

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA12-147

THANE THOMAS NEWTON
APPELLANT

V.

OFFICE OF CHILD SUPPORT
ENFORCEMENT and CATHIE S.
REED
APPELLEES

Opinion Delivered September 5, 2012

APPEAL FROM THE WASHINGTON
COUNTY CIRCUIT COURT
[NO. E-2001-1875-5]

HONORABLE ELIZABETH STOREY
BRYAN, JUDGE

REMANDED FOR
SUPPLEMENTATION OF RECORD;
REBRIEFING ORDERED

CLIFF HOOFFMAN, Judge

Appellant Thane Thomas Newton appeals from the trial court’s order dismissing his petition for abatement of child support during his incarceration. On appeal, appellant argues that his due-process rights were violated because he did not receive adequate notice of the hearing and that the trial court erred in dismissing his petition for abatement. We decline to address the merits at this time and order rebriefing due to the numerous deficiencies in Newton’s abstract and addendum. We also remand so that the record may be supplemented with Newton’s September 2006 petition to hold support in abeyance, as well as the January 2007 order dismissing this petition.

Newton and appellee Cathie Reed were divorced in January 2002, and Reed received custody of their son, A.N., who was six years old at the time. Newton received standard



Cite as 2012 Ark. App. 463

visitation and was ordered to pay \$67 per week in child support. The decree further stated that Newton owed \$670 for past-due child support that was to be paid at a rate of 10% of the current periodic payment, or \$6.70 per week. According to the record, appellee Office of Child Support Enforcement (OCSE) intervened in Reed's contempt proceeding against Newton in 2005, due to his failure to pay child support. Newton's arrearage was \$3,591.40 as of July 31, 2005, and he received a thirty-day jail sentence for the finding of contempt.

In January 2006, Newton was convicted of two counts of first-degree sexual abuse on his stepdaughter, for which he was sentenced to fifteen years' imprisonment. Although the petition is not in the record, the docket sheet indicates that Newton first filed a petition to hold support in abeyance in September 2006 and that it was dismissed without prejudice in January 2007. On August 20, 2007, Newton filed another petition to hold child support in abeyance due to his incarceration, and this second petition is contained in the addendum. The trial court dismissed this second petition on September 12, 2007, citing *Reid v. Reid*, 57 Ark. App. 289, 944 S.W.2d 559 (1997), which held that under the doctrine of unclean hands, an incarcerated child-support payor is not entitled to a reduction in child support based on his reduced earnings where those reduced earnings were caused by his own criminal conduct.

On March 9, 2011, proceeding in forma pauperis, Newton filed a "Petition for Contempt and Estoppel for Abatement of Support," alleging that he was entitled to have his child support abated because Reed had left the state with the child in violation of the divorce decree and had withheld his visitation rights since his incarceration in 2005. Attached to the



Cite as 2012 Ark. App. 463

petition were exhibits, including the divorce decree and the September 2007 order of dismissal, and Newton also alleged that the trial court had committed error in dismissing his previous petition for abatement on the basis of unclean hands. Newton filed a motion for leave to amend his complaint for contempt against Reed on April 11, 2011, alleging that she had removed items of personal property from his storage locker that were awarded to him under the divorce decree.

In a letter to the trial court dated May 5, 2011, OCSE stated that Newton had sent a proposed order for judgment on his petition and that OCSE objected to this order because it had not been properly served with the petition. OCSE asserted that Newton had sent the petition by certified mail but had not restricted delivery, and that the return receipt had been signed by an unknown person not associated with the agency. OCSE then filed an answer on May 13, 2011, asserting that Newton's petition should be denied on the basis of *Reid* and the doctrine of res judicata. Newton filed a reply to the answer on May 19, 2011, alleging that OCSE's answer was not filed within twenty days of service of the petition and that he was entitled to a default judgment. In a letter to the court on May 27, 2011, Newton again alleged that neither appellee had timely answered the petition and requested judgment on the pleadings.

A letter from the trial court was sent to the parties on October 3, 2011, stating that the hearing had been scheduled for December 9, 2011. On December 8, 2011, another notice was faxed to the warden, stating that the hearing would be by telephone the next morning.



