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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2021-2022

2200928

H.A.A.

v.

B.J.J.

**Appeal from Colbert Juvenile Court
(JU-21-83.01)**

PER CURIAM.

H.A.A. ("the biological father") appeals from a judgment of the Colbert Juvenile Court ("the juvenile court") terminating his parental rights to T.A.A. ("the child"), the child born of his nonmarital relationship

with B.J.J. ("the mother"). For the reasons set forth herein, we conclude that the juvenile court acted outside its statutory authority when it purported to terminate the biological father's parental rights, and, as a result, we dismiss the appeal as arising from a void judgment.

Background

On March 29, 2021, the mother filed a petition to terminate the parental rights of the biological father to the child. The child was almost eleven years old at that time. In her petition, the mother alleged that the child was born in Georgia and that, when the child was eight months old, the mother fled from her relationship with the biological father and relocated to Alabama. She further alleged that, during their relationship, the biological father had abused alcohol and had been unable to care for the child's needs. The mother acknowledged in her petition that the biological father had filed a petition to establish paternity, custody, and child support in the Colbert Juvenile Court.¹ She alleged that the biological father had failed to maintain contact with the child, and she further alleged that the child did not know the biological father. She

¹Testimony at the trial indicated that the biological father filed his paternity petition at some point in 2020 and that it was served on the mother in August 2020.

stated in her petition that she had begun a relationship with J.D.J. ("the stepfather") when the child was eighteen months old and that they had married. She alleged that the stepfather holds the child out as his child and that he wants to adopt her. She also alleged that, because of his lack of contact with the child, the biological father had voluntarily abandoned the child. In addition, she alleged, the biological father had failed to provide for the child's material needs and had failed to pay child support. She sought a judgment terminating the biological father's parental rights.

The biological father filed an answer in which, among other things, he denied the material allegations of the mother's petition and alleged that he had attempted numerous times to reconnect with the mother and the child. He alleged that he did not have an accurate address for the mother and the child until shortly before he filed his paternity petition, having previously searched for years to locate them. The juvenile court held a hearing on the mother's petition on July 22, 2021. The testimony and documents received into evidence reveal the following pertinent facts.

The biological father and the mother resided in Georgia when they began their relationship around 2008. At that time, the mother was married to a different man. She continued to be married to that other man when, in 2010, the child was born. It is undisputed that, despite her marriage to the other man, the biological father is the biological father of the child.

Near the end of 2010, and contrary to allegations in the mother's petition, the parties relocated with the child to Alabama. The mother testified that the reason they moved to Alabama was so that she could be closer to her friends and family because the biological father had not been helping to provide for her and the child. According to the mother, although the biological father worked, he would never bring home a paycheck.

The mother testified that, when they first moved back to Alabama, the mother and the child lived with a childhood friend of the mother's for two or three months and that the biological father would visit them. The mother described her relationship with the biological father at that time as "on and off" and not as serious as it had been when they had lived together in Georgia. The biological father testified that he had actually

lived with the mother and the child while they were staying with her friend.

After the mother (or both parties) and the child lived with the mother's childhood friend for two or three months, the mother and the biological father moved with the child to a home in Decatur, where they lived for a few months. They then moved with the child to a home in Trinity.

The mother and the biological father ended their relationship in October 2011. According to the biological father, while they lived in Trinity, he did not have a job for a couple of months because the mother had asked him to stay home with the child. However, because of their financial situation, the biological father testified, he agreed to go back to work and secured a job as a truck driver, an industry in which he had worked for several years. He testified that the day after he left for Nashville, Tennessee, to begin the job, the mother contacted him and told him not to come back. Later that year, the biological father's former wife, who lived in North Carolina, had a stroke, and the biological father began staying with her to help take care of the son that he had had with his former wife.

Thereafter, the mother obtained a job in Hartselle and moved with the child into a townhouse there. The last time the biological father saw the child was right after her first birthday party, when he came to the townhouse to retrieve the last of his belongings. The mother lived in the townhouse in Hartselle for at least a year and a half.

