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# **ALABAMA COURT OF CIVIL APPEALS**

**SPECIAL TERM, 2023**

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**CL-2022-1051**

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**J.L.**

**v.**

**S.L. and T.L.**

**Appeal from Cleburne Juvenile Court  
(JU-21-46.01)**

EDWARDS, Judge.

In October 2021, S.L. and T.L. ("the prospective adoptive parents") filed in the Cleburne Probate Court ("the probate court") a petition seeking to adopt J.K.L. ("the child"). In that petition, the prospective adoptive parents alleged that the child had been living with them since before December 25, 2015; that they had physical custody of the child

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pursuant to a February 2019 judgment entered by the Cleburne Juvenile Court ("the juvenile court"); that the child's biological father, J.L. ("the biological father"), had joint legal custody of the child; and that the biological father had "not been consistent in his visitation with the child."<sup>1</sup> After the biological father was served with the adoption petition, he filed a handwritten statement in the probate court on November 17, 2021, that the probate court construed as his answer to the adoption petition; that statement read only: "I, [J.L.], the biological father of [the child], do not approve of the adoption." On December 16, 2021, the biological father's counsel filed a notice of appearance in the probate court. On December 17, 2021, the probate court, acting sua sponte, entered an order transferring the adoption proceeding to the juvenile court. The probate court specifically based its transfer on Ala. Code 1975, § 12-12-35.

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<sup>1</sup>The adoption petition also alleged that the mother of the child, K.K. ("the biological mother"), had not had "physical contact" with the child since January 2019 and that she had not provided support for the child. Because the biological mother has not appealed, we discuss the biological mother to the extent necessary to establish the finality of the judgment.

The juvenile court set the adoption proceeding for a trial to be held on February 10, 2022. On January 19, 2022, the prospective adoptive parents filed a motion in which they requested that the juvenile court determine that the biological father had impliedly consented to the adoption.<sup>2</sup> Although the juvenile court initially set that motion for a hearing to be held on the existing February 10, 2022, trial date, the juvenile court continued the hearing twice and ultimately reset it for March 30, 2022.

On March 30, 2022, the biological father filed an objection to the prospective adoptive parents' motion on the implied-consent issue and also filed a motion challenging the juvenile court's jurisdiction over the adoption proceeding. In the motion to dismiss, the biological father contended that the probate court had lacked the authority to transfer the adoption proceeding to the juvenile court pursuant to § 12-12-35 because, he said, that statute provided that a probate court could make such a

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<sup>2</sup>The motion also requested a determination that the biological mother had impliedly consented to the adoption.

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transfer on motion of a party and not on its own motion. The juvenile court requested letter briefs on the jurisdictional issue.

As ordered, the parties presented letter briefs on the jurisdictional issue to the juvenile court. The prospective adoptive parents contended that the biological father's one-sentence answer should be construed as a motion to transfer the adoption proceeding to the juvenile court because, they said, his lack of consent to the adoption required that his parental rights be terminated, which, they said, could occur only in the juvenile court. The guardian ad litem for the child agreed with the argument of the prospective adoptive parents. The biological father argued that § 12-12-35, unlike other transfer provisions available to the probate court in Ala. Code 1975, §§ 26-10A-21 and 26-10A-24, did not provide a method for the transfer of the adoption proceeding from the probate court on that court's own motion, that the probate court's attempt to transfer the adoption proceeding pursuant to § 12-12-35 was erroneous, and that the juvenile court therefore lacked jurisdiction to entertain the adoption proceeding. The juvenile court denied the biological father's motion to dismiss on April 20, 2022.

