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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2021-2022

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D.H.

v.

V.P.

**Appeal from Wilcox Circuit Court
(CV-20-900003)**

THOMPSON, Presiding Judge.

D.H. ("the mother"), the mother of R.S.D. ("the child"), appeals from the July 27, 2021, order of the Wilcox Circuit Court ("the circuit court") denying her motion seeking relief under Rule 60(b)(4), Ala. R. Civ. P., from

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the circuit court's January 30, 2020, judgment entered in case number CV-20-900003 ("the circuit-court action"). The child's maternal grandmother, V.P. ("the maternal grandmother"), initiated the circuit-court action, seeking a determination as to whether the Wilcox Juvenile Court or the Sumter Juvenile Court was the proper venue for a separate action that had been initiated by the maternal grandmother in which she asserted that the child was dependent. To give context to the issues raised in the circuit-court action and in this appeal, it is necessary to summarize the proceedings in the juvenile courts concerning the dependency action.¹

On February 15, 2018, the maternal grandmother filed a petition in the Wilcox Juvenile Court seeking to have the child declared dependent based on allegations that the mother had failed to enroll the child in school and was otherwise neglecting the child. The materials submitted

¹This court has not been asked to rule on the propriety of any of the actions taken by or any of the orders entered by the juvenile courts. Specifically, the issue of which juvenile court is the proper venue for the dependency action is not before this court, and, because this court does not have jurisdiction to issue advisory opinions, D.K. v. S.M.S., 297 So. 3d 466, 470 (Ala. Civ. App. 2019), we will not address that issue in this opinion.

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to this court indicate that, in a February 29, 2016, judgment, the Sumter Juvenile Court had adjudicated the paternity of the child, had awarded custody of the child to the mother, and had ordered the child's father, A.D., to pay child support. In her dependency petition filed in the Wilcox Juvenile Court, the maternal grandmother did not make any allegations pertaining to the father. Also, the maternal grandmother made no reference to the Sumter Juvenile Court's February 29, 2016, judgment concerning the child and made no allegations concerning the location of the mother and the child's home.

On May 16, 2018, the Wilcox Juvenile Court entered an order finding the child "delinquent" and awarding pendente lite custody of the child to the maternal grandmother. On May 25, 2018, the mother filed in the Wilcox Juvenile Court a motion requesting a hearing. In that motion, the mother disputed the jurisdiction of the Wilcox Juvenile Court to consider the matter; she asserted that she had not been served with notice of the maternal grandmother's dependency petition filed in that court. The mother also contended that the mother and the child were residents of Sumter County and that the action should be tried in the Sumter Juvenile

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Court; thus, in her motion filed in the Wilcox Juvenile Court, the mother was also contesting the issue of proper venue.

The distinction between the concepts of jurisdiction and venue has been explained as follows:

"It is only when the tribunal, court, or officer has the jurisdiction or power to proceed or to act at several different places that a statute as to venue can have any excuse for existence. The venue statute, of course, presupposes that the tribunal, court, or officer has jurisdiction or power to proceed or act at different places, and then the sole purpose and effect of the statute as to venue is to direct at which of these several places the jurisdiction in the particular case may be exercised."

Southern Ry. Co. v. Fitzpatrick, 195 Ala. 328, 330-31, 70 So. 164, 165 (1915) (Mayfield and Thomas, JJ., dissenting); see also Skieff v. Cole-Skieff, 884 So. 2d 880, 885-86 (Ala. Civ. App. 2003) (same). More recently, our supreme court has explained:

"The terms "jurisdiction" and "venue" are often confused and loosely used. In its pure sense "jurisdiction" means the power of a court to entertain and consider a cause, and render a binding judgment therein. "Venue" refers to the court in which for the sake of convenience or policy considerations the cause is to be tried.' "

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City Stores Co. v. Williams, 287 Ala. 385, 388, 252 So. 2d 45, 48 (1971) (quoting Pepperell Mfg. Co. v. Alabama Nat'l Bank, 261 Ala. 665, 666, 75 So. 2d 665, 667 (1954)).

