

**APPELLANT REQUESTS
ORAL ARGUMENT**

B251854

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

MARY CUMMINS,
Plaintiff and Appellant,

v.

AMANDA LOLLAR,
Defendant and Appellee

Appeal from Order of Los Angeles Superior Court
Case No. BS143169, Honorable Carol Boas Goodson

APPELLANT'S REPLY BRIEF

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**Court of Appeal
State of California
Second Appellate District**

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Court of Appeal Case Number: B251854

Case Name: Appellant v Lollar

Please check the applicable box:

- There are NO interested entities or parties to list in this certificate pursuant to California Rules of Court rule 8.208(d).

Interested entities or parties are listed below:

None

Mary Cummins Dated: October 20, 2014
Signature of Party Submitting Form

Printed Name: Mary Cummins

Party Represented: Petitioner

IDENTITY OF PARTIES AND COUNSEL

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INTRODUCTION

Appellee's attorney has again made completely untrue, derogatory and outlandish statements about Appellant in Appellee's Reply Brief. Appellant pro se has never filed a frivolous appeal. Appellant filed one previous appeal in Texas with the opinion due any day¹. Freedom of speech group Public Citizen² and renown Los Angeles lawyer David Casselman³ both wrote amicus briefs on behalf of Appellant. Appellant should win that appeal.

Appellee Lollar is a party in that Texas appeal case. Appellant reported Appellee for animal cruelty and regulation violations (Appellant OB pg 2 paragraph 1). Violations were found by government agencies. In retaliation Appellee filed a case against Appellant in Texas which Appellant is appealing. Appellee also began a four year long campaign of harassment, defamation, cyberstalking against Appellant. Appellant has not defied any trial court orders.

The arguments raised in Appellant's opening brief are valid. Appellant has not violated rules of appellate procedure. Appellant provided the

¹ <http://www.search.txcourts.gov/Case.aspx?cn=02-12-00285-CV&coa=coa02>

² http://www.animaladvocates.us/Appellant_amicus_brief.pdf

³ http://www.animaladvocates.us/mary_Appellant_v_bat_world_sanctuary_amicus_letter.pdf

Clerk's transcript which is allowed by this Court for appeal. Appellant has provided citation, evidence and case law which supports the case being reversed. The trial court's ruling should be reversed.

ARGUMENT

I. Appellant Has Met Her Burden of Proof.

A. Appellant Did Not Violate the Rules Governing Appeal

Appellant was required to (1) provide an adequate record for review; (2) identify the issues for review; (3) provide reasoned analysis to support her position on the issues; and (4) identify specific facts and provide citations to the record. (*Null v City of Los Angeles* (1988) 206 Cal.App.3d 1528, 1532-1533). Appellant has done all these required things.

(1) Appellant Provided an Adequate Record for Review.

Appellant provided to the court "a clerk's transcript," "an appendix," and the "original superior court file" (Cal. Rules of Court 8.120(a)(1)(A)). The court file included motions and sworn statements with exhibits filed with the Court. Appellant was not advised that all court reporters had been recently fired June 2013 until after the first hearing (Appellant OB p 7 paragraph 1). As Appellant is indigent Appellant would not have been able to afford to hire her own court reporter even if she'd been notified. All the necessary facts

are included in the written record. Appellee has not replied or even mentioned, cited items from the available court record. Instead Appellee states the entire case should not be reviewed based on the lack of an oral transcript.

The California Rules of Court provide an appellant with a choice of several types of records upon which to take an appeal. The choices include the reporter's transcript, a clerk's transcript, and agreed statement and a settled statement. (Cal. Rules of Court, rules 8.120, 8.122, 8.130, 8.134, 8.137) Appellant elected to proceed with the clerk's transcript, appendix and superior court files.

The order on appeal in this case demonstrates reversible error on its face. The absence of a transcript does not preclude reversal where an "error appears on the face of the record" (*National Secretarial Service Inc v Froehlich* (1989) 210 Cal. App.3d 510, 521; Cal. Rules of Court rule 8.163). The Judge's order clearly states that the restraining order was denied based on the application which is clearly pre-bias "The court finds that the petition, on its face, does not rise to the level of the issuance of an Injunction" (1 CR 14:3-4, 9). In fact in Respondent's reply to Petitioner's motion to reconsider Respondent stated "Judge (sic) Goodman denied the

RRO on the face of the application itself.” Appellee admits there was pre bias in this case.

