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ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2020

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Sherri Laponsie

v.

Phillip Corley

**Appeal from Elmore Circuit Court
(DR-12-900243.01)**

HANSON, Judge.

Sherri Laponsie ("the mother") appeals from a judgment of the Elmore Circuit Court ("the circuit court") purporting to modify a previous custody award of the Elmore Juvenile Court ("the juvenile court") to award Phillip Corley ("the father")

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sole physical custody of G.C. ("the child") and to hold the mother in contempt. Because the record before us establishes that the circuit court was without subject-matter jurisdiction to enter the judgment, we dismiss the appeal with instructions.

Facts and Procedural History

According to the mother, the parties were never married.¹ An initial custody award relating to the child, who was born in 2008, was entered by the juvenile court on February 3, 2011. A copy of the juvenile court's judgment is not contained in the appellate record, but the record in this case indicates that the juvenile court awarded the parties joint legal custody of the child; awarded the mother sole physical

¹The father's appellate brief states that the initial custody award was part of a judgment divorcing the parties. This appears to be a mistake by appellate counsel. The father's citations to the clerk's record do not provide support for the statement; no claim of a preexisting divorce judgment was made by any party in the circuit court; and the circuit court's recitation of the material procedural history confirms that the initial custody award was entered by the juvenile court.

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custody of the child; awarded the father visitation; and ordered the father to pay child support.²

In 2014, the mother sought and received a protection-from-abuse judgment in the Autauga Circuit Court that indefinitely enjoined the father from any contact with the mother or the child.³ According to the mother, she moved to Texas with the child in late 2017.

On November 2, 2017, the father filed a "petition to modify visitation/child support" in the circuit court. In his petition, the father alleged that there had been a change in circumstances warranting a modification of his visitation rights and child-support obligation. The father also sought a finding of contempt against the mother, alleging that she had moved to Texas without providing him required notice of the child's change of residence. Along with his petition, the

²The limited materials and testimony contained in the appellate record indicate that the juvenile court's custody award was entered incident to a parentage determination. See Ex parte Washington, 176 So. 3d 852, 853 (Ala. Civ. App. 2015) ("[A]n order requiring a man to pay child support is an implicit judicial determination of paternity.").

³The father appealed from the protection-from-abuse judgment, and this court affirmed the judgment, without an opinion. Corley v. Laponsie (No. 2130928, May 15, 2015), 212 So. 3d 191 (Ala. Civ. App. 2015) (table).

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father filed a motion for a pendente lite award of visitation. In that motion, the father alleged that he had been unable to exercise visitation with the child for approximately three years.

The mother filed an answer generally denying the allegations of the petition and appeared with counsel at a hearing on the motion for pendente lite relief. On February 21, 2018, the circuit court entered the following pendente lite order:

- "1. Child support is reset at \$371.00 per month.
- "2. [The father] is to have telephone visitation, twice weekly, with the mother making phone, phone number and time available to [father] for contact.
- "3. Personal visitation to be arranged by next court date."

On June 7, 2018, the mother filed a motion to dismiss the father's modification action on the ground that the circuit court lacked personal jurisdiction over the parties. The mother alleged in the motion that the father was actually a resident of Florida and that she was a resident of Texas. No evidentiary submissions were attached in support of the motion. On June 28, 2018, the 2014 protection-from-abuse

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judgment was modified by the Autauga Circuit Court to allow contact between the father and child.

A brief trial on the father's modification petition was conducted on August 1, 2019. The mother did not appear for the trial, although her counsel was present. Furthermore, immediately before the start of trial, a process server served the father with documents related to a child-custody action regarding the child that had been initiated by the mother in Texas.⁴

The father was the only witness to testify at the trial. He stated that he was a resident of Alabama and that he had always resided in Alabama; that he held an Alabama driver's license; and that he filed tax returns in Alabama. He admitted, however, that on two occasions he had used his girlfriend's address in Florida as his home address on tax documents, but he stated that he had done so for "tax purposes" and that his girlfriend had driven the tax documents to him in Alabama after she had received them. The father

⁴The documents served upon the father were not made part of the record in this case, and the precise nature of the Texas custody action is not clear from the record in this case.

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testified that he is employed as a "pipeliner" and indicated that his work on oil and gas pipelines requires frequent travel outside Alabama.

