

Rel: October 4, 2019

Notice: This opinion is subject to formal revision before publication in the advance sheets of Southern Reporter. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0649), of any typographical or other errors, in order that corrections may be made before the opinion is printed in Southern Reporter.

ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2019

2180544

K.G.

v.

J.J.

**Appeal from Russell Circuit Court
(DR-18-900172)**

THOMPSON, Presiding Judge.

On August 21, 2018, J.J. ("the father") filed in the Russell Circuit Court ("the trial court") a petition seeking an award of custody of the child born of his relationship with K.G. ("the mother"). In that petition, the father alleged

2180544

that the Russell Juvenile Court ("the juvenile court") had entered a June 29, 2009, judgment adjudicating his paternity and establishing his monthly child-support obligation. In his August 21, 2018, petition, the father claimed that he was seeking an "initial custody determination" and an award of sole physical custody of the child.¹

The mother filed in the trial court an answer opposing the father's August 21, 2018, petition. The mother also counterclaimed seeking, among other things, an award of sole physical custody of the child, a determination of the father's child-support arrearage, and an attorney fee.

The trial court conducted an ore tenus hearing on the parties' claims. On March 1, 2019, the trial court entered a judgment in which, among other things, it purported to award sole physical custody of the child to the father, to award the mother a schedule of visitation, to determine the father's child-support arrearage, and to order the mother to pay child

¹In his August 21, 2018, petition, the father sought an award of "primary physical custody" of the parties' child. However, it is clear that the father requested an award of "sole physical custody," as that term is defined in § 30-3-151, Ala. Code 1975.

2180544

support to the father.² On March 21, 2019, the mother filed two postjudgment motions, and the trial court entered an April 2, 2019, order denying those motions. The mother filed a notice of appeal to this court on April 11, 2019.

In their briefs submitted to this court, neither party has addressed the issue of the trial court's jurisdiction over the father's claims. However, jurisdictional issues are of such importance that an appellate court may take notice of them ex mero motu. Nunn v. Baker, 518 So. 2d 711, 712 (Ala. 1987); Heaston v. Nabors, 889 So. 2d 588, 590 (Ala. Civ. App. 2004). This court asked the parties to submit letter briefs regarding the issue of whether the trial court properly exercised jurisdiction over the father's action.

The parties' pleadings indicate that the juvenile court had entered a judgment in which it determined the father's paternity and that it had subsequently entered two judgments concerning the father's child-support obligation. Thus, the record demonstrates that the juvenile court had exercised

²The trial court did not expressly rule on the mother's request for an attorney fee, but that does not affect the finality of the judgment. Blankenship v. Blankenship, 963 So. 2d 112, 114 n.2 (Ala. Civ. App. 2007).

2180544

jurisdiction over the action between the parties that established the father's paternity of the child under the Alabama Uniform Parentage Act ("AUPA"), § 26-17-101 et seq., Ala. Code 1975. § 12-15-115(a)(6), Ala. Code 1975 (A juvenile court has original jurisdiction over "[p]roceedings to establish parentage of a child pursuant to the [AUPA]."). The record does not contain any documentation from the juvenile-court action between the parties. However, in its March 1, 2019, judgment, the trial court set forth relevant information concerning the juvenile court's earlier judgments as follows:

"The [father] was adjudicated father of the minor child on June 30, 2009, through a child-support judgment in the [Juvenile] Court of Russell County, Alabama, in 57-CS-209-39.00. Said judgment was modified on two occasions, and on January 11, 2016, (CS-09-39.02), the [father] was ordered to pay \$515.84 per month as 'current' child support, along with \$25 per month towards a child-support arrearage totaling \$1,939.74, plus interest in the amount of \$156.96."³

The parties acknowledge that those earlier judgments of the juvenile court did not contain an express award of custody to the mother. However, in the action in the trial court, the

³This court has recognized that an action designated as a "CS" action is a juvenile-court action. R.Z. v. S.W., 141 So. 3d 1099, 1101 (Ala. Civ. App. 2013); C.B. v. D.P.B., 80 So. 3d 918, 920 (Ala. Civ. App. 2011).

