

NOT DESIGNATED FOR PUBLICATION

**CHRISTINA A. FERRAND
VERSUS**

*

NO. 2002-C-0115

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COURT OF APPEAL

**NOVARTIS
PHARMACEUTICAL
CORPORATION, ET AL.**

*

FOURTH CIRCUIT

*

STATE OF LOUISIANA

WRIT DENIED

*

*

CONSOLIDATED WITH:

CONSOLIDATED WITH:

DUANE JOSEPH

NO. 2002-C-0116

VERSUS

**BAYER CORPORATION, ET
AL.**

WRIT DENIED

CONSOLIDATED WITH:

CONSOLIDATED WITH:

DEBORAH ANN BRADY

NO. 2002-C-0117

VERSUS

**BAYER CORPORATION, ET
AL.**

**WRIT GRANTED REVERSED
AND REMANDED**

CONSOLIDATED WITH:

ALFRED DAVIS, SR.

VERSUS

**BAYER CORPORATION, ET
AL.**

**WRIT GRANTED REVERSED
AND REMANDED**

CONSOLIDATED WITH:

NO. 2002-C-0118

CONSOLIDATED WITH:

STEPHEN BARQUET

VERSUS

**GLAXO SMITHKLINE, PLC,
ET AL.**

**WRIT GRANTED REVERSED
AND REMANDED**

CONSOLIDATED WITH:

NO. 2002-C-0119

CONSOLIDATED WITH:

WILLIE TRASK

VERSUS

**SCHERLING-PLOUGH
CORPORATION, ET AL.**

WRIT DENIED

CONSOLIDATED WITH:

NO. 2002-C-0120

CONSOLIDATED WITH:

JOHN WASHINGTON

VERSUS

**BAYER CORPORATION, ET
AL.**

WRIT DENIED

CONSOLIDATED WITH:

NO. 2002-C-0121

CONSOLIDATED WITH:

JOHN CORBIN

VERSUS

**BAYER CORPORATION, ET
AL.**

WRIT DENIED

CONSOLIDATED WITH:

NO. 2002-C-0122

CONSOLIDATED WITH:

HERMAN WILLIAMS

VERSUS

**NOVARTIS
PHARMACEUTICALS CORP.,
ET AL.**

**WRIT GRANTED REVERSED
AND REMANDED**

CONSOLIDATED WITH:

NO. 2002-C-0123

CONSOLIDATED WITH:

BRUCE ROBERSON

VERSUS

**GLAXO SMITHKLINE PLC,
ET AL.**

WRIT DENIED

CONSOLIDATED WITH:

NO. 2002-C-0124

CONSOLIDATED WITH:

DEBRA JACKSON

VERSUS

**BAYER CORPORATION, ET
AL.**

**WRIT GRANTED REVERSED
AND REMANDED**

CONSOLIDATED WITH:

NO. 2002-C-0125

SUPERVISORY WRIT APPLICATION DIRECTED TO
CIVIL DISTRICT COURT, ORLEANS PARISH
NOS. 2001-18594 (M-7) C/W, 2001-18571(H-12) C/W,
2001-18588 (C-6) C/W, 2001-18601(A-5) C/W, 2001-18563
(J-13), C/W, 2001-18565 (J-13) C/W, 2001-18564 (H-
12) C/W, 2001-18555 (C-6), C/W, 2001-18580 (M-7)
C/W, 2001-18552- (G-11) C/W, 2001-18592(M-7)

Honorable Roland L. Belsome, Judge

* * * * *

Judge Dennis R. Bagneris, Sr.

* * * * *

(Court composed of Judge James F. McKay III, Judge Dennis R. Bagneris,
Sr., and Judge Max N. Tobias, Jr.)

Stuart H. Smith
Michael G. Stag
Raphael Juneau, Jr.

SMITH & HARANG, L.C.
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COUNSEL FOR PLAINTIFFS

The relators in these eleven consolidated writ applications challenge the denial of their in forma pauperis application/status. The plaintiffs/relators seeks damages for injuries allegedly sustained as a result of consuming over-the-counter medications that contained Phenylpropanolamine (PPA).

