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# ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2021

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**Ex parte J.R.C.**

**PETITION FOR WRIT OF MANDAMUS**

**(In re: K.D.Y.**

**v.**

**J.R.C.)**

**(Walker Juvenile Court, CS-21-900015)**

FRIDY, Judge.

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J.R.C. petitions this court for a writ of mandamus directing the Walker Juvenile Court ("the juvenile court") to vacate its July 2, 2021, order denying J.R.C.'s motion for a change of venue in an action that K.D.Y. ("the mother") commenced against him and to enter an order transferring the mother's action to Madison County. For the reasons discussed below, we deny the petition.

#### Procedural History

On May 21, 2021, the mother sued J.R.C. in the juvenile court. Her complaint alleged that J.R.C. was the father of B.C. and E.R.C. ("the children"), the mother's children; that the mother and J.R.C. were not married; and that the children lived with the mother in Walker County. As relief, the mother's complaint sought a judgment determining that J.R.C. is the father of the children, awarding the mother custody of the children, establishing a visitation schedule for J.R.C., ordering J.R.C. to pay child support for the children, ordering J.R.C. to maintain medical and dental insurance covering the children, ordering J.R.C. to pay one-half of the children's medical and dental expenses not covered by insurance, and awarding the mother an attorney fee and court costs.

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After being served with process, J.R.C. filed a motion for a change of venue. The motion alleged that, although J.R.C. and the mother had had a romantic relationship, they had never been married; that they had lived together in Madison County when they were in a relationship; that the mother and the children had moved to Walker County when the parties' relationship ended; and that J.R.C. still lived in Madison County. The motion asserted that, because the mother's action sought a custody determination, the mother's action was equitable in nature and that § 6-3-2(b)(3), Ala. Code 1975, provided that the county in which the defendant resides is the proper venue for actions that are equitable in nature.<sup>1</sup> The motion further asserted that, because J.R.C. was the defendant in the mother's action and lived in Madison County, Madison County was the proper venue for the mother's action. As relief, the motion sought an order transferring the action to Madison County.

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<sup>1</sup>Section 6-3-2(b)(3), Ala. Code 1975, provides: "In proceedings of an equitable nature against individuals: ... (3) Except as may be otherwise provided, actions must be commenced in the county in which the defendant or a material defendant resides."

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The mother filed a response to J.R.C.'s motion in which she asserted that, because she was seeking a determination regarding the children's paternity, the venue provision contained in the Alabama Uniform Parentage Act ("the AUPA"), § 26-17-101 et seq., Ala. Code 1975, specified the proper venue for her action; that § 26-17-605(1), Ala. Code 1975, a part of the venue provision contained in the AUPA, specified that the county in which the children live is the proper venue for a paternity action; that the children lived in Walker County; and that, therefore, Walker County was the proper venue for her action.<sup>2</sup>

After holding a hearing by teleconference regarding J.R.C.'s motion, the juvenile court, on July 2, 2021, entered an order stating:

"It is undisputed that venue for this case is proper in Walker County, where the child[ren] at issue reside[], or Madison County, where [J.R.C.] resides. See Ala. Code [1975,] § 26-17-605. Alabama recognizes that when venue is proper in more than one county, the plaintiff may choose the county in which to file the action. In this instance, [the plaintiff, i.e., the mother] chose to file the case in Walker County.

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<sup>2</sup>Section 26-17-605(1), Ala. Code 1975, provides: "Venue for a proceeding to adjudicate parentage is in the county of this state in which: (1) the child resides."

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"Therefore, [J.R.C.'s] motion to change venue or transfer the case to Madison County is denied."

On July 16, 2021, within the fourteen-day presumptively reasonable period for filing a mandamus petition seeking review of the juvenile court's July 2, 2021, order, see Rule 21(a)(3), Ala. R. App. P., and Rule 28(D), Ala. R. Juv. P., J.R.C. filed his mandamus petition in this court. After a preliminary review, this court called for an answer to the petition.

#### Standard of Review

The proper method for obtaining review of a denial of a motion for a change of venue in a civil action is to petition for a writ of mandamus. See Ex parte Pike Fabrication, Inc., 859 So. 2d 1089, 1091 (Ala. 2002). Mandamus is a drastic and extraordinary writ, to be issued only where there is (1) a clear legal right in the petitioner to the order sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) properly invoked jurisdiction of the court. See Ex parte Integon Corp., 672 So. 2d 497, 499 (Ala. 1995). The burden of proving improper venue is on the party raising the issue, and, on review of an order refusing to transfer an

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action, a writ of mandamus will issue only if the petitioner makes a clear showing of error on the part of the trial judge. See Ex parte Pike Fabrication, Inc., 859 So. 2d at 1091.

