

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

In the Interest of Z.A.R., a child.

C.D.F. and C.K.F.,

Appellants,

v.

D.R.,

Appellee.

No. 2D21-652

November 30, 2022

Appeal from the Circuit Court for Lee County; Carolyn D. Swift,
Judge.

Michael E. Chionopoulos of Absolute Law, Fort Myers, for
Appellants.

No appearance for Appellee.

LaROSE, Judge.

The child's permanent guardians, C.D.F. and C.K.F.
(collectively, the Prospective Parents), appeal a final order

dismissing their petition to terminate the parental rights (TPR) of the minor child's birth parents, D.S. (the Mother) and D.R. (the Father), pending adoption. See § 63.089, Fla. Stat. (2020). We have jurisdiction. See Fla. R. App. P. 9.030(b)(1)(A).

The court's domestic relations division dismissed the petition for lack of jurisdiction, concluding that the court's juvenile division (a.k.a. the dependency court)¹ had exclusive jurisdiction over the child in case 14-DP-534, under chapter 39, Florida Statutes (2020). Because the domestic relations division had jurisdiction over the child in its chapter 63 proceeding, we reverse and remand for further proceedings consistent with this opinion.

I. Background

In 2018, the juvenile division placed the child in the Prospective Parents' permanent guardianship under section 39.6221 in case 14-DP-534. It determined that a permanent

¹ The domestic relations division referred to the court in case 14-DP-534 as "the Juvenile Dependency Court" in the final dismissal order. The court in case 14-DP-534 stated in its order that it is in the "Juvenile Division." The juvenile division includes juvenile dependency matters. *In re* Unified Fam. Ct.: Admin. Order No. 12.4 (Dec. 31, 2007) (on file with Clerk, Fla. 20th Jud. Cir. Ct.). Thus, we use the terms "juvenile division" and "dependency court" interchangeably in this opinion.

guardianship was in the child's best interest. The juvenile division "retain[ed] jurisdiction of the . . . child."

Less than two years later, in July 2020, the Prospective Parents filed their TPR petition. See § 63.089(3)(e), (4). The petition was assigned to the domestic relations division.²

Thereafter, the domestic relations division entered a "deemed consent" as to the Father for "failing to prepare [sic] when proper notice was given." The Mother moved to dismiss the petition, arguing that the juvenile division retained exclusive jurisdiction over the child under section 39.6221(5).

At the hearing on the Mother's motion, the domestic relations division reasoned:

I mean, I think based on -- unless I have an order relinquishing jurisdiction in the Chapter 39 case, which I do not, then that case, although I have jurisdiction to hear all of the cases. I have authority [but] that case has exclusive jurisdiction over this child until that jurisdiction is relinquished under the permanent guardian issue.

. . . .

² The Twentieth Judicial Circuit has a Unified Family Court to facilitate "familial related case litigation"; it consists of the court's domestic relations division and juvenile division. *In re Unified Fam. Ct.*: Admin. Order No. 12.4 (Dec. 31, 2007) (on file with Clerk, Fla. 20th Jud. Cir. Ct.).

It is not subject matter jurisdiction. It's an exclusive jurisdiction that Chapter 39 has exclusive jurisdiction. So we [are] using the word jurisdiction inappropriately. So it would just be like, for example, if I have a permanent guardianship order, and the parents and the permanent guardian want to change the arrangement, they have to come back to the 39 case. They can't do it in Family Court. But if it's two parents that one parent reunified and one parent didn't, I terminate jurisdiction in 39 [sic] so they can go to Family Court.

So the order matters. The Court's going to dismiss the petition for lack of jurisdiction, and we'll have to proceed from there.

The domestic relations division rendered an order dismissing the TPR petition. The Prospective Parents unsuccessfully sought rehearing, contending that the domestic relations division had jurisdiction. Alternatively, they argued that the case should be transferred to the juvenile division.

II. Discussion

The Prospective Parents argue that the domestic relations division had jurisdiction over their TPR petition. In their view, the domestic relations division mistakenly believed that jurisdiction was based on the court's *division* and it misinterpreted section 39.6221(5) to give the juvenile division exclusive jurisdiction over

the child *in all matters* regarding the child, instead of matters within the purview of chapter 39.³

We review the domestic relations division's statutory interpretation and jurisdiction de novo. *See Beltway Cap., LLC v. Greens COA, Inc.*, 153 So. 3d 330, 332 (Fla. 5th DCA 2014); *Lande v. Lande*, 2 So. 3d 378, 380 (Fla. 4th DCA 2008).

