

SUPREME COURT OF ARKANSAS

Arkansas Department of Human Services v. Isbell

360 Ark. 256 (2005) (Ark. 2005) · No. No. 04-852 · Decided January 6, 2005

SUMMARY

The Arkansas Supreme Court denied the Arkansas Department of Human Services' petition for a writ of prohibition concerning a circuit court order requiring DHS to perform an out-of-state home study in Kansas. The court held that no act remained to prohibit because the circuit court had rescinded the order after the Interstate Compact on the Placement of Children home study was completed. The court therefore did not reach DHS's arguments regarding the circuit court's authority or enforcement of the compact.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Betty C. Dickey, Justice
JURISDICTION	Arkansas
DECIDED	January 6, 2005
DOCKET	No. 04-852
DISPOSITION	writ_denied
PROCEDURAL POSTURE	The Arkansas Department of Human Services petitioned the Supreme Court of Arkansas for a writ of prohibition to prevent the Marion County Circuit Court from enforcing an order requiring DHS to perform an out-of-state home study in Kansas.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Arkansas Department of Human Services v. Honorable Gary Isbell, Judge, Christina Starry, Mother of Minor Child

TOPICS

- writ of certiorari
- mootness
- appellate procedure
- subject matter jurisdiction
- family law procedure

PRACTICE AREAS

- appellate procedure
- civil procedure
- administrative law
- family law

QUESTIONS PRESENTED

1. Whether the Supreme Court should issue a writ of prohibition concerning the circuit court's order requiring DHS to perform a home study in Kansas after the circuit court withdrew that order.
2. Whether a trial court has inherent authority to modify or set aside an order within ninety days of its filing.

HOLDINGS

1. A writ of prohibition will not issue when the trial court has already withdrawn the challenged order and there is no current act to prohibit.
2. A trial court has inherent authority, independent of any rule or statute, to modify or set aside a judgment during the term in which it was entered, now understood as within ninety days under Arkansas Rule of Civil Procedure 60(a).

KEY QUOTATIONS

“Because the trial court has already acted and there currently is no act to prohibit, the petition is denied.”
(200 S.W.3d at 875)

“The power of a court to modify or set aside a judgment during the term it was entered, now ninety days according to Rule 60(b), exists as an inherent power and outside of any rule or statute.” (200 S.W.3d at 875)

FACTUAL BACKGROUND

A fifteen-year-old child was being considered for placement with a biological aunt who lived in Kansas. The Marion County Circuit Court ordered an ICPC home study, but, concerned about delay and the child's impending discharge from treatment, later ordered DHS to travel to Kansas and conduct a home study by a specified date. Before the Supreme Court resolved DHS's prohibition petition, the ICPC home study was completed, the circuit court withdrew its order requiring DHS to conduct the Kansas study, and custody was awarded to the aunt.

PROCEDURAL HISTORY

The Marion County Circuit Court initially ordered an Interstate Compact on the Placement of Children home study concerning a Kansas placement. When the study was not completed promptly, the circuit court separately ordered DHS to perform a home study in Kansas. DHS sought a stay and then a writ of prohibition. While the petition was pending, the circuit court withdrew the challenged order after the ICPC home study was completed and awarded custody to the child's aunt. The Supreme Court denied the petition because there was no longer any act to prohibit.

DISPOSITION

writ_denied

CASES CITED

- Steward v. Wurtz, 327 Ark. 292, 938 S.W.2d 837 (1997)

- Young v. Young, 316 Ark. 456, 872 S.W.2d 856 (1994)
- Massengale v. Johnson, 269 Ark. 269, 599 S.W.2d 743 (1980)
- Cowan v. Patrick, 247 Ark. 886, 448 S.W.2d 336 (1969)
- Wright v. Ford, 216 Ark. 55, 224 S.W.2d 50 (1949)
- Underwood v. Sledge, 27 Ark. 295 (1871)
- Parker v. Sebourn, 351 Ark. 453, 456, 95 S.W.3d 762, 765 (2003)
- J.W. Reynolds Lumber Co. v. Smackover State Bank, 310 Ark. 342, 352, 836 S.W.2d 853, 858 (1992)

OPINION

DICKEY, J.

200 S.W.3d 873 (2005) ARKANSAS DEPARTMENT OF HUMAN SERVICES, Appellant, v. Honorable Gary ISBELL, Judge, Christina Starry, Mother of Minor Child, Appellees. No. 04-852. Supreme Court of Arkansas. January 6, 2005. *874 Gray Allen Turner, Little Rock, for petitioner. Mike Beebe, Att'y Gen., by: C. Joseph Cordi, Jr., Ass't Att'y Gen., Little Rock, for respondents.

