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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2018-2019

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Ex parte J.R.H.

PETITION FOR WRIT OF MANDAMUS

**(In re: State of Alabama Department of Human Resources
ex rel. A.D.D.)**

v.

J.R.H.)

(Morgan Juvenile Court, CS-18-900072)

THOMPSON, Presiding Judge.

J.R.H. ("the father") filed a petition for a writ of mandamus requesting that this court direct the Morgan Juvenile

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Court ("the juvenile court") to vacate its order denying his motion to dismiss filed in this action and to enter an order granting his motion to dismiss. For the reasons set forth below, we deny the petition.

The materials submitted to this court in support of the father's petition indicate that on April 11, 2008, the Morgan Circuit Court ("the circuit court") entered an order dismissing a complaint filed by B.D.D. ("the mother") against the father insofar as it sought a divorce; the mother asserted initially that the parties were married at common law. In that order, however, the circuit court explained that the mother and the father had agreed that no common-law marriage existed between them. The circuit court also ordered that the mother's and the father's claims pertaining to custody of their two minor children and child support be transferred to the juvenile court.

On March 3, 2009, the juvenile court entered a judgment in which it adjudicated the father's paternity of the two minor children, awarded the mother sole custody of the children subject to the father's rights of visitation, and ordered the father to pay \$177 per month in child support.

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That March 3, 2009, judgment was entered in case number CS-08-133.

In January 2015, the State of Alabama Department of Human Resources ("DHR"), on behalf of the mother, filed a petition in the juvenile court seeking to have the father held in contempt for failure to pay child support and requesting a modification of the father's child-support obligation. That action was designated by the juvenile-court clerk as case number CS-13-90211.01. The materials submitted to this court do not indicate whether an order was entered in that action or whether the action was renumbered. However, it is clear that the petition originally filed in case number CS-13-90211.01 sought to enforce and modify the \$177 per month child-support obligation established in the March 3, 2009, judgment entered in case number CS-08-133. The materials submitted to this court indicate that the juvenile court entered in case number CS-08-133.01 an April 21, 2015, judgment addressing the claims asserted in DHR's January 2015 petition filed on behalf of the mother in case number CS-13-90211.01. In that April 21, 2015, judgment entered in case number CS-08-133.01, the juvenile court found the father to be \$14,391.97 in arrears on his

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child-support obligation, ordered the father to pay \$100 per month toward that accumulated child-support arrearage, and increased the father's regular monthly child-support obligation to \$650 per month.

On March 3, 2018, DHR, on behalf of the mother, filed a petition to modify the father's child-support obligation. That action was designated as case number CS-08-133.02. In that action, DHR alleged that the mother no longer had physical custody of the children, and it sought to suspend the father's child-support obligation being paid to the mother, but DHR requested an increase in the child-support-arrearage payments established in the April 21, 2015, judgment. The father answered and filed a counterclaim seeking to enforce and/or to modify the visitation provisions set forth in the March 3, 2009, judgment and to modify custody of the children. In his answer and counterclaim, the father alleged that the mother had left the children with her mother, A.A.D. ("the maternal grandmother").

Also on March 3, 2018, DHR, on behalf of the maternal grandmother, filed a separate action against the father seeking to "establish" a child-support obligation in favor of

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the maternal grandmother and seeking an award of retroactive child support. DHR's March 3, 2018, action filed on behalf of the maternal grandmother was designated as case number CS-18-900072, and that action is the one from which this petition for a writ of mandamus arises. On March 30, 2019, the father moved to dismiss case number CS-18-900072. In his motion to dismiss, the father specifically referenced Rule 12(b)(1), Ala. R. Civ. P. (permitting dismissal on the basis of "lack of jurisdiction over the subject matter"), and argued that the maternal grandmother had no right to an award of child support.

DHR replied to the father's motion to dismiss by arguing that the maternal grandmother had applied for services from the Child Support Enforcement Division of the Morgan County Department of Human Resources ("the Morgan County DHR") and that, when she had done so, the maternal grandmother had alleged that she had custody of the children. DHR argued that it was attempting to enforce the father's continuing obligation to contribute to the support of the children.

On April 10, 2019, the juvenile court entered an order denying the father's motion to dismiss. The father filed a

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timely petition for a writ of mandamus, arguing that the juvenile court erred in failing to grant his motion to dismiss case number CS-18-900072.

