

REL: September 18, 2020

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) 229-0649), of any typographical or other errors, in order that corrections may be made before the opinion is printed in Southern Reporter.

ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2020

2190617

A.M.

v.

A.K.

**Appeal from Jefferson Circuit Court
(DR-18-900613)**

MOORE, Judge.

A.M. ("the father") appeals from a judgment entered by the Jefferson Circuit Court ("the circuit court") awarding custody of his minor child, C.M. ("the child"), to the child's

2190617

maternal aunt, A.K. ("the maternal aunt"). We dismiss the appeal as arising from a void judgment.

Procedural History

The child was born in 2005 of a marriage between the father and N.K. ("the mother"). The father and the mother divorced in 2007. In the divorce judgment, which was entered by the circuit court, the mother was awarded the "care, custody and control" of the child,¹ subject to the father's right to visitation. In 2016, the mother died. After the mother's death, the maternal aunt assumed physical custody of the child.

On May 1, 2018, the maternal aunt filed in the circuit court a complaint seeking custody of the child.² In the

¹The divorce judgment does not appear in the record, but it was summarized, as quoted, by the circuit court in the judgment at issue in this appeal. The circuit court further noted that the divorce judgment had awarded the mother custody of the other child of the marriage, who, at the time of these proceedings, had reached the age of majority.

²The father commenced an action in 2016 to obtain custody of the child; that action resulted in a judgment awarding him and the maternal aunt joint custody of the child. In 2017, the maternal aunt commenced an action to modify that judgment. In the modification action, the circuit court vacated the judgment entered in the 2016 action because it determined that that judgment was a void judgment; it also dismissed the 2017 modification action, which prompted the maternal aunt to file

2190617

complaint, labeled "Petition for Custody," the maternal aunt alleged that the father was unfit to care for the child because, she asserted, he had been convicted and previously imprisoned for having committed felony assault upon the mother in 2008 in the presence of the child, his visitation with the child had subsequently been restricted,³ his relationship with the child had become strained, and he had not financially supported the child after the death of the mother. On November 13, 2018, the father filed an answer denying the material allegations of the complaint.

On the date of the filing of the answer, the circuit court set the trial of the case for June 3, 2019, and notified the parties of the trial date. The father did not appear for the trial.⁴ The circuit court proceeded to conduct the trial in his absence, taking oral testimony and receiving other

the underlying action.

³The maternal aunt alleged that the divorce judgment had been modified in 2008 to suspend the father's visitation until he completed parenting classes, at which point his visitation would be limited to supervised visitation every other Sunday for four hours.

⁴The circuit court had earlier fined the father \$500 for failing to appear at a settlement conference that had been scheduled for February 15, 2019.

2190617

evidence. On January 31, 2020,⁵ the circuit court entered a judgment awarding custody of the child to the maternal aunt and specifically finding, among other things:

"This Court has jurisdiction to make custody determinations in actions where custody is in controversy where a non-parent is a party for so long as at least one (1) parent is a party and there are no allegations of dependency. As such, this case is properly before the Court.

". . . .

"That the Court hereby finds that a material change in circumstances exists that warrants a modification of the Final Judgment of Divorce entered on July 31, 2007, which awarded the Mother of the [child] care, custody, and control of the ... child with the ... Father in this cause being award standard visitation. The Mother of the ... child died on March 9, 2016. Since the death of the child's Mother, the ... child has been in the primary physical care and custody of the ... maternal aunt, who has been supporting and providing full-time the daily needs of [the] child. The ... child does not have a significant relationship with the ... Father. The Court finds that a modification awarding sole legal and physical custody of the ... child to the ... maternal aunt[] will materially promote the ... child's best interest and welfare to the extent that [the] positive good brought about from said modification will more than offset the inherent effects caused by uprooting the ... child."

⁵The record contains no explanation for the six-month delay between the trial and the entry of the judgment.

2190617

The circuit court awarded the father supervised visitation with the child and ordered the father to pay the maternal aunt child support.

On March 2, 2020, the father filed a motion to alter, amend, or vacate the circuit court's judgment.⁶ In that motion, the father argued, among other things, that the circuit court lacked subject-matter jurisdiction to decide the custody of the child because the maternal aunt had, in substance, filed a dependency petition, which, he said, falls within the exclusive jurisdiction of the juvenile court. See Ala. Code 1975, § 12-15-114. The circuit court denied the father's postjudgment motion on March 31, 2020. On May 12, 2020, the father filed his notice of appeal.

Standard of Review

On appeal, the father argues only that the circuit court lacked subject-matter jurisdiction. "Questions of law, such as whether a court has subject-matter jurisdiction, are

⁶Pursuant to Rule 59, Ala. R. Civ. P., the father generally had 30 days from the entry of the judgment to file his postjudgment motion. However, because the 30th day following the entry of the judgment on January 31, 2020 -- March 1, 2020 -- fell on a Sunday, the deadline was extended to March 2, 2020, by operation of Rule 6, Ala. R. Civ. P.

2190617

reviewed de novo.'" J.H. v. C.Y., 161 So. 3d 233, 237 (Ala. Civ. App. 2014) (quoting K.R. v. Lauderdale Cty. Dep't of Human Res., 133 So. 3d 396, 404 (Ala. Civ. App. 2013)).