The father testified that, pursuant to the custody and visitation award entered by the juvenile court in 2011, he had initially exercised visitation with the child every other weekend. He stated that, after the protection-from-abuse judgment had been entered against him, he had been unable to visit or communicate with the child. The father stated that, since the entry of the February 21, 2018, pendente lite order, he had had twice-weekly telephone visitations with the child, usually via videoconferencing. The father testified that he had also had one supervised-visitation session with the child in Abilene, Texas. The father testified that that visitation session with the child had gone very well; that the child had been excited to see him; and that they had played a card game. The father testified that he wanted the visitation schedule modified to award him one weekend visitation each month, to

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provide him extended summertime visitation, and to allow him to spend holidays with the child.⁵

On August 6, 2019, the circuit court entered a judgment denying the mother's motion to dismiss and purporting to award the father sole physical custody of the child. The circuit court's judgment stated, in pertinent part:

"The court finds that the father is a resident of the State of Alabama and has been such since the issuance of the initial custody order in this matter. The Court further finds that pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act[,], § 30-3B-202, [Ala. Code 1975], ... this Court has continuing exclusive jurisdiction of any modification of the Alabama custody order.
...

".

"The Court finds that the mother has willfully violated the orders of this Court. The mother has failed to make the child available to the father for his Court ordered visitation and has attempted to thwart the father's relationship with his son. The mother was obviously aware of the final hearing in this matter as she had the father served with court documents from Texas at the exact time, date, and location of said hearing. Further, the Court believes that the mother's court filings in Texas filed just two (2) weeks before the final hearing in this matter are a further attempt to thwart the

⁵At the close of testimony, the mother's counsel made an oral motion to withdraw from representing the mother. That motion was granted.

father's relationship with his child and subvert the orders of this Court.

"The mother is found to be in contempt of the Court's order. The father is awarded attorney's fees and costs incurred in this matter. ...

"The Court finds the mother is willfully attempting to keep the child from the jurisdiction of this Court to the detriment of the child and the child's relationship with his father.

"The Court finds that the best interest of the child requires a modification of custody. Any disruption caused by said modification will be more than offset by the benefit to the minor child.

"It is therefore, ordered, adjudged, and decreed as follows:

- "1. Custody of [the child] ... is awarded to the father
- "2. The subject child shall be immediately returned to the State of Alabama and the jurisdiction of this Court. Thereafter, the child may leave the State as directed by the father.
- "3. All law enforcement agencies are ordered to assist with the implementation of this order.
- "4. The father's obligation regarding payment of support for the minor child is terminated as of July 31, 2019."

On September 5, 2019, the mother filed a postjudgment motion. In the motion, the mother reasserted her argument that the circuit court lacked jurisdiction to modify custody because, she contended, neither party or the child resided in

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Alabama; argued that her due-process rights had been violated by the custody award because, she alleged, she had had no notice that the father had sought a change in the child's physical custody; contended that the father had not established the factors for a modification of custody as set forth in Ex parte McLendon, 455 So. 2d 863 (Ala. 1984); and argued that the evidence at trial did not support a finding of contempt. The mother attached an affidavit in which she claimed to have personal knowledge bearing on the father's alleged residence in Florida. She also stated that she had not appeared at the trial because she had been told by the attorney who had represented her at trial that, if she were to appear in person, she would waive her jurisdictional arguments.

The circuit court denied the mother's postjudgment motion on September 11, 2019. The mother then timely filed this appeal.

Analysis

The mother raises a number of arguments on appeal. As a threshold matter, however, we first address whether the circuit court had jurisdiction to enter the August 6, 2019,

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judgment awarding custody of the child to the father, particularly in light of the fact that the initial custody determination pertaining to the child was issued by the juvenile court. Although the mother has not raised the issue whether the circuit court had jurisdiction to modify the juvenile court's previous custody determination, "jurisdictional matters are of such magnitude that we take notice of them at any time and do so even ex mero motu." Nunn v. Baker, 518 So. 2d 711, 712 (Ala. 1987).

