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ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2021

2190884

J.D.

v.

D.P.D.

Appeal from Madison Probate Court
(No. 8325-A)

2190885

J.D.

v.

D.P.D.

**Appeal from Madison Probate Court
(No. 8326-A)**

2190886

D.C.H.

v.

D.P.D.

**Appeal from Madison Probate Court
(No. 8325-A)**

2190887

D.C.H.

v.

D.P.D.

**Appeal from Madison Probate Court
(No. 8326-A)**

2190968

J.D.

v.

E.D.

**Appeal from Madison Circuit Court
(DR-20-305)**

HANSON, Judge.

These five consolidated appeals arise from judgments of the Madison Probate Court ("the probate court") granting a stepparent's petitions to adopt his wife's children over the objection of the children's natural father and from judgments of the probate court and the Madison Circuit Court ("the circuit court") dismissing petitions filed in those courts by the children's paternal grandmother seeking to enforce and/or modify a Virginia state-court judgment granting her visitation rights as to the children. Given the interrelated nature of the claims below, we granted the parties' request to consider the appeals together; we dismiss the natural father's two appeals with instructions, and, as to the parental grandmother's appeals, we reverse and remand.

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Facts and Procedural History

D.C.H. ("the father") and E.D. ("the mother") are the natural parents of S.H., born in 2011, and E.H., born in 2013 ("the children"). The mother and the father were divorced in Virginia in 2016 following the father's arrest and conviction for crimes related to the sexual abuse of several minor victims (not including the children). The Virginia divorce judgment ("the Virginia judgment") awarded sole legal and physical custody of the children to the mother, but it also incorporated an agreement that awarded visitation rights to the father's mother, J.D. ("the grandmother"), who had intervened in and been made a party to the Virginia divorce action. With respect to the grandmother's visitation rights, the Virginia judgment provided as follows:

"[The grandmother] shall have visitation with the minor children, supervised by [the mother] as follows:

- "a. Reasonable correspondence between [the grandmother] and the minor children with [the mother] providing a response to [the grandmother] from the minor children including, but not limited to, notes, cards, pictures, art works or the like, at least every sixty (60) days;
- "b. Telephone contact a[t] least once per week between the [grandmother] and the minor children;

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- "c. Skype/Facetime [video conferencing] at least once per month between the [grandmother] and the minor children. In advance of this Skype/Facetime visit once a month, [the mother] will provide [the grandmother] with an update regarding the minor children by email. [The mother] will attach a picture of each minor child to her monthly email;
- "d. Commencing 2018, [the grandmother] shall have annual weeklong visits with the minor children at or near [the mother]'s place of residence taking into consideration the minor children's schedule(s) and activities and with reasonable time between [the grandmother] and the minor children during that week. [The grandmother] may attend any activities of the children during that week; and
- "e. Such other times as the parties may agree to."¹

In 2018, the mother married D.P.D. ("the husband"), and the mother, the husband, and the children have resided in Alabama since that time. On November 4, 2019, the husband filed petitions in the probate court seeking to adopt the children. In his petitions, the husband alleged that the father had impliedly consented to the adoptions by virtue of his

¹The Virginia judgment also provided that "[the grandmother] shall not discuss [the father] with the children [or] bring him up in any fashion" and that "all questions regarding [the father] will be referred to [the mother]."

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criminal conviction and the resulting 50-year prison sentence. The husband's petitions also recognized the grandmother's visitation rights with the children and requested that the probate court grant the grandmother a limited right to continued visitation and communication with the children following the adoptions. His petitions stated, in pertinent part:

"[T]he ... grandmother has enjoyed certain visitation rights with [the children]. [The husband] desires that she continue to have the right to visit and communicate with [the children] after [their] adoption by [the husband] as follows:

"[The g]randmother would be allowed to call, Facetime or Skype with [the children] up to twice per month at a time and for a duration agreed by [the mother] in writing (e.g., text, email, etc.);

"[The g]randmother would be allowed a supervised visit annually with [the children] at a location and for a duration agreed upon by [the mother] in writing (e.g., text, email, etc.). Said visitation would be supervised at all times by [the husband] and/or [the mother]; and

"[The g]randmother would be expressly prohibited from discussing the biological father, either directly or indirectly, with [the children] and would be expressly prohibited from disparaging, either directly or indirectly, the [mother] and/or [husband]."

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The husband's petitions were served on both the father, who is incarcerated in the United States penitentiary in Terre Haute, Indiana ("USP Terre Haute"), and on the grandmother, who is a resident of Ohio. On December 16, 2019, the father, acting pro se, answered the husband's petitions, stating that he was "absolutely contesting the adoption of [the] children." On December 27, 2019, the grandmother filed an answer generally denying the allegations of the adoption petitions and requesting a hearing. The probate court ultimately set a final hearing on the husband's adoption petitions for June 30, 2020.

