

IN THE COURT OF APPEALS OF THE STATE OF OREGON
STATE OF OREGON, acting by and through DA Family Support,
Initiating Party-Respondent,

and

TESSICA L. SWIFT,
Obligee-Respondent,

v.

KOFI KYEI,
Obligor-Appellant.

Clackamas County Circuit Court No. 17DR13435

Court of Appeals No. A165531

ORDER GRANTING RECONSIDERATION AND ADHERING TO PRIOR ORDER

Appellant petitions for reconsideration of the Appellate Commissioner's order transferring this appeal to the circuit court pursuant to ORS 14.165(2)(a). The petition is granted for the purpose of considering appellant's argument, but, on reconsideration, the court adheres to the transfer order.

Appellant appeals from an order issued under the authority of the district attorney administering Oregon's child support laws establishing a child support obligation. The district attorney filed the order with the circuit court pursuant to ORS 416.440. The state moved to dismiss the appeal on the ground that, under ORS 416.427(6), appellant's remedy was to request a hearing *de novo* in circuit court.¹ The commissioner concluded that this court lacked jurisdiction of the appeal, but that the circuit court had jurisdiction to conduct a hearing *de novo* respecting the administrative order and, pursuant to ORS 14.165(2)(a), transferred the appeal to circuit court.²

¹ ORS 416.427(6) states, in relevant part:

Appeal of the order of the administrative law judge or any default or consent entered by the administrator pursuant to ORS 416.400 to 416.465 may be taken to the circuit court of the county in which the order has been entered pursuant to ORS 416.440 for a hearing *de novo*. * * *.

² The order also denied appellant's motion to take judicial notice and to stay enforcement of the administrative order, but appellant does not seek reconsideration of those decisions.

ORDER GRANTING RECONSIDERATION AND ADHERING TO PRIOR ORDER

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563
Page 1 of 3

Respecting which court has jurisdiction to hear appellant's challenge to the administrative support order, appellant reasons as follows: (1) ORS 416.427(6) provides that an "[a]ppeal of the order of the administrative law judge or default or consent order entered by the administrator * * * may be taken to the circuit court of the county in which the order has been entered pursuant to ORS 416.440 for a hearing de novo[.]" (Emphasis added.); (2) but, under ORS 416.440(3), such orders have the effect of a circuit court judgment;³ (3) ORS 19.205(1) authorizes appeals from judgments entered in circuit court to the Court of Appeals; (4) therefore, because such an order filed with the circuit court has the effect of a judgment, appellant may choose to appeal to this court; and (5) appellant exercised his right to appeal to this court.

The term "may" in ORS 416.427(6) could mean that an affected party has the choice whether to appeal to the circuit court or to the Court of Appeals; or, it could mean that, *if* an affected party elects to appeal, the appeal must be taken to the circuit court. The court determines that the legislature meant the latter: *If* an affected party elects to appeal, the appeal must be taken to the circuit court. Two factors inform that decision.

First, in relevant part, ORS 416.427(6) provides:

Appeal of the order of the administrative law judge or any default or consent entered by the administrator pursuant to ORS 416.400 to 416.465 may be taken to the circuit court of the county in which the order has been entered pursuant to ORS 416.440 for a hearing de novo. The appeal shall be by petition for review filed within 60 days after the order has been entered pursuant to ORS 416.440.

Where the legislature has specifically authorized a remedy, the court should not resort to a more general statute, ORS 19.205(1), to determine that a party may appeal under the more general statute. Second, an appeal in this court proceeds on the record made in the forum from which the appeal arises. It appears, here, that the district attorney's authorized representative did not conduct a hearing leading to the administrative order. Therefore, there would be no record for this court to review on appeal. Indeed, it is manifest that the point of authorizing a hearing *de novo* in circuit court is to give the child support obligor the opportunity to object and to make a record of the grounds for objecting. If dissatisfied with the circuit court's ruling, the party may then appeal.⁴

³ In relevant part, ORS 416.440(3) provides: "Upon entry in the register under subsection (2) of this section, the order shall have all the force, effect and attributes of a judgment of the circuit court[.]"

⁴ *In re Marriage of Wessels*, 214 Or App 545, 551, 166 P3d 576, 579 (2007), is an example of this court reversing the circuit court's dismissal of an obligation petition for circuit court review of an administrative law judge's child support determination under a prior version of ORS 416.427(6).

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Therefore, the circuit court, not this court, has jurisdiction to hear appellant's appeal of the administrative order.⁵

Appellant also petitioned for reconsideration of the denial of additional time to respond to the state's motion to dismiss. The state filed its motion to dismiss on August 11, 2017. Appellant asserts he didn't receive a copy of the motion until August 29, 2017, when he filed his response. Although appellant was in default, the court accepted appellant's response and the commissioner considered it in review of the motion to dismiss.

Appellant's motion for additional time is well-taken and is granted.⁶



JAMES C. EGAN
CHIEF JUDGE, COURT OF APPEALS
2/1/2018 2:10 PM

c: Kofi O Kyei
Inge D Wells
Tessica Lynn Swift

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⁵ The court denies appellant's request to certify to the Supreme Court the question of whether the obligor of an administrative support order filed in circuit court may appeal to the Court of Appeals.