### Analysis

In support of his petition, J.R.C. argues that the controlling venue statute is § 6-3-2(b)(3) because, he says, the mother's claims regarding custody, visitation, and child support are equitable in nature and § 6-3-2(b)(3) provides that the proper venue for equitable actions against individuals is the county in which the defendant resides, which, in this case, is Madison County.

J.R.C. cites Ex parte L.B., 304 So. 3d 222 (Ala. Civ. App, 2020), in support of his argument. In that case, L.B., an unwed mother of two children, commenced a protection-from-abuse action against C.P., the father of the children, in the Dale Circuit Court on August 28, 2019. That same day, the Dale Circuit Court entered a temporary protective order that included a provision granting L.B. temporary custody of the parties' children. On September 8, 2019, C.P. commenced an action in the Houston Circuit Court seeking custody of the parties' children, child support, and

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payment from L.B. of one-half of their children's health-care expenses not covered by insurance. On September 20, 2019, L.B. filed a motion in the Houston Circuit Court asking that court to transfer C.P.'s action to the Dale Circuit Court. In that motion, L.B. asserted that she was the named defendant in C.P.'s action, that § 6-3-2 specified that the county where the defendant resided was the proper venue for C.P.'s action, and that she resided in Dale County. Therefore, according to L.B.'s motion, Dale County was the proper venue for C.P.'s action.

The Houston Circuit Court held an evidentiary hearing at which the parties introduced conflicting evidence regarding whether L.B. was still a resident of Houston County on the date when C.P. commenced his action in the Houston Circuit Court or had changed her residence to Dale County on or before that date. After the hearing, the Houston Circuit Court denied L.B.'s motion. L.B. then petitioned this court for a writ of mandamus directing the Houston Circuit Court to vacate its order denying her motion and to enter an order transferring C.P.'s action to Dale County.

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This court concluded that the Houston Circuit Court reasonably could have found from the conflicting evidence that L.B. was still a resident of Houston County on the date when C.P. commenced his custody action in the Houston Circuit Court and that, therefore, Houston County was the proper venue for C.P.'s custody action on the date when he commenced it. Therefore, this court denied L.B.'s mandamus petition.

The present case differs from Ex parte L.B. in several respects, the most important of which for purposes of this matter is that the mother in the present case pleaded a claim seeking an adjudication of paternity pursuant to the AUPA. Section 26-17-104, Ala. Code 1975, a part of the AUPA, provides in pertinent part that "[a] circuit or district court of this state or any other court of this state, as provided by law, shall have original jurisdiction to adjudicate parentage pursuant to [the AUPA] this chapter and may determine issues of custody, support, and visitation incidental to a determination of parentage."<sup>3</sup> (Emphasis added.) Black's

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<sup>3</sup>Section 12-15-115(a)(6), Ala. Code 1975, confers upon juvenile courts original jurisdiction concurrent with that of circuit courts and district courts over actions to establish parentage pursuant to the AUPA. Moreover, § 12-15-115(a)(7) confers upon juvenile courts jurisdiction over



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Law Dictionary defines "incidental" as: "Subordinate to something of greater importance; having a minor role." Black's Law Dictionary 777 (8th ed. 2004).<sup>4</sup> Thus, when a party prosecutes a claim seeking to establish parentage pursuant to the AUPA, his or her claims seeking adjudication of issues regarding custody, visitation, and child support are subordinate to the claim seeking to establish parentage, and the venue provision contained in the AUPA is controlling. As noted above, one of the proper venues in an action to establish parentage is the county in which the child resides, see § 26-17-605(1), which, in this case, is Walker County.

J.R.C. argues that the mother's claim seeking an adjudication of paternity is immaterial in the present case because, he says, he does not dispute that he is the father of the children. However, a man's stipulation that he is the father of a child cannot deprive a court of jurisdiction to

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"[p]roceedings to establish, modify, or enforce support, visitation, or custody when a juvenile court previously has established parentage."

<sup>4</sup>The eighth edition of Black's Law Dictionary was the current edition when the legislature passed the AUPA in 2008. The eleventh edition of Black's Law Dictionary, which is now the current edition, contains the same definition of "incidental" as the eighth edition. See Black's Law Dictionary 911 (11th ed. 2019).

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adjudicate the issue of paternity. See L.L.M. v. J.M.T., 964 So. 2d 66, 73-74 (Ala. Civ. App. 2007). Accordingly, J.R.C. has not made a clear showing of error by the juvenile court in denying his motion for a change of venue, and, therefore, we deny his petition.

**PETITION DENIED.**

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