

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2011-IA-01624-SCT

***MISSISSIPPI DEPARTMENT OF HUMAN
SERVICES AND FRANK HARTLEY, JR.***

v.

JOHN D. WATTS AND LENITA S. WATTS

DATE OF JUDGMENT:	10/13/2011
TRIAL JUDGE:	HON. EDWARD E. PATTEN, JR.
COURT FROM WHICH APPEALED:	LINCOLN COUNTY CHANCERY COURT
ATTORNEYS FOR APPELLANTS:	OFFICE OF THE ATTORNEY GENERAL BY: TONYA M. BLAIR M. EARL SCALES DOUGLAS L. TYNES, JR.
ATTORNEYS FOR APPELLEES:	JOSEPH P. DURR W. BRADY KELLEMS CHELI K. DURR
NATURE OF THE CASE:	CIVIL - ADOPTION
DISPOSITION:	AFFIRMED AND REMANDED - 12/06/2012
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

EN BANC.

LAMAR, JUSTICE, FOR THE COURT:

¶1. The County Court of Jackson County, sitting as Youth Court (“Youth Court”), exercised jurisdiction over two minors following allegations of abuse and neglect. The foster parents of the two minor children subsequently filed adoption proceedings in the Lincoln County Chancery Court (“Chancery Court”). The Mississippi Department of Human Services (“MDHS”) sought interlocutory appeal after unsuccessfully challenging the

chancery court's jurisdiction to consider the adoption proceedings. We find that the Chancery Court has jurisdiction over the adoption proceedings and affirm the judgment of the Chancery Court.

FACTS AND PROCEDURAL HISTORY

¶2. The Jackson County Department of Human Services took minors A.B. and B.H. into custody due to neglect by the children's mother. At that time, the minors' father, Frank Hartley, was incarcerated in Florida.¹ The Youth Court ultimately placed the children with foster parents. Due to a shortage of foster homes in Jackson County, the children were placed with Lenita and John Watts, who serve as foster parents in Lincoln County.

¶3. MDHS subsequently began proceedings to terminate the parental rights of both parents in Youth Court. But, Hartley, having been released from prison, sought custody of the children or, alternatively, a plan for reunification with the children, and the Youth Court ultimately dismissed the motion for termination of Hartley's parental rights.² The Youth Court entered an order allowing Hartley to take the children to his home in Pennsylvania, under the supervision of the Pennsylvania courts, and MDHS informed the Wattses they would have to surrender the children for unsupervised overnight visitation with Hartley. The

¹ Hartley was convicted of committing lewd and lascivious acts on a minor between the ages of twelve and sixteen.

²The record of the Youth Court proceedings is not before this Court. It is unclear whether the Youth Court ever dealt with the merits of the petition to terminate Hartley's parental rights. Also, it appears the proceeding to terminate the mother's parental rights is still pending in the Youth Court. The dissent expresses concerns about "res judicata" and "conflicting orders" between the two courts. However, these issues are not before this Court and are potential issues that the chancellor acknowledged in his order. Nothing in this opinion should be read to preclude such issues being raised in the lower court. We rule today only upon the jurisdiction of the Chancery Court to proceed.

Wattses had no notice of the hearing on Hartley’s custody in the Youth Court, and they were not present at the hearing.³

¶4. The Wattses filed a Petition for Termination of Parental Rights, Adoption, or in the Alternative Custody, and for Other Relief in the Chancery Court of Lincoln County, where the children and the Wattses resided.⁴ Additionally, the Wattses requested a temporary restraining order (TRO) prohibiting Hartley from taking custody of the children.

¶5. The Chancery Court heard oral argument on the Wattses’ request for a TRO. MDHS opposed the Wattses’ petition, arguing, among other things, that the Chancery Court lacked jurisdiction, because the Youth Court had exclusive jurisdiction over all proceedings related to the children due to the ongoing abuse and neglect proceedings in that court. The Chancery Court found that it did have jurisdiction over the adoption proceeding.

¶6. After the Chancery Court’s decision retaining jurisdiction, the parties entered into an Agreed Order of Temporary Injunctive Relief (“Agreed Order”).⁵ MDHS sought interlocutory appeal on the jurisdictional issue, which we granted, leaving the Agreed Order in effect pending this appeal. The sole issue before us is whether the Lincoln County

³See Miss. Code Ann. § 43-15-13(9) (Rev. 2009).