2180544

parties and the trial court recognized that those judgments of the juvenile court ordering the father to pay child support constituted an implicit award of custody to the mother. See, e.g., M.K. v. A.M., 176 So. 3d 221, 222 (Ala. Civ. App. 2015) ("In determining the father's child-support obligation, the juvenile court either explicitly or implicitly awarded custody of the child to the mother."); L.E.W. v. M.J.L., 200 So. 3d 1171, 1172 (Ala. Civ. App. 2015) ("'[A]n award of support to one parent constitutes an implicit award of custody to that parent.'" (quoting Ex parte Washington, 176 So. 3d 852, 853 (Ala. Civ. App. 2015))); and T.B. v. C.D.L., 910 So. 2d 794, 796 (Ala. Civ. App. 2005) ("Based upon the award of child support to the mother, we conclude that the mother was also awarded custody of the child at the time the original paternity and child-support judgment was entered and that the award of custody to the mother was reaffirmed by the subsequent modification judgments."). Accordingly, the parties and the trial court agreed that the custody-modification standard set forth in Ex parte McLendon, 455 So. 2d 863 (Ala. 1984), applied to the father's action filed in

2180544

the trial court that sought to modify the juvenile court's award of custody to the mother.⁴

In reaching those conclusions, however, the parties and the trial court did not recognize that the juvenile court retained jurisdiction concerning the modification or enforcement of its earlier judgments under § 12-15-117(a), Ala. Code 1975, which provides:

"(a) Once a child has been adjudicated dependent, delinquent, or in need of supervision, jurisdiction of the juvenile court shall terminate when the child becomes 21 years of age unless, prior thereto, the judge of the juvenile court terminates its jurisdiction by explicitly stating in a written order that it is terminating jurisdiction over the case involving the child. Nothing in this section is intended to affect the initial and continuing jurisdiction of juvenile courts over cases other than delinquency, dependency, or in need of supervision cases as provided in Sections 12-15-114,

⁴The trial court's judgment mirrors the language of the standard set forth in Ex parte McLendon, 455 So. 2d 863, 865-66 (Ala. 1984), by concluding:

"1. That a material change in circumstances has occurred since the last order awarding implicit custody to the Defendant/Mother such that a change of custody should be granted in favor of the Plaintiff/Father.

"2. That said change in custody materially promotes the best interest of the minor child and would overcome any inherent disruptive effects, if any, of said change in custody."

2180544

12-15-115, 12-15-116, [Ala. Code 1975,] or any other statute by which jurisdiction was initially lawfully invoked."

(Emphasis added.) See also § 12-15-117.1, Ala. Code 1975 (reiterating a juvenile court's continued jurisdiction to modify and enforce its judgments in any action that had been within its original jurisdiction).

In M.K. v. A.M., supra, a juvenile court established A.M.'s paternity of a child born of his relationship with the child's mother, and it ordered A.M. to pay child support. After the child's mother died, M.K., the child's maternal grandmother, filed in the circuit court in that case a petition to modify custody, seeking custody of the child. The circuit court purported to award custody of the child to A.M., and the maternal grandmother appealed. 176 So. 3d at 222. This court held that because the juvenile court maintained jurisdiction over the child, the juvenile court, not the circuit court, had jurisdiction over the maternal grandmother's custody action; therefore, this court concluded that the judgment of the circuit court in that case was void for want of jurisdiction. M.K. v. A.M., 176 So. 3d at 222.

2180544

The father argues in his letter brief submitted to this court that the same judge who presided over this action also serves as a juvenile-court judge. That fact, however, does not operate to confer jurisdiction in the trial court over the father's action seeking to modify a judgment of the juvenile court. This court has recently addressed a similar situation, explaining:

"It appears that the initial custody order sought to be modified was the product of a juvenile-court paternity proceeding and that the modification action, although reassigned to a judge who routinely sits as a juvenile-court judge, was never effectively transferred to the juvenile court for disposition. Pursuant to M.K., the trial court did not have subject-matter jurisdiction to modify the juvenile court's initial custody order; thus, the judgment from which the mother has sought to appeal is void. 'A judgment entered by a court lacking subject-matter jurisdiction is absolutely void and will not support an appeal; an appellate court must dismiss an attempted appeal from such a void judgment.' Vann v. Cook, 989 So. 2d 556, 559 (Ala. Civ. App. 2008). That said, our supreme court has recently held that, under § 12-11-11, Ala. Code 1975, a court has an obligation to transfer a case outside its subject-matter jurisdiction to an appropriate court within the same county should such a court exist. See Ex parte E.S., 205 So. 3d 1245 (Ala. 2015)."

Williams v. Minor, 202 So. 3d 676, 678-79 (Ala. Civ. App. 2016).

2180544

The trial court lacked jurisdiction over the father's custody-modification action. Upon this court's issuance of its certificate of judgment in this appeal, the trial court is directed to transfer the father's custody-modification action to the juvenile court. § 12-11-11, Ala. Code 1975; Ex parte E.S., 205 So. 2d 1245, 1249 (Ala. 2015); Williams v. Minor, supra.

APPEAL DISMISSED WITH INSTRUCTIONS.

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