Under article VI, section 13 of our state Constitution trial error merits reversal of judgment if “the error complained of has resulted in a miscarriage of justice.” Appellant merely “has to demonstrate that in the absence of the error he or she would have obtained a more favorable result” (*People v Weaver* 2001 26 Cal.4th 876, 968; *People v Watson* (1956) 46 Cal.2d 818, 836). Appellant has shown this.

(2) Appellant Clearly Identified the Issues for Review

Appellant Identified the Claim of Bias in Violation of Constitutional Due Process (Appellant’s OB p 11), Errors Alleged to Justify a New Trial Under §657 (Appellant’s OB p 13) and Errors in Law (Appellant’s OB pg 23).

(3) Appellant Provided Reasoned Analysis to Support the Issues

Appellant provided reasoned analysis to support the issues in her OB (Appellant’s OB pg 11-27). Appellant even cited a recent, identical case before this same Judge with the exact same legal issues which was reversed in this same Appeal’s Court (*Radha Bharadwaj v William Mears*, Cal.App 2nd Div 4 B222911, 2011).

(4) Appellant Identified Specific Facts and Provided Citations to the Record.

Appellant provided many exact quotes and citations to the specific parts of the record sometimes two or three citations per paragraph. Appellant believes proper citations to the court record were made though it's possible there may be some small inadvertent errors. The court has the power to disregard the "same treatment" rule to ensure justice. (*Foster v Civil Service Commission of Los Angeles County*, 142 Cal.Ap2d 444, 190 Cal. Rptr. 893 (2nd Dist, 1983) The Court of Appeals cited the "same treatment" rule in an appeal from the Superior Court in which the appellant, proceeding in propria persona, failed to provide citations to the trial court record. However, the appellant court then disregarded the rule and examined the entire record for support for the arguments made - treatment that would not have been accorded a party represented by counsel.

B. Appellant's Brief Does Not Violate Rules Governing Appeals

Each point in Appellant's opening brief is supported by argument and cites authority. Appellant cites 27 cases, the Constitution and eight Statutes and Rules (Appellant's OB Index of Authorities, p iv-vi). For Appellee to state that Appellant did not cite the record or authority makes it appear that

Appellee never read Appellant's opening brief or their reply brief was copy/pasted from some other case at the last minute so as not to be sanctioned for requesting two extensions of four months merely to delay.

Appellant provided a proper record to the Court by providing the "clerk's record," "appendix" and "superior court files" (Cal. Rules of Court 8.120 (a) (1)(A)(B)(C)). It is not mandatory to also provide a reporter's transcript especially in this case where one does not exist. Appellant only raises issues in filed court documents. Appellant does not raise an issue which requires consideration of the oral proceedings.

Appellant did fairly summarize all the facts in this case.

II. Appellant Did Not Violate the Rules in the Trial Court

A. Appellant is not an attorney but a pro se party

Appellant filed a motion to reconsider then instantly filed an amended motion to reconsider to merely include more legal citations. The filings were not stricken but accepted by the Court. Appellant included a declaration in the motion with the necessary statements. All of these documents are part of the original superior court files and are part of the record of this appeal.

While Appellant believes that this appeal has been filed properly, it's possible there may be some small inadvertent technical mistakes. While

courts must abide by the “same treatment” rules, the courts have some leeway in order to ensure there is no “miscarriage of justice through inadvertence.” “It has always been the policy of the courts in California to resolve a dispute on the merits of the case rather than allowing a dismissal on technicality. (*Harding v Collazo*, 177 Cal.App.3d 1044, 1061, 223 Cal.Rrt. 329 (1986)(Acting P.J. Liu, dissenting). The trial judge has a “duty to see that a miscarriage of justice does not occur through inadvertence.” *Lombardi v. Citizens Nat. Trust etc. Bank*, 137 Cal App.2d 206, 209, 289 P. 2d 8231 (1951).

Appellant may have inadvertently filed the appeal from a “judgment after court order” rather than from an “appealable order.” The court can construe that this appeal was filed from an appealable order instead of a “judgment after court order.” (*Nelson v Gaunt* (1981) 125 Cal. App. 3d 624) “Gaunt’s notice of appeal, filed in pro per, erroneously states that he appeals from the verdict and notice of entry of judgment. We construe the latter as taken from the judgment and dismiss the purported appeal from the verdict.”

