

Rel: August 11, 2023

**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 published in Southern Reporter.

# ALABAMA COURT OF CIVIL APPEALS

**SPECIAL TERM, 2023**

---

**CL-2023-0438**

---

**Ex parte M.K.G.**

**PETITION FOR WRIT OF MANDAMUS**

**(In re: M.K.G.**

**v.**

**J.K.J.)**

**(Lauderdale Juvenile Court, CS-18-900113.01)**

THOMPSON, Presiding Judge.

M.K.G. ("the mother") petitions this court for a writ of mandamus directing the Lauderdale Juvenile Court ("the juvenile court") to vacate its order transferring her custody-modification action from her selected

venue of Lauderdale County to Morgan County. We grant the petition and issue the writ.

The mother filed a petition to modify a final judgment entered by the juvenile court on April 10, 2020, that granted the mother and J.K.J. ("the father") joint legal custody of J.M.J. ("the child")<sup>1</sup> and granted the mother sole physical custody of the child subject to the father's visitation. The father filed two motions to transfer the action from Lauderdale County to Morgan County. In his motions, the father alleged that the parties and the child were residents of Morgan County, that neither party maintained substantial ties to Lauderdale County, that comparable resources were available in Morgan County, and that "an order granting transfer to Morgan County would best serve judicial economy and would be more convenient for all parties and potential witnesses involved." The juvenile court granted the father's motion to transfer. In its order, the juvenile court reasoned that because the parties and the child, who lived in Morgan County, were spending time and expense commuting to Lauderdale County for supervised visitation and Morgan County had the necessary resources available to address the issues presented in the case,

---

<sup>1</sup>The child was born in November 2015.

"[i]t is unfair to these parties, particularly the child of the parties, to litigate this matter in Lauderdale County ..., given the counseling or other resources required to resolve this matter."

In a subsequent order addressing the mother's motion to stay proceedings while this court considered her petition for a writ of mandamus, the juvenile court further explained its decision to transfer the action to Morgan County, stating:

"[F]orcing these parties (both parties) to drive from Hartselle, Alabama, to Florence, Alabama, for supervised visitation, treatment, and/or counseling violates [the juvenile court's] sensibilities of practical economy and is not in the best interest of either of these parties or their minor child."

In substance, the juvenile court concluded that Morgan County would be a more convenient venue for the parties. The mother timely filed a petition for a writ of mandamus challenging the juvenile court's order transferring the action.<sup>2</sup>

Our standard of review is well-established:

---

<sup>2</sup>The juvenile court entered its order transferring the action on June 13, 2023. The mother filed her petition for the writ of mandamus challenging the propriety of that order on June 27, 2023 --14 days later. See Rule 21, Ala. R. App. P. (providing that the presumptively reasonable time for filing a petition for a writ of mandamus is "the same as the time for filing an appeal"); and Rule 28, Ala. R. Juv. P. (providing that an appeal of a juvenile court's order shall be filed within 14 days of the entry of the challenged order).

""The writ of mandamus is an extraordinary remedy; it will not be issued unless the petitioner shows ""(1) a clear legal right in the petitioner to the order sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) properly invoked jurisdiction of the court."" Ex parte Inverness Constr. Co., 775 So. 2d 153, 156 (Ala. 2000)(quoting Ex parte Gates, 675 So. 2d 371, 374 (Ala.1996)); Ex parte Pfizer, Inc., 746 So. 2d 960, 962 (Ala. 1999)."

"Ex parte Vest, 68 So. 3d 881, 884 (Ala. Civ. App. 2011) (quoting Ex parte Children's Hosp. of Alabama, 931 So. 2d 1, 5-6 (Ala. 2005))."

Ex parte M.A.G., 160 So. 3d 22, 24 (Ala. Civ. App. 2014).

"A petition for the writ of mandamus is a proper method for presenting a venue challenge based on the doctrine of forum non conveniens. Ex parte Pearson Management Co., 667 So. 2d 48 (Ala. 1995); Ex parte Alabama Power Co., 640 So. 2d 921 (Ala. 1994); Ex parte Ford Motor Credit Co., 561 So. 2d 244 (Ala. Civ. App. 1990). When we consider a mandamus petition relating to a venue ruling, our scope of review is to determine if the trial court abused its discretion, i.e., whether it exercised its discretion in an arbitrary and capricious manner. Ex parte Ford Motor Credit Co., 561 So. 2d at 247, citing Ex parte GTE Automatic Elec., Inc., 448 So. 2d 385 (Ala. Civ. App. 1984)."