The father claims that, on February 10, 2020, he filed a "Motion to Appear Via Video Teleconference" at the hearing; however, that motion does not appear in the record. On June 9, 2020, the father filed a "motion for ruling" in the probate court in which he sought a ruling on his February 10, 2020, motion to appear via "video teleconference". The father's June 9, 2020, motion, which does appear in the record, set forth the following request to appear via "video teleconference":

"On or about February 10, 2020 I filed a Motion to Appear Via Video Teleconference for the hearing on [these cases]. As I stated before, USP Terre Haute is fully capable of

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producing me via Zoom or Skype [videoconferencing services]. All that is required is the order of this court requiring me to appear via Zoom. This will then allow me sufficient time to make the appropriate arrangements at the institution and confirm it with the court.

"I am fully opposed to the adoption of my children, whom I love more than anything in the world, by someone neither I nor the court knows anything about under [the husband]'s malicious and deceitful charge that I have abandoned my children. Because of this, my testimony is imperative. I respectfully request that this Honorable Court rule on my Motion to Appear and do so in my favor as it is also unopposed by [the husband]."

No ruling on any motion filed by the father to appear via "video teleconference" appears in the appellate record.

On June 22, 2020, the grandmother initiated an action in the circuit court against the mother seeking to formally register the Virginia judgment pursuant to § 30-3B-305, Ala. Code 1975, and to enforce and/or modify the visitation rights granted to the grandmother in the Virginia judgment. The grandmother alleged that the mother and the husband had sought to limit her visitation rights with the children, and she requested that the circuit court modify the provisions of the Virginia judgment to grant her additional unsupervised visitation with the

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children or, alternatively, to enforce the existing visitation rights set forth in the Virginia judgment. On June 24, 2020, the circuit court entered an order purporting to grant the grandmother's motion to register the Virginia judgment. We note that neither the mother nor the father filed any pleading or requested a hearing to contest the validity of the registration of the Virginia judgment, and the registration of that judgment in Alabama was, therefore, effected as a matter of law. See §30-3B-305(e).

Also on June 22, 2020, the grandmother filed in the probate court a "petition to enforce" her visitation rights as provided in the Virginia judgment. In that petition, the grandmother stated that she consented to the adoption of the children by the husband but requested that the probate court "[r]ecognize and enforce the contact and visitation privileges granted to [the grandmother] in the [Virginia judgment] and agreed to by the children's mother, as may be modified by the [circuit court]." The grandmother subsequently amended her "petition to enforce" to include a copy of the circuit court's order registering the Virginia judgment.

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On June 29, 2020, the husband filed a motion to dismiss the grandmother's "petition to enforce" filed in the probate court. The husband's motion posited, among other things, that the grandmother was not a "party" to the adoption proceedings, and, he argued, the grandmother therefore did not have "standing" to seek visitation.

Also on June 29, 2020, the grandmother filed a motion to continue the June 30, 2020, hearing on the proposed adoptions or that, alternatively, she be permitted to attend the hearing by means of videoconferencing technology. The grandmother argued that, in light of the COVID-19 pandemic, traveling from her home in Ohio to Alabama for the hearing posed certain health risks for her and her family. Although no formal ruling on the motion is contained in the record, on June 29, 2020, an employee of the probate court forwarded an e-mail from the probate judge to counsel for the grandmother providing instructions on how she could virtually attend the scheduled hearing via "Zoom," a computer telecommunication program offering video conferencing services.

On June 30, 2020, the probate court held a contested hearing on the husband's adoption petitions and entertained arguments on the husband's

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motion to dismiss the grandmother's "petition to enforce." The grandmother appeared via Zoom, and her counsel appeared personally at the hearing. There is no transcript from the probate court's hearing. The grandmother, however, contends that she was not permitted to testify at the hearing and that, following oral arguments as to whether her "petition to enforce" was procedurally proper, the probate court ruled from the bench that it was not proper; invited the grandmother's counsel to leave the hearing; and disconnected the grandmother from the hearing. It appears that the mother and the husband thereafter testified in support of the husband's adoption petitions. The father did not appear for the hearing and was not represented by counsel at the hearing.

On June 30, 2020, the probate court issued judgments in the adoption proceedings granting the husband's petitions to adopt the children, and it also dismissed the grandmother's "petition to enforce" her visitation rights with the children. With regard to the grandmother's "petition to enforce," the probate court issued the following order:

"This cause came to be heard on a purported Petition to Enforce [a] Judgment ... filed by the ... grandmother; [the husband's] motion to dismiss same; and the ... grandmother's

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response to [the husband's] Motion to Dismiss. Said hearing was held on June 30, 2020. [The husband] was physically present along with his attorney of record; the ... grandmother was present via Zoom also with her attorney of record who was physically present. Upon consideration of said petitions, motion and response as well as the arguments of counsel ore tenus, this Honorable Court does hereby Order, Adjudge and Decree as follows:

- "1. [The husband's] Motion to Dismiss the Petition to Enforce [the] Judgment ... is, hereby, granted.
- "2. The ... grandmother was not properly before this Court.
- "3. The ... grandmother's petition and amended petition were not timely filed.
- "4. The ... grandmother failed to state a claim upon which relief could be granted.
- "5. As such, both the Petition to Enforce ... and Amended Petition to Enforce [the] Judgment ... are dismissed."