It is clear that the maternal grandmother's February 2018 petition invoked the dependency jurisdiction of our states' juvenile courts. § 12-15-114(a), Ala. Code 1975; § 12-15-117(a), Ala. Code 1975. Thus, the maternal grandmother properly initiated her dependency action in a juvenile court. With regard to venue, however, the pertinent statute provides that "[d]ependency proceedings shall be commenced in the county where the child resides, in the county where the child is present when the proceedings are commenced, or in the county where the acts that are the basis of the dependency petition occurred." § 12-15-302(a), Ala. Code 1975. Throughout the litigation, the parties, the two juvenile courts, and the circuit court have often referred to issues pertaining to venue as, instead, concerning the "jurisdiction" of either the Wilcox Juvenile Court or the Sumter Juvenile Court. However, in their dispute concerning whether the Wilcox Juvenile Court or the Sumter Juvenile Court was the appropriate forum in which to litigate the maternal grandmother's dependency action,

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the parties were actually addressing the issue of venue. Therefore, despite the parties' having argued this issue in terms of "jurisdiction," in this opinion, for the sake of clarity, we address this issue in terms of whether "venue" was proper in the Wilcox Juvenile Court or the Sumter Juvenile Court.

On August 13, 2018, the Wilcox Juvenile Court entered an order transferring the maternal grandmother's dependency action to the Sumter Juvenile Court on the basis that venue was proper in the Sumter Juvenile Court. The maternal grandmother did not object to that transfer, and she did not seek appellate review of that order by way of a petition for a writ of mandamus filed in this court. The Sumter Juvenile Court entered a September 13, 2018, order rejecting the transfer and finding that neither the child nor the mother was a resident of Sumter County. Approximately one year later, in a July 10, 2019, order, the Wilcox Juvenile Court set aside its August 13, 2018, transfer order and scheduled the dependency action for a final hearing. However, the materials submitted to this court indicate that the Wilcox Juvenile Court has taken no further action on the

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maternal grandmother's dependency action since it entered that July 10, 2019, order.

On July 23, 2019, the Sumter Juvenile Court entered another order stating that it had rejected the transfer of the maternal grandmother's dependency action to that court. On July 30, 2019, the mother filed in the Sumter Juvenile Court a motion seeking reconsideration of that court's July 23, 2019, order. No challenge to that motion, or to the timing of that motion, was filed by the maternal grandmother in the Sumter Juvenile Court. In support of her motion, the mother submitted an affidavit in which she testified that she had been a resident of Sumter County since 2011. The mother alleged in her July 30, 2019, motion that the child lived in Sumter County, but she did not include that allegation in her affidavit submitted in support of that motion. The Sumter Juvenile Court held a hearing on the mother's July 30, 2019, motion and received testimony at that hearing.

On October 25, 2019, the Sumter Juvenile Court entered a detailed order setting forth the history of the maternal grandmother's dependency action and the parties' dispute concerning whether the Wilcox Juvenile

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Court or the Sumter Juvenile Court was the proper venue for the dependency action. In that order, the Sumter Juvenile Court found that, at the time the maternal grandmother initiated her dependency action in the Wilcox Juvenile Court, the child was a resident of Sumter County. Based on that conclusion, the Sumter Juvenile Court vacated its September 13, 2018, and July 23, 2019, orders in which it had rejected the Wilcox Juvenile Court's transfer of the maternal grandmother's dependency action. As a part of its October 25, 2019, order, the Sumter Juvenile Court incorporated the terms of the May 16, 2018, pendente lite order entered by the Wilcox Juvenile Court that had awarded custody to the maternal grandmother; it also ordered home studies of the parties' homes and scheduled another hearing.

