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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2019-2020

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Ex parte R.D. and D.D.

PETITION FOR WRIT OF MANDAMUS

(In re: F.S. and D.S.

v.

R.D. and D.D.)

(Jefferson Probate Court, Case No. 194969)

THOMPSON, Presiding Judge.

This matter involves a petition for a writ of mandamus challenging an order of the Jefferson Probate Court ("the

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probate court") denying a motion to dismiss a petition seeking grandparent visitation.

The materials submitted to this court indicate that F.S. and D.S. ("the maternal grandparents") filed an April 18, 2019, petition in the probate court seeking, pursuant to § 26-10A-30, Ala. Code 1975, an award of grandparent visitation with their grandson ("the child"), who, at the time the petition was filed, was 15 years old. Section § 26-10A-30 is a part of the Alabama Adoption Code ("the Adoption Code"), § 26-10A-1 et seq., Ala. Code 1975. In their petition, the maternal grandparents alleged that their daughter, the child's mother, had died after the child's birth in 2003, that the child's father, R.D. ("the father"), had later married D.D., and that D.D. ("the adoptive mother") had adopted the child. In seeking an award of grandparent visitation with the child, the maternal grandparents alleged that the father and the adoptive mother had substantially decreased their visitation with the child and that the lack of a relationship with the maternal grandparents constituted a risk to the health and welfare of the child.

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The father filed an answer opposing the maternal grandparents' petition on a number of grounds, including a challenge to the constitutionality of § 26-10A-30. Later, the father and the adoptive mother filed a motion seeking to dismiss the maternal grandparents' petition or, in the alternative, seeking the entry of a summary judgment in their favor. In that motion, the father and the adoptive mother argued, among other things, that the probate court lacked subject-matter jurisdiction over the maternal grandparents' action. On March 1, 2020, the probate court entered an order denying the motion. The father and the adoptive mother (hereinafter referred to collectively as "the petitioners") filed this petition for a writ of mandamus in which they again contend that the probate court lacks subject-matter jurisdiction over the maternal grandparents' action filed in that court.

A petition for a writ of mandamus is the appropriate method for reviewing the denial of a motion to dismiss for want of subject-matter jurisdiction. Ex parte Vega-Lopez, [Ms. 2180831, Dec. 20, 2019] ___ So. 3d ___ (Ala. Civ. App. 2019).

"Mandamus is an extraordinary remedy. An appellate court will grant a petition for a writ of mandamus only when '(1) the petitioner has a clear legal right to the relief sought; (2) the respondent has an imperative duty to perform and has refused to do so; (3) the petitioner has no other adequate remedy; and (4) this Court's jurisdiction is properly invoked.' Ex parte Flint Constr. Co., 775 So. 2d 805, 808 (Ala. 2000) (citing Ex parte Mercury Fin. Corp., 715 So. 2d 196, 198 (Ala. 1997)). Review by mandamus is not appropriate where the petitioner has another adequate remedy, such as an appeal. Ex parte Jackson, 780 So. 2d 681 (Ala. 2000); Ex parte Inverness Constr. Co., 775 So. 2d 153 (Ala. 2000); Ex parte Walters, 646 So. 2d 154 (Ala. Civ. App. 1994)."

Ex parte Americas, 855 So. 2d 544, 546-47 (Ala. Civ. App. 2003).

Generally, an award of grandparent visitation is governed by § 30-3-4.2, Ala. Code 1975. That section applies when a grandparent seeks visitation with a grandchild whose parents are divorced or seeking a divorce or when a parent of the child has died, among other situations, and it requires that grandparent-visitation claims be filed in a circuit court:

"(b) A grandparent may file an original action in a circuit court where his or her grandchild resides or any other court exercising jurisdiction with respect to the grandchild or file a motion to intervene in any action when any court in this state has before it any issue concerning custody of the grandchild, including a domestic relations proceeding involving the parent or parents of the grandchild, for reasonable visitation rights with

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respect to the grandchild if any of the following circumstances exist:

"(1) ... the marital relationship between the parents of the child has been severed by death or divorce. ..."

Pursuant to that statute, "[t]here is a rebuttable presumption that a fit parent's decision to deny or limit visitation to the petitioner is in the best interest of the child." § 30-3-4.2(c)(1).

However, § 30-3-4.2 specifies that that statute does not govern an award of grandparent visitation if the child is the subject of a intrafamily adoption action, stating:

"(i)(1) Notwithstanding any provisions of this section to the contrary, a petition filed by a grandparent having standing under Chapter 10A of Title 26 [i.e., the Adoption Code], seeking visitation shall be filed in probate court and is governed by Section 26-10A-30, rather than by this section if either of the following circumstances exists:

"a. The grandchild has been the subject of an adoption proceeding other than the one creating the grandparent relationship.

"b. The grandchild is the subject of a pending or finalized adoption proceeding."

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Section 26-10A-30 governs awards of grandparent visitation with children who have been adopted by certain relatives and provides:

"Post-adoption visitation rights for the natural grandparents of the adoptee may be granted when the adoptee is adopted by a stepparent, a grandfather, a grandmother, a brother, a half-brother, a sister, a half-sister, an aunt or an uncle and their respective spouses, if any. Such visitation rights may be maintained or granted at the discretion of the court at any time prior to or after the final order of adoption is entered upon petition by the natural grandparents, if it is in the best interest of the child."

(Emphasis added.)

