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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2010-2011

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D.C.S.

v.

L.B.

**Appeal from Madison Juvenile Court
(CS-05-143.01)**

PER CURIAM.

D.C.S. ("the father") appeals from a judgment entered by the Madison Juvenile Court ("the juvenile court") that denied his petition to modify his child-support obligation, that found him in contempt and ordered him to pay a child-support

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arrearage, and that refused to hold L.B. ("the mother") in contempt.

Procedural History

This is the second time these parties have appeared before this court. See D.C.S. v. L.B., 4 So. 3d 513 (Ala. Civ. App. 2008). Litigation between the parties began in April 2005 when the mother filed a petition in the juvenile court seeking to adjudicate the father as the biological father of the child. Id. at 515. The mother also sought custody of the child, an award of child support, and an award of attorney's fees. Id. The parties apparently stipulated that the father was the father of the child, and the juvenile court entered a judgment in April 2007 that awarded the father "standard" visitation rights, that found that the father was voluntarily unemployed, that imputed income to the father in the amount of \$7,414 a month, and that set his child-support obligation at \$1,025 a month. Id. at 516. This court affirmed the judgment of the juvenile court in D.C.S., supra.

On June 25, 2009, the father filed a petition in the juvenile court seeking a modification of his child-support obligation, retroactive to the filing of the petition, an

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award of attorney's fees, and an order taxing the costs of the action against the mother. The father also asked the juvenile court to hold the mother in criminal or civil contempt for her failure to comply with certain "standard parenting clauses" in the juvenile court's April 2007 judgment. The mother subsequently filed an answer to the father's modification petition and contempt petition. The mother, on August 12, 2009, filed a counterclaim for a rule nisi, alleging that the father had not paid his child-support obligation in full.

On August 19, 2010, the juvenile court entered an order that denied the father's petition to modify his child-support obligation after it found that the father was voluntarily underemployed and that there had not been a material change in circumstances since the entry of the April 2007 judgment. The juvenile court also found that the father was in contempt for failure to pay the full amount of his child-support obligation, and it ordered the father to pay \$6,469.02 to the mother to cure the contempt. The juvenile court found that the mother had not violated certain portions of the standard parenting clauses made a part of its April 2007 judgment but that she had violated the "civility" requirement in that

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judgment. The juvenile court ordered the mother to demonstrate civility at all times, but it did not impose sanctions against the mother at that time. Each party was ordered to pay their attorney's fees.

The father filed a postjudgment motion pursuant to Rule 59, Ala. R. Civ. P., challenging the juvenile court's failure to find the mother in contempt for violating provisions of the standard parenting clauses, the juvenile court's failure to require the mother to pay his attorney's fees, and the juvenile court's finding that there had not been a material change in circumstances since the entry of the April 2007 judgment to justify a modification of his child-support obligation. The juvenile court denied the father's postjudgment motion, and he filed a timely notice of appeal.

Issues

The father presents three issues for review by this court: (1) whether the juvenile court erred by denying his petition to modify his child-support obligation and by ordering him to pay a child-support arrearage; (2) whether the juvenile court erred by refusing to hold the mother in contempt; and (3) whether the juvenile court erred by refusing

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to order the mother to pay his attorney's fees and the costs of the action.

Jurisdiction

Although neither party raises the issue of this court's jurisdiction to consider the father's appeal, jurisdictional matters are of such importance that this court will review its jurisdiction to consider an appeal ex mero motu. See Ex parte T.C., [Ms. 2090433, June 18, 2010] ___ So. 3d ___, ___ (Ala. Civ. App. 2010) (citing Ex parte Progressive Specialty Ins. Co., 31 So. 3d 661, 662 n.1 (Ala. 2009)) ("[A] lack of subject-matter jurisdiction is not subject to waiver by the parties, and it is our duty to consider a lack of subject-matter jurisdiction ex mero motu"). "A judgment entered by a court lacking subject-matter jurisdiction is absolutely void and will not support an appeal; an appellate court must dismiss an attempted appeal from such a void judgment." Vann v. Cook, 989 So. 2d 556, 559 (Ala. Civ. App. 2008) (citing Hunt Transition & Inaugural Fund, Inc. v. Grehier, 782 So. 2d 270, 274 (Ala. 2000)). An appeal will not lie from a void judgment. See Montgomery v. Montgomery, 37 So. 3d 168, 173 (Ala. Civ. App. 2009) (dismissing an appeal from a void

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judgment). Thus, we must determine whether the juvenile court had jurisdiction over the father's modification and contempt action and the mother's counterclaim for contempt.

