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ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2019

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Ex parte T.A.W.

PETITION FOR WRIT OF MANDAMUS

(In re: T.W.

v.

T.A.W.)

(Dallas Circuit Court, DR-18-51)

MOORE, Judge.

T.A.W. ("the father") petitions this court for a writ of mandamus directing the Dallas Circuit Court ("the trial

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court") "to domesticate and execute" an order entered by a Florida circuit court ("the Florida court") making an ex parte award of custody of A.M.W. ("the child") to the father.

Following the father's filing of his mandamus petition with this court, T.W. ("the mother") filed a notice with the clerk of this court asserting that the father's mandamus petition does not properly protect the identity of the child in accordance with Alabama statutes and court rules. The mother also filed with this court a motion to disallow and to strike the father's mandamus petition based on the father's failure to properly protect the confidentiality of the proceedings following the consolidation of the case before the trial court with the mother's juvenile-court petition. The mother, however, has failed to direct this court to any authority requiring that the father's petition be dismissed based on his alleged failure to properly protect the child's identity. In response to the mother's motion, the father filed an objection and, later, an amended objection to the mother's motion to disallow and to strike his petition; in both his objection and his amended objection, the father resubmitted the attachments that had been originally submitted

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in support of his petition for the writ of mandamus in redacted formats such that any confidential information regarding the child has been omitted. Additionally, initials are used throughout this opinion to protect the identity of the child, who is the subject of a juvenile-court proceeding. See Rule 52, Ala. R. App. P. Because the father and this court have now made reasonable efforts to preserve the child's anonymity, the mother's motion to strike the father's petition is denied.

In his mandamus petition, the father asserts, among other things, that, on June 6, 2016, the child was born to him and the mother, to whom the father has never been married; that the father's paternity of the child was established by a Florida court in 2018; and that the father has provided support for the mother and the child since the child was born. The father asserts further that, in 2018, the Florida court issued an order allowing the father to obtain custody of the child ("the Florida custody order") and that, thereafter, the mother absconded with the child from Florida to Alabama. According to the father's petition, since the entry of the Florida custody order, the mother has initiated a number of

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petitions in different counties in Florida and Alabama seeking protection from abuse against the father, but, the father asserts, all of those petitions have been dismissed. The father asserts that the present case was initiated when the mother filed a petition for protection from abuse against him in the trial court in 2018. Attached to the father's mandamus petition is a copy of a petition that the mother filed in the Dallas Juvenile Court ("the juvenile court") in which she sought to keep the child from being removed from her care. According to the father, that petition has been consolidated with the mother's petition for protection from abuse in the trial court.

Also attached to the father's mandamus petition is a November 8, 2018, petition he filed in the trial court in which he requested, among other things, that the trial court "domesticate and enforce" the Florida custody order, pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act, § 30-3B-101 et seq., Ala. Code 1975 ("the UCCJEA"). He asserts in his mandamus petition that the trial court "has refused to domesticate th[e Florida custody] order some 6 months later and has set a hearing for September 2019."

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(Petition, p. 6). A May 15, 2019, motion filed by the father in the trial court and attached to the father's mandamus petition indicates that the father requested that the trial court expedite the final hearing and again requested that the trial court domesticate the Florida custody order. According to the father, the trial court responded to his motion by setting the hearing on the motion for September 2019; the father has failed, however, to include the date of the trial court's order setting the hearing or to attach the order as an exhibit to his mandamus petition.

The father purports to raise a number of issues in his petition before this court. The legal authority cited by the father in support of his mandamus petition, however, speaks solely to the full faith and credit to be afforded by a court of this state to a judgment issued by another state. See, e.g., Pirtek USA, LLC v. Whitehead, 51 So. 3d 291 (Ala. 2010) (discussing the domestication of a Florida judgment); R.W. v. G.W., 2 So. 3d 869 (Ala. Civ. App. 2008) (discussing jurisdiction pursuant to the UCCJEA in a custody case); Tongue, Brooks & Co. v. Walser, 410 So. 2d 89 (Ala. Civ. App. 1982) (stating that the judgment of a court of a sister state

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is due full faith and credit in Alabama); and the UCCJEA. Although the father requests that this court direct the trial court to grant his request to domesticate and enforce the Florida custody order, there is no indication before us that the trial court has entered any ruling on the father's petition requesting that relief. Our supreme court has stated that, "[g]enerally, the writ of mandamus will not issue to compel a trial court to exercise its discretion in a particular manner." Ex parte Monsanto Co., 794 So. 2d 350, 353-54 (Ala. 2001). Therefore, insofar as the father's mandamus petition requests this court to direct the trial court to grant his request to domesticate and enforce the Florida custody order, we conclude that that request is premature, and we deny the father's petition insofar as it requests such relief.