Ex parte Integon Corp., 672 So. 2d 497, 499 (Ala. 1995).

Venue for an action to modify a judgment awarding custody of a child, visitation, or child support is determined by application of § 30-3-5, Ala. Code 1975, which provides:

"Notwithstanding any law to the contrary, venue of all proceedings for petitions or other actions seeking modification, interpretation, or enforcement of a final decree awarding custody of a child or children to a parent and/or granting visitation rights, and/or awarding child support, and/or awarding other expenses incident to the support of a minor child or children, and/or granting post-minority benefits for a child or children is changed so that venue will lie in: (1) the original circuit court rendering the final decree; or (2) in the circuit court of the county where both the current custodial parent or, in the case of post-minority benefits, where the most recent custodial parent, that parent having custody at the time of the child's attaining majority, and the child or children have resided for a period of at least three consecutive years immediately preceding the filing of the petition or other action. The current or most recent custodial parent shall be able to choose the particular venue as herein provided, regardless of which party files the petition or other action."

The April 10, 2020, judgment that the mother seeks to modify awarded sole physical custody of the child to the mother subject to the father's visitation. Therefore, venue of the mother's action is governed by § 30-3-5, which allows the custodial parent, in this case, the mother, to select the venue. See Ex parte Brandon, 113 So. 3d 638 (Ala. 2012). The mother selected Lauderdale County and, because the juvenile court entered the April 10, 2020, child-custody judgment that she seeks to modify, venue is proper in Lauderdale County.

In the juvenile court, the father argued -- and the juvenile court agreed -- that although Lauderdale County is a proper venue for the action, Morgan County is a more convenient venue.

"The doctrine of forum non conveniens is applicable only '[w]ith respect to civil actions filed in an appropriate venue.' § 6-3-21.1(a)[, Ala. Code 1975] (emphasis added). This statutory language is consistent with 'the fundamental premise of all transfers for convenience -- i.e., that venue is good at the time of filing, but that a transfer to a better venue is, or has become, appropriate.' Ex parte Wilson, 854 So. 2d [1106,] 1112 [(Ala. 2002)] (emphasis added). Consequently, as this Court has stated, the doctrine of forum non conveniens, as codified at § 6-3-21.1, 'has a field of operation only where an action is commenced in a county in which venue is appropriate.' Ex parte New England Mut. Life Ins. Co., 663 So. 2d 952, 956 (Ala. 1995). See also Ex parte Townsend, 589 So. 2d 711, 714 (Ala. 1991); Montgomery Elevator Co. v. Pinkney, 628 So. 2d 767, 768 (Ala. Civ. App. 1993)."

Ex parte Miller, Hamilton, Snider & Odom, LLC, 978 So. 2d 12, 14 (Ala. 2007).

Section 6-3-21.1, Ala. Code 1975, which is entitled "[c]hange or transfer of venue for convenience of parties and witnesses or in interest of justice," provides in part:

"With respect to civil actions filed in an appropriate venue, any court of general jurisdiction shall, for the convenience of parties and witnesses, or in the interest of justice, transfer any civil action or any claim in any civil action to any court of general jurisdiction in which the action might have been properly filed and the case shall proceed as though originally

filed therein. Provided, however, this section shall not apply to cases subject to Section 30-3-5[, Ala. Code 1975]."

§ 6-3-21.1(a)(emphasis added). Thus, the doctrine of forum of non conveniens does not apply to actions subject to § 30-3-5.

As previously recognized in this opinion, venue for the mother's custody-modification action is determined by application of § 30-3-5. The juvenile court transferred the action pursuant to the doctrine of forum non conveniens. Section 6-3-21.1(a), however, clearly states that the doctrine of forum of non conveniens does not apply to this custody-modification action. Therefore, the juvenile court erred in relying on it to transfer this action to Morgan County. See Ex parte M.A.G., 160 So. 3d at 25.

The mother has established a clear, legal right to the relief she requests. Accordingly, we grant the mother's petition for a writ of mandamus and direct the juvenile court to vacate its order transferring the mother's custody-modification action to Morgan County.

PETITION GRANTED; WRIT ISSUED.

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