Court of Appeals abused its discretion when it denied Appellant leave to proceed without payment of filing fees and then dismissing the appeal when the fees could not be paid, though Appellant's case clearly presented several issues involving fundamental rights?

III. Argument

I. Review pursuant to *Ex Parte Martin* of a motion for leave to proceed *In Forma Pauperis* is a ministerial function: (II.) grant of leave to proceed without payment of fees is automatic when the complaint presents issues involving the appellant's fundamental rights, and (III.) the Court of Appeals abused its discretion when it denied Appellant leave to proceed without payment of fees and then dismissing the appeal when the fees could not be paid, though Appellant's case clearly presented several issues involving fundamental rights.

"Plaintiff has been deprived of personal property, deprived of constitutionally secured equal protection of the law and deprived constitutionally secured equal protection of the law by each and every defendant, all in violation of South Carolina State law, custom and usage, and in violation of the South Carolina Constitution." (R.p.#, pgh.1.)

The above opening statement of the "Amended Complaint" clearly presents issues involving Appellant's "fundamental rights". *Ex Parte Martin, supra.*

In the lower court, these claims of violating Appellant's fundamental rights has been admitted by each defendant.

Appellant is entitled to appeal the lower court's Order dismissing the appeal for inappropriate reasons.

During the nine (9) months elapsing between filing the "Notice of Appeal" and Judge Few's denying leave to proceed without paying the filing fees, the appeal has been perfected and is ripe for judicial review.

Dismissing this appeal due to Appellant's inability to pay the filing fee is contrary to the South Carolina Supreme Court's order in Ex Parte Martin, supra.

This court has denied Appellant access to the courts and procedural due process to which he is entitled in violation of the 14th Amendment to the United States Constitution. Appellant will continue to suffer these deprivations unless and until this court intervenes in his behalf, reinstates this case, grants him leave to proceed without payment of fees, and proceeds with this appeal, Ruling upon the merits.

V. Conclusion

Appellant prays that this case be reinstated, that Appellant be granted leave to proceed with his appeal without payment of fees, that the court proceed with adjudication of the merits, and that he be granted any such or further relief as may be deemed appropriate and just.

Respectfully submitted:

Stewart Buchanan
Stewart Buchanan, #069848

McCormick CI

386 Redemption Way

McCormick, SC 29849

Dated: April 26, 2013

In the State of South Carolina
In the Court of Appeals

Appeal from Richland County
Court of Common Pleas

Honorable James R. Barber, III, Circuit Court Judge

Case No. 2010-CP-40-05896

Appellate Case No. 2012-211917

Stewart Buchanan,, Appellant,

v.

Robert Brown, et al.,, Respondents,

Affidavit of Service

Personally appears Affiant Stewart Buchanan who, first being duly sworn, hereby deposes and says that I placed originals of my "Motion for Rehearing" in sealed envelopes addressed to Samuel F. Arthur, III, Esq., Aiken Bridges, P.O. Drawer 1931, Florence, SC 29503, and Hon. Jerry A. Kitchings, Clerk, SC Court of Appeals, P.O. Box 11629, Columbia, SC 29211, and deposited same in the McCormick CI mailroom on this 26th day of April, 2013,

Stewart Buchanan
Affiant

Sworn to and subscribed before me
this 26th day of April, 2013.

Jane L Young
Notary Public

My Commission expires: 10/1/2021

The South Carolina Court of Appeals

Stewart Buchanan, #69848, Appellant,

v.

Robert Brown, in his individual capacity, [First name unknown] Bowie, in her individual capacity, and David Tatarsky, in his individual capacity, Respondents.

Appellate Case No. 2012-211917

The Honorable James R. Barber, III
Richland County
Trial Court Case No. 2010CP4005896

ORDER

Appellant has failed to provide the notice of appeal filing fee, as required by Rule 203 of the South Carolina Appellate Court Rules. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY


CLERK

Columbia, South Carolina

cc:

FILED

4-10-13 EAC



South Carolina Court of Appeals

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STEWART BUCHANAN, 069848
MCCORMICK CI, F4-224
386 REDEMPTION WAY
MCCORMICK SC 29889

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Stewart Buchanan, #069848
McCormick CI
386 Redemption Way
McCormick, SC 29899

April 26, 2013

The Honorable Jenny A. Kitchings, Clerk
S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED

MAY 01 2013

SC Court of Appeals

Re: Buchanan v. Brown, et al., Appellate Case No. 2012-211917
Motion for Rehearing, Rules 221(C) and 240(G), SCACR

Dear Ms. Kitchings:

Enclosed you will find a true original of my "Motion for Rehearing" regarding the court's April 10, 2013 order dismissing this appeal. The Order was received at McCI on April 12, 2013 and was delivered to me Monday, April 15, 2013.

Respondent has been served with a true and correct copy of same.

Sincerely,
Stewart Buchanan

Attachments

Enclosure

cc: Samuel F. Arthur, III, Esq.

File