

IN THE CIRCUIT COURT FOR THE
NINETEENTH JUDICIAL CIRCUIT IN AND
FOR MARTIN COUNTY, FLORIDA.
APPELLATE DIVISION

Circuit Case No. 18-AP-18
Lower Tribunal No. 18-CC-1262

ALFONSO DEL NEGRO,

Appellant,
v.

Not final until time expires for filing motion
for rehearing, and if filed, disposed of.

CAITLIN KELLY,

Appellee.

Decision filed November 19, 2019.

Appeal from the County Court for Martin County; Jennifer Waters, Judge.

Alfonso Del Negro, pro se, Santa Rosa Correctional Institution Annex, Milton, for appellant.

Caitlin Kelly, pro se, Tallahassee, for appellee.

AMENDED OPINION¹

PER CURIAM.

The issue in this case is whether the trial court erred in dismissing the case based on §57.085, Fla. Stat. (2018), the prisoner indigency statute, without first adjudicating the Appellant indigent. Based on the following, we find that reversal is warranted.

While incarcerated in the Martin County jail, the Appellant filed a “complaint for injunctive relief over five thousand dollars” in the county civil division. At the same time he filed the complaint, the Appellant also filed an application for civil indigency and a financial affidavit. Upon review, the clerk determined him indigent. Both the Appellant’s application for indigency and the clerk’s determination of indigency state that the applicable statute is §57.081, Fla. Stat.

¹ Amended to correct the spelling of the Appellant’s first name only.

(2018).² Three and a half months later, the trial court dismissed the complaint pursuant to §57.085, Fla. Stat. (2018).

The Appellant alleges that the trial court erred in dismissing his case based on its interpretation of the prisoner indigency statute. A trial court's interpretation of a statute is subject to de novo review because it presents a question of pure law. *Rachins v. Minassian*, 251 So. 3d 919, 923 (Fla. 4th DCA 2018).

The Florida Supreme Court has stated that “where the plain language of a statute is unambiguous and conveys a clear meaning, the statute must be given its obvious meaning.” *Shepard v. State*, 259 So. 3d 701, 704 (Fla. 2018). When a court construes a statute, its “task is to ascertain the meaning of the phrases and words used in a provision, not to substitute [the Court's] judgment for that of the Legislature.” *Id.* (quoting *Sch. Bd. of Palm Beach Cty. v. Survivors Charter Sch., Inc.*, 3 So.3d 1220, 1228 (Fla. 2009)).

The statute at issue states:

Before an **indigent prisoner** may intervene in or initiate any judicial proceeding, the court must review the prisoner's claim to determine whether it is legally sufficient to state a cause of action for which the court has jurisdiction and may grant relief. The court shall dismiss all or part of an indigent prisoner's claim which:

- (a) Fails to state a claim for which relief may be granted;
- (b) Seeks monetary relief from a defendant who is immune from such relief;
- (c) Seeks relief for mental or emotional injury where there has been no related allegation of a physical injury; or
- (d) Is frivolous, malicious, or reasonably appears to be intended to harass one or more named defendants.

(Emphasis added) §57.085(6), Fla. Stat. (2018). The Fourth District Court of Appeal has held that since the statute refers to an “indigent prisoner”, the trial court must first adjudicate the prisoner indigent before dismissing the case under this provision. *Jones v. Joseph*, 989 So. 2d 744, 745 (Fla.

² Paragraph (1) of §57.081 begins with the following language: “any indigent person, **except a prisoner as defined in s. 57.085...**” (Emphasis added). §57.085(1), Fla. Stat. (2018) defines prisoner as “...a person who has been convicted of a crime and is incarcerated for that crime or who is being held in custody pending extradition or sentencing.” The Appellant's address on his complaint is the Martin County jail. Though the record does not explicitly state why the Appellant was in jail, it reflects that the Appellant was transferred from the Martin County jail to the Orange County Corrections Department and eventually to Santa Rosa Correctional Institution Annex. Therefore, §57.081, Fla. Stat. (2018) does not apply, which makes the clerk's determination of indigency problematic.

4th DCA 2008); *Jones v. Ferguson*, 979 So. 2d 1245 (Fla. 4th DCA 2008); *Craft v. Holloway*, 975 So. 2d 620 (Fla. 4th DCA 2008).

In the instant case, the record is devoid of a trial court order adjudicating the Appellant indigent. Instead, it only contains a clerk's determination of indigency under §57.081, which was improper because it appears from this record that the Appellant was a prisoner. Even if the clerk had properly determined the Appellant's indigency under the prisoner statute, the trial court was required to adjudicate him indigent either prior to or while simultaneously dismissing his complaint under §57.085, Fla. Stat. (2018) (R14). *Jones*, 989 So. 2d at 745.

Reversed and remanded for proceedings consistent with this opinion.

SWEET, BUCHANAN, JJ., and ALONZO, Acting Circuit Judge, concur.

Copies of above decision
were furnished to the attorneys/parties
of record on the same date
the decision was filed.