Rel: 06/20/2014

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2013-2014

1121134

Ex parte O.S. and J.A.S.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS

(In re: O.S. and J.A.S.

v.

E.S.)

(Walker Circuit Court, DR-10-900006; Court of Civil Appeals, 2110621)

PARKER, Justice.

O.S. and J.A.S. petitioned this Court for a writ of certiorari to review the Court of Civil Appeals' decision affirming the judgment of the Walker Circuit Court ("the circuit court") in favor of E.S. setting aside a final judgment of adoption rendered on March 11, 2008, by the Probate Court of Walker County ("the probate court"). See O.S. v. E.S., [Ms. 2110621, April 19, 2013] ___ So. 3d ___ (Ala. Civ. App. 2013). We granted certiorari review solely to determine whether the circuit court had jurisdiction to consider E.S.'s independent action seeking to set aside the probate court's judgment of adoption.

I. Facts and Procedural History

The Court of Civil Appeals set forth the relevant facts and procedural history in O.S., supra, as follows:

> "B.O.S. ('the husband') and E.S. ('the wife') began living together in 2005. Their union produced a daughter, B.T.S. ('the child'), in August 2006; the couple married in March 2007. The husband, the wife, and the child lived in a mobile home next door to O.S., the child's paternal grandfather ('the grandfather'), and his wife, J.A.S. ('the stepgrandmother') (hereinafter sometimes referred to collectively as 'the grandparents'). The evidence was undisputed that the grandparents had given the husband and the wife financial assistance and that the child had spent substantial time with the grandparents.

"In January 2010, the husband and wife separated. The wife took the child and went to stay with her parents. On February 3, 2010, the husband filed a complaint seeking a divorce. The complaint alleged, among other things, that one child had been born to the couple but that the child had been adopted by the grandparents in 2008 after the husband and the wife had 'signed over all parental rights' to the grandparents. The complaint requested that the child be removed from the physical custody of the wife and returned to the adoptive parents -- i.e., the grandparents -- immediately.

"The grandparents moved to intervene in the divorce action, asserting that they were the child's adoptive parents and seeking immediate pendente lite physical custody of the child. On February 4, 2010, the circuit court issued an order allowing the grandparents to intervene in the action, granting their request for pendente lite custody of the child, and directing the wife to return the child to them immediately.

"The wife answered the husband's complaint and filed a 'counterclaim and independent action' against the grandparents, seeking to set aside a final judgment of adoption rendered on March 11, 2008, by the Probate Court of Walker County. The wife alleged that the grandfather had fraudulently induced her to consent to 'something that was similar to an adoption but was not an adoption, so that the child might receive college assistance in the future.' The wife further alleged that the grandfather had assured her that, if she consented to his proposal, 'nothing would change' and she would always be the child's mother. The wife acknowledged that she had signed a document labeled 'consent for adoption' in the office of an attorney for the grandfather, but, she alleged, nothing had been explained to her, she had not been assisted by her own attorney, and she had not been given copies

of the documents she had signed. Further, the wife alleged that the grandparents had falsely asserted in their adoption petition that the child had 'resided in the [grandparents'] home since [the child's birth on] August 31, 2006,' thereby perpetrating, the wife claimed, a fraud on the probate court.

"The grandparents answered the wife's claim, asserting that an independent action seeking to set aside a probate court's adoption judgment could properly be filed only in the probate court and that the circuit court had no subject-matter jurisdiction to consider the matter. The grandparents also asserted that the wife's claim was barred by the Alabama Adoption Code, § 26-10A-1 et seq., Ala. Code 1975, specifically, § 26-10A-14(a), Ala. Code 1975, which provides, in pertinent part:

> "'(a) The consent [to an adoption]..., once signed or confirmed, may not be withdrawn except:
>
> "'....
>
> "'(2) .... <u>After one year from the date a final decree of adoption is entered, a consent ... may not be challenged on any ground, except in cases where the adoptee has been kidnapped</u>.'