LAW

Pursuant to the provisions of La. C.C.P. art. 5181, “[A] n individual who is unable to pay the costs of court because of his poverty and lack of means may prosecute or defend a judicial proceeding . . . without paying the costs in advance or as they accrue or furnishing security therefore. ” The purpose of the in forma pauperis article is to enable indigent persons to assert their causes in the courts of this state. Benjamin v. National Super Markets, Inc., 351 So. 2d 138,140 (La. 1977). Accordingly, our courts have held that the statutes authorizing the litigation of cases in forma pauperis

should be interpreted liberally in favor of giving indigent persons their day in court. Id.

However, pursuant to La. C.C.P. Art. 5182, the privilege to litigate under the forma pauperis statutes, “ shall be restricted to litigants who are clearly entitled to it, . . . so that the fomentation of litigation by an indiscriminate resort thereto may be discouraged, without depriving a litigant of its benefits if he is entitled thereto.”

In determining whether a person is entitled to proceed in forma pauperis, the trial court has the discretion to restrict the right to litigants clearly entitled to it, with regard to the nature of proceeding, the court costs which otherwise would have to be paid and the ability of the litigant to pay them or furnish security therefore. La. C. C. P. Art. 5182; Hollier v. Broussard, 220 So. 2d 175 (La. App. 3 Cir.1969). Although the trial court has wide discretion to determine whether pauper status should be granted or denied, such discretion must be exercised reasonably and is subject to review for abuse. McCoy v. Winn-Dixie Louisiana, Inc., 339 So.2d 976 (La. App. 4 Cir. 1976), reversed on other grounds, 345 So. 2d 1175 (La. 1977); Jolivette v. Jolivette, 386 So. 2d 707 (La. App. 3 Cir. 1980). The trial court's discretion to restrict the statutory right to proceed in forma pauperis to those litigants clearly entitled to it should not be disturbed in the absence

of abuse. Id.; Hollins v. Moore, 220 So. 2d 103 (La. App. 3 Cir. 1969).

A person seeking pauper status must demonstrate his/her entitlement to such status by showing that the prerequisites for proceeding in forma pauperis are met. Those prerequisites are specified in La. C.C.P. art. 5183 which provides:

Art. 5183. Affidavits of poverty; documentation; order

A. A person who wishes to exercise the privilege granted in this Chapter shall apply to the court for permission to do so in his first pleading, or in an ex parte written motion if requested later, to which he shall annex:

(1) His affidavit that he is unable to pay the costs of court in advance, or as they accrue, or to furnish security therefor, because of his poverty and lack of means, accompanied by any supporting documentation; and

(2) The affidavit of a third person other than his attorney that he knows the applicant, knows his financial condition, and believes that he is unable to pay the costs of court in advance, or as they accrue, or to furnish security therefore.

(3) A recommendation from the clerk of court's office as to whether or not it feels the litigant is in fact indigent, and thus unable to pay the cost of court in advance, or as they accrue, or to furnish security therefore, if required by local rule of the court.

B. When the application and supporting affidavits are presented to the court, it shall inquire into the facts, and if satisfied that the applicant is

entitled to the privilege granted in this Chapter it shall render an order permitting the applicant to litigate, or to continue the litigation of, the action or proceeding without paying the costs in advance, or as they accrue, or furnishing security therefore. The submission by the applicant of supporting documentation that the applicant is receiving public assistance benefits or that the applicant's income is less than or equal to one hundred twenty-five percent of the federal poverty level shall create a rebuttable presumption that the applicant is entitled to the privilege granted in this Chapter. The court may reconsider such an order on its own motion at any time in a contradictory hearing. (**Emphasis added**)

WRIT APPLICATION #2002-C-0115
Christina A. Ferrand, et al v. Novartis Pharmaceutical, et al
WRIT DENIED

The relator in the instant writ application is Christina A. Ferrand, who seeks to file the instant litigation on behalf of her minor child, Kenneth Hoofkin. The relator was denied in forma pauperis on November 19, 2001. The relator seeks to reverse the trial court denial of in forma pauperis status.

The relator's Forma Pauperis Application indicates that she is a pre-school teacher at Kids of Excellence and that she also receives financial assistance from either the Supplemental Security Income ("SSI") or State Supplemental Payments Program ("SSP"). Information contained on her application form indicates that her total monthly take-home pay is \$550.00 and her monthly expenses total \$1,238.00. She owns no real estate, jewelry,

furniture, or other property of value, and she only has \$10.00 cash on hand. She has three dependents (including herself), and she avers that she is unable to pay any of the court costs or fees attendant to this litigation in advance or as they accrue.

