

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs November 1, 2022

GUILLERMO RAMOS v. MELLANIE CALDWELL**Appeal from the Circuit Court for Montgomery County
No. 63CC1-2017-CV-435 Kathryn Wall Olita, Judge**

No. M2022-00222-COA-R3-CV

A father filed a petition seeking, in addition to a modification of child support, a judgment for past overpaid support. The father asserted that mother, without his knowledge, had received for a period of time double child support payments as a result of payments being taken directly from his paycheck and also being paid through electronic funds transfers that he remitted directly to mother. While prevailing as to child support modification, the trial court denied the father's claim for overpayment of child support. The trial court concluded his claim was barred by *res judicata* and, also, a directed verdict on this matter was warranted due to the father's failure to present certain critical evidence in support of his claim. Father appealed the court's decision barring his claim due to *res judicata*, but he did not challenge on appeal the trial court's granting of a directed verdict in connection with failure to present evidence to support his claim. As a result of the appellant's failure to challenge an independent alternative basis for the trial court's decision on appeal, we affirm the decision of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court is Affirmed

JEFFREY USMAN, J., delivered the opinion of the court, in which D. MICHAEL SWINEY, C.J., and ARNOLD B. GOLDIN, J., joined.

Gregory D. Smith, Clarksville, Tennessee, for the appellant, Guillermo Ramos.

Katie B. Klinghard, Clarksville, Tennessee, for the appellee, Mellanie Caldwell.

OPINION

I.

Guillermo Ramos and Mellanie Caldwell had two children during their marriage. Mr. Ramos and Ms. Caldwell were divorced in Kentucky in 2011. Mr. Ramos was ordered to pay child support to Ms. Caldwell. Both parties were employed by the United States Army, and after the divorce, both moved in accordance with new assignments. Ms. Caldwell settled in Clarksville, Tennessee, for a time, while Mr. Ramos moved to North Carolina.

In February 2017, Ms. Caldwell had the child support order enrolled in Tennessee for enforcement. The Notice of Registration of Support Order informed Mr. Ramos that child support was set at \$545.62 per month effective January 7, 2013, to be paid to the Central Child Support Receiving Unit. In addition, Mr. Ramos owed \$9,469.09 in arrearage for the period from August 25, 2011, to January 31, 2013. Mr. Ramos was required to pay \$80 per month towards the arrearage, making his total monthly payment \$625.62.

In October 2018, the State of Tennessee, on behalf of Ms. Caldwell, filed a Petition for Modification alleging a significant variance between the Tennessee Child Support Guidelines and the current amount of support. A hearing was held on February 11, 2019, regarding Mother's Petition for Modification. The juvenile court magistrate found that a significant variance existed and modified Mr. Ramos's support obligation. The court increased Mr. Ramos's child support to \$1,185 per month still to be paid to the Central Child Support Receiving Unit. The court granted a judgment to Ms. Caldwell setting Mr. Ramos's arrears at \$7,169.71 through January 31, 2019. This arrears judgment included \$2,557.50 for retroactive support from November 1, 2018, to February 1, 2019. Neither party requested a rehearing, so the juvenile court judge adopted the findings and recommendations of the juvenile court magistrate.

In December 2019, Mr. Ramos filed a Petition to Modify Child Support and for an Award of Overpaid Support alleging a significant variance between the February 2019 order and his current ability to pay because Mr. Ramos was no longer employed by the United States Army. Mr. Ramos acknowledged the last child support order was entered in February 2019. In his petition, Mr. Ramos also alleged that Ms. Caldwell had received overpayments:

[Mr. Ramos] has further become aware that [Ms. Caldwell] has been receiving the incorrect amount of child support from him.

[Ms. Caldwell] has repeatedly told [Mr. Ramos] she has not been paid child support, and demand[ed] that he pay her through the Parties' bank accounts.

As a result, [Mr. Ramos] made child support payments via electronic bank transfer to [Ms. Caldwell] in the amount of \$17,310.00. Unbeknownst to [Mr. Ramos], [Ms. Caldwell] was, in fact, receiving the correct amount of support directly from his paycheck. These payments made to [Ms. Caldwell's] bank account were in addition to payments from his paycheck, such that [Mr. Ramos] overpaid child support to [Ms. Caldwell] by \$17,310.00.

