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# ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2015-2016

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2140981

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**Ex parte Byron Stouffer**

**PETITION FOR WRIT OF MANDAMUS**

**(In re: Byron Stouffer**

**v.**

**Heather Stouffer Wilson)**

**(Russell Circuit Court, DR-14-53.01)**

PER CURIAM.

Byron Stouffer ("the father") petitions this court for a writ of mandamus directing the Russell Circuit Court ("the

2140981

trial court") to enter an order vacating its August 26, 2015, order and all other orders issued in case no. DR-14-53.01 based on its purported lack of subject-matter jurisdiction. We deny the petition.

#### Procedural History

The father and Heather Stouffer Wilson ("the mother") were divorced by a judgment entered by the Hoke County District Court in North Carolina ("the North Carolina court") on August 25, 2003; that judgment incorporated a settlement agreement entered into by the parties that, among other things, awarded the parties joint legal custody of the parties' child, C.J.S. ("the child"), and awarded the father primary physical custody of the child, subject to the mother's visitation. On August 15, 2007, the North Carolina court entered a judgment incorporating an agreement of the parties that, among other things, awarded primary physical custody of the child to the mother, subject to the father's visitation. The mother and the father were previously before this court in appeal no. 2140061, in which we affirmed, without an opinion, a September 19, 2014, judgment of the trial court declining to modify custody of the child pursuant to the father's custody-

2140981

modification petition following the trial court's domestication of the North Carolina modification judgment. See Stouffer v. Wilson (No. 2140061, July 10, 2015), \_\_\_ So. 3d \_\_\_ (Ala. Civ. App. 2015) (table). This court entered its certificate of judgment in Stouffer on July 29, 2015.

On July 22, 2015, the mother filed a petition for a finding of contempt against the father in the trial court. She asserted, among other things, that, at that time, she was a resident of Colorado and that, on July 19, 2015, the date on which the father's summer visitation with the child in Pennsylvania, where the father resides, was to end, the mother had received a text message from the father informing her that he was not returning the child to her custody. The mother sought the issuance of an instanter order requiring the father to return the child to her custody, an award of temporary and exclusive custody of the child to the mother, and pendente lite relief. The trial court filed an instanter order on July 22, 2015, ordering law-enforcement authorities to dispatch a deputy to facilitate the orderly transfer of the child from any person who had custody of the child to the mother. On that same date, the trial court entered an order denying the

2140981

mother's request for pendente lite relief. Also on July 22, 2015, the father filed an answer to the mother's contempt petition and a custody-modification petition, seeking primary physical custody of the child.

On July 27, 2015, the mother filed in the Franklin County Branch of the Court of Common Pleas of the 39th Judicial District of Pennsylvania ("the Pennsylvania court") a petition for registration of the trial court's September 19, 2014, judgment and its July 22, 2015, order, and for the "expedited enforcement" of both. In her petition, the mother asserted, among other things, that Pennsylvania law-enforcement authorities had been unwilling to facilitate the transfer of the child without first having the trial court's July 22, 2015, order registered in Pennsylvania. She sought attorney's fees, an expedited hearing, immediate custody of the child pursuant to the orders of the trial court, and an order requiring that law-enforcement authorities assist her in obtaining physical custody of the child. On July 28, 2015, the Pennsylvania court entered an order registering the trial court's September 19, 2014, judgment and its July 22, 2015, order; awarding the mother sole physical custody of the child;

2140981

and ordering Pennsylvania law-enforcement authorities to enforce the terms of the Pennsylvania court's order. The mother filed a petition for contempt in the Pennsylvania court on August 4, 2015; she asserted therein, among other things, that the child had refused to leave the father's home despite the best efforts of the Franklin County Sheriff's Department ("the Pennsylvania sheriff's department"). The mother requested that the Pennsylvania court set a contempt hearing, that it order the father to appear in court with the child, and that it enter an order directing the Pennsylvania sheriff's department to physically remove the child from the father's home and transfer him to the mother's custody. On August 6, 2015, the father filed in the Pennsylvania court an emergency petition for special relief. The father sought sole physical custody of the child based on his concerns for the child's safety and best interests.

On August 13, 2015, the Pennsylvania court entered an order finding that temporary emergency jurisdiction existed under the Pennsylvania Uniform Child Custody Jurisdiction and Enforcement Act, 23 Pa. Cons. Stat. Ann. § 5401 et seq., concluding that, due to safety concerns for the child, an

2140981

emergency situation existed and suspending enforcement of its order directing that the child be returned to the mother's custody. The Pennsylvania court, repeatedly noting the temporary nature of its emergency order, further indicated that it was "in no way assuming permanent jurisdiction" and that the trial court would be contacted and advised of the emergency order. The Pennsylvania court entered a second order on August 13, 2015, concluding that the father's actions had not been willful with regard to the child's failure to return to the mother and denying the mother's petition for contempt. On August 14, 2015, the Pennsylvania court entered an order indicating, among other things, that it had conducted an emergency hearing pursuant to the father's request that it exercise temporary emergency jurisdiction as to the child; that the Pennsylvania court had contacted the trial court; and that, "for the six months prior to the filing of [the] proceedings [in the Pennsylvania court] the child's home state for jurisdictional purposes remains ... Alabama." The Pennsylvania court ordered that the emergency custody order would terminate on November 11, 2015, and it directed the

2140981

parties to resume proceedings in the trial court within that period.

