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ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2023

CL-2022-0911 and CL-2022-0912

G.W.K.

v.

B.W.M. and G.M.

**Appeals from Lawrence Juvenile Court
(JU-21-223.01 and JU-21-224.01)**

MOORE, Judge.

G.W.K. ("the father") appeals from separate judgments entered by the Lawrence Juvenile Court ("the juvenile court") finding his children, S.L.K. and K.G.K. ("the children"), to be dependent and awarding their custody to B.W.M. and G.M. ("the maternal grandparents"). We dismiss the father's appeals with instructions.

Procedural History

On October 4, 2021, the maternal grandparents filed separate, but almost identical, petitions against the father in which they alleged:

"1. That the Petitioners are the maternal grandparents of the ... child[ren] and are over the age of [19] years and [are] resident[s] of the State of Alabama

"2. That the [maternal grandparents] aver that [G.L.K.], is the natural mother of the ... child[ren] and deceased on or about August 22, 2021.

"3. That the [father], is the biological father of the ... child[ren] and is over the age of nineteen years and his present address is unknown.

"....

"5. The [maternal grandparents] aver that they are able to provide for the wants, needs, and desires of the ... child[ren] at issue in this cause.

"6. The [maternal grandparents] aver that the ... mother ... and the ... child[ren] resided with the [maternal grandparents] for approximately (7) seven years.

"7. The [maternal grandparents] further aver that the [father] ..., agrees with the [maternal grandparents] having custody of the ... child[ren] at issue in this cause.

"8. That there has been a material change in circumstances which calls for modification of the custody of the ... child[ren], and that the [maternal grandparents]

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should have the legal and physical custody of the ...
child[ren]."

The maternal grandparents specifically requested that they be awarded sole physical and sole legal custody of the children. A juvenile-court intake officer reviewed the maternal grandparents' petitions and filed the petitions by delivering them to the clerk of the juvenile court. The clerk assigned the petitions case numbers JU-21-223.01 and JU-21-224.01.

On December 28, 2021, the father filed an answer in each case denying all the material allegations made by the maternal grandparents. Furthermore, he asserted counterclaims for custody, in which he asserted that he and the children have a strong relationship, that he is willing and able to provide a loving, stable, and wholesome environment for the children, that awarding him physical custody would be in the children's best interest, and that he was willing to relocate to be closer to Lawrence County to prevent uprooting the children. Also on December 28, 2021, the father filed motions to transfer the underlying actions to the Limestone Circuit Court; he renewed those motions on January 17, 2022. On January 18, 2022, the maternal grandparents filed in each action a

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reply to the father's counterclaim. In their replies, the maternal grandparents contended, among other things, that "they are the most fit and proper persons to exercise custody" of the children and that the children are "dependent." The maternal grandparents also moved the juvenile court to deny the father's motions to transfer.

The father withdrew his motions to transfer, and the cases proceeded to trial. On August 1, 2022, after conducting ore tenus proceedings over the course of three separate days in April, May, and June 2022, the juvenile court entered a separate judgment in each case in which it determined that the children were dependent and awarded custody of the children to the maternal grandparents. On August 14, 2022, the father timely filed a separate notice of appeal in each case; the father's appeals were docketed as appeal numbers CL-2022-0911 and CL-2022-0912. On September 7, 2022, this court consolidated the appeals ex mero motu.¹

¹This court also consolidated these appeals with appeal number CL-2022-0915, an appeal from a separate judgment that was entered by the juvenile court in an action that was filed by the maternal grandparents against X.K., the father of the children's half sibling; that judgment

Issue

The dispositive issue in these appeals is whether the maternal grandparents properly invoked the dependency jurisdiction of the juvenile court. The father asserts that the petitions filed by the maternal grandparents did not invoke the dependency jurisdiction of the juvenile court because, he says, they do not contain any specific factual allegations that would support a finding that the children were dependent. We agree. We, therefore, pretermitt any discussion of any other issues raised by the father in these appeals.

Analysis

Section 12-15-114, Ala. Code 1975, a part of the Alabama Juvenile Justice Act ("the AJJA"), Ala. Code 1975, § 12-15-101 et seq., 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" To invoke the dependency jurisdiction of the juvenile

awarded custody of the children's half sibling to the maternal grandparents. On April 21, 2023, appeal number CL-2022-0915 was unconsolidated from these appeals and was dismissed for lack of prosecution.

