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SUPREME COURT OF ALABAMA

SPECIAL TERM, 2020

1190390

**Ex parte N.G., Jr.; B.J.U.; and the N.G., Jr. Special Needs
Trust**

PETITION FOR WRIT OF MANDAMUS

(In re: P.W.

v.

**N.G., Jr., and B.J.U., individually and as guardian for
N.G., Jr.)**

(Russell Juvenile Court, CS-89-167.11)

SELLERS, Justice.

1190390

N.G., Jr. ("the father"); B.J.U., the father's legal guardian; and the N.G., Jr. Special Needs Trust ("the special-needs trust") petition this Court for a writ of mandamus directing the Russell Juvenile Court to vacate an order transferring to the Russell Circuit Court a claim asserted by P.W. ("the mother") alleging the fraudulent transfer of the father's assets in a case she filed seeking past-due child support from the father. We deny the petition.

In 2005, the father was involved in an automobile accident and was rendered permanently disabled. His mother, B.J.U., was appointed as his guardian. Through B.J.U., the father commenced a personal-injury action seeking to recover compensation for injuries he sustained in the accident. The personal-injury action settled, and, in 2013, the settlement proceeds were placed in the special-needs trust. Although it is not entirely clear, it appears that B.J.U. may be the trustee of the special-needs trust.

In August 2019, the mother filed a petition in the Russell Juvenile Court seeking to recover approximately \$70,000 in past-due child support allegedly owed by the father. The mother also named B.J.U., in her individual

1190390

capacity and as the father's guardian, as a defendant and alleged that she had secreted the father's assets. In an amended petition, the mother asserted a claim alleging a fraudulent transfer under § 8-9A-4(a), Ala. Code 1975, which provides that "[a] transfer made by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made, if the debtor made the transfer with actual intent to hinder, delay, or defraud any creditor of the debtor." The mother asserted that placing the proceeds of the father's personal-injury settlement in the special-needs trust was a fraudulent transfer. She also added the special-needs trust as a defendant.

The father, B.J.U., and the special-needs trust (hereinafter referred to collectively as "the petitioners") moved to dismiss the fraudulent-transfer claim, asserting that the juvenile court did not have subject-matter jurisdiction over it. The juvenile court agreed that it lacked jurisdiction but, instead of dismissing the fraudulent-transfer claim, severed it from the child-support claim and transferred it to the Russell Circuit Court. The petitioners filed a petition for a writ of mandamus in the Alabama Court

1190390

of Civil Appeals, which denied the petition by order. Ex parte N.G., Jr. (No. 2190337, Jan. 30, 2020), ___ So. 3d ___ (Ala. Civ. App. 2020) (table). The petitioners then filed a mandamus petition with this Court.

"Mandamus is an extraordinary remedy and will be granted only when there is '(1) a clear legal right in the petitioner to the order sought, (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so, (3) the lack of another adequate remedy, and (4) properly invoked jurisdiction of the court.' Ex parte Alfab, Inc., 586 So.2d 889, 891 (Ala. 1991)."

Ex parte Dillard Dep't Stores, Inc., 879 So. 2d 1134, 1136 (Ala. 2003). A petition for a writ of mandamus is an appropriate means of challenging the allegedly improper transfer of a case from one court to another. See Ex parte MedPartners, Inc., 820 So. 2d 815, 821 (Ala. 2001) (considering the improper transfer of a case that allegedly had been filed in the wrong venue and stating that "[t]he aggrieved party's sole remedy in such a case is a petition for writ of mandamus directed to the transferor court"); Ex parte N.B., 204 So. 3d 887, 891 (Ala. Civ. App. 2016) (considering the transfer of a case from a juvenile court to a circuit court and noting that a petition for a writ of mandamus is a proper means of challenging such a transfer).