[Ms. Caldwell] was clear in her demands that [Mr. Ramos] needed to pay her child support directly through the Parties' bank accounts. These funds were accepted by [Ms. Caldwell] as child support.

Ms. Caldwell filed an Answer to Mr. Ramos's petition denying the allegations. Mr. Ramos's petition was set for hearing in July 2021. After Mr. Ramos filed a Motion to Compel regarding Ms. Caldwell's discovery responses, the parties entered an agreed order to continue the hearing to September 21, 2021.

Prior to the trial, both parties filed pretrial briefs. In her pretrial brief filed September 16, 2021, three business days before trial, Ms. Caldwell, for the first time, referenced *res judicata* in connection with Mr. Ramos's claims for overpaid child support. Ms. Caldwell stated:

The *Res Judicata* doctrine addresses the fact that once the Court finds final judgment on the merits, any matters that were in litigation or *could have been litigated* are conclusive. Additional payments were made prior to the hearing on February 11, 2019. This matter should have been addressed at that time. Any allegation that Father did not know he was making two payments is absurd.

The day before trial, on September 20, 2021, at 2:02 p.m., Ms. Caldwell filed a Motion to Dismiss Mr. Ramos's petition for failure to state a claim for which relief may be granted. Ms. Caldwell's motion asserted that any alleged overpayment by Mr. Ramos occurred before the court's February 11, 2019 order. Furthermore, Ms. Caldwell stated "[t]hat the only possible overpayment he could be referencing is the brief period he made additional payment to avoid additional garnishment. This was a voluntary agreement that provided benefit to [Mr. Ramos]."

On the day of trial, September 21, 2021, the court initially considered Ms. Caldwell's motion to dismiss as a preliminary matter. However, "[h]aving considered the arguments of counsel, the Court determined it was appropriate to withhold determination on the Motion until following the Petitioner's testimony." After Mr. Ramos presented his proof, the court took up the motion to dismiss again.

The trial court ultimately concluded that Mr. Ramos should not be awarded a judgment for overpayment of child support for two reasons. The trial court concluded that *res judicata* barred Mr. Ramos's claim for overpayment "as this could have or should have been litigated and addressed at the February 2019 hearing." Having heard evidence from Mr. Ramos with regard to the issue of overpayment, the trial court also determined that "[i]t is further appropriate to grant a directed verdict in [Ms. Caldwell's] favor with respect to the issue of overpayment by [Mr. Ramos], as [Mr. Ramos] did not introduce his LESs." LES is a Leave and Earning Statement. These statements are provided on a monthly basis to members of the military and reflect among other information payments and deductions.

In connection with what the trial court and parties termed a directed verdict, but is more accurately described as a Tennessee Rule of Civil Procedure 41.02 involuntary dismissal,¹ the Tennessee Rule of Appellate Procedure 24(c) statement of the evidence in this case sets forth the following:²

The Court further determined at the conclusion of Petitioner's testimony that a directed verdict was appropriate with respect to Petitioner's request to receive credit for his double payments of child support. The Court found that since Petitioner had not introduced his LESs as an Exhibit, it was appropriate to grant a directed verdict. . . .

. . . [T]he Court stated there was "no proof of how much money came out and when" it was disbursed. Further, the Petitioner had "not established by proof that overpayment was made."

After hearing the testimony regarding modification, the trial court modified Mr. Ramos's child support, finding a significant variance. The trial court set child support at \$844 per month retroactive to December 19, 2019, when Mr. Ramos filed his petition. In connection with a separate overpayment issue, the trial court credited Mr. Ramos with an overpayment made between December 10, 2019, and September 21, 2021, due to the decrease in his income.

Mr. Ramos filed a Motion to Alter or Amend the trial court's order, requesting the court reconsider whether Ms. Caldwell waived the affirmative defense of *res judicata* and the court's directed verdict regarding overpayment in connection with his failure to

¹ See generally *In re Adoption of Jordan F.J.*, No. W2013-00427-COA-R3-PT, 2013 WL 6118416, at *2-3 (Tenn. Ct. App. Nov. 20, 2013) (quoting *Burton v. Warren Farmers Co-op.*, 129 S.W.3d 513, 520 (Tenn. Ct. App. 2002)). Because no challenge has been brought to the trial court's ruling on this point and the parties have utilized the same terminology, we use the description of a directed verdict rather than a dismissal in our discussion in this case.

