# ARKANSAS COURT OF APPEALS

DIVISION III
No. CV-14-734

**OPINION DELIVERED** APRIL 15, 2015

MICHAEL A. HAYES
APPELLANT

V.

SANDRA L. OTTO
APPELLEE

APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, FOURTEENTH DIVISION
[NO. DV-1998-3853]

HONORABLE VANN SMITH, JUDGE

AFFIRMED

**ROBERT J. GLADWIN, Chief Judge**

Michael A. Hayes appeals the Pulaski County Circuit Court's May 9, 2014 order and the underlying order of August 30, 2010. Because his points on appeal have either been addressed by this court, *Hayes v. Otto* (*Hayes II*), 2009 Ark. App. 654, 344 S.W.3d 689, or are not supported by citation to authority or convincing argument, we affirm. Further, this court's latest order held that some statements in appellant's briefs bordered on contempt. *Hayes v. Otto* (*Hayes III*), 2011 Ark. App. 564. Based on Arkansas Supreme Court and Court of Appeals Rule 1-5 (2011), we struck those statements from his briefs and warned, "If appellant makes similar statements in future filings, we will have no choice but to address this problem more harshly." *Hayes III*, 2011 Ark. App. 564 at 2. As is noted below, appellant's current brief contains similar statements. Therefore, relying on Rule 1-5, we strike the entirety of appellant's point on appeal regarding recusal. *See Exigence, LLC v. Baylark*, 2010

Ark. 306, 367 S.W.3d 550; *Cox v. State*, 365 Ark. 358, 229 S.W.3d 883 (2006); *McLemore v. Elliot*, 272 Ark. 306, 614 S.W.2d 226 (1981).

I. *Procedural History*

The parties had joint custody of their youngest child, and appellee Sandra Otto, having a greater income than appellant, was ordered to pay child support.[1] According to appellant's recitation of related cases, there have been a total of ten appellate cases, including a petition for writ of mandamus, appeals on issues of child support and sanctions, and petitions for review. The appellate opinion that is most pertinent to this latest appeal is *Hayes II*, wherein this court affirmed the circuit court's August 12, 2008 order setting child support based on a deviation from Administrative Order No. 10, taking into consideration appellee's creation of a college fund for the benefit of the children. In that appeal, appellant argued in eight points for reversal of the circuit court's order.

Following our decision, appellant filed a motion to modify child support, arguing that appellee's income had increased. The circuit court's order of August 30, 2010, reflects that appellant's argument made sense that "if he receives less child support because of [appellee's] payment of funds to a college fund for their children, then, in effect, [appellant] is paying a small portion towards the college education of the children." Nevertheless, the circuit court declined to compute the amount appellant could claim as his contribution because it was not material to the court's decision. Further, the circuit court found that appellee had full and complete control over the fund because she had created it. Finally, the circuit court noted

[1]The parties have two children, both having reached the age of majority.

appellee's income of $134,000 per year, and appellant's income of $697.38 bi-weekly, but stated, "However, on August 12, 2008, this court found that [appellant] had a net weekly income of $635. The Arkansas Court of Appeals affirmed the Court's decision in its opinion of October 7, 2009."

The circuit court then found as follows:

15. The [appellee] testified that as of January 1, 2010 she had a net weekly income of $1,954.00. [Appellee] further stated on her Affidavit of Financial Means that she contributes $900.00 per month to a college fund for [daughter].

16. [Appellant's] obligation for child support for one child would be $112.00 per week based on a net weekly income of $635.00. [Appellee's] weekly child support obligation is $ 292.10 based on a net weekly income of $1,954.00. The Court computes the child support for [appellee] by referring to the child support chart and finding that [appellee] should pay $149.00 for the first $1,000.00 per week and then fifteen percent (15%) of $954.00, which is $143.10. The total of this amount is $292.10. The Court deviates from the child support chart because of [appellee's] paying into a college fund for [daughter]. The Court deviates in the amount of $91.00 per week, leaving the [appellee's] obligation to be $201.10 per week. The deviation is the exact amount as was affirmed by the Court of Appeals on October 7, 2009, and child support was calculated in the same manner.

