

*Heather L. Smith*  
CLERK OF THE COURT

COPY

No. 78067

1 ORDR

2

3

4

DISTRICT COURT

5

CLARK COUNTY, NEVADA

6

FILED

7

FEB 11 2019

8

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *D. Richards*  
DEPUTY CLERK

9 CANDICE K. TOWNER,

10

Plaintiff,

11

CASE NO. R-17-196685-R

12

vs.

DEPT. NO. "H"

13

FREDERICK O. SILVER,

14

Defendant.

15

**DECISION AND ORDER**  
**REGARDING APPLICATION**  
**TO PROCEED**  
**IN FORMA PAUPERIS**

16

17

Date of Hearing: N/A

18

Time of Hearing: N/A

19

This matter is on appeal with the Nevada Supreme Court. Frederick

20

Silver filed a Notice of Appeal on December 19, 2018, and on January 29, 2019.

21

22

On January 17, 2019, Frederick Silver filed an Application to Proceed in Forma

23

Pauperis in Case R-17-196685-R. The application was referred to Department H

24

by the clerk of the court. This Department is responsible for hearing objections to

25

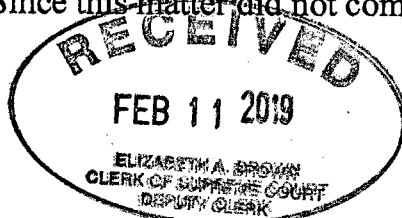
recommendation made by child support hearing masters in this child support case.

26

27

Since this matter did not come to the department as a recommendation or as an

28



19-06402

1 objection to a recommendation, and because the matter was on appeal, this  
2 Department did not rule on the merits of the application. On or about February 5,  
3 2019, a court clerk contacted the law clerk for Department H, and reported that an  
4 order was required on the application. Because a forma pauperis application may  
5 still be pending in the district court because an order has not been entered, and to  
6 avoid further delay in the evaluation of the matter on appeal, this court prepared  
7 this order to resolve Frederick Silver's Application to Proceed in Forma Pauperis  
8 filed on January 17, 2019. This written order is entered to memorialize the  
9 denial of the ex-parte application.  
10  
11  
12

13 This application was submitted for ex-parte consideration by the court.  
14 This court reviewed the application and supporting affidavit pursuant to EDCR  
15 2.23 (c) and NRS 12.015.  
16

17 This court reviewed the application and supporting affidavit on its  
18 chambers calendar pursuant to EDCR 2.23 (c) and NRS 12.015.  
19

20 EDCR 2.23 (c) provides impertinent part:

21 (c) The judge may consider the motion on the merits at any time with  
22 or without oral argument, and grant or deny it.  
23

24 NRS 12.015 Indigent litigants: Waiver of costs and official fees; effect of  
25 filing affidavit of indigency, provides:  
26

27 1. Any person who desires to prosecute or defend a civil action may:  
28

1 (a) File an affidavit with the court setting forth with particularity  
2 facts concerning his income, property and other resources which  
3 establish that he is unable to prosecute or defend the action because  
4 he is unable to pay the costs of so doing; or

5  
6 (b) Submit a statement or otherwise indicate to the court that he is  
7 a client of a program for legal aid.  
8

9 2. If the court is satisfied that a person who files an affidavit pursuant  
10 to subsection 1 is unable to pay the costs of prosecuting or defending  
11 the action or if the court finds that a person is a client of a program  
12 for legal aid, the court shall order:  
13

14 (a) The clerk of the court:

15 (1) To allow the person to commence or defend the action  
16 without costs; and  
17

18 (2) To file or issue any necessary writ, process, pleading or  
19 paper without charge.  
20

21 (b) The sheriff or other appropriate public officer within this State  
22 to make personal service of any necessary writ, process,  
23 pleading or paper without charge.  
24

25 3. If the person is required to have proceedings reported or recorded, or  
26 if the court determines that the reporting, recording or transcription  
27  
28

1 of proceedings would be helpful to the adjudication or appellate  
2 review of the case, the court shall order that the reporting, recording  
3 or transcription be performed at the expense of the county in which  
4 the action is pending but at a reduced rate as set by the county.  
5

6 4. If the person prevails in the action, the court shall enter its order  
7 requiring the losing party to pay into court within 5 days the costs  
8 which would have been incurred by the prevailing party, and those  
9 costs must then be paid as provided by law.  
10

11 5. Where the affidavit establishes that the person is unable to defend an  
12 action, the running of the time within which to appear and answer or  
13 otherwise defend is tolled during the period between the filing of the  
14 affidavit and the ruling of the court thereon.  
15

16 6. An affidavit filed pursuant to this section, and any application or  
17 request for an order filed with the affidavit, does not constitute a  
18 general appearance before the court by the affiant or give the court  
19 personal jurisdiction over him.  
20

21 7. The order of the court to which application is made pursuant to this  
22 section is not appealable.  
23

24 8. As used in this section, "client of a program for legal aid" means a  
25 person:  
26  
27

- 1 (a) Who is represented by an attorney who is employed by or  
2 volunteering for a program for legal aid organized under the  
3 auspices of the State Bar of Nevada, a county or local bar  
4 association, a county or municipal program for legal services  
5 or other program funded by this State or the United States to  
6 provide legal assistance to indigent persons; and  
7  
8  
9 (b) Whose eligibility for such representation is based upon  
10 indigency.  
11

12 (Added to NRS by 1967, 1209; A 1989, 201; 1991, 455; 2005, 197)

13 The district court has discretion to grant or deny these applications. This  
14 court considered the motion and supporting documents, and concludes that  
15 Frederick Silver failed to provide facts with particularity concerning income,  
16 property, and other resources which established that Mr. Silver is unable to pay  
17 the costs related to his appeal. Specifically, this court did not find that the  
18 application justified causing the taxpayers of Clark County, Nevada, to pay for  
19 this appeal of the judgment entered in this child support case. Specifically, Mr.  
20 Silver reported income from employment of \$1,680.00 per month as a production  
21 Team Manager with Toyota. The application did not attach documents showing  
22 income, such as paycheck stubs or earning statements. Findings from the R-  
23 Case hearings show that Frederick Silver had been employed in other jobs in  
24  
25  
26  
27  
28

1 2017, earning \$18.00 per hour, or \$3,120.00 per month. This concludes that a  
2 waiver of fees and costs has not been justified in this case because there is an  
3 insufficient showing that he is indigent and unable to pay the filing fee for this  
4 appeal. This court concludes that Frederick Silver's application to proceed in  
5 forma pauperis lacks merit and should be denied.  
6

7  
8 Furthermore, Frederick Silver may seek forma pauperis status from the  
9 appellate court if he can show that he is indigent, and incapable of providing the  
10 record to be reviewed on appeal. Therefore,  
11

12 **IT IS HEREBY ORDERED** that Frederick Silver's Application to  
13 Proceed in Forma Pauperis filed on January 17, 2019, is denied.  
14

15 DATED this 18<sup>th</sup> day of February, 2019.  
16  
17  
18

19   
20 DISTRICT COURT JUDGE

21 T ART RITCHIE, JR.  
22  
23  
24  
25  
26  
27  
28