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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2023-2024

CL-2023-0820

Ex parte C.H.

PETITION FOR WRIT OF MANDAMUS

(In re: In the matter of S.A.)

(Jefferson Juvenile Court, Bessemer Division, JU-18-293.03)

FRIDY, Judge.

This is the fourth time the parties have come before this court on a petition for a writ of mandamus in connection with attempts by C.H. ("the maternal grandmother") to obtain visitation with her grandchild, S.A. ("the grandchild"). Since March 2020, the grandchild has been in the custody of D.A. and M.A. ("the paternal grandparents") pursuant to a

"private dependency petition order" entered in the Jefferson Juvenile Court, Bessemer Division ("the juvenile court"). The prior petitions have involved issues of the jurisdiction of various courts to consider the claims the maternal grandmother has asserted in several pleadings.

The current petition involves a question of whether the juvenile court has complied with this court's mandate in Ex parte C.H., [Ms. CL-2023-0523, Oct. 27, 2023] ___ So. 3d ___ (Ala. Civ. App. 2023), which followed the third petition for a writ of mandamus submitted to this court. Specifically, the maternal grandmother seeks a writ directing the juvenile court to vacate a November 6, 2023, order stating that all requested relief and causes of action in this matter "were transferred to the Jefferson Circuit Court and remain pending there." The maternal grandmother contends that the November 6, 2023, order contravenes this court's mandate in Ex parte C.H., supra. For the reasons set forth herein, we grant the petition.

Background

What began as a simple case in which the maternal grandmother sought visitation with the grandchild has grown into a procedural quagmire. For purposes of this petition, we need not set forth the entire

procedural history that has led to this point. A thorough rendition of that history is set forth in Ex parte C.H., ___ So. 3d at ____. Here, we take up the procedural background with the issuance of a writ of mandamus in Ex parte C.H. on October 27, 2023. That case involved the maternal grandmother's petition to modify a "no-contact order" contained in the judgment that the juvenile court had entered in the original dependency action, which, according to materials previously submitted to this court in a previous petition in this matter, had been designated JU-18-293.01. The action arising from the maternal grandmother's petition ("the modification action") was designated case number JU-18-293.03. The no-contact order in the original dependency judgment restrained the maternal grandmother from having any contact of any nature with the grandchild. In her modification petition, the maternal grandmother contended that the circumstances that resulted in the no-contact order no longer existed, and she requested "'reasonable, specified rights of visitation'" with the grandchild. Id. at ____.

In C.H., the paternal grandparents moved the juvenile court to transfer the modification action to the Jefferson Circuit Court ("the circuit court"), where the maternal grandmother already had a pending

action seeking visitation with the grandchild ("the visitation action"). See Ex parte D.A., [Ms. CL-2022-1148, Mar. 24, 2023] ___ So. 3d ___ (Ala. Civ. App. 2023) (issuing writ ordering the juvenile court to transfer the visitation action to the circuit court).¹ On July 11, 2023, the juvenile court entered an order transferring the modification action to the circuit court. Ex parte C.H., ___ So. 3d at ___. We agreed with the maternal grandmother that the juvenile court had erred in doing so, explaining that,

"[b]ecause the maternal grandmother has asserted that new facts had arisen that render the continued application of the injunction against her inequitable, she is entitled to have the non-contact provision of the dependency judgment set aside and, pursuant to § 12-15-117(c), Ala. Code 1975, the Jefferson Juvenile Court has jurisdiction to consider that relief."

Ex parte C.H., ___ So. 3d at ___. We concluded: "At this juncture, however, we do not determine whether, in light of this court's decision in Ex parte S.H., 321 So. 3d 1 (Ala. Civ. App. 2019), among other things, the maternal grandmother can obtain an award of visitation with the grandchild." Id. at ___. We granted the writ the maternal grandmother

¹Ex parte D.A., [Ms. CL-2022-1148, Mar. 24, 2023] ___ So. 3d ___ (Ala. Civ. App. 2023), involved the first two mandamus petitions submitted to us in connection with this matter.

had requested, directing the juvenile court to vacate its July 11, 2023, transfer order. We note that nothing in the materials the parties submitted to us in connection with the current petition indicates that the juvenile court complied with that directive.

