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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2021-2022

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**Ex parte Autauga County Department of Human
Resources et al.**

PETITIONS FOR WRIT OF MANDAMUS

(In re: Autauga County Department of Human Resources

v.

K.C.C. and C.D.C.)

**(Autauga Juvenile Court, JU-20-499.04, JU-20-500.04,
and JU-20-501.04)**

THOMPSON, Presiding Judge.

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These parties have previously been before this court regarding petitions for a writ of mandamus filed in appellate case numbers 2200797, 2200798, 2200799, and 2200800. This court's opinion in Ex parte Autauga County Department of Human Resources, [Ms. 2200797, Aug. 24, 2021] __ So. 3d __, __ (Ala. Civ. App. 2021) ("Ex parte Autauga County DHR"), sets forth much of the history that forms the basis of these current petitions.

In those original petitions for a writ of mandamus, the Autauga County Department of Human Resources ("DHR"); Nancy Buckner, the commissioner of the Alabama Department of Human Resources; and Serena Cronier, counsel for DHR (hereinafter referred to collectively as "the petitioners"), petitioned this court for writs of mandamus directing the Autauga Circuit Court ("the trial court") to vacate a June 28, 2021, order entered in case number DR-19-900179 ("the divorce action"), a divorce action between K.C.C. ("the mother") and C.D.C. ("the father"), and June 28, 2021, orders purportedly entered in dependency actions ("the .04 actions) commenced in the Autauga Juvenile Court ("the juvenile court") regarding the mother and the father's three children. Ex parte

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Autauga County DHR, supra. The June 28, 2021, order entered in the divorce action purported to consolidate the .04 actions with the divorce action and required the petitioners to appear at a hearing on a motion to hold DHR in contempt that the mother and the father had filed in the divorce action. In their original petitions for a writ of mandamus, the petitioners also alleged that the June 28, 2021, orders supposedly entered in .04 actions purported to consolidate the .04 actions with the divorce action and required the petitioners to appear at the contempt hearing.¹

¹We note that, in their response to the petitioners' current petitions for a writ of mandamus, the mother and the father submitted materials indicating that on July 15, 2021, they initiated a new action in the trial court, case number CV-21-900114, in which they filed a complaint that is virtually identical to their contempt motion asserted in the divorce action. Those materials further indicate that the mother and the father amended their complaint in case number CV-21-900114 on August 5, 2021. The mother and the father assert in their answer to these petitions for a writ of mandamus that their complaint in case number CV-21-900114 has been served on the petitioners but that no answer to the complaint has been filed. See Ex parte Turner, 840 So. 2d 132, 134 (Ala. 2002) (stating that "uncontroverted averments" in an answer to a petition for a writ of mandamus are "taken as true"). In the petitions for a writ of mandamus currently before this court, the petitioners have made no argument concerning case number CV-21-900114 and have sought no relief pertaining to that action. Therefore, this opinion does not address case number CV-21-900114.

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The contempt motion had not been filed in any of the .04 actions, a fact that none of the parties apparently recognized at that time.

In Ex parte Autauga County DHR, supra, this court denied the petitions in appellate case numbers 2200798, 2200799, and 2200800, challenging the June 28, 2021, orders purportedly entered in the .04 actions, because the petitioners had failed to include those orders with their petitions in those cases. This court also dismissed the petition in appellate case number 2200797, challenging the June 28, 2021, order entered in the divorce action, because, this court held, the mother and the father had failed to initiate a separate contempt action and, thus, the trial court had never obtained subject-matter jurisdiction over the issue of contempt. Id. at _____. This court's opinion in Ex parte Autauga County DHR, supra, was released on August 24, 2021, and the certificate of judgment in appellate case numbers 2200797, 2200798, 2200799, and 2200800, were issued on September 14, 2021.

