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ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2013

2120534

C.C.

v.

L.J.

Appeal from Limestone Juvenile Court
(JU-12-154.01)

PER CURIAM.

C.C. ("the father") appeals from a judgment of the Limestone Juvenile Court ("the juvenile court") terminating his parental rights to J.C.C., a minor child ("the child"), born in November 2008 to L.J. ("the mother"). We dismiss the appeal as being from a void judgment.

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The record reflects that the mother initiated a civil action against the father in the juvenile court in July 2012, requesting that the juvenile court establish the father's paternity of the child and that that court also terminate the father's parental rights on the basis that the father had purportedly abandoned the child and had failed to visit with or provide for the material needs of the child. The father, initially acting pro se, filed an answer generally denying the allegations of the mother's complaint pertinent to her termination request, but HE did not deny paternity, and the juvenile court entered an order in September 2012 determining that the father was indeed the biological father of the child. The father, acting through counsel, then amended his answer and asserted a counterclaim seeking joint legal custody, visitation rights, and a child-support award for the benefit of the mother.

After an ore tenus hearing, at which the mother, the father, and the mother's mother testified, the juvenile court entered a judgment in March 2013 terminating the father's parental rights, thereby implicitly denying the relief requested by the father in his counterclaim. The father timely appealed from the judgment of the juvenile court, and the judge of that court certified the record as adequate for

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review by this court pursuant to Rule 28(A)(1)(a), Ala. R. Juv. P.

The father, in addition to presenting challenges to the correctness of the juvenile court's judgment, has asserted in his brief a jurisdictional challenge attacking the validity of the judgment, contending that the juvenile court did not have subject-matter jurisdiction to hear the mother's petition. Although the father's argument was not made to the juvenile court in the first instance, a trial court's lack of subject-matter jurisdiction may not be waived by the parties, and it is an appellate court's duty in reviewing a judgment of a trial court to consider lack of subject-matter jurisdiction ex mero motu. See PQ, Inc. v. Birmingham Realty Co., 78 So. 3d 391, 393 (Ala. 2011). Thus, we will address the father's contention as to jurisdiction on its merits.

The father contends that, under § 12-15-114, Ala. Code 1975, a juvenile court may not exercise jurisdiction over a termination-of-parental-rights claim except insofar as that claim arises out of a proceeding involving an allegation that a child is dependent, delinquent, or in need of supervision. We agree for the same reasons set out in our opinion in W.B.B. v. H.M.S., [Ms. 2120501, Sept. 6, 2013] ___ So. 3d ___ (Ala. Civ. App. 2013). Because the instant termination-of-parental-

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rights proceeding did not arise out of a dependency, delinquency, or child-in-need-of-supervision proceeding, the juvenile court did not have subject-matter jurisdiction to enter its judgment, and its judgment purporting to terminate the parental rights of the father is therefore void.

A void judgment will not support an appeal. See generally A.C. v. In re E.C.N., 89 So. 3d 777 (Ala. Civ. App. 2012). Therefore, the appeal is dismissed, albeit with instructions for the juvenile court to vacate its judgment terminating the parental rights of the father.

APPEAL DISMISSED WITH INSTRUCTIONS.

Thomas, Moore, and Donaldson, JJ., concur.

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

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PITTMAN, Judge, dissenting.

Because I disagree with the main opinion's conclusion that the juvenile court lacked jurisdiction to enter the judgment from which the father has appealed, I respectfully dissent; I would reach the merits of the appeal.

Before its repeal by the Alabama Juvenile Justice Act of 2008 ("the AJJA"), Ala. Code 1975, § 12-15-101 et seq., the 1984 Child Protection Act, Ala. Code 1975, § 26-18-1 et seq. ("the CPA"), applied to proceedings in which termination of parental rights was sought. The CPA was intended "to provide meaningful guidelines to be used by the juvenile court in cases involving the termination of parental rights," Ala. Code 1975, § 26-18-2 (repealed) (emphasis added), and provided, for the first time, that such a petition could "be filed by ... any ... parent, with permission of the court, or any interested party," Ala. Code 1975, § 26-18-5(a) (repealed). The CPA was held, in Ex parte Johnson, 474 So. 2d 715 (Ala. 1985), to reflect a legislative intent to allow parents to initiate termination actions, which, under former law (Ala. Code 1975, § 12-15-30(b)(6) (repealed)), were within the exclusive jurisdiction of the juvenile courts.

Did the enactment of the AJJA alter the formerly prevailing law under which parents could seek termination of

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parental rights in the juvenile court? A close review of the AJJA as a whole indicates no such intent. Former § 26-18-5 has been carried forward into the AJJA and codified at Ala. Code 1975, § 12-15-317, which states that "any ... parent ... may file a petition to terminate the parental rights of a parent or parents of a child." Although the proper forum for filing such a petition is not therein stated, the Code sections that follow leave no doubt that the legislature intended that juvenile courts maintain their former exclusive jurisdiction to hear such matters. Taken together, the succeeding sections of the AJJA provide (a) for service of process by publication to be ordered in particular circumstances by the juvenile court (§ 12-15-318), (b) that termination of parental rights may be ordered by the juvenile court upon a proper showing of grounds therefor (§ 12-15-319), and (c) that additional actions are authorized to be undertaken by the juvenile court upon a determination that parents are unwilling or unable to act as parents (§ 12-15-320). I glean from the AJJA's repetitious references to the juvenile court in connection with disposition of cases in which termination of parental rights is sought, including cases in which a parent seeks such termination, that the legislature had no intent to deprive the juvenile court of its

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former exclusive jurisdiction to adjudicate a termination-of-parental-rights claim such as that advanced by the mother in this case.

Thompson, P.J., concurs.