

No. 11-0073

IN THE SUPREME COURT OF TEXAS

BARBARA DAVIS

Petitioner

v.

TARRANT COUNTY (SELF-INSURED GOVERNMENTAL ENTITY) and
TARRANT COUNTY DISTRICT CLERK'S OFFICE

Respondents

**TARRANT COUNTY DISTRICT CLERK'S OFFICE'S
RESPONSE TO BARBARA DAVIS'S BRIEF ON THE MERITS**

Respectfully submitted,

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TARRANT COUNTY, TEXAS

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I.

SUMMARY OF THE ARGUMENT

In order to qualify as a pauper on appeal and avoid the payment of costs, the appellant must comply with the provisions of Rule 20.1 of the Rules of Appellate Procedure and § 13.003 of the Civil Practice and Remedies Code. The failure to meet both requirements precludes pauper's status on appeal. Because the trial court found that Davis's appeal was frivolous, the court of appeals acted properly in denying Davis pauper's status and dismissed her appeal in a manner consistent with this Court's precedent. The process afforded Davis by the court of appeals was consistent with the procedure prescribed in *In re Arroyo*, 988 S.W.2d 737 (Tex. 1998).

II.

ARGUMENT

A. Requirements to Appeal as a Pauper

Texas Rule of Appellate Procedure 20.1 sets forth the procedure for an appellant to prosecute an appeal without the payment of costs. It requires that an appellant submit an affidavit that includes specific information about their financial condition. TEX. R. APP. P. 20.1 (b). If the affidavit is not challenged, then the facts in the affidavit are deemed as true and the appellant may proceed without the payment of costs. TEX. R. APP. P. 20.1 (i) (4). If, however, a contest to the affidavit is filed, then the applicant must prove by a preponderance of the evidence that they are indigent. *Higgins v.*

Randall County Sheriff's Office, 257 S.W.3d 684, 686 (Tex. 2008). The test to determine indigence is clear: “Does the record as a whole show by a preponderance of the evidence that the applicant would be unable to pay the costs, or a part thereof, or give security therefore, if he really wanted to and made a good-faith effort to do so?” *Pinchback v. Hockless*, 139 Tex. 536, 164 S.W.2d 19, 19-20 (1942).

In addition to the requirements of Rule 20.1, an appellant that seeks to proceed as a pauper must comply with § 13.003 of the Texas Civil Practice and Remedies Code. *Schlapper v. Forest*, 272 S.W.3d 676 (Tex. App.—Austin 2008, pet. denied); *Rhodes v. Honda*, 246 S.W.3d 353 (Tex. App.—Texarkana 2008, no pet.). This statute requires the appellant obtain an affirmative finding from the trial court that their appeal is not frivolous and that the records are necessary for the appeal. TEX. CIV. PRAC. & REM. CODE ANN. § 13.003 (Vernon 2002). Compliance with both Rule 20.1 and § 13.003 are necessary for an appellant to prosecute their appeal without the payment of costs.

“Parties who establish their indigency and have a potentially meritorious appeal are entitled to a free record for the appeal and to have their appellate costs waived.” *In re C.H.C.*, 331 S.W.3d 426, 429 (Tex. 2011) (emphasis added). Even with satisfaction of one, the absence of the other will result in the denial of a pauper’s status and the party being required to pay

the costs. *Baughman v. Baughman*, 65 S.W.3d 309, 314-15 (Tex. App.—Waco 2001, pet. denied) (holding that a decision on the frivolousness of appeal was unnecessary when appellant found not to be indigent).

B. Sufficient Process Afforded to Davis

At the hearing on Tarrant County and Tarrant County District Clerk’s Office’s contests to Davis’s affidavit of indigency, the trial court held that Davis’s appeal was frivolous, but specifically withheld from ruling on whether Davis was indigent.

After Davis’s pauper’s status was denied because her appeal was found to be frivolous, Davis sought to have that decision reviewed by the court of appeals. Her original appeal was already filed under Cause No. 02-10-00331-CV, and within that case Davis filed a petition for writ of mandamus. The court of appeals viewed that mandamus petition as a request to have the trial court’s October 1, 2010, decision reconsidered.

