IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2021-SA-01133-COA

MISSISSIPPI DEPARTMENT OF HUMAN SERVICES **APPELLANT**

v.

TONY ANTWAN REAVES **APPELLEE**

DATE OF JUDGMENT:	09/03/2021
TRIAL JUDGE:	HON. DENISE OWENS
COURT FROM WHICH APPEALED:	HINDS COUNTY CHANCERY COURT, FIRST JUDICIAL DISTRICT
ATTORNEYS FOR APPELLANT:	ALLYSON LEWIS BROCK DARRELL C. BAUGHN
ATTORNEY FOR APPELLEE:	TONY ANTWAN REAVES (PRO SE)
NATURE OF THE CASE:	CIVIL - STATE BOARDS AND AGENCIES
DISPOSITION:	REVERSED AND REMANDED - 11/01/2022
MOTION FOR REHEARING FILED:	

BEFORE CARLTON, P.J., GREENLEE AND McCARTY, JJ.

CARLTON, P.J., FOR THE COURT:

¶1. The Hinds County Chancery Court, First Judicial District, entered an order directing the Mississippi Department of Human Services (MDHS) to pay a money judgment to Tony Reaves as reimbursement for past child-support payments. MDHS now appeals, arguing that the chancellor erred in ordering the reimbursement.

¶2. After our review, we find error on the part of the chancellor. We therefore reverse the chancellor's award of child-support reimbursement to Tony and remand for further proceedings consistent with this opinion.

FACTS

¶3. Tony and Bessie Reaves were married in June 2006. Prior to the marriage, Tony and Bessie had one child, Y.T.R., who was born in December 2003.

¶4. Tony and Bessie divorced in July 2013. At the time of the divorce, Tony resided in Mississippi, and Bessie resided in North Carolina. Tony and Bessie's custody agreement granted physical custody of Y.T.R. to Bessie and visitation rights to Tony. Tony was ordered to pay Bessie $330 per month in child support.

¶5. Tony later filed a motion for contempt and modification of the custody agreement. After a hearing on the motion, the chancellor entered an order on December 20, 2016, awarding custody of Y.T.R. to Tony. The chancellor reserved ruling on the issue of child support "until credible financial evidence can be had from the respective parties."

¶6. On November 5, 2018, the chancellor entered an order continuing the trial on the custody modification motion and suspending Tony's child-support obligation until further order of the court.

¶7. On February 28, 2019, Tony and Bessie entered into an agreed temporary order of modification of custody, which would remain in effect until the trial. Per the agreed order, Tony and Bessie were awarded joint physical and legal custody of Y.T.R., with neither party paying child support to the other. In the order, Tony and Bessie "acknowledge[d] that there are existing problems with each of the prior orders as to the related child support and arrearage, as well as, amounts due from whom and to whom." The order stated that as a result, "any and all child support currently in effect shall immediately cease and none shall

be due on to the other until the final judgment in this matter" in order to "allow any prior payments, as well as, any amounts withheld from [Tony's] pay to be properly re-calculated, applied, adjusted and/or reimbursed to the appropriate party, beginning with the first order entered in this matter on or about July 2013 and up through date and entry of this Agreed Temporary Order."

¶8. After several continuances, a trial on the issues of child custody and child support was held on February 5, 2020. At trial, Tony's attorney and counsel for MDHS reviewed Tony's tax returns and other child-support-payment documentation. Tony conceded to the chancellor that his total child-support arrearage was $3,295.42.

¶9. On May 19, 2020, the chancellor entered an order awarding Tony and Bessie joint legal and physical custody of Y.T.R., with Tony having primary custody subject to visitation with Bessie. The chancellor ordered Bessie to pay $180 a month in child support.

¶10. As to Tony's child-support arrearage, the order reflected that Tony's total arrearage at the time of the February 5, 2020 hearing was $3,295.42. The chancellor also clarified that the December 2016 order had discharged Tony of any further child-support obligation.

¶11. In October 2020, the chancellor entered an order granting Tony a credit of $3,039.39 against his child-support arrearage. The chancellor explained that she arrived at this amount after reviewing documents showing payments that had not been accounted for in prior orders.

¶12. Tony filed a motion to reconsider and for clarification. On September 3, 2021, the chancellor entered an order explaining that after reviewing the necessary documentation and

recalculating Tony's payments, Tony was entitled to a reimbursement of child-support payments. The chancellor then ordered MDHS to reimburse Tony $4,115.39.

¶13. MDHS now appeals.

STANDARD OF REVIEW

¶14. On appeal, we will not disturb a chancellor's findings if they are supported by substantial evidence. *Friday v. Miss. Dep't of Hum. Servs*., 325 So. 3d 1200, 1202 (¶8) (Miss. Ct. App. 2021). We will only reverse when we find that "the chancellor abused [her] discretion, applied an erroneous legal standard, was manifestly wrong, or was clearly erroneous." *Id*. (quoting *Greer v. Greer*, 312 So. 3d 414, 415 (¶6) (Miss. Ct. App. 2021)).