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court, the maternal grandparents had to file petitions complying with Ala. Code 1975, § 12-15-121(c)(1). See L.B. v. R.L.B., 53 So. 3d 969, 972 (Ala. Civ. App. 2010). Section 12-15-121(c)(1) provides, in pertinent part, that "the petition shall set forth with specificity ... the facts constituting the alleged dependency"

"A child is dependent if, at the time a petition is filed in the juvenile court alleging dependency, the child meets the statutory definition of a dependent child." A.G. v. Ka.G., 114 So. 3d 24, 26 (Ala. 2012) (quoting Ex parte L.E.O., 61 So. 3d 1042, 1046 (Ala. 2010)). Section 12-15-102(8)a., Ala. Code 1975, defines "dependent child" to mean:

"A child who has been adjudicated dependent by a juvenile court and is in need of care or supervision and meets any of the following circumstances:

"1. Whose parent, legal guardian, legal custodian, or other custodian subjects the child or any other child in the household to abuse, as defined in [Ala. Code 1975, §] 12-15-301[,] or neglect as defined in [§] 12-15-301 or allows the child to be so subjected.

"2. Who is without a parent, legal guardian, or legal custodian willing and able to provide for the care, support, or education of the child.

"3. Whose parent, legal guardian, legal custodian, or other custodian neglects or refuses, when able to do so or when the service is offered without charge, to provide or allow medical, surgical, or other care necessary for the health or well-being of the child.

"4. Whose parent, legal guardian, legal custodian, or other custodian fails, refuses, or neglects to send the child to school in accordance with the terms of the compulsory school attendance laws of this state.

"5. Whose parent, legal guardian, legal custodian, or other custodian has abandoned the child, as defined in subdivision (1) of [§] 12-15-301.

"6. Whose parent, legal guardian, legal custodian, or other custodian is unable or unwilling to discharge his or her responsibilities to and for the child.

"7. Who has been placed for care or adoption in violation of the law.

"8. Who, for any other cause, is in need of the care and protection of the state."

To satisfy § 12-15-121(c)(1) and to invoke the dependency jurisdiction of a juvenile court, a party must allege specific facts in its petition indicating that a child is a "dependent child" as defined in § 12-15-102(8)a. See L.B., supra.

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In determining whether a petition alleges the dependency of a child, the court must look to the substance, not the form, of the pleading. See A.M. v. A.K., 321 So. 3d 1278, 1281 (Ala. Civ. App. 2020). In these cases, the petitions do not allege any specific facts implying that the father had abandoned, neglected, or abused the children; that he was unable or unwilling to properly parent the children; that he had subjected the children to any of the conduct prohibited by § 12-15-102(8)a.; or that he had otherwise caused the children to be in need of care or supervision. The petitions allege only that the children had been residing with the maternal grandparents for seven years, that their mother had died, that the maternal grandparents were fit and proper persons to assume legal and physical custody of the children, and that the father did not contest their claims to custody. In essence, the petitions assert only a plea to resolve the custody of the children that does not fall within the dependency jurisdiction of the juvenile court but lies within the jurisdiction of the appropriate circuit court. See A.C. v. C.C., 49 So. 3d 726, 733 (Ala. Civ. App. 2010) (holding that allegations that grandmother had been exercising custody of child and that grandmother wished to

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retain custody rather than return child to mother stated a custody dispute that did not invoke the dependency jurisdiction of juvenile court).

Section 12-15-118, Ala. Code 1975, requires a juvenile-court intake officer to "[r]eceive and examine written complaints or petitions, made under oath, of allegations of ... dependency" Furthermore, Rule 12(B), Ala. R. Juv. P., requires that a juvenile-court intake officer "conduct a preliminary inquiry to determine whether the acts or conditions alleged are within the subject-matter jurisdiction of the juvenile court[.]" In these cases, a juvenile-court intake officer received and examined the petitions and determined that they invoked the dependency jurisdiction of the juvenile court. In their brief to this court, the maternal grandparents imply that the endorsement of the juvenile-court intake officer resolves the jurisdictional issue. However, the AJJA does not make the determination of the juvenile-court intake officer conclusive. Regardless of the opinion of the juvenile-court intake officer, the subject-matter jurisdiction of a juvenile court may be questioned at any stage of the proceedings, see M.B.L. v. G.G.L., 1 So. 3d 1048, 1050 (Ala. Civ. App. 2008), including upon review by this court. See Ex parte K.S.G., 645 So.