The juvenile court conducted an evidentiary hearing on the implied-consent issue on March 30, 2022, and May 4, 2022. On May 9, 2022, the juvenile court entered an order determining that the biological father had not impliedly consented to the adoption.<sup>3</sup> The juvenile court also set a contested adoption hearing on the adoption petition for May 23, 2022. That hearing was reset and eventually occurred on June 22, 2022, and August 9, 2022. After the conclusion of the contested hearing, the juvenile court entered an order on August 17, 2022, denying the biological father's contest to the adoption. The August 17, 2022, order stated that the juvenile court had concluded that the biological father's contest was "due to be denied and dismissed" based on clear and convincing evidence but did not outline that evidence or make any findings of fact relating to the biological father's consent or relating to termination of his parental rights. In addition, the August 17, 2022, order dismissed the biological father as a party to the adoption proceeding and directed that his counsel

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<sup>3</sup>In a separate order, the juvenile court determined that the biological mother had impliedly consented to the adoption of the child.

be prohibited from further access to the records of the adoption proceeding.<sup>4</sup>

Also on August 17, 2022, the juvenile court entered a judgment permitting the adoption of the child. Although that judgment did not expressly terminate the biological father's parental rights, the judgment contained findings of fact relating to the juvenile court's basis for denying

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<sup>4</sup>The juvenile court's directive that the biological father be removed as a party and that he not be permitted further access to the records of the adoption proceeding or to any orders or judgments entered therein was improper. We take this opportunity to reiterate that

"in an adoption proceeding, a parent or contestant who is given notice pursuant to [Ala. Code 1975,] § 26-10A-17, and who has suffered an adverse conclusion to his or her adoption contest, remains a party to the adoption proceeding and is entitled to notice of the entry of the final adoption judgment under Rule 77(d), [Ala. R. Civ. P.], so that he or she may exercise the statutory right to take an appeal as provided in [Ala. Code 1975,] § 26-10A-26."

Ex parte C.D., [Ms. 2210248, Nov. 18, 2022] \_\_\_ So. 3d \_\_\_, \_\_\_ (Ala. Civ. App. 2022). Pursuant to Act No. 2023-92, Ala. Acts 2023, the current adoption code expires December 31, 2023, and a new adoption code will take effect on January 1, 2024. However, under the new adoption code, an order adjudicating an adoption contest is specifically made a final order capable of supporting an appeal. See Act No. 2023-92, Ala. Acts 2023, § 1 (enumerated in that Act as Ala. Code 1975, § 26-10E-25(a)(1)b.)

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the biological father's adoption contest and for terminating his parental rights, including findings that the biological father had "failed to form or maintain a significant parental relationship with [the child]," that "no significant parental bond" between the biological father and the child existed, that the biological father was "unable or unwilling to discharge his responsibility to and for the child," that the biological father's visitation with the child was "sporadic and inconsistent," that the biological father "failed to maintain regular visitation and consistent contact with the child," and that the biological father "never provided financial support for the [child]." In compliance with the order denying the biological father's adoption contest, the adoption judgment was not provided to the father or his counsel.

On August 31, 2022, the biological father filed a postjudgment motion directed to the August 17, 2022, order denying his contest to the adoption. At the hearing on the biological father's postjudgment motion, counsel for the biological father argued that the biological father or his counsel should have been provided with the adoption judgment, especially if that judgment had factual findings relating to the biological

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father's consent to the adoption or to the termination of the biological father's parental rights. Counsel for the biological father also argued that the evidence was not sufficient for the juvenile court to have determined that he had consented to the adoption, to have denied his contest to the adoption, or to have terminated his parental rights, if, in fact, the adoption judgment had done so.

The juvenile court entered an amended adoption judgment on September 6, 2022. In the amended adoption judgment, the juvenile court expressly terminated the biological father's parental rights. The juvenile court also issued an order denying the biological father's postjudgment motion. The biological father timely appealed.

The biological father's first argument on appeal is that the probate court's order transferring the adoption proceeding pursuant to § 12-12-35 did not properly transfer the adoption proceeding to the juvenile court because the probate court lacked the authority to transfer the adoption proceeding without a motion from one of the parties to the adoption proceeding. Based on that argument, the biological father contends that the juvenile court lacked jurisdiction over the adoption proceeding. We

agree with the biological father and find this issue to be dispositive of this appeal.

Our supreme court has explained that, although probate courts are vested with original jurisdiction over adoption proceedings under § 26-10A-3, there are four methods by which a probate court may transfer an adoption proceeding, or a portion of it, to another court such that the other court gains jurisdiction over all or part of the adoption proceeding. Ex parte A.M.P., 997 So. 2d 1008, 1016-17 (Ala. 2008). Our supreme court stated in Ex parte A.M.P.:

"First, § 12-12-35, Ala. Code 1975, provides:

"'(a) Adoption proceedings, primarily cognizable before the probate court, may be transferred to the district court on motion of a party to the proceeding in probate court.

