

ARKANSAS COURT OF APPEALS

DIVISION II
No. CV-17-647

CLEVELAND EARL SMITH

APPELLANT

V.

ARKANSAS DEPARTMENT OF HUMAN
SERVICES

APPELLEE

Opinion Delivered: February 28, 2018

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT, SIXTH
DIVISION
[NO. 60CV-16-5622]

HONORABLE TIMOTHY DAVIS FOX,
JUDGE

SEALED SUPPLEMENTAL RECORD
AND SEALED SUPPLEMENTAL
ADDENDUM ORDERED

BART F. VIRDEN, Judge

Appellant Cleveland Smith appeals from the Pulaski County Circuit Court's decision affirming a determination by an administrative law judge (ALJ) for the Office of Appeals and Hearings, a division of the Arkansas Department of Human Services (DHS), that his name shall remain on the Arkansas Child Maltreatment Registry as a result of a true finding of abuse from an incident that occurred in 2002. Smith argues that (1) DHS failed to notify him of the true finding of maltreatment, (2) DHS failed to timely conduct an administrative hearing, and (3) the finding of maltreatment is not supported by substantial evidence. We cannot address the merits of Smith's arguments because a key

piece of evidence is missing. We must order a supplemental record and supplemental addendum, both of which must be filed under seal.

In June 2002, a report was made to the Arkansas Child Abuse Hotline alleging that Smith had abused his then teenage daughter, V.S. Matthew Caton, an investigator with the Arkansas State Police Crimes Against Children Division (CACD), was assigned to investigate the allegations of child maltreatment. During the investigation, photographs were taken purporting to show wounds on V.S.'s back and arm. A true finding of maltreatment was made by the CACD, and Smith's name was placed on the child-maltreatment registry.

A telephone hearing was later held, and the ALJ noted in her preliminary statement that she had been given, among other things, a copy of the investigative file containing color photographs of V.S.'s injuries. The ALJ found "abuse," as defined by Ark. Code Ann. § 12-18-103(3)(A)(v) (Supp. 2017), which was not reasonable and moderate physical discipline pursuant to Ark. Code Ann. § 12-18-103(3)(C)(i) (Repl. 2016). Specifically, the ALJ found that

sufficient evidence was presented that Smith caused a non-accidental physical injury to V.S. I based my finding on the following: While I noted that Smith denied that he struck V.S. with an extension cord, Smith admitted that he struck V.S. with a belt during the course of physical discipline. The pictures that were included in the investigative file show linear and curved welts on V.S.'s upper arm and physical injuries on V.S.'s upper back and upper arm, which appear to be scabbed over.

After the ALJ's final order was entered, DHS filed a motion to seal the record under Ark. Code Ann. § 12-18-809(a), which provides that an administrative-hearing decision

and the hearing record, including all exhibits, are confidential and shall remain confidential upon the filing of an appeal with a trial court or an appellate court. The Pulaski County Circuit Court entered an order sealing the record and directed the court clerk to “seal the entire record and any and all pleadings filed in the above entitled matter from public access.” The trial court subsequently affirmed the ALJ’s decision.

On appeal to this court, Smith did not include any photographs of V.S.’s injuries in his addendum. DHS included with its brief a supplemental addendum containing black-and-white photocopies of the color photographs depicting V.S.’s injuries. This court cannot discern any injuries from these black-and-white photocopies. We note that the record contains a series of exhibits, also consisting of black-and-white photocopies of V.S.’s injuries, with a “sticky note” indicating that the exhibits are sealed. Because this court is being asked to review the sufficiency of the evidence supporting a finding of abuse, the record must be supplemented to include those color photographs that the ALJ, and presumably the trial court, considered in reaching their decisions. After this supplemental record is compiled and is both certified and sealed by the trial court, we order Smith to supplement his addendum with color photocopies of the original color photographs and to ensure that the clerk of this court is aware that his addendum is being filed under seal.

Sealed supplemental record and sealed supplemental addendum ordered.

KLAPPENBACH and MURPHY, JJ., agree.

Hewett Law Firm, by: *Marceliers Hewett*, for appellant.

Mary Goff, Office of Chief Counsel, for appellee.