⁴It is undisputed the Wattses lived in Lincoln County when they filed their petition on October 10, 2011, and that the children lived with the Wattses in Lincoln County from December 14, 2009, until the Wattses filed their petition.

⁵In the Agreed Order, the Chancery Court found it had subject matter and party jurisdiction, but that MDHS and Hartley reserved all objections to jurisdiction; that the minor children were to be placed with MDHS, but not allowed to be removed from Mississippi; that all nonphysical contact between the children and Hartley would be monitored; and that the Chancery Court would appoint a guardian ad litem (GAD), who would supervise any physical contact between the children and Hartley if the GAD chose to do so.

Chancery Court has jurisdiction over the adoption proceedings involving children who are simultaneously the subject of abuse and neglect proceedings in the Youth Court.⁶

DISCUSSION

I. STANDARD OF REVIEW

¶7. The question of whether the chancery court has jurisdiction to hear a particular matter is a question of law which this Court reviews de novo.”⁷

II. LEGAL ANALYSIS

¶8. The Mississippi Constitution gives chancery courts “full jurisdiction [over] . . . minor’s business.”⁸ The Mississippi Legislature gives youth courts “exclusive original jurisdiction” over “all proceedings” involving abused and neglected children.⁹ But “the

⁶Following oral arguments, we requested additional briefing from the parties on the question of whether the statutory grant of “exclusive original jurisdiction” to youth courts over “all proceedings” concerning abused and neglected children impermissibly encroaches upon the chancery courts’ constitutionally granted “full jurisdiction” over “minor’s business.” After thorough study, we find it unnecessary to answer this question in order to decide this case, and we leave it for determination on another day.

⁷*White v. White*, 26 So. 3d 342, 346 (Miss. 2010) (citing *In re Guardianship of Z.J.*, 804 So. 2d 1009, 1011 (Miss. 2002); *Burch v. Land Partners, L.P.*, 784 So. 2d 925, 927 (Miss. 2001)).

⁸Miss. Const. art. 6, § 159 (1890).

⁹*See* Mississippi Code Section 43-21-151, which reads as follows: “(1) The youth court shall have exclusive original jurisdiction in all proceedings involving a delinquent child, a child in need of supervision, a neglected child, an abused child or a dependant child, except in the following circumstances” None of the enumerated excepted circumstances is present herein.

chancery court’s jurisdiction . . . set by the Mississippi Constitution . . . cannot be diminished by statute.”¹⁰

¶9. MDHS argues that the Youth Court has exclusive original jurisdiction, to the exclusion of all other courts, over these two children in all proceedings because of the ongoing proceedings in Youth Court involving their abuse and neglect. MDHS relies primarily upon this Court’s decision in *K.M.K. v. S.L.M.*, 775 So. 2d 115 (Miss. 2000), to support its position. In *K.M.K.*, a minor was placed in the custody of foster parents by the County Court of Hinds County, sitting as Youth Court.¹¹ Approximately six months later, the foster parents filed a petition for termination of parental rights in the Chancery Court of Hinds County.¹² The natural mother filed an emergency motion to dismiss the chancery court petition, arguing that the youth court had “taken jurisdiction of the matter and had already entered an order granting [her] specific visitation rights.”¹³

¶10. On interlocutory appeal, we held that “a chancery court may not exercise jurisdiction over any abused or neglected child or any proceedings pertaining thereto over which the youth court may exercise jurisdiction *if* there has been a prior proceeding in the youth court concerning that same child.”¹⁴ However, in *K.M.K.*, we specifically limited our holding “to questions of priority jurisdiction in counties that have a county court sitting as a youth court

¹⁰*White v. White*, 26 So. 3d at 347.

¹¹*K.M.K.*, 775 So. 2d at 116.

¹²*Id.*

¹³*Id.* at 117.

