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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2021-2022

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M.B.F.

v.

B.H. and M.F.H.

**Appeal from Calhoun Circuit Court
(CV-21-900401)**

MOORE, Judge.

M.B.F. ("the father") appeals from a judgment entered by the Calhoun Circuit Court ("the circuit court") dismissing the complaint he

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filed against M.F.H. ("the mother") and her husband, B.H. ("the mother's husband"). We reverse the circuit court's judgment.

Procedural History

On September 24, 2021, the father filed a complaint against the mother and the mother's husband, alleging as follows:

"1. [The father] is a resident of Calhoun County.

"2. [The mother and the mother's husband] are husband and wife, and they reside [in] Jacksonville, Alabama. ...

"3. [The father and the mother] were divorced by [a judgment] of this Court dated January 7, 2013[,] in Case Number DR-2012-900931. The parties were parents of a minor child, A.L.F. ('the child'), date of birth 7/14/2009.

"4. [The father] was granted visitation with the child as set out in [the January 2013] Order, and he exercised said visitation. He was ordered to pay child support, and he paid the support as ordered.

"5. In January 2017, [the father] was arrested and was sent to the Calhoun County Jail in Anniston. In August 2017, he was sentenced to 8 years in prison. He was released in January 2020 and has been out since.

"6. [The father] subsequently discovered that, in 2017, [the mother's husband] adopted [the child]. [The father] has never seen the adoption order.

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"7. [The father] was never served with a Petition for Adoption or any other such notice that [the child] was being adopted.

"8. [The mother] was aware of the fact that [the father] was in the Calhoun County Jail and could have easily served him with notice of the adoption proceeding. In fact, [the father's] grandmother was maintaining regular contact with [the mother, the mother's husband, and the child] during the time that [the father] was incarcerated.

"9. Any adoption order that was entered was obtained by fraud."

The father requested that the circuit court enter an order setting aside the adoption judgment, awarding him compensatory and punitive damages, and granting him any "other, further or different relief to which [the father] may be entitled."

On October 27, 2021, the mother and the mother's husband filed a motion to dismiss the father's complaint. They alleged that the circuit court lacked "subject matter jurisdiction to set aside a prior order of adoption entered by a probate court." On October 29, 2021, the circuit court entered a judgment stating that "[s]ubject matter jurisdiction in this matter clearly lies with the Probate Court" and dismissing the complaint.

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On October 29, 2021, the father filed a response to the motion to dismiss and a motion to set aside the judgment of dismissal. The father argued that his complaint had commenced an independent action to set aside the adoption judgment based on fraud upon the court and that the circuit court had jurisdiction over his complaint. During a hearing on his postjudgment motion, the father also argued that, even if the circuit court did lack jurisdiction, it should not have dismissed the case but, instead, should have transferred the case to the appropriate probate court. The circuit court entered an order on December 20, 2021, denying the father any relief. The father filed his notice of appeal on December 23, 2021.

Discussion

On appeal, the father argues that the circuit court erred in determining that it lacked subject-matter jurisdiction over his complaint. He further argues that, even if the circuit court lacked jurisdiction, it erred by declining to transfer the case to the appropriate probate court for adjudication.

We initially note that our supreme court explained in Ex parte O.S., 205 So. 3d 1233 (Ala. 2014), that a circuit court lacks subject-matter

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jurisdiction to set aside a judgment of adoption. The supreme court explained that "the legislature has given the probate court original jurisdiction over all adoption proceedings, including a challenge to a judgment of adoption on the basis of fraud." O.S., 205 So. 3d at 1241. See also Ala. Code 1975, § 26-10A-3 ("The probate court shall have original jurisdiction over proceedings brought under the [Alabama Adoption Code]."); and § 26-10A-25(d) ("A final decree of adoption may not be collaterally attacked, except in cases of fraud or where the adoptee has been kidnapped, after the expiration of one year from the entry of the final decree and after all appeals, if any."). Therefore, we conclude that the circuit court correctly determined that it lacked jurisdiction over the father's complaint.

With regard to the father's second argument -- that the circuit court erred by declining to transfer the case to the appropriate probate court for adjudication -- § 12-11-11, Ala. Code 1975, provides 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" (Emphasis added.) In

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Ex parte E.S., 205 So. 3d 1245, 1249 (Ala. 2015), our supreme court held that a petition to set aside an adoption judgment on the basis of alleged fraud upon the court that had been mistakenly filed in the Walker Circuit Court should not have been dismissed for lack of subject-matter jurisdiction but, instead, should have been transferred to the Walker Probate Court in accordance with § 12-11-11.

In Ex parte E.S., the Walker Circuit Court was informed that the Walker Probate Court had entered the judgment approving the adoption at issue. In this case, the father's counsel informed the circuit-court judge that the father did not have any information regarding which probate court had approved the child's adoption. The attorney representing the mother and the mother's husband stated that she could not verify that any adoption had even occurred, much less reveal the probate court that had approved the adoption, due to the confidentiality provisions in the Alabama Adoption Code, §26-10A-1 et seq., Ala. Code 1975. See Ala. Code 1975, § 26-10A-31. The circuit-court judge determined that the case could not be transferred to the "appropriate" probate court without information as to which probate court had approved the adoption and

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that it lacked the authority to order disclosure of the adoption records, if any. Ultimately, the circuit court denied the father's motion to set aside the judgment of dismissal and his request to transfer the case.

In the complaint, the father alleged that the child had been adopted by the mother's husband in 2017 and that all parties had resided in Calhoun County at that time. Section 26-10A-4, Ala. Code 1975, provides that

"[a]ll petitions [for adoption] may be filed in the probate court in the county in which:

"(1) The minor or adult resides or has a legal residence;

"(2) A petitioner resides, or is in military service; or

"(3) An office of any agency or institution operating under the laws of this state having guardianship or custody of a minor or an adult is located."

Based on the allegations in the complaint, it appears that the only proper venue for an adoption proceeding would have been the Calhoun Probate Court. Because it "appears" that the Calhoun Probate Court would have been the only court with jurisdiction over the father's complaint seeking

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to set aside the adoption, the circuit court should have transferred the case to that court.¹ Accordingly, we reverse the circuit court's judgment and remand this cause with instructions to the circuit court to transfer the case to the Calhoun Probate Court.

REVERSED AND REMANDED WITH INSTRUCTIONS.

Thompson, P.J., and Edwards, Hanson, and Fridy, JJ., concur.

¹A probate court has the authority to allow access to adoption records "for good cause shown," Ala. Code 1975, § 26-10A-31(c); therefore, the Calhoun Probate Court can determine whether it or some other probate court has entered an adoption judgment regarding the child as a predicate to determining whether that judgment should be vacated. If the Calhoun Probate Court determines that, in fact, another probate court entered the adoption judgment, it, upon a timely motion, may transfer the case to the proper venue. See Rule 82, Ala. R. Civ. P.; see also Ala. Code 1975, § 26-10A-37 ("The Rules of Civil Procedure ... apply to the probate court in adoption proceedings to the extent they apply under [Ala. Code 1975, §] 12-13-12."); and Ala. Code 1975, § 12-13-12 ("The provisions of this code in reference to ... pleading and practice ..., in the absence of express provision to the contrary, are applicable to the proceedings in the probate court.").