

REL: January 28, 2022

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# ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2021-2022

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**Ex parte T.M.**

**PETITION FOR WRIT OF MANDAMUS**

**(In re: J.D.**

**v.**

**T.M.)**

**(Jefferson Juvenile Court, Bessemer Division,  
JU-21-219.01)**

FRIDY, Judge.

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T.M. ("the mother") petitions this court for a writ of mandamus, challenging the September 15, 2021, order entered by the Bessemer Division ("the Bessemer division") of the Jefferson Juvenile Court ("the juvenile court") denying her second motion to dismiss the petition of J.D. ("the father") seeking to modify the child-custody provision of a judgment entered by the Harrison County, Mississippi, Chancery Court ("the Mississippi chancery court") or, alternatively, to transfer the father's action to the Birmingham Division ("the Birmingham division") of the juvenile court. For the reasons set forth below, we grant the mother's mandamus petition in part and deny it in part.

### Background

The materials submitted to this court indicate the following. In October 2016, a child, S.D. ("the child"), was born of the relationship between the mother and the father, who have never been married to each other. On May 24, 2019, the Mississippi chancery court entered a judgment ("the Mississippi judgment"), awarding the mother and the father joint legal custody of the child and awarding the father visitation pursuant to a specific visitation schedule. Although the Mississippi

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judgment did not explicitly award the mother sole physical custody, that award was implicit given the father's award of visitation, and no one asserts that the mother does not have sole physical custody of the child as a result of the Mississippi judgment. The Mississippi judgment also ordered the father to pay child support. At the time the Mississippi judgment was entered, the mother lived in Mississippi and the father lived in Birmingham.

On March 20, 2020, the mother and the father filed a joint motion in the Mississippi chancery court seeking to end the father's child-support obligation. In the motion, the parties asserted that, at that time, they were living together in Birmingham and were engaged to be married; thus, they said, the father's child-support payments were no longer necessary. The parties agree that the mother and the child moved back to Mississippi in September 2020. The father continued to live in Birmingham. It appears from the materials submitted to this court that the father thereafter continued to exercise visitation in accordance with the Mississippi judgment.

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On March 25, 2021, the mother filed in the Mississippi chancery court a petition for a writ of habeas corpus and seeking to hold the father in contempt ("the contempt petition"), alleging that the father had not returned the child to her when the father's last visitation period had ended on March 1, 2021.<sup>1</sup> The father was served with the contempt petition, and, on April 27, 2021, he filed in the Bessemer division of the juvenile court a motion to register the Mississippi judgment and a verified petition to modify custody ("the custody-modification petition"). In the custody-modification petition, the father asserted that "there ha[d] been a material change in circumstances [since the entry of the Mississippi judgment] in that upon information and belief the mother regularly exposes the child to inappropriate sexual activities, content, and/or pornographic material, thereby not providing a safe environment for the child." The father then set forth a list of inappropriate conduct of a sexual nature that he said the child had exhibited. In the custody-modification

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<sup>1</sup>The mother subsequently amended the contempt petition twice, but the material allegations set forth in the original petition remained the same.

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petition, the father did not mention the mother's contempt petition pending in the Mississippi chancery court.

On May 18, 2021, the mother filed in the Bessemer division of the juvenile court a motion to dismiss the father's custody-modification petition, pointing out the existence of her pending action in the Mississippi chancery court and asserting that the juvenile court did not have subject-matter jurisdiction to consider the father's petition. Alternatively, the mother argued that the father had filed the custody-modification petition in the wrong venue because his home was located in the territorial limits of the Birmingham division, rather than the Bessemer division, where he had filed his petition. See Ex parte Walter Indus., Inc., 879 So. 2d 547 (Ala. 2003) (discussing Act No. 213, Ala. Local Acts 1919, establishing the Bessemer division; providing an overview of previous caselaw interpreting Act No. 213 and its predecessor; and determining when venue is appropriate in the Bessemer division).

