**REL: December 4, 2020**



# ALABAMA COURT OF CIVIL APPEALS

## OCTOBER TERM, 2020-2021

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## 2190714

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**S.C.H.**

**v.**

**L.A., L.C.M., and Y.C.M.**

**Appeal from Fayette Probate Court**
**(PC-2015-22)**

EDWARDS, Judge.

In April 2015, S.C.H. ("the adoptive father") filed a complaint in the Fayette Probate Court ("the probate court") seeking to adopt his niece by marriage, L.A. ("the adoptee"). The adoptive father also filed executed

consents from the adoptee, the adoptee's biological mother, L.C.M., and the adoptee's biological father, S.A.A. The complaint alleged that the adoptive father wished to establish a parent-child relationship with the adoptee and that the adoptee had lived in his home and had been in his care since December 1, 2013. The post-placement report completed by the Fayette County Department of Human Resources ("DHR") indicates that the adoptee desired to be adopted because it would help her achieve her goal of attending college; that report also indicated that the adoptee lived in the home of the adoptive father and that all of her needs were being met by the adoptive father. In July 2016, the probate court entered an adoption judgment ("the 2016 adoption judgment").

On February 21, 2020, the adoptive father filed in the probate court a "Petition to Nullify and Set Aside [the 2016] Adoption [Judgment] as an Independent Action." In that petition, the adoptive father alleged that the "[complaint] for adoption was perpetrated by fraud and misrepresentation" and that it was "conceived and perpetrated solely for the basis of the adoptee obtaining a favorable immigration status." He also alleged that the adoption complaint had contained false averments

because, he stated, (1) the adoptee had never been in his care, (2) he and the adoptee had never had or formed a parent-child relationship, and (3) the address of the adoptee's biological mother, L.C.M., had been falsely stated in the complaint "to mask their illegal grab for immigration status." The adoptive father further contended that, because his wife, Y.C.M., who is the adoptee's maternal aunt, did not join in the adoption complaint, the adoption was void and illegal. The adoptive father later moved for Y.C.M. and L.C.M. to be made parties to the action to set aside the 2016 adoption judgment, and the probate court granted that motion.

After a trial held on June 2, 2020, at which the adoptive father and the adoptee testified, the probate court entered a judgment on June 4, 2020, denying the petition to set aside the 2016 adoption judgment. The adoptive father timely filed a notice of appeal to this court. We affirm.

The testimony of the adoptive father indicated that he had signed the adoption complaint and that he had answered the questions of the DHR worker who compiled the post-placement report. He testified, however, that the factual averments in his adoption complaint were false. He said that, at the time he signed that complaint, the adoptee's biological

mother, L.C.M., was living in his home and not elsewhere, as was averred in the complaint, and that he had employed the adoptee as his housekeeper; therefore, he explained, he had not "provided for her." He also testified that the reason for the adoption was that the adoptee desired to attend college, and he admitted that he had listed the adoptee on his income-tax returns as his daughter in the years following the adoption. The adoptive father also testified that Y.C.M. had told him in 2019 that she had never loved him, that he had also discovered that she had engaged in extramarital affairs, and that they were in the process of getting a divorce. He called both his marriage, which had lasted nearly 10 years, and the adoption "shams."

The adoptee testified that, at the time of the filing of the adoption complaint, she was living in the home of the adoptive father with her biological mother and had done so since December 2013. She said that the adoptive father had wanted to assist her in attending college and that the adoption had been his idea; she said that he had always wanted the best for her. She also testified that she thought of the adoptive father as "my dad" and that their relationship after the adoption had been like that of

father and daughter. She admitted that their relationship had since soured to the point that she did not want to have anything to do with him and that she had no issue with nullifying the 2016 adoption judgment.