17. The Court finds that these amounts should offset with [appellee] paying the [appellant] the net sum of $89.10 per week in child support for the period of time beginning October 17, 2008 through the end of May, 2010. The Court finds that there were 85 weeks during the above stated time period. The total amount [appellee] owes [appellant] is $7,573.50 in child support at the rate of $89.10 per week for the 85 weeks. However, [appellee] had been ordered to pay $78.00 per week in child support during this time period. Assuming [appellee] paid child support to [appellant] from October 17, 2008 through May 2010, the total of her payments shall be offset against the $7,573.50.

18. [Appellee] shall make arrangement to satisfy the end figure by the end of 2010.

On appeal, we held that the above order lacked finality because it did not set forth a specific dollar amount. *Hayes III*, 2011 Ark. App. 564, at 2–3. Because that appeal resulted

in a dismissal for lack of a final order, the precedential value lies within the final paragraph, which states:

> We note that some of appellant's statements in his briefs border on contempt. His descriptions of the trial court as "blatantly dishonest" and "clearly biased," as well as his statements that the trial court and this court have engaged in "unconscionable behavior" and that this court had "abetted the Trial Court's fraud" by upholding the trial court's "fraudulent order," violate Arkansas Supreme Court and Arkansas Court of Appeals Rule 1-5 (2011). That rules states: "No argument, brief, or motion filed or made in the Court shall contain language showing disrespect for the circuit court." We therefore strike these statements from appellant's briefs. If appellant makes similar statements in future filings, we will have no choice but to address this problem more harshly. Appellant also filed a motion for Rule 11 sanctions. The motion is also dismissed.

*Hayes III*, 2011 Ark. App. 564, at 3. Following this court's opinion, appellant filed a motion seeking an amendment of child support and finality for purposes of appeal on March 21, 2012, wherein he asked that the circuit court amend its order to state the specific dollar amount of appellee's child-support obligation.

On April 29, 2013, appellant filed a motion requesting Judge Smith's recusal, noting this court's opinion in *Hayes III* regarding appellant's near-contemptuous statements, the striking of those statements, and the warning of more harsh treatment for similar statements made in the future. He complained of the circuit court's failure to issue an order based on his March 21, 2012 motion. Appellant stated in paragraph 6 that "Judge Hobson Vann Smith, has been blatantly dishonest, and clearly biased, in his rulings and unethical in his behavior and actions dealing with the parties to this case." In paragraph 7, appellant stated that "this court refuses to hold [appellee's attorney] accountable for his dishonesty." In paragraph 8, appellant stated that "Judge Smith repeatedly ignores or violates the Arkansas

Rules of Civil Procedure, ignores and manufactures material facts, and misconstrues and misuses Administrative Orders, case law and legal doctrine and flagrantly abuses his discretionary powers in producing the outcome he desires."

On April 8, 2014, appellant filed a motion to clarify, asking that the circuit court base his income for child-support purposes on an updated affidavit of financial means or to explicitly state the basis for its refusal to do so. He also asked that the circuit court consider appellee's tax refund as income for purposes of calculating her child-support obligation.

In a brief filed April 17, 2014, appellant states, "This brief is in essence the same argument presented in his appellant's brief for CA 07-00015 filed April 24, 2007." The appeal referenced by appellant resulted in this court's opinion, *Hayes v. Otto* (*Hayes I*), CA 07-15 (Ark. App. Oct. 31, 2007) (unpublished), wherein we could not reach the issue of the trial court's denial of appellant's motion for sanctions because appellant failed to include in his notice of appeal the trial court's order denying his motion. In a second brief in support of his recusal motion filed April 23, 2014, appellant stated that the brief provided examples of the circuit court's "blatant dishonesty and bias." In paragraph 6 of the brief, appellant disagrees with the circuit court's findings of fact and contends that the circuit court was "simply making up a fact to support his desired order" and it was "another example of the court's bias." He asserted that the court fabricated facts and "falsely concocted" the existence of a trust fund. In paragraph 16, he stated,

> Finally as stated in his motion to recuse, defendant Hayes reasserts his belief that because there are no adverse consequences from the Superior Courts for his biased actions, Judge Smith repeatedly ignores or violates the Arkansas Rules of Civil Procedure, ignores and manufactures material facts, and misconstrues and misuses

> Administrative Orders, case law and legal doctrine and flagrantly abuses his discretionary powers in producing the outcome he desires.