With regard to the husband's petitions to adopt the children, the probate court entered identical judgments granting the husband's petitions and making the following findings:

"All contests have been resolved in favor of [the husband]. The court is satisfied from clear and convincing evidence that the ... father impliedly consented to [these] adoption[s] by failing to provide the adoptee[s] with any financial support in almost six (6) years; and failing to communicate with the adoptee[s] in any manner in almost

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three (3) years such that he knowingly and voluntarily left the adoptee[s] with others without provision for support and without communication, and failed and refused to maintain a significant parental relationship with the adoptee[s] for a period of at least three (3) years. The court is satisfied from clear and convincing evidence the best interest of the adoptee[s] will be served by granting the petition[s] to adopt: said evidence including, in part, that the adoptee[s]' biological father will not be released from prison until the adoptee[s are] ... adult[s]; that the adoptee[s have] been in the actual physical custody of [the husband] since June of 2018; that the ... mother has consented to [the] adoption[s] both in writing and in the presence of this Honorable Court; that [the husband] is suitable to be the parent[] of [the] adoptee[s] and has acted in that capacity for the past two (2) years, developing a significant parental relationship with the adoptee[s]; that the adoptee[s have] thrived in [the husband]'s care; and that [the] adoption[s] by [the husband are] proper."

The probate court also awarded a monetary judgment, pursuant to § 26-10A-24(i), Ala. Code 1975, in favor of the husband and against the father in the amount of \$6,033.065, representing the legal costs, including attorney's fees, allegedly expended by the husband in responding to the father's adoption contest.

The father, through new counsel, and the grandmother each filed postjudgment motions in the probate court. The postjudgment motions

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were denied by operation of law, and both the grandmother and father filed timely notices of appeal from the probate court's judgments.

On August 11, 2020, the mother moved the circuit court to dismiss the grandmother's action in that court on the ground that the circuit court lacked subject-matter jurisdiction. Specifically, the mother argued that, under § 30-3-4.2(j), Ala. Code 1975, the "probate court's orders of adoption [had] superseded the [Virginia judgment's] custody and visitation provisions, rendering them null and void," and that the probate court had exclusive jurisdiction over postadoption grandparent-visitiation rights pursuant to § 26-10A-30, Ala. Code 1975. In support of the motion to dismiss, the mother submitted copies of the adoption judgments entered by the probate court. The mother also moved for an award of attorney's fees. On August 25, 2020, the circuit court entered a final judgment summarily dismissing the grandmother's action and awarding the mother an attorney's fee in the amount of \$2,740. The grandmother timely appealed from the circuit court's judgment to this court.

Standard of Review

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With regard to the father's appeals from the judgments of the probate court approving the adoptions of the children, the following standard of review is applicable: " 'Where a probate court hears ore tenus evidence on a petition for adoption, its findings and conclusions based on that evidence are presumed to be correct.' " Ex parte J.W.B., 933 So. 2d 1081, 1087 (Ala. 2005) (quoting K.P. v. G.C., 870 So. 2d 751, 757 (Ala. Civ. App. 2003)). However, the probate court's ruling on questions of law carry no presumption of correctness and are subject to de novo review. See Ex parte Terry, 957 So. 2d 455, 457 (Ala. 2006).

With regard to the grandmother's appeals from the judgments of the probate court and the circuit court dismissing her claims, the following standard of review applies:

"A ruling on a motion to dismiss is reviewed without a presumption of correctness. Nance v. Matthews, 622 So. 2d 297, 299 (Ala. 1993). This court must accept the allegations of the complaint as true. Creola Land Dev., Inc. v. Bentbrooke Housing, L.L.C., 828 So. 2d 285, 288 (Ala. 2002). Furthermore, in reviewing a ruling on a motion to dismiss we will not consider whether the pleader will ultimately prevail but whether the pleader may possibly prevail. Nance, 622 So. 2d at 299."

Newman v. Savas, 878 So. 2d 1147, 1148-49 (Ala. 2003).

