

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
DAVID M. GLOVER, JUDGE

DIVISION IV

CA07-734

February 20, 2008

OFFICE OF CHILD SUPPORT
ENFORCEMENT
APPELLANT

AN APPEAL FROM JEFFERSON
COUNTY CIRCUIT COURT
[No. E-89-446-3-5]

v.

ALEXIS REED
APPELLEE

HONORABLE ROBERT WYATT,
CIRCUIT JUDGE

REVERSED and REMANDED

Office of Child Support Enforcement¹ has appealed from a judgment entered against it by the Jefferson County Circuit Court in a child-support dispute. For the reasons expressed below, we reverse the judgment and remand.

Appellee, Alexis Reed, and Connie Reed were divorced in the Jefferson County Chancery Court in 1990. Connie received custody of the children and Alexis was ordered to pay child support. In 1993, Connie assigned her child-support rights to OCSE. On October 3, 2003, appellant moved for the court to find Alexis in contempt because he had accrued an arrearage of \$48,561.29. The court issued a contempt order on December 2, 2003. On

¹The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration was established to administer the state plan for child support enforcement required under Title IV-D of the Social Security Act. *See* Ark. Code Ann. § 9-14-206 (Repl. 2002).

January 29, 2004, Alexis moved for an abatement of arrears, a change of custody, and child support because the children had lived with him for most of the time since August 2001. Alexis, Connie, and appellant's counsel were present at the hearing. On July 27, 2004, the circuit judge granted appellant a judgment of \$29,998 against Alexis, giving him credit for the time that the children had resided with him and allowing for the fact that one child had reached the age of eighteen. The judge specifically reserved ruling on Connie's obligation to pay child support to Alexis.

In September 2004, Alexis was awarded a portion of a federal Thrift Savings Plan (TSP) owned by his second wife, Shirley Reed, in his divorce from her in Missouri. On November 19, 2004, appellant obtained a writ of garnishment against any interest in the TSP to which Alexis was entitled. Alexis asked the circuit court to suspend the writ pending a hearing because it was entered without notification to him. In his letter to the court, Alexis stated that he still wanted child support from Connie.

On July 8, 2005, after a hearing, the circuit court found the writ of garnishment defective and set it aside. It reserved ruling on Alexis's request for child support from Connie and directed her to complete an affidavit of financial means within ten days. The court further stated that the case would be reset for hearing on the following issues: (1) the writ of garnishment against the TSP; (2) Alexis's documentation for his child-support payments in 1997 and 1998; and (3) child support to be paid by Connie to Alexis.

Appellant sent another writ of garnishment to the TSP on July 12, 2005, and filed "Allegations and Interrogatories," stating that the TSP possessed money due to Alexis from Shirley's retirement benefits. In its supporting statement of facts, appellant said that Alexis was

entitled to a lump-sum payment from the TSP in the amount of \$43,099.34 as a result of his divorce from Shirley. It attached a copy of that judgment. In its “Statement of Basis of Defendant’s Right to Payment” filed July 28, 2005, appellant said that the party benefitting from the writ of garnishment was Connie.

On October 6, 2005, appellant moved to keep the writ of garnishment in place pending disbursement of the TSP funds, stating: “[Appellant] has received from Thrift Savings Plan . . . a letter attached as Exhibit 3. This letter indicates that the account holder, Shirley B. Reed, elected to withhold the entire amount of the disbursement for Federal tax purposes. Therefore, no funds were disbursed to any party.” The attached letter from the TSP to appellant stated:

Our records indicate that a court order submitted to the Thrift Investment Board was determined to be effective to award \$25,613.37 from Ms. Reed’s TSP account to Arkansas Child Support Clearinghouse. Therefore, on December 27, 2004, \$.00 was paid to Arkansas Child Support Clearinghouse and \$25,613.37 was withheld for Federal taxes. We have enclosed a copy of form W-4P submitted by Ms. Reed.

On May 18, 2006, appellant moved to dismiss its October 6, 2005 motion without prejudice. The court granted the motion to dismiss. On April 23, 2007, Alexis filed a belated response to appellant’s latest motion and asked for a hearing to resolve the child-support issue “as it is quite feasible that the arrears owed Ms. Reed and the Child support requested by this Defendant will possibly offset.” The court set the case for a hearing on May 14, 2007.

The abstract of this hearing demonstrates that the trial court did not understand that Shirley, not Alexis, was the owner of the TSP; that the money was disbursed to pay her federal taxes; or that the money was not disbursed pursuant to the writ of garnishment.

Appellant's attorney and Alexis unsuccessfully attempted to correct the misunderstanding. The trial court stated that appellant had a duty to notify the TSP that the original writ of garnishment was defective and had been set aside. It also stated: "[T]he money was taken by a defective garnishment from the Office of Child Support Enforcement, I'm going to enter judgment against the State of Arkansas Office of Child Support Enforcement and Connie Reed, jointly and severally, in the amount of \$25,613.37." Appellant's counsel then raised an objection. On May 21, 2007, the trial judge entered judgment for Alexis in the amount of \$25,613.37 against appellant and Connie, jointly and severally. It found that \$25,613.37 was disbursed and that appellant had a duty to notify the administrator of the TSP that the writ of garnishment was not valid.