On October 27, 2023, the same day that Ex parte C.H. was released, the maternal grandmother filed in the juvenile court a motion in the modification action requesting "a temporary order granting her specified visitation rights" with the grandchild. Later that day, the paternal grandparents filed a response to the maternal grandmother's motion arguing that both the juvenile court and this court had determined that visitation issues should be heard in the circuit court and that "[t]he scope of issues in [the modification] action and any hearing or order should be limited to the issue of whether to dissolve" the no-contact order contained in the original dependency judgment. The maternal grandmother immediately responded that the paternal grandparents had misrepresented the holding in Ex parte C.H. and that this court had not held that she could not seek visitation as part of the modification action as the paternal grandparents contended. Instead, she said in her response, we had "expressly held [that] '[a]t this juncture, however, we

do not determine whether ... the maternal grandmother can obtain an award of visitation with the grandchild.'"

On October 30, 2023, the juvenile court entered the following order:

"Motion for pendente lite [sic] filed by [the maternal grandmother] is hereby other [sic]. Response to motion for orders pendente lite & motion to limit issues to injunction dissolution filed by [the paternal grandparents] is hereby other [sic]. This matter [sic] before this court on a petition for grandparents' visitation. This matter was transferred to the Bessemer Circuit Division case no: CV-2022-000028.02 assigned to Judge Alexis."

(We refer to the matter that the Bessemer Division of the circuit court designated as case no. CV-2022-000028.02 as "the transferred modification action.") Later that day, the maternal grandmother responded to the order explaining that she had voluntarily dismissed the transferred visitation action on July 11, 2023, and that the modification action that she had filed in the juvenile court, designated as JU-2018-293.03 and the subject of Ex parte C.H., was the only action she had filed that was still pending. She then renewed her request for a "temporary order granting her specified rights of visitation" with the grandchild. The juvenile court entered an order scheduling a hearing on the motion for pendente lite visitation for November 13, 2023.

On November 6, 2023, the paternal grandparents moved to set aside the order setting the hearing and to enter an order clarifying that the various actions that the maternal grandmother had filed in the juvenile court had been transferred to the circuit court. They also asked for the removal from the juvenile-court docket of any settings scheduled in those cases.

Later on November 6, the juvenile court entered an order in the modification action stating: "This case and all requested relief/causes of action were transferred to the Jefferson Circuit Court and remain pending there. The Clerk is directed to remove all settings from the docket." Because the October 30, 2023, order simply ordered "other," the meaning of which we cannot discern, we consider the November 6, 2023, order the operative order between the two, i.e., the November 6 order is the one in which the juvenile court let it be known that it would not consider the modification action despite our directive in Ex parte C.H.

Also on November 6, the maternal grandmother filed a motion to vacate the juvenile court's order entered earlier that day. Less than an hour later, she filed in the circuit court a notice of voluntary dismissal of the transferred modification action and, in the juvenile court, she filed a

notice of dismissal of the transferred modification action. In her petition to this court, the maternal grandmother points out that she filed the voluntary dismissal of the transferred modification action "to let the Jefferson Circuit Court know that the case was due to be dismissed because of the writ of mandamus issued" in the modification action in Ex parte C.H. As already noted, however, the materials submitted to us do not include an order of the juvenile court vacating the July 11, 2023, transfer order.²

²In their answer to the maternal grandmother's current petition for a writ of mandamus, the paternal grandparents state that the juvenile court entered a transfer order on July 19, 2023, and in that order, they say, the juvenile court terminated its remaining jurisdiction under § 12-15-117(a), Ala. Code 1975. The July 19 transfer order, submitted to this court for the first time as part of their answer to the current petition for a writ of mandamus, does not explicitly terminate the juvenile court's jurisdiction over the dependency action. See § 12-15-117(a) (providing that, "[o]nce a child has been adjudicated dependent, ... jurisdiction of the juvenile court shall terminate when the child becomes 21 years of age unless, prior thereto, the judge of the juvenile court terminates its jurisdiction by explicitly stating in a written order that it is terminating jurisdiction over the case involving the child" (emphasis added)). In fact, the "private dependency petition order" previously submitted to this court in connection with this matter explicitly states that the juvenile court was "NOT terminating its subject matter jurisdiction as to this matter for future filings/petitions" (capitalization in the original) and nothing in the July 19 transfer order makes that statement ineffective. Thus, as we held in Ex parte C.H., ___ So. 3d at ___, the juvenile court retained jurisdiction to modify its own dependency judgment of March 9,

