

RENDERED: November 14, 1997; 2:00 p.m.
NOT TO BE PUBLISHED

NO. 97-CA-2509-MR

DARRELL PERRY

APPELLANT

v. APPEAL FROM DAVIESS CIRCUIT COURT
HONORABLE GARLAND W. HOWARD, JUDGE
ACTION NO. 94-CI-0540

BARBARA HAYDEN; MARTY HAYDEN;
CHERYL N. CURETON; RICHARD A. ROBERTSON

APPELLEES

OPINION AND ORDER
REVERSING AND REMANDING

** ** * * * * *

BEFORE: GUIDUGLI, JOHNSON AND SCHRODER, JUDGES.

SCHRODER, JUDGE. This is an appeal from an order entered by the Daviess Circuit Court on September 11, 1997, denying appellant's motion to proceed in forma pauperis on appeal. The Daviess Circuit Court simply signed the printed form order at the bottom of the KRS 31.120 Affidavit of Indigency filed by appellant and checked the box provided therein to determine that appellant is not qualified for the services as provided by KRS Chapter 31.

The decision to grant or deny a motion to proceed in forma pauperis on appeal is within the discretion of the trial court and we may not reverse that decision in the absence of

clear error. CR 52.01; Bush by Bush v. O'Daniel, Ky., 700 S.W.2d 402 (1985). In the case sub judice, appellant submitted a completed Affidavit of Indigency as required by statute for a determination as to whether he is as a needy person. The record does not include any evidence controverting appellant's affidavit and the circuit court made no findings of fact to support the conclusion that appellant is not qualified for the services as provided by KRS Chapter 31.

Therefore, we are of the opinion that the circuit court's denial of appellant's motion is an abuse of discretion. Gabbard v. Lair, Ky., 528 S.W.2d 675 (1975). It is ORDERED that the order denying in forma pauperis status be, and it is hereby, REVERSED and the matter is REMANDED to the Daviess Circuit Court with directions that the circuit court grant appellant's motion to proceed in forma pauperis on appeal.

ALL CONCUR.

ENTERED: November 14, 1997

/s/ Wil Schroder
JUDGE, COURT OF APPEALS

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