

Rel: October 16, 2020

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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2020-2021

2190557 and 2190558

C.H.

v.

Lamar County Department of Human Resources

2190577 and 2190578

E.H.

v.

Lamar County Department of Human Resources

Appeals from Lamar Juvenile Court
(JU-16-5.03 and JU-16-6.03)

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THOMPSON, Presiding Judge.

On October 23, 2019, the Lamar County Department of Human Resources ("DHR") filed in the Lamar Juvenile Court ("the juvenile court") two petitions, each seeking to terminate the parental rights of C.H. ("the father") and E.H. ("the mother") to one of their two minor children, V.H. and A.H., daughters who were born in 2014 and 2009, respectively. The juvenile court conducted an ore tenus hearing on DHR's petitions. The mother and the father did not appear for that hearing, Valerie Maddox, a DHR social worker, is the only person who testified at the hearing.

On March 10, 2020, the juvenile court entered judgments in which it terminated the parents' parental rights to the children. The mother and the father each filed a timely postjudgment motion directed to the judgment, and the juvenile court denied those postjudgment motions. The mother and the father each timely appealed.

The record indicates that DHR became involved with the mother and the children on February 2, 2016, when hospital personnel notified DHR that V.H., the younger of the two children who was then approximately 20 months old, had

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suffered a broken bone and bruising that were consistent with physical abuse. During DHR's involvement with the family, the father resided in North Carolina; for much of that time, he was incarcerated. In February 2016, the mother had custody of the children and was living in Alabama. The mother's boyfriend was suspected in the abuse of V.H.

Maddox, the DHR social worker assigned to the children's cases, testified that her inspection of the mother's home at the time the abuse report was investigated in early February 2016 revealed that the home was filthy and had several conditions that posed safety hazards for the young children. V.H. and A.H., the older child who was then seven years old, were placed in foster care on February 5, 2016.

DHR provided the mother reunification services, and the mother initially complied with those services. In August 2016, the children were returned to the mother's custody. However, in September or October 2016, DHR again removed the children from the mother's custody after a surprise visit to the mother's home by Maddox again revealed problems with the cleanliness and the safety of the mother's home.

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According to Maddox, the mother did not comply with any further DHR services and DHR services could not be provided to the father, who was then incarcerated in North Carolina. In approximately December 2017, the mother moved to North Carolina, and she has resided there since that time.

Maddox testified that on August 11, 2018, DHR placed the children with the father's brother and sister-in-law, M.C. and A.C. (referred to collectively as "the paternal aunt and uncle"), who live in North Carolina. That placement was accomplished after an investigation of the paternal aunt and uncle and their home conducted pursuant to the Interstate Compact for the Placement of Children. Maddox explained that a social worker in North Carolina goes to the paternal aunt and uncle's home to visit the children and to monitor their progress in the home.

Maddox also testified that, according to statements made by the paternal aunt and uncle, visits between the mother and the children in North Carolina had caused "disruptions"; Maddox specifically testified that, according to the paternal aunt and uncle, the children's behavior had deteriorated after each visit. The father was released from prison shortly

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before the termination hearing, and it appears that, after his release, he began taking part in the visitations. Maddox stated that the paternal aunt and uncle have stated that they do not merely want an award of permanent custody of the children because of the disruptions created by the parents' visitations with the children. However, Maddox stated, the paternal aunt and uncle are willing to adopt the children if the parents' parental rights are terminated.

In their briefs submitted to this court, the parties have not addressed the issue of whether the juvenile court had subject-matter jurisdiction over the termination-of-parental-rights actions.¹ "Unlike defects in personal jurisdiction, which can be waived, ... 'subject-matter jurisdiction may not be waived; a court's lack of subject-matter jurisdiction may be raised at any time by any party and may even be raised by a court ex mero motu.'" J.T. v. A.C., 892 So. 2d 928, 931 (Ala. Civ. App. 2004) (quoting C.J.L. v. M.W.B., 868 So. 2d 451, 453 (Ala. Civ. App. 2003)). This court may not presume

¹On appeal, the father argues that the juvenile court lacked personal jurisdiction over him, an argument that he waived by failing to assert it in the juvenile court. Rule 12(h)(1), Ala. R. Civ. P.; Ex parte Puccio, 923 So. 2d 1069, 1076 (Ala. 2005); Clements v. Clements, 990 So. 2d 383, 396 (Ala. Civ. App. 2007).