Additionally on November 6, 2023, the paternal grandparents filed a response in the juvenile court to the maternal grandmother's motion to vacate and notice of voluntary dismissal, contending that, because the maternal grandmother had dismissed the transferred modification action, she had now twice dismissed her actions seeking visitation with the grandchild and that, pursuant to Rule 41, Ala. R. Civ. P., "any action for visitation should now be deemed adjudicated on the merits as dismissed with prejudice." They also contended that there remained no

2020, and it cannot "transfer" subject-matter jurisdiction to make such a modification to the circuit court.

As to the paternal grandparents' contention that the July 19, 2023, transfer order "superseded any previous order" entered in the modification action, as we set forth in Ex parte C.H., on July 7, 2023, the juvenile court entered an order stating, among other things, that "'[o]nce this Court enters an order to transfer this court no longer has jurisdiction.' The case-action summary for the modification action indicates that it was transferred to 'adult court' on July 7, 2023." ___ So. 3d at ___. An order the juvenile court entered on July 11, 2023, granted the paternal grandparents' motion to transfer the modification action. Based on the materials before us, the July 19 order did not supersede any previous orders but appears simply to have effectuated the juvenile court's July 7 decision to transfer the visitation action to the circuit court and its July 11 order granting the motion to transfer.

action in the juvenile court pursuant to which the maternal grandmother could "proceed to pendente lite hearing."

On November 9, 2023, the juvenile court denied the maternal grandmother's motion to vacate the November 6 order. On November 19, 2023, the maternal grandmother filed her petition for a writ of mandamus in this court. This court called for an answer, and the paternal grandparents filed an answer to the petition on December 11, 2023.

Analysis

The maternal grandmother contends that the juvenile court failed to comply with this court's mandate in Ex parte C.H., supra, when, in the November 6, 2023, order, it declared that the modification action and all other actions pending in the juvenile court had been transferred to the circuit court and directed the removal of the hearing scheduled in the modification action from its docket.

"A petition for a writ of mandamus is the proper method for bringing before an appellate court the question whether a trial court, after remand, has complied with the mandate" of an appellate court. Ex parte Edwards, 727 So. 2d 792, 794 (Ala. 1998).

"Mandamus is a drastic and extraordinary writ that will be issued only when there is: 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 United Serv. Stations, Inc., 628 So. 2d 501, 503 (Ala. 1993).

The maternal grandmother asserts that she has the right to seek modification of the no-contact order in the modification action "irrespective of any prior actions seeking visitation." We agree. "An appellate court's decision is final as to the matters before it, becomes the law of the case, and must be executed according to the mandate." Honea v. Raymond James Fin. Servs., Inc., 279 So. 3d 568, 570 (Ala. 2018). In Ex parte Alabama Power Co., 431 So. 2d 151 (Ala. 1983), our supreme court wrote:

"It is the duty of the trial court, on remand, to comply strictly with the mandate of the appellate court according to its true intent and meaning, as determined by the directions given by the reviewing court. No judgment other than that directed or permitted by the reviewing court may be entered'"

431 So. 2d at 155 (quoting 5 Am. Jur. 2d Appeal & Error § 991 (1962)).

In Ex parte C.H., ___ So. 3d ___, we held that, because the maternal grandmother, through her modification action, was seeking to modify the original dependency judgment of the juvenile court, that court had

jurisdiction to consider the modification pursuant to § 12-15-117(c), Ala. Code 1975. That statute provides that, "[i]n any case over which the juvenile court has jurisdiction, the juvenile court shall retain jurisdiction ... to enforce or modify any prior orders of the juvenile court unless otherwise provided by law." To the extent that our instructions in Ex parte C.H. may not have been clear, we now make explicit our directive in that case: the juvenile court must vacate its order of July 11, 2023, transferring the modification action to the circuit court. The maternal grandmother is entitled to have the juvenile court consider her request to modify the no-contact order.

