



**COURT OF APPEALS  
SECOND DISTRICT OF TEXAS  
FORT WORTH**

**NO. 02-16-00445-CV**

IN THE INTEREST OF R.J.,  
A CHILD

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FROM THE 360TH DISTRICT COURT OF TARRANT COUNTY  
TRIAL COURT NO. 360-599129-16

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**MEMORANDUM OPINION<sup>1</sup> AND ORDER**

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**I. INTRODUCTION**

Before the court is Father's motion for review of the trial court's order sustaining the court reporter's challenge to Appellant J.J.'s (Father's) "Statement of Inability to Afford Payment of Court Costs or an Appeal Bond" and ordering Father to pay the costs of the reporter's record or to provide security or bond

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<sup>1</sup>See Tex. R. App. P. 47.4.

sufficient to cover said costs.<sup>2</sup> See Tex. R. Civ. P. 145(g). We will affirm the order.

## II. BACKGROUND

Father, appearing pro se, filed a statement of inability to afford costs following the trial court's order naming him possessory conservator of R.J., prohibiting court-ordered possession because Father is in prison for a crime against R.J., and ordering Father to pay \$300 per month in child support and \$25 per month for retroactive child support. Father's statement reflects that he does not receive public benefits, has \$0 income from any source, and owns no property. Father's statement further reflects that he has \$325 per month withheld by court order; \$15,000 of credit card debt that is past due; an unspecified amount of attorney's fees and court costs from his criminal case; and past-due child support of \$2,920. Father's statement contains a declaration, declaring under penalty of perjury that the foregoing information is true and correct. The court reporter filed a motion requiring Father to prove his inability to afford costs. See Tex. R. Civ. P. 145(f)(3).

At the hearing on the court reporter's motion challenging Father's statement of inability to afford costs, the trial court took judicial notice that though he was given notice of the hearing, Father did not appear for the hearing, nor did he respond to the notice by filing a motion for bench warrant or to participate by

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<sup>2</sup>The trial court clerk did not challenge Father's statement of inability to afford costs and has filed the clerk's record without prepayment of costs.

telephone. See Tex. R. Civ. P. 145(f)(5). Evidence was presented at the hearing showing that Father receives \$1,800 per month in VA disability benefits, that he owns a home and several rental properties, that he paid the \$205 filing fee for this appeal, and that the cost for the reporter's record is \$200. No controverting evidence was presented. The trial court took judicial notice that Father had paid "the usual filing fees" and that he had gross monthly income of \$1,700 per month. The trial court thereafter entered a written order finding that Father "has assets and resources sufficient to pay costs in connection with his Motion to Appeal—Set Aside Order" and ordering Father to pay costs. See Tex. R. Civ. P. 145(f)(6). Father filed a motion seeking to have this court set aside the trial court's order requiring him to pay costs. See Tex. R. Civ. P. 145(g)(1).

### **III. APPLICABLE LAW AND STANDARD OF REVIEW**

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, an attorney ad litem in certain cases, the court reporter, or the court itself may challenge the statement of inability to pay costs by motion. Tex. R. Civ. P. 145(f)(1)–(4). The burden is on the declarant to prove the inability to afford costs. Tex. R. Civ. P. 145(f)(5). The trial court may grant the motion and order payment of costs if, following a hearing, the declarant fails to establish his inability to afford costs. Tex. R. Civ. P. 145(f)(5). The trial court may order the

declarant to pay that part of the costs he can afford or to pay in installments. Tex. R. Civ. P. 145(f)(7).

When a declarant challenges the trial court's order requiring the declarant to pay costs, the trial court's order is reviewed for an abuse of discretion 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.); *White v. Bayless*, 40 S.W.3d 574, 576 (Tex. App.—San Antonio 2001, pet. denied). The central inquiry under rule 145 “is not merely whether [the declarant] can pay costs, but whether [the declarant] can afford to pay costs” and still pay for “basic essentials, like housing or food.” See Tex. R. Civ. P. 145, cmt.

#### **IV. ANALYSIS**

Here, because the court reporter moved to require Father to prove his inability to pay costs, it was Father's burden to prove that he could not afford to pay the fee for the reporter's record. Tex. R. Civ. P. 145(f)(5). Father, however, did not meet this burden. The record reflects that Father receives at least \$1,700 in VA benefits each month and that his set monthly expenses are \$325, leaving him with a net monthly income of \$1,375. See *Eggers v. Van Zandt*, No. 07-10-00205-CV, 2011 WL 3568943, at \*2 (Tex. App.—Amarillo Aug. 15, 2011, no pet.) (mem. op.) (stating that “[e]ntitlement to veterans' disability benefits is not based on the applicant's indigency,” and holding that appellant had not made a prima facie showing of indigence merely by proving his receipt of veterans' disability

benefits). The record demonstrates that Father has sufficient funds available to meet any “basic essentials” he has beyond housing and food, which are provided by the prison, and to pay for the \$200 reporter’s record. Father has therefore not met his burden to prove his inability to afford the cost of the reporter’s record. See Tex. R. Civ. P. 145(f)(5). Based on the record before us, we hold that the trial court did not abuse its discretion by sustaining the court reporter’s challenge to Father’s statement of inability to afford costs. See *In re J.S.*, No. 05-17-00341-CV, 2017 WL 1455406, at \*1–2 (Tex. App.—Dallas Apr. 20, 2017, no pet. h.) (mem. op.) (affirming trial court’s order sustaining court reporter’s challenge to mother’s affidavit of indigency because mother failed to provide documentation “supporting the entirety of her affidavit,” failed to provide “credible evidence to support [her] expenditures,” and had “sufficient income to secure [the] reporter’s record”).

## V. CONCLUSION AND ORDERS

We affirm the trial court’s order requiring Father to pay costs. Father’s “Appeal – Motion to Set Aside Order of Inability to Pay” is therefore **DENIED**. Father shall pay or make arrangements to pay for preparation of the reporter’s record **on or before May 28, 2017**. Failure to pay or to make such arrangements will result in this appeal being submitted without a reporter’s record. See Tex. R. App. P. 37.3(c).

Father's request to proceed without payment of costs on appeal is also **DENIED**. See Tex. R. App. P. 20.1(c). Because Father has already paid the required \$205 filing fee for this appeal, we will not return that fee.

The clerk of this court is directed to transmit a copy of this memorandum opinion and order to Father, all lead counsel on appeal, the trial court judge, the trial court clerk, and the court reporter.

PER CURIAM

PANEL: WALKER, GABRIEL, and PITTMAN, JJ.

DELIVERED: May 18, 2017