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Analysis

The Father's Appeals -- Case Nos. 2190886 & 2190887

We first address the father's appeals from the judgments of the probate court granting the husband's petitions to adopt the children. The father first argues that he was denied the right to participate and testify in the adoption contest. It is well settled under Alabama law that an incarcerated civil litigant has no right to be transported from his or her place of confinement to participate in a trial unrelated to his or her own confinement. See Alabama River Grp., Inc. v. Conecuh Timber, Inc., 261 So. 3d 226, 253 (Ala. 2017); M.T.D. v. Morgan Cnty. Dep't of Hum. Res., 53 So. 3d 966, 967-68 (Ala. Civ. App. 2010). Nevertheless, incarcerated civil litigants are entitled to due process as guaranteed under the constitutions of the United States and the State of Alabama, which generally includes the right to notice and the right to be heard. Alabama appellate courts have consistently concluded that such due-process concerns are satisfied by those provisions of Alabama's Rules of Civil Procedure that provide a means through which an incarcerated party may submit his or her own testimony at trial. See, e.g., Eastman v. Eastman,

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429 So. 2d 1058, 1058 (Ala. Civ. App. 1983) ("Alabama discovery and evidentiary procedures [as provided by the Alabama Rules of Civil Procedure] are designed to effectively provide [incarcerated litigants] the constitutional safeguards of notice and opportunity to be heard."). Such procedures include the ability take one's own testimony upon oral examination under Rule 30, Ala. R. Civ. P., or upon written questions under Rule 31, Ala. R. Civ. P. See, e.g., Whitehead v. Bi-Petro Mktg., Inc., 356 So. 2d 150, 152 (Ala. 1978) (holding that incarcerated party's "proper remedy was to take his own testimony upon oral examination under Rule 30,[Ala. R. Civ. P.], upon written questions under Rule 31, [Ala. R. Civ. P.]"); accord Alabama River Grp., 261 So. 3d at 253; see also Rule 32(a)(3)(C), Ala. R. Civ. P. (addressing use of depositions given by incarcerated persons at trial).

We note, however, that the trial in the probate court was conducted during the COVID-19 pandemic. In response to the COVID-19 pandemic, our supreme court issued a series of administrative orders that, among other things, authorized and encouraged the use of telephone and videoconferencing technologies as a complete substitute for in-person

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court proceedings. See Ex parte Miller, [Ms. 1190918, Apr. 2, 2021] __ So. 3d __, __ (Ala. 2021).² Thus, at the time of the adoption proceedings, our supreme court had expressly authorized and encouraged alternate methods by which a party could participate and testify at a trial or

²On March 13, 2020, our supreme court issued an "Administrative Order Suspending All In-Person Court Proceedings" beginning March 16, 2020, which order ultimately extended until May 15, 2020. That order provided, in pertinent part, that "all judges and court clerks are urged to limit in-person courtroom contact as much as possible by utilizing available technologies, including electronic filing, teleconferencing, and videoconferencing" and that "[t]his order expressly does not prohibit court proceedings by telephone, video, teleconferencing, or other means that do not involve in-person contact." Moreover, on March 24, 2020, the Chief Justice issued an administrative order authorizing trial witnesses to be placed under oath by audio-video communication technology; permitting out-of-state witnesses to consent to being placed under oath via audio-video communication equipment; and suspending any rules, orders, or opinions limiting or prohibiting the remote administration of oaths to witnesses at trial. Although the supreme court authorized the resumption of in-person hearings after May 15, 2020, it continued to authorize the use of teleconferencing and videoconferencing technology beyond that date, and it extended the March 24, 2020, order pertaining to witness testimony by remote means until April 30, 2021. Those orders were expressly revoked by our supreme court only recently, on July 7, 2021. However, on August 20, 2021, our supreme court issued a new administrative order again granting Alabama courts discretion to use "available audio/video technologies[] rather than conducting in-person proceedings" upon certification by such court "that, for good cause shown, time is of the essence and the use of the audio/video technologies is necessary for the proper administration of justice."

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hearing without being physically present in the courtroom, and we see no basis why an incarcerated litigant would have been barred, as a matter of law, from seeking to avail himself or herself of such procedures.

Thus, in light of the orders of our supreme court expressly authorizing the use of videoconferencing technologies to present testimony at trial, we disagree with the husband's contention that the father's sole method of testifying at the June 30, 2020, contested hearing in the adoption proceedings was via the submission of deposition testimony. In this case, the father denied that he had abandoned the children such that his consent to their adoption could be properly implied,³ and he sought leave of the probate court to appear and/or to testify at the adoption hearing via videoconferencing technology, which, he indicated, could be arranged through USP Terre Haute. There is nothing in the record,

³This court has noted that a parent's incarceration does not per se constitute abandonment of his or her children as defined in the statutes governing adoption but that "it is a factor to be considered along with other factors indicating abandonment." Gillespie v. Bailey, 397 So. 2d 130, 132 (Ala. Civ. App. 1980); see also Ex parte A.M.P., 997 So. 2d 1008, 1020 (Ala. 2008) (holding that "incarceration alone is not a ground for finding that a parent has abandoned a child").