The maternal grandmother did not seek appellate review of the October 25, 2019, order of the Sumter Juvenile Court by filing a petition for a writ of mandamus in this court. Instead, the maternal grandmother filed in the Wilcox Juvenile Court a verified petition for an ex parte temporary restraining order, asking that court to keep its pendente lite custody and visitation order in place. Thereafter, however, the maternal

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grandmother filed motions and pleadings pertaining to the dependency action in the Sumter Juvenile Court. For example, on December 4, 2019, and on December 5, 2019, respectively, the maternal grandmother filed in the Sumter Juvenile Court a motion to reschedule a weekend visitation and a motion to conduct discovery. On December 6, 2019, the maternal grandmother filed in the Sumter Juvenile Court a motion for leave to file an amended dependency petition; she filed an amended dependency petition in the Sumter Juvenile Court on December 17, 2019.

Almost four months after the Sumter Juvenile Court had vacated its earlier orders and had accepted the transfer of the dependency case, and more than two months after the Sumter Juvenile Court had entered its October 25, 2019, order, the maternal grandmother, on January 9, 2020, initiated the circuit-court action. In the circuit-court action, the maternal grandmother requested the entry of an order staying the proceedings in both the Wilcox Juvenile Court and the Sumter Juvenile Court until the circuit court could determine whether venue over the dependency action was proper in the Wilcox Juvenile Court or in the Sumter Juvenile Court. On January 15, 2020, the maternal grandmother filed in the circuit court

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an "amended complaint" in which she set forth allegations pertaining to the venue dispute but in which she requested no specific relief. The January 9, 2020, filing initiating the circuit-court action, together with the January 15, 2020, "amended complaint," constituted a request by the maternal grandmother for a determination regarding whether the Wilcox Juvenile Court or the Sumter Juvenile Court was the proper venue for the maternal grandmother's dependency action. As is explained later in this opinion, we construe the maternal grandmother's claims in the circuit-court action as seeking injunctive relief and declaratory relief or an advisory opinion.

On January 30, 2020, the circuit court entered a judgment finding, based on its consideration of the pleadings and testimony, that the Wilcox Juvenile Court was the appropriate venue for the maternal grandmother's dependency action and that the Sumter Juvenile Court's orders were void. On February 3, 2020, the mother filed a postjudgment motion in which she argued, among other things, that she had not been served in the circuit-court action and that she had not and was not waiving her right to

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service of process; the mother supported that motion with her affidavit.²

The materials submitted to this court do not indicate that any action was taken on that postjudgment motion or that an appeal was taken from the circuit court's January 30, 2020, judgment or the denial by operation of law, pursuant to Rule 59.1, Ala. R. Civ. P., of the mother's postjudgment motion.

On June 26, 2020, the mother filed in the circuit court a "motion to dismiss, or in the alternative, answer" in the circuit-court action. As already indicated, at the time of the filing of the June 26, 2020, motion, a judgment had been entered in the circuit-court action. In her June 26, 2020, motion, the mother again argued, among other things, that she had never received service of process in the circuit-court action, and she asserted that the maternal grandmother had waived the issue of proper venue in the dependency action by participating in the dependency litigation in the Sumter Juvenile Court. The circuit court appears to have

²An entry on the State Judicial Information System case-action summary for the circuit-court action states that "D001," i.e., the mother, waived service on January 9, 2020.

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treated the mother's June 26, 2020, filing as a request for relief pursuant to Rule 60(b), Ala. R. Civ. P., because it entered an October 19, 2020, judgment dismissing the circuit-court action, i.e., granting the mother relief from the January 30, 2020, judgment. However, the circuit court immediately entered a second order vacating that judgment of dismissal as having been entered by mistake.