On May 25, 2021, the juvenile court entered an order granting the father's motion to register the Mississippi judgment and denying the mother's motion to dismiss the custody-modification petition because, it

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said, it was exercising its temporary emergency jurisdiction pursuant to § 30-3B-204, Ala. Code 1975, which is a part of Alabama's version of the Uniform Child Custody Jurisdiction and Enforcement Act ("the UCCJEA"), §§ 30-3B-101 to -405, Ala. Code 1975. In the May 25, 2021, order, the juvenile court ordered that the Jefferson County Department of Human Resources ("DHR") be made a party to the action and directed that DHR immediately begin an investigation into what the juvenile court said was "the alleged sexual abuse" of the child. The juvenile court awarded the mother supervised visitation and ordered that the child could not be removed from Alabama. A trial of the matter was scheduled for September 20, 2021.

On September 14, 2021, the mother, through new counsel, filed in the Bessemer division of the juvenile court a second motion to dismiss the custody-modification petition on the ground that the juvenile court lacked subject-matter jurisdiction. She also contended, a second time, that the father had filed the custody-modification petition in the wrong venue. The juvenile court denied the motion the next day. On September 17, 2021, the mother filed her petition for a writ of mandamus and a motion to stay the

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September 20 trial. This court granted the motion to stay on September 17, 2021.

### Analysis

As we have often noted, a writ of mandamus is an extraordinary remedy that we will issue only if the petitioner properly invokes this court's jurisdiction and shows a clear legal right to the writ, a refusal by the respondent to perform an imperative duty, and the lack of another adequate remedy. See, e.g., Ex parte McConico, 315 So. 3d 608, 609 (Ala. Civ. App. 2020).

In her mandamus petition, the mother argues that the juvenile court lacks subject-matter jurisdiction over the custody-modification petition, and, that therefore, it erred in denying her motion to dismiss. This court may review an order denying a motion to dismiss for lack of subject-matter jurisdiction under the UCCJEA via a petition for a writ of mandamus. Ex parte Gallant, 221 So. 3d 1120, 1122 (Ala. Civ. App. 2016); see also Ex parte Holloway, 218 So. 3d 853 (Ala. Civ. App. 2016). We review the legal question of subject-matter jurisdiction de novo. Hill v. Hill, 89 So. 3d 116, 117-18 (Ala. Civ. App. 2010). The mother also contends

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that venue is improper in the Bessemer division, and we can address that issue by way of a mandamus petition as well. See Ex parte Pike Fabricators, Inc., 859 So. 2d 1089, 1091 (Ala. 2002).

Before considering the merits of the mother's mandamus petition, we first address the father's contention that the mother's petition is untimely because her petition challenges the denial of the second motion to dismiss. Generally, a mandamus petition must be filed "within a reasonable time." Rule 21(a)(3), Ala. R. App. P. 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 case, is within fourteen days of the entry of the challenged order. See Rule 21(a)(3), Ala. R. App. P., and Ex parte Madison Cnty. Dep't of Hum. Res., 261 So. 3d 381, 384 (Ala. Civ. App. 2017). The father points out that the mother's second motion to dismiss was based on the same grounds as her first motion, which the juvenile court denied on May 25, 2021. The mother did not file a petition for a writ of mandamus challenging the propriety of the order denying her first motion. Therefore, the father contends, the juvenile court's September 15, 2021, order denying the second motion to dismiss cannot be used to "reset



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the 'presumptive reasonable time' " in which to file a mandamus petition as required by Rule 21(a)(3). We agree.

The juvenile court's May 25, 2021, order disposed of multiple motions, including the mother's first motion to dismiss. As mentioned, that motion to dismiss contained an alternative request to transfer the father's custody-modification petition from the Bessemer division of the juvenile court to the Birmingham division on the ground that the father lived in the territorial limits of the Birmingham division and neither party resided in the territorial limits of the Bessemer division. The juvenile court denied the motion to dismiss and entered numerous directives, including making DHR a party to the case, establishing a visitation schedule for the mother, and setting a trial date, among other things. We conclude that the May 25, 2021, order implicitly denied the mother's alternative request to transfer the father's custody-modification petition to the Birmingham division.

The mother had fourteen days, or until June 8, 2021, to file a petition for a writ of mandamus challenging the denial of her request to transfer the father's custody-modification petition. She failed to do so.

