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# ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2021-2022

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**In the Matter of Anonymous, a minor**

MOORE, Judge.

In this case, an unemancipated minor ("the minor") appeals from a judgment of a juvenile court denying her petition seeking a waiver of parental consent for an abortion, i.e., the termination of her pregnancy.

We dismiss the appeal.

On September 28, 2021, the minor filed a petition seeking a waiver of parental consent for an abortion. The juvenile court appointed an attorney to represent the minor and set the petition for a hearing on

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October 7, 2021. On October 8, 2021, the juvenile court entered a judgment; that judgment includes findings of fact and the following conclusions:

"1. The [minor] has received sufficient information to make a well-informed decision.

"2. The [minor] has not provided sufficient testimony that she is mature enough to make this decision on her own without the consent or knowledge of her parents.

"3. The [minor] has not provided sufficient testimony that the performance of the abortion would be in the best interest of the [minor]."

In accordance with its conclusions, the juvenile court denied the minor's petition. The minor timely filed her notice of appeal to this court.

The minor argues on appeal that the juvenile court erred in denying her petition based on what she asserts are its erroneous conclusions. The procedure for obtaining a waiver of parental consent for an abortion is found in § 26-21-4, Ala. Code 1975. Section 26-21-4(a) provides, in pertinent part:

"A minor who elects not to seek or does not or cannot for any reason, obtain consent from either of her parents or legal guardian, may petition, on her own behalf, the juvenile court, or the court of equal standing, in the county in which the

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minor resides or in the county in which the abortion is to be performed for a waiver of the consent requirement of this chapter [i.e., Chapter 21, Title 26, Ala. Code 1975]."

(Emphasis added.) In her petition, the minor averred that she is a legal resident of a city located in the county in which the juvenile court is situated ("County A") and that the abortion procedure will be performed in an adjoining county ("County B"). In its judgment, the juvenile court made the following pertinent finding:

"The [minor] alleged in her petition that she resides in ... County [A] ...; however after receiving her address this Court finds that in fact the [minor] appears to live in [a county, other than County B, adjoining County A]. This raises a potential issue of personal jurisdiction, not an issue of subject-matter jurisdiction. However, considering the [minor] subjected herself to the jurisdiction of this court and alleged in her sworn petition that she resides in ... County [A] the court finds that she waived personal jurisdiction."

The minor testified as to her home address, which is, in fact, located in a county, other than County B, adjoining County A. The minor did not present testimony controverting the assertions in her petition regarding where the procedure would be performed, i.e., in County B.

In Fox v. Arnold, 127 So. 3d 417, 421 (Ala. Civ. App. 2012), this court stated:

" "[J]urisdictional matters are of such magnitude that we take notice of them at any time and do so even ex mero motu." ' Singleton v. Graham, 716 So. 2d 224, 225 (Ala. Civ. App. 1998) (quoting Wallace v. Tee Jays Mfg. Co., 689 So. 2d 210, 211 (Ala. Civ. App. 1997), quoting in turn Nunn v. Baker, 518 So. 2d 711, 712 (Ala. 1987)). ' " '[S]ubject-matter jurisdiction may not be waived; a court's lack of subject-matter jurisdiction may be raised at any time by any party and may even be raised by a court ex mero motu.' " ' M.B.L. v. G.G.L., 1 So. 3d 1048, 1050 (Ala. Civ. App. 2008) (quoting S.B.U. v. D.G.B., 913 So. 2d 452, 455 (Ala. Civ. App. 2005), quoting in turn C.J.L. v. M.W.B., 868 So. 2d 451, 453 (Ala. Civ. App. 2003))."

In In re Anonymous, 812 So. 2d 1218, 1220 (Ala. Civ. App. 2001), this court construed § 26-21-4(a) as conferring subject-matter jurisdiction to consider a petition for a waiver of parental consent for an abortion upon only the juvenile court of the county of the minor's residence or the juvenile court of the county in which the abortion procedure is to be performed. This court rejected the contention that § 26-21-4(a) merely regulated venue over those proceedings. Unlike personal jurisdiction and venue, subject-matter jurisdiction cannot be waived. See Ex parte Children's Hosp. of Alabama, 721 So. 2d 184, 191 n.10 (Ala. 1998), and J.T. v. A.C., 892 So. 2d 928, 931 (Ala. Civ. App. 2004). Accordingly, this court determined that the juvenile court in In re Anonymous had been

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without jurisdiction to consider the petition in that case and dismissed the appeal as being from a void judgment. Id. at 1220.

We note that the statutory language relied on by this court in In re Anonymous remains unchanged. Section 12-15-115(a)(5), Ala. Code 1975, a part of the Alabama Juvenile Justice Act, Ala. Code 1975, § 12-15-101 et seq., now provides that a juvenile court shall exercise original jurisdiction in "[p]roceedings for waiver of parental consent for a minor to have an abortion pursuant to Chapter 21 of Title 26." We conclude that § 12-15-115(a)(5) does not supersede § 26-21-4(a) or alter the conclusion we reached in In re Anonymous. In accordance with § 26-21-4(a) and this court's decision in In re Anonymous, we conclude that the juvenile court lacked subject-matter jurisdiction to consider the minor's petition and that, therefore, its judgment is void. "[A] void judgment will not support an appeal." Tidwell v. State Ethics Comm'n, 599 So. 2d 12, 12 (Ala. 1992). Accordingly, the appeal is dismissed.

APPEAL DISMISSED.

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