

1 **Cause No 2015-002259-2**

2 **AMANDA LOLLAR**

3 **Plaintiff,**

4 **vs.**

5 **MARY CUMMINS,**

6 **Defendant**

7 § **County Court No 2**

8 § **TARRANT COUNTY**

9 **DEFENDANT'S AFFIDAVIT OF INDIGENCE**

10 TO THE HONORABLE JUDGE OF SAID COURT:

11 Mary Cummins, Defendant, files this affidavit of indigence. In support thereof, the
12 DEFENDANT would respectfully show the Court the following:

13 Defendant filed an Affidavit of Indigence in the Second Court of Appeals in case
14 352-248169-10 on September 11, 2012 in appeal 12-00285-CV. Contests to an affidavit
15 of inability to pay were filed. Defendant filed Reply to Contests along with Motion for
16 Telephonic Hearing with FIAT. Defendant had previously been allowed to appear by
17 phone in this court with this Judge.

18 Out of state California pro se indigent Defendant was given minimum notice midday
19 Friday of a Monday morning hearing on the Contests to affidavit of inability to pay.
20 Defendant's Motion for Telephonic Hearing was never heard. Defendant was not
21 allowed to appear by phone. Defendant lost the hearing because Defendant did not
22 appear in Texas in person.
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Defendant petitioned to the Appeals Court in regard to Order denying Petition for Indigence. October 22, 2012 Appeals Court ruled that the Judge abused his discretion not allowing an Indigent pro se out of state Defendant to appear by phone or at least by her filed brief. Appeals court reversed the court order and remanded the case back to district court for rehearing with telephonic appearance by Defendant.

Hearing was held October 31, 2012. Defendant appeared by phone. Court granted Defendant's Affidavit of Indigence (Exhibit 1).

Defendant is still indigent as of this date. Everything stated in the original Affidavit is still true. Defendant is also now physically disabled due to a severe back injury suffered on premises of Plaintiffs in Texas. Defendant is awaiting back surgery. Defendant now also receives free Medi-Cal medical insurance from the government. Defendant does not have a job, bank account or credit card.

Defendant prays that this Court accepts, grants this Affidavit of Indigence.

Respectfully submitted,



Mary Cummins
Appellant In Pro Per
645 W. 9th St. #110-140
Los Angeles, CA 90015-1640
(310) 877-4770
(310) 494-9395 Fax
mmmaryinla@aol.com

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CERTIFICATE OF SERVICE

I, Mary Cummins, hereby certify that a TRUE COPY of the above **DEFENDANT'S AFFIDAVIT OF INDIGENCE** was served on the Plaintiffs' Attorney of record by efiletexas

Randy Turner
Bailey & Galyen
1300 Summit #650
Fort Worth, TX 76021
rturner@galyen.com
this 6th day of January, 2016



Mary Cummins, Defendant Pro se
645 W 9th St, #110-140
Los Angeles, CA 90015-1640
Phone 310-877-4770
Email: mmmaryinla@aol.com

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REPORTER'S RECORD
VOLUME 1 OF 1 VOLUMES
TRIAL COURT CAUSE NO. 352-248169-10
COURT OF APPEALS CAUSE NO. 02-12-00285-CV

BAT WORLD SANCTUARY, ET AL) IN THE 352ND JUDICIAL
))
vs.) DISTRICT COURT OF TEXAS
))
MARY CUMMINS) IN AND FOR TARRANT COUNTY

CONTEST TO AFFIDAVIT OF INDIGENCY

October 31, 2012

On the 31st day of October, 2012, the following proceedings came on to be heard in the above-titled and numbered cause before the Honorable William Brigham, Judge Presiding, held in Fort Worth, Texas, reported by machine shorthand utilizing computer-aided transcription.

COPY

1 out. And what I've just said is that Ms. Cummins may appeal
2 to the Court of Appeals as an indigent.

3 I did not make any ruling on the question of the
4 district court, because that has not been before the Court.

5 **MR. RISINGER:** Your Honor, this order states
6 that you find that she is indigent and you order that the
7 contest to the affidavit of inability are overruled.

8 **THE COURT:** Show it to the other lawyers over
9 there, and I'll read it to Ms. Cummins.

10 *(Brief pause.)*

11 **THE COURT:** Mr. Turner, did you get a chance to
12 review it?

13 **MR. TURNER:** Yes, Your Honor. We have no
14 objection to the form of that order.

15 **THE COURT:** Any objections to the form?

16 **MR. LIVELY:** No, Your Honor, not to the form.

17 **THE COURT:** All right. Ms. Cummins, I'll read
18 it to you. Are you ready?