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Instead, she filed a second motion to dismiss, which included a renewed request for a change of venue based on the same ground as her original motion to dismiss. "If a defendant does not seek a writ of mandamus in a timely manner, he will have waived any further challenges to venue." Ex parte Children's Hosp. of Alabama, 721 So. 2d 184, 191 n.10 (Ala. 1998).

In Ex parte Jones, 147 So. 3d 415, 420 (Ala. 2013), our supreme court denied a petition for a writ of mandamus seeking appellate review of the trial court's denial of a "renewed" motion for a summary judgment. The "renewed" motion was based on the same grounds as a previous motion for a summary judgment that the trial court had denied. Jones had sought mandamus review of the order denying the first summary-judgment motion, but our supreme court determined that the first mandamus petition was untimely. Id. In denying Jones's second mandamus petition, challenging the denial of his "renewed" summary-judgment motion, our supreme court wrote: "In essence, Jones seeks a 'second bite' at appellate review of the denial of his summary-judgment motion based on immunity grounds, having failed to timely seek appellate review of the trial court's denial of the initial motion for a summary

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judgment." Id. Thus, the supreme court concluded, Jones had failed to show that he had a clear legal right to the relief he sought. Id.

In this case, the mother failed to file a petition for a writ of mandamus challenging the juvenile court's denial of her request to transfer the father's custody-modification petition to the Birmingham division because, she said, the father resided within the territorial limits of the Birmingham division. Her second request for a change of venue was based on the same ground. Based on Ex parte Jones, we agree with the father that the mother cannot use the denial of her second motion as a way to "reset the clock" so that she can now seek appellate review of the denial of her second request for a change of venue.

Although we cannot address the mother's mandamus petition to the extent that it challenges the juvenile court's denial of her motion to change venue, we can address her claim that the juvenile court lacks subject-matter jurisdiction over the father's custody-modification petition. It is well settled that a lack of subject-matter jurisdiction may be raised at any time, even in an otherwise untimely mandamus petition. See Ex parte K.R., 210 So. 3d 1106, 1112 (Ala. 2016); Ex parte J.B., 223 So. 3d

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251, 254-55 (Ala. Civ. App. 2016). As a result, we will consider that issue in this mandamus proceeding.

The mother contends that the juvenile court lacked subject-matter jurisdiction to consider the father's custody-modification petition because, she says, the father did not allege that the child was dependent and the juvenile court did not have jurisdiction to modify custody. In its May 25, 2021, order denying the mother's first motion to dismiss, the juvenile court said that it was exercising temporary emergency jurisdiction pursuant to Alabama's version of the UCCJEA. According to the materials before us, it appears that the mother and the child reside in Mississippi; that, for purposes of the UCCJEA, Mississippi, which has also adopted the UCCJEA, is the child's home state; that the child was the subject of the 2019 child-custody determination by the Mississippi chancery court; and that the Mississippi chancery court has continuing jurisdiction over its child-custody determination. See Miss. Code Ann. §§ 93-27-102(g) (defining "home state"), -201 (setting out when a Mississippi court has jurisdiction to make an initial child-custody determination), and -202 (setting out when a Mississippi court retains exclusive, continuing

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jurisdiction of over a child-custody determination); compare, respectively, §§ 30-3B-102(7), -201, and -202, Ala. Code 1975. Section 30-3B-204, Ala. Code 1975, the section of Alabama's version of the UCCJEA under which the juvenile court purported to exercise temporary emergency jurisdiction over the father's custody-modification petition, reads, in pertinent part:

"(a) A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse."

Section 30-3B-102(6) defines "court" as "[a]n entity authorized under the law of a state to establish, enforce, or modify a child custody determination." "Juvenile courts are purely creatures of statute and have extremely limited jurisdiction." T.B. v. T.H., 30 So. 3d 429, 431 (Ala. Civ. App. 2009). A juvenile court may not make a determination regarding the custody of a child unless a provision of the Alabama Juvenile Justice Act of 2008 ("the AJJA"), Ala. Code 1975 §§ 12-15-101 to -701, explicitly authorizes it to do so. See Ex parte M.M.T., 148 So. 3d 728, 736 (Ala. Civ. App. 2014) (Moore, J., concurring in the result).

