

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

**446**

**CA 11-02452**

PRESENT: CENTRA, J.P., FAHEY, CARNI, WHALEN, AND MARTOCHE, JJ.

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DONNELL JEFFERSON, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

JOSHUA STUBBE, DEFENDANT-RESPONDENT.

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DONNELL JEFFERSON, PLAINTIFF-APPELLANT PRO SE.

WILLIAM K. TAYLOR, COUNTY ATTORNEY, ROCHESTER (KRISTINE M. CAHILL OF COUNSEL), FOR DEFENDANT-RESPONDENT.

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Appeal from an order of the Supreme Court, Monroe County (Elma A. Bellini, J.), entered August 3, 2011. The order denied the motion of plaintiff for permission to proceed as a poor person.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Plaintiff commenced this action seeking declaratory and other relief based on the alleged negligence of defendant, his former attorney in a criminal matter. Contrary to plaintiff's contention, Supreme Court did not abuse its discretion in denying his motion for permission to proceed as a poor person pursuant to CPLR 1101 (see generally *Matter of Young v Monroe County Clerk's Off.*, 46 AD3d 1379, 1380). Although we agree with plaintiff that he established that he is unable to pay the costs, fees and expenses necessary to prosecute the action (see CPLR 1101 [a]), we conclude that the action does not have "arguable merit" (*Nicholas v Reason*, 79 AD2d 1113, 1113; cf. *Popal v Slovis*, 82 AD3d 1670, 1671, lv dismissed 17 NY3d 842; *Young*, 46 AD3d at 1380).

Entered: June 7, 2013

Frances E. Cafarell  
Clerk of the Court