In an email dated January 6, 2012, the biological father accused the mother of lying to him about not having a telephone, accused her of trying to keep him from having a relationship with the child, and ended the email by threatening to file a lawsuit against her. The biological father did not, however, follow through on his threat to sue the mother. Instead, the parties continued to have contact with each other over the phone in an attempt to establish whether the biological father wanted to pay child support and whether he wanted to be in the child's life.

On March 13, 2012, the mother sent an email to the biological father in which she set forth the terms of a custody and child-support arrangement that they had apparently worked out through conversations on the phone. In pertinent part, she wrote:

"Per our conversation we have agreed to only have contact with each other when it pertains to [the child] and her well being.

"As of today, March 13, 2012, we have agreed for you to pay \$50.00 a week in child support starting this Friday 3/16/12.

"When you want to establish visitation I ask that you give me at least a 72 to 48 hour notice that you are coming into town.

"We have also agreed that you will stay in the area of our home town when you are visiting [the child]. There will be no out of town visitation at this time due to [the child]'s age.

"Our agreement as of today as far as contact with each other will be done only by phone on our set days and time of contact.

"We will have no email, text or any other contact with each other with the exception of the scheduled phone calls two to three times a week to let you know how [the child] is doing for the week as far as daycare, sickness etc. is concerned."

Despite this email, the biological father neither paid the mother any child support nor contacted the mother with notice that he would be coming into town to exercise visitation with the child. According to the mother, although the biological father had agreed to the terms set forth in the email, he never complied with them.

Regarding visitation and child support, the biological father testified that he did not agree with what he called the mother's "demands." Although he said that he had had no problem with paying the \$50-per-week child support, or with any of the other provisions in the email, he said that the mother had demanded in a phone conversation

that she be around while he exercised his visitation with the child and that he had not agreed to that. The email itself, however, does not reflect that "demand."

Around the time the mother and the biological father ended their relationship in October 2011, the mother met the stepfather. In 2012, she moved into his house, which was located in Sheffield ("the Sheffield home"). The mother had no contact with the biological father following that move, although she claimed that she received an envelope at the Sheffield home that she believed was from him. The envelope contained only a picture of a donkey and a tube of red lipstick. The mother admitted that there was no return address on the envelope.

The mother and the stepfather married in 2013, and they remained at the Sheffield home for four years. The mother began work as an insurance agent, and the stepfather was employed at a construction company that, by the time of the hearing, he had worked for almost thirty years. The mother and the stepfather have one child together, who, at the time of the hearing, was six years old.

The biological father testified that the mother's March 13, 2012, email to him was her last communication with him. He said that he had

tried to call and email her after that but that she had not responded to him. He said that the last address he had for her was her townhouse in Hartselle.

The biological father said that he had tried to locate the mother by reaching out to two of her relatives on a social-media platform. The messages he sent were admitted into evidence at the hearing. The biological father also found the stepfather's profile on a social-media platform and sent him a message through that platform in 2015. The biological father testified that, although he told the stepfather in the message that he had "lost" his address, he did not ever have the address. The biological father said that he was not able to locate a profile of the mother on social media.

The biological father never reached out to the mother's father ("the maternal grandfather") to try to locate the mother, even though he had been to the maternal grandfather's house on multiple occasions when the biological father and the mother were dating. The biological father claimed that he would have felt comfortable contacting the maternal grandfather if he "could have found him," but he claimed that he did not know how to get to the maternal grandfather's house. The biological

father also claimed that he did not have the maternal grandfather's phone number. The maternal grandfather testified that if the biological father had ever contacted him, he would have given the biological father the mother's address. He said that the mother, in fact, had told him that he could give the biological father her address if the biological father ever contacted him.

According to the mother, the biological father had had a good relationship with the maternal grandfather. She said that the biological father could have gone to the maternal grandfather's home to locate her. She further testified that the biological father also knew where some of her friends resided and had been to their homes, yet, she testified, he never reached out to them to try to locate her.