The relator's brother, Jacob Dixon, signed an affidavit supporting the relator's application for pauper status. In the affidavit he stated that he knew his sister's financial condition because he was her brother, and he lived in the same household. The only attachment to the Forma Pauperis Application is a photocopy of the relator's social security card.

The relator failed to provide the requisite information needed for the trial court to determine if she is entitled to proceed in forma pauperis. Further, the relator's Forma Pauperis Application is incomplete; additionally she failed to attach the supporting documentation requested in the Forma Pauperis Application.

The relator placed a checkmark in the box indicating that she receives financial assistance from the SSI or SSP program. If this were true, a rebuttable presumption of eligibility for in forma pauperis status would have been created if the relator had submitted documentation of receipt of such public assistance benefits. La. C.C.P. art. 5183 (B). However, the relator failed to specify the amount of public assistance benefits she receives as

requested by the form, and she submitted no documentation to corroborate her allegation that she is a recipient of public assistance. The Forma Pauperis Application specifically states that any applicant receiving financial assistance in the form of SSI, SSP, AFDC, TANF, Food Stamps, and/or a city or parish general relief or assistance program must attach documents to verify receipt of the benefits checked.

Additionally, although the relator indicated that her monthly take-home pay is \$550.00, she failed to attach a copy of a recent paycheck or pay stub to verify the amount of her pay as requested in the note to question 11 of the Forma Pauperis Application.

Because the relator failed to provide the information needed to determine if she is eligible for pauper status, we are unable to find that the trial court abused its discretion by denying her application for pauper status.

Accordingly, relator's writ application is hereby denied, noting that the relator failed to supply the information needed in order for the court to determine whether she is eligible for pauper status.

**WRIT APPLICATION # 2002-C-0116
DUANE JOSEPH V. BAYER CORPORATION, ET AL
WRIT DENIED**

The relator in the instant writ application is Duane Joseph. The relator was denied in forma pauperis status on November 19, 2001. The relator

seeks to reverse the trial court denial of in forma pauperis status.

The relator's Forma Pauperis Application indicates that he is single, unemployed, and has no income. He apparently does not receive any type of financial assistance from any public assistance program. An individual named Gaynell Butler signed the affidavit stating that she knew the relator was unable to pay the costs of litigation.

After reviewing the relator's Forma Pauper Application, we find that if in fact the relator has no income, it is obvious that his income is less than one hundred twenty-five percent of the federal poverty level. Further, if supporting documentation had been presented to corroborate the allegation of no income, a rebuttable presumption of entitlement to in forma pauperis status would have been created. However, the only documentation submitted with the relator's Forma Pauperis Application was a photocopy of his driver's license.

Based on the information supplied in the Forma Pauperis Application, it appears that the relator has no visible means of support. However, his application is incomplete in that he failed to provide any information concerning the amount of cash on hand or in bank accounts. Likewise, he failed to provide any information concerning any real estate, vehicles, or other personal property he owns. Although he indicated that he is currently

unemployed, he failed to state how long he had been unemployed. He also failed to provide any of the information requested in the monthly expense section of the form.

Gaynell Butler, the person completing the affidavit supporting the relator's pauper status, also failed to complete the affidavit form of the application properly. Although the application specifically requested information concerning the basis of her knowledge of the relator's financial condition, Ms. Butler failed to provide this information. She failed to state her relationship to the relator; she failed to state how long she had known the relator; and she failed to state her basis for averring that she is familiar with the relator's financial condition.

The relator failed to establish his entitlement to proceed in forma pauperis because his application and the affidavit of the third person in support of his pauper status are incomplete

Accordingly, the relator's writ application is denied.

WRIT APPLICATION # 2002-C-0117
DEBORAH ANN BRADY V. BAYER CORPORATION, ET AL
WRIT GRANTED
REVERSED AND REMANDED

The relator in the instant writ application is Deborah Ann Brady. The relator was denied in forma pauperis status on November 19, 2001. The relator seeks to reverse the trial court denial of in forma pauperis status.