BETTY C. DICKEY, Justice. The Department of Human Services (DHS) seeks a writ of prohibition to prevent the Marion County Circuit Court from enforcing an order that DHS perform a home study in Kansas. The petition is denied because the circuit court has rescinded its order. At issue is the placement of a fifteen-year old child with the child's biological aunt, living in Kansas.

This aunt was being considered for legal custody through the Interstate Compact on the Placement of Children (ICPC). On March 11, 2004, the circuit court ordered a home study through ICPC. On June 25, 2004, the circuit court, expressing concern that the home study through ICPC had not been completed and citing a need to place the child immediately, issued an order requiring DHS to proceed to Kansas to perform a home study on the aunt's home by August 11, 2004.

Confirming from both the CASA worker and the attorney ad litem that there was no objection by DHS[1], the court stated: The Court finds that it is imperative with [the child's] upcoming discharge from treatment that we update his placement with [his] family in Kansas.

The Court finds that the wheels of ICPC turn too slowly for that to happen in a timely fashion, so the Court has directed that DHS do a home study on the [child's] family in Kansas. The Court finds that there is an availability of time and effort because DHS is already going to be in the State of Kansas for another matter, and the Court would direct that occur on that date.

The Court would note that this has been with the compliance with the CASA worker... as well as with... the attorney ad litem in this case, is that right? On July 7, 2004, DHS filed an application for stay of the order to do the home study in Kansas, arguing that the circuit court erred in ordering DHS to undertake an out-of-state home study.

On August 6, 2004, DHS petitioned for a writ of prohibition and application for temporary relief with this court. On August 10, 2004, we stayed the circuit court's order and directed the parties to submit simultaneous briefs on the issue.

On August 11, 2004, the circuit court withdrew its previous order requiring DHS to perform a home study in Kansas, because the ICPC home study had been completed and had been received by the circuit court. The circuit court, awarding custody of the child to the aunt, stated: *875 At this point in time then the Court would withdraw previous orders made by the Court requiring the Department to do a home study in Kansas.

It's now been done by ICPC, so it's probably moot anyway. DHS now asks this court to issue a writ and order that: (1) DHS no longer be required to perform the out-of-state home study; and, (2) no contempt or enforcement proceedings may be undertaken in the circuit court. DHS contends that "the trial court has exceeded its power in this case, and should be prevented from enforcing the order, or punishing the Department or its caseworkers for violating an order that should have never been entered."

DHS argues that the circuit court must enforce the Interstate Compact on the Placement of Children, and that a circuit court does not have the statutory authority to order DHS to perform a home study in another state.

We need not address those arguments because the trial court has the inherent power to modify an order with or without notice to any party by motion of a party or on its own within ninety days of filing. *Steward v. Wurtz*, 327 Ark. 292, 938 S.W.2d 837 (1997); *Young v. Young*, 316 Ark. 456, 872 S.W.2d 856 (1994).

The power of a court to modify or set aside a judgment during the term it was entered, now ninety days according to Rule 60(b)[2], exists as an inherent power and outside of any rule or statute. *Id.*; *Massengale v. Johnson*, 269 Ark. 269, 599 S.W.2d 743 (1980); *Cowan v. Patrick*, 247 Ark. 886, 448 S.W.2d 336 (1969); *Wright v. Ford*, 216 Ark. 55, 224 S.W.2d 50 (1949).

That authority exists so that courts may review and correct any mistakes, errors, or indiscretions that might have been committed during the term. *Id.*; *Underwood v. Sledge*, 27 Ark. 295 (1871). Because the trial court has already acted and there currently is no act to prohibit, the petition is denied. Denied. GUNTER, J., not participating. NOTES [1] This court notes that subject-matter jurisdiction can be raised at any time.

Parker v. Sebourn, 351 Ark. 453, 456, 95 S.W.3d 762, 765 (2003) It is well settled that subject-matter jurisdiction may not be stipulated by the parties and, "if lacking, cannot be induced simply because there is no objection." *Id.*; *J.W. Reynolds Lumber Co. v. Smackover State Bank*, 310 Ark. 342, 352, 836 S.W.2d 853, 858 (1992).

[2] After the 2000 amendment to the Rules of Civil Procedure, the power to modify or set aside a judgment during the term it was entered is now found at Rule 60(a).

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