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SUPREME COURT OF ARKANSAS
No. CV-16-898

DEXTER J. HARMON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered: February 7, 2019

PRO SE APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT, SECOND
DIVISION

[NO. 60CV-16-1301]

HONORABLE CHRISTOPHER
CHARLES PIAZZA, JUDGE

AFFIRMED IN PART; REVERSED IN
PART.

SHAWNA A. WOMACK, Associate Justice

This matter comes to this court after remand. Appellant Dexter J. Harmon filed a pro se appeal from an order entered by the circuit court that granted the State’s petition for reimbursement for costs of care out of funds received by Harmon in connection with a settlement of a class-action lawsuit filed pursuant to 42 U.S.C. § 1983 against the City of Helena-West Helena and Phillips County. The circuit court granted the State’s petition pursuant to the State Prison Inmate Care and Custody Reimbursement Act (“reimbursement act”) codified at Arkansas Code Annotated sections 12-29-501 to -507 (Repl. 2016), and Harmon appealed. *Harmon v. State*, 2017 Ark. 224, 521 S.W.3d 128.

We remanded and directed the circuit court to enter findings that were statutorily mandated before disbursing funds to the State pursuant to the reimbursement act. *Id.*

Specifically, the circuit court was directed to enter findings on the following matters: whether Harmon's elderly father had an enforceable right to support and maintenance under the statute; whether restitution is owed by Harmon in connection with his criminal conviction; and whether costs and attorney's fees related to Harmon's § 1983 action against the City of Helena-West Helena and Phillips County are owed. *Id.*

In compliance with the order of remand, the circuit court conducted two hearings before issuing its findings. During the course of those hearings, Harmon reasserted claims that he had failed to preserve in the previous appeal, and he asserted a new claim based on his own financial needs. The circuit court entered the following findings: that Harmon did not owe any restitution in connection with his criminal conviction; that Harmon did not owe any costs or attorney's fees related to the § 1983 lawsuit; that Harmon's father had an enforceable right to support in the sum of \$500 under Arkansas Code Annotated section 12-29-504(c)(2)(A); that Harmon was entitled to certain funds for his own support in the amount of \$500 under section 12-29-504(c)(2)(A); and that Harmon was entitled to have certain liens and obligations owed to the Arkansas Department of Correction (ADC) paid before the State was reimbursed. With respect to Harmon's remaining arguments, the circuit court found that they were barred from further review.

On appeal, Harmon does not dispute the circuit court's findings regarding restitution and attorney's fees but argues that the State confiscated his settlement funds without a pre-deprivation hearing in violation of due process; that confiscation of his settlement funds constituted conversion and unjust enrichment; that the State's

entitlement to reimbursement is preempted by federal law; and that his father was entitled to a sum greater than \$500 in satisfaction of his moral obligation to financially support him.

For the reasons set forth below, we affirm the circuit court's findings that neither restitution nor attorney's fees were owed by Harmon and that Harmon's previous claims are not subject to further review. The circuit court's findings with respect to the amounts of money owed to Harmon as well as Harmon's entitlement to an offset for liens and obligations were inconsistent with this court's remand order and are reversed. Finally, the circuit court's finding that Harmon's father had a legally enforceable right to support was not contested by the State on appeal and is, therefore, affirmed.

Due Process, Unjust Enrichment, and Preemption

As stated, Harmon reasserted below and reiterates on appeal the same arguments raised in his first appeal in which we found that those issues were not preserved because he had failed to obtain rulings necessary for appellate review. *Harmon*, 2017 Ark. 224, 521 S.W.3d 128. Under the law-of-the-case doctrine, the decision of an appellate court establishes the law of the case for the trial court upon remand and for the appellate court itself upon subsequent review. *Green v. George's Farms, Inc.*, 2011 Ark. 70, 378 S.W.3d 715. The doctrine is not inflexible and does not absolutely preclude correction of error, but it prevents an issue raised in a prior appeal from being raised in a subsequent appeal unless the evidence materially varies between the two appeals. *Camargo v. State*, 337 Ark. 105, 987 S.W.2d 680 (1999). The doctrine also prevents consideration of an argument that could

have been raised at the first appeal and is not made until a subsequent appeal. *Green*, 2011 Ark. 70, 378 S.W.3d 715.

