FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

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No. 1D22-798
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MARIO ENRIQUE PEREZ,

    Appellant,

    v.

STATE OF FLORIDA, DEPARTMENT
OF REVENUE CHILD SUPPORT
PROGRAM and ANALIA PEREZ,

    Appellees.

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On appeal from the Department of Revenue Child Support
Program.
Ann Coffin, Director.

October 12, 2022

WINOKUR, J.

Mario Enrique Perez ("Perez") seeks review of a final
administrative support order imposing a child support obligation
on him. In response to his appeal, the Department of Revenue ("the
Department") filed a "confession of error," noting an alleged error
in the support order. Because Perez never mentioned the alleged
error to which the Department confessed, we reject the confession
of error. Because Perez does not otherwise show an entitlement to
reversal of the support order, we affirm.

In November 2020, Analia Perez filed an Application for Child Support Services with the Department, seeking child support from Perez. DNA testing to establish Perez's paternity put his probability of paternity at 99.9999999%. The Department then initiated a proceeding to establish an administrative support order. The Department eventually filed a proposed administrative support order, specifying a support obligation for Perez. The proposed administrative support order informed Perez that he could request a hearing if he disagreed with the proposed order. Perez did not request a hearing, and the Department issued a final administrative support order in February 2022.

Perez appealed the final order to this Court. In his notice of appeal, Perez acknowledged that he had "the legal duty to pay child support to my daughter" and that he "know[s] it is [his] responsibility" to do so. However, because he has another daughter for whom he is paying support, and because of the amount of his net pay, he claimed he is unable to pay the support amount indicated in the final order.

Instead of filing an answer brief, the Department filed a "Confession of Error." The Department claimed that this case began as an action to establish paternity and that the support order "incorrectly found that 'paternity has been established for [the child] by an order based on a positive genetic test.'" In fact, according to the Department, no paternity order had been rendered. As such, the Department requested that this Court vacate the support order and remand to the Department to issue a paternity and support order.

"The appellate court will usually reverse on a confession of error if it appears from the record, or the appellant's brief, that the point or error relied on is well taken." 5 C.J.S. Appeal and Error § 1081. In other words, an appellee confessing error has found the error asserted by the appellant is well taken and should result in reversal. The Department did no such thing here. Instead, the Department ignored the issue actually raised by Perez, and simply alerted this Court to an alleged error in the support order that it had discovered on its own. If the Department detects an error in its own order, it is free to correct it as it sees fit, in accordance with

the law. It need not involve this Court. It is the function of this Court to determine whether an appellant has demonstrated reversible error, not to ratify an appellee's own discovery that an order contains a mistake. Nor can it be ignored that Perez explicitly admitted paternity in this appeal and that a DNA test indisputably establishes his paternity, regardless of whether an order of paternity is in the record.[1] For this reason, we reject the Department's confession of error.

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[1] We disagree with the dissent's contention that "[a]n order adjudicating paternity is a necessary step before an administrative support order may issue and be enforceable." Dissenting op. at ___. Section 409.2563(2)(f), Florida Statutes, authorizes the Department to establish a parent's child support obligation where "paternity has been established or is presumed by law, or [where] paternity is the subject of a proceeding under [section] 409.256," Florida Statutes. "Adjudication" of paternity is not always necessary, and even when it is, there is no specific requirement that an order adjudicating paternity be issued before a child support proceeding may be commenced. Section 409.2563(7)(e), which delineates findings that must be included in an administrative support order, does not include a requirement that there be a finding of paternity.

If paternity is contested, then a paternity test may be ordered, and the issue of paternity may be adjudicated. *See* § 409.256(2)(a), Fla. Stat. However, there is no requirement that the proposed order of paternity be issued before the proposed administrative support order. The Department may "delay issuing a proposed order of paternity and commence . . . an administrative proceeding to establish a support order for the child pursuant to [section] 409.2563 and issue a single proposed order that addresses paternity." *See* § 409.256(9)(a)2., Fla. Stat.; *see also* § 409.256(4)(a)7.–9., Fla. Stat. (providing that if the paternity test renders a statistical probability of paternity that equals or exceeds 99%, then the Department may choose to issue a proposed order of paternity or commence a support proceeding, after which the Department will issue a proposed order that addresses paternity and child support).

As for the error actually claimed by Perez, he did not preserve any alleged error relating to the calculation of his support obligation.[2] *See Feliciano v. Dep't of Revenue, Child Support Enf't*, 305 So. 3d 801, 803 (Fla. 4th DCA 2020). Perez has therefore failed to present any entitlement to have the support order set aside.

AFFIRMED.

TANENBAUM, J., concurs; MAKAR, J., dissents with opinion.

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Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

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MAKAR, J., dissenting.

An order adjudicating paternity is a necessary step before an administrative support order may issue and be enforceable; that's because a putative father can't be forced to pay support unless he is first deemed by law to be the child's biological *father*. *See, e.g.*, § 409.2563(1)(a), Fla. Stat. (2022) (defining an "[a]dministrative support order" as a final order "establishing or modifying the obligation of a *parent* to contribute to the support and maintenance of his or her child or children" (emphasis added)). Such orders presume "that paternity has already been established or is being established in a separate administrative proceeding" under chapter 409. *Dep't of Revenue v. Long*, 937 So. 2d 1235, 1236 (Fla. 1st DCA 2006); *see, e.g.,* § 409.256, Fla. Stat. (2022).

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[2] This would be true even if the record did include an order establishing paternity. In such a case, Perez still would not have had an "opportunity" to press his unpreserved claim.

Which is why the Department pointed out its error below. It should not have issued an administrative support order without first having established a basis for paternity in this case. It suggests a remand so that the Department can "issue a proposed administrative paternity and support order" that gives the putative father "an opportunity to timely request an administrative hearing to address the issues that he has raised on appeal."

I find no fault whatsoever in the Department's actions; if a putative father is subject to an administrative support order without an adjudication of his paternity, the order is subject to summary reversal on that basis. Far better to dot the i's and cross the t's than to ignore a potentially reversible order. That a pro se litigant with no legal training did not raise the paternity issue in his two-paragraph, one-page "brief" filed in this court does not—in my judgment—justify the Department being called to task for pointing out its error and seeking leave to correct it. I would remand the case, as the Department requests, so that a proper paternity order and administrative support order can issue.

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Mario Enrique Perez, pro se, Appellant.

Ashley Moody, Attorney General, and Toni C. Bernstein, Senior Assistant Attorney General, Tallahassee, for Appellee Department of Revenue.