Recently, this court has considered the effect of the enactment of the new Alabama Juvenile Justice Act, § 12-15-101 et seq., Ala. Code 1975 ("the new AJJA"), which became effective on January 1, 2009, as it relates to a juvenile court's continuing jurisdiction, or lack thereof, when a juvenile court initially obtains jurisdiction through a paternity action. See Ex parte T.C., ___ So. 3d at ___ (juvenile court did not have continuing jurisdiction to consider a petition to modify custody); Ex parte L.N.K., [Ms. 2090965, December 3, 2010] ___ So. 3d ___ (Ala. Civ. App. 2010) (juvenile court that had jurisdiction over paternity action did not have continuing jurisdiction over the father's petition to modify child custody and child support); and B.L.R. v. N.M.M., [Ms. 2091064, March 11, 2011] ___ So. 3d ___ (Ala. Civ. App. 2011) (because there was no indication in the record that the child had ever been found dependent by the juvenile court, the juvenile court did not have continuing jurisdiction to consider a custody-modification action filed

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after January 1, 2009).

In Ex parte L.N.K., the Jefferson Family Court, which acts as the juvenile court in Jefferson County, in 2003, adjudicated a man to be the father of a child born out of wedlock. Id. at _____. In its judgment, the Jefferson Family Court implicitly awarded custody of the child to the mother and ordered the father to pay child support to the mother. Id. at _____. In February 2010, the father filed a petition in the Jefferson Circuit Court seeking to modify the judgment of the Jefferson Family Court so as to gain legal and physical custody of the child and to end his obligation to pay child support. Id. at _____. The mother subsequently filed a motion to dismiss the father's action, arguing that the juvenile court retained jurisdiction over the custody and child-support issues, not the circuit court. Id. at _____. The circuit court denied the mother's motion to dismiss, and she filed a petition for a writ of mandamus with this court. Id. at _____. We denied the mother's petition for a writ of mandamus after discussing the continuing jurisdiction of the juvenile court under the former Alabama Juvenile Justice Act, former § 12-15-1 et seq., Ala. Code 1975 ("the former AJJA"), and under the

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new AJJA:

"Formerly, once a juvenile court decided custody and child-support issues as part of a paternity proceeding, that juvenile court retained continuing exclusive jurisdiction over those issues unless it terminated its own jurisdiction. See former § 12-15-32, Ala. Code 1975 (providing that, once a juvenile court obtains jurisdiction in any case involving a child, that court retains jurisdiction over that case until the child reaches the age of 21 years or until the court, by its own order, terminates that jurisdiction); see also W.B.G.M. v. P.S.T., 999 So. 2d 971 (Ala. Civ. App. 2008). However, in 2008, the legislature enacted the new [AJJA], ... which amended and renumbered the provisions of former § 12-15-32 as § 12-15-117, Ala. Code 1975. Section 12-15-117 provides, in pertinent part:

'(a) Once a child has been adjudicated dependent, delinquent, or in need of supervision, jurisdiction of the juvenile court shall terminate when the child becomes 21 years of age unless, prior thereto, the judge of the juvenile court terminates its jurisdiction over the case involving the child.'

"By its plain terms, § 12-15-117(a) does not grant juvenile courts continuing jurisdiction over children unless they have been 'adjudicated dependent, delinquent, or in need of supervision.' Thus, this court has held that a juvenile court no longer has continuing jurisdiction over a child based solely on its having made a prior paternity determination. Ex parte T.C., [supra]."

Id. at ___ (footnote omitted).

