

ARKANSAS COURT OF APPEALSDIVISION I
No. CA11-343PARTNE A. DAUGHERTY
APPELLANT

V.

GARY SIPES, as Jacksonville Police Chief,
and JACKSONVILLE POLICE
DEPARTMENT

APPELLEES

Opinion Delivered April 4, 2012

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT, FIFTH
DIVISION
[NO. 60CV2010-4802]HONORABLE ERNEST SANDERS JR.,
JUDGE

AFFIRMED

ROBIN F. WYNNE, Judge

Partne A. Daugherty, acting pro se, appeals from an order of the Pulaski County Circuit Court denying her complaint against Jacksonville Police Chief Gary Sipes and the Jacksonville Police Department for violation of the Freedom of Information Act (FOIA). We affirm.

Ms. Daugherty was issued a speeding ticket by Officer Huddleston of the Jacksonville Police Department on June 24, 2010. On August 4, 2010, Ms. Daugherty submitted a FOIA request to Chief Sipes in which she requested a “complete copy of the video images/recording with any and all audio, including but not limited to video and separate body recordings made by Officer Huddleston during his shift on July 24, 2010, to include all of his patrol car and radar activities and his traffic stop of [Ms. Daugherty] on July 24, 2010.” Ms. Daugherty’s request for the video images/recording on July 24, 2010, was in error, as she

was stopped on June 24 and Officer Huddleston was not on duty on July 24. In response to Ms. Daugherty's request, the police department, through the city attorney, gave Ms. Daugherty the recording of her stop on June 24, 2010.

Ms. Daugherty was unsatisfied with this response and filed a FOIA complaint and request for hearing on August 13, 2010. The Department filed a response in which it sought to have the complaint dismissed. In the response, the Jacksonville Police Department asserted that it was never properly served with the complaint. A hearing was held before the circuit court on August 20, 2010. At the hearing, the city attorney argued that the Department was never properly served with the complaint because the city's mayor was not served. The attorney further argued that appellant's FOIA request was not clear and that the Department made a good-faith effort to comply by giving Daugherty the video of her stop. Ms. Daugherty countered that the Department was properly served with the complaint and that her request, despite the erroneous date, clearly requested the video from Officer Huddleston's entire shift.

At the conclusion of the hearing, the circuit court denied Ms. Daugherty's complaint. In the order entered on September 29, 2010, the circuit court found that Chief Sipes acted in good faith and that Ms. Daugherty failed to meet her burden to show that Chief Sipes violated the FOIA. The court further found that Ms. Daugherty failed to properly serve the Jacksonville Police Department and left the case file open as to the Department. Ms. Daugherty filed a motion to reconsider on October 1, 2010. There is no indication from

the record that this motion was ever ruled upon by the circuit court. This appeal from the September 29, 2010 order followed.

Ms. Daugherty argues in her brief that the order is not final because the Jacksonville Police Department was not dismissed as a party. For an order to be final and appealable, it must dismiss the parties from the court, discharge them from the action, or conclude their rights to the subject matter in controversy. *Bayird v. Floyd*, 2009 Ark. 455, 344 S.W.3d 80. In this case, the circuit court found that the Jacksonville Police Department was not properly served. Despite the lack of service, the court stated in its order that it was leaving the case open with regard to the Jacksonville Police Department. Arkansas Rule of Civil Procedure 54(b)(5) states that any claim against a named but unserved defendant is dismissed by the circuit court's final judgment or decree. Pursuant to the operation of Rule 54(b)(5), any claims against the Jacksonville Police Department were dismissed by the entry of the circuit court's order, and the language in the order regarding keeping the case file open as to the police department is without effect. The order of the circuit court is a final, appealable order.

Ms. Daugherty argues in her brief that the Department made a "voluntary appearance" before the circuit court. She never raised this argument before the circuit court. It is well settled that this court will not consider arguments raised for the first time on appeal. *Coker v. Coker*, 2011 Ark. App. 752. We decline to address the merits of Ms. Daugherty's argument on this point.

Our standard of review on appeal from a bench trial is not whether there was substantial evidence to support the finding of the circuit court, but whether the circuit court's

findings were clearly erroneous or clearly against the preponderance of the evidence. *Omni Holding & Dev. Corp. v. C.A.G. Invs., Inc.*, 370 Ark. 220, 258 S.W.3d 374 (2007). 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 an error has been committed. *Id.* Facts in dispute and determinations of credibility are within the province of the fact-finder. *Duke v. Shinpaugh*, 375 Ark. 358, 290 S.W.3d 591 (2009).

The circuit court found that Chief Sipes acted in good faith in giving Ms. Daugherty the video of her stop despite the ambiguous nature of her request. Upon reviewing the FOIA request that Ms. Daugherty submitted, we hold that the finding of good faith by the circuit court is not clearly erroneous.

Ms. Daugherty also argues that Jacksonville Police Department Policy 22-4 is in violation of Arkansas Code Annotated section 14-2-204(a)(1)(A). The policy she references was never mentioned at the hearing, nor is there a copy of the policy in the record. Ms. Daugherty never raised the argument she makes in her brief at the hearing before the circuit court. As noted above, this court will not consider arguments made for the first time on appeal. *Coker, supra*.

Ms. Daugherty's arguments are either not preserved or lack merit. The order of the circuit court is affirmed.

PITTMAN and HOOFFMAN, JJ., agree.