1190390

Normally, if a court lacks subject-matter jurisdiction over a case, it must dismiss the case. See Ex parte Rankin, 284 So. 3d 933, 936 (Ala. Civ. App. 2019). But a court can transfer a case to another court if expressly authorized to do so. Ex parte Boykin, 611 So. 2d 322, 326 (Ala. 1992). In its order denying the petitioners' mandamus petition, the Court of Civil Appeals referenced § 12-11-11, Ala. Code 1975, which provides:

"Whenever it shall appear to the court that any case filed therein should have been brought in another court in the same county, the court shall make an order transferring the case to the proper court, and the clerk or register shall forthwith certify the pleadings, process, costs and order to the court to which the case is transferred, and the case shall be docketed and proceed in the court to which it is transferred, and the costs accrued in the court in which the case was originally filed shall abide by the result of the case in the court to which transferred."

In Ex parte E.S., 205 So. 3d 1245 (Ala. 2015), this Court held that § 12-11-11 required a circuit court to transfer a dispute regarding an adoption, over which the circuit court did not have subject-matter jurisdiction, to the probate court. In a dissenting opinion, Justice Shaw noted that the original version of the statute now codified at § 12-11-11 provided:

1190390

"Whenever it shall appear to any court of law or equity that any cause filed therein should have been brought in another court of like jurisdiction in the same county, the court shall make an order transferring the cause to the proper court....'

"Ala. Code 1940, Tit. 13, § 156."

205 So. 3d at 1250 (Shaw, J., dissenting) (emphasis added). Justice Shaw noted that the original statute was enacted as part of a legislative act dealing with the transfer of cases erroneously filed on the law "side" of the circuit court to the equity "side" of the circuit court, and vice versa. Id. In addition, in counties in which the circuit court sits in multiple divisions, the original version of the statute was used to transfer cases from one division to another. Id. As Justice Shaw noted, however, when the original statute was incorporated into the Code of Alabama 1975 as § 12-11-11, the language referring to "law or equity" and "like jurisdiction" was removed. Id.¹

¹In a later case, Justice Shaw wrote that, in his opinion,

"the alterations [resulting in the current version of § 12-11-11] were simply to remove the language referring to the distinction between law and equity, which language was superseded by the Rules of Civil Procedure, because there was no longer a need for a statute to allow the transfer of cases between the law and equity 'sides' of the circuit court. The

1190390

The Court of Civil Appeals, in denying the petitioners' mandamus petition in the present case, cited Ex parte N.B., supra. In that case, Judge Donaldson authored an opinion, in which Judge Pittman concurred, citing E.S. and § 12-11-11 as support for the conclusion that a juvenile court had the power to transfer a child-custody dispute, over which the juvenile court had no jurisdiction, to the circuit court. Judge Donaldson wrote:

"[Section] 12-11-11 authorizes 'the court' in a given county to transfer a case to another court in the same county, without further limitation. Predecessors to § 12-11-11 appear to have authorized only transfers between divisions of the circuit court and between the law and equity 'sides' of the circuit court. See Ex parte E.S., 205 So. 3d at 1250 (Shaw, J., dissenting). Section 12-11-11, however, contains no such limitation and, when read literally, provides the authority for the transfer in this case. Here, the juvenile court transferred a case that 'should have been brought in another court in the same county' to the appropriate court, i.e., the circuit court."

204 So. 3d at 893.

"Words used in a statute must be given their natural, plain, ordinary, and commonly understood

Code section was retained, however, because it still had a use in transferring cases between divisions of the circuit court."

Ex parte N.B., 222 So. 3d 1160, 1163 (Ala. 2016) (Shaw, J., concurring specially).

1190390

meaning, and where plain language is used a court is bound to interpret that language to mean exactly what it says. If the language of the statute is unambiguous, then there is no room for judicial construction and the clearly expressed intent of the legislature must be given effect."

IMED Corp. v. Systems Eng'g Assocs. Corp., 602 So. 2d 344, 346 (Ala. 1992). As Judge Donaldson concluded in N.B.: "[W]hen read literally, [§ 12-11-11] provides the authority for the transfer in this case." 204 So. 3d at 893.