Similarly, in Ex parte T.C., we held that the juvenile

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court did not have continuing jurisdiction to modify a custody judgment that had not been entered pursuant to a finding that the child was dependent, delinquent, or in need of supervision. ___ So. 3d at ___. After discussing the substantive changes made by the legislature in the new AJJA, we explained that, by enacting the new AJJA, "[t]he clear intent of the legislature was to provide that the juvenile courts of this state should no longer be deciding custody disputes except insofar as their resolution is directly incidental to core juvenile-court jurisdiction (such as in original paternity actions, see Ala. Code 1975, § 26-17-104)." Id. at ___. We concluded that the juvenile court's judgment in that case "would ... be prospectively modifiable in Alabama only by the circuit courts, which are constitutionally constituted as 'trial court[s] of general jurisdiction.' Ala. Const. 1901 § 139(a) (Off. Recomp.)." Id. at ___.

In the present case, as in Ex parte T.C. and Ex parte L.N.K., there is no indication that the parties' child had ever been adjudicated dependent, delinquent, or in need of supervision by the juvenile court. Furthermore, the father's modification petition was filed after January 1, 2009, the

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effective date of the new AJJA. Thus, pursuant to Ex parte T.C., Ex parte L.N.K., and § 12-15-117(a), Ala. Code 1975, the juvenile court in the present case did not have continuing jurisdiction to consider the father's petition to modify his child-support obligation, and, therefore, the juvenile court's judgment, insofar as it denied the father's petition to modify his child-support obligation, is void for lack of subject-matter jurisdiction. The father's petition to modify should have been filed in the circuit court. Ex parte T.C., ___ So. 3d at ___.

Furthermore, notwithstanding the juvenile court's general power to enforce its judgments, see § 12-15-110(a), Ala. Code 1975, the circuit court should also consider the contempt petitions filed by the mother and the father.¹ As

¹We disagree with the conclusion in the dissent that § 12-15-117(c) or § 12-15-117(d), Ala. Code 1975, provides a juvenile court with continuing jurisdiction to enforce a child-support judgment. Section 12-15-117 provides, in pertinent part:

"(c) In any case over which the juvenile court has jurisdiction, the juvenile court shall retain jurisdiction over an individual of any age for the enforcement of any prior orders of the juvenile court requiring the payment of fines, court costs, restitution, or other money ordered by the juvenile court until paid in full.

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we stated above, by making substantive changes to the former AJJA concerning a juvenile court's continuing and original jurisdiction, see § 12-15-114(a), Ala. Code 1975, the clear

"(d) For purposes of enforcing any order of the juvenile court requiring the payment of fines, court costs, restitution, or other money ordered by the juvenile court, the remedies with regard to punishment for contempt, including incarceration in jail of individuals 18 years of age or older, shall be available to the juvenile court."

The dissent concludes that the "catchall" provision in §§ 12-15-117(c) and (d) -- "other money ordered by the juvenile court" -- includes a child-support judgment entered by the juvenile court, even when the juvenile court does not otherwise have continuing jurisdiction to modify the same child-support judgment. However, the phrase "other money ordered by the juvenile court" is ambiguous at best and certainly does not, in plain terms, specifically confer upon the juvenile court continuing jurisdiction over the enforcement of a child-support judgment when the juvenile court does not otherwise have continuing subject-matter jurisdiction over the action. See K.C.G. v. S.J.R., 46 So. 3d 499, 501 (Ala. Civ. App. 2010) ("Juvenile courts, as courts of limited jurisdiction, only have subject-matter jurisdiction as expressly conferred by statute."). Relying on the ejusdem generis rule of statutory construction, we conclude that child-support judgments are not included in the phrase "other money ordered by the juvenile court" because child-support judgments are of a different nature or class of orders than orders of the juvenile court requiring the payment of fines, court costs, and restitution. See Cocking v. City of Montgomery, 48 So. 3d 647, 650 (Ala. Civ. App. 2010) ("The ejusdem generis rule of statutory construction provides that when general words or phrases follow or precede a specific list of classes of persons or things, the general word or phrase is interpreted to be of the same nature or class as those named in the specific list.").

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intent of the legislature was to alleviate the juvenile court's docket by removing the juvenile court's continuing jurisdiction over cases wherein the child or the children in question had not been adjudicated to be dependent, delinquent, or in need of supervision. See J.W. v. C.B., [Ms. 2100108, February 25, 2011] ___ So. 3d ___ (Ala. Civ. App. 2011) (pursuant to the new AJJA, the juvenile court had continuing jurisdiction to modify a custody determination that was made after a child had been adjudicated dependent).

