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# ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2022-2023

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J.N.S.

v.

A.H.

**Appeal from Montgomery Circuit Court  
(DR-18-900640)**

MOORE, Judge.

J.N.S. ("the father") appeals from a judgment entered by the Montgomery Circuit Court ("the circuit court") purporting to award custody of J.S. ("the child"), his child with A.H. ("the mother"), to the

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mother, subject to the father's specified visitation. Because we conclude that the circuit court lacked subject-matter jurisdiction to enter the judgment, we dismiss the appeal with instructions.

### Pertinent Procedural History

The following summarizes that portion of the lengthy and convoluted procedural history of the underlying case that is pertinent to our disposition of this appeal. In 2013, the Child Support Division of the Montgomery Juvenile Court ("the juvenile court") entered a judgment in case number CS-2013-900162 ("the 2013 judgment"), incorporating an agreement of the parties and ordering the father to pay child support to the mother for the benefit of the child.<sup>1</sup> On September 12, 2018, the father filed a petition in the circuit court to obtain emergency and sole physical custody of the child based on the mother's alleged sudden

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<sup>1</sup>The father has included a copy of the 2013 judgment as an attachment to his brief on appeal, but this court cannot consider that judgment. See Roberts v. NASCO Equip. Co., 986 So. 2d 379, 385 (Ala. 2007). However, the circuit court took judicial notice of the 2013 judgment and summarized its contents in a November 12, 2019, order; therefore, the record contains ample evidence of the substance of the 2013 judgment. See T.B. v. C.D.L., 910 So. 2d 794, 796 n.1 (Ala. Civ. App. 2005).

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relocation of the child and her alleged refusal to inform the father of the child's whereabouts. Although the father informed the circuit court of the 2013 judgment in his petition, the father also asserted in his petition that the 2013 judgment had not adjudicated the custody of the child.

On September 17, 2018, the circuit court entered an order awarding the father pendente lite custody of the child. The mother filed a motion on October 30, 2018, requesting that the circuit court vacate its order awarding pendente lite custody; she asserted, among other things, that she had been awarded custody of the child in the 2013 judgment and that the father was required to meet the standard for a modification of custody outlined in Ex parte McLendon, 455 So. 2d 863 (Ala. 1984). The mother subsequently filed a motion to dismiss the father's petition, asserting that the circuit court lacked jurisdiction over the petition because the 2013 judgment amounted to an implicit determination of paternity and an implicit award of custody of the child to the mother and that the juvenile court therefore retained exclusive continuing jurisdiction to

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modify that award.<sup>2</sup> The father filed a response to the mother's motion to dismiss on October 22, 2019, asserting that the circuit court did not lack jurisdiction.

On November 12, 2019, the circuit court entered an order taking judicial notice of the 2013 judgment but denying the mother's motion to dismiss the case, concluding that it had jurisdiction over the case pursuant to K.C. v. R.L.P., 67 So. 3d 94 (Ala. Civ. App. 2011). Ultimately, on June 3, 2021, the circuit court entered a final judgment in which it, among other things, purported to award sole legal custody and sole physical custody of the child to the mother, subject to the father's specified visitation. The father filed a timely notice of appeal.

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<sup>2</sup>The mother also challenged the circuit court's jurisdiction pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act ("the UCCJEA"), § 30-3B-101 et seq., Ala. Code 1975. The circuit court determined that Alabama is the child's home state pursuant to § 30-3B-102(7), Ala. Code 1975, a part of the UCCJEA, such that it could exercise jurisdiction over the father's petition pursuant to the UCCJEA. Although the determination that Alabama is the child's home state appears to be correct based on the record on appeal, because neither party challenges that determination on appeal and because we decide this appeal on a different jurisdictional basis, we do not discuss that jurisdictional issue under the UCCJEA further.

### Analysis

The father argues on appeal that the circuit court erred in awarding custody of the child to the mother. We cannot consider the merits of the father's appeal, however, because we conclude that the circuit court lacked jurisdiction over the case.

