

Cite as 2024 Ark. App. 60
ARKANSAS COURT OF APPEALS
DIVISION II
No. CV-22-108

JOHN WESLEY TIPPIT

APPELLANT

V.

CHARLOTTE DAVIS F/K/A
CHARLOTTE TIPPIT

APPELLEE

Opinion Delivered January 31, 2024

APPEAL FROM THE CLAY
COUNTY CIRCUIT COURT,
WESTERN DISTRICT
[NO. 11CDR-21-55]

HONORABLE DAN RITCHEY, JUDGE

AFFIRMED

STEPHANIE POTTER BARRETT, Judge

John Wesley Tippit (“Tippit”), appellant, appeals the consolidated decision of the Circuit Court of Clay County authorizing the garnishment of funds that were to be distributed to him in probate from the estate of Lois Irene Waymon (“Waymon Estate”). The circuit court ordered Tippit’s funds from the Waymon Estate to be paid to Charlotte Davis f/k/a Charlotte Tippit (“Davis”), appellee, pursuant to two foreign contempt orders Davis registered before the circuit court. Tippit appeared pro se, objected to the garnishment, and claimed he had paid the arrearages due to Davis. The circuit court found that Davis had properly filed and registered her two foreign judgments, found that proper notice had been provided to Tippit, and authorized the garnishment of both judgments

against Tippit's interest in the probate estate. It is from this order that Tippit instituted the present appeal. We affirm.

Davis filed two separate applications for registration of a foreign judgment in the Clay County Circuit Court in case numbers 11CDR-21-55 and 11CDR-21-56. In case number 11CDR-21-55, which is the subject of this appeal, Davis filed an application for registration of an October 1, 2014, foreign judgment against Tippit for support maintenance arrearages. In case number 11CDR-21-56, Davis filed an application for registration of a December 1, 2015, foreign judgment against Tippit for support maintenance arrearages. Although filed in separate actions and without a written order, the circuit court consolidated the cases for consideration and conducted one hearing. The circuit court entered an order authorizing the garnishment of funds as requested in both 11CDR-21-55 and 11CDR-21-56 that were to be allocated to Tippit from the distribution of the Waymon Estate. The circuit court found that Davis had properly filed and registered her two foreign judgments and Tippit received proper notice of the same. Tippit filed separate appeals in CV-22-108 and CV-22-109 on May 18, 2022. Today, we also hand down an opinion with respect to the companion case, CV-22-109. *See Tippit v. Davis*, 2024 Ark. App. 61.

In case number 11CDR-21-55, Davis filed an application for registration of an October 1, 2014, foreign judgment from Madison County, Illinois, case number 12-D-1099 ("2014 order"), in the amount of \$4,000 against Tippett. The mandated affidavit of name and address of defendant and certificate of service was attached to the application. The 2014 order was a contempt order for support maintenance arrearages Tippit owed to Davis. A

certified copy of the 2014 contempt order was attached as exhibit A to Davis's application. The 2014 order found Tippit was in arrears in making maintenance payments to Davis and found him in indirect contempt of court, and judgment was entered against Tippit in the amount of \$4,000. The 2014 order further stated that failure to make payments under the order would be contempt, and the balance of the judgment would bear 8 percent interest and be due immediately in total. Davis asserted in her application that there had been no payments reducing the amount of the judgment. Davis sought execution, garnishment, and enforcement of the foreign judgment pursuant to Ark. Code Ann. § 16-66-601 (Repl. 2005).

On September 28, 2021, Davis filed a writ of garnishment against the administrator of the Waymon Estate, Robert E. "Eddie" Tippit, and an affidavit of notice to Tippit seeking \$6,240.88 (the total is based on the \$4,000 judgment plus accrued interest). The Waymon Estate filed an answer to the writ of garnishment stating that the estate was indebted to Tippit in an undetermined amount and sought leave to amend its answer upon the determination of the distribution of the Waymon Estate.

On October 25, Tippit filed a pro se objection to Davis's writ of garnishment. In his response, Tippit stated that he was just notified of Davis's garnishment on his interest in the Waymon Estate and stated that his brother was the executor of the Waymon Estate. Tippit complained that he was having difficulties retaining an attorney to represent him in the matter. He claimed that in September 2017, Davis filed a motion in their divorce proceedings to remove Tippit's name from a car she took from the marriage and seeking two years of past maintenance. Tippit alleged that at the hearing in November 2017, he

presented receipts to the Illinois court proving that he had paid the arrearages to Davis. Tippit claimed that the Illinois court concluded he did not owe maintenance to Davis. Tippit further alleged that in October 2018, Davis asked him to sign an annulment and in return promised not to ask anything else of him.

