

IN THE SUPREME COURT OF THE STATE OF NEVADA

TRENT HIGGINS,
Appellant,
vs.
LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,
Respondent.

No. 49166

FILED

DEC 24 2007

ORDER OF REVERSAL AND REMAND

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Alvarado
DEPUTY CLERK

This is a proper person appeal from a default judgment in a forfeiture action. Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

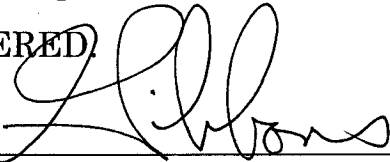
In his civil proper person appeal statement, appellant alleges that, after respondent served him with a summons and complaint, appellant attempted to file a timely answer in the district court. Appellant states that his answer was returned unfiled, as he did not pay the required filing fee or, alternatively, file a motion to proceed in forma pauperis. It appears that, on February 1, 2007, respondent filed a notice of intent to take default and on February 6, 2007, appellant filed a motion to proceed in forma pauperis. While appellant's motion was still pending, the district court entered a default judgment against appellant. Only after appellant filed his notice of appeal and we directed the district court to rule on the motion did the district court grant appellant's motion to proceed in forma pauperis. Despite being directed to respond to appellant's appeal statement, respondents have failed to do so.

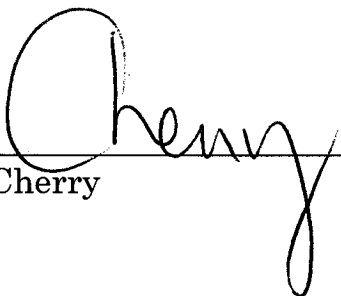
Appellant alleges that the district court clerk's office refused to file and returned to appellant his timely answer due to a procedural noncompliance. However, appellant's civil proper person appeal statement


and the district court record transmitted to this court are not sufficient to evaluate appellant's allegations. If appellant indeed attempted to file a timely answer, then the district court clerk failed to stamp the answer "received" and maintain it in the case file as required by Sullivan v. District Court.¹ Similarly, we cannot evaluate appellant's alleged efforts to timely remedy his noncompliance with the filing fee requirement by filing a motion to proceed in forma pauperis, because it is not clear from the record if appellant's allegedly timely answer was received and returned by the district court clerk. These fact-sensitive matters are better addressed in the district court, where a judge, as a fact finder, can evaluate the facts and apply the law. Finally, it was improper for the district court to enter a default judgment without first addressing appellant's pending motion to proceed in forma pauperis.² For these reasons, we

REVERSE the default judgment and REMAND this case to the district court for further proceedings consistent with this order.

It is so ORDERED.


_____, J.
Gibbons


_____, J.
Cherry


_____, J.
Saitta

¹111 Nev. 1367, 1371, 904 P.2d 1039, 1042 (1995).

²Cf. Jordan v. State, Dep't of Motor Vehicle, 121 Nev. 44, 110 P.3d 30, (2005); Lindblom v. Prime Hospitality Corp., 120 Nev. 372, 90 P.3d 1283 (2004).

cc: Hon. Jessie Elizabeth Walsh, District Judge
Trent Higgins
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger/Civil Division
Eighth District Court Clerk