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however, indicating that the probate court ever considered or ruled upon his request. We conclude that the probate court's failure to consider the father's motion to testify by means of videoconferencing technology pursuant to the administrative orders of our supreme court was error and was inconsistent with due process. See McConico v. Culliver, 872 So. 2d 872, 875 (Ala. Civ. App. 2003) (holding that a court denies an inmate "equal access to the courts" when it dismisses his or her claims based on a failure to appear "when that inmate has filed appropriate motions to proceed with the litigation"); Feagin v. Stokes, 837 So. 2d 857, 860 (Ala. Civ. App. 2002) (reversing judgment dismissing prisoner's civil action when trial court failed to consider prisoner's request to testify via written deposition and noting that such failure "effectively thwarted [the prisoner] from following the 'proper course' specifically laid out by our Supreme Court for prisoners who need to present evidence on their own behalf in order to prosecute their civil claims"). Our conclusion is bolstered by the fact that, despite failing to act on one or more motions requesting leave for the father to appear via videoconferencing technology, the probate court permitted the grandmother to appear at the hearing via Zoom.

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Accordingly, we conclude that the adoption judgments were entered in a manner inconsistent with due process and are, therefore, void. See M.M. v. K.J.Z., 249 So. 3d 1144, 1149 (Ala. Civ. App. 2017) (noting that "judgments entered in a manner inconsistent with due process are void"). Accordingly, we dismiss the father's appeals with instructions that the probate court set aside the adoption judgments and conduct further proceedings consistent with this opinion and that the probate court specifically address any motions filed by the father seeking leave to participate in, and to testify at, any trial held by the probate court as to the husband's adoption petitions.

In so ordering, however, we recognize that, shortly after the father's appeals from the judgments of the probate court were submitted to this court for decision, our supreme court, on July 7, 2021, issued an order revoking (with some exceptions not applicable in this case) its previous administrative orders related to the COVID-19 pandemic, including those orders approving and encouraging the use of telephone and videoconferencing technologies to conduct trials and hearings. Thus, we are mindful that the specific relief requested by the father in the probate

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court -- that he be permitted to appear and testify at trial via videoconferencing technology -- may no longer be an available method for offering live trial testimony.⁴ Nevertheless, we conclude that, to the extent that remote appearance by the father via telephone or videoconferencing technology may no longer constitute an available or practical means for receiving the father's testimony, fairness requires that the father be permitted to request that his testimony be provided by way of oral or written deposition as provided by Rules 30 and 31, Ala. R. Civ. P., or by other alternative means. See McConico, 872 So. 2d at 875.

⁴We note that, shortly before the release of this decision, our supreme court, on August 20, 2021, issued a new administrative order again authorizing the use, under certain situations, of audio/video technologies in place of in-person proceedings until November 29, 2021. That order provides, in part:

"Any judge of ... probate ... court ... is authorized, upon making written findings that, for good cause shown, time is of the essence and the use of audio/video technologies is necessary for the proper administration of justice, to use his or her discretion to allow any discovery, testimony, appearance, proceeding, hearing, review, or bench trial to be conducted by audio/video technologies."

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Given our decision, we pretermite consideration of the other issues raised by the father in his appeals.

The Grandmother's Appeals

Next, we turn to the grandmother's appeals. Initially, we note that the grandmother's claims in both the circuit court and the probate court did not seek an initial award of grandparent visitation under Alabama law but, rather, sought enforcement of and, in the case of her circuit-court action, modification of an existing award of visitation rights established in the Virginia judgment. Both federal and state law require Alabama authorities to respect the judicial decrees of its sister states. The United States Congress has enacted the Parental Kidnaping Prevention Act of 1980 ("the PKPA"), 28 U.S.C. § 1738A, for the purpose of extending the requirements of the Full Faith and Credit Clause, art. IV, § 1, United States Constitution, to child-custody and child-visitation determinations. The PKPA requires that "every State shall enforce according to its terms ... any custody determination or visitation determination made consistently with the provisions of this section by a court of another State," 28 U.S.C. § 1738A(a), and the PKPA expressly applies to visitation

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determinations in which "a ... grandparent ... claims a right to ... visitation of a child." 28 U.S.C. § 1738A(b)(2); see also Ledoux-Nottingham v. Downs, 210 So. 3d 1217, 1221 (Fla. 2017) (holding that the PKPA required Florida courts to extend full faith and credit to Colorado judgment granting grandparent visitation).

Furthermore, this court has held that the final judgment of another state's court that awards grandparent visitation is a "child-custody determination" as defined by the Uniform Child Custody Jurisdiction and Enforcement Act ("the UCCJEA"), § 30-3B-101 et seq., Ala. Code 1975, and that, pursuant to the UCCJEA, such a judgment "must be recognized and enforced by Alabama courts." See G.P. v. A.A.K., 841 So. 2d 1252, 1255 (Ala. Civ. App. 2002).