""The denial of a motion to dismiss or a motion for a summary judgment generally is not reviewable by a petition for writ of mandamus, subject to certain narrow exceptions"" Ex parte University of South Alabama, 183 So. 3d 915, 918 (Ala. 2016) (quoting Drummond Co. v. Alabama Dep't of Transp., 937 So. 2d 56, 57 (Ala. 2006), quoting in turn Ex parte Haralson, 853 So. 2d 928, 931 n.2 (Ala. 2003)). "In all but the most extraordinary cases, an appeal is an adequate remedy" Ex parte Watters, 212 So. 3d 174, 181 (Ala. 2016) (quoting Ex parte Jackson, 780 So. 2d 681, 684 (Ala. 2000) (emphasis added)). In Ex parte U.S. Bank National Ass'n, 148 So. 3d 1060 (Ala. 2014), this Court recognized that one of the exceptions under which this Court will review by a petition for a writ of mandamus the denial of a motion to dismiss or a motion for a summary judgment is when there is a question regarding the trial court's subject-matter jurisdiction. 148 So. 3d at 1064."

Ex parte Sanderson, 263 So. 3d 681, 685 (Ala. 2018).

In his petition for a writ of mandamus, the father acknowledges the limited review available to a petitioner challenging the denial of a motion to dismiss. However, the father argues that he is challenging the subject-matter jurisdiction of the juvenile court. Therefore, he argues, his petition falls within the "subject-matter jurisdiction

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exception" recognized in Ex parte Sanderson, supra, and similar cases.

""Subject-matter jurisdiction concerns a court's power to decide certain types of cases."" Ex parte B.W., 257 So. 3d 334, 335 (Ala. Civ. App. 2018) (quoting Bates v. Stewart, 99 So. 3d 837, 850 (Ala. 2012), quoting in turn Ex parte Seymour, 946 So. 2d 536, 538 (Ala. 2006)). Among other things, the father argues that he does not have any children with the maternal grandmother, and, therefore, he says, the juvenile court lacks subject-matter jurisdiction to order him to pay child support to her or to DHR on her behalf. The father cites no authority in support of his contention that the maternal grandmother could not seek an award of child support unless she was the mother of the father's children.

In fact, the father acknowledges at least one basis pursuant to which the juvenile court may award child support to a nonparent. The father cites § 12-15-114, Ala. Code 1975, which governs a juvenile court's jurisdiction over juvenile matters, i.e., over cases involving delinquent or dependent children. The father contends that the children are not

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dependent and have not been alleged to be dependent.¹ The father's brief in support of his petition for a writ of mandamus alleges that, "[u]pon information and belief," the maternal grandmother has not filed a petition for custody under the dependency statutes. However, the statements of counsel in a brief submitted to this court are not evidence. Ex parte Manning, 170 So. 3d 638, 645 n.2 (Ala. 2014). We recognize that it is difficult to prove a negative, i.e., to demonstrate that no dependency petition seeking custody or order determining that the children are dependent and awarding custody to the maternal grandmother exists. However, in certain circumstances, our appellate courts have allowed affidavits in support of a petition for a writ of mandamus to establish facts necessary for review. See, e.g., Ex parte Guaranty Pest Control, Inc., 21 So. 3d 1222 (Ala. 2009). Further, the facts of this case, and the possible interrelated litigation concerning the children, have been complicated by inartful pleading.

""In considering a Rule 12(b) [], Ala. R. Civ. P., motion to dismiss for want of ... jurisdiction, a court must consider as true the allegations of the

¹There is no dispute that the children are not delinquent or alleged to be delinquent.

plaintiff's complaint not controverted by the defendant's affidavits, Robinson v. Giarmarco & Bill, P.C., 74 F.3d 253 (11th Cir. 1996), and Cable/Home Communication Corp. v. Network Productions, Inc., 902 F.2d 829 (11th Cir. 1990), and 'where the plaintiff's complaint and the defendant's affidavits conflict, the ... court must construe all reasonable inferences in favor of the plaintiff.' Robinson, 74 F.3d at 255 (quoting Madara v. Hall, 916 F.2d 1510, 1514 (11th Cir. 1990)). 'For purposes of this appeal ..., the facts as alleged by the ... plaintiff will be considered in a light most favorable to him [or her].' Duke v. Young, 496 So. 2d 37, 38 (Ala. 1986).""

Ex parte Barton, 976 So. 2d 438, 442-43 (Ala. 2007) (quoting Ex parte Puccio, 923 So. 2d 1069, 1072 (Ala. 2005), quoting in turn Ex parte McInnis, 820 So. 2d 795, 798 (Ala. 2001)). See also Ex parte Diefenbach, 64 So. 3d 1091, 1093-94 (Ala. Civ. App. 2010) (same).