In this case, the child has been the subject of a finalized adoption proceeding in which the child was adopted by his stepparent, i.e., the adoptive mother. See § 30-3-4.2(i)(1)a. and (1)b. In their petition for a writ of mandamus filed in this court, the petitioners do not contend that the probate court lacked subject-matter jurisdiction to consider a grandparent-visitation claim asserted against the adoptive mother under § 26-10A-30. Rather, the petitioners argue that the probate court does not have jurisdiction to consider an award of grandparent visitation pursuant to § 26-10A-30 in an action filed against a "natural parent" of the child such as

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the father in this case. The adoptive mother does not have the capacity to assert the rights of a natural parent with regard to this argument. C.Z. v. B.G., 278 So. 3d 1273, 1282 (Ala. Civ. App. 2018). For that reason, we dismiss the petition insofar as it seeks relief on behalf of the adoptive mother. Accordingly, we address the argument asserted in the brief filed in support of the petition for a writ of mandamus as having been asserted only by the father.

The father contends that he, as the child's natural parent, is not subject to the jurisdiction of the probate court under § 26-10A-30 and that, for that reason, the maternal grandparents' claim may not be maintained in the probate court. Rather, the father argues, the maternal grandparents' claim is governed by § 30-3-4.2 and must be asserted in the circuit court.

The Alabama Legislature, in enacting earlier versions of the general grandparent-visitation statute, currently § 30-3-4.2, placed the award of such visitation at the discretion of the trial court in cases in which the child's parents were divorcing, see former § 30-3-3, Ala. Code 1975 (repealed), and, later, in situations in which the parents were divorcing

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or upon the death of a parent, see former § 30-3-4, Ala. Code 1975 (repealed). A 1984 amendment to the Adoption Code created former § 26-10-5, Ala. Code 1975, which provided that, at a probate court's discretion, "'visitation rights for the natural grandparents of the minor grandchildren may be maintained, or allowed upon petition of modification at any time after the final order of adoption is entered.'" Snipes v. Carr, 526 So. 2d 591, 593 (Ala. Civ. App. 1988). Former § 26-10-5 was replaced in 1990 by § 26-10A-30, which remains in effect. See Ala. Acts 1990, Act No. 90-554.

In 1989, former § 30-3-4 was amended to set forth a presumption that grandparent visitation was in the child's best interests, but allowing the parent or parents to present evidence to rebut that presumption. See Ala. Acts 1995; Act No. 95-584; Weathers v. Compton, 723 So. 2d 1284, 1286 (Ala. Civ. App. 1998). Subsequently, in 1999, the legislature repealed former § 30-3-4 and replaced it with former § 30-3-4.1, Ala. Code 1975 (repealed), further limiting the circumstances under which grandparent visitation could generally be awarded; former § 30-3-4.1 provided that grandparent visitation could be awarded only upon a showing

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that such an award was in the child's best interest, based on a number of factors set forth in that statute. See Ala. Acts 1999, Act No. 99-436.

In 2000, the United States Supreme Court held in Troxel v. Granville, 530 U.S. 57, 65 (2000), that a parent's right to make decisions pertaining to the care, custody, and control of a child is a fundamental right. This court then held in R.S.C. v. J.B.C., 812 So. 2d 361, 363 (Ala. Civ. App. 2001), that former § 30-3-4.1 was unconstitutional. In response, the legislature amended former § 30-3-4.1 in 2003. See Ala. Acts 2003, Act. No. 2003-383. In Ex parte E.R.G., 73 So. 3d 634, 645 (Ala. 2011), our supreme court held that that subsequent version of former § 30-3-4.1 was also unconstitutional because it infringed on a parent's rights in and to his or her child. The court explained:

"The Act, however, and particularly § 30-3-4.1(d), makes no mention of the fundamental right of parents. Instead, it instructs the trial court to 'determine if visitation by the grandparent is in the best interests of the child.' The 'wishes of any parent who is living' are merely among the '[o]ther relevant factors' the court should 'consider.' § 30-3-4.1(d)(6), Ala. Code 1975. As noted above, a parent's right is fundamental, and a limitation on that right must be subject to strict scrutiny. To be constitutional, the Act must infringe upon the parent's right only to the extent

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necessary to protect a compelling state interest and must do so in a narrowly tailored way, using the least restrictive means. This it fails to do."

Ex parte E.R.G., 73 So. 3d at 646.

In 2011, after the release of Ex parte E.R.G., the legislature enacted Act Nos. 2011-539 and 2011-562 to amend former § 30-3-4.1 to create a rebuttable presumption in favor of the decision of a fit parent to deny or restrict a grandparent's visitation with a child. In Weldon v. Ballow, 200 So. 3d 654, 666 (Ala. Civ. App. 2015), this court held that another aspect of former § 30-3-4.1 was unconstitutional. Thereafter, in 2016, the legislature repealed former § 30-3-4.1 and enacted the current general grandparent-visitation statute, § 30-3-4.2. In § 30-3-4.2, the legislature added, among other things, a specification that grandparent visitation may not be awarded absent "[a] finding by the court, by clear and convincing evidence, that without court-ordered visitation by the grandparent, the child's emotional, mental, or physical well-being has been, could reasonably be, or would be jeopardized." § 30-3-4.2(a)(2).

Thus, the history of our grandparent-visitation statutes establishes that the intent of the legislature is and has been

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to provide a method by which a grandparent may seek an award of visitation with his or her grandchild without unconstitutionally infringing on the rights of natural parents.

