

REL: February 26, 2021

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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2020-2021

2200267

Ex parte K.F.

PETITION FOR WRIT OF MANDAMUS

(In re: Shelby County Department of Human Resources

v.

K.F.)

(Shelby Juvenile Court, JU-19-8.05, JU-19-8.06, and JU-19-8.07)

2200268

Ex parte K.F.

PETITION FOR WRIT OF MANDAMUS

(In re: Shelby County Department of Human Resources

v.

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(Shelby Juvenile Court, JU-19-9.05, JU-19-9.06, and JU-19-9.07)

EDWARDS, Judge.

K.F. ("the mother") has filed petitions for the writ of mandamus directing the Shelby Juvenile Court to set for hearing the numerous motions she has filed in various dependency actions relating to her two children, P.K. and H.K. ("the children"), which are purportedly pending in the Shelby Juvenile Court. The Shelby County Department of Human Resources ("DHR") has answered the mother's petitions. The materials appended to the petitions and the answer reveal the following procedural history.

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In January 2019, DHR filed petitions in the Shelby Juvenile Court seeking to have the children declared dependent; the action relating to P.K. was assigned case number JU-19-8.01, and the action relating to H.K. was assigned case number JU-19-9.01. In addition, separate dependency petitions regarding each of the children were filed by R.R. and M.R. and by B.S.; those petitions were assigned case numbers JU-19-8.02 and JU-19-9.02 and JU-19-8.03 and JU-19-9.03, respectively. Based on the materials before us, we presume that the actions were consolidated, at least for trial purposes. According to DHR, the children were adjudicated dependent on February 12, 2019, nearly two years ago.¹ In June 2019, the actions brought by B.S., case numbers JU-19-8.03 and JU-19-9.03, were dismissed on a motion filed by B.S.² In November and December 2019, the mother filed numerous motions in the dependency

¹Because DHR's assertion that the children were adjudicated dependent has not been controverted by the mother, we consider that fact to be true. Ex parte Hill, 166 So. 3d 701, 703 (Ala. Civ. App. 2014).

²According to DHR, despite the dismissal of case numbers JU-19-8.03 and JU-19-9.03, the numerous motions at issue were still filed in those actions.

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actions, including a motion to dismiss, an amended motion to dismiss, a motion to change visitation, and a motion for reunification. In February 2020, the mother also filed a petition for the writ of mandamus in the Shelby Juvenile Court. Although the Shelby Juvenile Court denied one of the mother's various motions in December 2019, the remaining motions were set for resolution at a trial scheduled for February 5, 2020. That trial apparently did not occur.

On February 4, 2020, the mother filed a petition for the writ of habeas corpus seeking the return of the children to her custody. The Shelby Juvenile Court entered an order denying the mother's petition for the writ of mandamus on March 22, 2020. In addition, the Shelby Juvenile Court entered an order indicating that the mother's petition for the writ of habeas corpus would be heard "at trial" but further noting that

"said trial will have to be subject to previously scheduled trial on a Petition for Termination of Parental Rights which must statutorily take precedence over any other cases before this Court. In addition, pursuant to the Order of the Supreme Court of Alabama to combat the spread of the Covid-19 virus, trials of such cases are prohibited until further Order."

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The mother filed an additional motion to change visitation and a second petition for the writ of habeas corpus in June 2020. That same month, the juvenile-court judge assigned to the cases, Judge James Kramer, "disqualified himself." However, on July 5, 2020, Judge Kramer entered an order directing a different juvenile-court judge, Judge Patrick Kennedy, to hear the mother's motion to change visitation.

On July 8, 2020, the mother filed a motion in the dependency actions seeking a change of venue to the St. Clair Juvenile Court. On July 15, 2020, DHR filed, in the Shelby Juvenile Court, actions seeking to terminate the mother's parental rights to the children; those actions were assigned case numbers JU-19-8.04 and JU-19-9.04. The Shelby Juvenile Court granted the mother's motion to change venue on July 20, 2020, and all pending actions, including the termination-of-parental-rights actions, were transferred to the St. Clair Juvenile Court.³ On September 2, 2020, the St. Clair Juvenile Court entered orders purporting to transfer the

³That is, case numbers JU-19-8.01, JU-19-8.02, JU-19-8.04, JU-19-9.01, JU-19-9.02, and JU-19-9.04 were transferred to the St. Clair Juvenile Court.

