REL: 07/19/2013

ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2013

2111244

Mark D. Davis

v.

Tonya D. Blackstock

Appeal from Lauderdale Circuit Court
(DR-06-86.01)

On Return to Remand

PER CURIAM.

On April 15, 2013, this court remanded this cause to the Lauderdale Circuit Court ("the trial court") to determine the child-support obligation of Mark D. Davis ("the father") in

compliance with instructions in a previous opinion of this court reversing, in part, a 2006 judgment. See Davis v. Blackstock, [Ms. 2111244, April 5, 2013] ___ So. 3d ___ (Ala. Civ. App. 2013) ("Davis III"). For a complete history of the disputes between these parties, see also Davis v. Blackstock, 47 So. 3d 796 (Ala. Civ. App. 2007) ("Davis I") (reversing a judgment modifying a joint-custody arrangement to award to the mother primary physical custody of the parties' child); Ex parte Blackstock, 47 So. 3d 801 (Ala. 2009) (reversing Davis I and remanding for consideration of the other issues raised in the father's original appeal); Davis v. Blackstock, 47 So. 3d 816 (Ala. Civ. App. 2010) ("Davis II") (reversing the child-support award and remanding for a recalculation of that award); and Ex parte Davis, 82 So. 3d 695 (Ala. Civ. App. 2011) (denying the father's petition for a writ of mandamus based on his arguments that the courts lacked jurisdiction over the action below).

On April 19, 2013, the trial court entered a judgment on remand in which it corrected the determination of the father's child-support obligation in the 2006 judgment and calculated the father's child-support arrearage through the end of June

2012. The State Department of Human Resources ("DHR"), which was providing child-support-enforcement services on behalf of Tonya D. Blackstock ("the mother") and which had intervened in the action below, see Davis III, ___ So. 3d at ___, filed a postjudgment motion arguing that the trial court had erred in its calculations of the father's child-support arrearage. On April 26, 2013, the trial court entered an amended judgment (hereinafter referred to as "the April 26, 2013, corrected judgment") in which it slightly modified its calculation of the father's child-support arrearage and its determination as to the accrual of interest on that arrearage. The father also filed a timely postjudgment motion, which the trial court denied.

On return to remand, this court entered an order allowing the parties to submit amended briefs to this court if they so desired, and the father and DHR each did so.

In his amended brief on return to remand, the father, appearing pro se, continues to reassert many of the arguments he made in his brief submitted to this court on original submission in Davis III, including his arguments that this court lacks subject-matter jurisdiction over this matter.

This court has already addressed those arguments in its opinions in Davis III and Ex parte Davis.[1]

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[1]The father asserts one argument purportedly concerning jurisdiction that he had not asserted on original submission. Assuming, out of an abundance of caution but without so deciding, that the father may raise the issue, we conclude that the father's argument lacks merit. The father contends that the 2006 custody dispute was rendered "moot" because, in the fall of 2007, he moved from Decatur to Florence to be closer to the child; he also asserts that our supreme court's 2009 decision in Ex parte Blackstock was based on "speculation" that he would not relocate. The father explains those arguments by alleging that the supreme court's decision in Ex parte Blackstock affirming the trial court's custody modification was based on the mother's speculation that the father would not move to Florence to be closer to the child so that the previously ordered joint physical and legal custody would be sustainable. The father states that he did, in fact, move to Florence in the fall of 2007. The father appears to argue that his relocation to be closer to the child meant that the previous joint-custody arrangement was then workable and, therefore, that there was no basis for the 2006 custody-modification judgment. Our supreme court's opinion in Ex parte Blackstock determined that the trial court properly modified custody to award the mother primary physical custody for a number of reasons. As only one of those reasons, the supreme court noted that the father had repeatedly promised to relocate to be closer to the child but had consistently failed to do so. The court stated:

> "Also, in regard to the father's moving to Florence, there was testimony that the father committed to move in 2004 and again in 2005 and that he committed to begin moving his business to Florence as well; the testimony would support the conclusion that the father could easily have moved his photography business to Florence. The father's most recent commitment was that he would move to Florence in the summer of 2006. It is undisputed,

In his amended brief on return to remand, the father also asserts several arguments pertaining to the trial court's determination on remand of his corrected child-support obligation under the 2006 judgment. In its April 26, 2013, corrected judgment, the trial court stated:

> "The father's child-support obligation due under the September 1, 2006, judgment is determined to be $506 per month. This calculation is based on the

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> however, that the father did not follow through on his commitments to relocate to Florence. Instead, he threatened the mother that he would attempt to obtain primary physical custody instead of moving, even before the mother filed her petition in the Lauderdale Circuit Court seeking primary physical custody. Based on the tenor of the testimony concerning the father's commitments to move, other testimony, and the fact that the father filed a counterpetition seeking sole custody of the child shortly before the final hearing in the present case, the circuit court could have concluded that the father had no intention of moving or that he had failed to act in good faith regarding moving and that, in that regard, he had placed his own self-interest above the child's best interest."

