

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2007 CA 0467

**PEGGY M. ROBINSON & METROPOLITAN MUTUAL
MORTGAGE, INC.**

VERSUS

**STATE OF LOUISIANA THROUGH THE OFFICE OF FINANCIAL
INSTITUTIONS**

Judgment Rendered: November 2, 2007

On Appeal from the Nineteenth Judicial District Court
In and For the Parish of East Baton Rouge
State of Louisiana
Docket No. 515,456

Honorable William A. Morvant, Judge Presiding

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BEFORE: GAIDRY, McDONALD, AND McCLENDON, JJ.

McCLENDON, J.

Plaintiff-appellant, Peggy M. Robinson, appealed a judgment dismissing, for failure to pay costs, her request for judicial review of an administrative agency decision. We affirm.

The petition was filed in December of 2003. Two years later, the defendant, State of Louisiana, Office of Financial Institutions, filed a motion to dismiss for failure to pay costs. After a hearing, the trial court, in its oral reasons, citing LSA-C.C.P. art. 2126E as authority, granted Ms. Robinson ten days to pay costs. The trial court further stated that Ms. Robinson's request for judicial review would be dismissed as abandoned should she fail to pay the costs within the allotted time. Two days after the hearing, Ms. Robinson filed into the record an "In Forma Pauperis Affidavit." Upon receipt of said affidavit, the trial court denied the request to proceed without advance payment of costs. Subsequently, the trial court denied a request for reconsideration, to which Ms. Robinson had attached another affidavit. More than six months later, on December 7, 2006, the trial court signed a judgment dismissing Ms. Robinson's request for review for failure to pay costs. Ms. Robinson appealed.¹

Notwithstanding the absence of a formal assignment of error on the issue of a dismissal based on the failure to pay costs, Ms. Robinson lists the denial of pauper status in the section of her appellant brief entitled, "ISSUES PRESENTED FOR REVIEW." However, she did not brief said issue. In her rebuttal brief, she does assert the conclusion that the "Judge's denial of

¹ Although the most efficient and time saving procedure to challenge a denial of pauper status is to invoke the appellate court's supervisory jurisdiction, Ms. Robinson chose to appeal instead. See **Starks v. Universal Life Insurance Company**, 95-1003, p. 12 n.4 (La.App. 1 Cir. 12/15/95), 666 So.2d 387, 394-95 n.4, writ denied, 96-0113 (La. 3/8/96), 669 So.2d 400.

the Pauper Status . . . appears to be unfair and unreasonable under the circumstances,” and states that the record contains “schematic representation of appellant’s lack of ability to pay fee” Unfortunately, the assertions are made without citation to specific pages in the record on appeal and without reference to specific facts that would support her conclusion that the denial in this case was “unfair.” See URCA Rule 2-12.4 (assignments not briefed may be deemed abandoned and argument without record citations may be disregarded). Nevertheless, despite the lack of specificity, this court chose to review the dismissal based on the failure to pay costs, including the initial and subsequent *in forma pauperis* affidavits filed before the judgment on appeal was rendered.

Generally, a trial court is afforded wide discretion in deciding whether to grant the privilege to litigate *in forma pauperis*. In the absence of clear abuse of that discretion, an appellate court will not disturb the trial court’s finding. See **Starks v. Universal Life Insurance Company**, 95-1003, p. 11 (La.App. 1 Cir. 12/15/95), 666 So.2d 387, 394, writ denied, 96-0113 (La. 3/8/96), 669 So.2d 400.

Initially, we note that although some of the expenses and values listed in Ms. Robinson’s first affidavit conflicted with the second one, filed only a month later, both showed moderate to significant equity in immovable property, with a listing of immovable property in addition to a family home. We also note that some of the expenses and debts in the first affidavit appeared to be inordinately high in light of the low valuations and income reported. Additionally, the record revealed that Ms. Robinson failed to file a proper application to proceed *in forma pauperis*. Ms. Robinson neither prayed for pauper status in the petition nor filed a written motion. See LSA-C.C.P. art. 5183A; **Tenney v. Burlington Northern & Santa Fe Railway**

Co., 2003-1260, pp. 4-6 (La. 1/21/04), 863 So.2d 526, 529. Even if the affidavit itself could be characterized as a written ex parte motion addressed to the court, Ms. Robinson did not submit all of the statutorily required proof to confirm pauper status. See LSA-C.C.P. art. 5183A(2). The ability to proceed without the advance payment of costs is not a right, but a privilege extended only to parties proven to be indigent and unable to pay court costs due to unavoidable poverty. See LSA-C.C.P. art. 5181, et seq.

In this case, the trial court found that Ms. Robinson, a licensed attorney, was not truly indigent and gave her more than a fair period of time to arrange for payment of the costs. From our thorough review of the record before us, we cannot say that the trial court abused its wide discretion or committed clear error in its refusal to grant pauper status. Based on that ruling, we see no error in the trial court's dismissal of Ms. Robinson's request for judicial review for failure to pay costs.²

For these reasons, the judgment of dismissal is affirmed. The costs of the appeal are assessed to plaintiff-appellant, Peggy M. Robinson.

AFFIRMED.

² Appellant filed a peremptory exception raising the objection of nonjoinder of a party. However, the exception centers on the merits of the revocation of a mortgage broker's license, which are not at issue in this appeal of a judgment of dismissal based on a failure to pay costs. Thus, we deny the exception.

Also, in light of our affirmance, we decline to address appellee's complaints of arguably inappropriate arguments and comments made by appellant in her brief.