The adoptive father first argues that the failure of his wife, Y.C.M., to join in the adoption complaint makes the resulting 2016 adoption judgment void. He contends that the language of Ala. Code 1975, § 26-10A-5(a), supports his argument. Section 26-10A-5(a) provides, in pertinent part: "Any adult person or husband and wife jointly who are adults may petition the court to adopt a minor." Thus, the adoptive father contends, because the adoption complaint was not joined by Y.C.M., which, he asserts, was required by § 26-10A-5(a), the 2016 adoption judgment should be set aside pursuant to Rule 60(b)(4), Ala. R. Civ. P.

In further support of his claim that the 2016 adoption judgment is void, the adoptive father contends in his brief on appeal that the Office of Vital Statistics ("OVS") "affirmed by letter dated April 23, 2019, [that] it was statutorily impossible for OVS to create a new birth certificate for the adoptee because the adoption was per se void." The letter from OVS is contained in the record on appeal, and it does not state that the 2016

adoption judgment is void. Instead, the letter indicates that the Report of Adoption filed with OVS after the entry of the 2016 adoption judgment incorrectly listed information for the biological mother and failed to list the country of the adoptee's birth; OVS requested in the letter that the Report of Adoption be corrected to include the adoptee's birth country and to omit the biological mother's information. The word "void" does not appear in the letter.

Regardless, the adoptive father cites no authority supporting his assertion that the failure of both spouses to join in an adoption complaint renders an adoption judgment void as opposed to merely voidable. The adoptive father merely states that, because of the well settled general principle that strict adherence to the adoption statutes is required, see Ex parte Sullivan, 407 So. 2d 559, 562–63 (Ala. 1981), the probate court lacked the "discretion" to grant the adoption in 2016 and that the 2016 adoption judgment is therefore "void -- illegal at its core." However, a trial court's judgment is not void merely because of the court's failure to comply with the law; rather, a judgment is void only " 'if the court which rendered it [1] lacked jurisdiction of the subject matter, or [2] of the parties, or [3]

if it acted in a manner inconsistent with due process.' " Neal v. Neal, 856 So. 2d 766, 781 (Ala. 2002) (quoting Seventh Wonder v. Southbound Records, Inc., 364 So. 2d 1173, 1174 (Ala. 1978)). Put another way, "[e]rrors in the application of the law by the trial court do not render a judgment void." Bowen v. Bowen, 28 So. 3d 9, 15 (Ala. Civ. App. 2009). The adoptive father does not clearly explain the specific basis for his voidness argument, but we presume that he is contending that, because of the alleged noncompliance with § 26-10A-5(a), the probate court lacked subject-matter jurisdiction to enter the 2016 adoption judgment.

We cannot agree. As our supreme court has explained:

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

Ex parte Seymour, 946 So. 2d 536, 538 (Ala. 2006). Certainly, the probate court is the proper court to have entertained the adoption action. See Ala. Code 1975, 26-10A-3 (granting the probate courts original jurisdiction over adoption proceedings). The requirement that the probate court strictly comply with the adoption statutes does not necessarily render any error made by the probate court in applying those statutes a jurisdictional defect. See V.L. v. E.L., 577 U.S. 464, ___, 136 S. Ct. 1017, 1021 (2016) (quoting Gonzalez v. Thaler, 565 U.S. 134, 146 (2012)) (stating that "[t]his Court 'has long rejected the notion that all mandatory prescriptions, however emphatic, are properly typed jurisdictional' "). We cannot conclude that every single requirement in the adoption statutes is jurisdictional merely because the adoption statutes must be strictly construed. See V.L. v. E.L., 577 U.S. at ___, 136 S. Ct. at 1021 (indicating that treating every mandatory requirement in a statute as jurisdictional would not "comport ... with common sense").