We note that, before 2012, this court had interpreted the Alabama Juvenile Justice Act ("the AJJA"), § 12-15-101 et seq., Ala. Code 1975, which became effective on January 1, 2009, as limiting a juvenile court's jurisdiction to modify its own initial custody award when a child had not been found to be dependent, delinquent, or in need of supervision. See, e.g., Ex parte T.C., 63 So. 3d 627, 631 (Ala. Civ. App. 2010) (stating that initial custody award by a juvenile court would be prospectively modifiable only by the circuit courts); D.C.S. v. L.B., 84 So. 3d 954, 958 (Ala. Civ. App. 2011) ("[T]he juvenile court was without jurisdiction to consider the father's claims seeking to modify the child-support

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provision of its earlier judgment; the modification claims were required to have been brought in the circuit court."); Ex parte L.N.K., 64 So. 3d 656, 658 (Ala. Civ. App. 2010) ("Thus, this court has held that a juvenile court no longer has continuing jurisdiction over a child based solely on its having made a prior paternity determination."); K.C. v. R.L.P., 67 So. 3d 94, 96 (Ala. Civ. App. 2011) (holding that custody-modification action could have been properly filed only in the circuit court); R.T. v. B.N.H., 66 So. 3d 807 (Ala. Civ. App. 2011) (holding that juvenile court lacked jurisdiction over action involving claims to modify visitation).

In 2012, however, the Alabama Legislature passed Ala. Acts 2012, Act No. 2012-383 ("the Act"), which is codified, in part, as § 12-15-117.1, Ala. Code 1975. That Code section provides, in pertinent part:

"(a) The Legislature finds that it was its original intent in the adoption of the [AJJA] for a juvenile court to retain continuing jurisdiction in all cases in its jurisdiction to the extent provided by law. [The Act] is curative and shall apply retroactively to ratify and confirm the exercise of continuing jurisdiction of the juvenile court to modify and enforce a judgment in cases filed in juvenile court on or after January 1, 2009, and prior to May 14, 2012. Any order of a juvenile

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court issued while exercising jurisdiction pursuant to this subsection during this time shall be deemed valid."

The Act also amended § 12-15-115, Ala. Code 1975, and § 12-15-117, Ala. Code 1975, to expressly provide that, once a juvenile court has established parentage, it has continuing jurisdiction to modify or enforce a corresponding custody determination. Section 12-15-115(a)(7), Ala. Code 1975, provides that a juvenile court "shall ... exercise original jurisdiction ... to establish, modify, or enforce support, visitation, or custody when a juvenile court previously has established parentage." Likewise, § 12-15-117(c), Ala. Code 1975, provides:

"In any case over which the juvenile court has jurisdiction, the juvenile court shall retain jurisdiction over an individual of any age to enforce or modify any prior orders of the juvenile court unless otherwise provided by law and also shall retain jurisdiction for the enforcement or modification of any prior orders of the juvenile court requiring the payment of fines, court costs, restitution, or other money ordered by the juvenile court until paid in full."

In Ex parte Washington, 176 So. 3d 852, 853 (Ala. Civ. App. 2015), a father filed an action in a circuit court seeking "'to establish custody.'" A juvenile court, however, had previously entered a judgment requiring the father in

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Washington to pay child support. Citing § 12-15-115(a) (7) and § 12-15-117(c), this court concluded that the circuit court lacked jurisdiction over the petition for custody:

"A juvenile court has original jurisdiction over actions to establish paternity. § 12-15-115(a) (6), Ala. Code 1975. Section 12-15-115(a) (7), Ala. Code 1975, provides that juvenile courts have original jurisdiction in '[p]roceedings to establish, modify, or enforce support, visitation, or custody when a juvenile court previously has established parentage.' Our supreme court has held that an order requiring a man to pay child support is an implicit judicial determination of paternity. See Ex parte State ex rel. G.M.F., 623 So. 2d 722, 723 (Ala. 1993) (holding that an order requiring a man to pay child support was an implicit 'judicial determination of paternity qualifying for res judicata finality'). Likewise, this court has determined that an award of support to one parent constitutes an implicit award of custody to that parent. See T.B. v. C.D.L., 910 So. 2d 794, 796 (Ala. Civ. App. 2005); M.R.J. v. D.R.B., 17 So. 3d 683, 686 (Ala. Civ. App. 2009).

"In this case, the limited materials submitted to us indicate that the juvenile court has previously entered a judgment ordering the father to pay child support to the mother; thus, the juvenile court has made implicit determinations as to paternity and custody. In a separate action, the juvenile court entered a judgment that included the express determination that the child was not dependent, and it declined to award the father custody. Pursuant to § 12-15-117(c), Ala. Code 1975, the juvenile court 'shall retain jurisdiction over an individual of any age to enforce or modify any prior orders of the juvenile court unless otherwise provided by law'

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"Because the materials submitted to us indicate that the the juvenile court has entered judgments regarding support and custody of the child, it 'shall retain jurisdiction' to modify those orders. Therefore, the juvenile court, not the circuit court, has jurisdiction over the father's petition for custody in this case. Id."