In arguing that N.B. was incorrectly decided, the petitioners point out that § 12-11-11 is set out in Chapter 22, Title 11, Ala. Code 1975, which is entitled "Circuit Courts." Thus, they assert, § 12-11-11 authorizes only circuit courts to transfer cases. They do not, however, cite any controlling legal authority for the proposition that the title of Chapter 22 governs over the otherwise plain language of § 12-11-11, which is not limited to circuit courts.

The petitioners also point to Ex parte Boykin, 611 So. 2d 322 (Ala. 1992), and Hughes v. Branton, 141 So. 3d 1021 (Ala. 2013). Boykin involved the transfer of cases filed in the circuit court for the 10th Judicial Circuit to the "equity division" of that circuit. This Court held that "the creation and maintenance of the equity division is not authorized by

1190390

Alabama law" and that the transfers were improper. 611 So. 2d at 324. Boykin made no mention of § 12-11-11. Hughes held that a probate court did not have the power to transfer to the circuit court an action to set aside a deed. Like Boykin, Hughes did not discuss the applicability of § 12-11-11.

Promoting judicial economy, § 12-11-11 allows courts lacking subject-matter jurisdiction to transfer claims to an appropriate court within the same county rather than dismissing those claims to the detriment of the parties. Under § 12-11-11, courts within the same county have the authority to transfer cases both "horizontally" to courts of like jurisdiction and "vertically" to "lower" and "higher" courts. In the present case, the juvenile court appropriately severed the fraudulent-transfer claim from the child-support claim and transferred the former claim to a court with subject-matter jurisdiction over that claim.

A writ of mandamus is an extraordinary remedy, and the petitioners have the burden of showing a clear right to relief. They have not demonstrated that the juvenile court was without power to transfer the mother's fraudulent-transfer

1190390

claim to the circuit court. Accordingly, we deny the petition.

PETITION DENIED.

Bolin, Wise, Bryan, Mendheim, and Stewart, JJ., concur.

Parker, C.J., and Shaw and Mitchell, JJ., dissent.

1190390

SHAW, Justice (dissenting)

I respectfully dissent.

In the main opinion, this Court appears to adopt a reading of the phrase "the court" in Ala. Code 1975, § 12-11-11, to mean "a" or "any" court. My previous writings in Ex parte E.S., 205 So. 3d 1245, 1250-52 (Ala. 2015) (Shaw, J., dissenting), and N.B. v. J.C.R., 222 So. 3d 1160, 1160-64 (Ala. 2016) (Shaw, J., concurring specially), together explain why the plain-meaning rule does not apply in reference to § 12-11-11 because of an ambiguity² as to the meaning of the phrase "the court";³ explain that, in light of the language of

²N.B., 222 So. 3d at 1161 (Shaw, J., concurring specially) ("[I]f the language of a statute is not 'plain' or is ambiguous, then we must construe it in order to determine the legislature's intent.").

3

"The use of the definite article 'the' preceding the word 'court' is a limitation; the Code section does not use the indefinite article 'a' and state that 'a court' without jurisdiction shall transfer the case, which language could be interpreted to mean that the Code section applied to any court. See Freytag v. Commissioner of Internal Revenue, 501 U.S. 868, 902, 111 S. Ct. 2631, 115 L. Ed. 2d 764 (1991) (Scalia, J., concurring in part and concurring in the judgment) ('[The Appointments Clause] refers to "the Courts of Law." Certainly this does not mean any "Cour[t] of Law" The definite article "the" obviously narrows the class of eligible "Courts of Law"'). Section 12-11-11

1190390

that Code section before the adoption of the Rules of Civil Procedure⁴ and its location in the Code,⁵ § 12-11-11 and the phrase "the court" as used therein refers to the circuit court and not other courts;⁶ and explain that another Code section

thus refers to a specific or particular court, but that court is not designated in the Code section. We do not, from the plain language of the Code section, know which particular court may transfer a case when it has no jurisdiction. To determine what 'court' is 'the court' referred to in the Code section, we must look beyond the text to determine the legislature's intent."