Ex parte Blackstock, 47 So. 3d at 812-13.

In reading Ex parte Blackstock in its entirety, it is clear that the father's failure to comply with repeated promises to relocate was only a part of the basis of the supreme court's determination that the trial court properly modified custody of the child. Further, the father's relocation to Florence after the entry of the 2006 judgment cannot be said to have rendered moot the 2006 custody dispute resolved in that judgment.

> evidence presented prior to the September 1, 2006, order. The mother's gross monthly income was $2,048 and the father's gross monthly income was $1,900. There was no evidence of preexisting child-support or periodic-alimony payments; therefore the monthly adjusted gross income was $3,948. The father's percentage share of income was, therefore, 48.13%. The basic child-support obligation based on the then-existing guidelines was $540. Work-related child-care costs were $364 per month and health-insurance costs were $147.12 per month for a total child-support obligation of $1,051.12 per month. The father's 48.13% of that obligation is $506."

We note that, in asserting his arguments on return to remand, the father does not contend that the trial court failed to comply with this court's remand instructions in Davis III or in Davis II. Rather, the father contends that this court's "mandate" in Davis III pertaining to his child-support obligation was inequitable.

In his amended brief, the father contends that, because of a recent change in the law, any order requiring him to contribute to the payment of medical expenses or for health insurance for the child is unconstitutional. The father cites Article I, § 36.04, Ala. Const. 1901 (off. Recomp.), which was adopted in December 2012. Article I, § 36.04, prohibits any law or rule from requiring a person to participate in any

health-care system.[2] That constitutional provision was adopted and ratified by the voters in Alabama as a countermeasure to the Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, 124 Stat. 119 (2010).

In his amended brief, the father states that any payment he makes under an obligation imposed under the child-support guidelines of Rule 32, Ala. R. Jud. Admin., to contribute to the provision of health insurance for the child or to defray her medical expenses is equivalent to the state's forcing him to participate in a health-care system in contravention of

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[2]The text of Art. I, § 36.04, Ala. Const. 1901 (off. Recomp.), provides:

> "(a) In order to preserve the freedom of all residents of Alabama to provide for their own health care, a law or rule shall not compel, directly or indirectly, any person, employer, or health care provider to participate in any health care system.
>
> "(b) A person or employer may pay directly for health care services and shall not be required to pay penalties or fines for paying directly for lawful health care services. A health care provider may accept direct payment for lawful health care services and shall not be required to pay penalties or fines for accepting direct payment from a person or employer for lawful health care services.
>
> "(c) The purchase or sale of health insurance in private health care systems shall not be prohibited by law or rule."

Article I, § 36.04. In support of that contention, the father cites only inapplicable authority for the proposition that a parent has a fundamental right to direct his or her child's upbringing and a case generally discussing the Equal Protection Clause of the United States Constitution. See City of Cleburne, Texas v. Cleburne Living Ctr., 473 U.S. 432, 439 (1985); and Ex parte E.R.G., 73 So. 3d 634 (Ala. 2011). The father makes no attempt to apply the holdings of those cases to the facts of this case or to argue how the language of Article I, § 36.04, relates to the rules of statutory interpretation. The father also fails to assert that the purpose of Article I, § 36.04, was to remove from the determination of a child's parents' respective child-support obligations the cost of providing health insurance for the child.

It is not the function of the appellate courts to develop, research, and support an appellant's arguments. Jimmy Day Plumbing & Heating, Inc. v. Smith, 964 So. 2d 1, 9 (Ala. 2007); Butler v. Town of Argo, 871 So. 2d 1, 20 (Ala. 2003). The father's argument in his amended brief that the requirement that a parent contribute to the health-insurance

and medical costs of his or her child is unconstitutional is insufficient to warrant review by an appellate court. Spradlin v. Spradlin, 601 So. 2d 76, 79 (Ala. 1992). Accordingly, we will not address it.