A court may terminate parental rights through (1) a private adoption under chapter 63 or (2) "the strict procedures set forth in chapter 39." *A.M. v. D.S.*, 314 So. 3d 747, 750 (Fla. 1st DCA 2021) (quoting *Fahey v. Fahey*, 213 So. 3d 999, 1001 (Fla. 1st DCA 2016)). "The two types are separate and distinct." *Id.* at 751. In a chapter 39 TPR proceeding, the "adoption is a separate, post-disposition option, ancillary to the TPR itself." *Id.* at 751. The Florida Rules of Juvenile Procedure apply to the proceedings, "unless otherwise provided by law." *Id.* at 752 (quoting § 39.801(1), Fla. Stat. (2017)). In contrast, a chapter 63 TPR proceeding "is in furtherance of and service to the adoption itself." *Id.* at 753. The

³ We have no answer brief. The Father did not appear in this appeal. The appellants have notified this court that the Mother died during this appeal, before a brief was filed on her behalf. We have removed her as an appellee.

Florida Family Law Rules of Procedure apply to those proceedings. See § 63.087(6).

Despite these differences, *all* circuit court judges have jurisdiction to hear both types of TPR proceedings. See *Adoption Miracles, LLC v. S.C.W.*, 912 So. 2d 368, 373-74 (Fla. 2d DCA 2005) ("The court in which the adoption proceeding is pending and the court in which the dependency proceeding is pending are both circuit courts with jurisdiction to determine these issues."); *Malave v. Malave*, 178 So. 3d 51, 54 (Fla. 5th DCA 2015) ("A circuit court, however, does not lack jurisdiction simply because a case is filed or assigned to the wrong division within the circuit court."); *In re Peterson*, 364 So. 2d 98, 99 (Fla. 4th DCA 1978) ("A judge in the probate division or the juvenile division or the civil division or the criminal division has the authority and jurisdiction to hear cases involving child custody or dependency. The internal operation of the court system and the assignment of judges to various divisions does not limit a particular judge's jurisdiction."); see also § 39.01(19), .013(2); § 63.032(8), .087(1). The domestic relations division correctly recognized that, generally, it had jurisdiction over chapter 63 TPR petitions.

However, the domestic relations division's reasoning went amiss when it concluded that the juvenile division in the dependency case retained *exclusive* jurisdiction over the child, thus ousting the domestic relations division from hearing the chapter 63 TPR petition. A circuit court has "exclusive original jurisdiction" over children in chapter 39 proceedings. § 39.013(2) ("The circuit court has exclusive original jurisdiction of all proceedings *under this chapter*, of a child voluntarily placed with a licensed child-caring agency, a licensed child-placing agency, or the department, and of the adoption of children whose parental rights have been terminated under this chapter." (emphasis added)). Section 39.013(2) further provides that the circuit court that obtains jurisdiction over a dependent child retains that exclusive jurisdiction for chapter 39 proceedings "unless relinquished by its order" or the child reaches a certain age.⁴ See *S.C.W.*, 912 So. 2d at

⁴ This is not a case where the dependency court had continuing jurisdiction over the child under section 39.812(4) after placing the child in the department's custody for subsequent adoption. See § 39.812(4) ("The court shall retain jurisdiction over any child placed in the custody of the department until the child is adopted. After custody of a child for subsequent adoption has been given to the department, the court has jurisdiction for the purpose of reviewing the status of the child and the progress being made

373 ("Here, a shelter petition and a dependency petition were filed before the birth mother signed a consent to the adoption of the child. These proceedings placed the child within the legal custody of the Department and vested 'exclusive original jurisdiction' over all proceedings under chapter 39 with the circuit court in which the petitions were filed."); *see also* § 39.01(19) (" 'Court,' unless otherwise expressly stated, means the circuit court assigned to exercise jurisdiction *under this chapter*." (emphasis added)). Section 39.6221(5) similarly provides that the circuit court assigned to a dependency case and that establishes a permanent guardianship "shall retain jurisdiction over *the case* and the child shall remain in the custody of the permanent guardian unless the order creating the permanent guardianship is modified by the court." (Emphasis added); *see also* § 39.01(19).

toward permanent adoptive placement. As part of this continuing jurisdiction, for good cause shown by the guardian ad litem for the child, the court may review the appropriateness of the adoptive placement of the child."). Nor is this a case where the dependency court already terminated parental rights of the child and thus had continuing exclusive jurisdiction over the adoption. *See* § 39.813 ("The court which terminates the parental rights of a child who is the subject of termination proceedings pursuant to this chapter shall retain exclusive jurisdiction in all matters pertaining to the child's adoption pursuant to chapter 63.").

