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SUMMARY
July 8, 2021

2021COA94

No. 20CA0478, *People in Interest of J.H.* — Children’s Code — Juvenile Court — Magistrates — Petition for Review

This is a direct appeal to the court of appeals from a magistrate’s order in a paternity action brought under article 4 of the Children’s Code. A division of the court of appeals concludes that section 19-1-108, C.R.S. 2020, requires that a party aggrieved by a magistrate’s order in an article 4 proceeding is required to file a petition for review to the district court as a prerequisite to appealing to the court of appeals.

Because the appellant directly appealed the magistrate’s order to the court of appeals, without first seeking review in the district court, the division dismisses his appeal without prejudice for lack of jurisdiction. The division concludes that this result is required

notwithstanding the fact that the magistrate's order misadvised the parties that any appeal had to be filed in the court of appeals.

Court of Appeals No. 20CA0478
Archuleta County District Court No. 18JV12
Honorable James A. Casey, Magistrate

In re the Parental Responsibilities Concerning J.H., a Child,
and Concerning C.D.,
Appellant,
and
A.H.,
Appellee.

APPEAL DISMISSED

Division II
Opinion by JUDGE WELLING
Román and Brown, JJ., concur

Announced July 8, 2021

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Colorado, for Appellant

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¶ 1 C.D. appeals a magistrate's order granting A.H.'s (mother) motion for a directed verdict following a hearing on C.D.'s petition for paternity. C.D. also appeals the magistrate's judgment adjudicating B.D. (biological father) the legal father of J.H. (the child).

¶ 2 Because C.D. directly appealed the magistrate's order to this court, without first seeking review in the district court, we dismiss his appeal without prejudice for lack of jurisdiction.

I. Background

¶ 3 C.D. filed a petition for paternity asking the court to adjudicate him the child's father. C.D. admitted he wasn't the child's biological father, but alleged that he was the legal father pursuant to section 19-4-105(1)(d), C.R.S. 2020, because, while the child was under the age of majority, he received the child into his home and openly held the child out as his natural child. Mother objected to the petition and claimed that B.D. was the biological father. B.D. completed a paternity test, which indicated a greater than 99.99% possibility that he was the child's biological father, and filed it with the court.

¶ 4 On October 15, 2019, a magistrate held a hearing on C.D.’s petition for paternity. The magistrate granted mother’s motion to bifurcate the proceeding so that the only issue to be decided at the hearing was whether C.D. met the presumption of paternity based on the “holding-out” provision of section 19-4-105(1)(d).

¶ 5 At the close of C.D.’s case, mother moved for a directed verdict, arguing that no evidence established that C.D. had openly held out the child as his natural child. C.D. filed a brief arguing that the statute didn’t require him to be or believe that he was a biological parent for the “holding out” provision to apply.

¶ 6 The magistrate issued a written order granting mother’s motion for a directed verdict and dismissing C.D.’s petition for paternity. Finding no competing presumption of paternity, the magistrate adjudicated B.D. as the child’s father. The order included the following language:

This final order has been entered with consent of the parties in a proceeding in which consent was necessary. Any appeal must be taken in accordance with rule 7(b) of the Colorado Rules for Magistrates.

¶ 7 C.D. filed a direct appeal of the magistrate’s order to this court.

II. Analysis

A. The Children's Code

¶ 8 Section 19-1-108(1), C.R.S. 2020, of the Children's Code provides that "[t]he juvenile court may appoint one or more magistrates to hear any case or matter under the court's jurisdiction," except under limited circumstances which are not present here. Another subsection of section 19-1-108 sets forth the procedural requirements for appealing a magistrate's order. Under section 19-1-108(5.5), a party aggrieved by a magistrate's order is required to file a petition for review to the district court within fourteen days of the magistrate's order for proceedings under articles 2, 4, and 6 of the Children's Code. Paternity actions are proceedings under article 4 of the Children's Code. See §§ 19-4-101 to -130, C.R.S. 2020. This "petition for review is a prerequisite before an appeal may be filed with the Colorado court of appeals or Colorado supreme court." § 19-1-108(5.5).

B. The Magistrate Rules

¶ 9 The magistrate's order stated that the order was entered with consent of the parties in a proceeding in which consent was

necessary and that any appeal therefore should be filed in accordance with Rule 7(b) of the Colorado Rules for Magistrates.

