ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN B. ROBBINS, JUDGE

DIVISION IV

CA 06-1411

JUNE 13, 2007

OFFICE OF CHILD SUPPORT ENFORCEMENT
APPELLANT

V.

DOUGLAS MOORE
APPELLEE

APPEAL FROM THE FAULKNER COUNTY CIRCUIT COURT
[NO. E-2000-1124]

HONORABLE DAVID LEE REYNOLDS, JUDGE

REVERSED AND REMANDED

Arkansas's Office of Child Support Enforcement has appealed from an order abating appellee Douglas Moore's child-support obligation. For the reasons expressed below, we reverse and remand for further proceedings.

Appellee, a resident of Faulkner County, filed a divorce complaint against Beth Moore in the Faulkner County Chancery Court on December 8, 2000. In the complaint, appellee stated that, during the marriage, he adopted Beth's twins, who were born in 1992, and that Beth had moved to Pennsylvania since their November 2000 separation. Appellant moved to intervene in the divorce action and filed an incoming Uniform Interstate Family Support Act (UIFSA)[1] petition for child support from Pennsylvania. Beth filed a response to the

[1]Ark. Code Ann. §§ 9-17-101 to 9-17-902 (Repl. 2002).

complaint and a counterclaim for divorce and child support. A hearing was held on March 19, 2001, at which all parties appeared through their attorneys. On March 23, 2001, the chancery court granted appellant's motion to intervene. The court entered a temporary order of support on May 1, 2001, setting appellee's child-support obligation at $217.98 per week and awarding custody to Beth.

Appellee filed an amended complaint for divorce on August 25, 2003, requesting that the children's adoption be set aside on the ground that, knowing that she would be leaving him, Beth had enticed him to adopt the children for the sole purpose of obtaining child support. A final hearing was set for July 16, 2004. Two days before the hearing, Beth moved for a continuance, stating that she was financially unable to travel to Arkansas for the hearing. The hearing was rescheduled for September 23, 2004. On August 6, 2004, appellee's second attorney filed a motion to withdraw from his representation. This motion was granted. On November 22, 2004, the circuit judge issued an order in which it entered Greg Bryant as attorney of record for appellee and stated:

> The Court finds that this matter having been previously set for trial and the parties not appearing is dismissed for failure to [sic] the Plaintiff to prosecute her complaint for divorce. The Court also finds that the Order for Wage Assignment previously entered by this Court is set aside and all monies held by the Arkansas Child Support Clearing House taken since October 1, 2004, are to be returned to the Defendant.

On January 31, 2005, appellant filed a motion to vacate that part of the November 22, 2004 order setting aside the wage assignment. It pointed out that the order incorrectly reversed the identities of the plaintiff and defendant and that, as the intervenor, it had asked for and obtained a temporary order of support. Appellant contended that appellee's child-

support obligation was not dependent on whether the counterclaim for divorce was dismissed. Subsequently, the circuit court entered an order vacating the November 22, 2004 order and reinstating appellant's claim.

The record reflects that, on December 1, 2005, a hearing was set for February 7, 2006, "on Motion To Abate Child Support," even though no such motion had been filed. A hearing was held on February 7, 2006. Although Beth's attorney and the attorney for appellant were notified of the hearing, only appellee and his attorney appeared at the scheduled time. The court took a recess, after which another attorney appeared on behalf of appellant. Appellee's attorney argued that Beth had withheld visitation and that the temporary order of support had also been dismissed when the divorce case was dismissed. Keith Griffith, appellant's new attorney, stated that he had no objection to appellee's testifying then, so he would not have to return from New York, where he had moved. Griffith pointed out that there was no motion pending and argued that the court could not relieve appellee from paying child support because Beth had withheld visitation.

Appellee testified that he resided in New York and was employed by Con Edison earning a "little over" $100,000. He said that the parties were still married and that, although a final hearing had been set in October 2004, neither he nor Beth had shown up for it. He asked the court to dismiss the temporary order of support and testified about his confusion as to how to proceed.

At the conclusion of appellee's testimony, the court stated: "I think at this point we're going to need some more pleadings. I don't think I have jurisdiction to do anything right

now. Time for creative writing." Appellee's attorney stated that he would file a motion to dismiss the temporary order the next day and asked the court to shorten the time for appellant to respond or, if the court, having heard appellee's testimony, would rule on the pleadings. The circuit court said that it would not mind ruling on the pleadings if appellant's counsel agreed. Appellant's attorney replied that he would not agree to that until he saw the pleadings.

