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NO. _____

STAY REQUESTED

**STAY REQUESTED IN THE MATTER OF MOCKET V.
SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF SAN BERNARDINO, FOURTH DISTRICT
COURT OF APPEAL CASE NO. E084517: PREPARATION
OF APPELLATE RECORD AFTER THE COURT OF
APPEAL LIFTED ITS STAY ON NOVEMBER 12, 2024**

San Bernardino County Court Case No. CIV2309380
Hon. Wilfred J. Schneider, Jr., Judge, Dept. S32, (909) 708-8641

**IN THE SUPREME COURT OF THE STATE OF
CALIFORNIA**

WILLIAM MOCKETT, Petitioner vs. SUPERIOR COURT FOR THE STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO, Respondent.	 Court of Appeal No. E084596 San Bernardino County Court Case No. CIV2309380
CITY OF HESPERIA, Real Party in Interest	

PETITION FOR REVIEW

**AFTER THE UNPUBLISHED DENIAL OF PETITIONER'S
WRIT OF MANDATE BY THE COURT OF APPEAL,
FOURTH APPELLATE DISTRICT, DIVISION TWO**

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Table of Contents

Table of Authorities.....	4
Issue Presented.....	6
Necessity for Review.....	6
Statement of the Case and Facts.....	7
Argument.....	8
I. The Court of Appeal erred as a matter of law in denying Petitioner’s writ petition because fee waiver requests are not discretionary.....	8
A. Introduction.....	8
B. Standard of Review.....	8
C. The trial court was required by statute to grant petitioner’s fee waiver request.....	8
D. This court should stay the proceedings below.....	12
Conclusion.....	12
Certificate of Word Count.....	13
Ex. A-Order Denying Petition for Writ of Mandate	14
Proof of Service.....	17

Table of Authorities

Cases

<i>Barron v. Superior Court</i> (2023) 90 Cal.App.5th 628.....	8
<i>C.S. v. W.O.</i> (2014) 230 Cal.App.4th 23.....	9, 10, 11

California Statutes

Gov. Code, §	
68630 to 68641.....	9
68631.....	10
68632.....	9, 10, 11
68632, subd. (a).....	9
68633.....	10, 11
68633, subd. (a).....	9, 10
68633, subd. (e).....	10
68634, subd. (b).....	10
68636.....	10
68636, subd. (b).....	11

Rules of Court

Cal. Rules of Court, rule 8.500(b)(2).....	6
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**IN THE SUPREME COURT OF THE STATE OF
CALIFORNIA**

WILLIAM MOCKETT,

Petitioner

vs.

Court of Appeal

No. E084596

San Bernardino County Court

Case No. CIV2309380

**SUPERIOR COURT FOR
THE STATE OF
CALIFORNIA, COUNTY OF
SAN BERNARDINO,**

Respondent.

CITY OF HESPERIA,

Real Party in Interest

PETITION FOR REVIEW

TO THE HONORABLE PATRICIA GUERRERO, CHIEF
JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES
OF THE CALIFORNIA SUPREME COURT:

Petitioner WILLIAM MOCKETT respectfully asks for
review of the summary denial of his petition for writ of mandate by
the California Court of Appeal, Second Appellate District,
Division Two, in *William Mockett v. Superior Court for the State
of California, County of San Bernardino*, Case Number E084596,
filed on November 12, 2024. (Ex. A.)

Issue Presented

Petitioner filed a petition for writ of mandate in the San Bernardino Superior Court challenging the constitutionality of fines levied by the City of Hesperia due to an unsightly fence surrounding his home. After the trial court denied the petition, Petitioner filed his notice of appeal and a fee waiver application, as he receives food stamps. The trial court denied the application for appeals fees payable to the trial court, stating, “Attorney can advance fees and costs.” (Ex. 3 to Writ Petition.) The Court of Appeal denied Petitioner’s petition for writ of mandate seeking to compel the trial court to waive the fees in a one-sentence order. Are California’s courts required by law to grant fee waiver applications submitted by qualified indigent parties?

Necessity for Review

Under the Government Code, fee waiver requests must be granted to qualified indigent defendants such as Petitioner. However, trial courts continue to arbitrarily deny requests, as happened in this case. And in this case, the Court of Appeal failed to provide relief. A pronouncement from this court that courts must grant fee waiver requests to qualified indigent defendants is necessary to ensure that all citizens, regardless of financial means, have equal access to the justice system. (Cal. Rules of Court, rule 8.500(b)(2) [review appropriate to secure uniformity of decision or to settle an important question of law].)