The biological father testified that in addition to sending a few messages to a few of the mother's family members, in or around 2013 he hired a "skip tracer" -- which he described as someone who attempts to discover information about someone -- to find the mother. That individual provided a document to the biological father indicating two possible addresses for the mother, one of which was her correct address at that time at the Sheffield home. In addition, the document separately listed

the stepfather's correct address at that time, which was the same as the mother's. When confronted with the fact that the skip tracer had located the mother's and stepfather's correct address, the biological father testified that he did not have "one hundred percent knowledge" that the mother was living at that address because, he said, that information was "not verified"; he further testified that, although he believed that he had sent a letter to the mother at that address, he did not receive a response.

The biological father testified that he had used other services, including an Internet service in 2014, to locate the mother, but, he said, his attempts to locate the mother had been to no avail. He testified that he had used another Internet service in 2019, again, he said, without a positive result. He testified that he had then hired a friend of his who was a bail bondsman to attempt to locate the mother, and, he said, the friend had been successful in finding her address.

The biological father claimed that he had sent letters to all the addresses he had found for the mother, had called all the phone numbers he had found, and had sent emails to all the email addresses he had found but that he never received any responses.

The biological father admitted that there was a four-year period, from 2015 to 2019, during which he had not attempted to locate the mother. The biological father explained that gap in his alleged search for her by saying that he felt like efforts to locate her had been futile and hopeless. He also testified that he felt that if he backed off from trying to find the mother, she would become comfortable and stop trying to hide from him.

The biological father testified that he had thought about filing a paternity petition before 2019, but, he said, he was told by an attorney that, because the mother was married to someone else at time of the child's birth, he would not be recognized as the child's father. So, according to the biological father, he had believed that, first, he would have to obtain a verified address for the mother and, then, would have "to file through the state of Alabama and Georgia to be able to get Alabama to grant [him] a paternity test."

The mother testified that she has not told the child about the biological father, that the child does not know the biological father exists, and that the child believes that the stepfather is her father. According to the mother, the child has a typical father/daughter relationship with the

stepfather, and the stepfather is the only father the child has ever known. In fact, according to the mother, the child thinks her last name is the same as the mother's and the stepfather's. According to the stepfather, the child calls him "daddy" or "father." He stated that he had helped to raise the child and that everyone in the community sees him as the child's father. The stepfather planned to adopt the child if the juvenile court terminated the biological father's parental rights.

The mother testified that, since the biological father last saw the child after her first birthday, the biological father has not provided a single birthday gift for the child. According to the mother, the only thing the biological father ever sent the child was some Halloween candy and a card in October 2020.

The biological father admitted that he had not paid any child support from August 2020 (around the time he filed his paternity petition) until the day of the hearing. He testified that he "was told not to until the paternity and child support was established."

The mother testified that it would be devastating to the child if the juvenile court were to deny the mother's petition to terminate the biological father's parental rights and the biological father was permitted

to be reintroduced into the child's life. The stepfather stated that he believed that the child would be devastated if she were to find out that he was not really her father.

On August 10, 2021, the juvenile court entered a judgment purporting to grant the mother's petition to terminate the biological father's parental rights to the child. The juvenile court concluded that the biological father had failed to discharge his responsibility to care for the child by not providing for the emotional and material needs of the child, had failed to maintain regular visits with the child, had failed to adjust his circumstances to meet the child's needs, and had abandoned the child. The biological father filed a timely notice of appeal.

Analysis

In his appeal, the biological father raises substantive issues to challenge the juvenile court's judgment purporting to terminate his parental rights. We cannot reach those issues, however, because we perceive a fundamental flaw in the juvenile court's adjudication of this matter that voids its judgment. Specifically, the record fails to disclose a basis for concluding that the biological father was the child's "legal father" under the governing statutes, and, as a result, any attempt by the

juvenile court to adjudicate any parental rights the biological father might have was beyond that court's statutory authority, thus rendering its judgment void and unable to support this appeal.