This court held in the first appeal that Harmon had failed to preserve arguments that the State had violated his right to due process, that the State had converted his funds and would be unjustly enriched, and that Arkansas's reimbursement act was preempted by federal law. *Harmon*, 2017 Ark. 224, 521 S.W.3d 128. There was no evidence introduced at the two subsequent hearings that materially varied from the evidence presented during the original proceedings and the matters are therefore concluded. The circuit court did not err when it concluded that these arguments were barred from further judicial review.

Harmon's Entitlement to Support and Maintenance

In our previous opinion, we remanded this matter to the circuit court to make findings of fact with respect to three specific issues. *Id.* Where a remand limits the issues for determination, the court on remand is precluded from considering other issues, or new matters, affecting the cause. *Dolphin v. Wilson*, 335 Ark. 113, 119, 983 S.W.2d 113, 116 (1998). Thus, when a case is remanded for a specific act, the entire case is not reopened, but rather the lower tribunal is only authorized to carry out the appellate court's mandate, and the trial court is generally powerless to undertake any proceedings beyond those specified. *Id.* at 119, 983 S.W.2d at 115-16. New proof or new defenses cannot be raised after remand when they are inconsistent with this court's first opinion and mandate. *Dolphin*, 335 Ark. at 119, 983 S.W.2d at 115-16. If an appellate court remands with specific instructions, those instructions must be followed exactly to ensure that the lower

court's decision is in accord with that of the appellate court. *Id.*; see also *City of Dover v. Barton*, 342 Ark. 521, 29 S.W.3d 698 (2000).

Here, the scope of the remand was limited to consideration of three specific issues. The circuit court was not authorized to address whether Harmon was entitled to an award for his own living expenses or whether Harmon was entitled to an offset based on liens and obligations owed by him to the ADC or to allow the introduction of new proof in support of those claims. *Dolphin*, 335 Ark. 113, 983 S.W.2d 113.¹

Legally Enforceable Rights of Harmon's Father

Harmon argues that the circuit court erred when it denied his request to award his father \$3,500 in support. The question of the correct application and interpretation of an Arkansas statute is a question of law, which this court decides de novo. *Broussard v. St. Edward Mercy Health Sys., Inc.*, 2012 Ark. 14, 386 S.W.3d 385. In bench trials, the standard of review on appeal is not whether there is substantial evidence to support the finding of the circuit court, but whether the judge's findings were clearly erroneous or clearly against the preponderance of the evidence. *Omni Holding & Dev. Corp. v. C.A.G. Invs., Inc.*, 370 Ark. 220, 258 S.W.3d 374 (2007). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a firm

¹ Additionally, Harmon's claim that he was entitled to funds for his own support and maintenance could have been raised during the first hearing and are now barred on remand by the law-of-the-case doctrine. The remand did not provide Harmon with an opportunity to raise new claims that he could have raised in the original proceedings.

conviction that an error has been committed. *Id.* Facts in dispute and determinations of credibility are within the province of the fact-finder. *Id.*

At the hearing on remand, Harmon argued that past bills he submitted at the June 2016 hearing demonstrated that his father was entitled to the requested support. However, the State presented evidence that since receiving his settlement funds Harmon only requested that one hundred dollars be given to his father; further, the State argued that the bills Harmon previously submitted were several months old at the time and there was no indication if the amounts were still owed or current. The circuit court found that Arkansas Code Annotated section 12-29-504(c)(2)(A) provided to Harmon's father a legally enforceable right to support in the sum of \$500. The State denies that Harmon's father had such a right, but concluded that it could not plausibly assert that the court had abused its discretion in awarding the \$500. Therefore, the State did not request that this court reverse the trial court's award of \$500. Harmon has likewise presented no evidence that the circuit court's finding of fact that Harmon's father is owed \$500 is clearly erroneous. Accordingly, the award of \$500 to Harmon's father pursuant to section 12-29-504(c)(2)(A) is affirmed.

Affirmed in part; reversed in part.

Special Justice JASON OWENS joins.

HART, J., dissents.

GOODSON, J., not participating.