In a May 9, 2014 order, the circuit court amended paragraph 17 of its August 30, 2010 order to state that both parties admitted that all sums had been paid and that no child support was owed appellant by appellee. The circuit court declined to clarify its child-support order, stating that all child-support obligations had been satisfied and the children had reached majority. Finally, the circuit court found that appellant's motion to recuse had been resolved by this court's order of September 28, 2011.[2] Appellant filed a notice of appeal on June 5, 2014. This appeal followed.

I. *Deviation from Child-Support Chart*

Appellant first contends that the circuit court erred in deviating from the child-support chart in Administrative Order No. 10 when considering appellee's creation of a college fund for the children. In its August 30, 2010 order, the circuit court held that this court had affirmed the circuit court's deviation. In response to appellant's same argument in *Hayes II*, we affirmed the circuit court's order, upholding the deviation.

The Arkansas Supreme Court has explained as follows:

> The doctrine of law of the case prohibits a court from reconsidering issues of law and fact that have already been decided in a prior appeal. *Jones v. Double "D" Props., Inc.*, 357 Ark. 148, 156, 161 S.W.3d 839, 844 (2004). The doctrine provides that a decision of an appellate court establishes the law of the case for the trial upon remand and for the appellate court itself upon subsequent review. *Id.* The doctrine serves to effectuate efficiency and finality in the judicial process, and its purpose is to maintain consistency and avoid reconsideration of matters once decided during the

[2]We note that the date of this court's order resolving the recusal motion was October 7, 2009. *Hayes II*, 2009 Ark. App. 654, at 6, 344 S.W.3d 689, 693.

> course of a single, continuing lawsuit. *Id*. The law-of-the-case doctrine specifically provides that in a second appeal, the decision of the first appeal is conclusive of every question of law or fact decided in the former appeal and also of those questions that might have been, but were not, presented. *Clemmons v. Office of Child Support Enforcement*, 345 Ark. 330, 346, 47 S.W.3d 227, 237 (2001).

*Clinical Study Centers, Inc. v. Boellner*, 2012 Ark. 266, at 4, 411 S.W.3d 695, 698. We are bound by the law-of-the-case doctrine to affirm the circuit court's deviation.

II. *Use of Appellant's Current Affidavit of Financial Means*

The circuit court imputed income to appellant when setting child support based on a net weekly income of $635 in August 2008. In its August 30, 2010 order, the circuit court again imputed income to appellant by declining to base child support on an income of $697.38 bi-weekly. Appellant filed a motion to amend the order, asking the circuit court to reconfigure his child-support obligation based on his current affidavit. The circuit court declined to amend its ruling by order dated September 30, 2010. By motion filed April 8, 2014, appellant again asked the circuit court to set child support based on his current affidavit of financial means. In its May 9, 2014 order, the circuit court found that no further findings were warranted, stating that it had explained its reasoning in the August 30, 2010 order.

Appellant argues that because income had been imputed to him in August 2008, he has filed a motion to modify child support and that it was "patently wrong" for the circuit court to use an amount calculated for an earlier child-support order. He contends that it was "improper" for the circuit court to impute income to him and that the circuit court is "biased against him" by continuing to do so.

Appellant's four-page argument lacks any citation to authority. Arkansas appellate courts will not consider arguments that are unsupported by legal authority. *Owens v. Office of Child Support Enforcem't*, 2011 Ark. App. 351. Accordingly, we affirm.

III. *Appellee's Income-Tax Refund*

Appellant argues that the circuit court erred in failing to include appellee's income-tax refunds as income for the purposes of calculating her child-support obligation. We addressed this issue in *Hayes III*, 2009 Ark. App. 654, at 21–22, 344 S.W.3d 689, 700–01, and *Hayes I*. We affirm the circuit court's ruling based on the law of the case. *See Boellner*, *supra*.

IV. *Control of the College Fund*

Appellant contends that the circuit court erred in finding that appellee has full and complete control over the college fund she created for the children. Appellant's five-page argument lacks any citation to authority. Because we will not consider arguments unsupported by legal authority, we affirm on this point. *See Owens*, *supra*.

V. *Recusal*

Noting appellant's disregard of this court's warning to avoid statements bordering on contempt, as well as the circuit court's patience in light of appellant's continued disregard, this court will not entertain appellant's point on appeal regarding recusal.

Affirmed.

ABRAMSON and HARRISON, JJ., agree.

*Michael A. Hayes,* pro se appellant.

No response.