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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2021-2022

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M.A.B.

v.

D.S. and T.S.

**Appeal from Cherokee Juvenile Court
(JU-20-109.01)**

THOMPSON, Presiding Judge.

On September 15, 2020, D.S. and T.S. ("the petitioners") filed in the Cherokee Juvenile Court ("the juvenile court") a petition seeking to

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terminate the parental rights of M.B.B. ("the mother") and M.A.B. ("the father") to their minor child born in 2011.¹ In their petition, the petitioners alleged that the child had been in their home since December 2019 pursuant to a safety plan implemented by the Calhoun County Department of Human Resources and that a February 27, 2020, judgment of the Calhoun Juvenile Court had awarded them custody of the child. On January 28, 2021, the father filed in the juvenile court, in the termination-of-parental-rights action, a counterpetition seeking an award of custody of the child.

The juvenile court conducted an ore tenus hearing. On May 3, 2021, the juvenile court entered an order in which it terminated the parental rights of the mother and the father. The mother filed a purported postjudgment motion, which the juvenile court denied. See Malone v. Gainey, 726 So. 2d 725, 725 n.2 (Ala. Civ. App. 1999) (noting that a valid postjudgment motion may be filed only in reference to a final judgment).

¹The record indicates that the petitioners also sought to terminate the parental rights of the mother and B.H., the petitioners' son, to the minor child born of a relationship between the mother and B.H. That child is not at issue in this appeal.

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The father appealed, and that appeal was assigned appeal number 2200606.

On August 19, 2021, this court issued an order in appeal number 2200606, dismissing the father's appeal on the basis that it had been taken from a nonfinal order. M.A.B. v. D.S., (No. 2200606, Aug. 19, 2021), ___ So. 3d ___ (Ala. Civ. App. 2021) (table). This court's August 19, 2021, dismissal order stated, in pertinent part:

"It is not clear from the materials submitted to this court that there has been an award of permanent custody of the child. The May 3, 2021, order does not set forth an award of permanent custody. Rather, it states that custody shall 'remain' with the [petitioners], apparently pursuant to a Calhoun Juvenile Court custody order that is not before this court."

After the issuance of this court's certificate of judgment in appeal number 2200606, the father filed in the juvenile court a motion asking the juvenile court to amend its May 3, 2021, order, and he submitted in support of that motion a copy of the February 27, 2020, judgment of the Calhoun Juvenile Court. In its February 27, 2020, judgment, the Calhoun Juvenile Court found the child dependent, awarded "full custody" of the

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child to the petitioners, and awarded the mother visitation at the discretion of the petitioners.

In response to the father's motion, on October 29, 2021, the juvenile court entered a judgment, again stating that the petitioners "shall maintain custody of the minor child" and referencing the Calhoun Juvenile Court's February 27, 2020, judgment. In addition, the juvenile court specifically denied the father's counterpetition seeking an award of custody of the child. The father again appealed to this court.

Among other issues he raises in his appellate brief, the father challenges the subject-matter jurisdiction of the juvenile court over the termination-of-parental-rights action. Initially, we note that the father is raising this issue for the first time on appeal and did not apprise the juvenile court of any alleged jurisdictional defects at any point. However,

"[u]nlike defects in personal jurisdiction, which can be waived, ... "subject-matter jurisdiction may not be waived; a court's lack of subject-matter jurisdiction may be raised at any time by any party and may even be raised by a court ex mero motu." ' J.T. v. A.C., 892 So. 2d 928, 931 (Ala. Civ. App. 2004) (quoting C.J.L. v. M.W.B., 868 So. 2d 451, 453 (Ala. Civ. App. 2003)). This court may not presume that a statutorily created court of limited jurisdiction, such as the juvenile court, had

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subject-matter jurisdiction. M.B. v. B.B., 244 So. 3d 128, 130 (Ala. Civ. App. 2017)."

C.H. v. Lamar Cnty. Dep't of Hum. Res., 324 So. 3d 391, 394 (Ala. Civ. App. 2020).