¶ 10 C.R.M. 7 generally divides cases into those for which consent from the parties is required for a magistrate to preside, *see* C.R.M. 7(b), and those for which consent from the parties is not required for a magistrate to preside, *see* C.R.M. 7(a). C.R.M. 7(b) provides that if consent was required for the magistrate to hear the matter, the magistrate’s decision “shall be appealed pursuant to the Colorado Rules of Appellate Procedure in the same manner as an order or judgment of a district court.” That is, a timely petition for review to the district court isn’t a prerequisite for seeking review from the court of appeals.

¶ 11 A juvenile court magistrate has the powers and is subject to the limitations set forth in the Children’s Code, sections 19-1-101 to -129, C.R.S. 2020, and it must conduct proceedings in accordance with the statute. C.R.M. 6(d); *People in Interest of A.P.H.*, 2020 COA 159, ¶ 15. Therefore, the requirements of C.R.M. 7 only apply if there is not a statute or rule that otherwise governs. *See* C.R.M. 7(a)(1) (“Unless otherwise provided by statute, this Rule is the exclusive method to obtain review of a district court

magistrate’s order or judgment issued in a proceeding in which consent of the parties is not necessary.”); *A.P.H.*, ¶ 15.

¶ 12 In his supplemental brief, C.D. argues that the language of C.R.M. 7(a)(1) doesn’t govern this case because consent was necessary and, therefore, C.R.M. 7(b), which doesn’t contain the “unless otherwise provided by statute” language, applies to his appeal. We disagree. C.R.M. 6(d) provides that a juvenile court magistrate has all the powers and is subject to all the limitations and powers set forth in the Children’s Code. *See In re A.P.H.*, 98 P.3d 955, 957 (Colo. App. 2004) (explaining that a juvenile court magistrate has the powers and is subject to the limitations set forth in the Children’s Code and it must conduct proceedings in accordance with the code including the provisions of section 19-1-108). A division of this court recently held, “under the Children’s Code, it is of no consequence whether the proceeding presided over by the magistrate required the parties’ consent. Either way, a petition for review to the district court was a prerequisite to our review.” *A.P.H.*, ¶ 16.

¶ 13 Thus, we look to section 19-1-108 to determine the prerequisites for an appeal of a paternity petition. Pursuant to

subsection 19-1-108(5.5), a party who wishes to appeal a magistrate's order decided under article 4 of the Children's Code must file a petition for review with the district court within fourteen days of the magistrate's order. The Uniform Parentage Act, §§ 19-4-101 to -130, appears in article 4 of the Children's Code. Because the statute prevails over C.R.M. 7, under the Children's Code, whether consent to the magistrate presiding over the proceeding is required or not doesn't change the requirement that district court review is a prerequisite to a party appealing a magistrate's order in a paternity action to this court. *See A.P.H.*, ¶ 16.

¶ 14 We therefore lack jurisdiction to review the magistrate's order directly because the district court did not review it. *See People in Interest of K.L-P.*, 148 P.3d 402, 403 (Colo. App. 2006) ("Because the issue was not presented on judicial review to the district court judge, it is not properly before us on appeal."). And the parties' joint request that we review the magistrate's order notwithstanding the lack of district court review, doesn't change the outcome. *See, e.g., Dev. Recovery Co., LLC v. Pub. Serv. Co. of Colorado*, 2017 COA 86, ¶ 27 ("Subject matter jurisdiction 'either exists or it does not. The parties cannot confer subject matter jurisdiction upon the

court, nor may the court confer it upon itself.”) (internal citations omitted).

C. Unique Circumstances

¶ 15 In the alternative, C.D. urges us to apply the unique circumstances doctrine to his appeal. The unique circumstances exception applies “if a party reasonably relies and acts upon an erroneous or misleading statement or ruling by the trial court.” *Converse v. Zinke*, 635 P.2d 882, 886 (Colo. 1981). The exception is rarely invoked and applies only to an extreme situation. *See, e.g., Canton Oil Corp. v. Dist. Ct.*, 731 P.2d 687 (Colo. 1987); *Hillen v. Colo. Comp. Ins. Auth.*, 883 P.2d 586 (Colo. App. 1994); *Anderson v. Molitor*, 770 P.2d 1305 (Colo. App. 1998); *Sandoval v. Trinidad Area Health Ass’n*, 752 P.2d 1062 (Colo. App. 1988). In each case cited above, the court invoked the unique circumstances doctrine to excuse an untimely filing in a court that otherwise had jurisdiction. In contrast, we haven’t found — and the parties didn’t cite — any case where the doctrine was invoked to confer jurisdiction over an appeal on a court that lacked it.