JOSEPHINE LINKER HART, Justice, dissenting. I dissent. This court's decision to declare unpreserved the issues Harmon raised in his previous appeal was improvident. An appellate court cannot remand for further findings on like-kind issues under the auspices that the circuit court's order is insufficient, and then simultaneously declare the appellant's points on appeal on those like-kind issues unpreserved. The points Harmon raised in his previous appeal were properly preserved, and this court's decision to the contrary disregards controlling authority from this court. Furthermore, at least one of those points is, in my view, meritorious. No form of American government should allow for one government entity to violate an incarcerated individual's constitutional rights to the point of causing damages cognizable in a 42 U.S.C. § 1983 action, while also allowing another government entity to simply file an impromptu debit on that individual's inmate account with a corresponding court petition, such that the government can reclaim any damages the inmate may suffer when those damages flow from the exact same constitutional violation. The Eighth Circuit has ruled in a similar case that such government action violates the Supremacy Clause of the U.S. Constitution because it is inconsistent with the deterrence purpose of 42 U.S.C. § 1983. *Hankins v. Finnel*, 964 F.2d 853 (8th Circuit 1992).

As an initial matter, in the prior appeal in this case, this court should not have declared Harmon's argument about § 1983 proceeds unpreserved for failure to obtain a ruling. After the State initially filed its petition with the circuit court, Harmon filed multiple motions contesting the State's claim to the funds. One of those motions argued

that the State's seizure of these funds would violate the Supremacy Clause. The circuit court held a hearing on this motion on June 28, 2016, where the parties presented evidence and argument for the circuit court's consideration. The circuit court granted the State's petition. The circuit court's final order before Harmon's first appeal provided that its decision was based on "the pleadings before [the court] and arguments and evidence presented at the hearing held June 28, 2016[.]" The order also contained the following sentence at the end of the order: "Upon disbursement of the funds described above, the Petition shall be dismissed and the Clerk will close the claims pending as 60CV-16-1301." Harmon then filed his first notice of appeal.

On the first appeal, this court declared Harmon's points on appeal unpreserved for failure to obtain a ruling. I acknowledge that I joined that opinion, but I nonetheless maintain that this decision was incorrect. As previously stated, the circuit court's order did address Harmon's other "claims" at issue in this matter. While the majority cites to past cases for the proposition that Harmon was required to obtain a "specific" ruling on this issue before this court would address it, that rule does not have the same application where, as here, the circuit court did in fact consider the issue at a contested hearing, despite only issuing a general subsequent ruling. *See, e.g., Hardin v. Bishop*, 2013 Ark. 395, 430 S.W.3d 49 (circuit court's order simply providing that "[b]ased upon the adopted pleadings and argument of counsel . . . no genuine issue of material fact exists" was sufficient to preserve issue of agency on appeal where issue was raised in motions, briefs, and arguments at hearing before the circuit court). Even if Harmon had not filed a single

motion or pleading with regard to this issue (which he did), it remains undisputed that the parties actually tried this issue to the circuit court before the first appeal. See Ark. R. Civ. Proc. 15(b) (“When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings”).

Regardless, the problem with this case moving forward is the uncertainty it creates as to what circumstances properly invoke this court’s review. In the prior appeal, this court simultaneously addressed the points Harmon raised stemming from the circuit court’s order to declare them unpreserved, but also remanded the matter to the circuit court because that very same order was insufficient for its failure to satisfy statutory requirements. This was improvident; either the circuit court’s order was final and sufficient to trigger this court’s review, or it was not. Embracing a less definite rule cuts away at the reliability of those bedrock principles of jurisdiction and appellate review that are so necessary to our system of justice.

I say this court should rule that its prior mandate, which declared Harmon’s argument about the § 1983 proceeds unpreserved and remanded to the circuit court for additional findings, was improvident. Perhaps sensing this, the circuit court on remand supplied in its order an alternative basis for rejecting Harmon’s argument about the § 1983 proceeds (if for whatever reason the argument was still viable after this court’s remand): that the State’s seizure of the § 1983 proceeds was constitutionally permissible because the original judgment was obtained against the municipality of Phillips County, and not the

State of Arkansas. In light of all these circumstances, this court should address the merits of Harmon's argument about the § 1983 proceeds.