The father also briefly asserts that the cost of health-insurance coverage should not be included in the determination of his child-support obligation under the 2006 judgment in the April 26, 2013, corrected judgment because the evidence indicated that the health-insurance premiums, at the time of the 2006 judgment, were deducted from the paycheck of the mother's husband. The father alleges that the mother did not pay for that coverage and, therefore, that the cost of the health insurance should not be included in determining child support. The remainder of the paragraph the father dedicates to that "argument" sets forth facts presented at the 2006 hearing on the merits pertaining to the payment for that health-insurance coverage. The father provides no citations to any caselaw that might support his argument, and he fails to develop his argument further, in contravention of Rule 28(a)(10), Ala. R. App. P. Therefore, in order to address the issue as framed by the father in his amended brief, this court

would be required to develop the argument on behalf of the father and to research authority with which to support that argument, which this court will not do. Jimmy Day Plumbing & Heating, Inc. v. Smith, supra; Butler v. Town of Argo, supra.

Similarly, in a two-sentence "argument," the father urges this court "to overrule the line of cases found in Fuller v. Fuller, 93 So. 3d 961 (Ala. Civ. App. 2012)." The father does not explain in his amended brief on what basis he believes Fuller v. Fuller and the cases it relies on should be reversed. That case discusses, among other things, the inclusion of the total cost of a health-insurance premium in a child-support determination when the health-insurance policy provides coverage for persons other than the parties' child. However, the father has made no argument with regard to that issue, and he has not related the holding in Fuller v. Fuller to his argument, discussed above, that he should not be required to contribute to the health-insurance coverage for his child if the premium for that coverage is deducted from the salary of the custodial parent's spouse. The father has failed to demonstrate that the trial court erred in including

the cost of health insurance in the determination on remand of the father's child-support obligation under the 2006 judgment.

The father also argues that the trial court erred on remand in including $364 per month in child-care costs in its determination of his correct child-support obligation under the 2006 judgment. The trial court included that amount in its 2006 judgment, which the father appealed. With regard to the issue of child support in that appeal, the materials before this court demonstrate that the father argued only that the trial court erred by transposing his child-support obligation for that of the mother. See Davis II, 47 So. 3d at 817 ("[T]he trial court inadvertently ordered the father to pay the amount of child support that, according to its calculations, the mother would have been obligated to pay had the father been awarded primary physical custody of the child.").

In his appeal of the 2006 judgment, the father did not assert that the trial court erred in including the $364 in child-care costs in the determination of child support. Issues that could have been raised in the previous appeal (i.e., the amount of child-care costs included in the child-

support determination) but were not raised are deemed waived. See Boshell v. Keith, 418 So. 2d 89, 92 (Ala. 1982) ("When an appellant fails to argue an issue in its brief, that issue is waived."). Further, under the law-of-the-case doctrine, issues that could have been raised in the previous appeal may not be relitigated in a subsequent appeal. Scrushy v. Tucker, 70 So. 3d 289, 303-04 (Ala. 2011); Martin v. Cash Express, Inc., 60 So. 3d 236, 251 (Ala. 2010); see also Williams v. Williams, 91 So. 3d 56, 62 (Ala. Civ. App. 2012) (The law-of-the-case doctrine is "designed to avoid repeated litigation over an issue that has already been decided."). Accordingly, the father's failure to raise this argument in his appeal of the 2006 judgment precludes our consideration of that issue in this appeal.

Also with regard to the calculation on remand of his child-support obligation under the 2006 judgment, the father argues that the trial court erred in calculating the interest due on his child-support arrearage.[3] The version of § 8-8-

[3]The father also argues that the trial court erred in allowing "the mother," actually DHR, to submit a proposed calculation of the father's child-support arrearage with the interest due on that arrearage. DHR submitted to the trial court a computer spreadsheet detailing the months in which the

10, Ala. Code 1975, in effect in 2006 specified that interest on judgments be calculated at a rate of 12 percent. That statute was amended to provide that, effective September 1, 2011, the interest rate to accrue on judgments is to be 7.5 percent. In determining the amount of interest due on the father's past-due child support, the trial court stated:

> "This court heard testimony on July 9, 2012, concerning the father's payment history. Through the end of June 2012, the father should have made 70 monthly child-support payments of $506 for a total of $35,420. He had paid only $7,504 for an arrearage as of the end of June 2012 of $27,916. Interest accumulated on the arrearage at the rate of 12% per annum for the period of September 2006 to August 2011 and at the rate of 7.5% for the period of September 2011 to June 2012 for a total cumulative interest as of the end of June 2012 of $7,603.97. The father's child-support obligation plus interest as of July 9, 2012, the last time this