As the father points out and as is explained above, the evidentiary burden applicable to an action seeking grandparent visitation with a child who is the subject of an intrafamily adoption pursuant to § 26-10A-30 is lower than that set forth in § 30-3-4.2 for an action against a natural parent. See, generally, Ex parte D.W., 835 So. 3d 186 (Ala. 2002); and D.T. v. W.G., 255 So. 3d 764, 767 (Ala. Civ. App. 2017) (discussing the evidentiary burden for a grandparent-visitiation action decided under a predecessor to § 30-3-4.2). Thus, the father argues to this court that because he is the child's natural parent, for whom a more stringent evidentiary burden would apply under § 30-3-4.2, the legislature did not intend for § 26-10A-30 to govern an action against him that seeks an award of visitation with his natural child.

In rejecting that argument in its March 1, 2020, order, the probate court determined, among other things, that the father had "availed himself of the jurisdiction of [the

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probate court] when he consented to the adoption proceeding" and that "[t]he original adoption petition was a closely-related adoption, as it was by a step-parent, with the natural parent's[, i.e., the father's] consent." The father argues that the probate court erred by concluding that he had "consented" to the jurisdiction of the probate court over him for the grandparent-visitation claim. The father points out that a party may not consent to the existence of subject-matter jurisdiction. See Espinoza v. Rudolph, 46 So. 3d 403, 413 (Ala. 2010) ("The parties may not waive lack of subject-matter jurisdiction, and subject-matter jurisdiction may not be conferred by consent."); and Ex parte Siderius, 144 So. 3d 319, 323 (Ala. 2013) ("Subject-matter jurisdiction cannot be waived, and the lack of subject-matter jurisdiction may be raised at any time by a party or by a court ex mero motu." (quoting Ex parte Punturo, 928 So. 2d 1030, 1033 (Ala. 2002))). We agree that a party may not consent to subject-matter jurisdiction. Espinoza v. Rudolph, supra.

However, merely because a party may not consent to subject-matter jurisdiction does not end the inquiry whether the probate court could properly exercise jurisdiction over

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the maternal grandparents' claim. Accordingly, we must determine whether the probate court has jurisdiction to determine a claim for grandparent visitation against a natural parent pursuant to § 26-10A-30 or whether such a claim is within the jurisdiction of the circuit court pursuant to § 30-3-4.2. We note that, in Alabama, this appears to be an issue of first impression.

""The fundamental rule of statutory construction is to ascertain and give effect to the intent of the legislature in enacting the statute. Words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used a court is bound to interpret that language to mean exactly what it says. If the language of the statute is unambiguous, then there is no room for judicial construction and the clearly expressed intent of the legislature must be given effect.""

Austin v. Alabama Check Cashers Ass'n, 936 So. 2d 1014, 1026 (Ala. 2005) (quoting Ex parte Master Boat Builders, Inc., 779 So. 2d 192, 196 (Ala. 2000), quoting in turn IMED Corp. v. Systems Eng'g Assocs. Corp., 602 So. 2d 344, 346 (Ala. 1992)).

Further, we must construe the two statutes together.

''Statutes are in pari materia where they deal with the same subject. Kelly v. State, 273 Ala. 240, 139 So. 2d 326 [(1962)]. Where statutes are in pari materia they should be construed together to ascertain the meaning and intent of

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each. City of Birmingham v. Southern Express Co., [164 Ala. 529, 538, 51 So. 159, 162-63 (1909)]. Where possible, statutes should be resolved in favor of each other to form one harmonious plan and give uniformity to the law. Waters v. City of Birmingham, 282 Ala. 104, 209 So. 2d 388 [(1968)]; Walker County v. White, 248 Ala. 53, 26 So. 2d 253 [(1946)].'"

Ex parte Alabama Bd. of Cosmetology & Barbering, 213 So. 3d 587, 590 (Ala. Civ. App. 2016) (quoting League of Women Voters v. Renfro, 292 Ala. 128, 131, 290 So. 2d 167, 169 (1974)).

A probate court is a court of limited jurisdiction: a probate court's jurisdiction "'is limited to the matters submitted to it by statute.'" AltaPointe Health Sys., Inc. v. Davis, 90 So. 3d 139, 154 (Ala. 2012) (quoting Wallace v. State, 507 So. 2d 466, 468 (Ala. 1987)). See also Walton v. Walton, 256 Ala. 236, 237-38, 54 So. 2d 498, 499 (1951) ("The jurisdiction of the probate court to act in the premises is statutory and limited, and it must appear from the face of the proceeding that it has acted within the scope of that jurisdiction. Nothing is presumed."). "The probate court cannot take jurisdiction of a cause or administer remedies except as provided by statute." Lappan v. Lovette, 577 So. 2d 893, 896 (Ala. 1991).

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Section 12-13-1, Ala. Code 1975, which governs the subject-matter jurisdiction of a probate court, provides that such courts have original jurisdiction over, among other things, the probate of wills, aspects of estates, and partitions of lands. That section also provides that a probate court has jurisdiction over "[s]uch other cases as jurisdiction is or may be given to such courts by laws in all cases to be exercised in the manner prescribed by law." § 12-13-1(b)(11). Section 26-10A-3, Ala. Code 1975, a part of the Adoption Code, specifies that "[t]he probate court shall have original jurisdiction over proceedings brought under" the Adoption Code."

As has already been explained, subject to certain exceptions, a claim seeking an award of grandparent visitation is generally to be brought in the circuit court. § 30-3-4.2. One of those exceptions is the grant of jurisdiction to the probate court to resolve claims for grandparent visitation when the child at issue has been adopted by a family member. § 30-3-4.2(i). As our supreme court observed when discussing another statute granting jurisdiction over a matter to the probate court, the statute at issue here, § 30-3-4.2(i), "is

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an affirmative grant of subject-matter jurisdiction to the probate court when the circumstances described in that Code section are met." Russell v. Fuqua, 176 So. 3d 1224, 1228 (Ala. 2015).

