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ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2020

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Ex parte R.K.S.

PETITION FOR WRIT OF MANDAMUS

(In re: R.K.S.

v.

M.S.T.)

(Blount Juvenile Court, CS-18-900067)

EDWARDS, Judge.

In September 2018, R.K.S. ("the alleged father") filed in the Blount Juvenile Court a petition seeking to establish his

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paternity of C.Z.T. ("the child") and an award of custody of the child, who had been born to M.S.T. ("the mother"). After a hearing held on March 22, 2019, the Blount Juvenile Court entered an order on April 2, 2019, awarding the alleged father specified visitation pendente lite. In its order, the Blount Juvenile Court further stated:

"The mother and the ... child are both residents of Hoover, Jefferson County, Alabama. As such, on the motion of the Court, this matter is hereby transferred to the Jefferson County Family Court for disposition. The Clerk of the Court is ORDERED to IMMEDIATELY transfer this file in its entirety to the appropriate court as directed."

(Capitalization in original.)

The action was transferred and docketed in the Jefferson Juvenile Court, and the alleged father filed a motion in that court seeking an award of pendente lite custody. The mother apparently filed an objection to venue in the Jefferson Juvenile Court. After a hearing on the mother's objection, the Jefferson Juvenile Court entered an order on August 29, 2019, concluding that Blount County was the proper venue and purporting to transfer the action back to the Blount Juvenile Court.

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The alleged father then filed at least three motions in the Blount Juvenile Court seeking certain visitation and requesting that the action be set for a trial on the paternity and custody issues. The most recent of the alleged father's motions was filed in March 2020. The mother also filed a motion in the Blount Juvenile Court in January 2020 requesting that the Blount Juvenile Court set the case for trial. The Blount Juvenile Court has not acted on either party's motions, and the alleged father filed a petition for the writ of mandamus in this court on May 30, 2020, seeking a writ ordering the Blount Juvenile Court to set the action for a trial.

"Mandamus is a drastic and extraordinary writ, to be issued only where there is 1) a clear legal right in the petitioner to the order sought; 2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; 3) the lack of another adequate remedy; and 4) properly invoked jurisdiction of the court. While the writ will issue to compel the exercise of discretion by a circuit judge, it will not issue to compel the exercise of discretion in a particular manner."

Ex parte Ford Motor Credit Co., 607 So. 2d 169, 170 (Ala. 1992) (granting a petition for the writ of mandamus and ordering a trial court to rule on a pending Rule 64, Ala. R. Civ. P., motion).

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""The rules of law applicable to the case are simple and well settled. The writ of mandamus will lie from a superior to an inferior or subordinate court, in a proper case, to compel it to hear and decide a controversy of which it has jurisdiction If the duty is unperformed, and it be judicial in its character, the mandate will be to the judge directing him to exercise his judicial discretion or judgment, without any direction as to the manner in which it shall be done""

Ex parte Jim Walter Res., Inc., 91 So. 3d 50, 53 (Ala. 2012) (quoting State v. Cobb, 288 Ala. 675, 678, 264 So. 2d 523, 526 (1972), quoting in turn State v. Williams, 69 Ala. 311, 316 (1881)); see also Ex parte Lamar, 265 So. 3d 306, 307 (Ala. Civ. App. 2018) (granting a petition for the writ of mandamus to compel a trial court to enter a divorce judgment six months after the completion of the trial).

Although the alleged father's petition would normally have merit, in this particular instance we cannot compel the Blount Juvenile Court to set the alleged father's paternity and custody action for trial. The Blount Juvenile Court ordered that the alleged father's action be transferred to the Jefferson Juvenile Court based on its apparent sua sponte determination that Jefferson County was the appropriate venue. The alleged father's action was transferred to the Jefferson

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Juvenile Court, where it was docketed and the parties filed motions.

"Once the transferor court has granted the motion to transfer the case and the file has been sent to, and docketed by, the transferee court, the transferor court cannot then change its mind and vacate or set aside its transfer order or order the case returned. Ex parte Morrow, 259 Ala. 250, 66 So. 2d 130 (1953). Furthermore, the trial judge of the transferee court may not consider a motion to retransfer the case to the county in which it was originally filed. Ex parte Tidwell Indus., Inc., 480 So. 2d 1201 (Ala. 1985). The aggrieved party's sole remedy in such a case is a petition for writ of mandamus directed to the transferor court.

"'Where the trial court has improperly ordered a transfer, mandamus against the transferor court is an appropriate remedy, notwithstanding the fact that an order has been entered which moves the case to the transferee court. The transferee court lacks authority to consider a motion to retransfer an action to the county in which it was initially filed. Mandamus to the transferor court is the appropriate avenue for seeking redress of any error in the transfer.'

"2 Champ Lyons, Jr., Alabama Rules of Civil Procedure Annotated § 82.4, p. 553 (3d ed. 1996) (citations omitted)."

Ex parte MedPartners, Inc., 820 So. 2d 815, 821 (Ala. 2001).

Neither the mother nor the alleged father sought review, by way of a petition for the writ of mandamus in this court, of the Blount Juvenile Court's order transferring the alleged

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father's action to the Jefferson Juvenile Court. The Jefferson Juvenile Court lacked authority to hear the mother's apparent objection to the transfer of the alleged father's action. Thus, the August 2019 order of the Jefferson Juvenile Court transferring the alleged father's action back to the Blount Juvenile Court was a nullity. See Ex parte C.P., 253 So. 3d 401, 403 (Ala. Civ. App. 2017). The alleged father's action could not be, and therefore was not, transferred back to the Blount Juvenile Court. The alleged father's action is technically still pending in the Jefferson Juvenile Court.

The Blount Juvenile Court has no authority to hold a trial in the alleged father's action, and, therefore, we cannot order the Blount Juvenile Court to set the alleged father's action for a trial. We must, however, instruct the Blount Juvenile Court to ensure that the alleged father's action is properly returned to the Jefferson Juvenile Court for disposition.

PETITION DENIED WITH INSTRUCTIONS.

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