We note that, given the ground that the mother alleged in her June 26, 2020, motion filed in the circuit court, i.e., that the January 30, 2020, judgment was void, we agree that the mother's motion should be construed as a request for relief pursuant to Rule 60(b)(4). See Ex parte Alfa Mut. Gen. Ins. Co., 684 So. 2d 1281, 1282 (Ala. 1996) (quoting Union Springs Tel. Co. v. Green, 285 Ala. 114, 117, 229 So. 2d 503, 505 (1969)) ("The 'character of a [motion] is determined and interpreted from its essential substance, and not from its descriptive name or title.' "); Pharo v. Pharo, 199 So. 3d 93, 95 n.1 (Ala. Civ. App. 2015) (same). "A judgment is void under Rule 60(b)(4) only if the court that rendered the judgment lacked subject-matter jurisdiction [or] personal jurisdiction" Ex parte R.S.C., 853 So. 2d 228, 235 (Ala. Civ. App. 2002). A Rule 60(b)(4) motion

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alleging that a judgment is void may be brought at any time. Ex parte Full Circle Distrib., L.L.C., 883 So. 2d 638, 643 (Ala. 2003); L.R.B. v. J.C., 263 So. 3d 1068, 1069 (Ala. Civ. App. 2018). We further note that the filing of the Rule 60(b) motion would not generally be allowed as a substitute for the mother's failure to appeal the circuit court's January 30, 2020, judgment. J.L.E. v. T.L.S., 880 So. 2d 1159, 1162 n.2 (Ala. Civ. App. 2003); see also Ex parte R.S.C., 853 So. 2d at 237 ("[A] judgment is not void if it is merely erroneous because Rule 60(b)(4) is not intended as a substitute for a timely appeal."). However, because the mother filed her motion seeking relief under Rule 60(b)(4), i.e., alleging that the January 30, 2020, judgment was void, she could file that motion at any time, even after failing to timely appeal from a void judgment. J.L.E. v. T.L.S., 880 So. 2d at 1162 n.2.

After vacating its initial October 19, 2020, judgment granting the mother her requested relief, the circuit court did not take further action for many months. However, while the mother's request for Rule 60(b)(4) relief remained pending in the circuit court, the Sumter Juvenile Court conducted an ore tenus hearing on June 25, 2021, on the merits of the

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maternal grandmother's dependency petition. On July 23, 2021, the Sumter Juvenile Court entered a judgment determining that the child is not dependent, dismissing the dependency action, and ordering that custody of the child be restored to the mother. The maternal grandmother did not appeal that July 23, 2021, judgment of the Sumter Juvenile Court. Rather, on July 26, 2021, the maternal grandmother moved the circuit court to set a status conference for the circuit-court action.

On July 27, 2021, the circuit court entered an order stating that, although it had conducted an October 1, 2020, hearing on the mother's June 26, 2020, Rule 60(b)(4) motion, "through inadvertence" it had failed to rule on that motion. Accordingly, also on July 27, 2021, the circuit court entered an order titled "order on transfers and jurisdiction." In that order, the circuit court again determined that the Wilcox Juvenile Court was the proper venue for the maternal grandmother's dependency action, and it directed the Wilcox Juvenile Court to conduct appropriate proceedings in the maternal grandmother's dependency action. Thus, the circuit court denied the mother's Rule 60(b)(4) motion.

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On August 9, 2021, the mother filed a petition for a writ of mandamus in this court challenging the circuit court's July 27, 2021, order. However, the appropriate method for review of the denial of a Rule 60(b) motion is by way of appeal. Ex parte Keith, 771 So. 2d 1018, 1021 (Ala. 1998). We have elected to exercise our discretion to treat the mother's petition for a writ of mandamus as an appeal. Barnhart v. Ingalls, 275 So. 3d 1112, 1120 (Ala. 2018); Weaver v. Weaver, 4 So. 3d 1171, 1173 (Ala. Civ. App. 2008).

As noted earlier, we do not address the propriety of any of the orders of the Wilcox Juvenile Court or the Sumter Juvenile Court or whether either or both of those courts had the authority to take certain actions. See note 1, *supra*. The appeal is taken from the circuit court's July 27, 2021, order, and, therefore, we confine our discussion in this opinion solely to the propriety of that order.