"(Emphasis added.)

"The wife and the grandparents filed cross-motions for a partial summary judgment on the issue of the circuit court's jurisdiction to set aside the judgment of adoption. Citing Ala. Code 1975, § 26-10A-16(a) (requiring that an adoption petition be 'signed, and verified by each petitioner'), the wife argued that, in addition to the ground of fraud on the court, the circuit court could set aside the

adoption judgment on the ground that the judgment was 'void on its face' because the grandparents' adoption petition was unverified. The circuit court entered a partial summary judgment in favor of the wife on the jurisdictional issue and then conducted an evidentiary hearing on the merits of the wife's claim.

"At the hearing, the wife testified that in November 2005, soon after she had learned that she was pregnant with the child, the grandfather had informed her that if she signed certain papers, her child would be able to 'go to college for free,' using his veteran's benefits. According to the wife, the grandfather stated that he was proposing something 'like an adoption,' but, he said, 'nothing would ever change, that [the wife] would always be [the child's] mother, and [the child] would always stay with [the husband and the wife].' The wife stated that the grandfather had asked her not to tell anyone about his proposal to adopt the child.

"The wife testified that, after having considered the grandfather's proposal, she had agreed to the proposal because she had thought it would give the child a better life. She acknowledged that she had gone to a lawyer's office and had signed papers shown to her by a woman in the lawyer's office, but, she said, she had not read the documents or been given a copy of them. The wife testified that, after she had signed the papers, the grandfather's statement that 'nothing would ... change' proved to be true in fact. Nothing did change, she said -- the child still resided with the husband and her and regularly visited with the grandparents -- until she and the husband separated.

"The husband testified that the grandfather had first proposed adoption when the child was about a year old. At that time, the husband said, the grandfather had not referred to the proposal as 'something like an adoption,' and the husband had

understood that an adoption meant giving up rights to a child. On cross-examination, however, the husband acknowledged that the grandfather had told him that the adoption would be, in effect, 'a paper adoption only' and that the husband and the wife would continue to be the child's parents. The husband stated that he and the wife had discussed the grandfather's proposal and that they had eventually decided that adoption would be in the child's best interest because, they thought, the child would have the advantage of the grandfather's veteran's benefits. The husband said that, on August 13, 2007, he and the wife had gone to a lawyer's office, where a woman had presented each of them with two documents -- a 'consent for adoption' and an 'affidavit of natural parent' -- that they had read and signed. The husband said that he and the wife had been shown no other documents, including the grandparents' petition for adoption, nor had he and the wife spoken with the lawyer who drafted the documents or had their own lawyers.

"The stepgrandmother testified that, during a week when she and the grandfather had been separated, she had written a letter to her attorney, requesting that she be removed as a party from the instant litigation. She acknowledged that she had arranged for the wife to read the letter and that she had told the wife that 'it was wrong' for the grandfather to take the child from the husband and the wife. The stepgrandmother stated that she had also told the wife that she had already raised one child and that she was too old to raise another child.

"The grandfather denied that he had proposed 'something like an adoption' to the wife, but he admitted that he had told the wife that, after the adoption, she would continue to be the child's mother and that 'things would go on just as usual.' The grandfather explained that it was usual for the child to 'reside' in both his home and in the home

of the husband and the wife, and, he insisted, the child was with him more than half the time. He admitted, however, that he had not informed the probate court in his petition for adoption that the child had resided anywhere other than with the grandparents since her birth.

"On cross-examination, the grandfather acknowledged that his brother had adopted that brother's grandchildren. In addition, the grandfather admitted that he had previously proposed to the husband that he adopt a different child -- one born to the union of the husband and a woman other than the wife -- but, the grandfather said, the husband and the other woman had rejected that proposal. The grandfather acknowledged that after the adoption of the child in this case, the child had still been covered by the husband's health-insurance policy and had still been claimed as a dependent on the tax returns filed by the husband and the wife, but, the grandfather said, he had paid the majority of the expenses associated with the child because the husband and the wife had been struggling financially. Finally, the grandfather admitted that, by virtue of adopting the child, he had begun receiving additional veteran's benefits in the amount of $100 per month and additional Social Security benefits in the amount of $739 per month. He denied, however, that his motive for adopting the child was to receive those benefits.

