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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2019-2020

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N.Z.

v.

J.C. and E.C.

**Appeals from Talladega Juvenile Court
(JU-18-100015.03 and JU-18-100016.03)**

THOMPSON, Presiding Judge.

On February 2, 2018, B.C.J. and C.J. filed in the Talladega Juvenile Court ("the juvenile court") petitions seeking to have J.R.J. and K.M.J. ("the children") declared

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dependent and an award of custody of the children.¹ Those dependency petitions were assigned case numbers JU-18-100015.01 and JU-18-100016.01 ("the .01 actions"). The record indicates that B.C.J. is the half brother of the children. B.C.J. is the son of J.J., the children's father.² N.Z. is the mother of the children. The testimony of the parties and comments by the juvenile-court judge indicate that the juvenile court ordered, either orally or in writing, that B.C.J. and C.J. were awarded pendente lite custody of the

¹C.J.'s name is not listed on the petitions filed in the juvenile court. However, during a pendente lite hearing, B.C.J.'s attorney orally moved to add her as a petitioner. The juvenile court did not expressly rule on that request, but it later listed C.J., who is B.C.J.'s wife, as a petitioner in a later pendente lite order. We further note that C.J. is sometimes referred to as "F.J." in the record on appeal; it is not clear whether the "F." in her name is a part of her legal name or a nickname. Further, during her testimony at the November 2, 2018, dependency hearing, C.J. identified herself as "C.T." It appears that, at that time, C.J. had resumed using her maiden name, although she had not yet divorced B.C.J.

²We note that, during the pendency of the dependency actions underlying these appeals, J.J. moved to have his paternity of K.M.J. established and that the juvenile court entered a judgment determining that J.J. was K.M.J.'s legal father. It does not appear that the paternity of J.R.J. was questioned. We further note that, in its judgments, the juvenile court identified J.J. as the father of each of the children.

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children in March 2018 so that the children could be enrolled in school.³

On May 31, 2018, R.E. and S.E., who are C.J.'s parents, also filed dependency petitions pertaining to the children, and those petitions were assigned case numbers JU-18-100015.02 and JU-18-100016.02 ("the .02 actions").

On August 30, 2018, J.C. and E.C. filed in the juvenile court petitions seeking to have the children declared dependent and an award of custody of the children. J.C. and E.C.'s dependency petitions were assigned case numbers JU-18-100015.03 and JU-18-100016.03 ("the .03 actions"). On October 1, 2018, the juvenile court entered an order in the .02 actions and in one of the .03 actions in which it determined that the children were, at that time, living in the home of

³Those orders were not entered on the State Judicial Information System until September 12, 2018. During the dependency hearing, the juvenile court expressed confusion regarding the date the orders had been entered. It appears that the parties and the juvenile court assumed that those orders had been properly entered in the .01 actions in March 2018.

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J.C. and E.C., and it awarded pendente lite custody of the children to J.C. and E.C.⁴

The juvenile court conducted an ore tenus hearing on all of the pending actions on November 2, 2018. At that hearing, C.J. testified that she no longer wished to pursue the .01 actions because she and B.C.J. had separated; B.C.J. did not appear at the ore tenus hearing. Also at that hearing, S.E. testified that, because of family and health reasons, she and R.E. could no longer prosecute the .02 actions. On November 14, 2018, the juvenile court entered orders dismissing the .01 actions and the .02 actions. The .03 actions remained pending at that time.

On January 17, 2019, the juvenile court entered judgments in the .03 actions in which it found the children dependent and awarded custody of the children to J.C. and E.C. Each parent filed a postjudgment motion, and the juvenile court entered an order denying those motions. The mother timely appealed to this court from the January 17, 2019, judgments; the father is not a party to these appeals.

⁴The record indicates that the October 1, 2018, pendente lite order was not entered in the State Judicial Information System in the .03 action pertaining to K.M.J.