Cite as 2012 Ark. App. 463

According to the transcript of the telephone hearing, which is contained in Newton's addendum, the trial court questioned Newton about his allegations and his requests for relief. In then denying his request for abatement, the court explained to Newton that visitation and child support were separate matters and that he was not entitled to a cessation of his support payments simply because he had been denied visitation with his son. The court further explained that it did not have jurisdiction to hear Newton's allegation that Reed had taken his personal property out of his storage unit, as this was not a part of the parties' divorce case and would have to be brought in a separate action by Newton for conversion. An order dismissing Newton's petition for abatement and contempt was then filed on December 22, 2011. The trial court stated in this order that Newton was not entitled to an abatement of child support because his incarceration and reduction in income were his fault, citing *Reid v. Reid, supra*, and the court denied Newton's petition for contempt. Newton filed a timely notice of appeal from this order. According to Newton's brief, he is appealing only the dismissal of his petition for abatement and not the denial of his petition for contempt relating to his personal property allegedly taken by Reed.

On appeal, Reed argues that the trial court violated his due-process rights in holding the telephone hearing without adequate notice and that the trial court erred in not adhering to the doctrine of "vertical stare decisis." We are unable to address the merits of Newton's arguments at this time, as his abstract and addendum are clearly deficient under Ark. Sup. Ct. R. 4-2 (2011). First, Newton has failed to properly abstract the transcript of the telephone



Cite as 2012 Ark. App. 463

hearing. His abstract is less than two pages long, while we find that the vast majority of the eleven-page transcript is relevant and essential for this court to understand the case and decide the issues on appeal. Although Newton has included the entire transcript in his addendum, this is in violation of Rule 4-2(a)(5), which requires that the appellant prepare an abstract of the information in the transcript instead of reproducing it verbatim. Second, Newton has also omitted from his addendum several documents contained in the record that are necessary for our review. For example, he failed to include his amended petition, OCSE's answer to his petition, and his response to that answer. An appellant is required under Rule 4-2(a)(8) to include in his addendum all of the pleadings on which the trial court decided the issues. Also, if any pleading is amended, the final version and any earlier version incorporated therein must be included. Ark. R. Sup. Ct. 4-2(a)(8)(A)(i). In addition, missing from the addendum are letters to the trial court from both Newton and OCSE that are potentially relevant to our understanding of the issues in the case. Yet another deficiency in Newton's brief is his failure to include an informational and jurisdictional statement as required by Rule 4-2(a)(2).

Although Newton is appearing pro se in this appeal, a pro se litigant is held to the same standards as a licensed attorney and must comply with our rules of procedure. *Duncan v. Carelink*, 2011 Ark. App. 320. Thus, due to the numerous deficiencies in Newton's abstract and addendum, we order him to file a substituted brief correcting these errors. Prior to doing so, we also urge Newton to carefully review our rules to ensure that no other deficiencies are present other than the ones listed above, as the failure to file a conforming brief may result in



Cite as 2012 Ark. App. 463

affirmance for noncompliance with our rules. Ark. Sup. Ct. R. 4-2(c)(2).

In addition, we also order supplementation of the record. According to the docket sheet, Newton had previously filed another petition for abatement in September 2006 that was dismissed in January 2007. This petition and order are not included in the record despite Newton's request in his notice of appeal that the entire record be designated as the record on appeal. These particular documents may be relevant in this appeal due to OCSE's claim in its response to Newton's petition that the current petition should have been denied on the basis of *res judicata*. Newton has thirty days from the date of this opinion to file the supplemental record with our clerk's office. Under Ark. Sup. Ct. R. 4-2(b)(4), he then has seven calendar days after the supplemental record is filed to file a substituted abstract, addendum, and brief in compliance with our rules.

Remanded for supplementation of record; rebriefing ordered.

PITTMAN and GRUBER, JJ., agree.

Thane T. Newton, pro se appellant.

Andrew J. Ziser, Arkansas Office of Child Support Enforcement, for appellee.