¹⁴*Id.* at 118.

in addition to a chancery court.¹⁵ We further noted “there are some matters concerning abused and neglected children over which *the youth court has no jurisdiction.*”¹⁶ Thus, MDHS’s reliance on *K.M.K.* is misplaced. Jurisdiction to hear and determine adoption proceedings is vested exclusively in our chancery courts.¹⁷

¶11. MDHS also argues that the children were not “ripe” for adoption because the Youth Court had not yet terminated the natural parents’ rights. Although a youth court may terminate a parent’s rights under Mississippi Code Section 93-15-103 outside of an adoption proceeding, an adoption petition frequently includes an incidental termination of parental rights. Furthermore, as the Chancery Court recognized, two statutory schemes govern termination of parental rights. Mississippi Code Section 93-15-103 provides a finite list of specific factors that are to be considered in a proceeding to terminate parental rights. Mississippi Code Section 93-17-7 provides a more expansive list of factors that may be considered as reasons to terminate parental rights in the course of a contested adoption. Mississippi Code Section 93-17-13 additionally directs a chancellor granting an adoption over an objecting parent to include the language that “all parental rights of the natural parent, or parents, shall be terminated” in the final judgment of adoption.

¶12. Clearly, a chancellor has authority to terminate the rights of natural parents to enter a judgment of adoption, and is allowed to consider a more expansive list of factors in a

¹⁵*Id.*

¹⁶*Id.* at n.1 (citing Miss. Code Ann. § 93-17-3 (1994) (adoption proceedings must be filed in chancery court)) (emphasis added).

¹⁷*See* Miss. Code Ann. § 93-17-3 (4) (Rev. 2004) (adoption proceedings must be filed in chancery court).

contested adoption proceeding than the finite reasons that may be considered in a proceeding to terminate parental rights. We find nothing that would require a chancery court to hold in abeyance its exclusive jurisdiction over an adoption petition until a youth court first terminates the rights of the natural parents. Therefore, we find that the Chancery Court may exercise its exclusive jurisdiction over these adoption proceedings even though the Youth Court has not yet terminated the rights of the parents.

¶13. We also have held that a chancery court may properly exercise jurisdiction over an adoption proceeding, even though a youth court has awarded custody of the child to another relative, because an adoption proceeding is a different subject matter from a custody ruling.¹⁸

In *In re Beggiani*, foster parents petitioned for adoption of their foster child in Hinds County Chancery Court, where they resided, although the Youth Court of Carroll County had established jurisdiction over the minor due to neglect.¹⁹ The child's mother already had surrendered her rights and consented to adoption; however, the maternal grandmother opposed the adoption and sought custody of the child in youth court.²⁰ The youth court granted custody to the grandmother in October 1986, and the chancery court granted the foster parents' petition for adoption in March 1987; both parties appealed.²¹

¶14. This Court recognized the "well established rule . . . that where two (2) suits between the same parties over the same controversy are brought in courts of concurrent jurisdiction,

¹⁸*In re Beggiani*, 519 So. 2d 1208 (Miss. 1988).

¹⁹*Id.* at 1209.

²⁰*Id.*

²¹*Id.*

the court which first acquires jurisdiction retains jurisdiction over the whole controversy to the exclusion or abatement of the second suit.”²² However, for the “priority of jurisdiction” rule to apply, “there must, of necessity, be a determination that both actions involved the same controversy, the same remedy, and that such related to the same question.”²³ We concluded that, although the youth court retained jurisdiction for “the offense and purpose of the ‘neglected or abused’ subject matter,” this did not “act to exclude the adoption proceeding in the Hinds County Chancery Court which made up a different subject matter.”²⁴ We further recognized that “adoption proceedings are entirely separate and distinct statutory proceedings neither connected to nor controlled by prior custody awards of another court.”²⁵ We ultimately held that the chancery court acted properly in assuming jurisdiction over the adoption, and reversed the decision of the youth court in part because “an adoption is superior to a custody award.”²⁶

¶15. The dissent acknowledges the difficulty of these types of cases, but finds that “sound judicial administration and economy” mandate that the chancery courts should not involve themselves in these types of disputes.²⁷ With all due respect, we are more persuaded that the dictates of our Constitution, our own caselaw, and the best interests of these two children say

²²*Id.* at 1210 (citations omitted).

²³*Id.*

²⁴*Id.* at 1211.

²⁵*Id.* (citation omitted).

²⁶*Id.* at 1213-14.

²⁷Diss. Op. at ¶27.

otherwise. The Wattses are seeking to adopt the children, and it is undisputed that the chancery courts have exclusive jurisdiction over adoptions. Therefore, even though the Youth Court did have jurisdiction over proceedings related to these abused and neglected minors, its jurisdiction did not extend to the Wattses' petition for adoption, which involves an entirely different subject matter. As the Youth Court has no jurisdiction over the Wattses' petition for adoption, the Chancery Court may properly exercise its jurisdiction over the adoption proceedings.