B. Appellant Followed Proper Procedure

Appellant filed a Motion to Reconsider and for new trial. Appellant filed an appeal which was approved and accepted by LA Superior Court Appeals

Division. Appellant believes proper procedure was followed though it's possible there were small inadvertent technical errors. While lawyers and pro se parties must receive the "same treatment," the court can "resolve a dispute on the merits of the case rather than allowing a dismissal on technicality." (*Harding v Collazo*, 177 Cal.App.3d 1044, 1061, 223 Cal.Rrt. 329 (1986)(Acting P.J. Liu, dissenting))

III. The Denial of Writ Does Not Affect All Arguments in the Appeal

Petitioner filed her first § 170.6 August 15, 2013 (see date stamp bottom left 1 CR 45). Judge Goodson never ruled on this ever and never even mentioned it. Petitioner only learned that Judge Goodson would oversee the motion for vexatious litigant right before the hearing. This new § 170.6 motion and motion to recuse was filed at the absolute earliest time September 5, 2013 (2 CR 247). Petitioner's § 170.6 preemptory challenge was timely.

Judge Goodson should have recused herself (Code Civ. Proc., 170.1(6) (A) "for any reason: (i) The judge believes his or her recusal would further the interests of justice. (ii) The judge believes there is a substantial doubt as to his or her capacity to be impartial. (iii) A person aware of the facts

might reasonably entertain a doubt that the judge would be able to be impartial.”

Judge Goodson has a history of being biased to certain parties. Judge Goodson had an identical case before her in which she showed bias which was appealed and reversed (*Radha Bharadwaj v William Mears*, App Cal B222991, 2011)(1 CR 41:8-20). That Appellant appealed March 15, 2010 and the case was reversed July 26, 2011. The Appellant in that case also filed a writ of mandate May 7, 2009 which was denied May 21, 2009 (*Bharadwaj v S.C.L.A. et al*, Cal.App. Division 4, Case #B215943).

Appellant is not barred from raising this argument in this appeal. Appellant raises this issue and other issues in this appeal to show “the cumulative effect of the trial judge's conduct requires reversal.” (*People v. Sturm*, supra, 37 Cal.4th at p. 1243) “The trial of a case should not only be fair in fact, but it should also appear to be fair. And where the contrary appears, it shocks the judicial instinct to allow the judgment to stand.” (*Pratt v. Pratt* (1903) 141 Cal. 247, 252.) “We therefore reverse the judgment and remand the matter to the superior court for a new trial before a different judge” (2 CR 259:27).

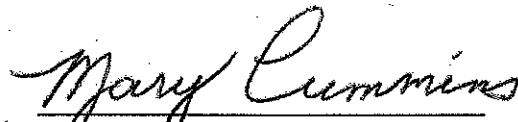
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CONCLUSION

Appellee's Reply Brief is merely a continued personal attack to try to disparage the character of Appellant to the Court. Appellee tries to obfuscate the issues and confuse the court with small semantic notes and intentional misinterpretation of the actual court record and case law. Appellee has not contested the main issues raised in the actual court record submitted or arguments supplied to the Court by Appellant. Appellee hopes to have this appeal dismissed based on possible small inadvertent technical issues.

Appellant provided adequate evidence and argument in her opening brief to support the case being reversed and remanded to the superior court for a new trial before a different judge. The Court is asked to reverse and to award fees and costs for this appeal and the trial court proceedings in amounts to be determined on remand.

Respectfully submitted,



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CERTIFICATE OF COMPLIANCE

Pursuant to California Rule of Court 8.204(c)(1)

Pursuant to California Rule of Court 8.204(c)(1), I certify that the text of this reply brief consists of 1,970 words. In so certifying, I am relying on the word count of Apple iPages, the computer program used to prepare this brief.

DATED: October 20, 2014

Respectfully submitted,

By Mary Cummins
Mary Cummins
Appellant in Pro Per

PROOF OF SERVICE BY MAIL
(FRCivP 5 (b)) or
(CCP 1013a, 2015.5) or
(FRAP 25 (d))

I am Plaintiff in pro per whose address is 645 W. 9th St. #110-140, Los Angeles, California 90015-1640. I am over the age of eighteen years. I further declare that on the date hereof I served a copy of:

APPELLANT'S REPLY BRIEF

on the following parties by placing a true copy thereof enclosed in a sealed envelope addressed as follows for collection and mailing at 645 W. 9th St. #110-140, Los Angeles, CA 90015-1640.

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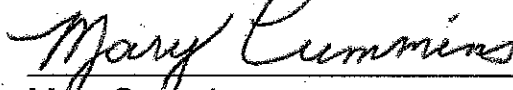
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I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed this day, October 20, 2014, at Los Angeles, California.

Respectfully submitted,

A handwritten signature in cursive script that reads "Mary Cummins". The signature is written in black ink and is positioned above a horizontal line.

Mary Cummins

Appellant in Pro Per

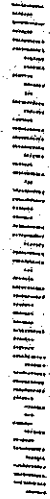
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