19 **MS. CUMMINS:** Yeah.

20 **THE COURT:** On October 31, 2012, the Court heard
21 the contest to the affidavit of Mary Cummins, petitioner, of
22 inability to pay costs in the above-numbered and entitled
23 cause, and petitioner appearing by telephone pro se, and the
24 district clerk appearing by and through the office of the
25 Criminal District Attorney, Tarrant County, Texas, and

1 defendants, Bat World Sanctuary and Amanda Lollar appearing in
2 person and by and through their attorney of record, and the
3 court reporter appearing in person and by and through her
4 attorney of record, and the Court having heard the evidence
5 and arguments find that the petitioner is indigent and order
6 that the contest to the affidavit of inability to pay costs
7 are overruled. And there's a place for the signature of the
8 judge to sign, and I'm about to sign it now.

9 Any reason why it shouldn't be signed,
10 Ms. Cummins?

11 *MS. CUMMINS:* No.

12 *THE COURT:* Mr. Turner?

13 *MR. TURNER:* No. No, Your Honor. No reason not
14 to.

15 *THE COURT:* All right. Mr. Lively?

16 *MR. LIVELY:* No, Your Honor.

17 *THE COURT:* As the Court's order is signed, and
18 that concludes this hearing.

19 *MS. CUMMINS:* Thank you.

20 *(Proceedings adjourned)*

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1 STATE OF TEXAS

2 COUNTY OF TARRANT

3 I, Monica J. Willenburg, Official Court Reporter
4 in and for the 352nd District Court of Texas in and for
5 Tarrant County, do hereby certify that the above and foregoing
6 contains a true and correct transcription of all portions of
7 evidence and other proceedings requested in writing by counsel
8 for the parties to be included in this volume of the
9 Reporter's Record in the above-styled and numbered cause, all
10 of which occurred in open court or in chambers and were
11 reported by me.

12 I further certify that this Reporter's Record of
13 the proceedings truly and correctly reflects the exhibits, if
14 any, offered by the respective parties, if requested.

15 I further certify that the total cost for the
16 preparation of this Reporter's Record is \$ 260.00
17 and was paid/will be paid by PLAINTIFF.

18 WITNESS MY OFFICIAL HAND, on this the 22nd of
19 February, 2012.

20

21

22 Monica J. Willenburg, CSR, RPR
23 Texas CSR No. 3386, Exp: 12/31/12
24 Official Court Reporter
25 352nd District Court
401 W. Belknap, 8th Floor
Fort Worth, Texas 76196
Telephone: (817)884-2732
email: mwillenburg@tarrantcounty.com



**COURT OF APPEALS
SECOND DISTRICT OF TEXAS**

CHIEF JUSTICE
TERRIE LIVINGSTON

JUSTICES
LEE ANN DAUPIHNOT
ANNE GARDNER
SUE WALKER
BOB McCOY
BILL MEIER
LEE GABRIEL

TIM CURRY CRIMINAL JUSTICE CENTER
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CLERK
DEBRA SPISAK

CHIEF STAFF ATTORNEY
LISA M. WEST

FAX TRANSMISSION

TO:

FAX NO.:

Hon. Bonnie Sudderth	(817)884-2384
Civil District Clerk, Tarrant County	(817)212-7010
Court Reporter, 352nd District Court	(817)884-2384
Mary Cummins	(310)494-9395
Randall E. Turner	(817)764-6336

FROM: Rose M. Stewart, Deputy Clerk

DATE: October 22, 2012

NO. OF PAGES: 5 (including this page)

RE: Court of Appeals Number: 02-12-00285-CV
Trial Court Case Number: 352-248169-10

Style: Mary Cummins
v.
Bat World Sanctuary and Amanda Lollar

MESSAGE:

ORDER



**COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH**

NO. 02-12-00285-CV

MARY CUMMINS

APPELLANT

V.

BAT WORLD SANCTUARY AND
AMANDA LOLLAR

APPELLEES

FROM THE 352ND DISTRICT COURT OF TARRANT COUNTY

ORDER

This court has received the record from the trial court's hearing on the contests to appellant Mary Cummins's affidavit of indigency and reviewed it to determine whether the trial court abused its discretion in sustaining the contests. See *In re Arroyo*, 988 S.W.2d 737, 739 (Tex. 1998); *In re C.D.S.*, 172 S.W.3d 179, 184 (Tex. App.—Fort Worth 2005, no pet.).