"On November 17, 2011, the circuit court ruled on the wife's claim against the grandparents and directed the entry of a final judgment as to that ruling.[1] See Rule 54(b), Ala. R. Civ. P. The circuit court's judgment states:

> "'This cause, coming for trial before this court on November 2, 2011, and November 4, 2011, on the complaint for intervention filed by the [grandparents] and the [wife's] counterclaim thereto, and

> upon consideration thereof, together with ore tenus testimony, it is hereby ordered, adjudged and decreed as follows:
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> "'1. The court determines, as the parties have been previously advised, that it has jurisdiction to determine the claims presented by the parties.[1]
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> "'2. That the [wife's] motion for a summary judgment on the issue of whether the judgment of adoption is void on its face is hereby denied.
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> "'3. The Court determines that the [wife] has proven that the [grandparents] perpetrated a fraud against the Probate Court of Walker County, Alabama, and made false representations to that Court in order to invoke the jurisdiction of that Court and to obtain the adoption the subject of this action.
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> "'4. Judgment is hereby rendered in favor of the [wife] and against the [grandparents] on the [wife's] counterclaim and independent action to set aside an order of adoption for fraud upon the court. Therefore, the final decree of adoption of March 11, 2008, is hereby set aside and said adoption is held null and void.
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> "'5. This court's order of February 4, 2010[, directing the wife to return the child to the grandparents,] is hereby

[1]On June 29, 2011, the circuit court entered an order indicating that it had considered all of the pertinent motions filed by the parties and concluding that "this court has jurisdiction of all issues raised by the pleadings in this matter."

> dissolved, and judgment is rendered in favor of the [wife] and against the [grandparents] on the complaint in intervention.'
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> "The grandparents appeal, arguing (1) that the circuit court did not have jurisdiction to set aside the probate court's judgment of adoption; (2) that the fraud alleged to have been committed in this case did not constitute 'fraud on the court'; and (3) that the circuit court's factual finding, that the grandparents had committed the alleged fraud, was unsupported by the evidence. The wife cross-appeals, arguing that the circuit court erred in determining that the judgment of adoption was not void because, she maintains, that judgment was predicated on a petition that had not been verified as required by § 26-10A-16(a).
>
> "_____
>
> "[1]The husband's claim against the wife for a divorce remained pending before the circuit court."

O.S., ___ So. 3d at ___.

II. Standard of Review

"Our review of the argument that the trial court lacks subject-matter jurisdiction is, of course, de novo." State Dep't of Revenue v. Arnold, 909 So. 2d 192, 193 (Ala. 2005).

III. Discussion

O.S. and J.A.S. argue that the circuit court lacked jurisdiction to consider E.S.'s independent action challenging the probate court's judgment of adoption. We agree.

Initially, we note that the jurisdiction of probate courts in Alabama "'is limited to the matters submitted to [them] by statute.'" AltaPointe Health Sys., Inc. v. Davis, 90 So. 3d 139, 154 (Ala. 2012) (quoting Wallace v. State, 507 So. 2d 466, 468 (Ala. 1987)). The legislature has given original jurisdiction over all adoption proceedings to the probate court. Section 26-10A-3, Ala. Code 1975, a part of the Alabama Adoption Code, § 26-10A-1 et seq., Ala. Code 1975, provides:

> "The probate court shall have original jurisdiction over proceedings brought under the chapter. If any party whose consent is required fails to consent or is unable to consent, the proceeding will be transferred to the court having jurisdiction over juvenile matters for the limited purpose of termination of parental rights. The provisions of this chapter shall be applicable to proceedings in the court having jurisdiction over juvenile matters."