"The standard of review on appeal from the denial of relief under Rule 60(b)(4) is not whether there has been an abuse of discretion. When the grant or denial of relief turns on the validity of the judgment, as under Rule 60(b)(4), discretion has no place. If the judgment is valid, it must stand; if it is void, it must be set aside. A judgment is void only if the court rendering it lacked jurisdiction of the subject matter or of the

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parties, or if it acted in a manner inconsistent with due process. Satterfield v. Winston Industries, Inc., 553 So. 2d 61 (Ala. 1989).'"

J.L.E. v. T.L.S., 880 So. 2d at 1162 (quoting Insurance Mgmt. & Admin., Inc. v. Palomar Ins. Corp., 590 So. 2d 209, 212 (Ala.1991)).

The mother argues in her brief submitted to this court that the circuit court's January 30, 2020, judgment is void. We agree, but not for the reasons argued by the mother. This court may take judicial notice of a void judgment or of the lack of subject-matter jurisdiction ex mero motu. Williams v. Mari Props., LLC, [Ms. 1190555, Dec. 18, 2020] __ So. 3d __, __ (Ala. 2020); R.W. v. G.W., 2 So. 3d 869, 871 (Ala. Civ. App. 2008); Davis Plumbing Co. v. Burns, 967 So. 2d 94, 96 (Ala. Civ. App. 2007).

In the circuit-court action, the maternal grandmother sought from the circuit court a determination regarding whether the dependency action should proceed in the Wilcox Juvenile Court or in the Sumter Juvenile Court, and she sought injunctive relief prohibiting further proceedings in either juvenile court until the circuit court made that determination. To the extent that the maternal grandmother sought injunctive relief in the circuit-court action, the mother argues before this

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court that the maternal grandmother's "complaint" did not comply with the requirements of Rule 65, Ala. R. Civ. P., concerning the initiation of an action seeking injunctive relief. We do not reach that argument because we dispose of this appeal on a different issue.

We conclude that the circuit court did not have subject-matter jurisdiction over the maternal grandmother's "complaint," which sought a remedy that is in the nature of declaratory relief; the maternal grandmother asked the circuit court to determine the proper venue for the dependency action as between two different juvenile courts.³ In her brief submitted to this court, the maternal grandmother asserts that the circuit court could make such a determination under its general-superintendence jurisdiction over inferior courts set forth in § 12-11-30, Ala. Code 1975; that section provides, in pertinent part:

"(1) Civil. The circuit court shall have exclusive original jurisdiction of all civil actions in which the matter in controversy exceeds twenty thousand dollars (\$20,000),

³A determination that the circuit court was without jurisdiction to address the claim seeking declaratory relief necessarily disposes of the maternal grandmother's claim seeking injunctive relief pending the determination of the claim for declaratory relief.

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exclusive of interest and costs, and shall exercise original jurisdiction concurrent with the district court in all civil actions in which the matter in controversy exceeds six thousand dollars (\$6,000), exclusive of interest and costs.

"....

"(3) Appellate. The circuit court shall have appellate jurisdiction of civil, criminal, and juvenile cases in district court and prosecutions for ordinance violations in municipal courts, except in cases in which direct appeal to the Courts of Civil or Criminal Appeals is provided by law or rule. Appeals to the circuit court shall be tried de novo, with or without a jury, as provided by law.

"(4) Superintendence of district, municipal and probate courts. The circuit court shall exercise a general superintendence over all district courts, municipal courts, and probate courts."

The maternal grandmother argues that the circuit-court action constituted a petition for a writ of mandamus to the circuit court, seeking to have it exercise its general superintendence over an inferior court. In making that argument, the maternal grandmother has failed to identify any order or judgment of the Wilcox Juvenile Court from which she might arguably have sought review in the circuit court. The materials submitted to this court contain only three orders entered by the Wilcox Juvenile Court: the May 16, 2018 pendente-lite custody order, an August 13, 2018,