On August 24, 2021, i.e., the same date on which this court released the opinion in Ex parte Autauga County DHR, supra, the petitioners filed in each of the .04 actions a "motion to vacate" an order purportedly

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entered in each of the .04 actions scheduling the August 27, 2021, contempt hearing; that motion did not set forth the date of the order purportedly entered in each of the .04 actions. In that motion, the petitioners also sought to vacate the June 28, 2021, orders supposedly entered in the .04 actions purporting to consolidate the .04 actions with the divorce action and to stay the proceedings, i.e., the August 27, 2021, contempt hearing. In their August 24, 2021, motions filed in the .04 actions, the petitioners alleged various reasons they contended that the juvenile court, or the trial court purporting to act as the juvenile court, lacked jurisdiction to consolidate the .04 actions with the divorce action, to consider any claims of contempt as part of the .04 actions, and to order the petitioners' presence at the August 27, 2021, contempt hearing.

The trial court did not immediately rule on the petitioners' August 24, 2021, motion, and, on August 26, 2021, the petitioners filed in this court the current petitions for a writ of mandamus, which this court assigned appellate numbers 2200936, 2200937, and 2200938.² The

²Although these mandamus petitions are styled as coming from the juvenile court, because of the unique procedural posture of the proceedings

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petitioners also filed in appellate case numbers 22009363, 2200937, and 2200938 an emergency motion to stay the August 27, 2021, contempt hearing. This court consolidated these proceedings ex mero motu. On August 26, 2021, this court issued an order granting the emergency motions to stay.

Thereafter, on September 8, 2021, the petitioners filed in this court as a supplement to their petitions for a writ of mandamus a document titled "notice to court of violation of stay and motion to reinstate juvenile cases" ("the notice"). In support of the notice, the petitioners submitted materials indicating that on August 27, 2021, the mother and the father together filed a "joint" motion to dismiss, without prejudice, their contempt claim against DHR; that August 27, 2021, motion was filed in the trial court and listed as applicable case numbers the divorce action and the three .04 actions. As the petitioners point out in their current petitions for a writ of mandamus, and as we observed earlier in this

below, the orders addressed in this opinion were entered by the trial court.

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opinion, no contempt claim had been asserted in any of the three .04 actions.

On September 2, 2021, the trial court entered a judgment purportedly granting the mother and the father's motion but also stating that "this case [i.e., the divorce action] and all consolidated JU cases [i.e., the .04 actions] are dismissed." We note that that part of the trial court's September 2, 2021, judgment dismissing the contempt claims asserted in the divorce action is consistent with the holding of this court in Ex parte Autauga County DHR, supra, in which we held that, in purporting to assert their contempt claims in that action, the mother and the father had failed to properly invoke the trial court's jurisdiction. ___ So. 3d at ___.

The materials submitted to this court do not indicate that the trial court's September 2, 2021, judgment was actually entered in the .04 actions. The petitioners allege in their submissions to this court that that judgment was not entered in the .04 actions. Regardless, however, the petitioners contend that, because the .04 actions are purportedly consolidated with the divorce action, this court should review the September 2, 2021, judgment insofar as it purports to dismiss the .04

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actions. That argument ignores that part of Ex parte Autauga County DHR, supra, in which this court rejected a similar argument asserted by the petitioners in those earlier petitions for a writ of mandamus by explaining:

"We note that the June 28, 2021, order entered in the divorce action is not considered to be a part of the .04 actions merely because the trial court purported to consolidate those actions with the divorce action. This court has explained:

"Pursuant to Rule 42, Ala. R. Civ. P., a trial court may order actions involving common facts or issues to be consolidated. Rule 42(a) provides:

"When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay."

"However, the Committee Comments on 1973 Adoption of Rule 42 clearly demonstrate that consolidation does not merge two actions into one action; rather, the two consolidated actions continue to maintain their separate identities. Those Comments specify:

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" "Rule 42(a) speaks both of joint hearings or trials and of consolidation. This wording is intended to confer a broad discretion to merge the two actions so far as is necessary for their most convenient determination, and to permit merger of some or all of the issues in the two cases. But where there is complete consolidation, the actions retain their separate identity and the parties and pleadings in one action do not automatically become parties and pleadings in the other action. Oikarinen v. Alexian Bros., 342 F.2d 155 (3d Cir. 1965). National Nut Co. of California v. Susu Nut Co., 61 F. Supp. 86 (N.D. Ill. 1944); Simon v. Carroll, 241 Minn. 211, 62 N.W.2d 822 (1954)."

" (Emphasis added.)