In its petition filed in this case, DHR alleged that the father should be responsible for current, future, and retroactive support of the children. Other than indicating that it was being brought on behalf of the maternal grandmother, the petition made no mention of the maternal grandmother. The father alleged in his motion to dismiss that he did not have a child or children with the maternal grandmother and that the maternal grandmother had not filed a dependency action pertaining to the children. DHR replied to

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the father's motion to dismiss by alleging that the maternal grandmother had made application with the Morgan County DHR for child-support services and that, in making that application, the maternal grandmother had alleged that she had custody of the children. Thus, this court cannot construe the allegations whether the maternal grandmother has custody of the children in favor of the father, because that fact is not undisputed. Ex parte Barton, supra. There is no pleading or affidavit in the materials submitted to this court in which the father disputes that the maternal grandmother claims to have custody of the children or that she does have custody of the children.

Regardless, DHR argues that it may seek support from the father whether or not the maternal grandmother has custody of the children (although DHR does not concede that she does not have custody). As DHR points out, the juvenile court is not limited in its exercise of jurisdiction to only issues of delinquency or dependency under § 12-15-114. In his petition for a writ of mandamus, the father ignores the other bases for a juvenile court's jurisdiction. One pertinent basis upon which the juvenile court could exercise subject-matter

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jurisdiction in this action is found in § 12-15-115(7), Ala. Code 1975, which provides that a juvenile court has original jurisdiction over "[p]roceedings to establish, modify, or enforce support, visitation, or custody when a juvenile court previously has established parentage."

It is undisputed both that the juvenile court established the father's paternity of the children in its March 3, 2009, judgment in case number CS-08-133 and that, in this current action, DHR is seeking an award of child support or to enforce the father's child-support obligation in favor of the maternal grandmother. Thus, because § 12-15-115(7) provides that a juvenile court has jurisdiction over an action concerning the support of children already within the jurisdiction of the juvenile court--specifically, when a juvenile court has established the parentage of the children at issue--the juvenile court in this case had jurisdiction to consider DHR's petition. R.Z. v. S.W., 141 So. 3d 1099, 1101 n.1 (Ala. Civ. App. 2013) ("[J]uvenile courts retain jurisdiction in '[p]roceedings to establish, modify, or enforce support, visitation, or custody when a juvenile court previously has established parentage.' Ala. Code 1975, § 12-15-115.").

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DHR contends that, as part of the juvenile court's jurisdiction under § 12-15-115(7), the juvenile court may consider its claim asserted in that court seeking child support from the father pursuant to the Child Support Act of 1979 ("the Act"), § 38-10-1 et seq., Ala. Code 1975. We note that the Act itself specifies that an action pursuant to the Act may be filed in the juvenile court. See § 38-10-7(a), Ala. Code 1975 ("All actions ... to establish, modify, or enforce support obligations may be brought in either the juvenile court or district court or the circuit court or appropriate federal court"). Pursuant to the provisions of the Act, DHR has a subrogation right against any child-support payments received for the benefit of a child for whom it provides government-assistance benefits. This court has explained:

"Pursuant to § 38-10-1 et seq., Ala. Code 1975, which section was first enacted in 1979, DHR is authorized to initiate child-support enforcement actions as an adjunct to its administration of state Aid to Families with Dependent Children (AFDC) benefits. All AFDC recipients are deemed under state law to have assigned to DHR all of their rights to receive child support, up to the amount of aid paid by DHR. Section 38-10-5, Ala. Code 1975. By statute, the payment of aid by DHR creates a debt due and owing to DHR by the parent owing support; however, in cases in which a court has ordered child

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support incident to a divorce judgment [(or any other support order)], the debt is limited to the amount specified in that judgment. Section 38-10-6, Ala. Code 1975. Whenever anyone owing a support obligation has failed to provide support to an AFDC recipient, DHR is empowered to initiate civil actions to establish or enforce support obligations; these actions may be brought in the juvenile court, the district court, the circuit court, or the 'appropriate federal court.' Section 38-10-7, Ala. Code 1975. Thus, we conclude that the juvenile court had subject-matter jurisdiction in 1982 to impose a support obligation upon the father, and that DHR could seek to enforce that judgment within 20 years of its entry. See § 6-2-32, Ala. Code 1975 (statute of limitations concerning actions on judgments)."

State Dep't of Human Res. v. R.L.R., 743 So. 2d 495, 497-98 (Ala. Civ. App. 1999).