N.B., 222 So. 3d at 1162 (Shaw, J., concurring specially).

⁴N.B., 222 So. 3d at 1162-63 (Shaw, J., concurring specially) (discussing the Committee Comments to Ala. Code 1940, Tit. 13, § 156, in Appendix III, Ala. R. Civ. P., which explain the modifications to § 12-11-11 resulting from the adoption of the rules).

⁵"The original act, [§ 4 of Act No. 725, Ala. Acts 1915,] expressly applied to circuit courts. Further, § 12-11-11 is placed in Chapter 11 of Title 12, which governs circuit courts." E.S., 205 So. 3d at 1250 (Shaw, J., dissenting).

6

"Given the use of the limiting term 'the court,' it appears that § 12-11-11 was 'intended' to apply to a particular court. Given the original act from which § 12-11-11 derives and the prior interpretation and use of that act for 'horizontal' transfers between circuit courts, it appears that § 12-11-11 was 'intended' to allow a transfer by one circuit court lacking jurisdiction to another circuit court. The Committee Comments explaining the modifications to the Code section effected by the

1190390

dealing with transfers by circuit courts and district courts shows that the legislature did not believe that § 12-11-11 was an all-encompassing transfer statute.⁷

In Ex parte E.S., supra, this Court applied § 12-11-11 to allow a circuit court to transfer an action to a probate court. Now, this Court holds that § 12-11-11 provides a different court -- the juvenile court -- with jurisdiction to transfer a case. This holding expands the scope of § 12-11-11 even further than did Ex parte E.S. Because, for the reasons discussed above, I believe that the Code section applies only to circuit courts and provides jurisdiction to transfer cases to only other circuit courts, "I do not believe that §

adoption of the Alabama Rules of Civil Procedure confirm this interpretation."

N.B., 222 So. 3d at 1163 (Shaw, J., concurring specially).

7

"[I]f § 12-11-11 allows any court to transfer a case to any other court in that county, then why would the legislature have enacted [Ala. Code 1975,] § 12-11-9[,] to allow circuit courts and district courts -- and only those courts -- to transfer cases to each other? If that would already be permissible under the purportedly much broader transfer powers of § 12-11-11, then § 12-11-9, covering the more limited transfers, would be unnecessary."

N.B., 222 So. 3d at 1163-64 (Shaw, J., concurring specially).

1190390

12-11-11 would allow the juvenile court in the instant case to transfer the action to the circuit court." N.B., 222 So. 3d at 1164 (Shaw, J., concurring specially). I thus respectfully dissent.

1190390

MITCHELL, Justice (dissenting).

I respectfully dissent from the majority's decision on statutory-interpretation grounds. I believe the phrase "the court" as used in § 12-11-11, Ala. Code 1975, is ambiguous and that the best interpretation limits its application to giving circuit courts authority to transfer a case to the proper court in the same county. In his dissent, Justice Shaw correctly uses the statute's contextual setting, the surplusage canon, and the Legislature's choice of the definite article to arrive at a narrower interpretation of the phrase "the court" than the one chosen by the majority. I write separately, however, to highlight two differences in my approach to resolving the ambiguity in § 12-11-11.

First, even in the face of ambiguity, it is never this Court's task to determine legislative intent. Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts at 391 (Thomson/West 2012) (discussing "[t]he false notion that the purpose of interpretation is to discover intent"). The alpha and omega of statutory interpretation is the text itself. "The words of a governing text are of paramount concern, and what they convey, in their context, is

1190390

what the text means." Id. at 56 ("Supremacy-of-Text Principle"). When ambiguities arise, this Court should turn to appropriate canons of interpretation to resolve them.

