

REL: December 2, 2022

**Notice:** This opinion is subject to formal revision before publication in the advance sheets of Southern Reporter. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0650), of any typographical or other errors, in order that corrections may be made before the opinion is printed in Southern Reporter.

# ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2022-2023

---

2210399

---

**J.F. and A.F.**

v.

**J.S. and M.S.**

**Appeal from DeKalb Juvenile Court  
(JU-17-336.02)**

EDWARDS, Judge.

On August 8, 2019, pursuant to a stipulation of dependency, the DeKalb Juvenile Court ("the juvenile court") entered a dependency judgment awarding custody of L.J.S. ("the child"), the child of J.S. ("the father") and M.S. ("the mother"), to J.F. and A.F. ("the maternal

2210399

grandparents"); the mother and the father were awarded visitation with the child at the discretion of the maternal grandparents. The dependency judgment set the matter for a review hearing in February 2020. In February 2020, the father filed a motion seeking an order awarding him custody of the child. After the review hearing, the juvenile court entered a pendente lite order awarding the father specified visitation with the child.

In January 2021, the mother filed a motion seeking an order awarding her custody of the child. After numerous continuances, most of which appeared to be related to issues arising from the COVID-19 pandemic, the juvenile court held a trial on November 30, 2021, and December 10, 2021, after which it entered a judgment in January 2022 awarding joint custody of the child to the mother and the father. The maternal grandparents filed a postjudgment motion, which the juvenile court denied, and they then filed a timely appeal. We dismiss the appeal.

As the juvenile court correctly determined in its January 2022 judgment, the August 2019 dependency judgment awarding custody of the child to the maternal grandparents was a final judgment relating to

2210399

the child's custody and was not a pendente lite custody award. As a result, although the juvenile court retained jurisdiction over the child and his custody, see Ala. Code 1975, § 12-15-117 and § 12-15-117.1, the juvenile court's jurisdiction to modify the custody award could be invoked only through the initiation of a custody-modification action by the father or the mother. See T.J.H. v. S.N.F., 960 So. 2d 669, 673 (Ala. Civ. App. 2006) (explaining that, after the entry of a final judgment awarding custody, the filing of a complaint seeking a modification of custody and the payment of the appropriate filing fee "would be necessary to institute a new proceeding" to change the award of custody). Neither the father nor the mother instituted a new action by filing a custody-modification complaint and paying a filing fee in the juvenile court or by serving the maternal grandparents with such a complaint pursuant to Rule 4, Ala. R. Civ. P. See Ex parte Bragg, 237 So. 3d 235, 238 (Ala. Civ. App. 2017) (explaining that, once a final judgment has been entered and postjudgment practice has concluded, a party may seek modification of that final judgment only by instituting a new action); L.H. v. L.S., 140 So. 3d 946, 950 (Ala. Civ. App. 2013) (concluding that a juvenile court could

2210399

not consider a father's motion for custody filed after the entry of a final custody judgment, "because no custody action was pending before [the juvenile court] over which it had jurisdiction"); Farmer v. Farmer, 842 So. 2d 679, 680 (Ala. Civ. App. 2002) (explaining that "a petition to modify [custody] is a separate action that requires a proper filing, the payment of a filing fee, and service [of process]"). Instead, both the father and the mother filed motions in the dependency action that had given rise to the August 2019 dependency judgment awarding custody to the maternal grandparents. Because the dependency action had been concluded by an award of custody to the maternal grandparents, the juvenile court lacked jurisdiction to revisit the August 2019 dependency judgment via motions filed by the father and the mother in that action. L.H., 140 So. 3d at 950. Accordingly, because the juvenile court's January 2022 judgment was entered without jurisdiction, that judgment is void. See Ex parte Bragg, 237 So. 3d at 238; L.H., 140 So. 3d at 950; Farmer, 842 So. 2d at 681.

2210399

Because a void judgment will not support an appeal, we must dismiss the maternal grandparents' appeal.<sup>1</sup> See L.H., 140 So. 3d at 950.

APPEAL DISMISSED.

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

---

<sup>1</sup>Because we lack jurisdiction over the maternal grandparents' appeal, we express no opinion on the merits of the arguments presented in their appeal.