¶ 16 Both parties cite *People in Interest of C.A.B.L.*, 221 P.3d 433 (Colo. App. 2009), to support the proposition that we should invoke

the unique circumstances doctrine in order to review the magistrate's order. *C.A.B.L.* doesn't support such a proposition. In *C.A.B.L.*, the magistrate presiding over the proceedings incorrectly advised a mother and her counsel to appeal orders they must first seek review in the district court. *Id.* at 436.¹ They did so, only to discover that district court didn't have jurisdiction to review the magistrate's order (and, instead, review was required to be sought directly in the court of appeals). *Id.* at 436-38. By the time mother sought review in the proper court — the court of appeals — the appeal was untimely. The division applied the unique circumstances doctrine to allow an appeal to the court of appeals beyond the jurisdictional deadline. *Id.* at 440-41. In other words,

¹ *People in Interest of C.A.B.L.*, 221 P.3d 433 (Colo. App. 2009), involved the appeal of a final order in a kinship adoption, which is a proceeding under article 5 of the Children's Code. Unlike proceedings under article 4 of the Children's Code, proceedings under article 5 aren't included among the proceedings that section 19-1-108, C.R.S. 2020, requires be reviewed by the district court before an appeal with this court may be pursued. See § 18-1-108(5.5) (requiring a petition for review with the district court as a "prerequisite before an appeal may be filed with the Colorado court of appeals or Colorado supreme court" for proceedings under articles 2, 3, 4, and 6 of the Children's Code). This is why the division in *C.A.B.L.* concluded that district court review wasn't a prerequisite for seeking review in the court of appeals. *C.A.B.L.*, 221 P.3d at 438.

the unique circumstances doctrine was invoked to excuse an otherwise untimely filing, not to vest jurisdiction in a court that otherwise lacked it.

¶ 17 C.D. also argues that the magistrate’s statement directing the parties to appeal pursuant to C.R.M. 7(b) itself was reversible error. But this argument misses the mark. Whether such an error is grounds for reversal or not, the error itself doesn’t confer appellate jurisdiction on this court. Instead it may serve as a basis for invoking the unique circumstances doctrine in the district court to excuse the untimely filing of a petition for review in that court. *See, e.g., In re Marriage of Stockman*, 251 P.3d 541, 543 (Colo. App. 2010) (“[I]f [appellant] files an untimely motion seeking review, the district court should carefully consider the unique circumstances presented by the magistrate’s erroneous and misleading language in determining whether to accept the untimely appeal.”).

¶ 18 Finally, C.D. asks us to remand the matter and order the district court to review the magistrate’s order even though a petition for review hasn’t been filed and the deadline for seeking such review has long passed. We decline to do so. Whether to excuse the untimeliness of a petition for review is a decision to be made by the

district court in the first instance. And we won't usurp the district court's role to decide the issue in the first instance; after all, the district court is in a far superior position to make the necessary findings about whether the circumstances of this case warrant the invocation of the unique circumstances doctrine. Our role will be to review such findings in the event they are challenged by either party.

¶ 19 We are certainly sympathetic to the parties' urgent plea to have the merits of their challenge to the magistrate's order expeditiously resolved. And it isn't lost on us that the parties have traveled down this long and futile path at the urging of a misstatement in the very order being challenged — compounded by the “confusing appellate labyrinth” of the Colorado Magistrate Rules that “perplex[] both counsel and pro se parties alike.” *Stockman*, 251 P.3d at 543 (citation omitted). Those circumstances may be grounds for the district court to accept a petition for review out of time, but they don't vest us with jurisdiction to review the magistrate's order in the absence of the filing and disposition of a petition for review with the district court. *See id.* (“[B]ecause

district court review of this order was required before any appeal could be filed, we simply have no jurisdiction and must dismiss.”).

III. Conclusion

¶ 20 For the reasons discussed above, we dismiss the appeal without prejudice to either party’s right to appeal following the disposition of a petition for review of the magistrate’s order to the district court.

JUDGE ROMÁN and JUDGE BROWN concur.