(Emphasis added.) In addition to this general grant of original jurisdiction over adoption proceedings, the legislature further specified in § 26-10A-25(d), Ala. Code 1975, that "[a] final decree of adoption may not be collaterally attacked, except in cases of fraud or where the adoptee has been kidnapped, after the expiration of one year

from the entry of the final decree and after all appeals, if any."

In O.S., the Court of Civil Appeals recognized the above-mentioned statutes but nevertheless found that the circuit court had jurisdiction to consider E.S.'s independent action challenging the judgment of adoption rendered by the probate court based on the circuit court's general equitable jurisdiction set forth in § 12-11-31, Ala. Code 1975, which states, in pertinent part:

> "The powers and jurisdiction of circuit courts as to equitable matters or proceedings shall extend:
>
> "(1) To all civil actions in which a plain and adequate remedy is not provided in the other judicial tribunals."

The Court of Civil Appeals concluded that E.S.'s independent action filed in the circuit court seeking to set aside the probate court's judgment of adoption was a Rule 60(b), Ala. R. Civ. P., motion, which the circuit court had jurisdiction to consider under § 12-11-31. O.S., ___ So. 3d at ___.

Concerning the plain and adequate remedy that was available to E.S. under §§ 26-10A-3 and -25(d), the Court of Civil Appeals stated:

> "A probate court's authority to set aside an adoption on collateral attack is governed by Ala. Code 1975, § 26-10A-25(d), which provides that
>
> > "'[a] final decree of adoption may not be collaterally attacked, except in cases of fraud or where the adoptee has been kidnapped, after the expiration of one year from the entry of the final decree and after all appeals, if any.'
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> "See G.M. v. T.W., 75 So. 3d 1181, 1186-87 (Ala. Civ. App. 2011). The fact that the probate court has statutory jurisdiction, pursuant to § 26-10A-25(d), to entertain a collateral attack on a judgment of adoption does not, however, vitiate either (a) the circuit court's jurisdiction to entertain an independent action to have a probate court's judgment set aside on the ground of fraud on the court or (b) the circuit court's general equitable jurisdiction to decide all issues between the parties in a divorce action."

O.S., ___ So. 3d at ___ (footnote omitted). We disagree.

Both of the Court of Civil Appeals' conclusions are incorrect for the same reason: §§ 26-10A-3 and -25(d) vitiate the circuit court's general equitable jurisdiction to consider an independent action challenging a judgment of adoption entered by the probate court, whether in a divorce action or otherwise.

Section 12-11-31(1) grants the circuit court jurisdiction over equitable matters "in which a plain and adequate remedy is not provided in the other judicial tribunals." In §§ 26-

10A-3 and -25(d),[2] the legislature provided a "plain and adequate remedy" in the probate court for a parent to challenge a judgment of adoption rendered by the probate court. As a result, the Court of Civil Appeals' conclusion that the circuit court had jurisdiction pursuant to § 12-11-31 over E.S.'s independent action seeking to set aside the probate court's judgment of adoption is incorrect. The legislature definitively vested the probate court with jurisdiction over all adoption proceedings, including challenges to a judgment of adoption based on fraud. Therefore, contrary to the Court of Civil Appeals' opinion,

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[2]See also § 26-10A-14(a), Ala. Code 1975, which states, in pertinent part, as follows:

> "(a) The consent [to adoption] or relinquishment [for adoption], once signed or confirmed, may not be withdrawn except:
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> "....
>
> "(2) At any time until the final decree upon a showing that the consent or relinquishment was obtained by fraud, duress, mistake, or undue influence on the part of a petitioner or his or her agent or the agency to whom or for whose benefit it was given. After one year from the date of final decree of adoption is entered, a consent or relinquishment may not be challenged on any ground, except in cases where the adoptee has been kidnapped."

