



**In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth**

No. 02-20-00064-CV

DARYL GREG SMITH, Appellant

v.

KAREN ANNETTE SMITH; DARREN KEITH REED; DEREK PAUL SMITH;
CADDOA CREEK RANCH, LLC; CANADIAN RIVER RANCH PARTNERSHIP
A/K/A CANADIAN RIVER RANCH PARTNERS; CANADIAN RIVER RANCH
LLC; SMITH IRREVOCABLE TRUST; SMITH LAND & CATTLE GP, LLC;
SMITH RANCHING LTD; HIGH POINT RANCH, LLC; LAKESIDE RANCH
BC, LLC; SMITH RANCH MERIDIAN, LLC; C2S PROPERTY HOLDINGS,
LLC; DD FARMS, LLC; DONNA C. MALLERY A/K/A DONNA REED; MAC
AG PROPERTIES, LLC; AND SMITH ROYAL TIES, LLC, Appellees

On Appeal from the 325th District Court
Tarrant County, Texas
Trial Court No. 325-584465-15

Before Sudderth, C.J.; Gabriel and Womack, JJ.
Memorandum Opinion by Chief Justice Sudderth

MEMORANDUM OPINION

Appellant Daryl Greg Smith appealed the trial court's judgment in this highly contentious divorce case and then claimed that he was indigent after the trial court ordered him to pay for the reporter's record, to pay spousal support of \$2,500 a month to Appellee Karen Annette Smith, and to pay \$75,000 in interim appellate attorney's fees to her attorney.¹ Appellee and the court reporter both challenged Appellant's claim to indigence. *See* Tex. R. Civ. P. 145(f)(1), (3) (stating that a party must provide sworn evidence in a motion to require an indigence declarant to pay costs; a court reporter's challenge has no such requirement).

After a hearing, the trial court found that Appellant was not indigent and made twenty findings of fact in support of the ruling.² Appellant appealed the ruling to this court, and during the pendency of the indigence appeal, Appellee filed a motion to dismiss, complaining that Appellant had failed to comply with the trial court's temporary orders for spousal support and payment of her appellate attorney's fees.³

¹In its findings of fact and conclusions of law after trial, the trial court found that Appellant had "a past history of not complying with the Court's orders and causing [Appellee] to expend significant time and money enforcing the Court's orders."

²The trial court specifically found that Appellant could afford to pay for the reporter's record, that he had access to assets and funds in the preceding eight months from which he could have paid for it, and that Appellant had claimed indigence "for the purpose of running up [Appellee's] costs and for delay."

³In Appellee's motion, she referred us to *Rodriguez v. Borrego*, 536 S.W.3d 16 (Tex. App.—El Paso 2016, pet. denied). In *Rodriguez*, the appellate court gave

When we affirmed the trial court’s order determining that Appellant was not indigent,⁴ we instructed Appellant to either comply with the trial court’s temporary orders or to file a response to Appellee’s motion to explain why his appeal should not be dismissed. *See* Tex. R. App. P. 42.3(c), 43.2(f).

Rodriguez ample opportunities to comply with the temporary orders (three extensions to the abatement based on his representation that he needed additional time to obtain funds) and noted that the evidence showed that he had not made any attempts to obtain the funds necessary to meet the temporary orders’ obligations until after Borrego filed her motion to dismiss the appeal. *Id.* at 18–19 (“The Court has been patient with Rodriguez and has given him every opportunity to comply with the temporary orders entered for the protection of Borrego during the pendency of the appeal, but he has failed to do so.”). She also referred us to *Griffith v. Case*, No. 03-06-00722-CV, 2007 WL 9770931 (Tex. App.—Austin May 22, 2007, no pet.) (mem. op.), in which the trial court ordered the appellant to deposit \$18,000 into the court’s registry based on the appellee’s motion for temporary orders seeking attorney’s fees and temporary spousal support. When the appellant failed to comply with the order, the Austin court dismissed his appeal. *Id.* at *1.

⁴During the indigence contest hearing, Appellant testified that he had been receiving food stamps, which is *prima facie* proof of indigence. *In re C.D.S.*, 172 S.W.3d 179, 185 (Tex. App.—Fort Worth 2005, no pet.) (“Receipt of public assistance benefits is *prima facie* proof of indigency.”); *see* Tex. R. Civ. P. 145(e)(1) & cmt. (stating that evidence of an inability to afford costs includes evidence that the declarant “receives benefits from a government entitlement program, eligibility for which is dependent on the recipient’s means”). However, Appellant did not offer any evidence—an approved application or a USDA Supplemental Nutrition Assistance Program (SNAP) card—besides his own testimony, which the trial court was entitled to disbelieve as the judge of the witnesses’ credibility. *In re Rhodes*, 293 S.W.3d 342, 344 (Tex. App.—Fort Worth 2009, orig. proceeding) (“As the factfinder, the trial court weighs the evidence and judges a witness’s credibility, and the trial court may accept or reject any witness’s testimony in whole or in part.”). Appellant’s testimony indicated that he had applied for SNAP after filing his affidavit of indigence and just before the indigence hearing. We note that had Appellant offered *any* credible evidence besides his own testimony to support his claim that he was receiving SNAP benefits, he might already have a free reporter’s record and thus might have also mooted Appellee’s motion to dismiss.

Appellant filed a response to Appellee’s motion in which he referenced his indigence hearing evidence and complained that he could not afford to comply with the trial court’s orders, and he filed a motion for appellate review of the trial court’s temporary orders, *see* Tex. Fam. Code Ann. § 6.709, in which he complained that they were unsupported by the evidence. However, Appellant did not provide a record for us to review.⁵ Accordingly, we deny his motion for review of temporary orders.

Appellee filed a reply to Appellant’s response, pointing out that Appellant’s position that he has no money “has been heard and overruled multiple times by the trial court.” Accordingly, because Appellant has been provided ample opportunity⁶ to comply with the trial court’s orders, we grant Appellee’s motion and dismiss the appeal. *See Rodriguez*, 536 S.W.3d at 18.

⁵Appellant’s motion for rehearing en banc of the trial court’s indigence contest order was denied by the court during the pendency of these proceedings. Accordingly, because Appellant has been found to not be indigent, he has no excuse for failing to provide the record necessary to review his sufficiency-of-the-evidence challenge to the trial court’s temporary orders. The court reporter informed this court’s clerk that the estimated costs of the reporter’s record of the June 10, 2020 hearing was \$1,600.

⁶Appellee filed for divorce in 2015, and the trial court signed the judgment in November 2019. The instant dispute is just one more that this court has been asked to consider. *See In re Smith*, No. 02-20-00053-CV, 2020 WL 1225083, at *1 (Tex. App.—Fort Worth Mar. 13, 2020, orig. proceeding) (per curiam) (mem. op.); *Smith v. Smith*, No. 02-18-00366-CV, 2019 WL 2429406, at *1 (Tex. App.—Fort Worth June 6, 2019, no pet.) (mem. op.); *In re Reed*, No. 02-18-00088-CV, 2018 WL 1974470, at *1 (Tex. App.—Fort Worth Apr. 26, 2018, orig. proceeding) (mem. op.); *Smith v. Smith*, No. 02-16-00427-CV, 2017 WL 56166, at *1 (Tex. App.—Fort Worth Jan. 5, 2017, no pet.) (per curiam) (mem. op.).

/s/ Bonnie Sudderth
Bonnie Sudderth
Chief Justice

Delivered: November 5, 2020