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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2011-2012

2100682

Alabama Department of Mental Health

v.

E.C.J.

Appeal from Limestone Juvenile Court
(JU-07-346.13)

MOORE, Judge.

The Alabama Department of Mental Health ("the department") appeals from a judgment of the Limestone Juvenile Court ("the juvenile court") ordering that the legal and physical custody of E.C.J. remain with the department and

further ordering that the juvenile court was retaining jurisdiction over E.C.J., pursuant to § 12-15-412, Ala. Code 1975. We dismiss the appeal.

Procedural History

On July 10, 2009, the juvenile court entered a judgment committing E.C.J., whose date of birth is February 6, 1992, and who was a minor at the time, to the custody of the department. Thereafter, the department placed E.C.J. at the William D. Partlow Developmental Center ("Partlow"). On February 1, 2011, the guardian ad litem for E.C.J. filed a "Motion for Immediate Review" alleging:

> "1. That the undersigned has just been informed that the current juvenile commitment of [E.C.J.] at Partlow will expire on February 6, 2011.
>
> "2. To the best of the undersigned's knowledge, contingency plans for this event have not been finalized."

On February 4, 2011, the department filed a "Notice of Expiration of Juvenile Court Involuntary Mental Commitment to the Alabama Department of Mental Health Pursuant to § 12-15-409 & § 12-15-410, Ala. Code 1975." Citing §§ 12-15-115(c), 12-15-412, and 12-15-102(1), (3), and (18), the department asserted that the juvenile court's commitment order

would expire on February 6, 2011, upon E.C.J.'s reaching the age of majority. The department further asserted that it had been informed and believed "that the treatment professionals at [Partlow], the Department facility to which [E.C.J.] is currently confined and receiving care and treatment, recommend that she continue to reside there until otherwise recommended for discharge." According to the department, "for [E.C.J.] to continue to receive care and treatment from Partlow, she will need to be admitted by virtue of a Legal Guardian's custody, the Department of Human Resources' ... custody or voluntarily consent to remain with Partlow for purposes of same given that she will be an adult on February 6, 2011." The department requested that the juvenile court acknowledge that its commitment order would expire on February 6, 2011, and that the court provide the department "guidance on whether th[e] Court desires for [E.C.J.] to remain at Partlow (as is currently recommended by her treatment professionals) by virtue of legal custody vesting in [the Department of Human Resources] or otherwise, via delinquency, dependency, child in need of supervision, etc., that may have arisen with this Court before the minor's 18th birthday."

On March 25, 2011, the juvenile court entered a judgment in which it stated, in pertinent part:

> "The parties discussed the issues previously presented to the Court regarding [E.C.J.] reaching her 19th birthday. The Court notes that [E.C.J.] was committed to the Department ... in July 2009. There has been no assertion by the Department ... that she has gained maximum benefit from Institutional treatment or no longer is in need of the services of the Department or has gained maximum benefit from the programs of the Department. On the contrary, in a report submitted to the Court dated February 15, 2011, the Department ... reported that her progress was only 'fair.' Upon consideration of the same, it is, therefore,
>
> "ORDERED, ADJUDGED, and DECREED BY THE COURT that the legal and physical custody of [E.C.J.] shall remain with the Department ....
>
> "IT IS FURTHER ORDERED BY THE COURT that the Court retains jurisdiction over [E.C.J.] and this matter pursuant to § 12-15-412, Code of Alabama (1975)."

(Capitalization in original.) On April 8, 2011, the department filed its notice of appeal.

Discussion

On appeal, the department argues that the juvenile court erred in retaining jurisdiction over E.C.J. and in ordering that the legal and physical custody of E.C.J. remain with the department after E.C.J. reached the age of majority.

> "'Juvenile courts are purely creatures of statute that have extremely limited jurisdiction.' L.B. v. R.L.B., 53 So. 3d 969, 972 (Ala. Civ. App. 2010). A juvenile court's jurisdiction to act extends only so far as authorized by the explicit terms of the empowering statute. See Ex parte K.L.P., 868 So. 2d 454, 456 (Ala. Civ. App. 2003). Therefore, the question whether a juvenile court has acted within its proper bounds depends on the meaning of the statute bestowing jurisdiction. See id. Discerning the meaning of a jurisdictional statute involves a pure question of law, which this court reviews de novo. See J.W. v. C.B., 68 So. 3d 878, 879 (Ala. Civ. App. 2011)."

