Fourth Court of Appeals
San Antonio, Texas

May 12, 2016

No. 04-16-00143-CV

John **CANO**,
Appellant

v.

Briana **CANO**,
Appellee

From the 408th Judicial District Court, Bexar County, Texas
Trial Court No. 2007-CI-08021
Honorable John D. Gabriel, Jr., Judge Presiding

O R D E R

On March 22, 2016, appellant John Cano filed a notice of restricted appeal from the trial court's judgment dated January 13, 2016. Due to appellant's failure to file a docketing statement or pay the filing fee, this Court ordered appellant to show cause in writing within ten days that either: (1) the filing fee has been paid; or (2) appellant is entitled to appeal without paying the filing fee. Appellant filed an affidavit of inability to pay costs in this court; however, it appears appellant did not file his affidavit in the trial court. *See* TEX. R. APP. P. 5, 20.1.

A party who cannot pay the costs of an appeal must file an affidavit of indigence "in the trial court with or before the notice of appeal." TEX. R. APP. P. 20.1(c)(1). Appellant's affidavit was therefore due in the trial court on the date his notice of appeal was filed, or a motion for extension of time to file the affidavit was due in this court fifteen days later. *See* TEX. R. APP. P. 20.1(c)(1), (3).

We construe the affidavit filed in this court as a motion for extension of time to file the affidavit in the trial court. Although the affidavit was filed outside the fifteen-day deadline set forth in Rule 20.1(3), an untimely affidavit of indigence can be "adequate to fulfill the fundamental purpose of Rule 20.1." *Higgins v. Randall County Sheriff's Office*, 257 S.W.3d 684 (Tex. 2008). Accordingly, we GRANT the motion to extend time to file an affidavit of inability to pay costs.

We ORDER the clerk of this court to send copies of the affidavit and this order to the trial court clerk, the court reporter, and all parties. *See* TEX. R. APP. P. 20.1(d)(2).

We further ORDER the deadline for filing a contest to the affidavit of indigence is **May 23, 2016**. **Any contest must be filed in this court.** *See* TEX. R. APP. P. 20.1(e)(1).

Jason Pulliam, Justice

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said court on this 12th day of May, 2016.

COURT OF APPEALS
STATE OF TEXAS

Keith E. Hottle
Clerk of Court