² The parties do not have a transcript of the proceedings and instead are relying upon a statement of the evidence.

introduce his LESs as evidence at trial. The trial court denied Mr. Ramos’s motion to alter or amend. Mr. Ramos timely appealed, arguing that the trial court erred by allowing Ms. Caldwell to present her Tennessee Rule of Civil Procedure 8.03 *res judicata* affirmative defense. However, Mr. Ramos has not raised on appeal a challenge to the trial court’s decision granting a directed verdict on the issue of overpayment as a result of his failure to introduce into evidence his LESs.

II.

The trial court’s order contains two bases for denying recovery for overpayment: (1) the *res judicata* defense and (2) Mr. Ramos’s failure to introduce his LESs as evidence showing overpayment. This court has previously confronted circumstances in which a trial court’s ruling is supported by alternative independent bases but not all of those bases have been challenged on appeal. In such circumstances, we have explained that

[g]enerally, where a trial court provides more than one basis for its ruling, the appellant must appeal all the alternative grounds for the ruling. *See* 5 Am. Jur. 2d Appellate Review § 718 (“[W]here a separate and independent ground from the one appealed supports the judgment made below, and is not challenged on appeal, the appellate court must affirm.”); *see also Tower Oaks Blvd., LLC v. Procida*, 219 Md. App. 376, 392, 100 A.3d 1255, 1265 (Md. 2014) (“The law of appellate review establishes that, ‘[w]hen a separate and independent ground that supports a judgment is not challenged on appeal, the appellate court must affirm.’”) (citation omitted); *Prater v. State Farm Lloyds*, 217 S.W.3d 739, 740–41 (Tex. App. 2007) (“When a separate and independent ground that supports a ruling is not challenged on appeal, we must affirm the lower court’s ruling.”); *Johnson v. Commonwealth of Virginia*, 45 Va. App. 113, 116, 609 S.E.2d 58, 60 (Va. 2005) (“[W]e join the majority of jurisdictions holding that in ‘situations in which there is one or more alternative holdings on an issue,’ the appellant’s ‘failure to address one of the holdings results in a waiver of any claim of error with respect to the court’s decision on that issue.’”) (citation omitted).

Hatfield v. Allenbrooke Nursing & Rehab. Ctr., LLC, No. W2017-00957-COA-R3-CV, 2018 WL 3740565, at *7 (Tenn. Ct. App. Aug. 6, 2018).

In *Hatfield*, we recognized that the trial court’s final written order included two bases for denying the motion to dismiss: “(1) that minimum contacts had been found to support exercising personal jurisdiction; and (2) that [two of] the individual defendants . . . waived the defense of lack of personal jurisdiction.” *Id.* The defendants raised the issue of minimum contacts, but not the issue of waiver in their initial appellate brief. *Id.* Because the defendants “failed to challenge one of the alternative grounds for denying the motion to dismiss for lack of personal jurisdiction,” we concluded that “the trial court’s decision

must be affirmed.” *Id.* (citing *Johnson* 609 S.E.2d 60).

Mr. Ramos has failed to challenge the trial court’s determination that he needed to enter into evidence his LESs to support his petition seeking a judgment for overpayment made to Ms. Caldwell. This is an independent alternative ground supporting the trial court’s denial of Mr. Ramos’s claim of overpayment of child support. The failure to challenge this independent alternative ground requires this court to affirm the trial court’s ruling without considering the issue that was raised on appeal. *Duckworth Pathology Group, Inc. v. Regl. Med. Ctr. at Memphis*, W2012-02607-COA-R3CV, 2014 WL 1514602, at *12 (Tenn. Ct. App. Apr. 17, 2014).

III.

Due to Mr. Ramos’s failure to challenge an independent alternative ground supporting the trial court’s decision in denying Mr. Ramos’s claims for overpayment, the judgment of the trial court is affirmed. Costs of this appeal are taxed to Appellant, Guillermo Ramos, for which execution shall issue if necessary.

JEFFREY USMAN, JUDGE