

Rel: November 18, 2022

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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2022-2023

CL-2022-1012

Ex parte Katherine M. Dukes

PETITION FOR WRIT OF MANDAMUS

(In re: Katherine M. Dukes

v.

Brandon Baker)

(Limestone Circuit Court: DR-15-900533.04)

HANSON, Judge.

Katherine M. Dukes ("the mother") filed a petition for a writ of mandamus asking this court to direct the Limestone Circuit Court ("the trial court") to vacate its August 31, 2022, order in which the trial court

determined that it had continuing, exclusive jurisdiction over the child of the mother and Brandon Baker ("the father") and directed that an award to the father of pendente lite physical custody of the child would remain in effect. For the following reasons, we deny the petition.

Background

The materials submitted in support of and in opposition to the petition for a writ of mandamus indicate the following. The mother and the father, who were married and had been living in Alabama, separated in July 2015 when the mother and the child relocated to Tennessee; the father remained in Alabama. In December 2015, the father filed a divorce complaint in the trial court. On September 14, 2016, the trial court entered a judgment divorcing the parties; that judgment incorporated a settlement agreement between the parties. Pursuant to the settlement agreement, the parties were awarded joint legal custody of the child and the mother was awarded sole physical custody of the child.

In June 2020, the mother had planned to end the life of the child and commit suicide. The mother did not follow through with her plan

and turned herself into law-enforcement officers.¹ Subsequently, the Tennessee Department of Human Resources filed a petition in the Juvenile Court of Overton County, Tennessee ("the Tennessee juvenile court"), seeking to have the child declared dependent and seeking an award of emergency temporary legal custody of the child. After a hearing, the Tennessee juvenile court determined that the child was dependent and neglected, "reinstated" custody of the child to the father, and "relinquished" jurisdiction over any further child-custody proceedings to the trial court. The mother appealed the Tennessee juvenile court's judgment.

After the mother appealed the Tennessee juvenile court's judgment, requesting a trial de novo, the Tennessee juvenile court's judgment was reversed and the case was remanded for further proceedings. The following is a recitation of the proceedings on remand. The Tennessee juvenile court conducted a trial de novo in two phases -- it first conducted an adjudicatory hearing and it subsequently conducted a dispositional hearing. After the adjudicatory hearing, the Tennessee juvenile court

¹A roll of duct tape, a garden hose, and a sleeping aid were found in the mother's vehicle after she turned herself into law-enforcement officers.

issued an order in May 2021 in which it determined, based on clear and convincing evidence, that the child was dependent and neglected; the Tennessee juvenile court did not, however, determine that the child was a victim of severe abuse, although it ordered the mother to submit to therapy and counseling. After the dispositional hearing, the Tennessee juvenile court entered an order in May 2022 in which it stated that the mother had followed the directives the court had issued after the adjudicatory hearing, and it returned custody of the child to the mother.

In May 2022, the father filed in the trial court a complaint seeking a modification of the custody of the child. After the father requested a pendente lite hearing, the trial court entered an order in which it set a pendente lite hearing; stated that it had subject-matter jurisdiction over the matter because it had issued the initial custody determination regarding the child and had not declined to exercise its continuing, exclusive jurisdiction over the child; and stated that, pursuant to § 36-6-219, Tenn. Code Ann., the Tennessee juvenile court had been authorized to exercise only temporary emergency jurisdiction over the custody of the child. On August 9, 2022, the trial court entered a pendente lite order in which, among other things, it awarded the father physical custody of the

child pending the final hearing. On August 31, 2022, the Tennessee juvenile court and the trial court jointly held a telephonic hearing to discuss jurisdictional issues. After the telephonic hearing, the trial court entered an order on August 31, 2022, stating that it was retaining continuing, exclusive jurisdiction over the custody proceedings concerning the child and that the trial court's pendente lite order remained in effect, pending the entry of a final judgment. Thereafter, the mother filed her petition for a writ of mandamus.

Analysis

In her petition seeking a writ of mandamus, the mother contends that the trial court lacks subject-matter jurisdiction to make a custody determination regarding the child.