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order transferring the maternal grandmother's dependency action to the Sumter Juvenile Court and a July 10, 2019, order setting aside that August 13, 2018, order. Review of either of those orders was appropriate only pursuant to a timely petition for a writ of mandamus filed in this court. § 12-3-11, Ala. Code 1975. Even assuming, for the sake of argument, that the maternal grandmother's January 2020 filings initiating the circuit-court action could be construed as a petition for a writ of mandamus to the circuit court that should have been filed in this court, there is no underlying order entered by the Wilcox Juvenile Court from which such a petition would have been timely filed. See Ex parte Madison Cnty. Dep't of Hum. Res., 261 So. 3d 381, 384 (Ala. Civ. App. 2017) ("The presumptively reasonable time for filing a petition for the writ of mandamus is the same as the time for taking an appeal, which, in a juvenile action, is within 14 days of the entry of the challenged order. See Rule 21(a)(3), Ala. R. App. P., and Ex parte R.W., 41 So. 3d 800, 804 (Ala. Civ. App. 2009).").

The maternal grandmother also contends that, as a part of its general-superintendence jurisdiction, the circuit court was the appropriate

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court to determine the issue of proper venue as between the two juvenile courts and that she sought to invoke that jurisdiction by initiating an independent action in the circuit court. The maternal grandmother has cited no supporting authority with regard to that argument, and our research has revealed none. Rather, our courts have explained that, through its general superintendence over inferior courts, a circuit court has the power to review the action of such an inferior court. Our supreme court has explained: "Encompassed in this superintendence is the power to review certain judgments and orders of the [district] court, either through direct appeal or by petition for an extraordinary writ." Franks v. Norfolk S. Ry. Co., 679 So. 2d 214, 216 (Ala. 1996) (citing Helms v. McCollum, 447 So. 2d 687 (Ala. 1984)). See also Dunbar v. Frazer, 78 Ala. 529, 532 (1885) (discussing the propriety of a petition for writ of mandamus allegedly invoking the general-superintendence jurisdiction of the circuit court in that case under a predecessor statute to § 12-11-30). See also Ex parte City of Andalusia, 324 So. 3d 872, 876 (Ala. Crim. App. 2020) ("The circuit court ... had the authority -- whether by its appellate jurisdiction, its jurisdiction over extraordinary writs directed to the

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municipal court, or by its 'general superintendence' jurisdiction over the municipal court -- to review [a] municipal court's decision not to grant [a] request for a waiver of the appeal bond."); Equity Ventures, LLC v. Cheaha Bank, 267 So. 3d 854, 858 (Ala. Civ. App. 2018) (holding that "the proper means by which to bring [a probate court's review of a petition for redemption of property] before the circuit court would be by petition for a writ of mandamus" invoking the circuit court's general superintendence over a probate court). As discussed, the maternal grandmother did not seek review in the circuit court of any order of the Wilcox Juvenile Court. Also, the maternal grandmother has cited no authority to support an argument that the circuit court had any superintendence jurisdiction over the Sumter Juvenile Court, which is in another circuit.

Rather, in the circuit-court action, the maternal grandmother sought injunctive relief and declaratory relief or an advisory opinion. See § 6-6-220 et seq., Ala. Code 1975; Hammack v. Moxcey, 220 So. 3d 1053, 1057 n.2 (Ala. Civ. App. 2016) (noting that the substance of a pleading, and not its title, determines the nature of the pleading); and Smith v. Houston, 71 So. 3d 721, 729 (Ala. Crim. App. 2010) ("Considering the substance of [the]

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complaint and not its style, it is clear that the complaint commenced a declaratory-judgment action."). However, "[t]he courts of Alabama are not authorized to render advisory opinions, except in very limited circumstances," none of which apply in this case. Leon C. Baker, P.C. v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 821 So. 2d 158, 164 (Ala. 2001). Also, a request for declaratory relief may not be asserted as a substitute for a party's failure to appeal an adverse ruling. Ex parte Houston Cnty. Bd. of Educ., 562 So. 2d 513, 514 (Ala. 1990). Further, "where the statute has provided for no appeal as a method of review, [seeking declaratory relief] cannot be substituted for certiorari or mandamus as a method of review." Mitchell v. Hammond, 252 Ala. 81, 83, 39 So. 2d 582, 583 (1949).