Tippit attached certified copies of the following documents to his objection: Davis's September 2017 motion for contempt; the Madison County Circuit Court's November 2017 order ("2017 order"); a January 2017 notice of dismissal for failure to prosecute Davis's contempt motion from the St. Louis County (Missouri) Circuit Court; and an October 2021 voluntary dismissal filed by Davis with the St. Louis County Circuit Court. Tippit also attached documentation pertaining to the 2019 annulment from the Diocesan Tribunal in Springfield, Illinois.

The 2017 order denied Davis's motion to enforce the divorce decree to remove Tippit's name from her car title on the basis that the decree did not address the vehicle in question; however, the order did not discuss maintenance. Tippit did not attach any documentation to his objection showing either that he had made or that Davis had received payments on the 2014 order.

I. Consolidated Hearing

On November 4, 2021, the circuit court conducted a consolidated hearing on cases 11CDR-21-55 and 11CDR-21-56. In opening statements, the Waymon Estate appeared and stated that it had \$10,941.23, representing Tippit's share of the estate that it was willing to hold until the court made a final decision on Davis's garnishment claims. The circuit court

confirmed that Davis was seeking to garnish Tippit's inheritance for the 2014 order in the amount of \$4,000 and the 2015 order in the amount of \$7,085.

Davis testified that in 2014, she filed a motion in her divorce action against Tippit to order him to pay the maintenance awarded in the divorce. She also testified as to the authenticity of the 2014 order and the 2015 order. Davis stated that there had not been any court action, including any discharge, dealing with the 2014 and 2015 orders. Davis later testified that she had not received any payments related to the 2014 order or the 2015 order. Davis admitted that in the 2017 proceeding, she made a claim for unpaid support but did not receive an additional judgment for unpaid support at that time. Davis denied that Tippit showed receipts at the 2017 hearing to prove he had made payments for maintenance.

Tippit testified that he had a few handwritten receipts allegedly signed by Davis illustrating that he had made payments to her, and he moved to admit the receipts into evidence. Davis did not object to the admission of the receipts. Tippit testified that he did not have all the receipts with him. Tippit stated that the receipts illustrated that he had paid above and beyond the \$7,085 in question due to Davis.

Tippit also testified that he did not have copies of the receipts in question before the 2015 contempt hearing because he had just undergone surgery and was incapacitated prior to and during the hearing. Tippit attempted to admit evidence of his disability and medical records to establish his inability to represent himself in the 2015 hearing. Davis objected, arguing that Tippit was attempting to collaterally attack the 2015 order. The circuit court sustained the objection and instructed Tippit that he could not enter the documents relating

to his Social Security disability claims. The circuit court instructed Tippit that he could tender the documents to the court for the purpose of appeal but that the court would not give consideration to the unauthenticated documents. The court questioned Tippit about a receipt for a payment of \$9,810.47 that was paid to Davis as one-half of a workers'-compensation settlement. Tippit attempted to offer testimony concerning the Madison County Circuit Court's purported oral declaration concerning the application of such funds to his maintenance. The circuit court sustained Davis's objection as hearsay.

Tippit stated that he should be able to offset the value of the car that Davis took but was not awarded in the divorce. Tippit asserted that he was under the impression after the 2017 hearing that he did not owe Davis any more money. Tippit further testified that Davis contacted him in October 2018 and promised never to bother him again if he would sign annulment papers. The circuit court sustained Davis's objection to the admission of the annulment papers.

On cross-examination, Tippit admitted that the divorce decree required him to give half of any workers'-compensation award to Davis and did not allow such an award to serve as an offset of the maintenance award. In closing, Tippit asked the court to take notice of the handwritten receipts he presented and credit those amounts against the maintenance awards attached to Davis's garnishment applications.

The circuit court ruled that it was required to give full faith and credit to the two contempt judgments that had been properly registered as foreign judgments. The court stated that it did not have sufficient evidence to establish that those judgments had been

satisfied. The circuit court stated that it would enforce those judgments through valid garnishment claims against Tippit's distribution of the Waymon Estate. The court informed Tippit that the issues relating to the value of the car were not properly before the court, and Tippit's only recourse would have been to raise those issues before the Madison County Circuit Court. The court explained that it had no way of knowing whether the handwritten receipts presented by Tippit were related to the contempt judgments or payments on something else.