⁶ The commissioner's order also denied appellant's motion for extension of time to file a response to the state's motion to dismiss. The court now recognizes that appellant was seeking relief from default in the event that his response was filed more than 14 days after the date the state filed its motion, not more time to file an additional response. The motion for time should have been granted. However, the court considered appellant's response; therefore, the commissioner's denial of the motion was harmless.

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Page 3 of 3

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KOFI KYEI,
Obligor-Appellant.

Clackamas County Circuit Court No. 17DR13435

Court of Appeals No. A165531

**ORDER TRANSFERRING APPEAL TO CIRCUIT COURT AND DENYING
APPELLANT'S MOTIONS**

Appellant appeals an administrative order issued by the State of Oregon, Child Support Program, establishing a child support obligation under ORS 416.440. When filed with the circuit court, it has the effect of a judgment with money award. The State moves to dismiss the appeal on the ground that a challenge to the order must be in the form of a petition for review filed in circuit court, as provided in ORS 416.427(6).

The appeal is "an action or other proceeding against a public body" within the meaning of ORS 14.165. The court determines, pursuant to subsection (2) of that statute, for the reason stated in the State's motion, this court does not have jurisdiction of the appeal, but the circuit court does. Therefore, pursuant to ORS 14.165(2)(a), the court transfers the appeal to the Clackamas County Circuit Court.¹

On August 31, 2017, appellant filed a response to the State's motion in which he requested additional time to respond to the motion. Appellant has had almost two months since then to file an additional response and has not done so. The motion for additional time is denied.

¹ See ORS 14.165(8) regarding perfecting the transfer of this appeal to the circuit court.

ORDER TRANSFERRING APPEAL TO CIRCUIT COURT AND DENYING APPELLANT'S MOTIONS

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Appellant also requested the court to take judicial notice of the judgment entered in Multnomah County Circuit Court No. 0406-66556. If the court understands appellant correctly, he contends that the administrative order at issue in this case is invalid because the judgment in the Multnomah County Circuit Court case resolved the parties' rights and duties. However, that goes to the merits of the appeal, and this court lacks jurisdiction to review the merits of the appeal. Therefore, the motion to take judicial notice is denied.

Appellant's motions to identify the Clackamas County District Attorney and staff of the circuit court as parties to the appeal, and to stay enforcement of the administrative order pending appeal, are denied on the same ground: for want of jurisdiction to decide matters involving the merits of the appeal.

 10/23/2017
8:23 AM
JAMES W. NASS
APPELLATE COMMISSIONER

c: Kofi O Kyei
Inge D Wells
Tessica Lynn Swift
Clackamas County Circuit Court

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ORDER TRANSFERRING APPEAL TO CIRCUIT COURT AND DENYING APPELLANT'S MOTIONS

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IN THE SUPREME COURT OF THE STATE OF OREGON

STATE OF OREGON, acting by and through DA Family Support,
Initiating Party-Respondent,
Respondent on Review,

and

TESSICA L. SWIFT,
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Respondent on Review,

v.

KOFI KYEI,
Obligor-Appellant,
Petitioner on Review.


Court of Appeals
A165531

S065922

ORDER WAIVING FEES AND DENYING REVIEW

Upon consideration by the court.

Petitioner on review's motion to waive the filing fee is granted. The court has considered the petition for review and orders that it be denied.


MARTHA L. WALTERS
CHIEF JUSTICE, SUPREME COURT
7/5/2018 8:33 AM

c: Inge D Wells
Kofi O Kyei
Tessica Lynn Swift

gk

ORDER WAIVING FEES AND DENYING REVIEW

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
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and

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Respondent on Review,

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KOFI KYEI,
Obligor-Appellant,
Petitioner on Review.


Court of Appeals
A165531

S065922

ORDER DENYING PETITION FOR RECONSIDERATION

Upon consideration by the court.

The court has considered the petition for reconsideration and orders that it be denied.


MARTHA L. WALTERS
CHIEF JUSTICE, SUPREME COURT
8/30/2018 11:38 AM

c: Inge D Wells
Kofi O Kyei
Tessica Lynn Swift

ms

ORDER DENYING PETITION FOR RECONSIDERATION

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Page 1 of 1

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Clackamas County Circuit Court No. 17DR13435

Court of Appeals No. A165531

ORDER STAYING ISSUANCE OF APPELLATE JUDGMENT

Appellant moves to stay issuance of the appellate judgment pending the filing and disposition of his petition for writ of certiorari in the United States Supreme Court. The motion is granted and issuance of the appellate judgment is stayed.

The stay will automatically terminate after 90 days from the date of this order unless appellant sooner serves this court with a copy of his petition for writ of certiorari filed in the United States Supreme Court; in which case the stay will continue pending resolution of appellant's petition.



JAMES W. NASS
APPELLATE COMMISSIONER
9/25/2018 12:26 PM

c: Kofi O Kyei
Inge D Wells
Tessica Lynn Swift

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ORDER STAYING ISSUANCE OF APPELLATE JUDGMENT

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
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**Additional material
from this filing is
available in the
Clerk's Office.**