



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

NO. 02-16-00165-CV

MARY CUMMINS

APPELLANT

V.

AMANDA LOLLAR

APPELLEE

FROM COUNTY COURT AT LAW NO. 3 OF TARRANT COUNTY
TRIAL COURT NO. 2015-002259-3

ORDER

On July 11, 2016, the trial court sustained the trial court clerk's and appellee's contests to appellant's affidavit of indigence. That same day, appellant filed "Defendant's Notice of Appeal Indigence," complaining, in part, that the trial court did not sign the order sustaining the contests in accordance with rule 20.1(i)(4).¹ See Tex. R. App. P. 20.1(i)(4).

On June 8, 2016, this court notified the trial court clerk, the court reporter, and appellee that appellant had filed an affidavit of indigence with this court instead of the trial court and that any contest to the affidavit must be filed in this

¹Although titled a "notice of appeal," we are treating appellant's filing as a motion challenging the trial court's decision on an indigence contest. See Tex. R. App. P. 20.1(j)(1).

court. See Tex. R. App. P. 20.1(d)(2). We enclosed a copy of appellant's affidavit of indigence. Appellee filed a contest to the affidavit in this court on June 8, 2016. See Tex. R. App. P. 20.1(e).

On June 10, 2016, the trial court clerk filed appellant's affidavit of indigence in the trial court. The trial court clerk filed a contest to the affidavit in the trial court on June 13, 2016. On June 14, 2016, the trial court signed an order setting the hearing on the contests for June 21, 2016.² On June 20, 2016, the trial court signed an order continuing the hearing on the contests to July 1, 2016. The trial court did not sign any subsequent orders continuing the hearing.

Rule 20.1(i) requires the trial court to either conduct a hearing on the contest or sign an order extending the time to conduct a hearing within ten days after the contest was filed in the trial court.³ Tex. R. App. P. 20.1(i)(2)(A). The trial court may not extend the time for conducting the hearing for more than twenty days from the date the order of extension is signed. Tex. R. App. P. 20.1(i)(3). Unless the trial court signs an order sustaining the contest "within the period set for the hearing," the affidavit's allegations will be deemed true, and the

²On July 15, 2016, we notified appellant, appellee, the trial court clerk, the court reporter, and the trial court that because the indigence issue was proceeding in the trial court in accordance with rule 20.1(e)(1) and (i)(1), no further contest needed to be filed with this court, and this court would await the trial court's decision as to appellant's indigence.

³We never referred appellee's contest to the trial court, so we will assume that the ten-day period in rule 20.1(i)(2) began to run when the trial court clerk filed her contest in the trial court on July 13, 2016. See Tex. R. App. P. 20.1(i)(2)(A), (B).

party filing the affidavit of indigence is allowed to proceed on appeal without advance payment of costs. Tex. R. App. P. 20.1(i)(4).

The trial court heard appellee's and the trial court clerk's contests and signed an order sustaining those contests on July 11, 2016. Thus, the trial court did not sign an order sustaining appellant's contest "within the time set for the hearing" in its June 20, 2016 order, which was July 1, 2016. See *id.* The allegations in appellant's affidavit are deemed true, and appellant is entitled to proceed without advance payment of costs. See *id.* Accordingly, we reverse the trial court's order sustaining appellee's and the trial court clerk's contests.

The trial court clerk and the court reporter⁴ must prepare the appellate record without prepayment by appellant. See *id.*; see also Tex. R. App. P. 20.1(k). The clerk's record and the reporter's record for this appeal are due on or before **Monday, August 01, 2016**.

The clerk of this court is ordered to transmit a copy of this order to appellant, attorney for record for appellee, the trial court judge, the trial court clerk, and the court reporter.

DATED July 20, 2016.

PER CURIAM

⁴The court reporter also filed a contest on June 20, 2016. The contest has not been heard and no order has been signed sustaining the contest.