Considering the substantive changes made to the former AJJA, we must conclude that the legislature intended for the juvenile court to be completely divested of its continuing jurisdiction over proceedings wherein the child in question was not adjudicated to be dependent, delinquent, or in need of supervision by the juvenile court. If the legislature, at least by implication in § 12-15-117(a), granted the circuit courts power to modify juvenile-court judgments that did not fall within the continuing jurisdiction of the juvenile court, we must conclude, in the absence of a statute specifically stating otherwise, that the legislature also granted circuit courts the power to enforce the juvenile-court judgments that

did not fall within the continuing jurisdiction of the juvenile court.²

To conclude otherwise would produce a less than harmonious result when the juvenile courts and the circuit courts attempt to conduct separate but related proceedings concerning the same parties, wherein the likelihood of inconsistent judgments is all but certain.³ Cf. Weathers v.

²Our decision should not be interpreted as placing a limitation on the juvenile court's power to enforce its judgments when the juvenile court is otherwise properly exercising continuing jurisdiction over the underlying action.

³The father's inability to pay his child-support obligation is the basis of his defense to the mother's contempt petition as well as the basis of his petition to modify his child-support obligation. If the contempt issues are split from the modification issues, the circuit court and the juvenile court would be required to determine the same question, i.e., whether the father had the ability to pay \$1,025 a month in child support during the same period. Moreover, this court would be determining the father's ability to pay when that question has not been properly presented to the circuit court.

To use the present case as an example, if the circuit court, after considering the father's petition to modify his child-support obligation, concludes that there had been a material change in circumstances since the entry of the April 2007 judgment, i.e., if it found that the father was not voluntarily underemployed, the circuit court would enter a judgment granting the father's petition to modify his child-support obligation. Because the circuit court could make such a modification retroactive to the date the father filed his petition, see Rule 32(A)(3)(a), Ala. R. Jud. Admin., the

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City of Oxford, 895 So. 2d 305, 309 (Ala. Civ. App. 2004) (quoting Ex parte Jackson, 625 So. 2d 425, 428 (Ala. 1992) quoting in turn 2A Norman J. Singer, Sutherland Statutory Construction § 46.05 5th ed. 1993)) ("'[S]ections of the Code originally constituting a single act must be read in pari materia in order to "produce a harmonious whole."'). In addition to the near certainty of inconsistent judgments, to conclude that the juvenile court retained jurisdiction to enforce its prior child-support order under these circumstances would result in a multiplicity of trials, a waste of judicial resources, and the burden of unnecessary expense to the parties because the juvenile court would be able to enforce, but not modify, its prior judgments. Cf. Ex parte Dowling, 506 So. 2d 340, 342 (Ala. Civ. App. 1986) (holding that the Tuscaloosa Circuit Court had jurisdiction to

circuit court could, depending on the father's new child-support obligation, determine that the father did not owe a child-support arrearage. However, in contrast, the juvenile court, after considering the mother's contempt petition, could determine that the father was voluntarily underemployed and that he had the ability to pay the full amount of child support ordered in the April 2007 judgment. Thus, the juvenile court could find that the father was in contempt and could order the father to pay a child-support arrearage, which would be inconsistent with the judgment of the circuit court.

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consider a child-support-modification action together with a petition for contempt to enforce a judgment entered by the Houston Circuit Court, concluding that "[s]uch procedure would prevent a multiplicity of suits and trials over the subject of child support and would assure the just, speedy and inexpensive determination of those matters"). Moreover, if we conclude that the new AJJA gives juvenile courts retained jurisdiction to enforce a prior judgment that it no longer has continuing jurisdiction over, the intent of legislature, discussed above, to allow juvenile courts to focus on matters directly related to core juvenile jurisdiction, would be thwarted. Cf. Weathers v. City of Oxford, 895 So. 2d at 309 ("[T]he Legislature will not be presumed to have done a futile thing in enacting a statute; there is a presumption that the Legislature intended a just and reasonable construction and did not enact a statute that has no practical meaning.").