The Alabama Comment to § 30-3-4.2 explains that the legislature intended to allow an action seeking grandparent visitation of a child adopted by a stepparent or certain other family members to be filed in the probate court, stating, in pertinent part:

"Subsection (a)(1) defines 'grandparent' for purposes of this act. ... Chapter 10A of Title 26 of the Code of Alabama governs the visitation rights of a natural grandparent whose grandchild has been adopted or who is the subject of a pending adoption petition by certain relatives or by a stepparent. Thus, for example, a post-adoption petition for visitation by the natural grandparent of a grandchild that was adopted by a step-parent would be governed by the Adoption Code[, i.e., Chapter 10A of Title 26]. ...

".

"Subsections (i) and (j) clarify the interaction of this act with Alabama's separate provision in the Alabama Adoption Code that governs a natural grandparent's opportunity to seek visitation rights with an adoptee who is being adopted or has been adopted. Ala. Code § 26-10A-30 (1975). Subsequent to Troxel [v. Granville], 530 U.S. 57 (2000), the constitutionality of §-26-10A-30 of the Code of Alabama was challenged. The court distinguished the facts of the case from Troxel because it involved

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'the rights of adopting parents in the limited context of intrafamily adoptions' and upheld its constitutionality in Ex parte D.W., 835 So. 2d 186, 189 (Ala. 2002); see also Ex parte A.S. and C.S., 91 So. 3d 656 (Ala. 2011) (Bolin, J., concurring specially). The Adoption Code provides that a natural grandparent may seek visitation rights in the limited situations when the adoptee is or has been adopted by a stepparent or certain relatives. ..."

Section 30-3-4.2(i)(1), by its express language, allows a grandparent having "standing" under the Adoption Code to file a claim seeking an award of grandparent visitation when there has been an intrafamily adoption. The term "standing" is defined as "[a] party's right to make a legal claim or seek judicial enforcement of a duty or right." Black's Law Dictionary 1695 (11th ed. 2019). This court has held that "'standing is a component of subject-matter jurisdiction and can be raised at any time'" and that it may be raised ex mero motu. T.N. v. I.B., 188 So. 3d 675, 680 (Ala. Civ. App. 2015) (quoting Ex parte Overton, 985 So. 2d 423, 427 (Ala. 2007), citing in turn State v. Property at 2018 Rainbow Drive, 740 So. 2d 1025 (Ala. 1999)). Our supreme court held in 2013 that the issue of standing generally pertains only to public-law cases. Ex parte BAC Home Loans Servicing, LLP, 159 So. 3d 31 (Ala. 2013); Ex parte MERSCORP, Inc., 141 So. 3d 984 (Ala.

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2013). However, our legislature enacted § 30-3-4.2 in 2016, after those cases were released. The legislature is presumed to know of existing statutory laws and caselaw when it enacts legislation. Blue Cross & Blue Shield of Alabama, Inc. v. Nielsen, 714 So. 2d 293, 297 (Ala. 1998). The legislature is presumed not to have "employed 'meaningless words.'" Elder v. State, 162 Ala. 41, 45, 50 So. 370, 371 (1909). Instead, 'we presume that the Legislature knows the meaning of the words it uses in enacting legislation.' Ex parte Jackson, 614 So. 2d 405, 407 (Ala. 1993)." Reed v. Board of Trs. for Alabama State Univ., 778 So. 2d 791, 794 (Ala. 2000). Thus, under these circumstances, the legislature has dictated that the issue of standing impacts the probate court's jurisdiction to consider claims seeking an award of grandparent visitation.

"The question of standing implicates the subject-matter jurisdiction of the court. Ex parte Howell Eng'g & Surveying, Inc., 981 So. 2d 413, 419 (Ala. 2006). 'When a party without standing purports to commence an action, the trial court acquires no subject-matter jurisdiction.' State v. Property at 2018 Rainbow Drive, 740 So. 2d 1025, 1028 (Ala. 1999). ... 'When the absence of subject-matter jurisdiction is noticed by, or pointed out to, the trial court, that court has no jurisdiction to entertain further motions or pleadings in the case. It can do nothing but dismiss the action forthwith.' [Cadle Co. v. Shabani, 4 So. 3d 460, 463 (Ala. 2008)]."

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Bernal, Inc. v. Kessler-Greystone, LLC, 70 So. 3d 315, 319 (Ala. 2011). See also Thompson v. Thompson, 984 So. 2d 415, 417 (Ala. Civ. App. 2007) (holding that a great-grandmother did not have standing to seek grandparent visitation under a predecessor to § 30-3-4.2 because she was "not within the class of persons granted the right to seek grandparent visitation"); Hill v. Divecchio, 425 Pa. Super. 355, 360, 625 A.2d 642, 645 (1993) ("[A]s a threshold step, we must resolve the subject matter jurisdiction issue of whether the grandmother and step-grandfather had standing to assert a cause of action [seeking grandparent visitation] against their own daughter or step-daughter before we may proceed to the merits of the mother's appeal.").

Nothing in either § 30-3-4.2 or § 26-10A-30 provides the maternal grandparents standing to pursue a grandparent-visitiation claim against a natural parent in the probate court.