Montgomery Cnty. Dep't of Human Res. v. McDermott, [Ms. 2100290, June 24, 2011] ___ So. 3d ___, ___ (Ala. Civ. App. 2011).

As the department argues, § 12-15-115(a)(3), Ala. Code 1975, a part of the Alabama Juvenile Justice Act ("the Act"), Ala. Code 1975, § 12-15-101 et seq., provides, in pertinent part, that the juvenile court will exercise jurisdiction in "[p]roceedings for the commitment of a minor or child." (Emphasis added.) Further, § 12-15-412, Ala. Code 1975, a part of the Act, provides: "The juvenile court committing any minor or child to the custody of the department shall retain jurisdiction over the minor or child so long as the minor or child is in the custody of the department regarding the original commitment." (Emphasis added.)

Section 12-15-102(3), Ala. Code 1975, also a part of the Act, defines a "child" to include "[a]n individual under the age of 18 years, or under 21 years of age and before the juvenile court for a delinquency matter arising before that individual's 18th birthday." Section 12-15-102(18) defines a "minor" as "[a]n individual who is under the age of 19 years and who is not a child within the meaning of this chapter." We agree with the department that, because E.C.J. was no longer a "minor or child" as defined by § 12-15-102, the juvenile court did not retain jurisdiction over her at the time it entered the March 25, 2011, judgment.

Moreover, as the department asserts, because a judgment may not extend further than the jurisdiction bestowed upon the juvenile court by the empowering statute, see McDermott, ___ So. 3d at ___, the juvenile court's July 10, 2009, commitment order necessarily expired when E.C.J. reached the age of 19. To hold otherwise would be tantamount to holding that a juvenile court may enter a binding mental-health commitment order relating to the treatment of an adult.

We note that other jurisdictions have reached similar results in somewhat different contexts. See, e.g., In re

Appeal, in Maricopa County Juvenile No. J-86509, 124 Ariz. 377, 604 P.2d 641 (1979) (holding that any jurisdiction regarding a juvenile commitment terminates at the age of majority and any provision of the statute extending that authority beyond that age was unconstitutional); In re Carson, 84 Wash. 2d 969, 530 P.2d 331 (1975) (upon motion of ward to declare that judgment of wardship entered by juvenile court expired upon ward's reaching age of majority, court determined that juvenile court had jurisdiction over only minors and judgment necessarily expired when jurisdiction was exhausted upon ward's attaining age of majority). Although we acknowledge that some courts have concluded that a juvenile court may exercise jurisdiction beyond the state's age of majority, those courts all relied on specific statutory language extending the scope of the jurisdiction of juvenile courts in specific situations. See, e.g., State v. Cassidy D., 52 Conn. Super. 132, ___ A.2d ___ (2010) (because statute defined "child" as person who has violated a condition of probation in juvenile-delinquency proceeding, juvenile court retained jurisdiction to impose commitment order on individual who violated prior probation order although the individual had

attained age of majority); In re Pittman, 315 So. 2d 62 (La. Ct. App. 1975) (holding that juvenile commitment order did not expire upon juvenile's reaching age 18, state's age of majority, because statute specifically provided that commitment orders could last until age 21). We have no doubt that the legislature could amend the Act to allow juvenile mental-health commitment orders to extend beyond the state's general age of majority by enacting a specific statute to that effect; however, our legislature has specifically conditioned a juvenile court's continuing jurisdiction over mental-health commitment orders on the minority status of the patient. Unless and until it changes that language to state an intent that minority status does not affect the juvenile court's continuing jurisdiction, we hold that a juvenile court's mental-health commitment order automatically expires upon the child's reaching the age of majority.

The juvenile court erred in holding that its July 10, 2009, order remained in effect beyond E.C.J.'s 19th birthday and in entering a new judgment on March 25, 2011, expressly extending its jurisdiction. Because the juvenile court lacked jurisdiction when it entered the March 25, 2011, judgment,

that judgment is void. L.P. v. A.W., [Ms. 2100535, Aug. 19, 2011] ___ So. 3d ___, ___ (Ala. Civ. App. 2011). "This court is required to dismiss an appeal from a void judgment." Owens v. Owens, 51 So. 3d 364, 367 (Ala. Civ. App. 2010). Accordingly, we dismiss the department's appeal, albeit with instructions to the juvenile court to vacate its void judgment. L.P., ___ So. 3d at ___.

