Cite as 2012 Ark. 54

SUPREME COURT OF ARKANSAS

No. CV-11-946

ARKANSAS DEPARTMENT OF HUMAN SERVICES AND MINOR CHILDREN

APPELLANT

V.

TAKEMMA SHELBY and ROBERT THOMAS

APPELLEES

Opinion Delivered February 9, 2012

APPEAL FROM THE JEFFERSON COUNTY CIRCUIT COURT
[NO. JV10-1130-6]

HONORABLE EARNEST EDWARD BROWN, JUDGE

ORIGINAL ACTION SEEKING WRIT OF CERTIORARI; WRIT DENIED.

JIM HANNAH, Chief Justice

This is an original action by the Arkansas Department of Human Services (DHS) seeking a writ of certiorari. DHS asserts that the Jefferson County Circuit Court exceeded its jurisdiction and violated the separation-of-powers doctrine in issuing an order DHS alleges invades the discretionary functions of the executive branch of government. We deny the writ.[1] Our jurisdiction is pursuant to Arkansas Supreme Court Rule 1-2(a)(8).

A writ of certiorari is appropriate when, on the face of the record, it is apparent that no other remedy is available to correct a plain, manifest, and gross abuse of discretion by the trial judge. *See Ark. Dep't of Human Servs. v. Circuit Ct. of Sebastian Cnty.*, 363 Ark. 389, 214

[1]This case was originally appealed to the Arkansas Court of Appeals. On November 15, 2011, this court assumed jurisdiction on the basis that the case involves an extraordinary writ.

S.W.3d 856 (2005). A writ of certiorari is extraordinary relief, and we will grant it only when there is a lack of jurisdiction, an act in excess of jurisdiction on the face of the record, or the proceedings are erroneous on the face of the record. *Ark. Dep't of Human Servs. v. Collier*, 351 Ark. 506, 95 S.W.3d 772 (2003).

This case arises from a dependency-neglect proceeding. A permanency-planning hearing was set for July 13, 2011. However, at the hearing, the circuit court discovered that DHS had failed to draft and put into place a case plan. The DHS caseworker informed the circuit court at the hearing that due to her workload, she did not have time to draft a case plan in this case. Because the parties had not been acting under a case plan, the court refused to move forward with permanency planning and stated as follows:

> So if we're looking at TPR or whatever, I'm not even going to consider a change today, so this is not going to be a permanency planning. It's just going to be a regular review. There's been no case plan. That's not fair to anybody for me to do a permanency planning under those circumstances. There's been no case plan.
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> . . . .
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> I do note that. And, Ms. Sample, frankly, had things been a little bit different than what I anticipated, I would have - - I mean I had in my mind permanent - - this would be a permanent - - PPH hearing, but some things [were] not handled and I will state on the record - - well, Mr. Cook, I'll address it to your other client, Ms. Walker. The Court's position is that Ms. Robertson is a very good caseworker. She does a good job. She's handled some very difficult cases and I'd like to see her remain employed there. I think she's very experienced. Forty-one cases are too much, so I'm going to do this. Mr. Lewis has arrived. Good afternoon, sir. I'm glad you're here. Y'all either fix it or the Court will call somebody to fix it. This lady's got too many cases. She's got too many tough cases to do that. Now, somebody's going to have to split out some of these cases and do it and I don't get into that micromanaging there, but based on what I was told by Cecile Bluch in Little Rock what the average load is supposed to be in Pine Bluff. Forty-one cases, especially the type of cases she has, is too many and I want that rectified within five business days of today's court order. She's got too many cases, and I don't want nobody else to get 41

> either as a result of it, but there's some deficiency in the system if that particular thing happens there.

After the hearing, the circuit court entered an order, which provides in pertinent part that "the the case worker testified that she has 41 cases on her caseload and fifty juveniles in foster care. That within 5 days, DHS shall rectify this issue."

We first address DHS's allegation that the circuit court exceeded its jurisdiction. DHS asserts that the exclusive jurisdiction of the courts is conferred by the Juvenile Code. DHS is mistaken. The Juvenile Code is designed to assure that all juveniles brought to the attention of the courts receives the care and guidance that best serves the juvenile before the court. *See* Ark. Code Ann. § 9-27-302(1) (Repl. 2009). Exclusive, original jurisdiction for specified proceedings occurring under the Juvenile Code is conferred on the circuit court. *See* Ark. Code Ann. § 9-27-306 (Supp. 2011). However, that is not the extent of circuit court jurisdiction over minors. The circuit courts are the trial courts of original jurisdiction of all justiciable matters not otherwise assigned pursuant to the Arkansas Constitution. *See* Ark. Const. amend. 80, § 6. In 1984, before amendment 80 was adopted, the court of appeals held that "[i]t has long been settled that minors are wards of the chancery court and it is the duty of those courts to make all orders that will properly safeguard their rights." *Jones v. Jones*, 13 Ark. App. 102, 105, 680 S.W.2d 118, 120 (1984) (citing *Richards v. Taylor*, 202 Ark. 183, 150 S.W.2d 32 (1941); *Kirk v. Jones*, 178 Ark. 583, 12 S.W.2d 879 (1928); *State v. Grisby*, 38 Ark. 406 (1882)). This remains true under amendment 80, except this jurisdiction now lies in the circuit court. Jurisdiction by equity over minors predates the present Arkansas Constitution. "These are distinct grounds of equitable jurisdiction which

have existed since the establishment of courts of chancery, and have been recognized in the jurisprudence of our English speaking people for centuries." *Watson v. Henderson*, 98 Ark. 63, 71, 135 S.W. 461, 464 (1911).