"The right of grandparent visitation did not exist at common law but was instead created by legislative act." Sanders v. Wright, 772 So. 2d 470, 471 (Ala. Civ. App. 2000), quoting C.Y. v. C.L., 726 So. 2d 733, 734 (Ala. Civ. App. 1999). The statutory right of grandparent visitation must be strictly construed; it cannot extend to persons who do not fit the definition specified by the

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Legislature. See Chavers v. Hammac, 568 So. 2d 1252 (Ala. Civ. App. 1990); Shoemaker v. Shoemaker, 563 So. 2d 1032 (Ala. Civ. App. 1990)."

T.R.S.S. v. R.S., 828 So. 2d 327, 330 (Ala. Civ. App. 2002).

In Ex parte D.W., 835 So. 2d 186, 191 (Ala. 2002), family members adopted a child, and the child's grandparents sought and were awarded grandparent visitation pursuant to § 26-10A-30. The adopting parents appealed, challenging the constitutionality of § 26-10A-30, and our supreme court held that the statute is constitutional. In so holding, our supreme court discussed the status of adoptive parents, noting that adoption is a status created entirely by statute:

"The right of adoption ... is purely statutory, and was never recognized by the rules of common law.' Hanks v. Hanks, 281 Ala. 92, 99, 199 So. 2d 169, 176 (1967). 'Adoption ... is a status created by the state acting as parens patriae, the sovereign parent.' Ex parte Bronstein, 434 So. 2d [780,] 781 [(Ala. 1983)]. Therefore, the rights of adopting parents are purely statutory, as defined in the Alabama Adoption Code."

Ex parte D.W., 835 So. 2d at 190.

In holding that § 26-10A-30 is constitutional, our supreme court further explained:

"It was the clear intent of the Legislature in enacting § 26-10A-30 to give the trial court the authority to grant post-adoption visitation rights to the natural grandparents of the adoptee, when the

adoptee is adopted by a family member. The only reasonable conclusion is that the Legislature intended to limit the rights of the adopting parents by allowing the possibility of court-ordered grandparent visitation over the objections of the adopting parents. Any other conclusion would fail to give any effect to § 26-10A-30, in violation of this Court's duty to harmonize the statutory provisions in order to give effect to all parts of the statute.

"....

"Under the facts of this case, adopting parents, whose rights are exclusively dependent upon statutory law, must be treated differently than natural parents."

Ex parte D.W., 835 So. 2d at 191 (emphasis added). See also D.T. v. W.G., 255 So. 3d 764, 769 (Ala. Civ. App. 2017) ("[T]he adoptive relationship is a status created by statute and, thus, ... the legislature is free to define the rights of adoptive parents as it sees fit, even to the extent of limiting those rights to allow for the possibility of court-ordered visitation with grandparents in certain instances.").

We further note that a grandparent does not have standing to seek an award of visitation if his or her grandchild is adopted by a person who is not a family member identified in § 26-10A-30. "[T]he right of the grandparent to seek

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visitation terminates if the court approves a petition for adoption by an adoptive parent, unless the visitation rights are allowed pursuant to Section 26-10A-30." § 30-3-4.2(b)(4).

Judge Thomas, in a special writing, explained:

"In an adoption by anyone other than a stepparent, the natural parents lose all parental rights to the adoptee. § 26-10A-29(b) [, Ala. Code 1975]. Thus, all others who may claim a relationship or a right to the child by virtue of the natural parents' relationship to the child also lose their relationships and rights to the child. Ex parte Bronstein, 434 So. 2d [780,] 782 [(Ala. 1983)]. As explained by the Bronstein court, 'adoption, like birth creates legal relationships under which the adoptive parents gain certain rights which pre-empt any visitation rights by natural parents or grandparents.' Id. at 783."

G.M. v. T.W., 75 So. 3d 1181, 1187 (Ala. Civ. App. 2011) (Thomas, J., concurring specially). See also T.R.S.S. v. R.S., 828 So. 2d 327, 329 (Ala. Civ. App. 2002) (holding that grandparents whose son's parental rights had been terminated lost standing to seek an award of grandparent visitation under a predecessor to § 30-3-4.2).

As the father points out, the distinction between the rights of natural parents and those of adoptive parents, and, therefore, the appropriate statute under which a grandparent-visitiation action may be prosecuted, dictates the applicable

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evidentiary burden to be applied to a grandparent-visitation claim. In an action involving a grandparent seeking an award of grandparent visitation from a natural parent, the evidentiary burden is far more stringent than the burden applicable to a claim seeking an award of visitation from a family member who has adopted a child. Under § 30-3-4.2, governing a claim against a natural parent, "[t]here is a rebuttable presumption that a fit parent's decision to deny or limit visitation [with a grandparent] is in the best interest of the child," and that presumption may be overcome only upon a showing that the petitioning grandparent has "a significant and viable relationship with the child" and that visitation with the petitioning grandparent is in the child's best interests. § 30-3-4.2(c). See also K.J. v. S.B., [Ms. 2180912, April 10, 2020] ___ So. 3d ___ (Ala. Civ. App. 2020) (discussing the burden applicable to a claim filed under § 30-3-4.2). However, a decision to award grandparent visitation with a child who has been adopted by a family member is within the discretion of the probate court and must serve the child's best interests. § 26-10A-30; J.B. v. J.M., 175 So. 3d 170, 173 (Ala. Civ. App. 2015) ("Section 26-10A-30 permits a

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probate court to grant visitation to grandparents if it is in the best interest of the child that such visitation occur."). This distinction is further indicative of the legislature's intent in promulgating § 26-10A-30 and making it applicable to adoptive rather than natural parents.

