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Appeal 02-16-00165-CV
Cause No 2015-002259-3

AMANDA LOLLAR

Plaintiff,

vs.

MARY CUMMINS,

Defendant

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§
§

County Court 3

TARRANT COUNTY

DEFENDANT'S MOTION FOR TELEPHONIC APPEARANCE CONTESTS
INDIGENCE

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant files this Motion for Telephonic Hearing, and in support shows the following:

I. The hearing is for CONTESTS OF INDIGENCE in the above styled cause which is scheduled to be heard June 21, 2016 at 10:30 a.m.. Texas time.

2. Defendant resides in Los Angeles County, California and their appearance by telephone would be the most expedient method of resolving the issues for all parties involved. Defendant does not have the money to pay for airfare, motel, taxi to/from Texas. Defendant has no job or assets. Defendant is also physically disabled, cannot travel, cannot sit for a hearing. Defendant was deemed disabled by the ADA dept for Tarrant County courts (Exhibit 1). If defendant is denied telephonic hearing, Defendant will not be able to appear. Defendant will be denied a fair hearing and will lose by default.

1 3. Previously in case 352-248169-10 Defendant was denied a telephonic appearance
2 for the contest of indigence hearing. Defendant appealed that to the Second Court of
3 Appeals. The Court allowed Defendant to appear by phone and to swear in by phone
4 (Exhibit 2, Order). Defendant swore in by phone (Exhibit 3, Contest Indigence Hearing,
5 October 31, 2012, p 7, line 1-2).

6 3. Defendant can be sworn in by phone per TRCP 199.1(b) and the court.

7
8 4. Defendant by this motion and signature below takes this oath, "I solemnly state that
9 the testimony I may give in the case now pending before this court shall be the truth, the
10 whole truth, and nothing but the truth, so help me God."

11 5. Defendant requests that Plaintiff, County Clerk serve all exhibits on Defendant well
12 before the hearing date. Defendant filed reply to contests before the hearing date.

13 6. No party in this action will suffer any prejudice if Defendant appears telephonically.

14 WHEREFORE, Defendant respectfully requests that the Court grant this Motion for
15 Telephonic Hearing.

16
17 Respectfully submitted,

18 Mary Cummins, Defendant Pro se
19 645 W 9th St, #110-140
20 Los Angeles, CA 90015-1640
21 June 20, 2016
22 Phone 310-877-4770
23 Email: mmmaryinla@aol.com

24 By:



25 Mary Cummins, Defendant Pro Se

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CERTIFICATE OF SERVICE

I, Mary Cummins, hereby certify that a TRUE COPY of the above **DEFENDANT'S MOTION FOR TELEPHONIC APPEARANCE** was served on the Plaintiffs' Attorney of record by eFileTexas.gov, email and fax,

Randy Turner
Law Offices of Randall E. Turner, PLLC
4255 Bryant Irvin Rd.
Suite 210
Fort Worth, TX 76109
Tel.: 817-420-9690
Fax: 817-887-5717 rturner@galyen.com
this 20th day of June, 2016

Mary Louise Garcia
Deputy Robbie Arbor
County Clerk
County Courts at Law 3 of Tarrant County
100 W. Weatherford
Fort Worth, Texas 76196
Fax: 817-884-3295
robbiearbor@tarrantcounty.com



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

From: "Ann C. Smith" <ACSmith@TarrantCounty.com>
Subject: **ADA Accommodation**
Date: June 8, 2015 6:33:04 AM PDT
To: "mmmaryinla@aol.com" <mmmaryinla@aol.com>

Hello Ms. Cummins,

I am in receipt of your request for an accommodation to appear via telephone/conference call for your case. Your case has been referred to Judge Evans, who will assign it to a court. It has not been assigned just yet, but as soon as it is, I will be in touch with you regarding your request. Let me know if you have additional questions. Thanks.

Ann C. Smith
Civil Service Coordinator/ADA Officer
Voice: (817) 884-3252 Fax: (817) 850-2950
Email: acsmith@tarrantcounty.com
Hours: 7 a.m. – 4 p.m.

From: "Ann C. Smith" <ACSmith@TarrantCounty.com>
Subject: **ADA Accommodation - Follow-up**
Date: June 25, 2015 4:21:40 AM PDT
To: "mmaryinla@aol.com" <mmaryinla@aol.com>

Hello Ms. Cummins,

I wanted to follow-up with you regarding your accommodation request. Your case has been assigned to Judge Chupp, 141st Court. I contacted the Judge's office yesterday, informing them of your request. I will be back in touch with you with a resolution. Let me know if you have questions.

Ann C. Smith

Ann C. Smith
Civil Service Coordinator/ADA Officer
Voice: (817) 884-3252 Fax: (817) 850-2950
Email: acsmith@tarrantcounty.com
Hours: 7 a.m. – 4 p.m.

From: "Ann C. Smith" <ACSmith@TarrantCounty.com>
Subject: **ADA Accommodation**
Date: July 8, 2015 1:39:31 PM PDT
To: "mmaryinla@aol.com" <mmaryinla@aol.com>

Hello Ms. Cummins,

I spoke with Judge Chupp's office today. They see no reason why you would not be able to appear via telephone. You will receive detailed information in the mail regarding your case. I do not have access to this information. I hope this satisfies your request for an accommodation. If you need further assistance, do not hesitate to contact me.

Sincerely,

Ann C. Smith

Ann C. Smith
Civil Service Coordinator/ADA Officer
Voice: (817) 884-3252 Fax: (817) 850-2950
Email: acsmith@tarrantcounty.com
Hours: 7 a.m. – 4 p.m.



**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
401 W. BELKNAP, SUITE 9000
FORT WORTH, TEXAS 76196

TEL.: (817) 884-1900

FAX: (817) 884-1932

www.2ndcoa.courts.state.tx.us

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

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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.

EXHIBIT 3

COPY

1

MARY CUMMINS,

2

having been first duly sworn, testified as follows:

3

DIRECT EXAMINATION

4

BY NARRATIVE:

5

MS. CUMMINS: Um, okay. I am indigent, and I signed an affidavit of indigence on September 7th of 2012, and I overnighted it to the Court.

8

I currently don't have a job. I also overnighted to you yesterday a copy of my bank statements which shows I have approximately \$300.

10

11

I have no income at the moment. And I applied for Medi-Cal, which is the welfare, basically. It is free medical insurance from the California government.

14

And I do not have the means to pay the \$4,000 for the minutes. I already paid the \$175 for the application.

16

And if I'm not allowed to be considered indigent I will not be able to continue with the appeal, because I will not be able to afford to pay for the minutes.

19

And I tried to get a loan and a credit card, I was not able to. I've already borrowed enough from my contact, I cannot possibly borrow any more money.

22

I'm doing everything I can to try to find a job. I've applied for every job in my field on Career Builder, Monster.com and Craigs List.

25

I did receive one job, and I accepted it. And

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