"Alabama law has long accorded the custody judgments of our sister states full faith and credit. See Ashwood v. Ashwood, 371 So. 2d 924, 928 (Ala. Civ. App. 1979). The UCCJEA also acknowledges the duty of an Alabama court to recognize and enforce a custody judgment entered by a sister state, provided that that state exercised jurisdiction in conformity with the UCCJEA. Ala. Code 1975, 30-3B-303; see also G.P. v. A.A.K., 841 So. 2d 1252, 1255 (Ala. Civ. App. 2002)."

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LaRose v. LaRose, 71 So. 3d 651, 656 (Ala. Civ. App. 2011). Section 30-3B-306(a), Ala. Code 1975, provides that an Alabama court has jurisdiction to "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."

From the record, it appears that the Virginia trial court had subject-matter jurisdiction and personal jurisdiction, within the scope of both the UCCJEA and the PKPA, to enter the Virginia judgment, and no party has argued otherwise. Accordingly, the Virginia judgment awarding the grandmother visitation with the children must be extended full faith and credit and must be enforced by Alabama courts.

The Grandmother's Appeal from Circuit Court --Case No. 2190968

Having clarified that the grandmother's actions sought enforcement and/or modification of an existing visitation award of a sister state rather than a new independent award of grandparent visitation,⁵ we next review

⁵This distinction distinguishes this case from our recent decision in Ex parte R.D., 313 So. 3d 1119 (Ala. Civ. App. 2020), in which we determined that, as to a child's natural parent, a circuit court and not a probate court had jurisdiction to consider a grandmother's request for an

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the circuit court's judgment dismissing the grandmother's action in that court. Although the order of the circuit court did not state the specific grounds for its dismissal of the action, the mother argued in her motion to dismiss that the circuit court lacked subject-matter jurisdiction over the grandmother's action. However, the circuit court clearly had subject-matter jurisdiction over the grandmother's enforcement action. Section 30-3B-306(a) provides that "[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." See also Ex parte Krukenberg, 252 So. 3d 676, 682 (Ala. Civ. App. 2017) (Moore, J., concurring in the result). Furthermore, the PKPA and the UCCJEA permit a court of this state to modify a custody determination of another state under certain circumstances. For example, § 30-3B-203, Ala. Code 1975, provides, in pertinent part:

"Except as otherwise provided in Section 30-3B-204[, Ala. Code 1975, regarding temporary emergency jurisdiction], a court of this state may not modify a child custody determination made by a court of another state unless a court

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of this state has jurisdiction to make an initial determination under Section 30-3B-201(a)(1) or (2)[, Ala. Code 1975,]and:

"....

"(2) A court of this state or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state."

In turn, § 30-3B-201(a)(1) and (a)(2), Ala. Code 1975, provide:

"(a) Except as otherwise provided in Section 30-3B-204, [regarding temporary emergency jurisdiction,] a court of this state has jurisdiction to make an initial child custody determination only if:

"(1) This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;

"(2) A court of another state does not have jurisdiction under subdivision (1), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under Section 30-3B-207 or 30-3B-208, and:

"a. The child and child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and

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"b. Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships."

See also 28 U.S.C. 1738A(f) (providing that a state court may modify a custody determination of another state if it has jurisdiction to make such a custody determination and the court of the other state no longer has jurisdiction).

Here the record indicates that the home state of the children is Alabama, where they and the mother have resided since 2018, and that no parent of the children or person acting as a parent continues to live in Virginia. Therefore, under the provisions of the UCCJEA, the circuit court appears to have had subject-matter jurisdiction to consider the grandmother's requests to modify and to enforce the Virginia judgment.

Nevertheless, the mother argues the judgments of the probate court granting the husband's petitions to adopt the children served to terminate the grandmother's visitations rights and, thereby, to deprive the circuit court of jurisdiction to enforce or modify the Virginia judgment. In support of this argument, the mother cites § 30-3-4.2(j), which provides that "[t]he right of a grandparent to maintain visitation rights pursuant

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to this section terminates upon the adoption of the child except as provided by Section 26-10A-30," Ala. Code 1975. (Emphasis added.) The mother argues that, upon the adoption of the children by the husband, the grandmother's visitation rights were rendered null and void by § 30-3-4.2(j), and that, therefore, the circuit court lost subject-matter jurisdiction to enforce the visitation rights set forth in the Virginia judgment.

By its terms, however, the statute upon which the mother relies applies only to grandparent-visitation rights conferred "pursuant to this section," i.e., Alabama's grandparent-visitation act. § 30-3-4.2(j) (emphasis added). The pertinent judgment awarding the grandmother visitation with the children was not entered pursuant to § 30-3-4.2, Alabama's grandparent-visitation act. Rather, the grandmother's visitation rights were created and defined in a final judgment entered by a Virginia trial court. There is no dispute that the Virginia trial court had jurisdiction to enter that judgment, and, as explained above, that judgment is therefore entitled to full faith and credit under federal law and the UCCJEA. See, e.g., § 30-3B-303(a), Ala. Code 1975 ("A court of this state shall recognize and enforce a child custody determination of a