The father argues that the juvenile court lacked jurisdiction over the termination-of-parental-rights action under the provisions of Alabama's version of the Uniform Child Custody Jurisdiction Enforcement Act ("the UCCJEA"), codified at § 30-3B-101 et seq., Ala. Code 1975. The UCCJEA is intended to resolve questions concerning the jurisdiction of courts of more than one state concerning child-custody issues.²

²Our supreme court has explained:

"Alabama adopted the UCCJEA to achieve the following purposes:

"(1) Avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;

"(2) Promote cooperation with the courts of other States to the end that a custody decree is rendered in that State which can best decide the case in the interest of the child;

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As the father contends in his appellate brief, the evidence in the record indicates that the mother and the father were divorced pursuant to a judgment entered by a court in Texas; the mother testified that the divorce was finalized in 2013. No copy of that divorce judgment was submitted into evidence. The father testified that, pursuant to the Texas divorce judgment, the mother was awarded physical custody of the child and he was awarded rights of visitation and ordered to pay child support.

The father stated that, shortly after the divorce, the mother moved to Alabama with the child. It is undisputed that the child was removed from the custody of the mother by the Calhoun County Department of

"(3) Discourage the use of the interstate system for continuing controversies over child custody;

"(4) Deter abductions of children;

"(5) Avoid relitigation of custody decisions of other states in this state;

"(6) Facilitate the enforcement of custody decrees of other states.' "

Ex parte Siderius, 144 So. 3d 319, 324 (Ala. 2013) (quoting the Official Comment to § 30-3B-101, Ala. Code 1975).

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Human Resources in 2019 and that the Calhoun Juvenile Court conducted a dependency hearing that resulted in its entry of the February 27, 2020, judgment that, among other things, found the child dependent. The father testified that he had received no notice that the child had been taken into protective custody, that a dependency action pertaining to the child had been initiated, or that the February 27, 2020, dependency judgment had been entered. The father testified that, in November 2020, the mother contacted him to inform him about the then-pending termination-of-parental-rights action. In addition, the father presented evidence that he still lives in Texas, has remarried, and has a child with his new wife.

The father is correct that the UCCJEA governs child-custody issues such as the one raised in this action. With regard to the UCCJEA, this court has explained:

" [T]he [UCCJEA], codified at Ala. Code 1975, § 30-3B-101 et seq., controls decisions regarding whether a court of this state has jurisdiction to make a child-custody determination or to modify another state's child-custody determination. M.J.P. v. K.H., 923 So. 2d 1114, 1116-17 (Ala. Civ. App. 2005). A "child-custody determination," as defined in the UCCJEA, includes any judgment providing for the legal or physical custody of a child or providing visitation with a child. § 30-3B-102(3)[, Ala. Code 1975]. A "child-custody proceeding" is

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defined in the UCCJEA to include not only divorce actions involving the custody of a child, but also "neglect, ... dependency, ... [and] termination of parental rights" actions in which the issue of child custody is addressed. § 30-3B-102(4).'

J.D. v. Lauderdale Cnty. Dep't of Hum. Res., 121 So. 3d 381, 384 (Ala. Civ. App. 2013) (quoting R.W. v. G.W., 2 So. 3d 869, 871 (Ala. Civ. App. 2008)).

Thus, under the UCCJEA, the mother and the father's divorce action resulting in the Texas judgment that, the father testified, awarded the mother physical custody of the child and awarded the father rights of visitation constitutes a "child-custody proceeding." See § 30-3B-102(4), Ala. Code 1975 (defining a "child custody proceeding" as "[a] proceeding in a court in which legal custody, physical custody, or visitation with respect to a child is an issue"). Accordingly, the Texas judgment that divorced the mother and the father constituted a "child-custody determination" under the UCCJEA. See § 30-3B-102(3), Ala. Code 1975 (a "child custody determination" is "[a] judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child").

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Section 30-3B-203, Ala. Code 1975, governs the modification of a previous child-custody determination such as the Texas judgment; that section provides:

"Except as otherwise provided in Section 30-3B-204[, Ala. Code 1975 (governing emergency jurisdiction)], a court of this state may not modify a child custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under Section 30-3B-201(a)(1) or (2)[, Ala. Code 1975,] and:

"(1) The court of the other state determines it no longer has continuing, exclusive jurisdiction under Section 30-3B-202[, Ala. Code 1975,] or that a court of this state would be a more convenient forum under Section 30-3B-207[, Ala. Code 1975];
or

"(2) A court of this state or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state."