The Alabama Juvenile Justice Act ("the AJJA"), § 12-15-101 et seq., Ala. Code 1975, governs the termination of parental rights. The AJJA authorizes the termination of the parental rights only of "parents," § 12-15-319(a), and defines the term "parent" as a "legal mother" or a "legal father" of a child under the juvenile court's jurisdiction, § 12-15-102(19). This court recently had occasion to address the term "legal father" in the context of the termination of parental rights in J.R.C. v. Mobile County Department of Human Resources, [Ms. 2190975, June 18, 2021] ___ So. 3d ___ (Ala. Civ. App. 2021). In that case, this court observed that "Alabama law recognizes a man as a legal father of a child when he is the 'presumed father' of the child, see § 26-17-204, Ala. Code 1975, or has been adjudicated as the father of the child, see § 26-17-201(b), Ala. Code 1975." ___ So. 3d at ___. We concluded in J.R.C. that, because the man whose parental rights the trial court had purported to terminate was merely an alleged father of the child at issue and was not a "legal father" of the child for purposes of the AJJA, he had no parental rights as to the

child that were subject to termination.² Thus, we concluded that the trial court had acted beyond its statutory authority in purporting to terminate those nonexistent rights.

We reach the same conclusion in this case. Although the record indicates that the biological father filed a paternity petition as to the child, the record does not disclose that a court has entered a judgment on that petition or has otherwise adjudicated the biological father as the father of the child under § 26-17-201(b), Ala. Code 1975.³

Moreover, the record does not permit this court to conclude that the biological father is a presumed father of the child under § 26-17-204, Ala. Code 1975, or, at the very least, to conclude that any paternal presumption that could arise in his favor under that section is not outweighed by a competing presumption in favor of the stepfather. The

²We also noted in a footnote in J.R.C. that other states' legislatures have conferred on their courts the authority to terminate the parental rights of putative fathers and not just "legal fathers." J.R.C., ___ So. 3d at ___ n.2 (citing as examples Mich. Comp. Laws § 710.39 and Mo. Rev. Stat. § 211.442).

³Although the child was born in Georgia, her paternity is determined under Alabama law. See § 26-17-103(b)(1), Ala. Code 1975.

only paternal presumption under that statute that the record in this case could possibly support with regard to the biological father is as follows:

"[a] man is presumed to be the father of a child if

"...

"(5) while the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child or otherwise openly holds out the child as his natural child and establishes a significant parental relationship with the child by providing emotional and financial support for the child."

§ 26-17-204(a). Even if we were to conclude that the record supports the finding of a presumption of paternity in favor of the biological father based on the short period he and the mother resided together with the child at the very beginning of the child's life, the record clearly supports a finding of a presumption of paternity in favor of the stepfather, who the record shows has taken the child into his home and has supported and raised the child as his natural child for most of the child's life.⁴ When "two or more conflicting presumptions arise" regarding paternity, a trial court is required to determine which presumption controls by considering

⁴In addition, a presumption potentially exists in favor of the mother's spouse at the time of the child's birth. See § 26-17-204(a)(1).

"which is founded upon the weightier considerations of public policy and logic, as evidenced by the facts." § 26-17-204(b). The juvenile court in this case does not appear to have considered whether the biological father enjoys a presumption of paternity or, if he does, whether that presumption would control over the apparent presumption in favor of the stepfather arising under the same subsection of § 26-17-204(a).

"In exercising jurisdiction over juvenile cases, a juvenile court may validly render a judgment only as authorized by the AJJA." J.R.C., ___ So. 3d at ___. Moreover, because a juvenile court is a statutory court of limited jurisdiction, see W.B.B. v. H.M.S., 141 So. 3d 1062, 1065 n.1 (Ala. Civ. App. 2013), we cannot assume its jurisdiction; instead, every fact essential to its jurisdiction must affirmatively appear of record, see Secretary of Alabama L. Enft Agency v. Ellis, 281 So. 3d 439, 443 (Ala. Civ. App. 2019) ("'But if the court is of limited jurisdiction, its jurisdiction being statutory, the requirements of the statute must be strictly complied with, which must affirmatively appear from the record.'" (quoting Patterson v. Downs, 255 Ala. 197, 199, 50 So. 2d 408, 410 (1951))). "A judgment entered beyond a court's statutory authority is outside the jurisdiction of the court." J.R.C., ___ So. 3d at ___.