In her Forma Pauperis Application the relator indicates that she is unemployed and that she is unable to pay any of the court costs or fees in advance or as they accrue. She apparently is not receiving any type of financial assistance under any of the public assistance programs, has no monthly income from any source and has two dependents, including herself. She is separated from her husband, who is incarcerated and not employed. Her total monthly expenses consist of \$4.00 for clothing. She spends no money on rent, house payments, food, utilities or transportation. She has \$5.50 in cash on hand and she has other property such as jewelry, furniture, etc., which is worth \$531.00. She also indicated that she is a client in a train car case where chemicals were spilled. Denise Brock signed the affidavit in support of the relator's application for pauper status. Ms. Brock indicated that she has been the relator's friend for twenty-five years and that she is intimately familiar with her financial status.

After reviewing the record, we find that the relator has little or no income. Accordingly, she clearly earns less than one hundred twenty-five percent of the federal poverty level. Her allegations of poverty were corroborated by the properly completed affidavit Denise Brock, her friend for twenty-five years. It appears that a rebuttable presumption of entitlement to pauper status was created. The trial court erred in denying the relator's

application for in forma pauperis status. Therefore, we grant the writ, reverse, and remand for further inquiry by the trial court whether the relator is entitled to proceed in forma pauperis.

WRIT APPLICATION #2002-C-0118
ALFRED DAVIS, SR.V. BAYER CORPORATION, ET AL
WRIT GRANTED
REVERSED AND REMANDED

The relator in the instant writ application is Alfred Davis, Sr. The relator was denied in forma pauperis status on November 19, 2001. The relator seeks to reverse the trial court denial of in forma pauperis status.

Information provided on the relator's Forma Pauperis Application indicates that he is married. He gives no information concerning his occupation or employer. Rather it appears that he is disabled and receives a monthly disability benefit of \$700.00. His spouse is also disabled and her gross monthly income is \$413.00. He has three dependents, including himself. He apparently receives no financial assistance from any public assistance program. His monthly expenses total \$1,128. 81. He currently has \$10.00 in cash on hand, \$100.00 in his checking account, and he owns real estate valued at \$30,000.00 (apparently the family home). He also owns a 1989 Ford valued at \$2,000.00. Barbara Davis, who avers that she knows he is unable to pay the costs of this litigation, signed the supporting affidavit. She alleges that she has known Mr. Davis for thirty years and has

personal knowledge of his financial condition.

Based on the information contained in the relator's Forma Pauperis Application, the relator and his wife are both disabled. Their only income consists of monthly disability benefits totaling \$1,113.00, an amount that is less than their total monthly expenses, which total \$1,128.81. It is not readily apparent why the trial court denied the relator's application. It is possible that the court gave undue consideration to the fact that the relator owns a modest amount of property. The relator and his wife apparently own their home, which is valued at \$30,000.00, and a twelve-year-old vehicle with an estimated value of \$2,000.00. However, these assets alone do not necessarily disqualify the relator from being accorded pauper status.

In Benjamin v. National Super Markets, Inc., *supra*, the court noted that a realistic view as to the litigant's actual ability to advance court costs out of net income available for that purpose was to be considered in determining a litigant's qualification to proceed as a pauper. The court indicated that net income, after payment of reasonable living expenses and debts and in view of unencumbered property other than a modest family residence, was to be considered. In Benjamin, the plaintiffs owned a home valued at \$27,500.00 and a 1970 truck. However, they still owed \$20,000.00 on the home, and they were in default for three months of

payments. The court concluded that a litigant is not necessarily disqualified from pauper status if he did not dispose of or encumber a modest family home and furniture or a modest automobile essential for family transportation.

The relator appears eligible for pauperis status, especially in light of the fact that he and his wife are disabled and living on fixed incomes.

The relators's application appears complete and properly supported by the affidavit of a person who has known the relator for over thirty years. Thus, we find the trial court abused its discretion in denying the relator's forma pauperis application. Therefore, we grant the writ, reverse and remand for further inquiry by the trial court whether the relator is entitled to proceed in forma pauperis status to proceed.

WRIT APPLICATION #2002-C-0119
STEPHEN BARQUET V. GLAXO SMITHKLINE, PLC, ET AL
WRIT GRANTED
REVERSED AND REMANDED

The relator in the instant writ application is Stephen Barquet. The relator was denied in forma pauperis status on November 19, 2001. The relator seeks to reverse the trial court denial of in forma pauperis status.