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Under the AJJA, our state's juvenile courts are vested with "exclusive original jurisdiction" over dependency proceedings, § 12-15-114(a), Ala. Code 1975, and a juvenile court is authorized to make a custodial determination in the dispositional phase of a dependency proceeding, see § 12-15-314, Ala. Code 1975. Section 12-15-114(a) provides, in pertinent part, that "[a] juvenile court shall exercise exclusive original jurisdiction of juvenile court proceedings in which a child is alleged ... to be dependent .... A dependency action shall not include a custody dispute between parents." Although the father did not specifically allege in his custody-modification petition that the child was dependent, he alleged certain acts by the mother that could be construed broadly to allege that the child has been subject to sexual misconduct by the mother, and those allegations potentially could support an allegation of dependency.

Even if the allegations of sexual misconduct were sufficient to imply that the child is dependent, however, the second sentence of § 12-15-114(a), which declares that a custody dispute between parents is not a dependency proceeding, effectively forecloses reliance on the juvenile

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court's dependency jurisdiction as a basis for authorizing the juvenile court to make a child-custody determination in this case. The primary relief the father seeks in his action against the mother in the juvenile court -- a modification of the Mississippi chancery court's award of physical custody to the mother -- plainly renders the father's action the quintessential "custody dispute" between parents, over which the juvenile court cannot exercise dependency jurisdiction.

We recognize that, on this point, there is tension in our caselaw. In T.K. v. M.G., 82 So. 3d 1 (Ala. Civ. App. 2011), a father, who was the noncustodial parent, filed a petition in a juvenile court in which he alleged that his child, who was in the custody of the child's mother, was dependent because of the mother's illegal drug use, inadequate finances, and inability to care for the child. T.K., 82 So. 3d at 1-2. He sought custody of the child. Id. at 2. The juvenile court held a dependency hearing, following which it entered a judgment finding that the child was dependent and awarding the father physical custody of the child. Id. at 3.

On appeal, the mother contended that the juvenile court lacked subject-matter jurisdiction because the father's action was, in effect, a

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custody dispute between the parents and not a dependency action. Id. A majority of this court disagreed, concluding that the allegations of the father's petition "were sufficient to invoke the dependency jurisdiction of the juvenile court." Id. at 4. The majority opinion did not directly address the effect of the language in § 12-15-114(a) providing that a dependency action does not include a custody dispute between parents.

Judge Moore dissented from the majority opinion. He concluded that the plain language of § 12-15-114(a) precluded a juvenile court from exercising dependency jurisdiction over a case involving a custody dispute between parents. Id. at 5-8. About that section, he wrote:

"As I read it, the first sentence states, generally, that a juvenile court shall have jurisdiction over proceedings in which a petition has been filed alleging the dependency of a child. However, the second sentence provides that the juvenile court shall not consider a 'custody dispute between parents' to be '[a] dependency action.' The phrase 'custody dispute between parents' refers to a legal contest pitting one parent against another for the custody, or some aspect thereof, of a minor child or children. Therefore, by its plain and unambiguous language, ... the second sentence of § 12-15-114(a) excludes the possibility that a juvenile court could exercise dependency jurisdiction over a contest solely between two parents as to the custody of one or more of their children. In effect, the second sentence of § 12-15-114(a) creates an exception to the first sentence by declaring that a custody dispute between parents,



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even if cast in the form of a dependency petition, will not invoke the jurisdiction of the juvenile court."

T.K., 82 So. 3d at 5-6. According to Judge Moore, "the legislature intended that a noncustodial parent cannot invoke the dependency jurisdiction of a juvenile court by filing a petition naming the custodial parent as a defendant, asserting the dependency of the child, and requesting a transfer of the custody of the child to the noncustodial parent." Id. at 7. Thus, he concluded that the father in T.K. had not properly invoked the dependency jurisdiction of the juvenile court, and he would have dismissed the appeal with instructions to the juvenile court to vacate its judgment. Id. at 7-8.