Accordingly, the juvenile division maintained exclusive jurisdiction over the child in the chapter 39 proceedings. See § 39.01(19), .013(2), .6221(5); *S.C.W.*, 912 So. 2d at 373. But, because the Prospective Parents filed their TPR petition under chapter 63, the juvenile division did not have *exclusive* jurisdiction over the child. *Cf. A.M.*, 314 So. 3d at 763 (discussing the problems that arise when treating a chapter 63 TPR petition as a TPR petition under chapter 39 and noting that the grandparents can file an amended chapter 39 TPR petition if they want to seek a termination under chapter 39). Therefore, the juvenile division could not usurp the domestic relations division's jurisdiction over the chapter 63 TPR petition. Thus, the domestic relations division erred in dismissing the petition.

We appreciate the administrative efficiencies offered by circuit court divisions. See *generally* art. V, § 7, Fla. Const. ("All courts except the supreme court may sit in divisions as may be established by general law."); *Dep't of Child. & Fam. Servs. v. Heart of Adoptions, Inc.*, 947 So. 2d 1212, 1215-16 (Fla. 2d DCA 2007) ("But 'for efficiency in administration, the [c]ircuit [c]ourt is frequently divided into divisions, with each division handling certain types of cases.' "

(quoting *In re Guardianship of Bentley*, 342 So. 2d 1045, 1046-47 (Fla. 4th DCA 1977))). And we recognize the domestic relations division's concerns for matters that may need resolution in the juvenile division. See § 39.621(10) ("The permanency placement is intended to continue until the child reaches the age of majority and may not be disturbed absent a finding by the court that the circumstances of the permanency placement are no longer in the best interest of the child."); § 39.6221(5) (providing that "the child shall remain in the custody of the permanent guardian unless the order creating the permanent guardianship is modified by the court"); cf. § 63.082(6)(f) (requiring an adoption entity to "keep[] the dependency court informed of the status of the adoption proceedings at least every 90 days from the date of the order changing placement of the child until the date of finalization of the adoption").⁵ However, instead of dismissing the TPR petition, the

⁵ Section 63.089 permits the court to terminate parental rights upon a chapter 63 TPR petition for reasons besides a parent's consent, such as a parent's abandonment of the child. Yet, the legislature only explicitly permits an adoption entity to intervene in the dependency case where a parent executes a consent for adoption. § 63.082(6)(b)-(c); *S.C.W.*, 912 So. 2d at 373 (explaining that "Adoption Miracles was required to intervene in the dependency proceeding" where there was consent so the

domestic relations division could have stayed its proceedings while the Prospective Parents intervened in the dependency case.⁶ See *S.C.W.*, 912 So. 2d at 373 ("Presumably, the adoption proceedings would be stayed during the time required for the dependency court's determination, but would then resume and proceed when the child was placed with the prospective adoptive parents, subject to Adoption Miracles providing monthly reports to the Department until the adoption is finalized. At that point, the dependency proceedings would presumably be stayed or dismissed pending the finalization of the adoption."). Alternatively, the domestic relations division had the authority to determine whether to transfer or consolidate the cases before the same judge. See *In re Unified Fam. Ct.*: Admin. Order No. 12.4 (Dec. 31, 2007); *In re Est. of Unified Fam. Ct.*: Admin. Order No. 2.12 (Jan. 23, 1992) (on file with Clerk,

dependency court could make various determinations under section 63.082(6)(c) before the separate adoption proceedings would resume).

⁶ Of course, any of the dependency court's orders entered pursuant to chapter 39 "which affect the placement of, access to, parental time with, adoption of, or parental rights and responsibilities for a minor child shall take precedence over other orders entered in civil actions or proceedings," until the dependency court terminates jurisdiction. § 39.013(4).

Fla. 20th Jud. Cir. Ct.); *cf. Heart of Adoptions, Inc.*, 947 So. 2d at 1215 ("[T]he order merely transferred this matter to another division of the circuit court, and such a transfer is a matter wholly under the purview and within the discretion of the chief judge of the circuit court. All judges of a circuit court are authorized to exercise a circuit court's jurisdiction.").

We reverse the order dismissing the petition for lack of jurisdiction. On remand, the domestic relations division may consider whether it is necessary to transfer the case to the juvenile division judge, consolidate the cases, or stay the case for the Prospective Parents to intervene in the dependency case.

Reversed and remanded with directions.

SILBERMAN and VILLANTI, JJ., Concur.

Opinion subject to revision prior to official publication.