On March 15, 2006, appellee filed a motion to abate child support, stating that no Pennsylvania or Georgia (where he believed Beth was living) court had entered a support order. He argued that appellant had no authority to intervene in this action because no support order from Pennsylvania had been entered but conceded that his attorney had not objected to appellant's intervention. Appellee argued that no valid support order was in effect because (1) when the divorce action was dismissed, all orders entered by the court were void; (2) no order enforceable under UIFSA had been entered by a court in Pennsylvania; and (3) Beth had moved from Pennsylvania. In response, appellant argued that it was not necessary for a Pennsylvania court to enter a child-support order or that Beth receive state or federal benefits in order to receive the services of appellant; that appellee's attorney had not objected to its intervention; and that, although the May 1, 2001 order was entitled "Temporary Order of Support," the language in the order did not indicate that it was only temporary. Based on appellee's testimony that his gross annual income was in excess of $100,000, appellant moved for an increase in child support pursuant to the child-support guidelines.

On May 19, 2006, appellee filed another motion to abate child support on the ground that, through no fault of his own, he had lost his employment and had no income. He asked

for an immediate hearing temporarily abating his child-support obligation. On September 8, 2006, the trial court issued an order, stating:

> Presented to the Court is the motion to terminate child support filed by the plaintiff, Doug Moore, and the Court finds that based on the testimony given by the plaintiff on February 27, 2006, the motion filed and the other matters presented finds that the motion should be and is hereby granted and the plaintiff's child support obligation to the defendant is hereby terminated.

Appellant filed a timely notice of appeal.

In its first point, appellant argues that the circuit court erred in abating appellee's child-support obligation. Because the circuit court did not explain its ruling, appellant challenges all three of the reasons set forth in appellee's first motion. The court's order, based partially on appellee's testimony, was not a judgment on the pleadings or a summary judgment. *See* Ark. R. Civ. P. 12 and 56. A trial court's ruling on child-support issues is reviewed de novo by this court, and the trial court's findings are not disturbed unless they are clearly erroneous. *Allen v. Allen*, 82 Ark. App. 42, 110 S.W.3d 772 (2003). However, a trial court's conclusion of law is given no deference on appeal. *Id.*

The dismissal of appellee's complaint and Beth's counterclaim for divorce did not necessarily dispose of appellant's UIFSA claim or the order setting child support. Arkansas Rule of Civil Procedure 41(a)(3) states that the defendant has the right to proceed on his claim, although the plaintiff may have dismissed his action. That rule applies to the dismissal of any counterclaim, cross-claim, or third-party claim. Ark. R. Civ. P. 41(c). It is also a well-settled rule of law that a dismissal does not affect, but leaves other claims for adjudication. *Security Pac. Housing Servs., Inc. v. Friddle*, 315 Ark. 178, 866 S.W.2d 375 (1993). Also,

appellant does not represent either parent in this dispute; the State of Arkansas is the real party in interest. *State of Arkansas Office of Child Support Enforcement v. Terry*, 336 Ark. 310, 985 S.W.2d 711 (1999). Whether the parties are divorcing, or whether they ever married, does not affect the children's need for support or the public's interest in seeing that they are supported.

Additionally, the original support order was not rendered invalid by the lack of a support order entered in another state. In fact, the Faulkner County Circuit Court, as the responding tribunal, could issue a support order only if one had *not* yet been issued in Pennsylvania. *See* Ark. Code Ann. § 9-17-401 (Repl. 2002).

It is also clear that Beth's move from Pennsylvania was not established by proof of any kind. The abstract of appellee's testimony reveals no mention of her purported move. Also, there is no evidence in the record to support appellee's allegation that he lost his job and had no income. Because none of the arguments made by appellee below support the circuit court's decision to abate his child-support obligation, we reverse.

In light of our decision, we need not address appellant's argument that the circuit court erred in ruling on appellee's motion to abate child support without giving appellant the opportunity for a hearing.

Reversed and remanded.

PITTMAN, C.J., and HEFFLEY, J., agree.