Neither § 30-3-4.2 nor § 26-10A-30 grants the probate court jurisdiction over a claim asserted by a grandparent seeking an award of visitation against the wishes of a natural parent. Rather, § 30-3-4.2, by its express language, governs a grandparent-visitation action against a natural parent. That section provides that a grandparent may seek grandparent visitation from a natural parent in a circuit court when, as here, "the marital relationship between the parents of the child has been severed by death" § 30-3-4.2(b)(1). Section 30-3-4.2(i) provides, in combination with § 26-10-30, that if a grandparent has standing under the Adoption Code, he or she may assert a grandparent-visitation claim against a "stepparent, a grandfather, a grandmother, a brother, a half-brother, a sister, a half-sister, an aunt or an uncle and their respective spouses," if they have adopted the child. § 26-10A-30.

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"This court may presume that a court of general jurisdiction," rather than a court of limited jurisdiction such as the probate court, "has subject-matter jurisdiction over a particular action." D.G. v. K.H., 155 So. 3d 242, 243 (Ala. Civ. App. 2013). Section 30-3-4.2 carves out an exception to that general rule by providing that, in an action seeking an award of grandparent visitation from a family member who has adopted a child, § 26-10A-30 applies. However, there is no language in § 30-3-4.2 or in § 26-10A-30 that provides a grandparent "standing" to assert a claim seeking grandparent visitation from a natural parent under § 26-10A-30. For that reason, we hold that the probate court erred in denying that part of the motion to dismiss pertaining to the maternal grandparents' claim against the father, and we grant the petition for a writ of mandamus as it pertains to the relief sought by the father.

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

Donaldson and Hanson, JJ., concur.

Moore, J., dissents, with writing, which Edwards, J., joins.

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MOORE, Judge, dissenting.

I respectfully dissent.

R.D. ("the father") and D.D. ("the adoptive mother") filed a petition for a writ of mandamus requesting that this court order Judge Alan King of the Jefferson Probate Court ("the probate court") to dismiss a grandparent-visitation action filed by F.S. and D.S. ("the maternal grandparents"), pursuant to Ala. Code 1975, § 26-10A-30, a part of the Alabama Adoption Code ("the Adoption Code"), Ala. Code 1975, § 26-10A-1 et seq. The father and the adoptive mother argue that the probate court lacks subject-matter jurisdiction over the action.

The question of subject-matter jurisdiction concerns solely the power of a court to adjudicate the case before it.

"Jurisdiction is '[a] court's power to decide a case or issue a decree.' Black's Law Dictionary 867 (8th ed. 2004). Subject-matter jurisdiction concerns a court's power to decide certain types of cases. Woolf v. McGaugh, 175 Ala. 299, 303, 57 So. 754, 755 (1911) ("By jurisdiction over the subject-matter is meant the nature of the cause of action and of the relief sought." (quoting Cooper v. Reynolds, 77 U.S. (10 Wall.) 308, 316, 19 L.Ed. 931 (1870))). That power is derived from the Alabama Constitution and the Alabama Code. See United States v. Cotton, 535 U.S. 625, 630-31, 122 S.Ct. 1781, 152 L.Ed.2d 860 (2002) (subject-matter jurisdiction refers to a

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court's 'statutory or constitutional power' to adjudicate a case)."

Ex parte Seymour, 946 So. 2d 536, 538 (Ala. 2006).

Probate courts are constitutionally created courts with general jurisdiction over adoptions. See Ala. Const. 1901, Art. VI, § 144 ("There shall be a probate court in each county which shall have general jurisdiction of orphans' business, and of adoptions"). However, this case involves a post-adoption proceeding for grandparent visitation, which a probate court may adjudicate only if it has statutory authority conferred by the legislature, as the main opinion correctly concludes. ___ So. 3d at ___ (holding that the subject-matter jurisdiction of a probate court is controlled by statute). Section 26-10A-30, entitled "Grandparent Visitation," provides:

"Post-adoption visitation rights for the natural grandparents of the adoptee may be granted when the adoptee is adopted by a stepparent, a grandfather, a grandmother, a brother, a half-brother, a sister, a half-sister, an aunt or an uncle and their respective spouses, if any. Such visitation rights may be maintained or granted at the discretion of the court at any time prior to or after the final order of adoption is entered upon petition by the natural grandparents, if it is in the best interest of the child."

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(Emphasis added.) The "court" referred to in § 26-10A-30 is the probate court. See Ala. Code 1975, § 26-10A-3 ("The probate court shall have original jurisdiction over proceedings brought under this chapter [i.e., the Adoption Code]"). Section 26-10A-30 specifically grants to probate courts jurisdiction in post-adoption proceedings to award visitation rights to the natural grandparents of a child who has been adopted by a stepparent. See D.T. v. W.G., 210 So. 3d 1143 (Ala. Civ. App. 2016).

In their petition, the maternal grandparents alleged as follows:

"1. The Plaintiffs are the maternal grandparents of the minor child that is the subject of this Finalized Adoption.

"2. The [maternal grandparents'] daughter, ... the mother of the ... child, is deceased and passed away in 2003, immediately after childbirth.

"3. [The father] and his second wife, [the adoptive mother], have been married approximately nine (9) years, and are residents of Shelby County, Alabama.

"4. [The child] was adopted by his step parent, [the adoptive mother], in Jefferson County, Alabama.

"5. [The maternal grandparents] have maintained a good relationship with the child to the best of their ability. However, they have seen [the child] less each passing year.

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"6. [The father and the adoptive mother]'s denial of Grandparent Visitation has created a substantial risk of harm to the child's mental, physical, or emotional health.

"7. The child has several cousins, aunts, and uncles with whom he has spent many holiday gatherings and family time. The denial of substantial, quality time with this side of his family creates said risk of harm to his mental, physical, and emotional health.