the probate court is the only court that has jurisdiction to consider E.S.'s challenge to the probate court's judgment of adoption.[3]

The Court of Civil Appeals' holding that E.S.'s "independent action seeking to set aside the adoption was a compulsory counterclaim that implicated a central issue in the divorce action, namely: the parentage and custody of a child born to the husband and the wife before they married," does not change our analysis. O.S., ___ So. 3d at ___. The parentage and custody of the child in this case was not a central issue in the divorce action because, years before B.O.S. filed the divorce action, the probate court had entered a judgment of adoption based on B.O.S.'s and E.S.'s consenting to O.S.'s and J.A.S.'s adopting the child. The probate court's judgment of adoption, which determined the parentage of the child, was a valid and final judgment at the time the divorce action was filed and was due to be "accorded the same

[3]We note that E.S. also argues that "[t]he circuit court also has jurisdiction to set aside a judgment of the probate court that is void on its face." E.S.'s brief, at p. 13. However, the circuit court's jurisdiction to consider such a challenge is also based on the circuit court's general equitable jurisdiction set forth in § 12-11-31. Therefore, for the same reasoning set forth above, this argument is not persuasive.

validity and presumptions which are accorded to judgments and orders of others courts of general jurisdiction." § 12-13-1(c), Ala. Code 1975. Legally, as B.O.S.'s divorce complaint alleged, B.O.S. and E.S. had no children at the time B.O.S. filed the divorce action. If E.S. sought to challenge the probate court's judgment of adoption based on her allegation that O.S. and J.A.S. employed fraudulent methods to adopt the child as a "benefit baby" solely to gain extra government benefits, the probate court was the proper court in which to bring such an action, as set forth above.

In their argument before this Court and the Court of Civil Appeals, O.S. and J.A.S. rely upon B.W.C. v. A.N.M., 590 So. 2d 282 (Ala. Civ. App. 1991)("B.W.C. II")(on remand from this Court, see Ex parte B.W.C., 590 So. 2d 279 (Ala. 1991)), and Holcomb v. Bomar, 392 So. 2d 1204 (Ala. Civ. App. 1981). In reaching its decision, the Court of Civil Appeals overruled, either in whole or in part, B.W.C. II and Holcomb; O.S. and J.A.S. have asked this Court to uphold those decisions. Based on the reasoning set forth above, we conclude that the Court of Civil Appeals erred in overruling those cases.

In Ex parte B.W.C., 590 So. 2d at 280-81, this Court set forth the facts relevant in B.W.C. II:

> "On June 22, 1984, the probate court entered final orders holding that B.W.C. had legally adopted A.N.M. and K.K.M. After B.W.C. and his wife divorced, and approximately three years after the probate court had entered the orders of adoption, B.W.C. filed a petition in the probate court to set aside the adoptions as fraudulent, alleging that his signature had been forged on the petitions for adoption.
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> "On April 7, 1989, the probate court transferred the case to the juvenile court, which denied B.W.C.'s petition with the following order:
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> > "'After careful review of the facts presented during the trial of this case, it is the opinion of the Court that the relief sought by the petitioner is due to be denied. On Aug. 22, 1985, the Circuit Court of Marshall County entered a divorce decree in case DR-85-200170 which terminated the marriage of [B.W.C. and K.C.]. Said decree provided that [B.W.C.] was to pay child support in the amount of $300.00 each month. [B.W.C.], the petitioner in this action, made no attempt to appeal his divorce decree. Some two years after the entry of the decree of divorce, [B.W.C.] filed this action seeking to set aside the adoption granted on June 22, 1984.
> >
> > "'It is apparent to the Court after review of the transcript of the divorce proceeding that the issue of the validity of the adoption was raised at that time. The Circuit Court found that [B.W.C.] had an obligation to pay support for these children. If [B.W.C.] wished to contest

> that finding, the proper method was to appeal from the order of the Circuit Court, not file an action some two years later in another Court.'
>
> "After the trial court denied his motion for new trial, B.W.C. appealed to the Court of Civil Appeals. The Court of Civil Appeals dismissed the appeal on the authority of § 26-10-5(c),[4] stating the following:
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> > "'Section 26-10-5(c) Code 1975, prohibits a decree of adoption from being set aside after the lapse of five years. ...'
>
> "[B.W.C. v. A.N.M.,] 590 So. 2d 279 [(Ala. Civ. App. 1991)]."

