



In The  
**Court of Appeals**  
**Fifth District of Texas at Dallas**

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No. 05-17-00961-CV

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**BRIAN E. VODICKA, Appellant**

**V.**

**MICHAEL B. TOBOLOWSKY,**  
**EXECUTOR OF THE ESTATE OF IRA E. TOBOLOWSKY, Appellee**

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**On Appeal from the 14th Judicial District Court**  
**Dallas County, Texas**  
**Trial Court Cause No. DC-15-08135**

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**MEMORANDUM OPINION**

Before Chief Justice Wright, Justice Francis, and Justice Stoddart  
Opinion by Chief Justice Wright

We **REINSTATE** this appeal.

Appellant filed an affidavit of indigency and appellee filed a contest to the affidavit. The trial court held a hearing, but appellant did not appear. Finding that appellant failed to prove his indigence, the trial court sustained the contest. Before the Court is appellant's motion to review the trial court's July 25, 2017 order sustaining appellee's contest to his affidavit.

Although the trial court found appellant failed to prove his indigence, the trial court's order did not provide the requisite "detailed findings that the declarant can afford to pay costs." TEX. R. CIV. P. 145(f)(6). Accordingly, we abated the appeal and ordered the trial court to make the requisite written findings. On October 25, 2017, a supplemental clerk's record was filed containing the trial court's October 12th amended order with twelve additional findings.

Texas Rule of Civil Procedure 145 exempts a party from paying court costs, including the reporter's fee, if the party files a statement showing he does not have the funds to pay. *See* Tex. R. Civ. P. 145(a),(c). However, the clerk, another party, the court reporter, or the court itself may challenge the statement of inability to pay costs by motion. *See id.* 145(f)(1)–(4). A declarant may not be ordered to pay costs without an “oral evidentiary hearing.” *See id.* 145(f)(5). It is the declarant's burden to prove the inability to afford costs. *See id.* An order granting the motion is reviewed for an abuse of discretion on appeal and will be affirmed unless the record reflects the trial court acted in an arbitrary and unreasonable manner or without reference to any guiding rules or principles. *See In re A.L.V.Z.*, 352 S.W.3d 568, 570 (Tex. App.—Dallas 2011, no pet.). Generally, a complaint for appellate review must be preserved by specific objection or motion in the trial court to allow the trial court an opportunity to correct the error. *See* Tex. R. App. P. 33.1; *Arkoma Basin Expl. Co. v. FMF Assoc. 1990–A, Ltd.*, 249 S.W.3d 380, 387 (Tex. 2008).

Of the twelve additional findings set forth in the trial court's amended order, we find the twelfth finding dispositive wherein the trial court found “no motion to continue the July 24, 2017 hearing was ever filed or requested and none of the evidence presented at the hearing by Plaintiff was objected to.” In response to this finding, appellant asserts that the trial court “specially eliminated telephone hearings for this case, purposely blocking every option available for [him] to object to ‘evidence presented at the hearing.’” Rule 145 requires the trial court to conduct an “oral evidentiary hearing.” *See* TEX. R. CIV. P. 145(f)(5). The burden rests squarely on the declarant to request access to the court through an alternative means such as by telephone and to demonstrate why a trial court should authorize it. *See Graves v. Atkins*, No. 01-04-00423-CV, 2006 WL 3751612, at \* 3 (Tex. App.—Houston [1st Dist.] Dec. 21, 2006, no pet.).

Rule of civil procedure 145(f)(5) provided appellant the means to demonstrate to the trial court why it should authorize him to appear for the contest hearing by way of telephone. There is nothing in the record before this Court that shows that appellant renewed his request to appear by telephone for the contest hearing or that he objected to not being permitted to appear by telephone. For this reason, we conclude appellant did not meet his burden to prove his indigence and the trial court did not err in sustaining the contest to his affidavit. We affirm the trial court's order.

/Carolyn Wright/  
CAROLYN WRIGHT  
CHIEF JUSTICE

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