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At the time of the November 2, 2018, hearing, K.M.J. was 13 years old and J.R.J. was 12 years old. The children had lived with their mother in Florida until December 2017.

C.J. testified that the children had come to visit B.C.J. at their home in Alpine during the week before Christmas 2017 and that the children had stayed with B.C.J. and C.J. throughout the holidays. It is undisputed that the mother's housing situation was unstable at that time. Therefore, C.J. stated, B.C.J. offered to allow the children to remain in their home until the mother was more stable. The mother testified that she agreed to allow the children to remain in Alabama with B.C.J. and C.J. after December 2017. The .01 actions were initiated by B.C.J. and C.J. on February 2, 2018.

C.J. testified that she and B.C.J. had separated after the .01 actions had been initiated; it appears that that separation took place in the late spring of 2018. Thereafter, C.J. and the children moved into the home of C.J.'s parents, R.E. and S.E., who also reside in Alpine.

S.E., C.J.'s mother, testified that the children moved into her home just before the end of the 2017-2018 school year, in late May 2018. S.E. explained that she had recognized

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that B.C.J. and C.J. could not take care of the children, and, therefore, she said, she and R.E. had initiated the .02 actions seeking to have the children found dependent and an award of custody of the children. S.E. testified, however, that, after the .02 actions were initiated, R.E. suffered a heart attack. S.E. stated that she and R.E. could no longer take care of the children because of health reasons and because of other, unspecified family reasons.

According to S.E. and E.C., the children had moved into the home of J.C. and E.C., who live in Sterrett, in September 2018. S.E. explained that E.C. is her former stepdaughter and the half-sister of C.J. and that J.C. is E.C.'s husband. J.C. and E.C. initiated the .03 actions at around that time, on August 30, 2018.

On appeal of the January 17, 2019, dependency judgments, the mother argues only that the juvenile court lacked jurisdiction to enter the January 17, 2019, judgments. Although this court does not normally consider arguments asserted for the first time on appeal, arguments related to a court's subject-matter jurisdiction may be raised at any time. R.J.R. v. C.J.S., 72 So. 3d 643, 645-46 (Ala. Civ. App. 2011).

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In asserting her argument on appeal, the mother relies on the Uniform Child Custody Jurisdiction and Enforcement Act ("the UCCJEA"), § 30-3B-101 et seq., Ala. Code 1975. The UCCJEA governs child-custody proceedings, including dependency actions in which custody or visitation is an issue. § 30-3B-102(4), Ala. Code 1975; M.B.L. v. G.G.L., 1 So. 3d 1048, 1050 (Ala. Civ. App. 2008); and H.T. v. Cleburne Cty. Dep't of Human Res., 163 So. 3d 1054, 1062 (Ala. Civ. App. 2014). "In order to make a custody determination incident to a dependency determination, a juvenile court must have jurisdiction to make an initial custody determination under the UCCJEA." R.S. v. B.C., 248 So. 3d 10, 12 (Ala. Civ. App. 2017).

We note that no party has alleged that the children were the subject of any custody or dependency proceedings in any other state. J.C. and E.C. represent in their appellate brief that there exist no other custody proceedings concerning the children. We acknowledge that the representations of counsel in a brief are not evidence. Ex parte Russell, 911 So. 2d 719, 725 (Ala. Civ. App. 2005). However, in her brief on appeal, the mother's arguments indicate that she agrees that the juvenile court's determinations in these actions

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constituted initial custody determinations regarding the children. Accordingly, we address the arguments as they have been presented to this court, i.e., to determine whether the mother has demonstrated that the juvenile court lacked subject-matter jurisdiction under the UCCJEA to make an initial custody determination in its January 17, 2019, dependency judgments.

