IN THE UTAH COURT OF APPEALS

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In the matter of the adoption of B.B.G., a minor.	)))	OPINION (For Official Publication)
_____	))	Case No. 20060893-CA
K.B. and J.B.,	))	
Appellants,	))	F I L E D (May 3, 2007)
v.	)))	2007 UT App 149
D.P.,	))	
Appellee.	)	

First District, Brigham City Department, 062100010
The Honorable Ben H. Hadfield

First District Juvenile, Brigham City Department, 509362
The Honorable Larry E. Jones

Attorneys: Dale M. Dorius, Brigham City, and Larry S. Jenkins
             and Lance D. Rich, Salt Lake City, for Appellants
             Craig W. McArthur, Sandy, for Appellee
             Martha Pierce, Salt Lake City, and Roger F. Baron,
             Logan, Guardians Ad Litem

Before Judges Bench, Orme, and Thorne.

ORME, Judge:

¶1   With appropriate leave of this court, K.B. and J.B. appeal
from an interlocutory order of the juvenile court denying their
motion to remand to the district court for lack of jurisdiction.
We reverse.

BACKGROUND

¶2   On March 10, 2006, K.B. and J.B. filed in district court a
petition to adopt B.B.G. pursuant to Utah Code section 78-30-7(1)
of the Utah Adoption Act. See Utah Code Ann. § 78-30-7(1) (Supp.
2006). Approximately four days later, D.P., the putative father

of B.B.G., filed an objection to the petition. After a hearing
on the objection, the district court issued a memorandum decision
stating "the current case [should be transferred] in its entirety
to First District Juvenile Court, in order to effectively and
efficiently resolve the contested adoption and to determine the
custody of the minor child." The district court reasoned that
D.P.'s parental rights had to be terminated prior to the adoption
going forward and that this responsibility fell to the juvenile
court by virtue of section 78-30-4.16. <u>See id.</u> § 78-30-4.16(1)-
(2).

¶3   K.B. and J.B. petitioned the Utah Supreme Court for
permission to pursue an interlocutory appeal from the district
court's transfer order. The Utah Supreme Court transferred the
petition to this court, and we denied the petition on August 2,
2006. K.B. and J.B. subsequently filed a motion with the
juvenile court asking it to remand the case to the district court
for lack of jurisdiction. When the juvenile court denied the
motion, K.B. and J.B. filed this interlocutory appeal request,
which we granted.

                    ISSUE AND STANDARD OF REVIEW

¶4   The primary issue presented by this appeal is whether a
juvenile court has jurisdiction over an adoption petition
originally filed in district court pursuant to Utah Code section
78-30-7(1) if the district court transferred the case to the
juvenile court without the juvenile court having previously
entered a termination order pursuant to section 78-3a-104(1)(p).
<u>See id.</u> § 78-3a-104(1)(p).[1] Questions of jurisdiction and
statutory interpretation are questions of law that we review for
correctness, giving no particular deference to lower court
decisions. <u>See</u> <u>Parkside Salt Lake Corp. v. Insure-Rite, Inc.</u>,

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1. The statute in effect when a petition is filed establishes a
court's subject matter jurisdiction. <u>See</u> <u>National Parks &
Conservation Ass'n v. Board of State Lands</u>, 869 P.2d 909, 912
(Utah 1993). In 2006, the Legislature re-lettered Utah Code
section 78-3a-104(1)(o) as 78-3a-104(1)(p), but it remained
substantively identical. <u>See</u> Utah Code Ann. § 78-3a-104
amendment notes (Supp. 2006); Emancipation of a Minor Act, Ch.
132, § 1, 2006 Utah Laws 568, 569. This change did not become
effective until May 2006. <u>See</u> Utah Code Ann. § 78-3a-104
amendment notes. Because the adoption petition was filed in
March 2006, the 2005 version of the statute was still in effect.
However, as a convenience to the reader, we refer to the current
codification of this provision, section 78-3a-104(1)(p).

