

NO. 07-04-0588-CV
IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS
AT AMARILLO
PANEL A
JANUARY 6, 2005

LAWRENCE HIGGINS, APPELLANT

V.

WOODBURN, SEARS & WATKINS, APPELLEE

FROM THE 251ST DISTRICT COURT OF RANDALL COUNTY;
NO. 050573C; HONORABLE PATRICK PIRTLE, JUDGE

Before JOHNSON, C.J., and REAVIS and CAMPBELL, JJ.

MEMORANDUM OPINION

Appellant Lawrence Higgins, proceeding *pro se*, filed a notice of appeal, received by this court on September 3, 2004, stating that he was appealing an order dated August 23, 2004, dismissing his case for want of prosecution. Appellant did not pay the filing fee of \$125 for the appeal or submit an affidavit of indigence before or at the time he filed his notice of appeal. Tex. R. App. P. 20.1(c)(1).

By letter dated December 22, 2004, the clerk of this court notified appellant that the filing fee had not been paid, and that failure to pay it could result in dismissal. Tex. R. App. P. 5, 42.3. He responded with a "Motion to Proceed on Appeal in Forma Pauperis." The motion does not comport with the requirements of an affidavit of indigence described under Rule 20.1(b), nor was it filed within the deadline prescribed by Rule 20.1(c)(1). In addition, appellant did not file a timely motion requesting an extension of time to file his affidavit of indigence. Tex. R. App. P. 20.1(c)(3).

Appellant refers us to documentation of his indigence filed with the trial court as proof of his inability to pay trial court costs. Filing an affidavit of inability to pay trial court costs does not comply with the requirement that, for appeal, an affidavit of indigence be filed in accordance with Rule 20.1. *Holt v. F.F. Enterprises*, 990 S.W.2d 756, 758 (Tex.App.–Amarillo 1998, pet. denied).

Failure to timely file an affidavit of indigence, or a motion for extension of time to file the affidavit, precludes appeal without the payment of costs. See *Ford v. Whitehead*, 2 S.W.3d 304, 306 (Tex.App.–San Antonio 1999, no pet.). Appellant is not excused by statute or the Rules of Appellate Procedure from paying the filing fee and has failed to comply with the requirement that he pay the fee this court is obligated to collect. Tex. R. App. P. 5.

All parties having had more than ten days' notice that dismissal could result from appellant's continued failure to comply with the rules, the appeal is dismissed. Tex. R. App. P. 5, 42.3(c).

James T. Campbell
Justice