Because the new AJJA does not specifically confer continuing subject-matter jurisdiction on the juvenile court to enforce its prior child-support judgment when the juvenile court does not otherwise have continuing jurisdiction to modify that judgment, we must conclude that the new AJJA

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removes a juvenile court's continuing jurisdiction to modify, as well as enforce, a judgment entered pursuant to an original paternity action. Because the circuit court is the only court that has jurisdiction over the father's child-support-modification petition, Ex parte L.N.K., supra, the circuit court should also consider the contempt petitions filed by the father and the mother. Cf. Ex parte Dowling, 506 So. 2d at 341-42. The father's appeal is dismissed, albeit with instructions to the juvenile court to vacate its August 2010 judgment.

The father's request for an attorney fee on appeal is denied.

APPEAL DISMISSED WITH INSTRUCTIONS.

Moore, J., concurs.

Bryan, J., concurs specially, with writing.

Thomas, J., concurs in the result, with writing.

Thompson, P.J., concurs in part and dissents in part, with writing, which Pittman, J., joins.

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BRYAN, Judge, concurring specially.

I agree with Judge Thomas in principle insofar as she tries to find a middle ground with regard to the jurisdiction of the juvenile court versus the jurisdiction of the circuit court in this particular case. However, I believe there are situations, unaccounted for in her writing, that would make her solution untenable.

The following example best identifies my concerns. If, after a juvenile court has adjudicated a paternity action, one of the parties to that action subsequently files an action in the juvenile court to enforce part of that judgment, under Judge Thomas's view (and the dissent's view), the juvenile court would retain jurisdiction to adjudicate that contempt action. A problem arises when, perhaps several months after the enforcement action has been filed, either the petitioner or the respondent in the enforcement action files either a motion to modify child support or a motion to modify child custody. In such a case, even though the enforcement action had been properly filed in the juvenile court, the entire matter, the enforcement action and the modification action, must be removed from juvenile court and adjudicated by the

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circuit court. Even more problematic would be a situation wherein the modification action is tried by the implied consent of the parties during the trial on the enforcement action. In such a case, the trial would have to cease, and the enforcement action along with the modification action would have to be removed from juvenile court and adjudicated by the circuit court. Such unforeseeable circumstances render a petitioner in an enforcement action at the mercy of a respondent who, whether intentionally or not, could delay a decision on the petitioner's request for relief and cause additional financial burdens by filing a modification action. Further, if the parties or the juvenile-court judge fail to recognize that such a matter would have to be adjudicated by the circuit court and the juvenile court enters a judgment on the enforcement and the modification issues, that judgment will be void because it was entered without subject-matter jurisdiction. If an appeal is filed from the entry of a void judgment, this court must dismiss the appeal. See B.L.R. v. N.M.N., [Ms. 2091064, March 11, 2011] ___ So. 3d ___, ___ (Ala. Civ. App. 2011).

I believe that a court either has jurisdiction or it does

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not. I join the main opinion because it does the difficult task of ensuring that the intent of the legislature, see discussion in the main opinion ___ So. 3d at ___, and the due process that must be afforded to all parties in a matter being litigated are reconciled. Although the dissent gives reasons why the main opinion is incorrect, it does not offer a method of reconciling the conflicts facing this court if we are required to decide the father's ability to pay his child-support obligation pursuant to the enforcement action without deciding the father's ability to pay his child-support obligation pursuant to his modification action (which has not yet been decided by the appropriate lower court).

I find no satisfaction in concluding that a juvenile court does not have jurisdiction to enforce its own judgments in cases such as this. Appellate-court judges are routinely called upon to make difficult decisions, and this case is one in which we must make such difficult decisions. Although I do not like the outcome, I must conclude that the main opinion best resolves the gaps in the Alabama Juvenile Justice Act, § 12-15-101 et seq., Ala. Code 1975, that the legislature has left this court to resolve.

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THOMAS, Judge, concurring in the result.