2001 UT App 347,¶16, 37 P.3d 1202; <u>State v. Martinez</u>, 896 P.2d 38, 39 (Utah Ct. App. 1995).

ANALYSIS

¶5   K.B. and J.B. argue that the district court improperly transferred the case to the juvenile court because the juvenile court lacks subject matter jurisdiction. We agree. "[J]uvenile courts are creatures of statute, [and therefore,] they are courts of limited jurisdiction." <u>In re B.B.</u>, 2004 UT 39,¶19, 94 P.3d 252. Accordingly, the juvenile court's jurisdiction is limited to that which the Legislature grants it, and we conclude that the Legislature has granted the juvenile court only narrowly circumscribed jurisdiction in adoption proceedings.

¶6   Utah Code section 78-30-7(1) states:

>   Adoption proceedings <u>shall</u> be commenced by
>   filing a petition with the clerk of the
>   district court either:
>
>   (a) in the district where the person
>   adopting resides . . . or
>
>   (b) with the juvenile court <u>as provided
>   in Subsection 78-3a-104(1)</u>.

Utah Code Ann. § 78-30-7(1)(a)-(b) (emphasis added). The referenced subsection states:

>   Except as otherwise provided by law, the
>   juvenile court has exclusive original
>   jurisdiction in proceedings concerning:
>
>   . . .
>
>   (p) adoptions conducted in accordance
>   with the procedures described in Title
>   78, Chapter 30, Adoption, <u>when the
>   juvenile court has previously entered an
>   order terminating the rights of a parent</u>
>   and finds that adoption is in the best
>   interest of the child.

<u>Id.</u> § 78-3a-104(1)(p) (emphasis added).

¶7   The compulsory language in section 78-30-7(1) mandates that the district court has exclusive original jurisdiction over all adoption petitions filed pursuant to section 78-30-7(1), except

for the narrow exception specified in subsection 7(1)(b), which
states that a juvenile court may only acquire jurisdiction over
adoptions filed pursuant to the Adoption Act "as provided in
Subsection 78-3a-104(1)." Id. § 78-30-7(1)(b). Furthermore, the
only relevant provision in subsection 104(1) is subsection
104(1)(p), which is precisely phrased. See id. § 78-3a-104(1).
Under subsection 104(1)(p), the juvenile court only acquires
jurisdiction over adoptions initiated under the Adoption Act if
the juvenile court has already entered an order terminating
parental rights in the same case. See id. § 78-3a-104(1)(p). In
this case, K.B. and J.B. filed their district court petition
pursuant to section 78-30-7(1), and the juvenile court had not
previously entered an order terminating D.P.'s parental rights.
As such, the district court had--and continues to have--exclusive
original jurisdiction over the petition, and its transfer of the
case to the juvenile court was therefore improper.

¶8   D.P. insists that the district court's jurisdiction is
concurrent with that of the juvenile court because the case will
establish D.P.'s paternity in accordance with the Termination of
Parental Rights Act (the Termination Act). See id. § 78-3a-
105(1)(b) (stating that the district court and the juvenile court
have concurrent jurisdiction over paternity proceedings initiated
under the Termination Act). Therefore, D.P. contends, the
district court is authorized to transfer the petition to the
juvenile court pursuant to rule 100(d)(3) of the Utah Rules of
Civil Procedure, see Utah R. Civ. P. 100(d)(3),[2] so that the
juvenile court may resolve the paternity issue. We disagree.

¶9   Pursuant to Utah Code section 78-3a-105(1), the district
court and the juvenile court share concurrent jurisdiction only
in specifically described contexts, including

> in establishing paternity and ordering
> testing for the purposes of establishing
> paternity, in accordance with Title 78,
> Chapter 45g, Utah Uniform Parentage Act, with
> regard to proceedings initiated under Part 3,
> Abuse, Neglect, and Dependency Proceedings,
> or Part 4, Termination of Parental Rights
> Act.