Although neither party has raised the issue of subject-matter jurisdiction on appeal,

"[i]t is well settled that 'subject-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.' C.J.L. v. M.W.B., 868 So. 2d 451, 453 (Ala. Civ. App. 2003); see, e.g., Ex parte Norfolk S. Ry. Co., 816 So. 2d 469, 472 (Ala. 2001) ('We are obliged to recognize an absence of subject-matter jurisdiction obvious from a record, petition, or exhibits to a petition before us.'). A judgment entered by a court that lacks subject-matter jurisdiction is void. See C.J.L., 868 So. 2d at 454; see also J.B. v. A.B., 888 So. 2d 528 (Ala. Civ. App. 2004)."

S.B.U. v. D.G.B., 913 So. 2d 452, 455 (Ala. Civ. App. 2005).

As explained above, the 2013 judgment ordered the father to pay child support to the mother pursuant to an agreement of the parties. When a court adopts a child-support agreement by incorporating it into a final judgment, the judgment is treated the same as a judgment entered

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without an agreement. See Scott v. Scott, 401 So. 2d 92, 95 (Ala. Civ. App. 1981).

"Our supreme court has held that an order requiring a man to pay child support is an implicit judicial determination of paternity. See Ex parte State ex rel. G.M.F., 623 So. 2d 722, 723 (Ala. 1993) (holding that an order requiring a man to pay child support was an implicit 'judicial determination of paternity qualifying for res judicata finality'). Likewise, this court has determined that an award of support to one parent constitutes an implicit award of custody to that parent. See T.B. v. C.D.L., 910 So. 2d 794, 796 (Ala. Civ. App. 2005); M.R.J. v. D.R.B., 17 So. 3d 683, 686 (Ala. Civ. App. 2009)."

Ex parte Washington, 176 So. 3d 852, 853-54 (Ala. Civ. App. 2015). Thus, the 2013 judgment was a paternity and child-custody determination.

In K.C. v. R.L.P., supra, this court held that, under former §12-15-117, Ala. Code 1975, adopted pursuant to Act No. 2008-277, Ala. Acts 2008, only a circuit court could exercise jurisdiction over an action to modify a paternity and child-custody judgment entered by a juvenile court outside the context of a dependency, delinquency, and child-in-need-of-supervision case. However, as explained in Laponsie v. Corley, 323 So. 3d 683, 686-87 (Ala. Civ. App. 2020), our holding in K.C. has been superseded by statute. In 2012, after K.C. was decided, the Alabama Legislature passed Act No. 2012-383, Ala. Acts 2012, which, among other

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things, reinstated the continuing jurisdiction of juvenile courts over all of their paternity and child-custody determinations. See § 12-15-115(a)(7), Ala. Code 1975 (providing that a juvenile court "shall ... exercise original jurisdiction ... to establish, modify, or enforce support, visitation, or custody when a juvenile court previously has established parentage"); § 12-15-117(c), Ala. Code 1975 (providing that a juvenile court "shall retain jurisdiction over an individual of any age to enforce or modify any prior orders of the juvenile court unless otherwise provided by law"); and § 12-15-117.1, Ala. Code 1975 (explaining the legislative intent that a juvenile court shall retain continuing jurisdiction "in all cases in its jurisdiction to the extent provided by law"). Under current law, the circuit court has no jurisdiction over the father's action seeking to modify the paternity and child-custody judgment entered by a juvenile court. See Laponsie, supra. The circuit court erred in relying on K.C. to conclude otherwise.

Because the circuit court lacked jurisdiction over the case, its orders and final judgment are void. See Laponsie, 323 So. 3d at 688. Because "[a] void judgment will not support an appeal," Landry v. Landry, 91 So. 3d 88, 90 (Ala. Civ. App. 2012), we dismiss the appeal, albeit with

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instructions to the circuit court to transfer the action to the juvenile court. See § 12-11-11, Ala. Code 1975 (providing for the transfer to the proper court of any case filed in a court that should have been brought in another court in the same county); and Laponsie, 323 So. 3d at 688.

APPEAL DISMISSED WITH INSTRUCTIONS.

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