Although I concur with the result reached by the main opinion, I must agree with Presiding Judge Thompson's special writing insofar as it addresses the juvenile court's inherent power to enforce its own child-custody and child-support judgments. ___ So. 3d at ___. A juvenile court, although it is a court of limited jurisdiction, retains the power to interpret and enforce its own judgments. See State ex rel. D.K. v. R.T., 599 So. 2d 627, 627 (Ala. Civ. App. 1992). Retention of such power is essential to the administration of justice. See Hall v. Hall, 485 So. 2d 747, 749 (Ala. Civ. App. 1986). However, in situations in which the juvenile court no longer has jurisdiction to modify those judgments and a modification action is brought as a counterclaim to an enforcement action in the juvenile court, the juvenile court cannot retain jurisdiction over the enforcement action while the modification action is addressed by the circuit court because the risk of inconsistent judgments is too high.⁴

⁴In my mind, it matters not when the modification action is first begun; at the time it is brought, the juvenile court can no longer maintain jurisdiction over the contempt/enforcement action without creating the risk of inconsistent judgments; thus, I agree with Judge Bryan that

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Retention of a contempt/enforcement action by the juvenile court in the face of a companion modification action in the circuit court would also waste judicial resources by forcing a duplication of effort on the part of both courts to determine the facts underlying both the modification action and the enforcement action.

In determining that, because the modification action must

the contempt/enforcement action must then be tried in the circuit court along with the modification action. Judge Bryan expresses concern that issues might arise when the parties to a contempt/enforcement action in juvenile court attempt to try a modification issue by implied consent of the parties. However, because the juvenile court clearly lacks jurisdiction to adjudicate the modification issue and thus the issue cannot truly be tried by the implied consent of the parties in the juvenile court, see Espinoza v. Rudolph, 46 So. 3d 403, 413 (Ala. 2010) ("The parties may not waive lack of subject-matter jurisdiction, and subject-matter jurisdiction may not be conferred by consent."), the juvenile court could continue to try the contempt/enforcement action separately until such time as a modification action is commenced. I note that the party desiring to raise a modification issue less than 42 days before the first trial setting must seek leave of court to amend its answer or complaint and that the juvenile court would have discretion to deny leave to amend if it determined that the modification action would result in undue delay or would prejudice the opposing party; in fact, the juvenile court could disallow an amendment made before the 42-day period before trial for those same reasons. See Rule 15(a), Ala. R. Civ. P.; Ex parte DePaola, 46 So. 3d 884, 886-87 (Ala. 2010) (discussing application of the trial court's discretion to refuse an amendment under Rule 15(a)); and Blackmon v. Nexity Fin. Corp., 953 So. 2d 1180, 1189 (Ala. 2006) (same).

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be brought in the circuit court, the contempt/enforcement action must also be tried in the circuit court, I am not entirely without guidance. The basis for my determination that a contempt/enforcement action and a modification action brought in the same case should be tried together and thus in the same forum, is underpinned by the same reasoning behind the requirement that compulsory counterclaims be brought in an action or be waived. O'Donohue v. Citizen's Bank, 350 So. 2d 1049, 1055 (Ala. Civ. App. 1977). "The whole concept of compulsory counterclaims is that all issues between litigants should be resolved in one action rather than in two or three." Owens v. Huffstetler Coll., 567 So. 2d 1231, 1235 (Ala. 1990). A counterclaim is considered compulsory if its meets the "logical relationship test." Brooks v. Peoples Nat'l Bank of Huntsville, 414 So. 2d 917, 919 (Ala. 1982).

"The logical relationship test denominates a counterclaim as compulsory if (1) its trial in the original action would avoid a substantial duplication of effort or (2) the original claim and the counterclaim arose out of the same aggregate core of operative facts. The claims arise from the same core of operative facts if (1) the facts taken as a whole serve as the basis for both claims or (2) the sum total of facts upon which the original claim rests creates legal rights in a party which would otherwise remain dormant."

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Brooks, 414 So. 2d at 919.

If a defendant in an action has a compulsory counterclaim and does not assert it but instead files a separate action on that counterclaim, that separate action is subject to abatement under Ala. Code 1975, § 6-5-440, which prohibits prosecuting two actions for the same cause of action against the same party. Ex parte Breman Lake View Resort, L.P., 729 So. 2d 849, 851 (Ala. 1999).