CONCLUSION

¶16. We hold that chancery courts have exclusive jurisdiction over adoptions and may exercise such jurisdiction, even if a youth court has established jurisdiction over the minor due to abuse and neglect, and even if a youth court already has awarded custody to someone other than the adoption petitioner. The order of the Lincoln County Chancery Court is affirmed, and this case is remanded to the Chancery Court of Lincoln County for further proceedings consistent with this opinion.

¶17. **AFFIRMED AND REMANDED.**

CARLSON AND DICKINSON, P.JJ., RANDOLPH, KITCHENS, CHANDLER AND KING, JJ., CONCUR. WALLER, C.J., DISSENTS WITH SEPARATE WRITTEN OPINION. PIERCE, J., NOT PARTICIPATING.

WALLER, CHIEF JUSTICE, DISSENTING:

¶18. Because the Lincoln County Chancery Court improperly asserted jurisdiction over John and Lenita Watts's adoption petition, I respectfully dissent. The Wattses' foster-parent relationship to A. B. and B. H. derived from the County Court of Jackson County, sitting as the Youth Court; thus, the Wattses are subject to jurisdiction in Jackson County concerning

the two children.²⁸ Further, the Youth Court has considered a petition to terminate the natural parents' parental rights and determined that reunification with the father, Frank Hartley, should begin. Because the Youth Court in Jackson County already has exercised jurisdiction over termination-of-parental-rights proceedings, it retains continuing jurisdiction over that issue, and the Lincoln County Chancery Court should not be allowed to reach that same issue by adjudicating an adoption over Hartley's objection. For these reasons, I respectfully dissent.

¶19. Adoption and termination of parental rights are connected. Certainly, chancery courts have exclusive jurisdiction to hear and determine adoption proceedings. *See* Miss. Code Ann. § 93-17-3(4) (Rev. 2004) (amended by Laws of 2012, ch. 556, §1, effective July 1, 2012). But to grant an adoption over a parent's objection, as here, chancery courts must first terminate the objecting parent's parental rights. Miss. Code Ann. § 93-17-7 (Rev. 2004). Conversely, a youth court that considers terminating parental rights must determine that "adoption is in the best interest of the child, taking into account whether the adoption is needed to secure a stable placement for the child and the strength of the child's bonds to his natural parents and the effect of future contacts between them" Miss. Code Ann. § 93-15-103(1) (Rev. 2004). So, even though a youth court cannot hear or grant an adoption, it

²⁸ The Wattses are contractual foster parents. Unfortunately, the actual contract that the Wattses entered into is not in the record. But regulations of the Mississippi Department of Human Services (MDHS) state that foster parents who agree to serve as a "resource home," "expressly waive[] any right to custody of a child placed in [their] home for care, *unless the child is made free for adoption by the written decision and action of the court.*" Dep't of Human Services Regulations, 11-111 CMSR § 006-35, Appendix S (Rev. 2008) (emphasis added).

still must weigh whether adoption is in the child's best interest before terminating parental rights. Adoption factors into termination of parental rights and vice-versa.

¶20. As the majority notes, a chancellor considering whether to terminate parental rights in a contested adoption proceeding is afforded a more expansive list of factors to consider than a youth court deciding whether to terminate parental rights only. Miss. Code Ann. §§ 93-15-103, 93-17-7 (Rev. 2004). But, even if the means are slightly different, the end remains the same: termination or nontermination of parental rights.

¶21. Here, the Youth Court in Jackson County has exercised its original jurisdiction over termination of parental rights. As the majority notes, proceedings to terminate the mother's parental rights apparently remain pending, and the petition to terminate Hartley's parental rights was dismissed so that reunification efforts could begin. Having exercised jurisdiction over termination-of-parental-rights proceedings, the Youth Court in Jackson County should retain continuing jurisdiction over A. B. and B. H.

¶22. This Court has held that where a chancery court exercises original jurisdiction in a divorce proceeding and decides issues pertaining to custody and visitation, that court has continuing jurisdiction over matters of contempt and termination of parental rights. *Tollison v. Tollison*, 841 So. 2d 1062, 1064 (Miss. 2003). In *Tollison*, a couple living in Prentiss County separated, and as a result, the wife and child moved to Lafayette County. *Id.* at 1063. Thereafter, the couple obtained a divorce in Prentiss County. *Id.* at 1064. Years later, the wife filed a complaint for contempt and termination of parental rights in the Lafayette County Chancery Court. *Id.* This Court held that the complaint should have been filed in

Prentiss County—the court of original jurisdiction—rather than Lafayette County. *Id.* at 1066.

