

IN THE COURT OF APPEALS OF THE STATE OF OREGON

ROBERT HERCENBERGER,
Plaintiff-Appellant,

v.

GARY A. MARTIN,
Defendant-Respondent.

Columbia County Circuit Court No. 17CV17886

Court of Appeals No. A168257

ORDER DENYING RECONSIDERATION

By order dated September 25, 2018, the court denied appellant's motion for preparation of the transcript at state expense on the ground that the legislature had not appropriated sufficient funds to the State Court Administrator to pay for preparation of transcripts in civil cases. Therefore, appellant amended his designation of record to include only excerpts of testimony totaling about 13 minutes. Appellant failed, after extensions of time and delays, to cause even that limited transcript to be filed. By order dated November 28, 2018, the court dismissed the appeal for want of prosecution. About a week later, the transcriber filed the transcript containing the excerpts of testimony. Appellant petitioned for reconsideration of the order of dismissal. The court denied that the petition, notwithstanding filing of the limited transcript, because the appeal could not be fairly prosecuted based on such a severely restricted transcript.

Appellant again petitions for reconsideration, asserting that he is homeless and unable to afford to have the entire transcript prepared, and that the court may not, as a matter of constitutional law, deny him meaningful access to the court. In effect, appellant seeks reconsideration of the court's September 25, 2018, order denying his motion for a transcript at state expense. Apart from that request being untimely, the Oregon Supreme Court and the U.S. Supreme Court have rejected on constitutional grounds an assertion similar to the one appellant is making here. *Ortwein v. Schwab*, 262 Or 375, 498 P2d 757 (1972) aff'd 410 US 656, 93 S Ct 1172, 35 L Ed 2d 572 (1972) (uniform appellate court fees do not violate the Due Process Clause or other part of the United States constitution). The issue in that case was the constitutionality of a uniform appellate court filing fee, but the principle is the same: a uniform fee (which the per-page fee for preparing a transcript is) to compensate the transcriber for the time and expense of preparing a transcript is not unconstitutional. Appellant's petition is denied.



JAMES C. EGAN
CHIEF JUDGE, COURT OF APPEALS
2/7/2019 10:25 AM

c: Robert Hercenberger

Nicholas O. Herman

ej

ORDER DENYING RECONSIDERATION

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

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Appendix B

IN THE SUPREME COURT OF THE STATE OF OREGON

ROBERT HERCENBERGER,
Plaintiff-Appellant,
Petitioner on Review,

v.

GARY A. MARTIN,
Defendant-Respondent,
Respondent on Review.

Court of Appeals
A168257

S066587

ORDER DENYING REVIEW

Upon consideration by the court.

The court has considered the petition for review and orders that it be denied.

MWB
MARTHA L. WALTERS
CHIEF JUSTICE, SUPREME COURT
5/23/2019 9:20 AM

c: Nicholas O. Herman
Robert Hercenberger

ms

ORDER DENYING REVIEW

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563
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Appendix C

IN THE COURT OF APPEALS OF THE STATE OF OREGON

ROBERT HERCENBERGER,
Plaintiff-Appellant,

v.

GARY A. MARTIN,
Defendant-Respondent.

Columbia County Circuit Court
17CV17886

A168257

ORDER OF DISMISSAL

It appears from the record that appellant is in default because the transcriber failed to serve and file the certificate of preparation and service of the transcript that was due to the Appellate Court Records Section on October 25, 2018. It further appears that on November 7, 2018 notice was given the parties that this appeal would be dismissed pursuant to ORAP 1.20 unless good cause was shown within 14 days from that date why the appeal should not be dismissed. The court acknowledges that a response to the default notice was filed by the respondent. However, as of this date the certificate of preparation and service of the transcript has not been filed. Therefore, the court on its own motion dismisses the appeal for lack of prosecution.

Appeal dismissed.

James W. Nass

JAMES W. NASS
APPELLATE COMMISSIONER
11/28/2018 9:21 AM

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Respondent

No costs allowed

c: Robert Hercenberger
Nicholas O Herman
Katie Bradford
Columbia County Transcript Coordinator

ab

ORDER OF DISMISSAL

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563
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Appendix D

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001**

August 22, 2019

Robert Hercenberger
c/o River Street Church of God
715 S. River Street
Newberg, OR 97132

RE: Hercenberger v. Martin
ORSC No. S066587

Dear Mr. Hercenberger:

The above-entitled petition for writ of certiorari was postmarked August 13, 2019 and received August 16, 2019. The papers are returned for the following reason(s):

No motion for leave to proceed in forma pauperis, signed by the petitioner or by counsel, is attached. Rules 33.2 and 39. The motion must be signed.

The notarized affidavit or declaration of indigency does not comply with Rule 39 in that the affidavit must be signed.

The appendix to the petition does not contain the following documents required by Rule 14.1(i):

The lower court opinion(s) must be appended from the Court of Appeals of Oregon (order dated November 28, 2018).

Please correct and resubmit as soon as possible. Unless the petition is submitted to this Office in corrected form within 60 days of the date of this letter, the petition will not be filed. Rule 14.5.

A copy of the corrected petition must be served on opposing counsel.

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ROBERT HERCENBERGER --Applicant,

vs.

GARY A. MARTIN --Respondent.

PROOF OF SERVICE

I, ROBERT HERCENBERGER, hereby certify that a (one) true copy of this application PETITION FOR WRIT OF CERTIORARI was served via USPS first class this day of Oct. 16, 2019, as required by Supreme Court Rule 29, upon the following attorney: Attorney for respondent.

Mr. Nicholas O. Herman
52490 SE 2nd St. Ste.100
Scappoose OR 97056

- USPS first class

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

Executed on Oct. 14, 2019.


Robert Hercenberger-Applicant.