Discussion

As a general rule, "[o]nce a circuit court has acquired jurisdiction over a child pursuant to a divorce and decides the question of custody, the circuit court retains jurisdiction over custody until the child reaches majority." S.B. v. P.G.B., 611 So. 2d 392, 394 (Ala. Civ. App. 1992). However, as an exception to that rule, "in the event a genuine dispute between a parent and a third party arises as to the dependency of the child, the juvenile court assumes exclusive jurisdiction to adjudicate that dispute." P.S.R. v. C.L.P., 67 So. 3d 917, 922 (Ala. Civ. App. 2011). Because § 12-15-114(a) provides, in part, that "[a] juvenile court shall exercise exclusive original jurisdiction of juvenile court proceedings in which a child is alleged ... to be dependent," a circuit court lacks subject-matter jurisdiction to adjudicate the custody of a child in a proceeding in which the child has been alleged to be dependent. P.S.R., supra.

2190617

In deciding whether a pleading alleges the dependency of a child, so as to invoke the exclusive jurisdiction of a juvenile court, the court shall look to the substance of the pleading and not to the nomenclature employed by the pleader. See M.B. v. R.P., 3 So. 3d 237, 245 (Ala. Civ. App. 2008). If a complaint filed in circuit court asserts facts indicating or implying that a child is a dependent child, within the meaning of Ala. Code 1975, § 12-15-102(8), the complaint shall be treated as a dependency petition over which the circuit court has no subject-matter jurisdiction and the juvenile court has exclusive jurisdiction. See P.S.R., supra.

In this case, the maternal aunt, who was seeking, but had not yet obtained,⁷ sole legal and physical custody of the child, alleged in her complaint that the mother had been awarded custody of the child in 2007, that the mother had died in 2016, that the maternal aunt had assumed the care of the child, and that the father was unfit to raise the child because of his criminal history of domestic violence, his refusal to discharge his parental responsibility to financially support the child, and his strained relationship

⁷See note 2, supra.

2190617

with the child. In substance, the maternal aunt asserted that the death of the mother, who was the custodial parent of the child, had rendered the child without a parent willing and able to properly raise the child, which is a ground for dependency. See § 12-15-102(8)a.2. and § 12-15-102(8)a.6. (respectively defining "dependent child" as a child in need of care or supervision and "[w]ho is without a parent, legal guardian, or legal custodian willing and able to provide for the care, support, or education of the child" or "[w]hose parent, legal guardian, legal custodian, or other custodian is unable or unwilling to discharge his or her responsibilities to and for the child").

In P.S.R., supra, this court considered similar factual averments as amounting to allegations of the dependency of a child that could be adjudicated only in juvenile court. In that case, P.S.R. filed a complaint in the Franklin Circuit Court seeking custody of her grandchildren. In her complaint, P.S.R. alleged that the custody of the grandchildren had been awarded jointly to their parents in 2008, but that the mother had abandoned them to be raised by the father, who had died in 2010. P.S.R. further alleged that the mother was addicted to

2190617

drugs and had criminal charges pending against her. The Franklin Circuit Court dismissed the complaint, instructing P.S.R. to file a dependency petition in the juvenile court. This court held that the Franklin Circuit Court had "properly recognized that it did not have jurisdiction over the dependency petition filed by [P.S.R.] and [had] properly dismissed that petition with instructions that [P.S.R.] file her petition in the juvenile court." 67 So. 3d at 922.

P.S.R. subsequently filed similarly worded petitions in the Franklin Juvenile Court, which the juvenile court dismissed. This court reversed the judgment dismissing the petitions, concluding that the petitions had sufficiently alleged the dependency of the grandchildren. This court said:

"Although th[e] petition[s] did not expressly allege the dependency of the children, [they] did assert that the natural parents of the children had been awarded legal custody of the children, that the father had died, that the mother had abandoned the children, that the mother was addicted to drugs, that the mother had criminal charges pending against her, and that the custody of the children should be placed with [P.S.R.]. Those allegations are sufficient to imply an allegation that the children were dependent. See Ex parte L.E.O., 61 So. 3d 1042, 1047 (Ala. 2010) (holding that a child is 'in need of care or supervision' within the meaning of Ala. Code 1975, § 12-15-102(8)a., when the child is not 'receiving adequate care and supervision from those

persons legally obligated to care for and/or to supervise the child')."

67 So. 3d at 921-22. This court held that only the Franklin Juvenile Court, and not the Franklin Circuit Court, could adjudicate the dependency petitions. 67 So. 3d at 922.

In this case, like in P.S.R., a relative of the child, the maternal aunt, filed a complaint in the circuit court in order to obtain custody of the child following the death of the child's mother, who was the custodial parent, alleging that the surviving parent, the father, was unable or unwilling to properly care for the child. Following P.S.R., we determine that the complaint filed by the maternal aunt is, in substance, a dependency petition over which the circuit court had no subject-matter jurisdiction. Under § 12-15-114(a), the complaint could be adjudicated only as a dependency petition by a juvenile court.⁸

"A judgment entered by a court that lacks subject-matter jurisdiction is void." S.B.U. v. D.G.B., 913 So. 2d 452, 455

⁸In his postjudgment motion, the father asserted that the dependency of the child should be adjudicated in the Shelby Juvenile Court. The question of the proper venue to decide the dependency of the child is not before this court, so we do not comment on that issue.

2190617

(Ala. Civ. App. 2005). A void judgment will not support an appeal. Tidwell v. State Ethics Comm'n, 599 So. 2d 12, 12 (Ala. 1992). We, therefore, dismiss this appeal, albeit with instructions to the circuit court to set aside its void judgment. See, e.g., Weith v. Weith, 263 So. 3d 715, 720 (Ala. Civ. App. 2018).

APPEAL DISMISSED WITH INSTRUCTIONS.

Thompson, P.J., and Donaldson, Edwards, and Hanson, JJ.,
concur.