The father also asserts, however, that the trial court has erred by failing to timely rule on his petition seeking domestication and enforcement of the Florida custody order. We interpret the father's assertion as requesting this court to issue a writ directing the trial court to rule on his motion to domesticate and enforce the Florida custody order.

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The mother has filed in this court an answer and a motion to dismiss the father's petition for the writ of mandamus in which she asserts that the father's petition is due to be dismissed because it was untimely filed and because, among other reasons, the father failed to attach to his petition any orders issued by the trial court. As discussed above, however, this court interprets the father's petition, in part, as requesting this court to direct the trial court to rule on his motion to domesticate and enforce the Florida custody order. This court has considered petitions for the writ of mandamus seeking an order directing that a pending motion be ruled on when there was no adverse ruling by the lower court. See, e.g., Ex parte RM Logistics, Inc., [Ms. 2180137, Jan. 11, 2019] ___ So. 3d ___, ___ (Ala. Civ. App. 2019) (directing the Walker Circuit Court to rule on a motion to dismiss or to transfer that had been pending for over a year).

With regard to the mother's assertion that the father's petition was untimely filed, we note that this court considered the timeliness of a petition for the writ of mandamus based on a trial court's failure to rule in Ex parte Williams, 183 So. 3d 186 (Ala. Civ. App. 2015). In that case, we stated, in pertinent part:

"Rule 21(a)(3), Ala. R. App. P., provides that a petition for the writ of mandamus 'shall be filed within a reasonable time.' The rule specifically provides that '[t]he presumptively reasonable time for filing a petition seeking review of an order of a trial court or of a lower appellate court shall be the same as the time for taking an appeal.' Rule 21(a)(3). However, the rule[] does not explain how to determine whether a petition seeking review of a trial court's failure to rule on a motion is timely filed.

"The Committee Comments to Amendments to Rule 21(a) and 21(e)(4) Effective September 1, 2000, state that '[a] petition for a writ of mandamus based on a trial court's failure to rule on a matter does not have a benchmark date from which to begin [to] measure a reasonable time.'"

183 So. 3d at 188. In the present case, the father last sought a ruling from the trial court with regard to his request to domesticate and enforce the Florida custody order on May 15, 2019. The father filed his petition for the writ of mandamus with this court on May 28, 2019. Although the trial court's order setting the father's motion for a hearing in September 2019 does not appear as an attachment to the father's petition before this court, we can conclude that the father's petition was timely filed in response to that order. Because we interpret the father's petition in this case as requesting this court to direct the trial court to rule on his motion to domesticate and enforce the Florida custody order,

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we conclude that the petition was not untimely filed and that this court may consider the father's petition despite the lack of an adverse ruling by the trial court on the father's motion. Accordingly, the mother's motion to dismiss is due to be denied.

We now turn to the merits of the father's mandamus petition insofar as it seeks this court to direct the trial court to rule on his motion to domesticate and enforce the Florida custody order. Section 30-3B-107, Ala. Code 1975, provides that "[i]f a question of existence or exercise of jurisdiction under [the UCCJEA] is raised in a child custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously." Section 30-3B-308, Ala. Code 1975, sets forth certain requirements for a petition seeking to enforce an order for the return of a child. Section 30-3B-308(c) provides, in pertinent part, that "[u]pon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing," which, in turn "must be held on the next judicial day after service of the order unless that date is impossible," in which event "the

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court shall hold the hearing on the first judicial day possible." According to the father's petition, the father first filed a petition to domesticate and enforce the Florida custody order on November 8, 2018. More recently, according to the father, he filed a motion on May 15, 2019, seeking domestication and enforcement of the Florida custody order. The father asserts that, in response to his May 2019 motion, the trial court indicated that it would conduct a hearing thereon in September 2019.

As stated above, § 30-3B-107 and § 30-3B-308(c) require that the question whether a foreign child-custody order is due to be domesticated and enforced be handled expeditiously. Because it appears from the materials before this court that the trial court has failed to act in accordance with § 30-3B-107 and § 30-3B-308(c), we grant the father's petition in part and direct the trial court to enter an order on the father's motion to domesticate and enforce the Florida custody order within 14 days of the issuance of this court's certificate of judgment.

PETITION GRANTED IN PART AND DENIED IN PART; WRIT ISSUED.

Edwards and Hanson, JJ., concur.

Thompson, P.J., and Donaldson, J., recuse themselves.