(Emphasis added.) See also M.J.P. v. K.H., 923 So. 2d 1114, 1116-17 (Ala. Civ. App. 2005).

Section 30-3B-201, Ala. Code 1975, governing the ability to make an initial child-custody determination, provides, in pertinent part:

"(a) Except as otherwise provided in Section 30-3B-204[, Ala. Code 1975 (governing emergency jurisdiction)], a court of

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this state has jurisdiction to make an initial child custody determination only if:

"(1) This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state; [or]

"(2) A court of another state does not have jurisdiction under subdivision (1), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under Section 30-3B-207 or [Section] 30-3B-208[, Ala. Code 1975], and:

"a. The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and

"b. Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships."

Section 30-3B-202, Ala. Code 1975, governs the continuing jurisdiction of the court that made an initial child-custody determination; that section provides:

"(a) Except as otherwise provided in Section 30-3B-204[, Ala. Code 1975 governing emergency jurisdiction)], a court of this state which has made a child custody determination consistent with Section 30-3B-201 or Section 30-3B-203[, Ala. Code 1975,] has continuing, exclusive jurisdiction over the determination until:

"(1) A court of this state determines that neither the child, nor the child and one parent, nor the child and a person acting as a parent have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships; or

"(2) A court of this state or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this state.

"(b) A court of this state which has made a child custody determination and does not have continuing, exclusive jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under Section 30-3B-201."

Texas has also adopted a version of the UCCJEA. See Tex. Fam. Code Ann. § 152 et seq. With respect to the provisions pertinent to this appeal, Texas's version of the UCCJEA is virtually identical to Alabama's version of the UCCJEA. See Tex. Fam. Code Ann. §§ 152.102(3) and (4), 152.201, 152.202, and 152.203. Thus, under the UCCJEA, it appears that

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the Texas court that entered the judgment divorcing the mother and the father would have continuing jurisdiction over the child. See Tex. Fam. Code Ann. § 152.202. Accordingly, the juvenile court could properly modify the Texas judgment, i.e., rule on the petitioners' petition to terminate parental rights, only pursuant to the requirements § 30-3B-203 of Alabama's version of the UCCJEA. Thus, the juvenile court could exercise jurisdiction only if it had jurisdiction over the termination-of-parental-rights action under § 30-3B-201(a)(1) or (2) to make an initial custody determination with regard to the child, see § 30-3B-203, and (1) if the Texas court determined that it no longer had continuing, exclusive jurisdiction or that Alabama would be a more convenient forum for litigation pertaining to the child or (2) if the juvenile court or the Texas court found that "the child, the child's parents, and any person acting as a parent do not presently reside" in Texas. § 30-3B-203(1) and (2).

The parties have not addressed before this court whether the juvenile court had jurisdiction under § 30-3B-201(a)(1) or (2) to make an initial child-custody determination with regard to the child. This court need not reach that issue, however. The record contains no indication

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whether there has been a finding by the Texas court that the juvenile court is a more convenient forum. See § 30-3B-203(1). Also, the record does not indicate that the juvenile court has made any determination regarding the residences of the child, the mother, or the father, and it does not demonstrate whether the Texas court has made any such finding. See § 30-3B-203(2).

We conclude that the record on appeal does not contain sufficient evidence from which this court can determine whether the Alabama juvenile court may exercise jurisdiction under the UCCJEA over the petitioners' termination-of-parental-rights action. "We express no opinion regarding the juvenile court's possible jurisdiction, but we recognize that the juvenile court is the appropriate forum to determine its jurisdiction in these matters." C.H. v. Lamar Cnty. Dep't of Hum. Res., 324 So. 3d at 397. Accordingly, we reverse the juvenile court's October 29, 2021, judgment and remand the cause for the juvenile court to make a determination, based upon the receipt of additional evidence, if necessary, whether it may exercise jurisdiction over the action under the UCCJEA. R.S. v. B.C., 248

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So. 3d 10, 13 (Ala. Civ. App. 2017); M.B. v. B.B., 244 So. 3d 128, 133 (Ala. Civ. App. 2017).

We pretermitted discussion of the other issues raised by the father on appeal.

REVERSED AND REMANDED WITH INSTRUCTIONS.

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