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father had failed to pay child support and the interest due on those amounts. The only error pertaining to the calculation of the child-support arrearage that the father alleges is in the determination of interest, and this court addresses that argument in the body of this opinion. The father also maintains, however, that the submission by DHR of its calculation of the father's arrearage amounted to the trial court's verbatim adoption of factual findings made by DHR. Even assuming that to be true, however, the appellate courts have approved the practice of allowing a party to draft an order or judgment for the trial court to consider and adopt in part or in its entirety. See, e.g., Stollenwerck v. Talladega Cnty. Bd. of Educ., 420 So. 2d 21, 24 (Ala. 1982); Boothe v. Jim Walter Res., Inc., 660 So. 2d 604 (Ala. Civ. App. 1995).

> court heard testimony on this issue, is hereby determined to be $35,519.97.
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> "The court determines the father is due no credit for any amounts the father claimed to have paid for the benefit of the child such as for extraordinary activities, summer camps, school lunches, braces, etc."

Thus, in calculating the interest due on the father's child-support arrearage dating back to the entry of the 2006 judgment, the trial court applied the 12 percent interest rate to all past-due child-support payments that had accrued before September 1, 2011. For those past-due child-support payments that accrued after September 1, 2011, i.e., the effective date of the new interest rate on judgments under § 8-8-10, the trial court applied the 7.5 percent interest rate.[4]

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[4]The father also contends that the trial court failed to apply simple interest to the child-support arrearage judgment. The father refers to DHR's exhibit listing the "cumulative interest" on the father's child-support arrearage, and he equates the term "cumulative interest" with "compound interest." In his amended brief after remand, the father fails to demonstrate that the "cumulative interest" that continued to accrue on each past-due installment of child support was not an accrual over time of simple interest on each of those past-due payments and that that interest was instead an award of compound interest. See State ex rel. State Dep't of Human Res. v. Orr, 635 So. 2d at 1, 3 (Ala. Civ. App. 1994) (interest accrues as of the due date of each past-due child-support payment); see also Walnut Equip. Leasing Co. v. Graham, 532 So. 2d 655, 655 (Ala. Civ. App. 1988) ("A party who complains of error by the trial court must

In his amended brief submitted to this court, the father contends that, because the April 26, 2013, corrected judgment was entered after the September 1, 2011, effective date of § 8-8-10, as amended, the 7.5 percent rate should apply to his entire child-support arrearage. However, as DHR points out, child-support obligations become money judgments on the date each payment is due, and they may be collected in the same manner that any other judgment may be collected. Ex parte State ex rel. Lamon, 702 So. 2d 449, 451 (Ala. 1997); Walker v. Walker, 828 So. 2d 943, 944 (Ala. Civ. App. 2002). "'[A]ccrued child support payments become final judgments as of the date due and may be collected as other judgments, ... such judgments would bear interest from due date.'" State ex rel. State Dep't of Human Res. v. Orr, 635 So. 2d 1, 3 (Ala. Civ. App. 1994) (quoting Argo v. Argo, 467 So. 2d 258, 259 (Ala. Civ. App. 1985)) (emphasis added). Thus, each of the father's unpaid child-support obligations became enforceable judgments on their due dates, and interest accrued at the statutory interest rate applicable to each of the separate

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affirmatively show from the record on appeal that such error was in fact committed.").

past-due payments. The father has failed to demonstrate that the trial court erred in calculating the interest due on his child-support arrearage.

Given the foregoing, we hold that the father has failed to demonstrate that the trial court erred on remand in calculating the father's corrected child-support obligation under the 2006 judgment or in determining the father's child-support arrearage. Accordingly, because the father's child-support obligation under the 2006 judgment has been properly determined, this court turns to the father's arguments, asserted in his brief on original submission, that the modification of his child-support obligation was erroneous.

In its August 3, 2012, judgment in the 2010 modification action filed by the father, see Ex parte Davis, 82 So. 3d at 699; Davis III, ___ So. 3d at ___, the trial court determined the father's child-support obligation to be $460 per month. Thus, the trial court's August 3, 2012, determination of the father's child-support obligation actually lowered the father's child-support obligation from $506 under the 2006 judgment (as determined by the April 26, 2013, corrected judgment) to $460. In general, when a judgment is wholly in

a party's favor, that party may not appeal. Ex parte Jefferson Cnty. Sheriff's Dep't, 13 So. 3d 993, 996 (Ala. Civ. App. 2009); see also Huntsville City Bd. of Educ. v. Sharp, [Ms. 2110366, May 3, 2013] ___ So. 3d ___, ___ (Ala. Civ. App. 2013) ("Typically, a party may not take an appeal from a decision that is wholly favorable to him."). In this case, in his original brief pertaining to the August 3, 2012, determination of his modified child-support obligation, the father argued, however, that his child-support obligation was computed in error and that his obligation should be a lesser amount. Therefore, for the purposes of resolving this appeal, we assume that the August 3, 2012, judgment on the issue of child support was not one wholly in favor of the father.