In Ex parte M.M.T., 148 So. 3d 728 (Ala. Civ. App. 2014), a majority of this court reached a different conclusion from the majority in T.K., holding that allegations in a petition that would otherwise have invoked the juvenile court's dependency jurisdiction were insufficient because the action was, in effect, a custody dispute between parents. In that case, a mother and father traveled to Alabama with their child, but, a few days later, the mother returned to Colorado, leaving the parties' child in

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Alabama with the father. M.M.T., 148 So. 3d at 729. In the days that followed, the mother filed a divorce complaint in Colorado and the father filed a petition for temporary emergency custody of the child in an Alabama juvenile court alleging that the mother had abandoned the child. Id. Ultimately, after both courts had held hearings and entered various orders, the Alabama juvenile court entered a judgment in which it determined that it had subject-matter jurisdiction over the father's action based on the UCCJEA's temporary emergency-jurisdiction provision, i.e., § 30-3B-204. Id. at 732.

The mother filed a mandamus petition with this court in which she contended that the juvenile court lacked jurisdiction over the father's action. Id. at 732. This court noted that the father, in his petition for temporary emergency custody, had alleged that the mother had abandoned the child, which, it said, "is an allegation supporting a finding of dependency regarding the child." Id. at 733. However, quoting the portion of § 12-15-114(a) that excludes custody disputes between parents from a juvenile court's dependency jurisdiction, a majority of this court concluded that "the father's petition improperly sought the determination

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of a custody dispute between parents by attempting to invoke the dependency jurisdiction of the juvenile court." Id. Thus, this court granted the mother's mandamus petition and ordered the juvenile court to vacate its orders for lack of jurisdiction. Id.

We conclude, after considering the plain language of § 12-15-114(a), that our court's treatment of the issue of juvenile-court dependency jurisdiction in M.M.T. better comports with the plain language of § 12-15-114(a). We agree with Judge Moore's dissent in T.K. that the phrase "custody dispute between parents" in § 12-15-114(a) refers to a legal contest between parents for the custody of their child or children and that the plain and unambiguous language of that section explicitly excludes such disputes from a juvenile court's jurisdiction. To the extent that T.K. and its progeny (e.g., J.H. v. A.J., 86 So. 3d 1028, 1029 (Ala. Civ. App. 2012)) hold that a juvenile court has jurisdiction on the basis of dependency allegations in the parties' pleadings to resolve what is, in fact, a custody dispute between parents, we conclude that those cases did not properly apply the jurisdiction-limiting language of § 12-15-114(a), and they are hereby overruled.

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The other potential basis for the juvenile court to exercise jurisdiction in this case is located in § 12-15-115(a)(9), Ala. Code 1975, which provides that a juvenile court exercises original jurisdiction of "[p]roceedings filed pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act, commencing at Section 30-3B-101, when an equivalent court of another state issued an order." (Emphasis added.) As discussed, the Mississippi chancery court entered the order awarding the parties joint legal custody and setting forth a visitation schedule for the father. The materials before us indicate that the Mississippi chancery court has retained jurisdiction over issues regarding the child.

The Mississippi chancery court's jurisdiction derives from the Mississippi Constitution of 1890, which provides that, among other types of matters and cases, the chancery court shall have "full jurisdiction" in "[a]ll matters in equity", "[d]ivorce and alimony", and "[m]inor's business." Miss. Const., Art. 6, § 159. The chancery court also has jurisdiction to make custody awards when the parents have never been married. Roberts v. Eads, 235 So. 3d 1425, 1431 (Miss. Ct. App. 2017); Miss. Code Ann. § 93-5-24(3).

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Mississippi youth courts are divisions of the state's chancery courts or county courts. See Miss. Code Ann. § 43-21-107. Pursuant to Miss. Code. Ann. § 43-21-151(1), with certain exceptions not relevant here, "[t]he youth court shall have exclusive original jurisdiction in all proceedings concerning a delinquent child, a child in need of supervision, a neglected child, an abused child or a dependent child."