"'(b) When adoption proceedings are transferred to the district court, a copy of the record of such proceedings shall be filed in the probate court, and the probate court offices shall maintain records of all adoption proceedings within their respective counties.'

"This provision, which predates the Alabama Adoption Code but which was not affected by it, allows a party to an adoption proceeding to initiate a transfer, which is discretionary with the probate court ('may be transferred'),

and, once a motion for transfer is granted, the entire 'adoption proceeding[]' is transferred to the district court. See Ex parte C.L.C., 897 So. 2d 234 (Ala. 2004) (holding that the primary jurisdiction over adoptions is in the probate court and that, unless the juvenile court acquires jurisdiction over a petition to adopt by the transfer mechanism of § 12-12-35, the juvenile court is without authority to grant an adoption).

"Second, [Ala. Code 1975,] § 26-10A-21 states:

"If, at any time during the pendency of the adoption proceeding, it is determined that any other custody action concerning the adoptee is pending in the courts of this state or any other state or country, any party to the adoption proceeding, or the court on its own motion, may move to stay such adoption proceeding until a determination has been made by an appropriate court with jurisdiction pursuant to the provisions of the Uniform Child Custody Jurisdiction Act (UCCJA)<sup>[5]</sup> or the Parental Kidnapping Prevention Act (PKPA)[, 28 U.S.C. § 1738A]. The adoption may be transferred and consolidated with a custody proceeding in any court in this state.'

"This statute, which includes a transfer mechanism, provides that, upon motion made by a party or upon the court's own motion, the probate court may stay an adoption proceeding while a custody action is pending in another court, and, in addition, the probate court may transfer 'the adoption' to the other court to be consolidated with the custody proceeding. Thus, this section, like § 12-12-35 quoted above, provides for a discretionary transfer of the entire adoption proceeding.

"Third, [Ala. Code 1975,] § 26-10A-24, dealing with hearings on adoption contests only, provides for a limited transfer in subsection (e), which states:

"'(e) On motion of either party or of the court, a contested adoption hearing may be transferred to the court having jurisdiction over juvenile matters.'

"Like the two transfer provisions above, a transfer under this provision, which may be upon the request of a party or upon motion of the court, is a discretionary transfer by the probate court; however, unlike the other two provisions, this section provides that only the 'contested adoption hearing' may be transferred, rather than the entire adoption proceeding. Therefore, after a juvenile court has conducted a 'contested adoption hearing' transferred to it pursuant to § 26-10A-24(e) and decided the issues presented in the hearing, the adoption proceeding would be remanded to the probate court for further action.

"The last possible transfer procedure in an adoption proceeding is contained in § 26-10A-3, Ala. Code 1975, which states:

"'The probate court shall have original jurisdiction over proceedings brought under [this] chapter. If any party whose consent is required fails to consent or is unable to consent, the proceeding will be transferred to the court having jurisdiction over juvenile matters for the limited purpose of termination of parental rights. The provisions of this chapter shall be applicable to proceedings in the court having jurisdiction over juvenile matters.'

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"<sup>5</sup>The UCCJA has been repealed and replaced by the Uniform Child Custody Jurisdiction and Enforcement Act ('UCCJEA'). See § 30-3B-101 et seq., Ala. Code 1975."

997 So. 2d at 1016-18.

As the biological father points out, the record from the probate court contains no motion from any party requesting the probate court to transfer the adoption proceeding to the juvenile court. We reject the prospective adoptive parents' contention that the biological father's one-sentence answer is also a motion to transfer the adoption proceeding to the juvenile court. The biological father's answer does not contain the word "transfer" or mention the juvenile court.