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court of another state [with jurisdiction to enter such an award]."); 28 U.S.C. § 1738A(a) ("The appropriate authorities of every State shall enforce according to its terms ... any custody determination or visitation determination made consistently with the provisions of this section by a court of another State."); art. IV, § 1, United States Constitution (requiring that states give full faith and credit to judicial proceedings of other states). Although Alabama may adopt, as a matter of public policy, the view that grandparent-visitation rights established pursuant to § 30-3-4.2 "terminate[] upon the adoption of the child except as provided by Section 26-10A-30[, Ala. Code 1975,]" that policy cannot properly defeat a party's rights established under another state's judgment concerning visitation rights. As we have observed:

"Under the federal Constitution, each state is entitled to develop its own statutes embodying its own public policy, but the United States Supreme Court has declared that there is 'no roving "public policy exception" to the full faith and credit due judgments.' Baker[v. General Motors Corp.], 522 U.S. [222], 233 [(1998)]. Hence, a court may not refuse to enforce a foreign judgment on the ground that it violates the public policy of the forum state. Id."

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E.L. v. V.L., 208 So. 3d 1094, 1101 (Ala. Civ. App. 2015) (rev'd on other grounds, 208 So. 3d 1102 (Ala. 2015), rev'd, in turn, 577 U.S. 404 (2016)); see also Ledoux-Nottingham, 210 So. 3d at 1223 (holding that Florida court was required to enforce Colorado grandparent-visitation award despite Florida's own constitutional prohibition of court-ordered grandparent visitation). Thus, although we recognize that the Virginia judgment may be modified pursuant to the UCCJEA, unless and until such modification occurs, "the [Virginia] court's determination as to visitation [is] a final judgment that must be recognized and enforced by Alabama courts." G.P., 841 So. 2d at 1255. Accordingly, we reject the mother's argument that the probate court's judgments granting the husband's petitions to adopt the children (which, as explained above, were themselves void) operated to nullify the Virginia judgment as a matter of law; to recognize such a rule would fail to afford the Virginia judgment the full faith and credit required by state and federal law. Accordingly, the Virginia judgment was not rendered ineffective by the adoption proceedings, and the circuit court retained subject-matter jurisdiction over the grandmother's action to enforce and/or modify the Virginia judgment.

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The circuit court's dismissal of the grandmother's action was error, and we, therefore, reverse that judgment and remand the case for further proceedings consistent with this opinion.

The Grandmother's Appeals from Probate Court -- Case Nos. 2190884
& 2190885

Finally, we turn to the grandmother's appeals from the judgments of the probate court dismissing the "petition to enforce" she filed in that court. Initially, we reject the husband's contention that the grandmother was not a proper party to the adoption proceedings. Section 26-10A-17, Ala. Code 1975, requires that all persons "known to the petitioners as currently having ... visitation rights with the adoptee under an existing court order" must be served with notice of the adoption petition and advised of their rights to respond to and to contest the adoption. § 26-10A-17(a)(6) & (b). Thus, Alabama's Adoption Code conferred upon the grandmother the right to appear and participate in the adoption proceedings and to contest the adoptions. See M.M., 249 So. 3d at 1149 (holding that great-grandmother, who had previously been awarded visitation rights with child, had right to contest adoption and participate

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in adoption action, rejecting argument that she lacked "standing" to contest adoption or to seek postjudgment relief). Further, in these cases, the husband's adoption petitions named the grandmother as a party and expressly sought relief concerning her preexisting visitation rights, requesting that the probate court award the grandmother a limited "right to visit and communicate with [the children] after [their] adoption by [the husband]." Thus, the grandmother was unquestionably a party to the actions,⁶ and we reject the husband's arguments that she was required to intervene for the purpose of seeking or enforcing grandparent-visitation rights and that she lacked the capacity to appeal from the judgments of the probate court.⁷

⁶See, e.g., Black's Law Dictionary 1350-51 (11th ed. 2019) (defining "party" as "[o]ne against whom a lawsuit is brought; anyone who both is directly interested in a lawsuit and has a right to control the proceedings, make a defense, or appeal from an adverse judgment").

⁷The husband moved to dismiss the grandmother's appeals from the probate court on the basis that the grandmother was not a proper party to the adoption actions and, thus, had no right to appeal. We deny that motion. See M.M., 249 So. 3d at 1149.

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Next we consider whether the grandmother's claims, which sought enforcement of the Virginia judgment, were cognizable in the probate court.

"A probate court is a court of limited jurisdiction: a probate court's jurisdiction 'is limited to the matters submitted to it by statute.'" AltaPointe Health Sys., Inc. v. Davis, 90 So. 3d 139, 154 (Ala. 2012) (quoting Wallace v. State, 507 So. 2d 466, 468 (Ala. 1987)). See also Walton v. Walton, 256 Ala. 236, 237-38, 54 So. 2d 498, 499 (1951) ("The jurisdiction of the probate court to act in the premises is statutory and limited, and it must appear from the face of the proceeding that it has acted within the scope of that jurisdiction. Nothing is presumed."). "The probate court cannot take jurisdiction of a cause or administer remedies except as provided by statute." Lappan v. Lovette, 577 So. 2d 893, 896 (Ala. 1991)."