In drawing comparisons between the jurisdiction of the relevant Mississippi courts and the relevant Alabama courts, we conclude that, under the circumstances involved in this case, the chancery courts are the equivalent of circuit courts and the youth courts are the equivalent of juvenile courts. See § 12-15-114. Because the Mississippi chancery court entered the order awarding the parties joint legal custody and establishing the father's visitation schedule, the circuit court, and not the juvenile court, constitutes a court of equivalent jurisdiction for purposes of § 12-15-115(a)(9). Accordingly, the juvenile court does not have jurisdiction to consider the father's petition under § 12-15-115(a)(9).

Based on the foregoing, we conclude that the juvenile court lacks jurisdiction over the father's custody-modification action because, given

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the circumstances of this case, it did not qualify as a "court of this state" for purposes of the temporary-emergency-jurisdiction provision of the UCCJEA, i.e., it was not the court authorized to modify the child-custody determination at issue in this case. See §§ 30-3B-204 and 30-3B-102(6). Instead, "[b]ecause the underlying action is a custody dispute between the parents, the circuit court has exclusive jurisdiction." Ex parte N.B., 204 So. 3d 887, 892 (Ala. Civ. App. 2016) (per Donaldson, J., with one Judge concurring and three Judges concurring in the result).

"Normally, if a court lacks subject-matter jurisdiction over a case, it must dismiss the case." Ex parte N.G., 321 So. 3d 655, 657 (Ala. 2020). However, § 12-11-11, Ala. Code 1975, provides in pertinent part that, "[w]henver it shall appear to the court that any case filed therein should have been brought in another court in the same county, the court shall make an order transferring the case to the proper court ...." Thus, when a case over which the circuit court would have subject-matter jurisdiction is filed in the juvenile court of the same county, and the juvenile court lacks subject-matter jurisdiction over the action, the juvenile court is required to transfer the action to the circuit court. See N.G., 321 So. 3d at

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657-59; N.B., 204 So. 3d at 893. Therefore, instead of ordering the juvenile court to dismiss the action, we issue the writ with instructions that the juvenile court transfer the father's custody-modification proceeding to the Bessemer Division of Jefferson Circuit Court to consider whether it can exercise temporary emergency jurisdiction over the action pursuant § 30-3B-204.

### Conclusion

The mother's petition for a writ of mandamus is denied to the extent that it challenges the juvenile court's denial of her request to transfer the father's child-custody action for improper venue. The petition is granted to the extent that it challenges the juvenile court's denial of her motion to dismiss for lack of subject-matter jurisdiction. The juvenile court is ordered to vacate the orders it has entered in the father's action and to transfer the action to the Bessemer Division of Jefferson Circuit Court for that court to determine whether it can exercise jurisdiction over the action pursuant to the temporary-emergency-jurisdiction provision of the UCCJEA, i.e., § 30-3B-204.

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Separately, the mother moved to strike portions of the father's answer to her petition for a writ of mandamus that she says are unsupported by the materials submitted in support of or in opposition to the petition. Given our resolution of her petition, her motion is denied as moot.

PETITION GRANTED IN PART AND DENIED IN PART; WRIT ISSUED.

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

Thompson, P.J., concurs in part and dissents in part, with writing.



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THOMPSON, Presiding Judge, concurring in part and dissenting in part.

I concur to deny the petition for a writ of mandamus insofar as T.M. ("the mother") challenges the denial of her request to change venue, and I dissent from the court's decision to grant the mother's mandamus petition on the basis that the juvenile court lacks jurisdiction.

There are situations in which a child may be dependent as to only one parent. See G.H. v. Cleburne Cnty. Dep't of Hum. Res., 62 So. 3d 540, 544 (Ala. Civ. App. 2010). One such situation could arise when there is no custody adjudication made as between the child's parents. In this case, such a judgment exists, and it awards the mother custody of the parties' child. However, the allegations made by J.D. ("the father") in this case, if proven true, demonstrate a situation in which the child could be determined dependent as to the mother. I conclude that the allegations in the father's petition were sufficient to invoke the dependency jurisdiction of the juvenile court, and, therefore, I disagree with the contrary holding of the main opinion. I also believe that it is the function of the juvenile court to determine, based on evidence, whether this action is a true dependency action or a custody dispute between parents. The materials

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submitted to this court do not demonstrate that the juvenile court received any ore tenus evidence on that issue, and the allegations in the mother's motion to dismiss indicate that it did not.