Information contained in the relator's Forma Pauperis Application

indicates that he is single and his monthly expenses total \$531.00 (\$300.00 for rent, \$200.00 for food and household supplies, and \$31.00 for utilities and telephone). He receives public assistance benefits in the form of SSI. It appears he receives \$531.00 monthly. Fredonia Barquet Davis provided a supporting affidavit, but she failed to state her relationship to the relator and/or her basis for knowing his financial condition.

Relator submits no documentation to corroborate his allegation that he receives SSI and is unable to pay court costs. Additionally, the person completing the affidavit failed to state the basis for knowing that the relator is unable to pay the costs of this litigation. However, it is noted that the affiant's middle name is the same as the relator's last name; thus, it appears likely that she is a relative and that she would have a basis for knowing Mr. Barquet's financial condition.

Therefore, it appears that the relator's met the requirements for in forma pauperis status and the trial court abused its discretion in denying his application without inquiring further into the facts as required by La. C.C.P art. 5183B. Accordingly, we grant the writ, reverse and remand for further consideration by the trial court whether the relator in forma pauper.

WRIT APPLICATION # 2002-C-0120
WILLIE TRASK V. SCHERLING-PLOUGH CORPORATION, ET AL
WRIT DENIED

The relator in the instant writ application is Willie Trask. The relator was denied in forma pauperis status on November 19, 2001. The relator seeks to reverse the trial court denial of in forma pauperis status.

Information contained in the relator's Forma Pauperis Application indicates that he is a chef at the Doubletree Hotel. He is married and apparently his wife is his only dependent. His gross monthly salary is \$2,150.24 and his total monthly take-home income is \$1,611.18. That portion of the application requesting information concerning monthly expenses is incomplete. He indicated that he owes monthly installment payments of \$1,268.00, but he failed to complete the section of the form that requested information concerning the purpose of the installment payments. He also failed to complete the blank calling for total monthly expenses. However, the amount appears to total \$3,403.00 (including \$852.00 for rent or house payments, \$350.00 for food and household supplies, \$360.00 for utilities and telephone, \$100.00 for clothing, \$100.00 for laundry, \$56.00 for medical expenses, \$56.00 for insurance and \$261.00 for transportation and or auto expenses). He has no cash on hand, and only has \$40.00 in a checking or savings account. He failed to state whether he owns any real estate, automobiles, or other property. His wife is a housewife and has no income. Nina Trask signed the supporting affidavit. Presumably she is a

relative but she gave no basis for knowledge of Mr. Trask's financial condition and she failed to state how long she had known him.

The information provided in the Forma Pauperis Application indicates that the relator's monthly expenses exceed his total monthly income; the relator failed to complete the entire application and failed to provide information concerning the nature of the \$1,268.00 monthly installment payments. Additionally, he failed to provide information concerning any real estate or personal property he owned. Finally the third person completing the affidavit in support of pauper status failed to state the basis for her knowledge of his financial condition.

Because the relator did not provide the information needed to determine if he is entitled to proceed in forma pauperis, the trial court did not abuse its discretion in denying his application for pauper status. Therefore, relator's writ application is denied.

#2002-C-0121
JOHN WASHINGTON v. BAYER CORPORATION, ETAL
WRIT DENIED

The relator is John Washington. The relator was denied in forma pauperis status on November 19, 2001. The relator seeks to reverse the trial court denial of in forma pauperis status.

The relator's Forma Pauperis Application provides scant information

concerning his financial situation. He ignores the question asking him to list his occupation, the name of his employer, and the address for his employer. Although he fails to give the name of his employer, he alleges that his gross monthly pay and his total monthly income is \$900.00. The source of this income is not stated. His monthly expenses total \$900.00. He failed to state his marital status and or whether he has any dependents. His application is even more perplexing because he fails to check any blocks on the application indicating that he receives public assistance. Yet, he attaches a photocopy of an undated food stamp identification card. Thus, it appears that he either received food stamps in the past or he is currently receiving food stamps. However, the amount or value of the food stamps is not shown. He left all the blanks requesting information concerning property owned blank. Surprisingly, the relator does not check the box indicating that he is unable to pay any of the court costs or fees in advance or as they accrue. Earl Register signed the supporting affidavit indicating that he knows the relator. He provides no information from which the court could determine the basis of his knowledge of the relator's financial condition.