This Court reversed the Court of Civil Appeals' decision in B.W.C. v. A.N.M., 590 So. 2d 279 (Ala. Civ. App. 1991)("B.W.C. I"), because this Court determined that, under now repealed § 26-10-5(c), Ala. Code 1975, "an action to set aside a final order of adoption under the statute has as one of its constituent elements the requirement that the suit be begun within five years from the date of the final order, not that it must be completed within that period." Ex parte B.W.C., 590 So. 2d at 282. This Court further stated:

> "By reversing the judgment and remanding the cause, we should not be understood as addressing

[4]Section 26-10-5, Ala. Code 1975, was repealed effective January 1, 1991, by Act No. 90-554, Ala. Acts 1990.

> whether the petitioner was barred for some other reason, such as that stated by the trial judge -- that the issue of the validity of the adoption had been adjudicated or could have been adjudicated in the divorce proceeding."

Id.

On return to remand, the Court of Civil Appeals was tasked by this Court with considering "whether the trial court correctly determined that B.W.C. was barred from contesting the validity of the adoptions of A.N.M. and K.K.M. in juvenile court." B.W.C. II, 590 So. 2d at 283. The Court of Civil Appeals answered that question as follows:

> "An inquiry into subject matter jurisdiction may be made at any time. C.C.K. v. M.R.K., 579 So. 2d 1368 (Ala. Civ. App. 1991). If a court does not have subject matter jurisdiction, then it does not have authority to act. Mobile & Gulf R.R. Co. v. Crocker, 455 So. 2d 829 (Ala. 1984).
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> "In the past, this court has held that primary jurisdiction over adoption proceedings is in the probate court. C.C.K.; Ex parte Hicks, 451 So. 2d 324 (Ala. Civ. App. 1984). Further, this court held in Holcomb v. Bomar, 392 So. 2d 1204 (Ala. Civ. App. 1981), that the facts of that case made the probate court the proper place to file a motion to set aside an adoption. Moreover, unless the juvenile court acquired jurisdiction over a petition to adopt by the 'transfer' mechanism found at § 12-12-35, Code 1975, the juvenile court would be without authority to grant an adoption. See Ex parte D.C.H., C.W.H., & J.L.H., 575 So. 2d 100 (Ala. Civ. App. 1990). We find that the same principle applies in a proceeding to set aside an adoption.

> "It is well settled that adoption is purely statutory, unknown to the common law, and that strict statutory adherence is required. Ex parte Sullivan, 407 So. 2d 559 (Ala. 1981); Wolf v. Smith, 435 So. 2d 749 (Ala. Civ. App. 1983). Here, the circuit court which granted the divorce had not acquired subject matter jurisdiction over the adoptions by any statutory mechanism. Therefore, we hold that the circuit court that granted the divorce in this case could not have ratified or set aside the adoptions, because it had not acquired subject matter jurisdiction pursuant to any statute."

B.W.C. II, 590 So. 2d at 283.

O.S. and J.A.S. appropriately relied upon B.W.C. II in making their argument. The same principles concerning the probate court and adoption proceedings applied by the Court of Civil Appeals in B.W.C. II apply today. As set forth above, the legislature has given the probate court original jurisdiction over all adoption proceedings, including a challenge to a judgment of adoption on the basis of fraud. Therefore, there is no reason to overrule B.W.C. II or Holcomb, and the Court of Civil Appeals erred in doing so.