Appellant—who resides in California and who was provided notice of the October 15, 2012 hearing on the contests on October 12, 2012—filed a motion asking to appear telephonically on October 11, 2012,¹ but the record contains no ruling on the motion. Moreover, although the trial court clerk had notified appellant that she could appear telephonically for the previously scheduled October 8, 2012 hearing, the clerk did not do so for the October 15, 2012 hearing.² Nevertheless, the trial court sustained the contests without considering the contents of appellant's affidavit,³ because appellant failed to appear at the hearing.

The purpose of Rule 20.1 of the Texas Rules of Appellate Procedure is to permit parties to proceed without paying filing fees if they are unable to do so, and we construe the rules liberally in favor of preserving appellate rights. See *Verburgt v. Dorner*, 959 S.W.2d 615, 616–17 (Tex. 1997); *Jones v. Stayman*, 747

¹We faxed this motion to the trial court on October 11, 2012, along with an order forwarding the motion for the trial court's consideration. Although at that time, Regional Presiding Judge Walker had not yet denied appellant's motion to recuse Judge Brigham, the order denying the motion to recuse was issued on October 12, 2012.

²This court's order abating the contests to the trial court stated that "[t]he trial court may arrange for appearances by telephone conference or other alternate means if necessary."

³If the affidavit provides sufficient information to prove by a preponderance of evidence that the party is unable to pay costs on appeal, the affidavit is sufficient, even if information on each of the twelve items is not included. *Higgins v. Randall County Sheriff's Office*, 257 S.W.3d 684, 688–89 (Tex. 2008).

S.W.2d 369, 370 (Tex. 1987) (“Indigency provisions, like other appellate rules, have long been liberally construed in favor of a right to appeal.”).

The indigency rules are rooted in the principle that “[c]ourts should be open to all, including those who cannot afford the costs of admission.” *In re C.H.C.*, 331 S.W.3d 426, 429 (Tex. 2011). To require a pro se out-of-state resident asserting indigence to physically appear at a contest hearing to prove the allegations in her affidavit, without reasonably accommodating that party by means such as a telephonic hearing, undercuts the purpose and spirit of rule 20.1. *Cf. Morris v. Aguilar*, 369 S.W.3d 168, 171 (Tex. 2011) (“To require a pro se party to object to a late-filed contest to an affidavit of indigence in order to preserve error—something the party is not likely to know to do—is to eviscerate the protection Rule 20.1(f) is intended to afford.”); *Misigaro v. Bassowou*, No. 02-10-00473-CV, 2012 WL 171110, at *1 (Tex. App.—Fort Worth Jan. 19, 2012, no pet.) (mem. op.) (reciting cases holding that although inmates need not be allowed to appear personally in court, their right of access to the courts must be accommodated by affidavit, deposition, telephone, or other means).

Accordingly, we reverse the trial court’s ruling on the contests to appellant’s affidavit of indigency and remand that issue to the trial court for a new hearing in which appellant is allowed to appear telephonically to attempt to prove her alleged indigence. *See In re M.A.H.*, 98 S.W.3d at 745, 749 (Tex. App.—Waco 2003, order). Within ten days of receiving this order, the trial court shall, in

accordance with rule 20.1(i), either conduct a hearing on the contest or sign an order extending the time to conduct a hearing to a date no later than twenty days from the date it signs the order. Tex. R. App. P. 20.1(i)(2)(b), (4). The trial court clerk shall file a record of any order sustaining or denying the contest or extending the time to hold a hearing on the contest within ten days after the date of such order.

The clerk of this court is directed to transmit a copy of the order to appellant, the attorneys of record, the trial court judge, the trial court clerk, and the court reporter.

DATED October 22, 2012.

PER CURIAM

FW-003

**Order on Court Fee Waiver
(Superior Court)**

1 Person who asked the court to waive court fees:

Name: Mary Cummins

Street or mailing address: 645 W 9th St #110-140

City: Los Angeles State: CA Zip: 90015

2 Lawyer, if person in 1 has one (name, address, phone number, e-mail, and State Bar number): None

3 A request to waive court fees was filed on (date): 02/15/16

The court made a previous fee waiver order in this case on (date):

FEB 19 RECD

Clerk stamps date here when form is filed.

FILED
Superior Court of California
County of Los Angeles

FEB 19 2016

Sherri R. Carter, Executive Officer/Clerk

By Jaime Alexander Deputy

Fill in court name and street address:

Superior Court of California, County of

Los Angeles

Stanley Mosk Courthouse

111 N Hill St

Los Angeles, CA 90012

Fill in case number and name:

Case Number:

BS140207

Case Name:

Bat World et al v Mary Cummins

Read this form carefully. All checked boxes are court orders.

Notice: The court may order you to answer questions about your finances and later order you to pay back the waived fees. If this happens and you do not pay, the court can make you pay the fees and also charge you collection fees. If there

