

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

June 22, 2016

County Court 3  
Judge Mike Hrabal  
100 E. Weatherford St, Room 290A  
Fort Worth, TX, 76196-0240

RE: Amanda Lollar vs Mary Cummins, 2015-002259-3

I received an email from Shari Steen late yesterday. She stated the hearing for contest to indigence was moved to June 23, 2016 at 1:00 p.m. I emailed her back instantly telling her I have a doctor's appointment at that time. I've been waiting six weeks for this appointment and can't reschedule it as the insurance approval will expire.

Carla Phelps emailed me when the hearing was rescheduled from June 21, 2016 to July 1, 2016. I agreed to that. I stated at that time that I needed the motion for telephonic appearance set for hearing and heard before that hearing. I also asked if I could appear by phone for that hearing. There's no way I can physically or financially get to Texas. This is an indigence hearing. I will be denied my right to a fair trial if I cannot appear.

In the meantime the clerk has not accepted my amended reply to motions contest indigence. I am attaching it to this fax to make sure the court gets it. I receive Medi-cal which is free state health insurance. I've also been found by the courts to be indigent five separate times. The court also did not hear the previous contest to indigence in this court so indigence is affirmed.

I will start calling the court to make sure my motion for telephonic appearance is heard before the contests to indigence. I must appear by phone. I also must record the hearing as I do not have money for the transcript and court reporter refuses to give me the transcript without first paying. I will need to create a court record so I can appeal. I can't appeal without the court record or I will automatically lose.

I have not received the order on motion to dismiss. I don't see it filed in the docket. It's only valid when

it is signed, filed and served on the parties. Please, fax, email, efiletexas.gov me the order. The clerk is supposed to use efiletexas.gov to serve the documents. I was not sent an unsigned copy before the Judge signed it so I could object. I don't know what it says. Thanks.

Sincerely,

A handwritten signature in cursive script that reads "Mary Cummins". The signature is written in black ink on a white background.

Mary Cummins

Cc: Randy Turner

Attached: Amended Motion Telephonic Appearance



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 4. Defendant by this motion and signature below takes this oath, "I solemnly state that  
8 the testimony I may give in the case now pending before this court shall be the truth, the  
9 whole truth, and nothing but the truth, so help me God."  
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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 9<sup>th</sup> St, #110-140  
20 Los Angeles, CA 90015-1640  
21 June 20, 2016  
22 Phone 310-877-4770  
23 Email: [mmmaryinla@aol.com](mailto: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](mailto:rturner@galyen.com)  
this 20<sup>th</sup> 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](mailto:robbiearbor@tarrantcounty.com)



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Mary Cummins, Defendant Pro se  
645 W 9<sup>th</sup> St, #110-140  
Los Angeles, CA 90015-1640  
Phone 310-877-4770  
Email: [mmmaryinla@aol.com](mailto:mmmaryinla@aol.com)

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

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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](mailto: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>

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Hello Ms. Cummins,

I wanted to follow-up with you regarding your accommodation request. Your case has been assigned to Judge Chupp, 141<sup>st</sup> 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](mailto: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>

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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](mailto: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

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FROM THE 352ND DISTRICT COURT OF TARRANT COUNTY  
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**ORDER**  
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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,<sup>1</sup> 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.<sup>2</sup> Nevertheless, the trial court sustained the contests without considering the contents of appellant's affidavit,<sup>3</sup> 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

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<sup>1</sup>We 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.

<sup>2</sup>This 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."

<sup>3</sup>If 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

## 1 REPORTER'S RECORD

2 VOLUME 1 OF 1 VOLUMES

3 TRIAL COURT CAUSE NO. 352-248169-10

4 COURT OF APPEALS CAUSE NO. 02-12-00285-CV

5  
6 BAT WORLD SANCTUARY, ET AL ) IN THE 352ND JUDICIAL  
7 vs. ) DISTRICT COURT OF TEXAS  
8 MARY CUMMINS ) IN AND FOR TARRANT COUNTY  
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10  
11 **CONTEST TO AFFIDAVIT OF INDIGENCY**

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12 October 31, 2012  
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19 On the 31st day of October, 2012, the following  
20 proceedings came on to be heard in the above-titled and  
21 numbered cause before the Honorable William Brigham, Judge  
22 Presiding, held in Fort Worth, Texas, reported by machine  
23 shorthand utilizing computer-aided transcription.  
24

25 EXHIBIT 3

**COPY**



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