We also note that the Alabama Disabilities Advocacy Program ("ADAP") has filed a brief to this court as an amicus curiae. In its brief, ADAP has raised several issues regarding the merits of the juvenile court's judgment continuing the custody of E.C.J. with the department, which were not raised by the parties to this case. Because we have determined that the juvenile court lacked jurisdiction to continue the commitment of E.C.J. to the department or to enter its judgment, ADAP's arguments are moot. Even if those arguments were not moot, we would not consider them because they were not raised by the parties to this case. Suttles v. Roy, [Ms. 1071453, May 21, 2010] ___ So. 3d ___, ___ (Ala.

2011) ("[A]rguments raised by amici curiae and not argued by the parties to the case are not considered by this Court.").

APPEAL DISMISSED WITH INSTRUCTIONS.

Bryan, J., concurs.

Thomas, J., concurs specially.

Thompson, P.J., dissents, with writing, which Pittman, J., joins.

THOMAS, Judge, concurring specially.

I agree that the juvenile court had no jurisdiction to enter a judgment relating to the juvenile commitment of E.C.J. after she reached the age of majority. Although I, too, share the concern expressed by Presiding Judge Thompson -- that the expiration of a juvenile commitment upon a minor's reaching the age of majority might be disruptive to the treatment of that person -- I must also concur in the majority's conclusion that a juvenile commitment must necessarily expire upon a minor's 19th birthday. I write specially to note that I am satisfied that mental-health care for such a person could be continued without disruption when necessary under the application of the law governing the involuntary commitment of adults.

Because the probate court does not have jurisdiction over the commitment of minors or children, see Ala. Code 1975, § 22-52-16, no petition seeking to continue E.C.J.'s commitment could have been filed in the probate court in anticipation of her reaching age 19. That does create a risk that E.C.J. would be released from the custody of the Department of Mental Health because of the expiration of her juvenile commitment.

However, a petition to recommit E.C.J. could have been filed in the probate court immediately upon her 19th birthday; in that petition, the Department of Mental Health could have requested that E.C.J. remain in a mental-health-care facility pending the outcome of the final commitment hearing in the probate court. See Ala. Code 1975, § 22-52-7(a) (permitting a commitment petitioner to request that the probate court place limitations on a commitment respondent's liberty pending the outcome of the final hearing on the petition). If the probate court were convinced that limitations on E.C.J.'s liberty were warranted because she presented a danger to herself or to others, see § 22-52-7(b), the probate court could order E.C.J. to be detained "at a designated mental health facility or hospital," § 22-52-7(a), pending a probable cause hearing to be held within 7 days, Ala. Code 1975, § 22-52-8(a), and, potentially, until the final hearing on the commitment petition, which is required to be held within 30 days of service of the petition. § 22-52-8(a) & (b).

The procedures provided in the commitment statutes minimize the potential for the release of a patient merely because he or she has turned 19, which, at least in my mind,

is the most troubling aspect of the expiration of a juvenile commitment order. Based on a review of the limited materials in the record on appeal, I think it is likely that the Department of Mental Health could present sufficient evidence that E.C.J.'s liberty should be restrained pending a commitment hearing in the probate court and, thus, that the status quo could be maintained. Accordingly, I concur in the majority opinion.

THOMPSON, Presiding Judge, dissenting.

I agree that the juvenile court did not have jurisdiction to enter a new judgment in this matter on March 25, 2011, because, by that date, E.C.J. had reached the age of majority; however, I do not believe that the juvenile court's judgment of July 10, 2009, ordering the involuntary commitment of E.C.J. "expired" when E.C.J. reached the age of majority.

It is undisputed that the juvenile court had jurisdiction to enter the judgment of July 10, 2009, in which E.C.J. was committed to the legal and physical custody of the Alabama Department of Mental Health ("the department"). E.C.J. was a minor when, on February 6, 2009, upon a petition filed by the Limestone County Department of Human Resources, she was involuntarily committed to the department and then admitted to the William D. Partlow Developmental Center ("Partlow") in Tuscaloosa. On March 18, 2009, the department filed a motion seeking to release E.C.J. from its custody. The juvenile court granted the motion on April 3, 2009, and custody of E.C.J. was returned to her parents. In May 2009, E.C.J.'s guardian ad litem filed another petition seeking E.C.J.'s involuntary commitment. On July 10, 2009, the juvenile court

granted the petition of the guardian ad litem on the ground that E.C.J. was suffering from mental illness and intellectual disability.