Second, the Legislature may, to an extent, instruct the courts on the meaning of particular provisions in the Alabama Code. Scalia & Garner, Reading Law at 225 ("Interpretive-Direction Canon"). To the extent those instructions do not violate the separation-of-powers doctrine, they should be followed. See id. at 223. The Legislature has provided interpretive instructions for the Code in § 1-1-14(a), Ala. Code 1975. Normally, titles and headings within a statutory framework are permissible indicators of meaning. Scalia & Garner, Reading Law at 221 ("Title-and-Headings Canon"). But § 1-1-14(a) states: "The classification and organization of the titles, chapters, articles, divisions, subdivisions and sections of this Code, and the headings thereto, are made for the purpose of convenient reference and orderly arrangement, and no implication, inference or presumption of a legislative construction shall be drawn therefrom." Thus, by statute, we cannot permissibly use Chapter 11's Title "Circuit Courts" to inform the meaning of § 12-11-11.

1190390

But the order of the Code sections is a different matter. Interpreting a statute in isolation without reference to its surrounding text or the larger body of law deprives the statute of its context -- and context is universally recognized as a primary determinant of the fair meaning of texts. Scalia & Garner, Reading Law at 167 (noting that under the "Whole-Text Canon [c]ontext is a primary determinant of meaning"). As the branch tasked with interpreting and applying the law in matters properly before it, see Ala. Const. 1901, Art. VI, § 139, it is the job of the judiciary to determine what the law means. Context is an indispensable tool in that process -- and the Legislature cannot permissibly tell us to ignore it. See Ala. Const. 1901, Art. III, § 42(c) ("[T]he legislative branch may not exercise the ... judicial power"); Scalia & Garner, Reading Law at 233 ("It is one thing for ... the legislature to supply the definition of the words, and specify the implication of the words, that go into this determination of fair meaning; it is something else for them to prescribe that fair meaning will not govern.").

"[I]n Alabama, unlike in the federal system, the legislature passes a separate act each term adopting the

1190390

codified text of previous enactments. See, e.g., Act No. 2007-147, Ala. Acts 2007." Blankenship v. Kennedy, [Ms. 1180649, May 29, 2020] __ So. 3d __, __ n.2 (Ala. 2020) (plurality opinion). It is settled that

"'the Code of Alabama ... is not a mere compilation of the laws previously existing, but is a body of laws, duly enacted, so that laws, which previously existed, ceased to be law when omitted from [the] Code, and additions, which appear therein, become the law from the approval of the Act adopting the Code.'"

Swift v. Gregory, 786 So. 2d 1097, 1100 (Ala. 2000) (quoting State v. Towery, 143 Ala. 48, 49, 39 So. 309, 309 (1905) (emphasis added)). Therefore, we do not rely on the editorial choices of code compilers to determine what the law is. Rather, we rely on the text the Legislature has ratified, in whole, every year, which sets out the statutes in a particular order.

Here, the contextual setting of § 12-11-11 sheds light on its meaning. Section 12-11-11 follows statutes concerning: the creation of the circuit courts (§ 12-11-1, Ala. Code 1975), the division of the circuits around the state (§ 12-11-2, Ala. Code 1975), the location of the circuit courts (§ 12-11-3, Ala. Code 1975), the circuit courts' hours of

1190390

operation (§ 12-11-4, Ala. Code 1975), and the types of sessions the circuit courts can hold (§ 12-11-5, Ala. Code 1975). And § 12-11-11 precedes the section establishing the circuit courts' jurisdiction. See § 12-11-30, Ala. Code 1975. It would be highly unusual to place a statute granting a power to courts generally in this otherwise specialized area of the Code. By way of proximity, it is only logical to infer that a statute referring to "the court" within a stretch of the Code dealing with circuit courts indicates its reach is limited to courts of that variety.

I do not necessarily agree with Justice Shaw's interpretation of the phrase "proper court" in § 12-11-11. But because the initial phrase, "the court," is limited to the circuit court, the juvenile court is not authorized to transfer the case to another court under § 12-11-11, regardless of the meaning of the phrase "proper court" later in the statute.

Parker, C.J., concurs.