Statement of the Case and Facts

This matter arises from petitioner's operative First Amended Petition for Writ of Mandate, filed on November 7, 2023, in the San Bernardino Superior Court to set aside fines imposed against him for a non-compliant fence around his residence on the ground the fines were unconstitutionally excessive. (Writ Petition, Ex. 1.) After a court trial, judgment was entered against petitioner on July 3, 2024. (Writ Petition, Ex. 2.)

On August 27, 2024, petitioner filed his notice of appeal and request for waiver of court fees on appeal in Case No. E084517. (Court of Appeal's Docket ("Dkt."), August 27, 2024.) Per the fee waiver application, petitioner receives Food Stamps. (*Ibid.*) The application also states that petitioner's attorney has not agreed to advance all or a portion of petitioner's fees and costs. (*Ibid.*)

On August 29, 2024, the Court of Appeal granted petitioner's request for waiver of the filing fee in the Court of Appeal. (Dkt., August 29, 2024.) However, on August 27, 2024, the trial court denied petitioner's request for waiver of appeal fees in the trial court, stating, "Attorney can advance fees and costs." (Writ Petition, Ex. 3.) On September 3, 2024, the trial court filed a notice of default for failure to timely designate the record on appeal and to timely pay the filing fee on appeal, with a September 18, 2024, cure date. (Writ Petition, Ex. 4.)

Petitioner filed his Petition for Writ of Mandate in the Court of Appeal on September 10, 2024. (Dkt., September 10,

2024.) On September 20, 2024, the Court of Appeal invited Respondent and Real Party in Interest to file a response to the petition and stayed preparation of the record on appeal. (Dkt., September 20, 2024.) On November 12, 2024, the Court of Appeal denied the petition and lifted the stay. (Ex. A.)

Argument

I. The Court of Appeal erred as a matter of law in denying Petitioner’s writ petition because fee waiver requests are not discretionary.

A. Introduction

Per petitioner’s fee waiver request, petitioner receives Food Stamps. (“Dkt., August 27, 2024.) The trial court denied petitioner’s request, stating “Attorney can advance fees and costs,” despite petitioner’s statement in his request that his attorney has not agreed to advance all or any portion of the costs. (Writ Petition, Ex. 3.) The trial court erred as a matter of law and the Court of Appeal similarly erred in denying Petitioner’s petition for writ of mandate.

B. Standard of Review

Whether the trial court has a statutory duty to grant petitioner’s fee waiver application—and thus whether the Court of Appeal erred in denying Petitioner’s writ application—presents a question of statutory interpretation, which is reviewed *de novo*. (*Barron v. Superior Court* (2023) 90 Cal.App.5th 628, 634-635.)

C. The trial court was required by statute to grant Petitioner’s fee waiver request.

As explained by the Court of Appeal in *C.S. v. W.O.* (2014) 230 Cal.App.4th 23, “The right of an indigent civil litigant to proceed in forma pauperis is grounded in a common law right of access to the courts and constitutional principles of due process. [Citations.] ‘[R]estricting an indigent’s access to the courts because of his poverty . . . contravenes the fundamental notions of equality and fairness which since the earliest days of the common law have found expression in the right to proceed in forma pauperis.’” [Citations.]” (*Id.* at p. 30.)

The process by which an indigent person gains access to the courts by applying for and obtaining a waiver of court fees and costs is governed by Government Code¹ sections 68630 to 68641. (*C.S. v. W.O., supra*, 230 Cal.App.4th at p. 30.) As relevant here, section 68632 provides: “Permission to proceed without paying court fees and costs because of an applicant’s financial condition shall be granted initially to all of the following persons: [¶] (a) A person who is receiving public benefits under one or more of the following programs: [¶] . . . (3) Food Stamps” (*Ibid.*) Section 68633, subdivision (a), provides that an applicant for an initial fee waiver under section 68632 subdivision (a) “shall complete under penalty of perjury, a Judicial Council application form” requiring the applicant to list only the following information: “his or her current street address, or another address where the court

¹ All further undesignated statutory references are to the Government Code.

can contact the applicant, occupation, employer, and the type of public benefits that he or she is receiving.” (*Ibid.*) All applications for an initial fee waiver must be accepted for filing, and the clerk “shall not request that the applicant furnish information that is not required on the Judicial Council fee waiver application form.” (*Ibid.*, citing § 68634, subd. (b).) The applicant is not required at the time the application is submitted, “to provide documents supporting receipt of public benefits, to provide evidence of identity, to submit to interviews regarding the applicant's financial circumstances, to be physically present to file the application, or to fill out additional parts of the application form.” (*Ibid.*, citing § 68633, subd. (a).) However, the applicant for the initial fee waiver “shall be informed that, at a later date, the court may require proof of receipt of benefits or financial information to verify eligibility, as provided in Section 68636” (*Ibid.*, citing § 68633, subd. (e).)