¶15. Tony did not file an appellee's brief. When an appellee fails to file a brief, the Mississippi Supreme Court has adopted two alternative approaches for reviewing the case:

> First, the Court may accept appellant's brief as confessed and reverse. That is the appropriate course of action when the record is voluminous or complicated and the appellant's thorough treatment of the issues in the brief makes out an apparent case of error. The second alternative is to disregard the appellees' error and affirm. This alternative should be used when the record can be conveniently examined and such examination reveals a sound and unmistakable basis or ground upon which the judgment may be safely affirmed.

Stratton v. McKey, 298 So. 3d 999, 1003 (¶11) (Miss. 2020) (internal citations and quotation marks omitted).

¶16. We find that "[t]he record in this case is neither complicated nor voluminous." *Id*. at (¶12). However, we find that error is "apparent." *Id*. Upon review, we find the chancellor improperly ordered MDHS to provide Tony with a money judgment as a reimbursement for

prior child-support payments.

DISCUSSION

¶17. On appeal, MDHS argues that the chancellor erred in ordering MDHS to reimburse Tony for past child-support payments. MDHS first asserts that the reimbursement was improper because Tony did not seek this relief in his pleadings. MDHS also claims that its due process rights were violated by Tony's failure to give MDHS proper notice and an opportunity to be heard regarding the reimbursement. Finally, MDHS argues that a chancellor may not order a reimbursement for child support that had already vested and been properly disbursed to the state of North Carolina and to Bessie.

¶18. We turn first to address MDHS's arguments regarding pleadings and notice. Our review of the record shows MDHS did not request that any pleadings or motions be included in the record on appeal. As a result, the pleadings referenced by MDHS in its appellate brief do not appear in the record before us. "The appellant has 'the duty of [e]nsuring that the record contains sufficient evidence to support his assignments of error on appeal.'" *Oakwood Homes Corp. v. Randall*, 824 So. 2d 1292, 1293 (¶4) (Miss. 2002) (citation omitted). Because MDHS "has failed to place the necessary record pertaining to this assignment of error before us, . . . we are therefore unable to consider it." *Id*. at 1293-94 (¶4) (quoting *Branch v. State*, 347 So. 2d 957, 958-59 (Miss. 1977)).

¶19. As to MDHS's argument that reimbursement was improper because a noncustodial parent cannot recover the child-support payments he made on behalf of the child, we agree.

The supreme court has established that "child support is for the benefit of the child and that past-due child support payments cannot be modified or forgiven by any court because the parent's obligation of child support vests in the child when the payment becomes due." *McBride v. Jones*, 803 So. 2d 1168, 1170 (¶9) (Miss. 2002). In accordance with this precedent, this Court has held that "a non-custodial parent is not entitled to reimbursement from a custodial parent for child support payments that have vested in the minor child and have been paid pursuant to valid court order." *Keith v. Purvis*, 982 So. 2d 1033, 1039 (¶20) (Miss. Ct. App. 2008) (citing *McBride*, 803 So. 2d at 1170 (¶¶7-10)).

¶20. In *Department of Human Services v. Ray*, 997 So. 2d 983, 985 (¶1) (Miss. Ct. App. 2008), MDHS appealed the chancellor's order directing MDHS and the natural mother to reimburse the non-biological father for past-due child support. On appeal, this Court reversed the chancellor's judgment, explaining that because the payments vested in the child once they became due, the father "was not entitled to reimbursement absent a showing of fraud." *Id*. at 990 (¶22).

¶21. Although we find that reimbursement in this case is not proper, the supreme court has stated that "[t]he noncustodial parent may be entitled to credit for any additional support which he/she has evinced by satisfactory proof to the trial court." *Smith v. Smith*, 20 So. 3d 670, 674 (¶13) (Miss. 2009). The question "[w]hether or not a non-custodial parent should be given credit against his/her child support obligation, is a matter left to the sound discretion of the chancellor." *Strack v. Sticklin*, 959 So. 2d 1, 5 (¶14) (Miss. Ct. App. 2006). We

therefore reverse the chancellor's judgment reimbursing Tony, and we remand this issue to the chancellor to determine whether Tony should be given credit against his child-support obligation. *Farrior v. Kittrell*, 12 So. 3d 20, 26 (¶32) (Miss. Ct. App. 2009).

¶22. **REVERSED AND REMANDED.**

BARNES, C.J., GREENLEE, LAWRENCE, McCARTY, SMITH AND EMFINGER, JJ., CONCUR. McDONALD, J., CONCURS IN PART AND IN THE RESULT WITHOUT SEPARATE WRITTEN OPINION. WILSON, P.J., AND WESTBROOKS, J., CONCUR IN RESULT ONLY WITHOUT SEPARATE WRITTEN OPINION.