

## COURT OF APPEALS OF TEXAS, FOURTEENTH DISTRICT

### Crystal R. Davis v. Little Nell Apartments

Davis v. Little Nell Apartments · No. 14-14-00506-CV · Decided August 14, 2014

#### SUMMARY

The Fourteenth Court of Appeals held that Crystal R. Davis's motion challenging the trial court's ruling on her affidavit of indigence was granted by operation of law because the reporter's record was not timely filed. The court ordered the Harris County Clerk and official court reporter to prepare, certify, and file the appellate record without advance payment of costs.

#### CASE DETAILS

|                    |                                                                                                                                                                                                    |
|--------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT              | Court of Appeals of Texas, Fourteenth District                                                                                                                                                     |
| JURISDICTION       | Texas                                                                                                                                                                                              |
| DECIDED            | August 14, 2014                                                                                                                                                                                    |
| DOCKET             | 14-14-00506-CV                                                                                                                                                                                     |
| DISPOSITION        | other                                                                                                                                                                                              |
| PROCEDURAL POSTURE | Appellant filed a motion under Texas Rule of Appellate Procedure 20.1(j) challenging the trial court's ruling sustaining a contest to her affidavit of indigence.                                  |
| STANDARD OF REVIEW | The court did not reach the merits of the indigence ruling because Rule 20.1(j)(4) required the motion to be granted by operation of law when the appellate court did not deny it within ten days. |
| PRECEDENTIAL VALUE | published                                                                                                                                                                                          |
| PARTIES            | Crystal R. Davis v. Little Nell Apartments                                                                                                                                                         |

#### TOPICS

appellate procedure

costs

civil procedure

#### PRACTICE AREAS

appellate procedure

civil procedure

#### QUESTIONS PRESENTED

1. Whether Davis's motion challenging the trial court's indigence ruling was granted by operation of law under Texas Rule of Appellate Procedure 20.1(j)(4) when the appellate court did not deny it within ten days and the hearing record was not filed.
2. Whether Davis could proceed on appeal without advance payment of costs and receive preparation of the appellate record without advance payment.

## HOLDINGS

1. When an appellate court does not deny a timely motion challenging a trial court's indigence ruling within ten days after filing, the motion is granted by operation of law; the absence of the hearing record prevents the appellate court from reviewing the merits.
2. Davis may proceed on appeal without the advance payment of costs.

## KEY QUOTATIONS

*“Under the unambiguous language of Rule 20.1(j), if the appellate court does not deny a motion under Rule 20.1(j) within 10 days after the motion is filed, this motion is granted by operation of law.”*

*“If the court reporter does not file the hearing record within 10 days after the filing of the motion, as in this case, this court has no ability to review the merits of the motion, and the motion is granted by operation of law regardless of whether the motion has merit.”*

## FACTUAL BACKGROUND

Davis, appearing pro se, filed a timely motion challenging the trial court's ruling sustaining a contest to her affidavit of indigence. The county clerk filed a clerk's record, but the reporter's record of the hearing on the indigence contest was not filed within the time required by Texas Rule of Appellate Procedure 20.1(j).

## PROCEDURAL HISTORY

The County Civil Court at Law No. 4 of Harris County sustained a contest to Davis's affidavit of indigence on July 8, 2014. Davis timely moved for appellate review on July 16, 2014. Although the county clerk prepared a clerk's record, no reporter's record of the indigence hearing was filed, and more than ten days passed without the appellate court denying the motion. The appellate court therefore treated the motion as granted by operation of law and ordered preparation and filing of the appellate record without advance payment of costs.

## DISPOSITION

other

## REMAND INSTRUCTIONS

The Harris County Clerk and official court reporter Karen S. Bernhardt were ordered to prepare, certify, and file the appellate record without advance payment of costs. The record was ordered due in the appellate court thirty days from the date of the order.

## OPINION

### PER CURIAM.

Order filed August 14, 2014 In The Fourteenth Court of Appeals NO. 14-14-00506-CV CRYSTAL R. DAVIS, Appellant V. LITTLE NELL APARTMENTS, Appellee On Appeal from the County Civil Court at Law No. 4 Harris County, Texas Trial Court Cause No. 1047273 ORDER On July 16, 2014, appellant, who is appearing pro se, filed a timely motion in this court challenging the trial court's July 8, 2014, ruling sustaining a contest to her affidavit of indigence.

See Tex. R. App. P. 20.1(j)(1), (2). When a motion to review the trial court's ruling on indigence is filed, the trial court clerk and the court reporter must prepare, certify, and file the record of the hearing on the contest to the claim of indigence within three days after the motion is filed. See Tex. R. App. P. 20.1(j)(3).

The county clerk prepared a clerk's record, but no reporter's record of the hearing has been filed. Under the unambiguous language of Rule 20.1(j), if the appellate court does not deny a motion under Rule 20.1(j) within 10 days after the motion is filed, this motion is granted by operation of law. Tex. R. App. P. 20.1(j)(4). Even if the trial court clerk and the court reporter prepare, certify, and file the hearing record within three days after the motion is filed, the appellate court has less than a week to review the record and rule on the merits of the motion.

If the court reporter does not file the hearing record within 10 days after the filing of the motion, as in this case, this court has no ability to review the merits of the motion, and the motion is granted by operation of law regardless of whether the motion has merit. Tex. R. App. P. 20.1(j)(4). This new rule places a heavy burden on the trial court clerk and the court reporter to act expeditiously in preparing, certifying, and filing the hearing record.

If they fail to do so, then under the applicable procedure, this court has no ability to review the merits of the motion. More than 10 days have passed since the motion was filed and appellant's motion was granted by operation of law.

Accordingly, appellant may proceed on appeal without the advance payment of costs. Therefore, we ORDER the Harris County Clerk and the official court reporter, Karen S. Bernhardt, to prepare, certify, and file the appellate record without the advance payment of costs. See Tex. R. App. P. 20.1(k).

The record will be due in this court 30 days from the date of this order. PER CURIAM