The record in this case does not affirmatively disclose, for the reasons previously discussed, that the biological father is the child's "legal father". The AJJA does not authorize a court to terminate the parental rights of anyone other than a "legal mother" or a "legal father". See id. at _____. As a result, we conclude that the juvenile court's judgment, which purported to terminate the biological father's parental rights, was outside the scope of the juvenile court's statutory authority and, therefore, its jurisdiction. See id. at _____. A judgment entered without jurisdiction is void, and a void judgment cannot support an appeal. See Williams v. Mari Props., LLC, 329 So. 3d 1237, 1240 (Ala. 2020). We therefore dismiss the appeal with instructions to the juvenile court to vacate its judgment and to conduct any further proceedings it deems necessary to resolve the mother's petition in light of its statutory and jurisdictional limits.

APPEAL DISMISSED WITH INSTRUCTIONS.

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

Edwards, J., concurs in the result, with opinion.

Thompson, P.J., dissents, with opinion.

EDWARDS, Judge, concurring in the result.

I agree that our precedents support the conclusion that the Colbert Juvenile Court ("the juvenile court") lacked jurisdiction to terminate the parental rights of H.A.A. ("the biological father") to T.A.A. ("the child"), who was born to B.J.J. ("the mother") in 2010. However, I am convinced that the juvenile court's lack of jurisdiction over the termination of the biological father's parental rights is based not on the potential presumed fatherhood of the mother's current husband, J.D.J. ("the stepfather"), who has not claimed paternity, has not sought a determination of paternity, and has testified that he desires to adopt the child, but, rather, on the potential presumed fatherhood of M.C., who, the biological father testified, was married to the mother at the time of the birth of the child. Although the mother testified that she had begun her relationship with the biological father in 2008 or 2009, after her divorce in 2006, the mother did not testify from whom she was divorced in 2006. The biological father testified that the mother was married to M.C. at the time the child was born, and, thus, the juvenile court was presented with evidence indicating that the child might have a presumed father.

Alabama law has long provided that the marital presumptions of

paternity set out in Ala. Code 1975, § 26-17-204(a)(1)-(3), a part of the Alabama Uniform Parentage Act ("the AUPA"), may not be attacked by any person unless the presumed father has given up his presumption of paternity. Ex parte Presse, 554 So. 2d 406 (Ala. 1989); A.S. v. M.W., 100 So. 3d 1112, 1114 (Ala. Civ. App. 2012). As we recently explained, when faced with information indicating that a child was born during a woman's marriage to a man other than the person seeking to establish paternity, a juvenile court must make that man a party to the paternity proceedings, as required by Ala. Code 1975, § 26-17-603(2). A.Ho. v. R.J., [Ms. 2200047, Aug. 6, 2021] ___ So. 3d ___, ___ (Ala. Civ. App. 2021).

In my opinion, in this particular instance, the juvenile court should have first taken evidence relating to whether, in fact, a marital presumption exists in favor of M.C., and, if it so concluded, the juvenile court should have taken steps to make M.C. a party and then taken evidence regarding whether M.C. has relinquished his presumption. Because the juvenile court did not take those steps in the face of evidence indicating that M.C. might, in fact, be a presumed father under § 26-17-204(a)(1), it lacked both the ability to implicitly conclude that the biological father was the child's legal father and to terminate his parental

rights, thus rendering the judgment purporting to terminate the biological father's parental rights void. See A.S., 100 So. 3d at 114 (explaining that a judgment purporting to adjudicate a man's paternity is void if the court rendering it failed to join a presumed father because a presumed father is an indispensable party to a paternity action). Of course, the juvenile court could also have declined to consider the termination-of-parental-rights action until the paternity action brought by the biological father was concluded; a paternity action is a more appropriate action in which to litigate the issues relating to presumed fatherhood, persistence of presumed fatherhood, and the like.