The August 3, 2012, judgment did not explicitly incorporate child-support-guidelines forms as required by Rule 32(E), Ala. R. Jud. Admin. However, it is clear that in reaching that child-support determination the trial court relied on an exhibit designated as "Plaintiff's 2" that reached that child-support determination, and we deem that exhibit as being incorporated into the judgment for the purpose of Rule 32(E). The trial court included $230 per

month in work-related child-care costs and $130 for the cost of health insurance in its calculation of the parties' respective child-support obligations in reaching its August 3, 2012, judgment.

In his argument pertaining to the August 3, 2012, judgment, the father primarily raises substantive issues about whether he should be required to pay child support pursuant to Rule 32, Ala. R. Jud. Admin., and, as stated, this court has already addressed most of those issues.[5] The father next makes some general statements concerning the calculation of his child-support obligation. Out of an abundance of caution, this court has attempted to interpret and clarify those statements to discern the father's arguments.

The father maintains that the mother places the child in after-school care as a method of "thwarting" his relationship with the child. The father has argued that he could keep the child after school each day instead. The father appears to be

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[5]This court addressed the main part of the argument asserted by the father on the issue of child support in the issue of recusal in Davis III, ___ So. 3d at ___. The father also argued that the interest on his child-support arrearage had been improperly calculated, an issue this court has already analyzed in this opinion.

arguing that the cost of work-related child care should not be included in the calculation of his child-support obligation because he has offered to eliminate the necessity for that cost. The father has not cited any authority in an attempt to develop that argument. Further, the father's request to have the child every day after school is not an issue pertaining to child support but is instead related to custody and visitation. The father waived his claims for a modification of custody or visitation in this action, and, therefore, the trial court did not enter a ruling on those claims.

The father also takes issue with the trial court's inclusion in its child-support determination in the August 3, 2012, judgment of $230 in child-care costs. Without citing any authority, in contravention of Rule 28, Ala. R. App. P., the father says that the DHR employee who testified on the issue of child support could not verify that the $230 per month complied with the limits on child-care costs set forth in the child-support guidelines. See Rule 32(B)(8), Ala. R. Jud. Admin. ("Child-care costs shall not exceed the amount required to provide care from a licensed source for the children, based on a schedule of guidelines developed by the

Alabama Department of Human Resources."). The DHR employee testified, however, that she believed that the child-care costs were correctly determined, although she was not the person who had calculated the amount DHR contended the father owed in child support.

The father states in his brief that a "correct calculation" of his child support is $335 per month. He cites to no portion of the record on appeal in which he submitted a calculation of child support to the trial court containing the figures he advances in his brief on appeal. Also, in making that argument, the father uses $150 as the figure he contends is the proper amount of work-related child-care expenses to be used in the calculation of his child-support obligation. The father provides no explanation of how he arrived at that figure. The father does cite exhibits he submitted pertaining to DHR's limits on work-related child-care costs; those exhibits were first submitted at the November 8, 2012, hearing on the father's August 31, 2012, postjudgment motion. The father fails to explain which of DHR's rates he contends would be applicable under the facts of this case. Further, it is not clear from the record on appeal that the father made this

argument to the trial court. See Andrews v. Merritt Oil Co., 612 So. 2d 409, 410 (Ala. 1992) (an appellate court cannot consider issues presented for the first time on appeal). Given the argument asserted in the father's brief on appeal, we cannot say that the father, who had the burden of demonstrating error on appeal, met that burden and showed that the trial court erred in determining his child-support obligation. Pavilion Dev., L.L.C. v. JBJ P'ship, 979 So. 2d 24, 39 (Ala. 2007); Coastal Realty & Mortg., Inc. v. First Alabama Bank, N.A., 424 So. 2d 1315, 1317 (Ala. Civ. App. 1982).

The father has failed to demonstrate error on appeal, and the August 3, 2012, judgment and the April 26, 2013, corrected judgment are therefore affirmed.

AFFIRMED.

Thompson, P.J., and Pittman and Donaldson, JJ., concur.

Thomas, J., concurs in the result, without writing.

Moore, J., recuses himself.