On August 19, 2015, the mother filed a motion in the trial court seeking an emergency order from the trial court setting a hearing and awarding her "sole permanent and exclusive custody" of the child. The trial court entered an order setting the mother's motion for a hearing on August 26, 2015. On August 21, 2015, the father filed in the trial court an objection to the setting of an emergency hearing and a motion seeking to cede jurisdiction to Pennsylvania. In his motion to cede jurisdiction, the father admitted that, for purposes of the present case, Alabama would be the home state of the child, although he also argued that it would also be the least convenient forum. The trial court entered an order on August 26, 2015, noting that, at the hearing on that date, the father had appeared through counsel and that the father's counsel had moved to dismiss the father's request to modify custody, which the trial court had granted. The trial court stated, in pertinent part:

"[The father] submitted himself to the jurisdiction of this Court on July 22, 2015, by seeking yet another modification of custody then decided, once he got a favorable ruling in [the]

2140981

Pennsylvania [court] that [this court] no longer had jurisdiction.

"This Court does not find it necessary to decide whether or not it had continuing jurisdiction to modify custody since there is no request to modify pending before it. The only issue is whether this court has jurisdiction to enforce its Order.

"Further the Court found jurisdiction at the commencement of the action.

"The argument of the [father] is essentially that this court, nor any other court, can enforce the custody order of September 29, 2014. This court finds such a position to be untenable. Courts have inherent power to enforce [their] own orders."

The trial court then directed the father to return the child to the mother within seven days of the entry of the order and noted that his failure to do so would constitute contempt of court for which the father would be placed in jail until he purged himself of the contempt. On September 1, 2015, the father filed a motion to alter, amend, or vacate the trial court's August 26, 2015, order, arguing that the trial court lacked jurisdiction over the child-custody determination. The trial court entered an order denying the father's motion on September 2, 2015. On that same date, the trial court entered an order denying a motion for a stay that had been filed by the father. The father filed a petition for a writ of



2140981

mandamus in this court on that same date. The father also filed a request for a stay, which this court granted pending further order by this court.

### Analysis

"A writ of mandamus is an extraordinary remedy, and it "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 Monsanto Co., 862 So. 2d 595, 604 (Ala. 2003) (quoting Ex parte Butts, 775 So. 2d 173, 176 (Ala. 2000), quoting in turn Ex parte United Serv. Stations, Inc., 628 So. 2d 501, 503 (Ala. 1993)).

The father argues in his petition that the trial court did not have subject-matter jurisdiction to enter its August 26, 2015, order. He asserts that Ala. Code 1975, § 30-3B-202, a part of the Alabama Uniform Child Custody Jurisdiction and Enforcement Act ("the UCCJEA"), Ala. Code 1975, § 30-3B-101 et seq., which discusses a court's continuing, exclusive jurisdiction over a child-custody determination, applies to enforcement of a child-custody determination in addition to modifications of a child-custody determination. The father

2140981

argues that the trial court lost jurisdiction over the custody determination when the mother moved to Colorado. He cites Peterson v. Peterson, 965 So. 2d 1096, 1101 (Ala. Civ. App. 2007), in which this court affirmed a judgment of the Mobile Circuit Court deferring to the jurisdiction of a North Carolina court with regard to issues of custody and visitation raised pursuant to a petition for modification of custody of the children at issue in that case. In the present case, however, unlike in Peterson, neither party is currently seeking a modification of custody.

Although the father argues that § 30-3B-202 applies to enforcement of child-custody determinations, in addition to modifications, we disagree. Rather, enforcement of child-custody determinations is governed by Article 3 of the UCCJEA. Section 30-3B-303(a), Ala. Code 1975, provides:

"(a) A court of this state shall recognize and enforce a child custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this chapter [i.e., the UCCJEA] or the determination was made under factual circumstances meeting the jurisdictional standards of this chapter and the determination has not been modified in accordance with this chapter."

Section 30-3B-306, Ala. Code 1975, provides:

2140981

"(a) A court of this state may grant any relief normally available under the law of this state to enforce a registered child custody determination made by a court of another state.

"(b) A court of this state shall recognize and enforce, but may not modify, except in accordance with Article 2 [of the UCCJEA], a registered child custody determination of a court of another state."

Reading the UCCJEA as a whole, as we must, see, e.g., Barton v. Liberty Nat'l Life Ins. Co., [Ms. 2130443, Dec. 12, 2014] \_\_\_ So. 3d \_\_\_, \_\_\_ (Ala. Civ. App. 2014), it is clear that the legislature did not intend for § 30-3B-202 to apply to enforcement of custody determinations; rather, a separate section was devoted to that issue. The father has failed to argue before this court in his petition that the judgment of the North Carolina court awarding primary physical custody of the child to the mother was entered without jurisdiction or that that judgment was not properly registered in this state. Because the father has failed to prove a clear legal right to the order sought in his petition for a writ of mandamus, we deny the petition.

PETITION DENIED.

All the judges concur.