Based on the foregoing, we conclude that the circuit court did not acquire jurisdiction to rule on the maternal grandmother's claims in the circuit-court action. Accordingly, the January 30, 2020, judgment entered by the circuit court in the circuit-court action is void for want of jurisdiction. See Alabama Law Enft Agency v. Carter, 263 So. 3d 1072, 1076 (Ala. Civ. App. 2018) ("A judgment entered without subject-matter

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jurisdiction is void."). In entering its July 27, 2021, order, the circuit court effectively denied the mother's pending request, pursuant to Rule 60(b)(4), to vacate the January 30, 2020, judgment as void. The denial of the Rule 60(b)(4) motion was error. Milloy v. Woods, 23 So. 3d 48, 52 (Ala. Civ. App. 2009). The July 27, 2021, order is reversed with instructions to the circuit court to grant the mother's Rule 60(b)(4) motion, to vacate the January 30, 2020, judgment, and to dismiss the circuit-court action. R.J.R. v. C.J.S., 72 So. 3d 643, 648 (Ala. Civ. App. 2011).

As stated earlier, we make no determination as to the propriety of any order or judgment entered by either the Wilcox Juvenile Court or the Sumter Juvenile Court with regard to the parties' dispute in the dependency action because none of those orders or judgments are before this court in this appeal.

REVERSED AND REMANDED WITH INSTRUCTIONS.

Hanson and Fridy, JJ., concur.

Moore, J., concurs in the result, with writing.

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

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MOORE, Judge, concurring in the result.

As the main opinion explains, on January 9, 2020, V.P. ("the maternal grandmother") commenced a civil action (case number CV-20-900003) in the Wilcox Circuit Court ("the trial court") naming D.H. ("the mother") as the defendant and requesting that the trial court resolve a dispute between the parties and the Wilcox Juvenile Court and the Sumter Juvenile Court regarding the appropriate venue for a dependency action relating to R.S.D. ("the child"). The venue dispute arose after the maternal grandmother commenced a dependency action in the Wilcox Juvenile Court; the Wilcox Juvenile Court transferred the dependency action to the Sumter Juvenile Court; the Sumter Juvenile Court rejected the transfer; the Wilcox Juvenile Court purported to rescind its transfer order; and the Sumter Juvenile Court reconsidered its rejection of the transfer order and accepted the transfer of the case. The maternal grandmother requested that the trial court enjoin the proceedings in both the Wilcox Juvenile Court and the Sumter Juvenile Court until it could determine which of those courts could properly preside over the dependency action. I agree with the main opinion that the trial court

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lacked subject-matter jurisdiction to adjudicate the venue dispute, but not for the reasons set forth in the main opinion.

Alabama caselaw clearly provides that, once a juvenile court transfers a case to another juvenile court, the transferor court cannot rescind its transfer order and the transferee court cannot consider a motion to retransfer the case back to the original court; the sole remedy available to a party aggrieved by the transfer order is to petition the appropriate court for the writ of mandamus directed to the transferor court. See Ex parte R.K.S., 317 So. 3d 68, 71 (Ala. Civ. App. 2020). Unless the party follows that procedure and obtains mandamus relief, any order entered by the transferor court purporting to rescind the transfer order is void. Id.

The maternal grandmother argues that the pleading commencing the underlying action in the trial court should be construed as a petition for the writ of mandamus. The main opinion rejects that contention for two reasons. First, the main opinion asserts that there is no order identified that would support a petition for the writ of mandamus. I disagree because the maternal grandmother could have filed a petition for

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the writ of mandamus from the transfer order entered by the Wilcox Juvenile Court. Second, the main opinion asserts that the maternal grandmother did not timely file a petition for the writ of mandamus, but Rule 21(a)(3), Ala. R. App. P., upon which the main opinion relies, does not apply in circuit-court mandamus proceedings. See Wall to Wall Props. v. Cadence Bank, NA, 163 So. 3d 384 (Ala. Civ. App. 2014). Nonetheless, I agree with the main opinion that the maternal grandmother's pleading, even if it could be charitably viewed as a petition for the writ of mandamus, did not properly invoke the supervisory jurisdiction of the trial court under Ala. Code 1975, § 12-11-30, as the maternal grandmother contends.