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2d 297 (Ala. Civ. App. 1992) (determining that juvenile court lacked subject-matter jurisdiction over child-custody dispute even though juvenile-court intake officer had accepted and delivered petition to clerk for filing). In ascertaining whether a petition invokes the subject-matter jurisdiction of a juvenile court, this court does not defer to the findings of a juvenile-court intake officer. To the contrary, this court reviews the question of subject-matter jurisdiction de novo, without attributing any presumption of correctness to the juvenile-court intake officer's findings. J.H. v. C.Y., 161 So. 3d 233, 237 (Ala. Civ. App. 2014). The decision of the juvenile-court intake officer to accept and to file the petitions does not affect our determination that the petitions failed to properly invoke the dependency jurisdiction of the juvenile court.

The day after the petitions were filed, the juvenile court reviewed the petitions. Upon its examination of the contents of the petitions, the juvenile court should have noticed that it lacked subject-matter jurisdiction over the cases, see International Longshoremen's Ass'n v. Davis, 470 So. 2d 1215, 1216 (Ala. 1985) ("[I]t is incumbent upon the court to notice subject matter jurisdiction sua sponte."), regardless of the

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determination of the juvenile-court intake officer. "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). Because no exception to that rule applies in these cases, the juvenile court should have dismissed the cases at that point; instead, the juvenile court appointed a guardian ad litem for the children and purported to continue exercising jurisdiction over the cases.

On January 18, 2022, the maternal grandparents filed replies to the father's counterclaims providing, in pertinent part:

"1. That the [maternal grandparents] deny the material allegations in the Counterclaim for Custody heretofore filed by [the father] and would show as follows:

"2. That the [maternal grandparents] would show that they are the most fit and proper persons to exercise custody of [the children] at issue in this cause.

"3. That the [maternal grandparents] aver that it would be in [the children's] best interest for the [maternal grandparents] to exercise custody of [the children].

"4. That [the children are] dependent."

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The maternal grandparents subsequently moved the juvenile court to deny the motions to transfer on the ground that, because the cases were dependency actions, they should remain in the juvenile court.

In effect, the maternal grandparents sought to amend their petitions by injecting an allegation of dependency into their replies to the counterclaims. In Alabama Department of Corrections v. Montgomery County Commission, 11 So. 3d 189, 191 (Ala. 2008), our supreme court held that, if the original complaint fails to invoke the subject-matter jurisdiction of a court, the court has no power to allow an amendment of the complaint to cure the jurisdictional defect; the court can only dismiss the action. We have not located any cases applying that rule in juvenile-court proceedings, but we find no basis for deviating from the rule in this context. Rule 17, Ala. R. Juv. P., generally provides that, before adjudication, "a juvenile petition alleging that a child is ... dependent ... may be amended by written order of the juvenile court." By its plain language, Rule 17 does not authorize a party to amend a petition that does not allege that a child is dependent to add that allegation by

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amendment in order to cure the jurisdictional defect, which would run counter to the holding in Alabama Department of Corrections, supra.

Moreover, even if a petitioner could amend a petition filed in the juvenile court to add in a claim of dependency, that amendment would still have to comply with § 12-15-121(c)(1) by making specific factual allegations of dependency. A petitioner does not comply with § 12-15-121(c)(1) by making only a bare assertion that a child is dependent. In L.B., supra, R.L.B., the father of a minor child, filed a petition in the Montgomery Juvenile Court alleging "that the child was dependent because, he said, '[c]ustody, visitation, and child support need to be established' for the child." 53 So. 3d at 970. This court determined that, although R.L.B. had made a conclusory allegation that the child was dependent, he had alleged only that the custody of the child was in dispute and had not included in his petition any specific factual allegations that the child was dependent within the applicable statutory definition of "dependent child." Id. at 972. This court held that the petition did not include sufficient allegations of dependency to invoke the jurisdiction of the juvenile court, and we dismissed the appeal. See also

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A.C. v. C.C., 49 So. 3d 726, 727 (Ala. Civ. App. 2010) (holding that grandmother did not invoke dependency jurisdiction of juvenile court by checking box on preprinted petition form indicating that child was dependent, but failing to make any specific factual allegations of the dependency of the child; grandmother alleged only a custody dispute between her and mother of child).