"Mandamus is an extraordinary remedy. An appellate court will grant a petition for a writ of mandamus only when '(1) the petitioner has a clear legal right to the relief sought; (2) the respondent has an imperative duty to perform and has refused to do so; (3) the petitioner has no other adequate remedy; and (4) this Court's jurisdiction is properly invoked.' Ex parte Flint Constr. Co., 775 So. 2d 805, 808 (Ala. 2000) (citing Ex parte Mercury Fin. Corp., 715 So. 2d 196, 198 (Ala. 1997)). Review by mandamus is not appropriate where the petitioner has another adequate remedy, such as an appeal. Ex parte Jackson, 780 So. 2d 681 (Ala. 2000); Ex parte Inverness Constr. Co., 775 So. 2d 153 (Ala. 2000); Ex parte Walters, 646 So. 2d 154 (Ala. Civ. App. 1994)."

Ex parte Amerigas, 855 So. 2d 544, 546-47 (Ala. Civ. App. 2003).

The Uniform Child Custody Jurisdiction and Enforcement Act ("the UCCJEA"), Ala. Code 1975, § 30-3B-101 et seq., establishes subject-matter jurisdiction over child-custody proceedings. See Ex parte M.M.T., 148 So. 3d 728, 731 (Ala. Civ. App. 2014).

"'An Alabama ... juvenile court may not make any custody determination -- neither an initial custody determination nor a determination as to modification of custody --regarding a child unless that court has jurisdiction to make an initial custody determination under the UCCJEA....' J.D. v. Lauderdale Cnty. Dep't of Human Res., 121 So. 3d 381, 384-85 (Ala. Civ. App. 2013)."

H.T. v. Cleburne Cnty. Dep't of Hum. Res., 163 So. 3d 1054, 1062 (Ala. Civ. App. 2014).

Section 30-3B-202(a), Ala. Code 1975, a part of the UCCJEA, provides, in pertinent part, that an Alabama court that

"has made a child custody determination consistent with Section 30-3B-201[, Ala. Code 1975, involving jurisdiction to make an initial custody determination] or Section 30-3B-203[, Ala. Code 1975, involving jurisdiction to modify a custody determination made by a court in another state] has continuing, exclusive jurisdiction over the determination until:

"(1) A court of this state determines that neither the child, nor the child and one parent, nor the child and a person acting as a parent have a significant connection with this state and that

substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships"

Based on § 30-3B-202(a), the trial court, as the court that had made the initial custody determination regarding the child in the divorce judgment, retained continuing, exclusive jurisdiction over custody proceedings concerning the child. The trial court did not make any determination that "neither the child, nor the child and one parent, nor the child and a person acting as a parent have a significant connection with this state" Instead, the trial court impliedly determined that the child continued to have a significant connection with this state, and that finding is supported by the materials before this court, which show that the father, who had joint legal custody of the child pursuant to the divorce judgment, continues to reside in Limestone County. Under § 30-3-169.9(b), Ala. Code 1975, a part of the Alabama Parent-Child Relationship Protection Act, § 30-3-160 et seq., Ala. Code 1975, when a parent with joint legal custody continues to reside in this state, "the child shall have a significant connection with this state" and a trial court may retain continuing jurisdiction over custody proceedings concerning the

child "even though the child's principal residence after [a] relocation is outside the state."

Here, the mother argues that the trial court lacked subject-matter jurisdiction to make a custody determination regarding the child simply because the child had been living with her in Tennessee. However, under § 30-3B-202(a) and § 30-3-169.9(b), the trial court is authorized to retain continuing, exclusive jurisdiction over custody proceedings concerning the child.

Despite the continuing, exclusive jurisdiction of the trial court, the Tennessee juvenile court properly exercised temporary, emergency jurisdiction to protect the child. See § 36-6-219, Tenn. Code Ann., and § 30-3B-204, Ala. Code 1975. However, once the emergency subsided, the Tennessee juvenile court could not make any further custody determinations regarding the child because of the continuing, exclusive jurisdiction of the trial court. See Button v. Waite, 208 S.W.3d 366 (Tenn. 2006), and J.D. v. Lauderdale Cnty. Dep't of Hum. Res., 121 So. 3d 381 (Ala. Civ. App. 2013). Accordingly, the trial court is properly exercising its continuing, exclusive jurisdiction over the custody-modification

proceedings concerning the child even though the child has relocated with the mother to Tennessee.

The mother has failed to demonstrate that she has a clear legal right to an order requiring the trial court to vacate the August 31, 2022, order. We therefore deny the mother's petition for a writ of mandamus.

PETITION DENIED.

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