That does not end our inquiry, however. In their answer to the current petition, the paternal grandparents argue that the maternal grandmother has twice voluntarily dismissed her visitation actions in the circuit court, once in the original visitation action, designated as case number CV-2022-28.00, and then again in the transferred modification action. Therefore, they say, pursuant to the "two-dismissal rule" of Rule 41, the issue of the maternal grandmother's visitation must be deemed adjudicated on the merits, and the juvenile court is precluded from considering the issue.

Pursuant to § 12-15-114(a), juvenile courts "exercise exclusive original jurisdiction of juvenile court proceedings in which a child is alleged ... to be dependent." As mentioned, § 12-15-117(c) provides that, "[i]n any case over which the juvenile court has jurisdiction, the juvenile court shall retain jurisdiction over an individual of any age to enforce or modify any prior orders of the juvenile court unless otherwise provided by law" See also § 12-15-117.1, Ala. Code 1975; S.R. v. B.G., [Ms. CL-2023-0074, Nov. 3, 2023] ___ So. 3d ___, ___ (Ala. Civ. App. 2023) (explaining that § 12-15-117.1 provides that "the juvenile court retains jurisdiction over enforcement or modification actions related to judgments entered by those courts in the exercise of juvenile-court jurisdiction").

We have already determined that, in light of our opinion in Ex parte C.H., supra, leaving the transferred modification action in the circuit court was not an option for the juvenile court. The juvenile court was required to vacate its July 11, 2023, order purporting to transfer the modification action to the circuit court because the juvenile court --- not the circuit court -- had jurisdiction over that action. § 12-15-117(c). Therefore, the juvenile court's July 11 order failed to confer jurisdiction

on the circuit court, and any action taken in the circuit court was void. See Ex parte D.A., [Ms. CL-2022-1148, Mar. 24, 2023] ___ So. 3d ___, ___ (citing C.D.S. v. K.S.S., 963 So. 2d 125, 130 n.5 (Ala. Civ. App. 2007)) (recognizing that "a circuit court could not confer jurisdiction on a juvenile court by purporting to transfer a custody action to the juvenile court when the circuit court had jurisdiction over custody matters pursuant to its continuing jurisdiction conferred by the parties' divorce action"). Because the circuit court lacked subject-matter jurisdiction over the modification action, the juvenile court's purported transfer of that action to the circuit court was a nullity. See Alabama Dep't of Corr. v. Montgomery Cnty. Comm'n, 11 So. 3d 189, 193 (Ala. 2008) (holding that complaint that failed to trigger subject-matter jurisdiction of the circuit court was a nullity). Thus, the maternal grandmother's attempt to voluntarily dismiss the transferred modification action was of no consequence, and we reject the paternal grandparents' argument that the purported voluntary dismissal operated as an adjudication on the merits under Rule 41.³

³We remind the parties that this current petition presents us with the issue whether the juvenile court must consider the maternal grandmother's motion to modify the no-contact order contained in the

Conclusion

The juvenile court erred in purporting to transfer the maternal grandmother's modification action to the circuit court and in refusing to consider that action itself. The maternal grandmother has demonstrated that she is entitled to have the juvenile court consider whether modification of the no-contact order is warranted. Therefore, the juvenile court is directed to vacate the order of July 11, 2023, purporting to transfer the modification action to the circuit court and to consider the maternal grandmother's request for modification of the no-contact order. Based on the arguments currently before us, we do not reach the efficacy of the maternal grandmother's motion for "temporary visitation rights" with the grandchild while consideration of such modification is pending.

PETITION GRANTED; WRIT ISSUED.

Moore, P.J., and Edwards and Hanson, JJ., concur.

original dependency order. We therefore find irrelevant the paternal grandparents' contentions that the maternal grandmother still has a visitation action pending before the circuit court and that she can somehow pursue the modification of the dependency action's no-contact order through that remaining visitation action, thus giving her an adequate remedy negating the need for a writ of mandamus.