Unlike the judges concurring in the main opinion, I am not inclined to inject the stepfather's potential presumed fatherhood into this particular case for three reasons: (1) because, as noted above, the stepfather has not sought a paternity adjudication in his favor, (2) because the stepfather and the mother expressed their clear intent to commence a stepparent-adoption action to secure the stepfather's parental status, and (3) because I believe that doing so might raise questions about the validity of former judgments terminating the parental rights of certain unmarried fathers because the stepfathers in

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those actions, like the stepfather in the present case, behaved admirably toward children who were not their biological children and therefore could have been considered under § 26-7-204(a)(5) to be presumed fathers who should have been joined in the action but were not. For that reason, I concur in the result of the main opinion.

THOMPSON, Presiding Judge, dissenting.

I believe that the main opinion in this case, and in J.R.C. v. Mobile County Department of Human Resources, [Ms. 2190975, June 18, 2021] ___ So. 3d ___ (Ala. Civ. App. 2021), have misconstrued the Alabama Juvenile Justice Act ("the AJJA"), § 12-15-101 et seq., Ala. Code 1975, with regard to the persons whose parental rights, to whatever extent a person might have such rights, may -be terminated. In my dissent in J.R.C., supra, I explained:-

"I do not believe that the legislature intended that the AJJA apply only in situations in which a child has a 'legal father' as defined in the main opinion. Such an interpretation would limit the rights of an alleged father who, although possibly having taken an active role in the child's life, is not a presumed father under § 26-17-204[, Ala. Code 1975]. That interpretation would also impact a child with an alleged father by delaying the possibility of the child's reunification with his or her father.

"In a section of the AJJA, the legislature specified that '[a] child born to parents who are not married to each other has the same rights under the law as a child born to parents who are married to each other.' § 26-17-202, Ala. Code 1975. I am concerned that the effect of the main opinion's interpretation of the AJJA in this case is to create a disparity in the rights of children born to married parents and children who have only an alleged father. In addition to the difference created in this case, under the holding of the main opinion, § 12-15-305(b), Ala. Code 1975, would provide a right to counsel only to a legal father; § 12-15-308 would require notice only to a child's legal father; and § 12-15-312 would dictate that DHR

has a responsibility to provide reunification services to only a legal father.

"The fundamental rule of statutory construction is to ascertain and give effect to the intent of the legislature in enacting the statute.' Ex parte McCall, 596 So. 2d 4, 6 (Ala. 1992). Our legislature has used the term 'parent' throughout the AJJA, and the practice of local county departments of human resources and juvenile courts has been to protect the rights of children by contacting, notifying, and working with any man who might be the father of a child. Such practices best serve the interests of the children involved with a department of human resources and who might be before a juvenile court, and, therefore, those practices are in compliance with the stated purpose of the AJJA. I am certain that in enacting legislation intended to strengthen and preserve families, no matter their makeup and legal status in relation to one another, our legislature never intended the distinctions created by the main opinion.

"It is a well-established principle of statutory construction that the law favors rational and sensible construction. See Crowley v. Bass, 445 So. 2d 902 (Ala. 1984); 2A Norman J. Singer, Sutherland Statutory Construction § 45.12 at 83-85 (6th ed. 2000). Moreover, the Legislature will not be presumed to have done a futile thing in enacting a statute; there is a presumption that the Legislature intended a just and reasonable construction and did not enact a statute that has no practical meaning. See Ex parte Watley, 708 So. 2d 890 (Ala. 1997); Ex parte Meeks, 682 So. 2d 423 (Ala. 1996). Additionally, '[s]ections of the Code originally constituting a single act must be read in pari materia in order to "produce a harmonious whole.'" Ex parte Jackson, 625 So. 2d 425, 428 (Ala. 1992) (quoting 2A Norman J. Singer, Sutherland Statutory Construction § 46.05 (5th

ed. 1993)) (footnote omitted)."