The inclusion of the photocopy of the "Food Stamp Identification Card" could be interpreted to suggest that the relator is receiving food stamps. If so, a rebuttable presumption of entitlement to proceed in forma

pauperis would be created. However, the card is undated, and the trial court had no way of knowing if the relator currently receives food stamps.

The relator's Forma Pauperis Application is woefully inadequate and does not provide information needed to establish entitlement to proceed in forma pauperis. Additionally, the supporting affidavit is also incomplete.

Because the relator fails to provide the necessary information to determine his true financial condition and because he does not even aver that he cannot pay court costs, the trial court did not abuse its discretion in denying his application for pauper status. Therefore, relator's writ application is denied.

#2002-C-0122
JOHN CORBIN V. BAYER CORPORATION
WRIT DENIED

The relator is John Corbin. The relator was denied in forma pauperis status on November 19, 2001. The relator seeks to reverse the trial court denial of in forma pauperis status.

Based on the information supplied in the Forma Pauperis Application, the relator is on a fixed income and he has no assets. However, the relator failed to complete the financial information section of the Forma Pauperis Application properly. Although it appears that his sole monthly income may consist of a \$768.00 disability check, he submitted no documentation to

show the amount of his social security disability benefit and/or any other income. In fact, the only document attached to the relator's forma pauperis application is a photocopy of his driver's license. Additionally, the relator failed to state how long he has been disabled.

Hannah V. Hayes, the person completing the affidavit supporting the relator's pauper status, failed to complete the affidavit form of the application properly. Although the application specifically requested information concerning the basis of her knowledge of the relator's financial condition, Ms. Hayes failed to provide this information. She failed to state her relationship to the relator; she failed to state how long she had known the relator; and she failed to state her basis for averring that she is familiar with the relator's financial condition.

The relator failed to establish his entitlement to proceed in forma pauperis because his application was completed improperly, and he provided no documentation to corroborate his monthly income. Additionally, the affidavit of the movant in support of his pauper status is incomplete. The trial court did not abuse its discretion.

Accordingly, relator's writ application is denied

#2002-C-0123
HERMAN WILLIAMS V. NOVARTIS PHARMACEUTICALS
CORP., ET AL.
WRIT GRANTED
REVERSED AND REMANDED

The relator is Herman Williams. The relator was denied in forma pauperis status on November 19, 2001. The relator seeks to reverse the trial court denial of in forma pauperis status.

Information contained in the relator's Forma Pauperis Application indicates that he is disabled and unable to pay court costs. He is married, receives no public assistance, and apparently has seven dependents. His total monthly income consists of a disability check in the amount of \$1,650.00, and his wife's gross monthly income is \$531.00. His monthly expenses total \$2,536.00. He has \$10.00 cash on hand. He owns a house worth \$80,000.00 and a 1997 Dodge worth \$5,000.00. His daughter, Sabrena Williams, signed the supporting affidavit.

Based upon the information contained in the relator's Forma Pauperis Application, it appears that the relator is disabled and his wife is unemployed. The total family income consists of disability checks for the relator and his wife in the amount of \$2,181.00. However, it appears that the relator's total monthly expenses exceed his total monthly income.

Although the relator in the instant case owns a modest family home

and an aged automobile, it does not appear that the relator is necessarily ineligible for pauperis status, especially in light of the fact that he and his wife are disabled and living on fixed incomes.

Therefore, it would appear that the relator has met the requirements for in forma pauper status and the trial court abused its discretion in not inquiring further into the facts as required by La. C.C.P. art. 5183B.

Accordingly, we grant the writ, reverse, and remand for further consideration by the trial court whether the relator is entitled to proceed in forma pauperis.

#2002-C-0124
BRUCE ROBERSON V. GLAXO SMITHKLINE PLC, ET AL
WRIT DENIED

The relator is Bruce Roberson. The relator was denied in forma pauperis status on November 19, 2001. The relator seeks to reverse the trial court denial of in forma pauperis status.

