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Jun 03 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bentley D. Price

Court of Appeals Case No. 2022-XXXXXX
Circuit Court Case No. 2021-CP-10-2682

Pet Helpers, Inc. and Melissa Susko..... Respondents,

v.

Janet L. FriscoAppellant.

RETURN TO MOTION TO APPEAR IN FORMA PAUPERIS

**I. THIS COURT SHOULD DENY APPELLANT’S MOTION TO APPEAR IN
FORMA PAUPERIS BECAUSE APPELLANT IS GAINFULLY
EMPLOYED AND BECAUSE THIS APPEAL DOES NOT INVOLVE A
FUNDAMENTAL RIGHT.**

Appellant bears the burden of establishing her indigency to qualify for the relief she seeks. State v. Bishop, 128 S.E.2d 914, ___, 241 S.C. 459, 461 (S. Ct. 1962). Here, there is no dispute that Appellant is not indigent. First, Appellant is gainfully employed as a security guard for Trident Security Systems in Charleston, South Carolina. Second, there is no dispute that Appellant owns a home in Summerville, South Carolina. Third, Appellant has asserted that finances are not an issue for her. Specifically, on April 28, 2022, Appellant communicated with Respondents’ counsel

regarding the late payment of \$1,774.24 in sanctions the lower court ordered her to pay wherein Appellant wrote, “At this point money is no object.”¹ **Exhibit A** (emphasis added).

Furthermore, no fundamental constitutional rights are invoked in this appeal that support Appellant’s request. *See Ex Parte Martin v. the State*, 321 S.C. 533, 535-36, 471 S.E.2d 134, ____ (S. Ct. 1995) (citing *Ortwein v. Schwab*, 410 U.S. 656, 93 S. Ct. 1172, 35 L. Ed. 2d 572 (1973) (there was no constitutional violation in requiring the payment of an appellate filing fee by indigents seeking the review of an adverse welfare decision); *United States v. Kras*, 409 U.S. 434, 93 S. Ct. 631, 34 L. Ed. 2d 626 (1973) (there was no constitutional violation in requiring the payment of a filing fee by an indigent in a bankruptcy action)). Here, the underlying lawsuit involves civil claims for defamation, and permanent injunction, and malicious prosecution.

CONCLUSION

Because Appellant is not indigent and because this appeal does not involve a fundamental constitutional right, this Court should deny Appellant’s motion.

Respectfully submitted,

FUTERAL & NELSON, LLC



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Attorney for Respondents

Dated: June 3, 2022

¹Appellant eventually paid the court-ordered sanction, which is not the subject of this appeal, using her personal credit card.

From: Janet Frisco janetfrisco@yahoo.com
Subject: Re: Rule to Show Cause re: Court-Ordered Sanctions
Date: April 28, 2022 at 1:45 PM
To: sfuteral@charlestonlaw.net
Cc: Stephanie Smith ssmith@charlestonlaw.net



Mr. Futeral,

At this point money is no object. There have been no threats, disruptive or histrionic behavior on my part. I reacted to what Your client did to me when I made the mistake of trusting them. I won't make that mistake again. If you review your emails, you'll see that you and Pet Helpers have consistently threatened and attempted to do me harm after I caught on to their fraud scheme.

You probably don't want me there because you know your staff will realize I'm an innocent victim. I don't have anyone to come to the office. My friend said she was treated like dirt there.

Janet Frisco

Sent from Yahoo Mail on Android

EXHIBIT A

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v.

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PROOF OF SERVICE

I certify that I have served the Respondent's *Return to Motion to Appear in Forma Pauperis* by delivering the same via email and United States Regular Mail, postage prepaid, on June 3, 2022, addressed to the Appellant as follows:

Janet Frisco
203 Cardinal Drive
Summerville, SC 29485
Janetfrisco@yahoo.com

Respectfully submitted,

FUTERAL AND NELSON, LLC



Stephanie M. Smith
Paralegal to Stephan V. Futeral, Esq.

Dated: June 3, 2022