Section 141(c), Ala. Const. of 1901 (Off. Recomp.), and Ala. Code 1975, § 12-3-11, grant the Alabama Court of Civil Appeals original jurisdiction to issue the writ of mandamus in cases that are within its appellate jurisdiction, which includes child-custody cases arising in juvenile courts. See Ala. Code 1975, § 12-3-10. In Ex parte Aldridge, 291 So. 3d 1184, 1191 (Ala. Civ. App. 2018), this court determined that, notwithstanding the authority vested in the circuit courts by Ala. Code

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1975, § 12-11-30, to superintend and control courts of inferior jurisdiction, this court, and not the circuit courts, maintains exclusive mandamus jurisdiction over interlocutory orders entered by juvenile courts in child-custody proceedings. Thus, the only avenue available to the maternal grandmother to obtain mandamus review of the transfer order entered by the Wilcox Juvenile Court was to file a petition for the writ of mandamus with this court. The trial court did not have mandamus jurisdiction to review the transfer order of the Wilcox Juvenile Court or any other orders relating to venue made by that court.

The civil action commenced by the maternal grandmother seeking to resolve the venue dispute between the Wilcox Juvenile Court and the Sumter Juvenile Court did not invoke the trial court's subject matter jurisdiction for two more reasons. First, as the main opinion notes, the pleading filed by the maternal grandmother was, in substance, a petition for declaratory and injunctive relief.

"Jurisdiction of a declaratory judgment action will not be entertained if there is pending at the time of the declaratory judgment action another action or proceeding to which the same persons are parties, and in which are involved and may

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be adjudicated the same identical issues that are involved in the declaratory judgment action."

Mathis v. Auto-Owners Ins. Co., 387 So. 2d 166, 167 (Ala. 1980) (citing Foreman v. Smith, 272 Ala. 624, 133 So. 2d 497 (1961)). The question of which juvenile court was the appropriate venue to adjudicate the maternal grandmother's dependency petition was a matter litigated by the parties in the Wilcox Juvenile Court and in the Sumter Juvenile Court, and those rulings were subject to mandamus review by this court; thus, the trial court could not obtain subject-matter jurisdiction over that dispute.

Secondly, "[t]here must be a bona fide existing controversy of a justiciable character to confer upon the court jurisdiction to grant declaratory relief under the declaratory judgment statutes, and if there was no justiciable controversy existing when the suit was commenced the trial court had no jurisdiction." State ex rel. Baxley v. Johnson, 293 Ala. 69, 73, 300 So. 2d 106, 110 (1974). Because the maternal grandmother failed to follow the appropriate mandamus procedure, by the time she initiated the underlying civil action, the venue issue had been conclusively

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resolved. The Sumter Juvenile Court had effectively assumed control of the dependency case and the actions of the Wilcox Juvenile Court purporting to resume control over the dependency case were void. See Ex parte R.K.S., supra. In fact, when the maternal grandmother filed her pleading in the trial court, she had been prosecuting the dependency case in the Sumter Juvenile Court for almost two months. Accordingly, the question of which juvenile court was the proper venue to adjudicate the dependency case had become a moot controversy over which the trial court could not exercise jurisdiction. See generally Chapman v. Gooden, 974 So. 2d 972, 984 (Ala. 2007) (explaining mootness doctrine).

For the foregoing reasons, and those reasons alone, I concur that the judgment of the trial court purporting to determine the venue issue and to enjoin the proceedings of the Sumter Juvenile Court is void for lack of subject-matter jurisdiction and that the trial court's order denying the mother's request for relief from that judgment, pursuant to Rule 60(b)(4), Ala. R. Civ. P., should be reversed.