In addition, to the extent that the adoptive father might be arguing that he lacked "standing" to seek the adoption without having his wife join in the complaint, we must reject that claim. Our supreme court, in Ex

parte BAC Home Loans Servicing, LP, 159 So. 3d 31, 46 (Ala. 2013), explained that the concept of "standing" has no place in private-law actions. Generally, our supreme court explained, issues termed as "standing" issues are, in reality, often "problems" properly addressed by the concepts of real party in interest under Rule 17(a), Ala. R. Civ. P., or failure to state a claim under Rule 12(b)(6), Ala. R. Civ. P. As our supreme court has more recently explained, "the distinction between such 'problems' is significant because [real-party-in-interest or cause-of-action problems], if they exist, do not divest a trial court of subject-matter jurisdiction." Norvell v. Norvell, 275 So. 3d 497, 505 (Ala. 2018). In its discussion in Ex parte BAC Home Loans Servicing, 159 So. 3d at 46, our supreme court quoted Jerome A. Hoffman, The Malignant Mystique of "Standing," 73 Ala. Law. 360, 362 (2012), and that same quotation is particularly apt here:

> " 'Lack of statutory authorization best supports analysis as the lack of a claim upon which relief can be granted, that is, a claim under Rule 12(b)(6), [Ala. R. Civ. P.,] not a claim over which the forum court lacks subject matter jurisdiction, that is, not a claim under Rule 12(b)(1).' "

Furthermore, insofar as the adoptive father might be arguing that his wife was an indispensable party to the adoption action, we note that "the absence of an indispensable party does not deprive the ... court of subject-matter jurisdiction." Miller v. City of Birmingham, 235 So. 3d 220, 230 (Ala. 2017). Because the defect of which the adoptive father complains -- the alleged noncompliance with § 26-10A-5(a) -- does not implicate the subject-matter jurisdiction of the probate court, the 2016 adoption judgment cannot be declared void, even assuming the adoptive father is correct that § 26-10A-5(a) required his wife to join in the adoption complaint, an issue we decline to decide.

The adoptive father next argues that certain allegedly false statements in the adoption complaint amounted to fraud on the court that entitle him to relief from the 2016 adoption judgment. The adoptive father's petition was in the nature of an independent proceeding to set aside the 2016 adoption judgment. Rule 60(b) provides that a court may entertain an independent action to set aside a judgment for fraud on the court if the action is filed within three years of the entry of that judgment. See Waters v. Jolly, 582 So. 2d 1048, 1055 (Ala. 1991). Thus, the adoptive

father's petition, insofar as it alleged fraud on the court, was properly before the probate court.

Our supreme court

> "has defined 'fraud upon the court' as that species of fraud that defiles or attempts to defile the court itself or that is a fraud perpetrated by an officer of the court, and it does not include fraud among the parties, without more. Spindlow v. Spindlow, 512 So. 2d 918 (Ala. Civ. App. 1987); Brown v. Kingsberry Mortgage Co., 349 So. 2d 564 (Ala. 1977). In evaluating an attack upon a judgment based on a claim of a fraud upon the court, the trial court has wide discretion and, in exercising that discretion, it must balance the desire to remedy injustice against the need of finality of judgments. Hill v. Hill, 523 So. 2d 425 (Ala. Civ. App. 1987); Denton v. Sanford, 383 So. 2d 847 (Ala. Civ. App. 1980)."

Waters, 582 So. 2d at 1055. In addition, if the truth of certain averments in the adoption complaint were required in order to imbue the probate court with jurisdiction to enter the 2016 adoption judgment, the falsity of one of those statements could serve as a basis for concluding that there had been a fraud on the court. See Bolden v. Sloss-Sheffield Steel & Iron Co., 215 Ala. 334, 335, 110 So. 574, 575 (1925).

> "But where the jurisdiction of the court of law is acquired by the fraudulent concoction of a simulated cause of action, the fraud itself to be consummated through the instrumentality of a court of justice, the protection of the court demands that

> there should be a remedy. We can conceive of no worse reflection upon a judicial system, no lowering of its dignity and of the respect due to its findings more regrettable than that the tribunal of justice may become an impotent agency of fraud against those who look to it for protection and who are free from fault or neglect in the premises."

Bolden, 215 Ala. at 335, 110 So. at 575 (emphasis added).