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that a statutorily created court of limited jurisdiction, such as the juvenile court, had subject-matter jurisdiction. M.B. v. B.B., 244 So. 3d 128, 130 (Ala. Civ. App. 2017).

The Uniform Child Custody Jurisdiction and Enforcement Act ("the UCCJEA"), § 30-3B-101 et seq., Ala. Code 1975, governs subject-matter jurisdiction over child-custody actions, including actions involving allegations of dependency or actions seeking the termination of parental rights. § 30-3B-201, Ala. Code 1975; § 30-3B-102(4), Ala. Code 1975; H.T. v. Cleburne Cnty. Dep't of Human Res., 163 So. 3d 1054, 1062 (Ala. 2014). Under the UCCJEA,

"[a] 'child custody determination' is defined as '[a] judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order.' § 30-3B-102(3)[, Ala. Code 1975]. An 'initial determination' is defined as '[t]he first child custody determination concerning a particular child.' § 30-3B-102(8)."

A.M. v. Houston Cnty. Dep't of Human Res., 262 So. 3d 1210, 1216 (Ala. Civ. App. 2017). The term "initial custody determination" includes a custody determination made pursuant to a dependency finding. M.B.L. v. G.G.L., 1 So. 3d 1048, 1050 (Ala. Civ. App. 2008).

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Section 30-3B-201 of the UCCJEA governs a court's jurisdiction to enter an initial custody determination. That section provides, in pertinent part:

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

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

"(2) A court of another state does not have jurisdiction under subdivision (1), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under Section 30-3B-207 or 30-3B-208, [Ala. Code 1975,] and:

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

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

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

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

"(b) Subsection (a) is the exclusive jurisdictional basis for making a child custody determination by a court of this state."

The UCCJEA contains two explanations of the term "home state" of a child, i.e., the one in § 30-3B-201(a), quoted above, and a similar definition set forth in § 30-3B-102(7), which defines "home state" as

"[t]he state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. ... A period of temporary absence of the child or any of the mentioned persons is part of the period."

With regard to the two definitions of "home state" under the UCCJEA, this court has explained:

"In Ex parte Siderius, 144 So. 3d 319, 324-25 (Ala. 2013), our supreme court noted that of the two definitions of 'home state' in the UCCJEA, i.e., the one set forth in § 30-3B-102(7), and the one set forth in § 30-3B-201(a)(1), the definition set forth in § 30-3B-201(a)(1) is broader. The court then concluded that 'we resolve the apparent conflict

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between the two sections, in keeping with the purposes of the UCCJEA, by applying the construction that finds the existence of a home state, rather than the one that finds that the children had no home state.'"

M.B. v. B.B., 244 So. 3d 128, 132 (Ala. Civ. App. 2017).

The record in these appeals does not contain any information regarding earlier dependency actions pertaining to the children. The current actions are designated as ".03" actions, and, therefore, it appears that two earlier dependency actions were filed with regard to each child. The record also contains no indication of how, or if, those earlier actions were resolved.²

It appears that the juvenile court might have exercised jurisdiction to make an initial custody determination or a dependency determination regarding the children based on a holding that Alabama was the children's home state at the time

²We note that, under certain circumstances, a juvenile court may take action to protect children present in Alabama, but perhaps not susceptible to the general subject-matter jurisdiction of the courts of this State under the UCCJEA, under the emergency-jurisdiction provision of the UCCJEA. See § 30-3B-204, Ala. Code 1975. When acting under emergency jurisdiction, however, a juvenile court may not adjudicate a child dependent or make an award of custody, other than a pendente lite award of custody. M.B. v. B.B., 244 So. 3d 128, 132-33 (Ala. Civ. App. 2017); R.S. v. B.C., 244 So. 3d 10, 13 (Ala. Civ. App. 2017).