E.C.J.'s 19th birthday was February 6, 2011. On February 4, 2011, in anticipation of E.C.J.'s 19th birthday, the department filed a "Notice of Expiration of Juvenile Court Involuntary Mental Commitment to the Alabama Department of Mental Health," which, the department asserts, was made pursuant to §§ 12-15-409 and -410, Ala. Code 1975. The department did not seek to have E.C.J.'s involuntary commitment lifted, to end E.C.J.'s treatment at Partlow, or to have E.C.J. removed from the department's custody. In its notice, the department asked the juvenile court

> "to acknowledge with its ruling, the Department's legal assertion that its ORDER dated July 10, 2009, committing [E.C.J.] to [the department] on the basis that she is both mentally ill and mentally retarded, is due to expire on February 6, 2011, upon the minor reaching her age of majority, i.e. 19 years of age. Further, the Department requests guidance on whether [the juvenile court] desires for [E.C.J.] to remain at Partlow (as is currently recommended by her treatment professionals) by virtue of legal custody vesting in [the Department of Human Resources] or otherwise, via delinquency, dependency, child in need of supervision, etc. ..., that may have arisen with [the juvenile court] before the minor's 18th birthday."

A hearing was held on the issues related to E.C.J.'s reaching the age of majority, and on March 25, 2011, the juvenile court entered its judgment directing that legal and physical custody of E.C.J. was to remain with the department and stating that the juvenile court was retaining jurisdiction over the matter pursuant to § 12-15-412. The department timely appealed to this court.

The department argues that the juvenile court's "mental commitments expire at the age of majority." In support of its argument, the department emphasizes language from several statutes governing the commitment of minors or children with mental illness or mental retardation, highlighting the words "minor or child" in each. The department quotes § 12-15-115(a)(3), Ala. Code 1975, which states, in pertinent part, that the juvenile court will exercise jurisdiction in "'[p]roceedings for the commitment of a minor or child.'" (Emphasis in department's appellate brief.) It also quotes § 12-15-411, governing the discharge of a mentally ill or a mentally retarded minor or child from the department's custody, as follows:

> "'(a) Any minor or child committed to the custody of the department who has gained maximum

> benefit from institutional treatment, who is no longer in need of the services of the department, or who has gained maximum benefit from the programs of the department shall be discharged from the custody of the department. The minor or child shall not be received again by the department pursuant to the original commitment order unless deemed appropriate by a court of proper jurisdiction holding a subsequent hearing.
>
> "'(b) The department shall notify the committing juvenile court or the court to which the case is transferred and the parties to the commitment action in writing, which must be received by the juvenile court at least 10 days in advance of the proposed discharge. The committing juvenile court, at the time of discharge, shall transfer custody to a person or another state department or agency deemed suitable by the juvenile court.'"

(Emphasis in department's appellate brief.) The department also quotes the basis for the juvenile court's holding that it retained jurisdiction over this matter, § 12-15-412, which states: "'The juvenile court committing any minor or child to the custody of the department shall retain jurisdiction over the minor or child so long as the minor or child is in the custody of the department regarding the original commitment.'" (Emphasis in department's appellate brief.)

In addition to statutes relating to the commitment of mentally ill or intellectually disabled minors and children, the department cites general statutes defining a minor as one

who is under the age of 19 years, Ala. Code 1975, §§ 12-15-102(18) and 26-1-1 (defining the age of majority as 19 years). The department also cites In re Warrick, 501 So. 2d 1223 (Ala. Civ. App. 1985). Warrick involved the issue whether employees of the department were in contempt for violating a juvenile court's order that committed a child to the department for "'evaluation, treatment and placement'" in a certain facility pending further court orders. Id. at 1225. The statutes in effect in 1984 were silent as to the authority of the department to discharge a patient. Id. at 1227. In this case, the department relies on language in Warrick in which the court in that case concluded that "[o]nce the juvenile court transfers custody to the department, custody remains in the department until it is relieved of that responsibility by the juvenile court or until the child reaches its majority." Id. Therefore, the Warrick court concluded, the department could not be relieved of its legal responsibility to the child "except by order of the juvenile court or the passage of time." Id. Accordingly, the court held that the department improperly had taken it upon itself to discharge the child. Id. at 1228.