"Alabama Dep't of Indus. Rels. v. AHI Linden Lumber, LLC, 68 So. 3d 187, 193 (Ala. Civ. App. 2011) (quoting Weathers v. City of Oxford, 895 So. 2d 305, 309 (Ala. Civ. App. 2004)).

"In my opinion, the 'rational and sensible construction' of the AJJA leads to the conclusion that the juvenile court had jurisdiction to enter its judgment terminating any rights that [the alleged father] might possibly assert to the child. For that reason, I dissent from the main opinion."

___ So. 3d at ___.

In addition to the concerns discussed above, I believe that, in this appeal, the main opinion applies the holding of J.R.C., supra, in spite of the fact that the issue of the legal status of the biological father was not in dispute between the parties in this case. In this case, juvenile-court case number JU-21-83.01 ("the .01 action"), B.J.J. ("the mother") sought to terminate the parental rights of H.A.A., whom she referred to in her pleading as "the father" and "the natural father" of the child and whom the main opinion has referred to as "the biological father." For ease of reference, I, too, refer to H.A.A. as "the biological father." The mother stated in her petition to terminate the biological father's parental rights in the .01 action that he had initiated an action, i.e., juvenile-court case number JU-21-83.00, in the juvenile court seeking to establish, among

other things, his paternity of the child. Throughout the pendency of the .01 action seeking to terminate the biological father's parental rights, the mother did not dispute the biological father's paternity or his status as the "legal father" of the child. Neither party presented evidence concerning the establishment of the biological father's paternity under the Alabama Uniform Parentage Act, § 26-17-101 et seq., Ala. Code 1975.

Moreover, at the beginning of the termination-of-parental-rights hearing, the juvenile court stated that "[p]resent in court would be the petitioner, [the mother], and the father, [H.A.A.]" The judgment entered in the .01 action is the only judgment before this court in this appeal. In the .01 action, the mother did not dispute, and has not disputed, the biological father's status as a "legal father" to whom, under the holding of the main opinion, the AJJA would apply. In reaching its holding in this appeal, the main opinion has created a factual dispute concerning the biological father's legal status that did not exist between the mother and the biological father, the litigants in this action.

In its judgment in the .01 action, which is reflective of the positions of the mother and the biological father in this matter, the juvenile court referred to the biological father as "the father" and to his attorney as

"counsel for the father." Thus, the juvenile court resolved the issue presented to it, i.e., whether to terminate the parental rights of the biological father, who both parties agreed was the father of the child. Further, given this court's holding in J.R.C., supra, and in the main opinion, it is arguable that the parties and the juvenile court might have been better served by using the term "legal father." However, I do not agree with the main opinion that the AJJA requires a juvenile court to use the specific term "legal father" in order to have the authority to terminate a man's parental rights. The appellate courts of this state have disregarded the use of incorrect terminology by parties and by trial courts and have, instead, used terminology that is consistent with what the parties or trial courts intended by considering the substance, rather than the title or specific terminology used in, a motion, pleading, or judgment. "The character of a pleading, or of a judgment or decree is determined from its essential substance, and not from its descriptive name or title." State v. Pettis, 275 Ala. 450, 451, 156 So. 2d 137, 137-38 (1963). See also, e.g., Ex parte Alfa Mut. Gen. Ins. Co., 684 So. 2d 1281, 1282 (Ala. 1996) ("The 'character of a pleading is determined and interpreted from its essential substance, and not from its descriptive name or title.' Union

Springs Telephone Co. v. Green, 285 Ala. 114, 117, 229 So. 2d 503, 505 (1969)."); Southern Sash Sales & Supply Co. v. Wiley, 631 So. 2d 968, 971 (Ala. 1994) ("This Court has always looked to substance over form."). In this case, the juvenile court terminated the parental rights of "the father" of the child in an action in which the parties' did not dispute the biological father's legal status as the child's father.

For the reasons discussed above, I dissent.