IV. Conclusion

Based on the foregoing, we reverse the Court of Civil

Appeals' judgment and remand the matter for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

Stuart, Bolin, Main, Wise, and Bryan, JJ., concur.

Moore, C.J., and Murdock and Shaw, JJ., dissent.

MURDOCK, Justice (dissenting).

After no small degree of struggle on my part and with some trepidation given the now antiquated rules of pleading and procedure in play in some of the cases discussed in the Court of Civil Appeals' opinion, I respectfully dissent. I offer the following thoughts.

Initially, my angst regarding the result achieved in the main opinion focused on a concern that the main opinion might be in error for failing to recognize and accommodate fully the plenary role of the circuit court as our court of general equity jurisdiction. The language of Ala. Code 1975, § 12-11-31 -- upon which the main opinion ultimately rests -- has been a part of our Code since the earliest years of Alabama's statehood. Despite this fact, in multiple cases dating back to that time, this Court has recognized the authority of the circuit court to adjudicate collateral attacks on the validity of probate court judgments on equitable grounds.

By its wording, § 12-11-31 assumes a preexisting, general

equity jurisdiction in circuit courts.[5] See generally Walker v. City of Birmingham, 279 Ala. 53, 181 So. 2d 493 (1965) (recognizing that circuit courts are courts of general equity jurisdiction); Ala. Const. 1901, § 142 ("The circuit court shall exercise general jurisdiction in all cases except as otherwise be provided by law."). The language in § 12-11-31 -- including the identical language now codified in subdivision (1) of that statute -- has been understood as simply affirmatively confirming or extending that general equity jurisdiction to certain categories of cases, not withholding from circuit courts equitable authority as to categories of cases not specifically listed therein. In Waldron, Isley & Co. v. Simmons, 28 Ala. 629 (1856), this Court addressed the language of § 602, 1852 Code, which was

[5]Section 12-11-31 provides in part as follows:

> "The powers and jurisdiction of circuit courts as to equitable matters or proceedings shall extend:
>
> "(1) To all civil actions in which a plain and adequate remedy is not provided in the other judicial tribunals."

identical to the language now codified in § 12-11-31(1) that states that the equitable jurisdiction of circuit courts shall extend "[t]o all civil actions in which a plain and adequate remedy is not provided in the other judicial tribunals." As to this language, the Court explained:

> "[W]e are entirely satisfied that, as to cases in which originally jurisdiction had vested legitimately in courts of chancery, the jurisdiction is not abolished by anything contained in section 602, although a plain and adequate remedy at law in such cases is provided by some other section of the Code, -- no prohibitory or restrictive words being used."

28 Ala. at 633.

Consistent with the foregoing, the language now found in § 12-11-31 has never been understood to prevent circuit courts, as Alabama's courts of general equity jurisdiction, from exercising jurisdiction over "bills of review" and other common-law writs that tested the validity of the judgments of other courts, including probate courts, on equitable grounds. See, e.g., Laney v. Dean, 267 Ala. 129, 136, 100 So. 2d 688, 695 (1958) ("There is no doubt of the general jurisdiction of a court of equity to annul decrees of courts of competent

jurisdiction which have been obtained by fraud."); Keenum v. Dodson, 212 Ala. 146, 148, 102 So. 230, 232 (1924) (holding as to a probate court judgment that "[t]he decree ... being charged as having been procured through fraud and requiring proof of extraneous facts to establish same, the complainants had the right to resort to a court of equity as for a cancellation or reformation of the decree"). (Again, the identical language now found in § 12-11-31(1) was in place when these cases were decided. See 1923 Code, § 6465; 1940 Code (Recomp. 1958), tit. 13, § 129.)