" "This court has summarized the caselaw precedent also providing that consolidated actions maintain their separate identities and that separate judgments must be entered in each action:

" "[W]hen two or more actions are consolidated under Rule 42, Ala. R. Civ. P., the actions do not lose their separate identities. League v. McDonald, 355 So. 2d 695, 697 (Ala. 1978). Moreover, "[a]n order of consolidation does not

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merge the actions into a single [action], change the rights or the parties, or make those who are parties to one [action] parties to another." Jerome A. Hoffman, Alabama Civil Procedure § 5.71 (2d ed. 2001) (citing Evers v. Link Enters., Inc., 386 So. 2d 1177 (Ala. Civ. App. 1980)). Finally, "in consolidated actions ... the parties and pleadings in one action do not become parties and pleadings in the other." Ex parte Flexible Prods. Co., 915 So. 2d 34, 50 (Ala. 2005) (quoting Teague v. Motes, 57 Ala. App. 609, 613, 330 So. 2d 434, 438 (Civ. 1976)).'

" 'Solomon v. Liberty Nat'l Life Ins. Co., 953 So. 2d 1211, 1222 (Ala. 2006). When actions are ordered consolidated, each action retains its separate identity and thus requires the entry of a separate judgment.' League v. McDonald, 355 So. 2d 695, 697 (Ala.1978)."

" 'H.J.T. v. State ex rel. M.S.M., 34 So. 3d 1276, 1278 (Ala. Civ. App. 2009) (emphasis added).'

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"R.J.G. v. S.S.W., 42 So. 3d 747, 752-53 (Ala. Civ. App. 2009).

"The .04 actions maintained their own, separate identities, regardless of any purported consolidation of those actions. Thus, the June 28, 2021, order entered in the divorce action did not become an order entered in the .04 actions."

___ So. 3d at ___. Similarly, the materials submitted to this court fail to demonstrate that the September 2, 2021, judgment of dismissal, although listing the .04 case numbers in its style, were actually entered in the .04 actions. See Rule 58(c), Ala. R. Civ. P. ("An order or a judgment shall be deemed 'entered' within the meaning of these Rules and the Rules of Appellate Procedure as of the actual date of the input of the order or judgment into the State Judicial Information System.").

DHR filed a purported postjudgment motion in each of the .04 actions, arguing that those actions should not have been dismissed. In the notice, the petitioners argue that this court should review the purported dismissal of the .04 actions.³ As already stated, however, the petitioners

³DHR has not asserted that its purported postjudgment motion filed in the .04 actions sought relief under Rule 60(b), Ala. R. Civ. P., and the petitioners have not asked this court to convert that part of the notice supplementing their petitions for a writ of mandamus that addresses the purported dismissal of the .04 actions to appeals. McWhorter v. Parsons,

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have presented no materials indicating that judgments dismissing the .04 actions have actually been entered. Thus, there is nothing for this court to review with regard to this argument.

With regard to the remainder of the issues raised in the petitions for a writ of mandamus, the petitioners question the jurisdiction of the trial court to consider the mother and the father's contempt claims and they challenge orders entered in the .04 actions that purportedly consolidated the .04 actions with the divorce action and scheduled the August 27, 2021, contempt hearing. These petitions for a writ of mandamus were filed on August 25, 2021, outside the 42-day presumptively reasonable period for filing a timely petition for a writ of mandamus from those orders. See Rule 21(a)(3), Ala. R. App. P. ("The presumptively reasonable time for filing a petition seeking review of an order of a trial court ... shall be the same as the time for taking an appeal."); Rule 4(a), Ala. R. App. P. (providing that, generally, an appeal must be filed within 42 days "of the date of the entry

215 So. 3d 577, 580 (Ala. Civ. App. 2016) ("The law is well settled that the denial of a Rule 60(b)[, Ala. R. Civ. P.,] motion is reviewable on appeal."). Given this court's disposition of their argument on this issue, we need not do so.