The adoptive father's allegations of fraud on the court are based on the factual averments that he made in the adoption complaint, indicating that, if there had been any fraud on the court, the adoptive father was the party who had perpetrated it. Although fraud on the court may vitiate a judgment, our caselaw clearly requires that relief be granted solely to those who are innocent of fraud or negligence. See Levine v. Levine, 262 Ala. 491, 495, 80 So. 2d 235, 238 (1955). Our supreme court has explained: "We have a principle in this State that false allegations in a bill on which its jurisdiction is founded, and which are necessary to invoke such jurisdiction, constitute a fraud on the court and a decree on such allegations is procured fraudulently and is subject to attack in equity, if the defendant was duly diligent." Spencer v. Spencer, 254 Ala. 22, 27, 47 So. 2d 252, 256 (1950). In addition, the Spencer court stated that, "to

support a suit to set aside such decree, it must be made to appear that the respondent in that suit failed to contest that claim without negligence, as by fraud of the complainant, otherwise it became an issue in the case and intrinsic in nature." Spencer, 254 Ala. at 28, 47 So. 2d at 256. Of course, in both Spencer and Levine, the allegations were that the opposing party had presented fraudulent factual averments to the trial court, not that the party seeking relief from the judgment had himself or herself made the very averments challenged as being knowingly false.

The adoptive father testified that he had signed the adoption complaint, which contained the allegations that he alleged were fraudulent. The probate court could have concluded that, if any of the statements made in the adoption complaint were false, the adoptive father knew of the falsity of those statements at the time of the entry of the 2016 adoption judgment and therefore that he was not entitled to rely on his own fraud to set aside that judgment. As our supreme court said in Levine, "[the adoptive father,] because of [his] conduct, ... has closed the doors of the equity court to [him]self." Levine, 262 Ala. at 495, 80 So. 2d

at 238; see also Reiss v. Reiss, 46 Ala. App. 422, 429, 243 So. 2d 507, 513 (1970) (indicating that, because of the wife's active participation in the fraud perpetrated on the court, the court would "leave [the wife] entangled in the web which she wove"). We therefore find no error in the probate court's failure to relieve the adoptive father from the 2016 adoption judgment on the basis of fraud on the court.

Finally, the adoptive father contends that the probate court could not deny his petition to nullify the 2016 adoption judgment because the adoptee indicated at trial that she had no objection to nullifying the 2016 adoption judgment. Thus, he posits, "[w]hile the ore tenus presumption of correctness carries weight, it is difficult to square the [probate] court's denial of the nullification with the reality that all parties were either in agreement with or without objection to the nullification." However, he offers no legal basis to support the notion that the desire to nullify an adoption judgment on the part of either the adoptive parent or the adoptee should somehow require a probate court to nullify an adoption judgment.

In fact, the authority is to the contrary. "In Alabama adoption is a status created by the state acting as parens patriae, the sovereign parent."

Douglas v. Harrelson, 454 So. 2d 984, 986 (Ala. Civ. App. 1984). The status gained by the adoptive father and the adoptee -- that of parent and child -- is not dissolvable merely on the whim of the parties. Buttrey v. West, 212 Ala. 321, 324, 102 So. 456, 459 (1924). Our supreme court explained in Buttrey: "We cannot concur with [the adoptive father in Buttrey] in the view that the [adoptive father] having voluntarily, of his own 'desire,' entered into the relation of parent and child, his wish or 'desire' to annul the relation is 'good cause' for so doing." 212 Ala. at 324, 102 So. at 459.

We have rejected the adoptive father's arguments that the 2016 adoption judgment is void because the adoptive father either failed to fully develop his argument or failed to support it with appropriate authority. We have also rejected the adoptive father's argument that fraudulent statements in the adoption complaint amounted to fraud on the court and therefore entitled him to relief from the 2016 adoption judgment and his argument that the agreement of the adoptee to the nullification of the 2016 adoption judgment required its nullification. Accordingly, we affirm

the judgment of the probate court denying the adoptive father's request to nullify the 2016 adoption judgment.

AFFIRMED.

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