That said, it cannot be denied that the need for circuit courts to be able to consider equity-based challenges to probate court judgments has at least in part been a function of the inability of the probate courts, as courts of law, to take up such matters for themselves. See Bolden v. Sloss-Sheffield Steel & Iron Co., 215 Ala. 334, 335, 110 So. 574, 575 (1926) ("[W]here the jurisdiction of the court of law is acquired by the fraudulent concoction of a simulated cause of action, the fraud itself to be consummated through the

instrumentality of a court of justice, the protection of the court demands that there should be a remedy."). At least to the extent that the "case" for circuit court authority to review probate court judgments previously has found support in this need for a remedy, we can say that that "case" has been diminished with the modern-day extension of Rule 60(b), Ala. R. Civ. P , to the probate courts. With at least this concern laid to the side, our consideration of the jurisdictional issue at hand might naturally turn to concerns over the orderly functioning of our courts and the dignity and binding force of a judgment of the probate court as a court of coordinate jurisdiction.

Nonetheless, I dissent. I do so for a reason not subsumed by the foregoing discussion and not addressed in the main opinion. Specifically, the circuit court in this case, no differently than any other court, whether "sitting" in equity or in law, is not obligated to recognize or enforce any judgment of another court that is shown to be a void judgment. In Wanninger v. Lange, 268 Ala. 402, 406, 108 So. 2d 331, 335

(1959), this Court explained that "'[c]ourts acting without authority can impart no validity to their proceedings and their judgments are assailable in any proceeding.'" (Quoting Crump v. Knight, 256 Ala. 601, 603-04, 56 So. 2d 625, 627 (1952).) As to probate court judgments specifically, this Court has acknowledged that such judgments can be collaterally attacked if "plainly void or made without jurisdiction." Black v. Seals, 474 So. 2d 696, 697 (Ala. 1985). Cf. Martin v. Martin, 173 Ala. 106, 115, 55 So. 632, 634 (1911)(permitting a collateral attack on a divorce judgment procured through false jurisdictional allegations because such a judgment is "a nullity under all circumstances"). In Wightman v. Karsner, 20 Ala. 446, 453-54 (1852), this Court stated:

> "As far as our search has extended, the best authorities on the subject concur in saying, that a judgment void in one court, is not binding upon any other court, in which an interest arising under it is sought to be enforced. If the proceedings were merely irregular or erroneous, and liable to be set aside on appeal or writ of error, the case would be different."

(Emphasis added.)

Ultimately, therefore, I must dissent because the main

opinion errs in concluding that the circuit court did not have jurisdiction even to assess whether there had been a fraud on the probate court that rendered the probate court's judgment void.[6] The circuit court may or may not have made a correct decision on this issue, but that is a matter of the merits of its decision that we do not even reach. The circuit court had the jurisdiction to make that decision.[7]

Because this Court denies the jurisdiction of a circuit court to even consider whether a probate court judgment is void, circuit courts hereafter will have no choice but to give

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[6]Not even the dissenting judges in the Court of Civil Appeals take issue with the authority of the circuit court to make a decision as to whether the fraud in this case was a fraud upon the probate court that vitiated its judgment; they merely challenge the correctness of that decision on its merits, see O.S. v. E.S., [Ms. 2110621, April 19, 2013] ___ So. 3d __, __ (Ala. Civ. App. 2013)(Donaldson, J., dissenting, joined by Thompson, P.J.) -- something we stop short of doing because of our decision that the circuit court was without jurisdiction to consider that issue.

[7]This is so even if its decision in this regard also bore on the circuit court's own jurisdiction. See generally Ex parte Board of Educ. of Blount Cnty., 264 Ala. 34, 38, 84 So. 2d 653, 656 (1956)("[E]very court of general jurisdiction has the judicial power to determine the question of its own jurisdiction.").

legal effect to probate court judgments that might well be void. I suppose the only alternative available to circuit courts in the future will be to interrupt their own proceedings and instruct the parties to "go to the probate court" and file a separate proceeding in that court and then await the outcome of such a proceeding before resuming the litigation already pending before the circuit court, a process with which our courts are not familiar, at least as to the question whether the judgment of another court is void.

Based on the foregoing, I respectfully dissent.