Further, the circuit court has the inherent authority to protect the integrity of the proceedings and to safeguard the rights of the litigants before it. *See City of Fayetteville v. Edmark*, 304 Ark. 179, 191, 801 S.W.2d 275, 281 (1990). At issue is a failure of DHS to fulfill its obligations under the Juvenile Code. The circuit court acted well within its jurisdiction to protect minors and assure that the necessary services are being delivered; additionally, the circuit court was acting within its authority to control and protect the integrity of the proceedings and the rights of the litigants.

However, DHS argues that the circuit court violated the separation-of-powers doctrine because it ordered DHS to reduce the caseload of its employees. Quoting an earlier case, this court in *Arkansas Department of Human Services v. Howard*, 367 Ark. 55, 66, 238 S.W.3d 1, 8 (2006) set out the separation-of-powers doctrine:

> In *Federal Express Corp. v. Skelton*, 265 Ark. 187, 197–98, 578 S.W.2d 1, 7 (1979), we explained the separation-of-powers doctrine:
>
> > Our government is composed of three separate independent branches: legislative, executive and judicial. Each branch has certain specified powers delegated to it. The legislative branch of the State government has the power and responsibility to proclaim the law through statutory enactments. The judicial branch has the power and responsibility to interpret the legislative enactments. The executive branch has the power and responsibility to enforce the laws as enacted and interpreted by the other two branches. The "Separation of Powers Doctrine" is a basic principle upon which our government is founded, and should not be violated or abridged.

With a few exceptions that are not relevant to this case, the circuit court is generally without

jurisdiction to judicially review the discretionary functions of the executive branch of government. *Villines v. Lee*, 321 Ark. 405, 407–08, 902 S.W.2d 233, 235 (1995). The circuit court lacked authority to order DHS as to how to correct the problem; however, the circuit court was not ordering DHS how it was to correct the problem. The circuit court specifically stated that it had no intent to micromanage and that DHS had five days in which to fix the problems that stopped it from fulfilling its obligations and duties. The circuit court was within its jurisdiction to act to protect the integrity of the proceedings and to safeguard the rights of the litigants before it when it ordered DHS to correct problems that were preventing work and services.

DHS focuses on whether the circuit court has invaded its province, when a simple reading of the discussion in court and the order indicates that the circuit court is not interested in running DHS; rather, it is interested only in getting from DHS what it is obligated to provide. Because we conclude that the circuit court was not attempting to control discretionary staffing issues, we need not address DHS's final issue on whether such an attempt would have benefited the parties in this case. We conclude that the circuit court had jurisdiction to control the proceedings before it, and we deny the petition for writ of certiorari.

CORBIN, BROWN, and DANIELSON, JJ., dissent.

PAUL E. DANIELSON, Justice, dissenting. I dissent from the majority's decision to deny the petition for writ of certiorari in the instant case. I understand why the disposition of the majority is sympathetic to the circuit court here; however, I disagree that this is not a case in which there was a violation of the separation-of-powers doctrine.

DHS certainly failed to fulfill its obligations, and the circuit court had every reason to be less than pleased given the circumstances. That being said, the order in the instant case goes too far and allowing it to stand sets horrible precedent. While it may seem like a minor issue given the facts of this case, and while the majority certainly presents it as such, upholding this order sets precedent for a circuit court to direct any state agency to comply with its desire for how it should operate.

I believe it disingenuous for the majority to claim that the "circuit court was not ordering DHS how it was to correct the problem." A simple reading of the discussion in court and the order indicates that the circuit court clearly believed that the reason the hearing could not be handled as a permanency-planning hearing was because "some things [were] not handled" as a result of the caseworker being assigned to too many cases. The circuit court termed that a deficiency in the system and ordered DHS to rectify the fact that the caseworker had "41 cases on her caseload and fifty juveniles in foster care" within five days. There is no other way to interpret that order but that DHS was being instructed to reassign some of that particular caseworker's cases.

While the majority makes something of the fact that the circuit court expressed that it had no intention to micromanage DHS, that statement, to me, makes it more evident that the circuit court wrongly believed it had some sort of management authority. It did not. The circuit court could have ordered DHS to have the instant case ready for a permanency-planning hearing, could have held DHS in contempt of court for not complying with a court order, etc.; however, a circuit court must be careful not to exceed its jurisdiction when issuing these orders. *See, e.g.*, *Arkansas Dep't of Human Servs. v. Denmon*, 2009 Ark. 485, 346 S.W.3d

283.

The bottom line is that the separation-of-powers doctrine must be applied equally. We are quick to recognize the doctrine when we believe that another branch of government "has invad[ed] the province of the judiciary's authority." *Broussard v. St. Edward Mercy Health Sys., Inc.*, 2012 Ark. 14, at 7, 886 S.W.3d 385, 390. *See also Johnson v. Rockwell Automation, Inc.*, 2009 Ark. 241, 308 S.W.3d 135; *Summerville v. Thrower*, 369 Ark. 231, 253 S.W.3d 415 (2007); *Weidrick v. Arnold*, 310 Ark. 138, 835 S.W.2d 843 (1992). We must also recognize when the judiciary has invaded the province of another.

For these reasons, I respectfully dissent.

CORBIN and BROWN, JJ., join.