The court of appeals agreed to review Davis’s claim and requested a limited record to review the trial court’s decision, a process outlined in this Court’s decision in *In re Arroyo*, 988 S.W.2d 737 (Tex. 1998). (Respondent’s Tab A) In *In re Arroyo*, this Court articulated the process by which a party could have the court of appeals review the trial court’s decision on the party’s claims of indigence. To review an indigence-contest order, like the one signed in this case, the appellate court “can and should obtain portions of the record

necessary to review [it].” *In the interest of G.C.*, 22 S.W.3d 932, 933 (Tex. 2000), *citing to Arroyo*, 988 S.W.2d at 739. This will give a “record of sufficient completeness to enable [appellant] to attempt to make a showing [of reversible error]’ as a matter of the due process and equal protection guarantees of the United States Constitution.” *De la Vega v. Taco Cabana, Inc.*, 974 S.W.2d 152, 154 (Tex. App.—San Antonio 1998, no pet.), *citing to Coppedge v. United States*, 369 U.S. 438, 446-448, 82 S.Ct. 917, 921-23, 8 L.Ed.2d 21 (1962).

An appellant is only entitled to a free partial-record to determine whether the trial court abused its discretion in finding that the appeal was frivolous. Once an appeal is found to be frivolous, the scope of appellate review is limited to a review of the trial court’s frivolousness finding. *In re K.D.*, 202 S.W.3d 860, 865 (Tex. App.—Fort Worth 2006, no pet.). Davis was afforded this process. Her appeal was not dismissed prior to the review of the frivolousness finding. It was dismissed after review and after the court of appeals’ determination that the trial court’s decision was not an abuse of discretion.

The court of appeals in the present case afforded Davis all of the due process to which she was entitled by acting in a manner consistent with *In re Arroyo* and *In the interest of G.C.* On November 15, 2010, the court of appeals ordered that the court reporter prepare and file the relevant portions of the

record from the trial court's October 1 hearing. (Appendix Tab A) On December 2, 2010, after reviewing the record, the court of appeals found that the trial court did not abuse its discretion and affirmed the trial court's order that Davis must pay the costs associated with her appeal. (Appendix Tab B) Accordingly, the court of appeals ordered Davis to pay the filing fee for her appeal by December 13, 2010, or risk having her case dismissed. (Appendix Tab C) On December 23, 2010, the court of appeals dismissed Davis's appeal for the non-payment of costs. (Appendix Tab D)

III.
PRAYER

Tarrant County District Clerk's Office urges this Court to deny Petitioner Barbara Davis's Petition for Review and also requests such other and further relief to which it may be entitled.

Respectfully submitted,

JOE SHANNON, JR.
CRIMINAL DISTRICT ATTORNEY
TARRANT COUNTY, TEXAS

/s/ CHRISTOPHER W. PONDER
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**ATTORNEY FOR RESPONDENT
TARRANT COUNTY DISTRICT
CLERK'S OFFICE**

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document was served via electronic mail and U.S. Regular Mail on the following people:

Ms. Barbara J. Davis
6940 Stephens Hill Road
Fort Worth, Texas 76140

barbaradavis20@yahoo.com
and U.S. Regular Mail

Ms. Carolyn Mitchell
Attorney at Law
3412 Rogers Avenue
Fort Worth, Texas 76109

mitchell_carolyn@sbcglobal.net
and U.S. Regular Mail

Signed on this 23rd day of April, 2012.

/s/ CHRISTOPHER W. PONDER
CHRISTOPHER W. PONDER

No. 11-0073

IN THE SUPREME COURT OF TEXAS

BARBARA DAVIS

Petitioner

v.

TARRANT COUNTY (SELF-INSURED GOVERNMENTAL ENTITY) and
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Respondents

**APPENDIX IN SUPPORT OF
TARRANT COUNTY DISTRICT CLERK'S OFFICE'S
RESPONSE TO BARBARA DAVIS'S BRIEF ON THE MERITS**

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

NO. 02-10-00331-CV

BARBARA J. DAVIS

APPELLANT

V.

TARRANT COUNTY (SELF-
INSURED) AND TARRANT
COUNTY DISTRICT CLERK'S
OFFICE

APPELLEES

FROM THE 17TH DISTRICT COURT OF TARRANT COUNTY

ORDER

Appellant has appealed the trial court's order sustaining the contests to appellant's affidavit of inability to pay costs. Therefore, on this court's motion, we order the court reporter to prepare and file the portions of the record necessary to review the trial court's order sustaining the contest to appellant's affidavit of indigency on or before **Monday, November 29, 2010**. See Tex. R. App. P.

