

## ARKANSAS COURT OF APPEALS

DIVISION II  
No. CA10-660

OFFICE OF CHILD SUPPORT  
ENFORCEMENT

APPELLANT

V.

FRANKLIN PERRY

APPELLEE

**Opinion Delivered** December 15, 2010

APPEAL FROM THE LINCOLN  
COUNTY CIRCUIT COURT  
[NO. E-94-96-4]

HONORABLE LEON N. JAMISON,  
JUDGE

DISMISSED

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**WAYMOND M. BROWN, Judge**

Appellant Office of Child Support Enforcement (OCSE) filed a motion for judgment to collect over \$14,000<sup>1</sup> in child-support arrears from appellee Franklin Perry on May 13, 2009. Perry filed a response on May 28, 2009, and he filed a motion for paternity testing on June 11, 2009. OCSE filed its response on July 9, 2009, seeking to have Perry's request denied. A hearing on Perry's motion took place on February 10, 2010. At the conclusion of the hearing, the court made a finding that Perry was entitled to testing. The order was entered on April 19, 2010. The order reserved OCSE's motion for judgment of arrears pending the

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<sup>1</sup>A default judgment of paternity was entered on January 26, 1995, directing Perry to pay weekly child support in the amount of \$32.50. OCSE alleged that Perry never made any support payments.

outcome of the test. OCSE filed a notice of appeal on April 22, 2010.<sup>2</sup> OCSE argues on appeal that the trial court erred by ordering genetic testing pursuant to Arkansas Code Annotated section 9-10-115(e)(1)(A) “because the plain language of the statute and the legislative intent of the statute reveal that a test can only be requested during the period of time that the defendant is required to pay current child support, which expires upon emancipation.”<sup>3</sup>

OCSE’s appeal must be dismissed for lack of a final, appealable order. Although OCSE attempted to dispose of its motion for judgment against Perry in its amended notice of appeal, there was no order entered by the trial court disposing of the motion. The paternity order entered in April 2010 specifically stated that the court was reserving OCSE’s motion for judgment pending the outcome of Perry’s paternity test.

Arkansas Rule of Appellate Procedure—Civ. 2(a)<sup>4</sup> permits appeals only from final orders of a trial court. An order must be final for the appellate court to have jurisdiction; thus we may consider this issue even though the parties have not raised it.<sup>5</sup> Pursuant to Rule 54(b)<sup>6</sup> of the Arkansas Rules of Civil Procedure, an order in which fewer than all claims are

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<sup>2</sup>It filed an amended notice of appeal in June 2010 stating that it was abandoning its motion for judgment of arrears.

<sup>3</sup>The child turned eighteen years old on November 30, 2005.

<sup>4</sup>(2010).

<sup>5</sup>*Deutsche Bank Nat’l Trust Bank v. Austin*, 2010 Ark. App. 753, 379 S.W.3d 669.

<sup>6</sup>(2010).

Cite as 2010 Ark. App. 861

adjudicated is not an appealable order unless the trial court expressly directs the entry of a final judgment to claims disposed of and expressly determines that there is no just reason for delay.<sup>7</sup>

In the instant case, the trial court reserved the issue of arrears until after Perry had undergone paternity testing. Additionally, there was no Rule 54(b) certificate included that would allow for an immediate appeal despite the unresolved claim. Therefore, we must dismiss for lack of a final order.<sup>8</sup>

Dismissed without prejudice.

ROBBINS and GRUBER, JJ., agree.

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<sup>7</sup>*Id.*

<sup>8</sup>See *Office of Child Support Enforcement v. Willis*, 341 Ark. 378, 17 S.W.3d 85 (2000).