The facts of this case are unclear. It appears this is an action brought on behalf of the estate of Bruce Roberson, who died on May 13, 2001. The applicant for pauper status is Lucille Roberson, the decedent's mother. The Forma Pauperis Application of Lucille Roberson indicates that she is a married housewife. Apparently, Lucille Roberson, the mother of the decedent, is seeking to prosecute this action on behalf of the decedent;

there is nothing in the Forma Pauperis Application or in the writ application to demonstrate that she is the proper party to bring an action on behalf of the decedent or even that she is a party to this litigation.

Information contained on the Forma Pauperis Application indicates that Mrs. Roberson receives Food Stamps and that she is unable to pay the court costs. She receives \$331.00 monthly in social security benefits. Her husband is retired and has a monthly income of \$667.00. She allegedly has two dependents, including herself. Her monthly expenses total \$849.00. She has \$10.00 cash on hand and \$20.00 in a checking or savings account. She owns a house valued at \$78,000.00 and a 1992 Chrysler valued at \$2,500.00. Her 54-year-old son, Anthony Henry Roberson, signs her supporting affidavit

Notwithstanding the relator's allegations to the contrary, there is nothing in this writ application to indicate the court denied this relator's Forma Pauperis Application.

The order on the relator's Forma Pauperis Application contains the date, November 19, 2001 and the judge's signature. However, it does not contain the word "denied", as do the other Forma Pauperis Applications forming the basis for the ten companion writ applications. The language of the order contained on this particular application supports a conclusion that

this relator's request to proceed in forma pauperis has been granted.

Alternatively, should the relator present documentation that the Forma Pauperis Application was denied, it is noted that the relator presents no information to support a finding that Lucille Roberson is the proper party to maintain this action on the part of the estate of Bruce Roberson. It appears that the decedent's father is also living and that the decedent may have had at least one sibling. The death certificate gives his marital status as divorced, but it is unknown if he had children. There is nothing in the writ application or on the Forma Pauperis Application to help the court determine how many heirs the decedent has or even whether Mrs. Roberson is the proper representative.

Accordingly, it cannot be said the trial court abused its discretion by denying the application if in fact it did. While the information given on her Forma Pauperis Application strongly suggests that she may be eligible for pauper status, it is unknown if other potential heirs qualify for such status. In short, the relator has failed to present sufficient information to allow the trial court to determine if this case should proceed as a pauper case.

Relator's writ application is denied.

#2002-C-0125
DEBRA JACKSON V. BAYERS CORPORTION, ET AL
WRIT GRANTED
REVERSED AND REMANDED

The relator is Debra Jackson. The relator was denied in forma pauperis status on November 19, 2001. The relator seeks to reverse the trial court denial of in forma pauperis status.

The relator's Forma Pauperis Application indicates that she is disabled and that she receives \$530.00 or \$531.00 monthly in Supplemental Security Income. She also receives food stamps. Her monthly expenses total \$1,361.00. She owns no real estate, no automobiles, no jewelry, furniture or other items of value, and she only has \$20.00 in cash on hand. She has no checking or savings accounts. She has four dependents (including herself), and she avers that she is unable to pay any of the court costs or fees attendant to this litigation in advance or as they accrue.

Attached to the relator's Forma Pauperis Application is a copy of a letter from the Social Security Administration dated November 27, 2000 notifying the relator that as of January 2001 her monthly SSI benefit would be increased to \$530.00. Also attached to her Forma Pauperis Application is a sheet of paper containing photocopies of her driver's license, social security card, and a Louisiana Purchase card. The relator's friend, Dorothy Burns Lacour, signed an affidavit supporting the relator's application for pauper status. In the affidavit she stated that she knew the relator's financial condition because she was her friend. Attached to the Forma Pauper

Application is a photocopy of Ms. Lacour's driver's license.

Section B of article 5183 creates a rebuttable presumption that persons submitting documentation of receipt of public assistance benefits are entitled to proceed in forma pauperis. Because the relator submitted documentation that she is receiving SSI it is presumed that she is entitled to proceed in forma pauperis.

The relator is presumably eligible to proceed in forma pauperis. Accordingly, it appears that the relator's met the requirements for in forma pauperis status and the trial court abused its discretion in not inquiring further into the facts as required by La. C.C.P. art. 5183B.

Accordingly, we grant the writ and remand for further consideration by the trial court whether relator is entitled to proceed in forma pauperis status.