Section 30-3B-201(a), Ala. Code 1975, of the UCCJEA sets forth the exclusive basis for an Alabama court to exercise jurisdiction over an initial child-custody determination and provides:

"(a) Except as otherwise provided in Section 30-3B-204, [Ala. Code 1975,] a court of this state has jurisdiction to make an initial child custody determination only if:

"(1) This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;

"(2) A court of another state does not have jurisdiction under subdivision (1), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under Section 30-3B-207

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or [Section] 30-3B-208, [Ala. Code 1975,]
and:

"a. The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and

"b. Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships;

"(3) All courts having jurisdiction under subdivision (1) or (2) have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under Section 30-3B-207 or [Section] 30-3B-208; or

"(4) No court of any other state would have jurisdiction under the criteria specified in subdivision (1), (2), or (3)."

The mother contends that the juvenile court lacked jurisdiction to make an initial determination of custody of the children under § 30-3B-201(a)(1) because, she says, Alabama is not the children's "home state." Under the UCCJEA, the term "home state" is defined as:

"The state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the

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commencement of a child custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of the child or any of the mentioned persons is part of the period."

§ 30-3B-102(7), Ala. Code 1975.

The mother argues that the children were not living in Alabama for six months before "the action was commenced in February 2018." In making that argument, however, the mother refers to B.C.J. and C.J.'s February 2, 2018, initiation of the .01 actions. The .01 actions, along with the .02 actions initiated by R.E. and S.C., were dismissed pursuant to the November 14, 2018, judgments of the juvenile court. No appeal by the original petitioners in those actions has been filed in this court.

The appeals before this court arise from the January 17, 2019, judgments entered in the .03 actions, which were commenced on August 30, 2018. In her brief filed in this court, the mother makes no argument concerning the commencement of the .03 actions as it relates to the determination of whether Alabama was the children's home state at the time those actions were filed.

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At the time the .03 actions were initiated by J.C. and E.C., the children had lived in Alabama since the week before Christmas 2017, i.e., for more than six months before the August 30, 2018, commencement of the .03 actions. Under the UCCJEA, the term "person acting as a parent" is defined as:

"A person, other than a parent, who:

"a. Has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding; and

"b. Has been awarded legal custody by a court or claims a right to legal custody under the law of this state."

§ 30-3B-102(13), Ala. Code 1975.

The petitioners in all three sets of dependency actions stepped up to care for the children, and to assist each other in caring for the children, when the mother was unable to do so.⁵ The record demonstrates that, beginning in December

⁵The mother has not challenged the evidentiary support for the juvenile court's dependency determinations, and, therefore, that issue is waived. See Gary v. Crouch, 923 So. 2d 1130, 1136 (Ala. Civ. App. 2005) ("[T]his court is confined in its review to addressing the arguments raised by the parties in their briefs on appeal; arguments not raised by the parties are waived.").

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2017, the children lived with B.C.J. and C.J. and that B.C.J. and C.J. first asserted a claim seeking custody of the children pursuant to a dependency determination on February 2, 2018, by commencing the .01 actions. Thereafter, the children moved with C.J. to the home of S.E. and R.E., who also initiated custody actions pursuant to the dependency statutes. On August 30, 2018, more than six months after the .01 actions had been initiated by B.C.J. and C.J., E.C. and J.C. commenced the .03 actions. Thus, we conclude that, for at least six months before E.C. and J.C. commenced the .03 actions, the children had been living with a person who had physical custody of them and who asserted a right to custody of the children under Alabama's dependency statutes. See, e.g., § 30-3B-102(13), Ala. Code 1975. Accordingly, at the time of the commencement of the .03 actions from which these appeals arise, the children's home state was Alabama. Therefore, the juvenile court had jurisdiction under the UCCJEA to enter its January 17, 2019, judgments.

The mother raises no other issues on appeal, and, therefore, any other issues are deemed to have been waived. Gary v. Crouch, 923 So. 2d 1130, 1136 (Ala. Civ. App. 2005). The judgments are affirmed.

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2180432--AFFIRMED.

2180433--AFFIRMED.

Moore, Donaldson, Edwards, and Hanson, JJ., concur.