PENGAD-Bayonne, N. J.
Tab
A

34.5(c)(1), 34.6(d). It is further ordered that all fees under rule 5 shall be deferred until this court determines whether appellant is entitled to proceed without payment of appellate costs. Tex. R. App. P. 5.

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

DATED November 15, 2010.

PER CURIAM



COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

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DISTRICT ATTORNEY'S OFFICE

NO. 02-10-00331-CV

BARBARA J. DAVIS

APPELLANT

V.

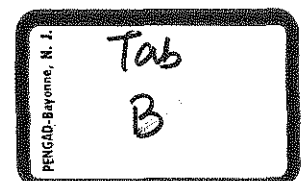
TARRANT COUNTY (SELF-
INSURED) AND TARRANT
COUNTY DISTRICT CLERK'S
OFFICE

APPELLEES

FROM THE 17TH DISTRICT COURT OF TARRANT COUNTY

ORDER

We have received the record from the trial court's hearing on the contest to appellant's affidavit of inability to pay costs of appeal and reviewed it to determine whether the trial court abused its discretion in sustaining the contest. See *White v. Bayless*, 40 S.W.3d 574,576 (Tex. App.—San Antonio 2001, pet. denied); *Avevalo v. Millan*, 983 S.W.2d 803, 804 (Tex. App.—Houston [1st Dist.]



1998, order, no pet.) (en banc). We conclude that it did not; the evidence supports the trial court's order sustaining the contest. Accordingly, we affirm the trial court's order sustaining the contest and conclude that appellant is not entitled to proceed without payment of costs in this appeal. See Tex. R. App. P. 20.1(g) (providing that the party filing an affidavit of indigency must prove its allegations).

Appellant shall pay the required \$175.00 filing fee on or before **Monday, December 13, 2010**. Appellant shall also pay or make arrangements to pay for preparation of the appellate record on or before **Tuesday, January 4, 2011**. Failure to pay or to make such arrangements will result in dismissal of the appeal for want of prosecution. See Tex. R. App. P. 37.3(b), 42.3(c).

The clerk of this court is ordered to transmit a copy of this order to the appellant, all lead counsel on appeal, the trial court judge, the trial court clerk, and the court reporter.

DATED December 2, 2010.

PER CURIAM

PANEL: LIVINGSTON, C.J.; WALKER and MEIER, JJ.



DA
Chris Ponder
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17-244948-1

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

NO. 02-10-00331-CV

BARBARA J. DAVIS

APPELLANT

V.

TARRANT COUNTY (SELF-
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COUNTY DISTRICT CLERK'S
OFFICE

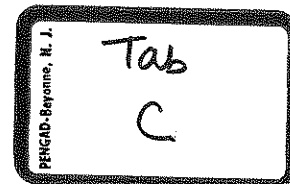
APPELLEES

FROM THE 17TH DISTRICT COURT OF TARRANT COUNTY

MEMORANDUM OPINION¹ AND JUDGMENT

On December 2, 2010, we notified appellant, in accordance with rule of appellate procedure 42.3(c), that we would dismiss this appeal unless the \$175 filing fee was paid on or before December 13, 2010. See Tex. R. App. P.

¹See Tex. R. App. P. 47.4.



42.3(c). Appellant has not paid the \$175 filing fee. See Tex. R. App. P. 5, 12.1(b).

Because appellant has failed to comply with a requirement of the rules of appellate procedure and the Texas Supreme Court's order of August 28, 2007,² we dismiss the appeal. See Tex. R. App. P. 42.3(c), 43.2(f).

Appellant shall pay all costs of this appeal, for which let execution issue. See Tex. R. App. P. 43.4.

PER CURIAM

PANEL: WALKER, J.; LIVINGSTON, C.J.; and MEIER, J.

DELIVERED: December 23, 2010

²See Supreme Court of Tex., *Order Regarding Fees Charged in Civil Cases in the Supreme Court and the Courts of Appeals and Before the Judicial Panel on Multidistrict Litigation*, Misc. Docket No. 07-9138 (Aug. 28, 2007) (listing fees in courts of appeals).