"WHEREFORE, PREMISES CONSIDERED, the [maternal grandparents] ask this Honorable Court, pursuant to Ala. Code [1975], § 26-10A-30, to assume jurisdiction of this matter, issue notice to those parties in interest as appropriate, conduct a hearing to consider this pleading, appoint a Guardian ad Litem ... and issue such orders to authorize the requested visitation. [The maternal grandparents] pray for such other and further relief to which this Court deems in the best interest of the ... child."

The petition expressly states a claim for relief under § 26-10A-30 over which the probate court has subject-matter jurisdiction by virtue of § 26-10A-3.

In Ex parte Palmer, 574 So. 2d 44 (Ala. 1990), Mattie Palmer filed a complaint in the Lauderdale Circuit Court seeking visitation with her natural grandchild, who had been adopted by his stepfather with the consent of his natural father, Palmer's son. The Lauderdale Circuit Court entered a summary judgment against Palmer on the ground that it lacked

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subject-matter jurisdiction to grant the requested relief. This court affirmed the summary judgment, holding that only the probate court had jurisdiction over the case, pursuant to Ala. Code 1975, former § 26-10-5(b), which, at that time, provided, in part, that, "'at the discretion of the [probate] court, visitation rights for the natural grandparents of the minor grandchildren may be ... allowed upon petition of modification at any time after the final order of adoption is entered.'" Palmer v. Bolton, 574 So. 2d 42, 44 (Ala. Civ. App. 1990) (emphasis omitted).

On certiorari review, the supreme court reversed the decision of this court. The supreme court determined that, when the legislature enacted a prior Grandparent Visitation Act, codified at Ala. Code 1975, former § 30-3-4, the legislature granted to circuit courts subject-matter jurisdiction over grandparent-visitation cases following the divorce of parents, which included Palmer's case in which the stepfather had adopted Palmer's grandchild after his parents had divorced. Thus, the supreme court held that the Lauderdale Circuit Court had jurisdiction over Palmer's case under former § 30-3-4. Notably, however, the supreme court

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did not conclude that the Lauderdale Circuit Court had exclusive subject-matter jurisdiction over Palmer's case. Nothing in the supreme court's opinion indicated that a probate court would have lacked subject-matter jurisdiction over the case had it been filed in that court. Ex parte Palmer recognized merely the concurrent subject-matter jurisdiction of the circuit courts over grandparent-visitation cases involving children adopted by a stepparent after the parents' divorce.

Former § 30-3-4 was repealed in 1999 by § 2 of Act No. 99-436, Ala. Acts 1999. Outside of the Adoption Code, grandparent visitation is now governed by Ala. Code 1975, § 30-3-4.2. Like former § 30-3-4, § 30-3-4.2 grants to the circuit courts general subject-matter jurisdiction over grandparent-visitation disputes. See § 30-3-4.2(b) ("A grandparent may file an original action [for visitation with his or her minor grandchild] in a circuit court"). However, § 30-3-4.2 does not strip the probate court of its jurisdiction under § 26-10A-30. To the contrary, § 30-3-4.2(i)(1) specifies that a petition of a grandparent who has "standing" under the Adoption Code and who seeks visitation

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"shall be filed in probate court." (Emphasis added.) Section 30-3-4.2(i)(1) further provides that the petition

"is governed by § 26-10A-30, rather than by [§ 30-3-4.2,] if either of the following circumstances exists:

"a. The grandchild has been the subject of an adoption proceeding other than the one creating the grandparent relationship.

"b. The grandchild is the subject of a pending or finalized adoption proceeding."

The father and the adoptive mother in the present case do not dispute that the maternal grandparents are seeking visitation with the child of their daughter who died in 2003 and that the child has been the subject of a finalized adoption proceeding in which the adoptive mother, who was the child's stepmother, adopted the child. Section 30-3-4.2(i)(1) mandates that jurisdiction over the petition filed by the maternal grandparents shall be in the probate court, apparently giving the probate courts exclusive subject-matter jurisdiction over cases falling within § 26-10A-30. See Ex parte A.S., 91 So. 3d 656, 657 (Ala. 2011) (Bolin, J., concurring specially) ("[A]n action seeking grandparent visitation under § 26-10A-30 can be maintained only in the probate court that granted the

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adoption." (emphasis added)). The holding in Ex parte Palmer apparently has been abrogated by § 30-3-4.2(i)(1), so that decision has no bearing on the issue before this court.

The main opinion concludes that the probate court cannot adjudicate the claim for grandparent visitation made against the father because the maternal grandparents lack standing under the Adoption Code to maintain an action against the father. Assuming the legislature intended the understood legal meaning of standing when it enacted § 30-3-4.2(i)(1), that requirement does not stand as an impediment to the probate court's jurisdiction.