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2. Rule 100(d)(3) provides that "[i]f the district court and
juvenile court have concurrent jurisdiction over cases, either
court may transfer a case to the other court upon the agreement
of the judges . . . assigned to the cases." Utah R. Civ. P.
100(d)(3).

Id. § 78-3a-105(1)(b). Paternity determinations made in the context of a case initiated under section 78-30-7(1) of the Adoption Act are not included in this provision. Accordingly, section 78-3a-105(1)(b) is inapplicable, and the juvenile court does not have concurrent jurisdiction.[3]

¶10 Finally, D.P. argues that because the juvenile court has exclusive original jurisdiction over termination of parental rights proceedings, see id. § 78-3a-104(1)(g), such jurisdiction should extend to termination determinations that arise, as here, in the context of contested adoptions. This argument is unavailing. "The only exception to the juvenile court's exclusive jurisdiction to terminate parental rights [is] provided in [section] 78-30-4.16 . . . regarding contested adoptions." In re V.K.S., 2003 UT App 13,¶22 n.10, 63 P.3d 1284. Section 78-30-4.16(1) provides:

> If a person whose consent for adoption is required . . . refused to consent, the court shall determine whether proper grounds exist for the termination of that person's rights pursuant to the provisions of [the Adoption Act] or . . . [the Termination Act].

Utah Code Ann. § 78-30-4.16(1).

¶11 Section 78-30-4.16(1) anticipates that if an adoption petition is filed in district court and then contested, the district court "shall determine" whether the rights of the contesting party, usually a parent, may be terminated. Section 78-30-4.16(1) simply provides the district court with two substantive avenues for determining whether grounds for termination of parental or consent rights exist, i.e., the district court may look at grounds for dispensing with consent found within the Adoption Act, see, e.g., id. § 78-30-4.14(4)(9)(i) ("[W]ith regard to a child who is placed with adoptive parents more than six months after birth, the consent of an unmarried biological father is not required unless the unmarried biological father . . . developed a substantial relationship with the child[.]"), and it may consider grounds for termination of parental rights listed in the Termination Act. See id. § 78-3a-407. Contrary to D.P.'s argument, reference to

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3. Section 78-3a-105 enumerates other circumstances under which the district court and juvenile court have concurrent jurisdiction. See Utah Code Ann. § 78-3a-105 (Supp. 2006). However, no provision specifically states that a juvenile court and a district court have concurrent jurisdiction over adoption proceedings, and no other provision is otherwise applicable.

the Termination Act in section 78-30-4.16(1) does not bestow the juvenile court with concurrent jurisdiction over parental termination questions that arise in the context of contested adoption proceedings originating, as in this case, in the district court. Accordingly, notwithstanding section 78-30-4.16, the district court has exclusive jurisdiction over this case, including plenary, non-delegable authority to resolve the issue of whether D.P.'s parental rights should be terminated.

CONCLUSION

¶12 The district court may not transfer an adoption petition to the juvenile court if the juvenile court has not "previously entered an order terminating the rights of the parent." Id. § 78-3a-104(1)(p). Furthermore, under section 78-3a-105(1)(b), while the juvenile court shares concurrent jurisdiction with the district court when a paternity issue arises in some contexts, a district court adoption proceeding is not one of them. See id. § 78-3a-105. Finally, section 78-30-4.16 does not provide the juvenile court with concurrent jurisdiction over parental rights termination questions that arise in the context of contested adoptions in cases brought in district court; instead, that section simply provides the district court with two statutes to consider when determining whether grounds for terminating parental or consent rights exist. See id. § 78-30-4.16(1).

¶13 Accordingly, we conclude that the district court erroneously transferred the adoption petition to the juvenile court, and the juvenile court erred when it decided not to return the case to the district court. We reverse and remand to the juvenile court, with instructions to return the case to the district court forthwith.

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Gregory K. Orme, Judge

¶14 WE CONCUR:

_____
Russell W. Bench,
Presiding Judge

_____
William A. Thorne Jr., Judge