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ARKANSAS COURT OF APPEALS

DIVISION I
No. CA09-581

ALPHONSO REID APPELLANT V. ARKANSAS DEPARTMENT OF HUMAN SERVICES APPELLEE	**Opinion Delivered** FEBRUARY 17, 2010 APPEAL FROM THE MILLER COUNTY CIRCUIT COURT [NO. JV2008-323-1] HONORABLE JOE E. GRIFFIN, JUDGE AFFIRMED

ROBERT J. GLADWIN, Judge

Alphonso Reid appeals from an order adjudicating his son, A.R., dependent-neglected. Reid argues that the circuit court erred by directing a verdict for the plaintiff, Arkansas Department of Human Services (DHS), at the close of the plaintiff's case. We agree that the directed verdict — actually the judgment because this was a bench trial — was premature and contrary to our Rules of Civil Procedure. However, because Reid's argument is not preserved for review, we affirm the adjudication order.

Reid and four other parents whose appeals we decide today—Greg Seago, Brian Broderick, and Richard and Debra Ondrisek—are members of the Tony Alamo Christian Ministries. In September 2008, the Miller County Circuit Court granted DHS emergency

custody of six minor females who resided at the Ministries' compound in Fouke, Arkansas. The girls were the daughters of Reid, Seago, Broderick, and the Ondriseks.

During the girls' adjudication hearings, DHS presented evidence that their parents were aware of beatings administered to Ministries children by Ministries adults; that some of the parents and younger children witnessed the beatings; that the parents condoned the marriage of under-aged females to adult males and placed their daughters in the residence of Tony Alamo without parental supervision; that Alamo sexually abused one of the girls and spent time in his bedroom with another; that the parents neglected to provide the children with proper medical care and education; and that the parents condoned extreme disciplinary measures for young children, such as fasting. Following the hearings, all of the girls were adjudicated dependent-neglected. We affirmed the adjudication orders on November 18, 2009 (other than the order involving the Ondriseks' daughter—her parents dismissed their appeal prior to submission). *Broderick v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 771, 358 S.W.3d 909; *Seago v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 767, 360 S.W.3d 733; *Reid v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 784.

In November 2008, DHS filed a second dependency-neglect petition seeking emergency custody of more than 100 other children who resided on Ministries property or with Ministries members. The petition was based in large part on information provided by witnesses who testified at the girls' adjudication hearings. The circuit court granted DHS

emergency custody of the children, including the Reid, Seago, Broderick, and Ondrisek boys who are the subject of today's appeals.

On January 12, 2009, the circuit court held a single adjudication hearing for the boys and several other children. DHS made a pretrial oral motion for summary judgment, arguing that, once a child's sibling had been adjudicated dependent-neglected, that child should also be deemed dependent-neglected as a matter of law. Ark. Code Ann. § 9-27-303(18)(A) (Supp. 2009) (defining a dependent-neglected juvenile as one who is at substantial risk of serious harm as the result of certain acts or omissions "to the juvenile, a sibling, or another juvenile"). The circuit court denied DHS's motion as untimely. Ark. R. Civ. P. 56(a) and (c). DHS then presented its case and placed into evidence certified copies of the Reid, Seago, Broderick, and Ondrisek girls' dependency-neglect adjudication orders.

At the close of its case-in-chief, DHS essentially renewed its motion for summary judgment and moved for a directed verdict as to all children whose siblings had previously been adjudicated dependent-neglected. The circuit court granted DHS's motion as to Alphonso Reid's son, A.R., as well as to the Seago, Broderick, and Ondrisek boys. Following the entry of an order adjudicating A.R. dependent-neglected, Reid brought the instant appeal. He argues, as do the other parents, that the circuit court's grant of a directed verdict at the close of DHS's case violated Ark. R. Civ. P. 50 and their right to due process of law.

A directed verdict or judgment in favor of the party with the burden of proof is rare, even where the other party has had a full and complete opportunity to present his case. *See*

Anderson v. Graham, 332 Ark. 503, 966 S.W.2d 223 (1998); *Morton v. Am. Med. Int'l, Inc.*, 286 Ark. 88, 689 S.W.2d 535 (1985). *See also Young v. Johnson*, 311 Ark. 551, 555, 845 S.W.2d 510, 513 (1993) (stating that the courts are "loath" to grant a directed verdict for the party with the burden of proof). However, the grant of a judgment or directed verdict for the plaintiff at the close of the plaintiff's case-in-chief, which essentially forecloses the defendant from presenting his own case, is simply improper under our Rules of Civil Procedure. *See Scott Truck & Tractor Co. of La., Inc. v. Alma Tractor & Equip., Inc.*, 72 Ark. App. 79, 35 S.W.3d 815 (2000). Rule 50(a) of the Arkansas Rules of Civil Procedure reads as follows:

> A party may move for a directed verdict *at the close of the evidence offered by an opponent* and may offer evidence in the event that the motion is not granted, without having reserved the right to do so and to the extent as if the motion had not been made. *A party may also move for a directed verdict at the close of all of the evidence.* A motion for a directed verdict which is not granted is not a waiver of a trial by jury even though all parties to the action have moved for directed verdicts. A motion for a directed verdict shall state the specific grounds therefor. The order of the court granting a motion for a directed verdict is effective without any assent of the jury. *In nonjury cases a party may challenge the sufficiency of the evidence at the conclusion of the opponent's evidence* by moving either orally or in writing to dismiss the opposing party's claim for relief. *The motion may also be made at the close of all of the evidence* and in every instance the motion shall state the specific grounds therefor.

(Emphasis added.)

As the emphasized portions of Rule 50(a) show, the correct time to make a motion for a directed verdict or judgment is at the close of the opponent's evidence or at the close of all of the evidence. The timing of the motion is crucial to the rule's purpose, which is to allow a party to challenge the sufficiency of his opponent's case. The rule is not designed to

allow the party with the burden of proof to have his own evidence declared unassailable as a matter of law prior to the defense having an opportunity to be heard.

Despite the mis-timed judgment, however, we do not reverse the adjudication order in this case. At no point during the proceedings below did Reid oppose DHS's motion based on Ark. R. Civ. P. 50(a) or due process of law. It is incumbent upon the parties to raise arguments initially to the circuit court in order to give that court an opportunity to consider them. *Bell v. Misenheimer*, 2009 Ark. 222, 308 S.W.3d 120. Otherwise, we are placed in the position of reversing the circuit court for reasons not addressed by that court. *See id*. This is something that our appellate courts refuse to do in all but a few extreme situations not applicable here. Accordingly, we decline to reverse on the basis of Reid's arguments, which are made for the first time on appeal. *See Seymour v. Biehslich*, 371 Ark. 359, 266 S.W.3d 722 (2007); *Jordan v. Jerry D. Sweetser, Inc.*, 64 Ark. App. 58, 977 S.W.2d 244 (1998).

We therefore affirm the adjudication order.

Affirmed.

MARSHALL and BAKER, JJ., agree.