

REL: October 15, 2021

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# ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2021-2022

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**Ex parte J.N.F.**

**PETITION FOR WRIT OF MANDAMUS**

**(In re: State of Alabama ex rel. S.A.H.**

**v.**

**J.N.F.)**

**(Macon Juvenile Court, CS-21-900019)**

EDWARDS, Judge.

J.N.F. ("the father") seeks a writ of mandamus directing the Macon Juvenile Court ("the juvenile court") to vacate its August 2, 2021, order

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purporting to set aside its June 25, 2021, order transferring the child-support action commenced against him in the juvenile court to the Chambers Circuit Court ("the circuit court"). We grant the petition and issue the writ.

The materials before us, which include solely the father's petition for the writ of mandamus and the attachments thereto, reveal the following procedural history. See Ex parte Lester, 297 So. 3d 477, 478 (Ala. Civ. App. 2019) (indicating that, when no answer controverting the facts set out in a petition for the writ of mandamus is filed, we take those facts as true). In March 2021, the State of Alabama commenced, on behalf of S.A.H. ("the mother"), a child-support action in the juvenile court, in which it requested an order requiring the father to name the parties' child, N.F. ("the child"), to any health-insurance policy that the father might have through his employment or that he might purchase. In June 2021, the father filed a motion entitled "Motion to Consolidate or to Transfer Venue," in which he asserted that the circuit court had entered various judgments relating to the custody of the parties' children and child support since the parties' divorce in 2007, that a postdivorce action

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relating to child support was pending before the circuit court, and that neither party lived in Macon County, making venue in the juvenile court improper. On June 25, 2021, the juvenile court entered an order transferring the child-support action to the circuit court. The circuit court received and docketed the child-support action in the pending postdivorce proceedings in the circuit court on July 8, 2021, and on August 3, 2021.<sup>1</sup>

On August 2, 2021, the State filed in the juvenile court a motion seeking to have the juvenile court set aside its June 25, 2021, order transferring the child-support action to the circuit court. The State contended that the father had incorrectly asserted that the mother and the child did not reside in Macon County. On the same date, the juvenile court entered an order purporting to set aside the June 25, 2021, order transferring the child-support action to the circuit court, stating as its

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<sup>1</sup>The materials before this court indicate that the circuit court has pending before it two separate postdivorce proceedings assigned case numbers DR-06-207.03 and DR-06-207.04. The case-action-summary sheet for each action indicates that the entire file from the juvenile court was received by the circuit court; the pertinent entry on the case-action-summary sheet for case number DR-06-207.03 bears the date July 8, 2021, and the pertinent entry on the case-action-summary sheet for case number DR-06-207.04 bears the date August 3, 2021.

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reason that it had "jurisdiction" based on the residency of the mother and the child in Macon County, and setting the action for "further review" to be held on September 7, 2021. On the motion of the State, the juvenile court later continued the September 7, 2021, hearing to November 14, 2021.

The father filed in the juvenile court a motion to reconsider the juvenile court's August 2, 2021, order purporting to set aside the June 25, 2021, transfer order. The juvenile court did not rule on the father's motion, and he then filed this petition. At the outset, we note that the father's decision to seek reconsideration of the August 2, 2021, order renders his petition, which was required to be filed within 14 days of the entry of the order, untimely. See Rule 21(a)(3), Ala. R. App. P. (setting out the presumptively reasonable time for the filing of a petition for the writ of mandamus as being "the same as the time for taking an appeal"); Rule 4(a)(1)(E), Ala. R. App. P. (prescribing that a notice of appeal from "any final order or judgment issued by a juvenile court" shall be "filed within 14 days (2 weeks) of the date of the entry of the order or judgment appealed from"); and Ex parte A.J., 256 So. 3d 671, 673-74 (Ala. Civ. App.