The father insists that in the absence of a dependency petition seeking custody or an order determining that the children are dependent and awarding the maternal grandmother custody (facts that are not established in the materials submitted to this court), the juvenile court may not award DHR child support under the Act. DHR, however, contends that such an award is authorized under the authority of Ex parte R.S.C., 853 So. 2d 228 (Ala. Civ. App. 2002). In dicta in that case, this court held that the State had the authority to seek child support from a father for reimbursement of benefits paid for

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his children who were living with an aunt.² In that case, this court stated:

"The aunt, as the physical custodian^[3] of the children in July 1999, had a substantial interest and a personal stake in receiving support on behalf of the children. Because the father was not paying the support he had agreed to pay, the aunt applied for, and received, aid from the State. In return, she assigned the right to enforce the child-support order to the State. Clearly, the State had an interest in protecting the children's right to continuing support from their father, and the State had an interest in protecting its right to be reimbursed for any aid paid on behalf of the

²In his reply brief, the father incorrectly states that in Ex parte R.S.C., an order had awarded the aunt physical custody of the children. The opinion in that case is not clear whether there was an order or judgment awarding the aunt physical custody of the child. The opinion states:

"On February 10, 1999, the State, on behalf of A.S. ('the aunt'), filed a petition in the Calhoun County Juvenile Court for child support, because she had physical custody of the two children. The aunt requested that the father pay child support to her for the care and support of the two children. The father moved to dismiss, arguing that the aunt lacked standing because she was not the 'legal and/or proper' custodian of the children. The father attached an affidavit to the motion; in that affidavit he stated that he had never given the mother permission to transfer legal custody of the children to the aunt but that he recognized that the children 'went to visit with and stay with [the aunt] awhile back.'"

Ex parte R.S.C., 853 So. 2d at 232.

³See note 2, supra.

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children. § 38-10-6, Ala. Code 1975; State ex rel. McDaniel v. Miller, 659 So. 2d 640 (Ala. Civ. App. 1995)."

Ex parte R.S.C., 853 So. 2d at 236-37.

The father in R.S.C. argued that the support order was void because the aunt had "lacked standing" to seek child support for the benefit of the children because she was not a legal custodian of the children, and, in dicta, this court rejected that argument. Ex parte R.S.C., supra, might provide authority for DHR's claim that it has a right to seek child support on behalf of the maternal grandmother regardless of whether she has a court order awarding her custody of the children. We need not--and, given the lack of necessary information, cannot--resolve the issue whether DHR has the authority to prevail or will prevail on its claim for support in this action. The materials submitted to this court indicate that the juvenile court has subject-matter jurisdiction to consider the issue of support for the children. The juvenile court might well determine, based on the evidence presented to it, that DHR is not authorized to obtain support on behalf of the maternal grandmother. However, this case involves the issue of whether DHR has the

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authority to seek that support; that issue does not implicate the subject-matter jurisdiction of the juvenile court to consider actions involving the support of children who are already subject to that court's jurisdiction. See, e.g., Luquire v. State, 42 Ala. App. 652, 653, 177 So. 2d 106, 107 (1965) ("While the judge acted without authority, the jurisdiction of the court was not exceeded") (quoting Smith v. State, 23 Ala. App. 72, 72, 121 So. 692, 692 (1929))).

The father has an adequate remedy on appeal with regard to the argument he asserts in this petition for a writ of mandamus. "A petition for a writ of mandamus may not be granted where the petitioner has an adequate remedy by appeal." Ex parte Gallant, 261 So. 3d 350, 354 (Ala. Civ. App. 2017) (quoting Ex parte Americas, 855 So. 2d 544, 547 (Ala. Civ. App. 2003)).

In his brief in support of his petition for a writ of mandamus, the father raises arguments concerning the right to support, the interplay of the various actions and claims pending in the juvenile court, whether the maternal grandmother may seek custody of the children, and the nature

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of any burden of proof the maternal grandmother might have in seeking custody. Those arguments do not implicate the subject-matter jurisdiction of the juvenile court. Accordingly, those issues are not appropriate for review in this petition for a writ of mandamus regarding an order denying the father's motion to dismiss for lack of subject-matter jurisdiction. Ex parte Sanderson, 263 So. 3d at 685; Ex parte Liberty Nat'l Life Ins. Co., 825 So. 2d 758, 762 (Ala. 2002).

Given the limited materials submitted to this court, we cannot say that the father has demonstrated that he is entitled to relief sought in his petition for a writ of mandamus.

PETITION DENIED.

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