As to the facts relevant to this issue, there is no dispute that the funds in question are made up of the proceeds of a § 1983 action against Phillips County and the Phillips County Jail. The settlement check came in to the facility where Harmon was held; ADC notified the Attorney General; ADC debited Harmon's inmate account for what the check would cover; ADC deposited the check in Harmon's inmate account; and then the Attorney General petitioned the circuit court to transfer the funds to the State treasury pursuant to the Arkansas State Prison Inmate Care and Custody Reimbursement Act (the Reimbursement Act).

Harmon argues that allowing the State to use the Reimbursement Act to seize the proceeds of his § 1983 action cuts against the purpose of § 1983 and would therefore constitute an as-applied violation of the Supremacy Clause. That federal law will preempt a contradictory state law has long been an important tenet of our constitutional republic. U.S. Const. Art. VI, Cl. 2. Moreover, federal law preempts state law not only where the two are plainly contradictory but also where "the incompatibility between [them] is discernible only through inference." *Hayfield Northern R.R. Co.*, 467 U.S. at 627, 104 S. Ct. at 2614. When federal law does not expressly preempt state law, the court "must inquire more deeply into the intention of Congress and the scope of the pertinent state legislation." *Id.* at 628, 104 S. Ct. at 2614. Preemption in this instance will arise when "state law stands as an obstacle to the accomplishment and execution of the full purposes

and objectives of Congress.” *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 300, 108 S. Ct. 1145, 1150–51, 99 L.Ed.2d 316 (1988) (citing *Hines v. Davidowitz*, 312 U.S. 52, 67, 61 S. Ct. 399, 404, 85 L.Ed. 581 (1941)).

The purpose of 42 U.S.C § 1983 is at issue in this case. The purpose of § 1983 is two-fold: to compensate victims and to deter future deprivations of federal constitutional rights. *Owen v. City of Independence*, 445 U.S. 622, 651, 100 S. Ct. 1398, 1415, 63 L.Ed.2d 673 (1980)). “There can be no doubt that § 1 of the Civil Rights Act was intended to provide a remedy, to be broadly construed, against all forms of official violation of federally protected rights.” *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 700–01, 98 S. Ct. 2018, 2041, 56 L. Ed. 2d 611 (1978).

In *Hankins v. Finnell*, the State of Missouri sought to recoup monies from an inmate’s trust account, monies that the inmate had acquired pursuant to a § 1983 judgment. 964 F.2d 853 (8th Circuit 1992). The inmate had obtained the § 1983 judgment against a state actor in his unofficial capacity. *Id.* at 857. The State of Missouri sought to recoup the monies pursuant to the Missouri Incarceration Reimbursement Act. *Id.* at 857-58. The Eighth Circuit concluded that allowing the State of Missouri to recover the monies in this instance would go directly against the purpose of § 1983:

We thus conclude that section 1983 preempts the Missouri Incarceration Reimbursement Act as it is applied in this case. To the extent that the Act permits the State to recoup the very monies it has paid to satisfy a section 1983 judgment against one of its employees, the Act is invalidated under the Supremacy Clause.

Id. at 861.

Here, this court is presented with a similar question: whether the State of Arkansas can use the Reimbursement Act to claim monies awarded to an inmate pursuant to a § 1983 action against a municipality and municipal actors. Despite the fact that the § 1983 judgment at issue here was obtained against Phillips County, and not a State actor, I say the answer to this question should still be no. Regardless of which government entity ultimately recoups the money, the fact remains that inmates whose constitutional rights are violated at the hands of government actors will be deterred from ever bringing those constitutional violations to light if they know that any damages they establish will simply be recouped by the government in one form or another. Indeed, with no such incentive, it seems that common sense and fear of potential retaliation would weigh against an inmate drawing such attention to himself. This cuts directly against and undermines the purposes of § 1983 and therefore violates the Supremacy Clause. Accordingly, the State should not be able to use the Reimbursement Act to recoup any of the proceeds from Harmon's § 1983 action.

I dissent.

Dexter J. Harmon, pro se appellant.

Leslie Rutledge, Att'y Gen., by: *Bourgon B. Reynolds*, Ass't Att'y Gen., for appellee.