II. *Order*

On November 19, 2021, the circuit court entered a single order addressing both 11CDR-21-55 and 11CDR-21-56, which was filed in both cases. The circuit court found that Davis had properly filed and registered two foreign judgments and had properly served the same upon Tippit. The circuit court found that Davis had filed writs of garnishment upon the Waymon Estate and, following a hearing, determined that the funds that were to be distributed to Tippit were properly subject to garnishment. The circuit court ordered the Waymon Estate to distribute any funds to Davis that Tippit would have received in the distribution of the Waymon Estate. Tippit timely filed his pro se notice of appeal.

Tippit makes several arguments on appeal for reversal of the order of garnishment. The enumerated issues are reformed for clarity. First, Tippit argues that the circuit court erred in finding service of process was properly had on him. However, Tippit did not assert in either of his objections to Davis's writs of garnishment or at the hearing before the circuit court that he was not properly served. "Our case law has made clear that this court will not

consider arguments made for the first time on appeal. Appellant must raise an issue with specificity and make an argument to the trial court for it to be preserved on appeal.” *St. Joseph’s Mercy Health Ctr. v. Edwards*, 2011 Ark. App. 560, at 4, 385 S.W.3d 849, 852 (citations omitted). “It is well settled that pursuant to Ark. R. Civ. P. 12(h)(1), a party waives the defense of insufficiency of process under Ark. R. Civ. P. 12(b)(4) if he or she fails to raise the argument in either the answer or a motion filed simultaneously with or before the answer.” *Dunklin v. First Magnus Fin. Corp.*, 79 Ark. App. 246, 249, 86 S.W.3d 22, 24 (2002) (citation omitted). For this reason, we summarily dispose of Tippit’s service arguments.

Tippit next contends that the circuit court abused its discretion in finding that the funds that were to be distributed to Tippit from the Waymon Estate were properly subject to Davis’s writs of garnishment. “The standard of review of a circuit court’s findings of fact after a bench trial is whether those findings are clearly erroneous.” *JMD Constr. Servs., LLC v. Gen. Constr. Sols., Inc.*, 2019 Ark. App. 268, at 4, 577 S.W.3d 50, 53. “A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been made.” *Id.* “In making this determination, we treat the facts alleged in the complaint as true and view them in the light most favorable to the plaintiff. Also, all reasonable inferences must be resolved in favor of the complaint, and the pleadings are to be liberally construed.” *J.B. Hunt, LLC v. Thornton*, 2014 Ark. 62, at 5–6, 432 S.W.3d 8, 11.

Tippit claims that the circuit court’s order determining his inheritance was subject to garnishment was clearly erroneous for lack of proper notice. As noted above, Tippit did not

raise the issue of insufficiency of service of process or lack of notice in either of his filed objections or at the hearing. However, the circuit court noted sua sponte that Tippit clearly had notice of the proceedings because he filed objections to the garnishment proceedings and appeared at the hearing. The Waymon Estate appeared and confirmed that it was holding \$10,941.23 representing Tippit's share of the estate. Tippit did not attach any documentation to his objections or present any authenticated documents at the hearing to illustrate that he had made, or that Davis had received, payments on either the 2014 order or the 2015 order. In fact, Davis testified that she had not received any payments from Tippit in relation to either order. Tippit failed to present any evidence that he was entitled to any offsets to amounts due under the 2014 order or the 2015 order. Treating the facts alleged in the writs of garnishment as true and viewing them in the light most favorable to Davis, we find that the circuit court's order determining that Tippit's distribution from the Waymon Estate was properly subject to Davis's writs of garnishment was not clearly erroneous.

Accordingly, we hold that the circuit court properly concluded that Tippit's distribution from the Waymon Estate was subject to Davis's writs of garnishment since Tippit failed to produce evidence sufficient to establish that any payments had been made to Davis on either the 2014 order or the 2015 order. Additionally, Tippit failed to raise the issue of insufficiency of service of process or lack of notice before the circuit court. As such, we affirm.

Affirmed.

KLAPPENBACH and MURPHY, JJ., agree.

John Tippitt, pro se appellant.

Charlotte Davis, pro se appellee.