Ex parte R.D., 313 So. 3d 1119, 1125 (Ala. Civ. App. 2020).

At first glance, an Alabama probate court would not appear to be the proper forum in which to seek enforcement of a visitation award under the UCCJEA. See § 30-3B-102(6), Ala. Code 1975 (defining a "court" with the duty to recognize and enforce a child custody/visitation determination of another state pursuant to § 30-3B-303 of the UCCJEA as "[a]n entity authorized under the law of a state to establish, enforce, or modify a child custody determination"). Nevertheless, our legislature has granted the

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probate court jurisdiction to grant or maintain grandparent-visitation rights when a child is adopted by a stepparent or another suitably close relative. Section 26-10A-30, Ala. Code 1975, provides:

"Post-adoption visitation rights for the natural grandparents of the adoptee may be granted when the adoptee is adopted by a stepparent, a grandfather, a grandmother, a brother, a half-brother, a sister, a half-sister, an aunt or an uncle and their respective spouses, if any. Such visitation rights may be maintained or granted at the discretion of the court at any time prior to or after the final order of adoption is entered upon petition by the natural grandparents, if it is in the best interest of the child."

See also R.D., 313 So. 3d at 1129 (noting that § 26-10A-30 provides an exception to the general rule that jurisdiction to adjudicate grandparent-visitation claims lies in the circuit court when a stepparent or family member has adopted a child and suggesting that the probate court is the proper forum to seek grandparent-visitation rights against a stepparent). Given that the probate court has authority to establish and maintain grandparent visitation when a stepparent seeks to adopt a child, we conclude that the probate court's jurisdiction necessarily includes the authority to consider a petition to maintain or extend a preexisting grandparent-visitation award that stemmed from an action involving the

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child's natural parents so as to bind an adoptive stepparent. Thus, the probate court in these cases had jurisdiction to consider the grandmother's "petition to enforce," which sought an award of grandparent visitation against the husband as a component of her efforts to enforce her established visitation rights with the children. Moreover, as indicated above, the husband's adoption petitions included an express claim requesting a more limited award of visitation to the grandmother than set forth in the Virginia judgment, a request that invoked the probate court's jurisdiction to award grandparent visitation under § 26-10A-30 as a component of its consideration of the adoption petitions. See D.T. v. W.G., 210 So. 3d 1143, 1147 (Ala. Civ. App. 2016). Accordingly, to the extent that the probate court concluded that it lacked subject-matter jurisdiction over the grandmother's visitation claims, or that that jurisdiction had not been properly invoked, its judgments were in error.

Nor do we agree that the grandmother's "petition to enforce" was untimely. Indeed, it was the husband who initially placed the grandmother's visitation rights in issue when he petitioned the probate court to impose limits on the grandmother's visitation and communication

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rights. Moreover, § 26-10A-30 authorizes the probate court to consider grandparent visitation "at any time prior to or after the final order of adoption is entered." (Emphasis added.) Here, the issue of the grandmother's prospective visitation rights was raised at the outset of the adoption actions, was not untimely, and should have, therefore, been considered by the probate court on the merits. Accordingly, the probate court's judgments dismissing the grandmother's grandparent-visitiation claims were erroneous.

Requests for Attorneys' Fees

Finally, the mother, the husband, and the grandmother have each petitioned this court for an award of reasonable attorney's fees for the representation each received on appeal. The mother's and the husband's requests for attorney's fees are denied. The grandmother's request for an award of attorney's fees is granted in the amount of \$5,000. See Ex parte Bland, 796 So. 2d 340, 345 (Ala. 2000) ("It is within the authority of the Court of Civil Appeals to award an attorney fee for representation received by a party in proceedings before that Court."), and § 30-3B-312(a), Ala. Code 1975.

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Conclusion

Based on the foregoing, we conclude that the probate court's judgments granting the adoptions were void, and the father's appeals taken from those judgments are therefore dismissed with instructions. Furthermore, we reverse the judgment of the circuit court dismissing the grandmother's action seeking enforcement and/or modification of the Virginia judgment as against the mother, and, likewise, reverse the judgments of the probate court dismissing the grandmother's visitation claims as against the husband; we remand these causes for further proceedings consistent with this opinion.

2190884 -- REVERSED AND REMANDED.

2190885 -- REVERSED AND REMANDED.

2190886 -- APPEAL DISMISSED WITH INSTRUCTIONS.

2190887 -- APPEAL DISMISSED WITH INSTRUCTIONS.

2190968 -- REVERSED AND REMANDED.

Thompson, P.J., and Moore, Edwards, and Fridy, JJ., concur.