Appellant filed a motion to reconsider on June 7, 2007, which stated:

1. The State of Arkansas, Office of Child Support Enforcement (hereinafter OCSE) has discovered evidence after reviewing the transcript which may not have been presented clearly to the Court. That Defendant, Alexis Reed at one period was married to a Shirley B. Reed, who as an employee for the Federal Government had established a Thrift Savings Plan as part of her retirement benefits. Alexis Reed and Shirley B. Reed were divorced on February 18, 2004. In a separate September 28, 2004 Judgment for Retirement Benefits Order, the Circuit Court of Jackson County, Missouri (Case No. 03FC202013, Division No. 33), granted Alexis Reed a portion of Shirley B. Reed's Thrift Savings Plan. See attached Exhibit A.
2. Upon discovery of the lump sum that was about to be dispersed [sic] to the Defendant, Alexis Reed, the OCSE attempted to garnish a portion of the money to be applied towards the Defendant's arrearage balance that was owed on the OCSE v Alexis Reed E-1989-446-3-5 to custodial parent, Connie Reed.
3. The State of Arkansas, OCSE, did file a Writ of Garnishment, for the amount Alexis Reed was granted in the divorce decree from Shirley B. Reed. The State of Arkansas, issued the Writ of Garnishment for the purpose of collecting payment for child support arrearages that were owed to Connie Reed.

4. That the State of Arkansas nor its Assignor, Connie Reed, never received any funds from the Thrift Savings Plan. The Thrift Savings Plan Administrator notified the State of Arkansas, that Shirley B. Reed had elected to use those funds to pay federal taxes. Therefore, the State of Arkansas and Connie Reed were not unjustly enriched. There was no evidence to prove that the State of Arkansas and its Assignor, Connie Reed received any moneys owed to Alexis Reed.
5. The Defendant was given a letter by the Thrift Savings Plan on July 20, 2005 that stated that the money was paid to the Office of Child Support Enforcement Clearinghouse (see attached Exhibit B), but after inquiry a subsequent letter was sent to OCSE stating that \$0.00 was sent to the OCSE Clearinghouse and that \$25,613.37 was withheld for Federal taxes by Shirley B. Reed (See attached Exhibit C & D).
6. That the Court's finding May 14, 2007, that the State of Arkansas was the responsible party for allowing the funds in the Thrift Savings Plan to be disbursed is not supported by any evidence. The Defendant's cause of action is against Shirley B. Reed, not OCSE.
7. On another note, the disbursement of the money was actually made in December of 2004. The Circuit Court of Jefferson County entered an Order to Dismiss the Writ of Garnishment on July 8, 2005.

In support of its motion, appellant attached a copy of the July 20, 2005 letter from the TSP to Alexis erroneously stating that \$25,613.37 had been paid to appellant. It also attached a copy of the TSP's August 3, 2005 letter stating that nothing was paid to appellant and that \$25,613.37 was withheld for federal taxes, along with a copy of Shirley's 2004 Form W-4P. On June 19, 2007, appellant filed a notice of appeal from the May 21, 2007 judgment.

Appellant makes three arguments on appeal: (1) the trial court erred in finding that appellant had a duty to inform the TSP to disregard the writ of garnishment because the money could be disbursed at the option of the plan's owner, and the money had already been disbursed before the writ was found to be defective; (2) the trial court committed error in finding appellant responsible for \$25,613.37 because neither it nor Connie received the

money; and (3) sovereign immunity applies. We will not address the sovereign-immunity issue because appellant neither raised it to the trial court nor received a ruling on it. An appellant cannot make an argument for the first time on appeal. *Morgan v. Chandler*, 367 Ark. 430, ___ S.W.3d ___ (2006). We will not reach the merits of an argument when the trial court has not ruled on the issue. *Id.*

Our standard of review for an appeal from a child-support order is de novo on the record, and we will not reverse a finding of fact by the circuit court unless it is clearly erroneous. *Ward v. Doss*, 361 Ark. 153, 205 S.W.3d 767 (2005). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a firm conviction that a mistake has been committed. *Royal Oaks Vista, L.L.C. v. Maddox*, ___ Ark. ___, ___ S.W.3d ___ (Jan. 17, 2008). This is such a case.

No one requested the relief contained in this judgment, which was based upon the trial court's erroneous belief that the TSP belonged to Alexis; that the money was disbursed from the TSP under a writ of garnishment; and that appellant and Connie benefitted from the disbursement. The court commented several times during the hearing that the money was disbursed because appellant had applied a defective writ of garnishment. The money, however, was not disbursed pursuant to the writ of garnishment but instead was used to pay Shirley Reed's 2004 federal taxes. The first writ of garnishment was not found to be defective until seven months after the money from the TSP was disbursed. Additionally, it is clear from this record that neither appellant nor Connie received the money. For these reasons, we have no choice but to reverse and remand.

Reversed and remanded.

PITTMAN, C.J., and MILLER, J., agree.