¶23. Though *Tollison*'s facts clearly are distinguishable, the principle of continuing jurisdiction should apply here to the Youth Court in Jackson County. Admittedly, we have held that a chancery court may properly exercise jurisdiction over an adoption even after a youth court has awarded custody to another relative. *In re Beggiani*, 519 So. 2d 1208, 1209-11 (Miss. 1988). In *In re Beggiani*, we reasoned that “adoption proceedings are entirely separate and distinct statutory proceedings neither connected with nor controlled by the prior custody awards of another court.” *Id.* at 1211 (citation omitted). Yet, termination of parental rights and reunification were not at issue in that case. The natural mother had signed a surrender of parental rights, and the natural father apparently was not in the picture. *Id.* at 1209.

¶24. In *K.M.K. v. S.L.M.*, 775 So. 2d 115, 118 (Miss. 2000), we held “that a chancery court may not exercise jurisdiction over any abused or neglected child or any proceeding pertaining thereto over which the youth court may exercise jurisdiction *if* there has been a prior proceeding in the youth court concerning that same child.” There, the minor’s foster parents had filed a petition in the Chancery Court for the First Judicial District of Hinds County to terminate the natural parents’ parental rights after the County Court of Hinds County, sitting as the Youth Court, had refused to terminate the natural mother’s visitation rights. *Id.* at 116-17. We limited our holding in *K.M.K.* to “questions of priority jurisdiction in counties that have a county court sitting as a youth court in addition to a chancery court.” *Id.* at 118. And

we noted specifically that youth courts do not have jurisdiction over adoption petitions. *Id.* at 118 n.1 (citing Miss. Code Ann. § 93-17-3 (1994)).

¶25. Because all matters concerning the children should have been filed in Jackson County, I believe we should extend *K.M.K.*'s holding to these particular facts. In my view, a chancery court should not exercise its jurisdiction over a contested adoption proceeding if a youth court already has exercised its jurisdiction over termination-of-parental-rights proceedings, and reunification efforts have begun.

¶26. The same considerations that led to our holding in *K.M.K.* are pertinent here. Legislative intent was one of our principal concerns in that case. *K.M.K.*, 775 So. 2d at 118. One of the primary goals of youth courts is reunification, if that is found to be in the child's best interest. *B.A.D. v. Finnegan*, 82 So. 3d 608, 616 (Miss. 2012) (citing Miss. Code Ann. § 43-21-103 (Rev. 2009)). That goal is thwarted, however, if chancery courts are allowed to exercise jurisdiction over contested adoptions even as reunification is underway. In *K.M.K.*, we also sought to prevent forum shopping and to avoid conflicting orders between trial courts on the same issues and multiple suits. *K.M.K.*, 775 So. 2d at 118. Under the majority's opinion, foster parents or other persons aggrieved by a youth court's decision(s) can simply file for adoption in chancery court in hopes of obtaining a more desirable outcome. Chancery courts must not be allowed to function as appellate courts for prior youth-court decisions. *McDonald v. McDonald*, 39 So. 3d 868, 886 (Miss. 2010). Further, allowing the Lincoln County Chancery Court to exercise jurisdiction over the adoption at this point in the Youth Court proceedings potentially leads to conflicting orders and creates confusion. If a youth court has dismissed a petition to terminate a parent's parental rights and ordered that

reunification begin, it is inconsistent for a chancery court to step in, terminate that same parent's parental rights, and grant an adoption. Also, what then becomes of the youth court's reunification orders as the adoption proceedings are pending?

¶27. These types of cases are difficult for everyone involved, including courts. That said, I believe that principles of sound judicial administration and economy require chancery courts to refrain from exercising jurisdiction over contested adoption proceedings where a youth court has exercised jurisdiction over termination-of-parental-rights proceedings and reunification efforts have begun. The Wattses' course for relief was in Jackson County, where A. B. and B. H. were subject to the Youth Court's jurisdiction as neglected children, where the Wattses had derived their foster-parent status, and where termination of parental rights already has been considered. Therefore, I respectfully dissent.