The requirement of alleging specific facts showing dependency is not just a technical matter that may be excused by the court. The dependency jurisdiction of the juvenile courts empowers those courts to exercise the parens patriae power of the state to infringe upon the fundamental right of a natural parent by assuming custody and control over his or her child. See Ex parte R.H., 311 So. 3d 761, 766 (Ala. Civ. App. 2020). By enacting § 12-15-121(c)(1), our legislature has recognized that a juvenile court should wield that power only when the petition clearly invokes its jurisdiction and that a parent should not have to submit to that jurisdiction unless the parent has been adequately notified of the factual basis of the dependency claim upon which he or she is being called to defend. A naked assertion that a child is "dependent," like the

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one made by the maternal grandparents in this case, does not comply with the letter or the spirit of § 12-15-121(c)(1). The replies to the counterclaims did not cure the jurisdictional defect in the maternal grandparents' pleadings.

During the juvenile-court proceedings, the father twice moved to transfer the cases to the Limestone Circuit Court, the court that had initially determined the custody of the children when divorcing the mother and the father; however, according to the final judgments, the father withdrew those motions. The father did not, by withdrawing those motions, confer jurisdiction upon the juvenile court or waive any objection to the juvenile court's lack of subject-matter jurisdiction. Subject-matter jurisdiction cannot be conferred upon a juvenile court by the consent of the parties, L.R.S. v. M.J., 229 So. 3d 772, 776 (Ala. Civ. App. 2016), and lack of subject-matter jurisdiction cannot be waived. See Ex parte M.M.T., 148 So. 3d 728, 733 (Ala. Civ. App. 2014). Moreover, we note that the juvenile court had no authority to transfer the cases to the Limestone Circuit Court. Pursuant to § 12-11-11, Ala. Code 1975, when a juvenile court lacks subject-matter jurisdiction over a case within

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the subject-matter jurisdiction of the circuit court, the juvenile court is required to transfer the action to the circuit court "in the same county." See Ex parte T.M., 358 So. 3d 1155 (Ala. Civ. App. 2022). We are unaware of any statute or rule that authorizes a juvenile court that lacks subject-matter jurisdiction over a case to transfer the case to a circuit court of another county that may have jurisdiction. The juvenile court could not transfer the cases to the Limestone Circuit Court; it could only dismiss the cases for lack of subject-matter jurisdiction.

Conclusion

Whether a juvenile court has subject-matter jurisdiction is purely a question of law based entirely upon the language of the statutes empowering the juvenile courts to act. See L.R.S., 229 So. 3d at 776. As we have determined, the petitions filed by the maternal grandparents did not invoke the dependency jurisdiction of the juvenile court. Out of an abundance of caution, we have considered the entire record and conclude that the juvenile court also did not have jurisdiction under any of the other jurisdictional statutes in the AJJA. See Ala. Code 1975, §§ 12-15-114, -115, -116, -117, and -117.1. Because the petitions filed by the

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maternal grandparents did not invoke the jurisdiction of the juvenile court, all of its proceedings, including the entry of the judgments finding the children dependent and awarding their custody to the maternal grandparents, are void. See T.B. v. T.H., 30 So. 3d 429, 433 (Ala. Civ. App. 2009). A void judgment will not support an appeal. K.R. v. D.H., 988 So. 2d 1050, 1052 (Ala. Civ. App. 2008). Therefore, we dismiss these appeals as arising from void judgments, albeit with instructions to the juvenile court to vacate the judgments. See A.C. v. In re E.C.N., 89 So. 3d 777, 780 (Ala. Civ. App. 2012).

CL-2022-0911 -- APPEAL DISMISSED WITH INSTRUCTIONS.

CL-2022-0912 -- APPEAL DISMISSED WITH INSTRUCTIONS.

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