

Order Reversed and Opinion Filed April 14, 2016



In The  
**Court of Appeals**  
**Fifth District of Texas at Dallas**

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No. 05-16-00248-CV

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**PILAR SANDERS A/K/A PILAR LOVE EL DEY, Appellant**  
**V.**  
**DEION L. SANDERS, Appellee**

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**On Appeal from the 366th Judicial District Court**  
**Collin County, Texas**  
**Trial Court Cause No. 366-04718-2014**

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MEMORANDUM OPINION ON MOTION TO REVIEW ORDER  
SUSTAINING CONTEST TO AFFIDAVIT OF INDIGENCE

Before Chief Justice Wright and Justices Lang-Miers and Stoddart  
Opinion by Chief Justice Wright

Before the Court is appellant's April 4, 2016 motion for review of the trial court's order sustaining a contest to her affidavit of indigence. *See* TEX. R. APP. P. 20.1(j). We review a trial court's order sustaining a contest to an affidavit of indigence for an abuse of discretion. *See Basaldua v. Hadden*, 298 S.W.3d 238, 241 (Tex. App.—San Antonio 2009, no pet.) (per curiam). A trial court abuses its discretion if it acts without reference to any guiding rules or principles or in an arbitrary or unreasonable manner. *Id.*

A party who is unable to pay costs on appeal may proceed without advance payment of costs by filing in the trial court an affidavit of indigence detailing such information as the party's income, assets, debts, monthly expenses, and ability to obtain a loan for court costs. *See* TEX. R. APP. P. 20.1(a)(2), (b). When a party files an affidavit with the trial court by delivering it to the

trial court clerk, the clerk has the duty to promptly send a copy of the affidavit to the appropriate court reporter. *See* TEX. R. APP. P. 20.1(d)(1). The clerk, court reporter, or any party may challenge the affidavit by filing a contest within ten days of the filing of the affidavit. *See* TEX. R. APP. P. 20.1(e)(1). If no contest is timely filed, “no hearing will be conducted, the affidavit’s allegations will be deemed true, and the party will be allowed to proceed without advance payment of costs.” *See* TEX. R. APP. P. 20.1(f). Indigency provisions are liberally construed in favor of a right to appeal. *See Jones v. Stayman*, 747 S.W.2d 369, 370 (Tex. 1987).

On February 18, 2016, appellant filed an affidavit of indigence in the trial court. The affidavit contained three trial court cause numbers on it. The trial court cause number associated with this particular appeal was the third cause number listed. The Collin County District Clerk’s Office only filed the affidavit in the first-listed cause number. Therefore, the affidavit of indigence was not included in trial court cause numbers 366-56261-2011 and 366-04718-2014. Appellant filed a copy of the file-stamped affidavit with this Court on March 14, 2016. The copy only listed this appellate cause number. At this point, we notified the parties, the district clerk, and the court reporter that appellant’s February 18, 2016 affidavit had been filed in this Court. Although the time for filing a contest had already elapsed, *see* TEX. R. APP. P. 20.1(e)(1), on March 17, 2016, court reporters Antoinette Varela and Destiny Moses filed a contest to the affidavit. The trial court held a timely hearing based on the date the court reporters filed the contest.

At the hearing on the contest, Yoon Kim, Collin County District Clerk, relying on the trial court’s docket sheet in the underlying case, testified that no affidavit was filed on February 18, 2016. He further testified, without citing to any local rule, that it was the “practice” of the district clerk’s office that a document with multiple cause numbers on it must be filed separately in each different cause. The District Clerk asserted that “I believe Texas Rule[s] of Appellate

Procedure 20.1(c)(1) states that in every single case you have to have a separate affidavit of indigency.” The trial court signed an order sustaining the contest on March 24, 2016. The order states the contest was sustained “because there was no affidavit of indigence filed in this cause number.”

Appellant contends the trial court’s order sustaining the contest should be reversed because the court reporters’ contest was not timely filed. Rule 20.1(c), upon which the District Clerk relied, addresses the need for a party who filed an affidavit of indigence for purposes of proceeding in the trial court to file a new affidavit for purposes of an appeal. *See* TEX. R. CIV. P. 145; TEX. R. APP. P. 20.1(c). That rule is not applicable to the situation before us because, contrary to the District Clerk’s contention, it does not address the filing of an affidavit with multiple cause numbers on it in the trial court.

At the hearing on the contest, counsel for appellant pointed out the affidavit was filed when it was put in the clerk’s hands. He argued that “just because the clerk doesn’t enter it in their own register of actions doesn’t mean it wasn’t filed.” We agree. A clerk has a “mandatory, ministerial duty” to file all documents submitted for filing. *See In re Smith*, 263 S.W.3d 93, 95 (Tex. App.—Houston [1st Dist.] 2006, orig. proceeding). It is then up to the court, not the clerk, to determine the propriety of the filing. *See id.* An instrument is deemed in law filed at the time it is delivered to the clerk, regardless of whether the instrument is file marked. *See Standard Fire Ins. Co. v. LaCoke*, 585 S.W.2d 678, 680 (Tex. 1979); TEX. R. CIV. P. 74. The purpose of this rule is to protect a diligent party from being penalized by the errors and omissions of the court clerk. *See Standard Fire Ins. Co.*, 585 S.W.2d at 680; *Biffle v. Morton Rubber Indus., Inc.*, 785 S.W.2d 143, 144 (Tex. 1990) (per curiam) (cost bond considered timely filed when delivered to the clerk before the deadline although the clerk inadvertently failed to file stamp it until after the deadline).

Appellant filed the affidavit of indigence on February 18, 2016. Appellant will not be penalized for the clerk's errors in failing to file it in each of the cause numbers listed on the affidavit and in failing to promptly send a copy of the affidavit to the appropriate court reporter. Any contest to the affidavit was due by Monday, February 29, 2016. *See* TEX. R. APP. P. 20.1(e)(1); TEX. R. CIV. P. 4. The court reporters' contest filed on March 17, 2016 was untimely. Because the court reporters' contest was untimely, we conclude the trial court abused its discretion in sustaining the contest. Accordingly, the allegations in appellant's affidavit are deemed true, and appellant is allowed to proceed without prepayment of costs. *See* TEX. R. APP. P. 20.1(f), (k), (n). We grant appellant's motion and reverse the trial court's order sustaining the contest.

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/Carolyn Wright/  
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CAROLYN WRIGHT  
CHIEF JUSTICE