"The concept of 'standing' refers to a plaintiff's ability to bring the action; the plaintiff must have a legally sufficient interest in that lawsuit, and, if he or she does not, the trial court does not obtain jurisdiction over the case:

"'"To say that a person has standing is to say that that person is the proper party to bring the action. To be a proper party, the person must have a real, tangible legal interest in the subject matter of the lawsuit.'" Doremus v. Business Council of Alabama Workers' Comp. Self-Insurers Fund, 686 So. 2d 252, 253 (Ala. 1996). "Standing ... turns on 'whether the party has been injured in fact and whether the injury is to a legally protected right.'" [State v. Property at 2018 Rainbow Drive, 740 So. 2d [1025, 1027 (Ala. 1999)] (quoting Romer v. Board of

County Comm'rs of the County of Pueblo, 956 P.2d 566, 581 (Colo. 1998) (Kourlis, J., dissenting)) (emphasis omitted). In the absence of such an injury, there is no case or controversy for a court to consider. Therefore, were a court to make a binding judgment on an underlying issue in spite of absence of injury, it would be exceeding the scope of its authority and intruding into the province of the Legislature. See City of Daphne v. City of Spanish Fort, 853 So. 2d 933, 942 (Ala. 2003) ("The power of the judiciary ... is 'the power to declare finally the rights of the parties, in a particular case or controversy'" (quoting Ex parte Jenkins, 723 So. 2d 649, 656 (Ala. 1998)))'

"Town of Cedar Bluff v. Citizens Caring for Children, 904 So. 2d 1253, 1256 (Ala. 2004).

"In determining whether a party has standing in Alabama courts, we are guided by whether the following exist: '(1) an actual, concrete and particularized "injury in fact" -- "an invasion of a legally protected interest"; (2) a "causal connection between the injury and the conduct complained of"; and (3) a likelihood that the injury will be "redressed by a favorable decision."' Alabama Alcoholic Beverage Control Bd. v. Henri-Duval Winery, L.L.C., 890 So. 2d 70, 74 (Ala. 2003) (quoting Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992))."

Ex parte Merrill, 264 So. 3d 855, 862-63 (Ala. 2018).

As explained above, standing tests whether the person seeking relief is a proper plaintiff not whether the person denying the right to relief is a proper defendant. A

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grandparent has "standing" to seek visitation with an adoptee child under § 26-10A-30, when the circumstances described therein exist and visitation between a grandparent and the adoptee child has been denied or unduly restricted such that the grandparent has suffered an injury in fact that may be redressed by the court. In this case, the maternal grandparents allege that their visitation with the child has been steadily reduced over the years by the father and the adoptive mother to their injury and to the damage of the best interests of the child. They may not have standing to assert the rights of any other family members, but they undoubtedly have standing under the Adoption Code to vindicate their own personal rights against those persons they claim are suppressing those rights, including the father. Section 26-10A-30 describes the circumstances in which a probate court may award grandparent visitation in post-adoption proceedings, i.e., when a stepparent or other listed relative has adopted the child. Nothing in the language of § 26-10A-30 limits the cause of action for grandparent visitation solely to claims against stepparents and other listed relatives or suggests that a petition for post-adoption grandparent visitation may

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not be filed against the natural parent who is the spouse of a stepparent who has adopted the child. Because the maternal grandparents have "standing" in both the legal and colloquial sense of the word, the probate court does not lack subject-matter jurisdiction to adjudicate the underlying case naming the adoptive mother and the father as defendants.

The father argues that the probate court cannot exercise jurisdiction over him because § 30-3-4.2, which is administered by the circuit courts, mandates a more heightened level of scrutiny than does § 26-10A-30 in cases involving natural parents. However, the jurisdiction of the probate court to adjudicate a claim for grandparent visitation, i.e., its authority to decide that type of case, is not affected by the standard by which it adjudicates a claim for grandparent visitation, i.e., how it decides the case. See Bowen v. Bowen, 28 So. 3d 9, 15 (Ala. Civ. App. 2009). The statutory requirements that circuit courts apply a heightened standard when scrutinizing a claim made against a natural parent for grandparent visitation does not in any manner affect the jurisdiction of a probate court to decide a grandparent-visitiation claim under § 26-10A-30.

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I fully agree that natural parents have a fundamental right to decide who associates with their children that no court can supersede or impair based on its own notions of what is best for a child. See E.H.G. v. E.R.G., 73 So. 3d 614 (Ala. Civ. App. 2010), aff'd, Ex parte E.R.G., supra. In Ex parte D.W., 835 So. 2d 186 (Ala. 2002), which held that § 26-10A-30 is not unconstitutional as applied to adoptive parents, the supreme court did not decide that a probate court could use the same best-interests-of-the-child standard applicable to adoptive parents when determining whether a grandparent should be awarded visitation over the objection of a natural parent. 835 So. 2d at 191 ("Under the facts of this case, adopting parents, whose rights are exclusively dependent upon statutory law, must be treated differently than natural parents."). If the probate court applies § 26-10A-30 unconstitutionally so as to deprive the father of his fundamental parental rights, which the father only anticipates at this point, then the father would have a right to appeal that judgment to correct that legal error, but not on the ground that the judgment is void for lack of subject-matter jurisdiction. See Neal v. Neal, 856 So. 2d 766, 781 (Ala.

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2002) (quoting Halstead v. Halstead, 53 Ala. App. 255, 256, 299 So. 2d 300, 301 (1974)) ("[The appellant] confuses legal error with want of subject-matter jurisdiction or want of due process of law." "'The simple fact that a court has erroneously applied the law does not render its judgment void.'").

I agree with the main opinion that the father's consent to the adoption proceedings did not confer subject-matter jurisdiction on the probate court in the underlying post-adoption proceedings. ___ So. 3d at ___. I do not agree, however, that the probate court lacks jurisdiction to adjudicate the claim made by the maternal grandparents against both the father and the adoptive mother. The probate court did not err in denying the motion to dismiss or, alternatively, for a summary judgment filed by the father and the adoptive mother asserting that the probate court lacked subject-matter jurisdiction. The maternal grandparents clearly have standing under § 26-10A-30, and the probate court has jurisdiction to adjudicate their claim against the father. I therefore would deny the petition for the writ of mandamus.

Edwards, J., concurs.