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of the judgment or order appealed from"). Our supreme court has held, however, that an appellate court may consider an untimely petition for a writ of mandamus to the extent that it challenges the subject-matter jurisdiction of the court that entered the order being challenged. Ex parte K.R., 210 So. 3d 1106, 1112 (Ala. 2016). In these petitions for a writ of mandamus, the petitioners have argued that the trial court was without jurisdiction to enter the June 28, 2021, orders in the .04 actions. Their other arguments also concern the subject-matter jurisdiction of the trial court. Accordingly, because the petitioners have asserted jurisdictional arguments, we will address the arguments that the petitioners have asserted in their untimely petitions for a writ of mandamus.

The petitioners argue that the trial court lacked jurisdiction to consolidate the .04 actions with the divorce action. However, the trial court dismissed the divorce action in its September 2, 2021, judgment entered in that case. Thus, there is no longer any action consolidated, or purportedly consolidated, with the .04 actions. "A petition for the writ of mandamus is moot when there is no real controversy and it seeks to determine an abstract question that does not rest on existing facts." Ex

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parte Taylor, [Ms. 2200379, Apr. 2, 2021] __ So. 3d __, __ (Ala. Civ. App. 2021). The issue of any purported consolidation of the .04 actions with the divorce action has become moot by virtue of the dismissal of the divorce action. Accordingly, we dismiss the petitions with regard to this issue.

The petitioners also argue that they are entitled to writs of mandamus vacating the trial court's orders scheduling a hearing for August 27, 2021, to consider the contempt claims. The action in which the contempt claims were asserted, i.e., the divorce action, has been dismissed, and, as explained above, the divorce action cannot be considered "consolidated" with the .04 actions. Thus, the order entered in the divorce action pertaining to the scheduling of the contempt hearing is no longer in effect.

Further, the July 1, 2021, orders entered in the .04 actions stated, in pertinent part, that "a contempt hearing is scheduled for [August 27, 2021]," and specified that Buckner and Cronier were to appear at that hearing. The date of the hearing has passed. The petitioners have not submitted to this court any evidence indicating that the trial court intends to reschedule that hearing, especially considering that it has dismissed

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the divorce action, the only action in which contempt claims were asserted. Accordingly, we conclude that this argument, like the argument concerning the propriety of the purported consolidation of the .04 actions with the divorce action, is now moot. Ex parte Taylor, supra. Further, the petitioners are correct that there is no pending contempt claim in the .04 actions for which a hearing at which the presence of the petitioners might be required, could be conducted.

The petitioners next contend that the trial court did not have jurisdiction to consider the mother's and the father's contempt claims against DHR. As a separate argument, the petitioners also maintain that any claims against Buckner or Cronier are barred by the doctrine of State-agent immunity. See McConico v. Patterson, 204 So. 3d 409, 416 (Ala. Civ. App. 2016) (explaining that whether State-agent immunity applies is a jurisdictional issue that, under certain circumstances, may be raised for the first time on appeal or in an application for rehearing). The mother and the father's contempt motion was filed only in the divorce action in trial court; it was not filed in the .04 actions. The divorce action was dismissed in the September 2, 2021, judgment. Thus, because the only

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action in which contempt was alleged has been dismissed, the issue of the trial court's jurisdiction to consider any contempt claims and the issue of the applicability of any defense to those claims are also now moot. Ex parte Taylor, supra; Talladega Cnty. Comm'n v. State ex rel. City of Lincoln, 303 So. 3d 476, 480 (Ala. 2020). We further note that any opinion this court were to issue reaching those issues would constitute an advisory opinion. "Our supreme court has held, however, that "the judiciary of Alabama is not empowered "to decide moot questions, abstract propositions, or to give advisory opinions, however convenient it might be to have these questions decided for the government of future cases." "' "' Ex parte Sims, 246 So. 3d 155, 158 (Ala. Civ. App. 2017) (quoting Case v. Alabama State Bar, 939 So. 2d 881, 885 (Ala. 2006), quoting in turn Ex parte Connors, 855 So. 2d 486, 488 (Ala. 2003), quoting in turn Stamps v. Jefferson Cnty. Bd. of Educ., 642 So. 2d 941, 944 (Ala. 1994)).

For the reasons discussed, the petitions for a writ of mandamus are dismissed.

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2200936 -- PETITION DISMISSED.

2200937 -- PETITION DISMISSED.

2200938 -- PETITION DISMISSED.

Moore, Edwards, Hanson, and Fridy, JJ., concur.