To the extent that the prospective adoptive parents argue that the biological father's answer, because it refused to consent to the adoption, should have been construed as a motion to transfer the adoption proceeding because a probate court cannot enter an adoption judgment without consent from the parents of the child, we also reject that argument. The biological father's answer clearly states that he did not consent to the adoption of the child. In such a situation, the probate court

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was authorized to transfer the adoption proceeding to the juvenile court "for the limited purpose of termination of parental rights" pursuant to § 26-10A-3, but the probate court did not utilize § 25-10A-3 and did not accomplish a limited transfer of the adoption proceeding. The probate court's order transferring the adoption proceeding to the juvenile court cited § 12-15-35, which purported to accomplish a complete transfer of the adoption proceeding to the juvenile court.

The language in § 12-12-35 is clear. A probate court may transfer an adoption proceeding to the juvenile court on the motion of a party to that proceeding. As our supreme court put it, § 12-12-35 "allows a party to an adoption proceeding to initiate a transfer." Ex parte A.M.P., 997 So. 2d at 1017; see also Ex parte Hicks, 451 So. 2d 324, 327 (Ala. Civ. App. 1984) (indicating that, by enacting § 12-12-35, "the legislature authorized adoption proceedings to be transferred to the district court and to the juvenile court upon motion of a party thereto"); Holcomb v. Bomar, 392 So. 2d 1204, 1205 (Ala. Civ. App. 1981) (citing § 12-12-35 and stating that "[a]doption proceedings may also take place in the juvenile courts and district courts where such proceedings are removed from the

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probate court on motion of any party to the proceedings"). Nothing in § 12-12-35 provides the probate court with the authority to transfer an adoption proceeding to the juvenile court on its own motion. See R.L. v. J.E.R., 69 So. 3d 898, 903-04 (Ala. Civ. App. 2011) (stating that, without a motion seeking a transfer having been filed by a party to the adoption proceeding, the transfer mechanism of § 12-12-35 is "not applicable"); see also § 12-15-115(a)(4) (providing that a juvenile court has jurisdiction over an adoption proceeding "when [those] proceedings have been transferred from probate court as provided by law"). Thus, we conclude that the order transferring the adoption proceeding to the juvenile court was invalid and that the juvenile court failed to acquire jurisdiction over the adoption proceeding. See R.L., 69 So. 3d at 903 (explaining that, unless a juvenile court acquires jurisdiction by virtue of the proper application of § 12-12-35, the juvenile court lacks authority to enter an adoption judgment). The juvenile court's several orders, including its order denying the biological father's adoption contest, and its adoption judgment are therefore void for lack of jurisdiction. See id. Because the juvenile court's adoption judgment is void, that judgment cannot support

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an appeal. See id. at 904. Accordingly, we dismiss the biological father's appeal from the adoption judgment, albeit with instructions to the juvenile court to set aside the adoption judgment and all orders entered in the adoption proceeding. In addition, the probate court is to resume exercising jurisdiction over the adoption proceeding as if it had not been transferred to the juvenile court.

APPEAL DISMISSED WITH INSTRUCTIONS.

Hanson and Fridy, JJ., concur.

Moore, J., concurs specially, with opinion, which Thompson, P.J., joins.

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MOORE, Judge, concurring specially.

I concur with the dismissal of the appeal. The Cleburne Probate Court purported to transfer the adoption proceedings to the Cleburne Juvenile Court on its own motion, pursuant to Ala. Code 1975, § 12-12-35(a); however, § 12-12-35(a) authorizes a transfer only upon motion of a party. As the main opinion discusses, several provisions of the current Alabama Adoption Code ("the AAC"), Ala. Code 1975, § 26-10A-1 et seq., allow a probate court to transfer all or part of an adoption proceeding to a juvenile court, but none of those provisions applied to authorize the transfer in this case. I write specially to inform the bench and the bar that the Alabama Legislature recently enacted a new adoption code that will become effective January 1, 2024. See Ala. Acts 2023, Act No. 2023-92, § 7. The act establishing the new adoption code repeals the AAC, including the various transfer provisions discussed in the main opinion, as well as the transfer mechanism contained in § 12-12-35(a). After the new adoption code takes effect, transfers of adoption proceedings will be governed solely by § 26-10E-3, Ala. Code 1975.

Thompson, P.J., concurs.