Section 68631 provides that “[a]n initial fee waiver shall be granted by the court at any stage of the proceedings at both the appellate and trial court levels if an applicant meets the standards of eligibility and application requirements under Sections 68632 and 68633.” (*C.S. v. W.O.*, *supra*, 230 Cal.App.4th at pp. 30-31.) Under section 68636, if, after granting the initial fee waiver, the court “obtains information . . . suggesting that a person whose fees and costs were initially waived is not entitled to a fee waiver, or that the person’s financial condition has changed so that he or she is no longer eligible for a fee waiver,” the court may require the person to appear and “provide

reasonably available evidence, including financial information, to support his or her eligibility for the fee waiver.” (*Id.* at p. 31, citing § 68636, subd. (b).) At any such hearing, the court “shall not require submission of information that is not related to the criteria for eligibility and application requirements set forth in Sections 68632 and 68633.” (*Ibid.*)

The decision in *C.S. v. W.O.*, *supra*, 230 Cal.App.4th 23 should control in this case. There, the appellant submitted two applications for waiver of court fees and costs based on her receipt of public benefits. (*Id.* at p. 25.) The trial court denied the applications, concluding in the exercise of its discretion that the appellant was not entitled to the waiver because she received financial assistance from family and friends. (*Ibid.*) The Court of Appeal applied the applicable parts of the Government Code cited above and reversed, reasoning,

Substantively, it is clear that appellant met the statutory requirements for obtaining a fee waiver. She stated in her applications, under penalty of perjury, that she was receiving the specified public benefits. In her written submission and at the August 22 hearing, she provided documentation supporting this representation. There is nothing in the court’s orders or findings to suggest the court did not believe appellant was receiving public benefits. The court was therefore required to grant appellant’s applications for a fee waiver, and relieve her of the expense of paying for the court reporter and any other court fees or costs assessed after the date of the initial application.

(*Id.* at pp. 33-34.)

Petitioner also substantively met the requirements for obtaining a fee waiver by documenting that he is receiving Food

Stamps. The trial court did not question this fact. The court's justification that petitioner's counsel can advance fees is similar to the trial court's invalid justification in *C.S. v. W.O.* that the appellant was receiving assistance from family and friends. The supposed ability of petitioner's counsel to advance fees, despite petitioner's statement that counsel has not agreed to do so, is a non sequitur and does not justify the denial of petitioner's request. The trial court was required to grant the request as a matter of law. The Court of Appeal erred as a matter of law in denying Petitioner's petition for writ of mandate.

D. This court should stay the proceedings below.

This court should also stay the proceedings below, including preparation of the appellate record in Fourth District Court of Appeal Case No. E08451 pending resolution of this petition, as Petitioner will be unable to afford to continue without a fee waiver.

Conclusion

This court grant should grant this petition for review to establish that California's Courts must grant fee waiver petitions to qualified indigent defendants. Equal access to justice depends on equal access to the courts regardless of financial means.

Dated: November 13, 2024 Respectfully submitted,

David Greifinger

David Greifinger (SBN 105242)
Attorney for Petitioner,
William Mockett

Certification of Word Count

I, hereby certify in accordance with California Rules of Court, rule 8.360(b)(1), that this petition contains approximately 1,790 words as calculated by the Microsoft Word software in which it was written.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Dated: November 13, 2024 Respectfully submitted,

David Greifinger

David Greifinger (SBN 105242)
Attorney for Petitioner,

Ex. A

COURT OF APPEAL -- STATE OF CALIFORNIA
FOURTH DISTRICT
DIVISION TWO

ORDER

WILLIAM MOCKETT,
Petitioner,

E084596

v.

(Super.Ct.No. CIVSB2309380)

THE SUPERIOR COURT OF
SAN BERNARDINO COUNTY,

The County of San Bernardino

Respondent;

CITY OF HESPERIA,

Real Party in Interest.

THE COURT

The petition for writ of mandate is DENIED.

Pursuant to the order in related appeal in case No. E084517, the stay previously issued on September 20, 2024, is hereby LIFTED.

CODRINGTON

Acting P. J.

Panel: Codrington
Ramirez
Menetrez

cc: See attached list

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William Mockett v. The Superior Court; City of Hesperia

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Proof of Service

I, David Greifinger, declare that I am over 18 years of age, employed in the County of Los Angeles, and not a party to the within action; my business address is 15515 Sunset Blvd., No. 214, Pacific Palisades, California 90272.

On November 13, 2024, I served the **PETITION FOR REVIEW** on each of the following, as indicated, by transmitting electronic copies or by placing true copies in envelopes as indicated on the attached service list and depositing them in the United States Mail at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 13, 2024, at Pacific Palisades, California.

David Greifinger

David Greifinger

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