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dependency and termination-of-parental-rights actions back to the Shelby Juvenile Court. The mother filed a motion in the St. Clair Juvenile Court seeking reconsideration of that court's orders transferring the actions back to the Shelby Juvenile Court, which the St. Clair Juvenile Court denied on September 29, 2020. At some point after September 29, 2020, the files in the dependency and termination-of-parental-rights actions were physically transferred back to the Shelby Juvenile Court. At that time, the circuit clerk of Shelby County assigned former case number JU-19-8.01 the new case number JU-19-8.05, former case number JU-19-8.02 the new case number JU-19-8.06, and former case number JU-19-8.04 the new case number JU-19-8.07. Similarly, former case number JU-19-9.01 was assigned the new case number JU-19-9.05, former case number JU-19-9.02 was assigned the new case number JU-19-9.06, and former case number JU-19-9.04 was assigned the new case number JU-19-9.07.

On December 9, 2020, Judge Kennedy recused himself from the dependency and termination-of-parental-rights actions. The actions were then reassigned to Judge Laura Alvis. In December 2020, the mother filed motions to hold DHR in contempt for violating the visitation order. On

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January 7, 2021, Judge Alvis set the mother's motions for a hearing to be held on January 25, 2021.

On January 21, 2021, the mother filed her petitions for the writ of mandamus in this court. After the mother filed her petitions, Judge Alvis entered an order resetting the hearing on the mother's contempt motions and DHR's responses to the same for February 10, 2021. In addition, Judge Alvis stated in her order that "all timely filed" motions would be heard on February 10, 2021. Thus, DHR contends in its answer that the mother's petitions are, at least in part, moot.

We need not, however, address DHR's assertion that the mother's petitions have, in fact, been mooted because we are unable to grant her the relief she seeks because the dependency and termination-of-parental-rights actions are still pending in the St. Clair Juvenile Court. As we explained recently in Ex parte R.K.S., [Ms. 2190651, July 31, 2020] ___ So. 3d ___, ___ (Ala. Civ. App. 2020),

" '[o]nce the transferor court has granted the motion to transfer the case and the file has been sent to, and docketed by, the transferee court, the transferor court cannot then change its mind and vacate or set aside its transfer order or order the

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case returned. Ex parte Morrow, 259 Ala. 250, 66 So. 2d 130 (1953). Furthermore, the trial judge of the transferee court may not consider a motion to retransfer the case to the county in which it was originally filed. Ex parte Tidwell Indus., Inc., 480 So. 2d 1201 (Ala. 1985). The aggrieved party's sole remedy in such a case is a petition for writ of mandamus directed to the transferor court.

" "Where the trial court has improperly ordered a transfer, mandamus against the transferor court is an appropriate remedy, notwithstanding the fact that an order has been entered which moves the case to the transferee court. The transferee court lacks authority to consider a motion to retransfer an action to the county in which it was initially filed. Mandamus to the transferor court is the appropriate avenue for seeking redress of any error in the transfer."

" '2 Champ Lyons, Jr., Alabama Rules of Civil Procedure Annotated § 82.4, p. 553 (3d ed.1996) (citations omitted).'

"Ex parte MedPartners, Inc., 820 So. 2d 815, 821 (Ala. 2001)."

(Emphasis added.) The situation in the present case is nearly identical to that in Ex parte R.K.S., and we therefore deny the mother's petitions with similar instructions.

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Neither the mother nor DHR sought review, by way of a petition for the writ of mandamus in this court, of the Shelby Juvenile Court's order transferring the dependency and termination-of-parental-rights actions to the St. Clair Juvenile Court. The St. Clair Juvenile Court lacked the authority to hear any objection to the transfer of the dependency and termination-of-parental-rights actions. Thus, the September 2, 2020, orders of the St. Clair Juvenile Court transferring the dependency and termination-of-parental-rights actions back to the Shelby Juvenile Court were nullities. See Ex parte C.P., 253 So. 3d 401, 403 (Ala. Civ. App. 2017). The dependency and termination-of-parental-rights actions could not be, and therefore were not, transferred back to the Shelby Juvenile Court. The dependency and termination-of-parental-rights actions are still pending in the St. Clair Juvenile Court.

The Shelby Juvenile Court has no authority to hold a hearing on any motions in the dependency and termination-of-parental-rights actions, and, therefore, we cannot order the Shelby Juvenile Court to set any motions pending in the dependency and termination-of-parental-rights actions for a hearing. We, however, instruct the Shelby Juvenile Court to

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ensure that the dependency and termination-of-parental-rights actions are properly returned to the St. Clair Juvenile Court for disposition. See Ex parte R.K.S., ___ So. 3d at ___.

2200267 -- PETITION DENIED WITH INSTRUCTIONS.

2200268 -- PETITION DENIED WITH INSTRUCTIONS.

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

Fridy, J., recuses himself.