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of the initiation of the earlier actions involving the children or at the time of the initiation of the termination-of-parental-rights action. See R.S. v. B.C., 248 So. 3d 10, 12 (Ala. Civ. App. 2017). In these cases, the record indicates that the mother and the children lived in Alabama for some unspecified period before DHR became involved with the family in 2016.

Further, DHR alleged in its termination-of-parental-rights petitions in these matters only that "[g]uardianship, custody, and supervision of the child[ren] vested in [DHR]. The said child[ren are] dependent as defined in § 12-15-102(8), Ala. Code 1975." In the termination petitions, DHR requested, among other things, that the juvenile court "find from clear and convincing evidence that said child[ren are] dependent and that, upon such finding of dependency," the juvenile court make findings to support the relief sought by DHR. The March 10, 2020, termination-of-parental-rights judgments contain a finding that each child "is" dependent. Thus, it is possible that the March 10, 2020, judgments are the initial custody determinations to be examined in determining whether Alabama had subject-matter jurisdiction

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under the UCCJEA. Therefore, regardless of whether the juvenile court made an initial custody determination as to the children in the earlier actions or in the current termination-of-parental-rights actions, the record currently before this court does not indicate whether the children's home state was Alabama when those actions were initiated such that the juvenile court could exercise subject-matter jurisdiction to make an initial custody determination under the UCCJEA.

Even assuming that, under the UCCJEA, the juvenile court had jurisdiction over the children under the UCCJEA and that it did, in fact, make initial custody determinations in earlier actions involving the children, it is not clear that, under the facts of these cases, the juvenile court retained continuing jurisdiction over the children. The UCCJEA addresses a court's continuing jurisdiction over custody of a child by providing:

"(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[, Ala. Code 1975,] 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

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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."

§ 30-3B-202, Ala. Code 1975.

"In order for this court to determine whether the juvenile court properly exercised continuing jurisdiction over the child[ren] and, thus, jurisdiction to terminate the [parents'] parental rights, 'the [juvenile] court must have had jurisdiction to make an initial custody determination.'" H.T. v. Cleburne Cnty. Dep't of Human Res., 163 So. 3d 1054, 1063 (Ala. Civ. App. 2014) (quoting Patrick v. Williams, 952 So. 2d 1131, 1138 (Ala. Civ. App. 2006)). The record in these appeals does not contain sufficient information from which it can be determined that the juvenile court ever had original

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jurisdiction to make an initial custody determination or whether, assuming that it ever had jurisdiction, it has maintained continuing jurisdiction over these children under the UCCJEA given the facts of these cases. We express no opinion regarding the juvenile court's possible jurisdiction, but we recognize that the juvenile court is the appropriate forum to determine its jurisdiction in these matters. Fuller v. Fuller, 51 So. 3d 1053, 1057 (Ala. Civ. App. 2010). Accordingly, we reverse the judgments and remand the cases "for the juvenile court to make a determination, based upon the receipt of additional evidence, if necessary, whether it may exercise jurisdiction" over these actions under the UCCJEA. R.S. v. B.C., 248 So. 3d 10, 13 (Ala. Civ. App. 2017). See also Fuller v. Fuller, supra; B.N. v. Madison Cnty. Dep't of Human Res., 151 So. 3d 1115, 1122 (Ala. Civ. App. 2014); D.B. v. Coffee Cnty. Dep't of Human Res., 26 So. 3d 1239, 1245-46 (Ala. Civ. App. 2009) ("On remand the juvenile court ... is directed to take evidence on the question of its jurisdiction under the UCCJEA and to determine whatever facts are necessary to a disposition of that question.").

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2190557 - - REVERSED AND REMANDED WITH INSTRUCTIONS.

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2190577 - - REVERSED AND REMANDED WITH INSTRUCTIONS.

2190578 - - REVERSED AND REMANDED WITH INSTRUCTIONS.

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

Moore, J., concurs in the result, without writing.