We note that in Warrick the child had not reached the age of majority. Moreover, Warrick was decided more than 20 years before the statutes relevant to the issue presented in this case were promulgated. As previously mentioned, § 12-15-411 governs when a child or a minor can be discharged from the custody of the department. Specifically, it provides that a child or a minor in the custody of the department can be discharged when that child or minor "has gained maximum benefit from institutional treatment, ... is no longer in need of the services of the department, or ... has gained maximum benefit from the programs of the department." § 12-15-411(a). That statute does not provide that treatment of a child or a minor already committed to the custody of the department "expires" simply because that child or minor reaches the age of majority. To the contrary, § 12-15-412 explicitly provides that "[t]he juvenile court committing any minor or child to the custody of the department shall retain jurisdiction over the minor or child so long as the minor or child is in the custody of the department regarding the original commitment." Nothing in that statute calls for a court-ordered commitment to "expire" simply because the child or the minor who is

receiving treatment pursuant to that order has reached the age of majority.

I believe that, under traditional principles of statutory construction, had the legislature intended for a mental commitment to "expire" when a committed minor reaches the age of majority, it could have included such language in the statutes governing the involuntary commitment of minors or children. See Ex parte Sawyer, 892 So. 2d 898, 902 (Ala. 2004). That the legislature did not include in its statutory scheme an "expiration" of a commitment order upon the minor's reaching the age of majority implies that it did not intend for a validly entered commitment order to "expire." See, e.g., Ex parte State Dep't of Revenue, 624 So. 2d 582, 584 (Ala. 1993) ("[C]ourts often apply the legal maxim expressio unius est exclusio alterius (the expression of one thing is the exclusion of another) in interpreting statutes.").

In fact, an expiration of a commitment order based solely on the age of the person being treated for mental illness or any other mental disability may be disruptive to the care and treatment of that person. Furthermore, to require a new commitment proceeding during the course of treatment that has

already been ordered by a court merely because the person being treated reaches the age of majority is a waste of judicial resources. The following scenario comes to mind. Assume that, one week before his 19th birthday, a minor becomes a danger to himself or to others such that the department is awarded custody of the minor pursuant to a valid order of involuntary commitment entered by the juvenile court. Under the department's rationale, when the minor reaches the age of majority a week later, the entire commitment process must be carried out again, although the person is in the custody of the department pursuant to a valid judgment.

In this case, the department admits that E.C.J. has made only "fair" progress in her treatment and that it was not recommending her for release from its custody. Indeed, the department wishes her to remain at Partlow. As long as E.C.J. remains committed pursuant to the order of July 2009, there is simply no reason for a new court to enter a duplicative order. We note that once a child or a minor has been discharged from the custody of the department, § 12-15-411(a) provides that the child or minor "shall not be received again by the department pursuant to the original commitment order unless

deemed appropriate by a court of proper jurisdiction holding a subsequent hearing." That provision of § 12-15-411 appears to contemplate the following scenario: when a mentally ill or intellectually disabled minor has been committed to the custody of the department and is subsequently released, if that minor has reached the age of majority, then the juvenile court cannot order a subsequent commitment; the commitment must be ordered by a court with jurisdiction over one who has reached the age of majority.

My research has revealed no law--and the department and the main opinion have not cited any law--that would authorize a party to file a "Notice of Expiration" of a validly entered judgment. The proper method by which to have a judgment set aside is for a party to file a motion pursuant to Rule 60(b), Ala. R. Civ. P., which allows for judgments to be set aside under certain circumstances. The department did not make any effort to have the judgment in this case set aside. Instead, it unilaterally gave "notice" to the juvenile court that the July 2009 judgment had "expired."

I believe that the July 2009 judgment will remain effective until E.C.J. has gained maximum benefit from

institutional treatment, is no longer in need of the services of the department, or has gained maximum benefit from the programs of the department. See § 12-15-411. Therefore, I must respectfully dissent.

Pittman, J., concurs.