I also conclude that the juvenile court could exercise limited jurisdiction over this action. In the juvenile court, the father sought to register the Mississippi chancery court's judgment, which was entered in 2019, and to modify the custody provisions of that judgment. The Uniform Child Custody Jurisdiction and Enforcement Act ("the UCCJEA"), § 30-3B-101 to -405, Ala. Code 1975, governs the juvenile court's jurisdiction over the father's modification petition. Section 30-3B-201, Ala. Code 1975, sets forth the requirements for the juvenile court to make an initial child-custody determination, and § 30-3B-203 addresses the conditions under which the juvenile court could modify the Mississippi chancery court's judgment. The materials submitted to this court in support of the parties' briefs tend to indicate that, by virtue of the fact that the Mississippi chancery court determined the issue of custody and that the mother and child had been living in Mississippi, that state is the child's home state under Mississippi's version of the UCCJEA. See Miss. Code Ann. § 93-27-

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202; and § 30-3B-202, Ala. Code 1975. Therefore, the Mississippi chancery court would be the court having jurisdiction over a petition to modify its previously entered custody judgment.

However, the UCCJEA provides that a court of a state other than the child's home state can exercise temporary emergency jurisdiction in circumstances in which the child is in, or could potentially be in, danger. Section 30-3B-204, Ala. Code 1975, sets forth the nature and extent of the temporary emergency jurisdiction the juvenile court may exercise:

"(a) A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child ... is subjected to or threatened with mistreatment or abuse.

"...

"(c) If there is a previous child custody determination that is entitled to be enforced under this chapter [, i.e., the UCCJEA,] any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under Sections 30-3B-201 through 30-3B-203 [, Ala. Code 1975]. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.

"(d) A court of this state which has been asked to make a child custody determination under this section, upon being informed that a ... child custody determination has been made by[]a court of a state having jurisdiction under Sections 30-3B-201 through 30-3B-203,[]shall immediately communicate with the other court. A court of this state which is exercising jurisdiction pursuant to Sections 30-3B-201 through 30-3B-203, upon being informed that ... a child custody determination has been made by[]a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order."

The nature of the allegations set forth in the father's petition filed in the juvenile court allowed the juvenile court, under § 30-3B-204, to address the issue of the temporary emergency custody of the child. In its May 25, 2021, order, the juvenile court recognized the apparent nature of its jurisdiction, i.e., temporary emergency jurisdiction pursuant to § 30-3B-204, when, in denying the mother's motion to dismiss, it specifically cited that section. However, "[t]he temporary emergency jurisdiction that an Alabama court may exercise pursuant to § 30-3B-204 is 'extremely limited,' see M.B.L. v. G.G.L., 1 So. 3d [1048] at 1051 [(Ala. Civ. App. 2008)], and an Alabama court must comply with the manner of exercising that jurisdiction set out in that section." J.D. v. Lauderdale Cnty. Dep't of

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Hum. Res., 121 So. 3d 381, 385 (Ala. Civ. App. 2013). Under the limited jurisdiction afforded the juvenile court by § 30-3B-204, that court could not make a dependency or custody determination, and it was required to communicate with the Mississippi chancery court. § 30-3B-204(d); J.D. v. Lauderdale Cnty. Dep't of Hum. Res., supra. However, the materials submitted to this court, and the language of the May 25, 2021, order, indicate that the juvenile court instead scheduled the father's modification petition "for trial."

The juvenile court erred in scheduling a hearing on the merits rather than complying with the provisions of § 30-3B-204 in exercising its temporary emergency jurisdiction.<sup>2</sup> I would therefore deny the mother's mandamus petition insofar as it challenges the juvenile court's jurisdiction and direct the juvenile court to comply with the requirements of § 30-3B-204 and, if necessary after doing so, to conduct further proceedings.

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<sup>2</sup>The mother does not address the issue of whether the juvenile court could properly register the 2019 Mississippi chancery court's judgment. For that reason, I do not address that issue.