Washington, 176 So. 3d at 853-54. See also Hicks v. Davis, 265 So. 3d 1285, 1288-89 (Ala. Civ. App. 2018) (holding that a circuit court did not have subject-matter jurisdiction over custody action when juvenile court had previously entered a judgement determining paternity and custody); Moore v. Griffin, 256 So. 3d 1201, 1203-04 (Ala. Civ. App. 2018) (holding that custody action was outside a circuit court's jurisdiction when juvenile court had previously entered judgment in a child-support action); but see Ex parte F.T.G., 199 So. 3d 82, 85-86 (Ala. Civ. App. 2015) (holding that a circuit court had concurrent jurisdiction over custody matters raised in divorce proceedings).

In this case, as in Washington, the record establishes that the juvenile court entered a judgment that determined paternity and custody of the child, ordered visitation, and awarded child support. Accordingly, the juvenile court has original jurisdiction "to establish, modify, or enforce

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support, visitation, or custody." Ala. Code 1975, § 12-15-115(a)(7). Therefore, pursuant to our caselaw, the August 6, 2019, judgment of the circuit court is void. Therefore, we must dismiss the appeal with instructions that the action be transferred to the juvenile court. Vann v. Cook, 989 So. 2d 556, 559 (Ala. Civ. App. 2008) ("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."); Moore, 256 So. 3d at 1205-06 (holding that outright dismissal of action was not consistent with § 12-11-11, Ala. Code 1975, and directing circuit court to transfer custody action to juvenile court); Hicks, 265 So. 3d at 1289 (dismissing appeal from a void judgment with instructions to transfer action to the juvenile court).

We note that the mother also argues that Alabama courts lack continuing exclusive subject-matter jurisdiction over the action under the Uniform Child Custody Jurisdiction and Enforcement Act ("the UCCJEA"), Ala. Code 1975, § 30-3B-101 et seq., because, she contends, the father was no longer an

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Alabama resident at the time he commenced the custody-modification action. The UCCJEA provides, in pertinent part:

"(a) Except as otherwise provided in Section 30-3B-204, [Ala. Code 1975,] a court of this state which has made a child custody determination consistent with Section 30-3B-201 or Section 30-3B-203[, Ala. Code 1975,] has continuing, exclusive jurisdiction over the determination until:

"(1) A court of this state determines that neither the child, nor the child and one parent, nor the child and a person acting as a parent have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships; or

"(2) A court of this state or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this state.

"(b) A court of this state which has made a child custody determination and does not have continuing, exclusive jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under Section 30-3B-201."

Ala. Code 1975, § 30-3B-202.

This court has recognized, however, that the determination regarding whether a court has jurisdiction under

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the UCCJEA potentially depends on the resolution of factual questions.

"Whether a court has jurisdiction under the [UCCJEA], § 30-3B-101 et seq., Ala. Code 1975, potentially depends on the resolution of several factual questions. See Baker [v. Baker], 25 So. 3d [470] at 473-74 [(Ala. Civ. App. 2009)] (discussing the requirements of the UCCJEA and summarizing the applicable evidence necessary to establish jurisdiction). 'When evidence in a child custody case has been presented ore tenus to the trial court, that court's findings of fact based on that evidence are presumed to be correct.' Ex parte Bryowsky, 676 So. 2d 1322, 1324 (Ala. 1996). '[W]e will not reverse unless the evidence so fails to support the determination that it is plainly and palpably wrong, or unless an abuse of the trial court's discretion is shown.' Phillips v. Phillips, 622 So. 2d 410, 412 (Ala. Civ. App. 1993)."

McGonagle v. McGonagle, 218 So. 3d 1208, 1212 (Ala. Civ. App. 2016).

Here, the question of the father's residency was disputed in the circuit court. Although the circuit court made findings of fact as to the father's residency based on evidence presented ore tenus, the circuit court was without subject-matter jurisdiction to decide those questions; thus, those findings, like the other parts of its judgment, are void, and the juvenile court, upon the transfer of this action by the circuit court, will not be bound by the findings of the

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circuit court in considering whether Alabama courts have jurisdiction to modify the child's custody consistent with the UCCJEA.

We pretermitt consideration of the remaining issues raised by the mother on appeal in light of this court's disposition thereof.

APPEAL DISMISSED WITH INSTRUCTIONS.

Thompson, P.J., and Moore, Donaldson, and Edwards, JJ., concur.