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2018) (explaining that the presumptively reasonable time for filing a petition for the writ of mandamus seeking review of a juvenile court's interlocutory order is 14 days and that the filing of a motion to reconsider the interlocutory order does not extend the time for filing the petition). However, we may consider the father's petition despite its untimeliness because, as we discuss below, the juvenile court lacked subject-matter jurisdiction over the child-support action when it entered the August 2, 2021, order, rendering that order a nullity. See Ex parte MedPartners, Inc., 820 So. 2d 815, 821 (Ala. 2001); F.Z. v. S.P., 80 So. 3d 920, 921 (Ala. Civ. App. 2011).

" '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. While the writ will issue to compel the exercise of discretion by a circuit judge, it will not issue to compel the exercise of discretion in a particular manner.' "

Ex parte R.K.S., 317 So. 3d 68, 70 (Ala. Civ. App. 2020) (quoting Ex parte Ford Motor Credit Co., 607 So. 2d 169, 170 (Ala. 1992)).

We have explained that,

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"[u]nder the holdings of our supreme court, '[o]nce the transferor court has granted [a] 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 case returned,' nor may 'the trial judge of the transferee court ... consider a motion to retransfer the case to the county in which it was originally filed' ; instead, '[t]he aggrieved party's sole remedy in such a case is a petition for [a] writ of mandamus directed to the transferor court.'" Ex parte Sawyer, 873 So. 2d 166, 167 (Ala. 2003) (quoting Ex parte MedPartners, Inc., 820 So. 2d 815, 821 (Ala. 2001))."

Ex parte C.P., 253 So. 3d 401, 402 (Ala. Civ. App. 2017).

The juvenile court lacked subject-matter jurisdiction to enter the August 2, 2021, order.

"Alabama courts have long recognized 'the general rule that jurisdiction of a case can be in only one court at a time.' Ex parte State ex rel. O.E.G., 770 So. 2d 1087, 1089 (Ala. 2000). When the juvenile court entered its order transferring the case to the circuit court ..., it lost jurisdiction to take any further action in the case. Id. Because the juvenile court did not have subject-matter jurisdiction over the case after it entered its order transferring the case to the circuit court, the juvenile court's [August 2, 2021, order], along with any other orders entered after the entry of the [June 25, 2021,] transfer order, are void. Gulf Beach Hotel, Inc. v. State ex rel. Whetstone, 935 So. 2d 1177, 1183 (Ala. 2006)."

F.Z., 80 So. 3d at 921. In short, the juvenile court's August 2, 2021, order is a nullity, see Ex parte MedPartners, 820 So. 2d at 821, and the juvenile

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court lacks subject-matter jurisdiction over the child-support action, which is now pending in the circuit court. See F.Z., 80 So. 3d at 921.

The father is entitled to the remedy he seeks, and we therefore grant his petition for the writ of mandamus. The juvenile court is instructed to vacate its August 2, 2021, order and any other orders it subsequently entered in the child-support action, including the August 22, 2021, order setting the child-support action for a hearing to be held on November 14, 2021.

Insofar as the father seeks an award of attorney's fees and costs related to the filing of this petition under either the Alabama Litigation Accountability Act, Ala. Code 1975, § 12-19-270 et seq., or otherwise, based on his assertions that the child-support action was brought in the juvenile court "without substantial justification" or that "the mother [has] willfully increas[ed] the costs of litigation without a legitimate purpose" by initiating and attempting to maintain the child-support action in the juvenile court and by filing the motion to set aside the June 25, 2021, transfer order, we note that the child-support action was, in this instance, brought not by the mother but by the State. We deny the father's request

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because we are without authority to order an agency of the State to pay attorney's fees and costs. See Ex parte Taylor, [Ms. 2200379, Apr. 2, 2021] \_\_\_ So. 3d \_\_\_ (Ala. Civ. App. 2021) (denying a request for attorney's fees and indicating that, according to Ex parte Town of Lowndesboro, 950 So. 2d 1203 (Ala. 2006), this court may not order a State official to pay attorney's fees and costs because such an award is precluded by the doctrine of sovereign immunity set out in Art. I, § 14, Ala. Const. 1901 (Off. Recomp.)).

PETITION GRANTED; WRIT ISSUED.

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