"This Court has held that the obligation imposed on a defendant under Rule 13(a), Ala. R. Civ. P., to assert compulsory counterclaims, when read in conjunction with § 6-5-440, Ala. Code 1975, which prohibits a party from prosecuting two actions for the same cause and against the same party, is tantamount to making the defendant with a compulsory counterclaim in the first action a 'plaintiff' in that action (for purposes of § 6-5-440) as of the time of its commencement. See, e.g., Ex parte Parsons & Whittemore Alabama Pine Constr. Corp., 658 So. 2d 414 (Ala. 1995); Penick v. Cado Systems of Cent. Alabama, Inc., 628 So. 2d 598 (Ala. 1993); Ex parte Canal Ins. Co., 534 So. 2d 582 (Ala. 1988). Thus, the defendant subject to the counterclaim rule who commences another action has violated the prohibition in § 6-5-440 against maintaining two actions for the same cause. We affirm the general rule expressed in these cases; to do otherwise would invite waste of scarce judicial resources and promote piecemeal litigation."

Ex parte Breman Lake View Resort, L.P., 729 So. 2d at 851 (emphasis added). In my opinion, the same reasoning would

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logically apply to this situation.

The modification action brought as a companion to a contempt/enforcement action is typically based on the same set of facts that underlie the contempt/enforcement action. In addition, as in the present case, the facts crucial to the resolution of one action are not only closely intertwined with but often form the basis of the decision reached in the other. Thus, because the modification action in the present case must be considered in the circuit court because the juvenile court lacks jurisdiction over the modification action, the circuit court is the appropriate forum for the contempt/enforcement action as well. To permit the splitting of the actions between two courts is untenable and wastes judicial resources that, in the present day, are already taxed with doing more with less.

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THOMPSON, Presiding Judge, concurring in part and dissenting in part.

I agree with the conclusion of the main opinion that, under the current provisions of the new Alabama Juvenile Justice Act, § 12-15-101 et seq., Ala. Code 1975 ("the new AJJA"), the juvenile court lacked jurisdiction over the father's claims seeking a modification of child support and that those claims should have been asserted in an action in the circuit court. Under former § 12-15-32, Ala. Code 1975, once a juvenile court properly exercised jurisdiction over a matter involving a child, the juvenile court maintained continuing jurisdiction over the child. However, the provisions of the former AJJA were either repealed or renumbered and amended, and the new AJJA became effective on January 1, 2009. See Act. No. 2008-277, Ala. Acts 2008. Former § 12-15-32 was amended and renumbered as § 12-15-117, Ala. Code 1975, which provides that a juvenile court retains jurisdiction when a child has been determined to be dependent, delinquent, or in need of supervision.

While serving on the Juvenile Court Revision Committee, I opposed the changes to the provisions pertaining to the

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juvenile court's retention of jurisdiction that are now set forth in the new AJJA. In Ex parte T.C., [Ms. 2090433, June 18, 2010] ____ So. 3d ____ (Ala. Civ. App. 2010), which is discussed in the main opinion, I wrote specially to explain my reasons for that disagreement:

"[T]he juvenile court that has presided over the case has more familiarity with the history of the case, the parties involved, and the issues to be addressed than does any other court. Any custody orders to be modified would be those that the juvenile court initially entered. That court also would be in a superior position to know what is in the best interest of the children. Yet the new law dictates that it no longer has jurisdiction over the case. The parties are left to practically start anew before another judge. I believe the better practice would be to leave the case in the court of its origin."

Ex parte T.C., ____ So. 3d at ____ (Thompson, P.J., concurring in part and concurring in the result). However, this court is bound by the enactments of the legislature, and so, in that case, I concurred with this court's conclusion that under the new AJJA the juvenile court lacked subject-matter jurisdiction to consider the custody-modification petition at issue. Ex parte T.C., supra. Similarly, in this case, I must concur with the holding that the juvenile court lacked jurisdiction to entertain the father's claims to modify child support.

In doing so, however, I want to clarify that I disagree with the main opinion's conclusion that the circuit court, rather than the juvenile court, could properly exercise jurisdiction over the contempt or enforcement claims asserted by both the father and the mother. Under the new AJJA, the juvenile court retains jurisdiction to enforce its orders that require monetary payments. § 12-15-117(c), Ala. Code 1975.⁵ Also, under § 12-15-110, Ala. Code 1975, the juvenile court retains the power to enforce its judgments through contempt determinations. The contempt claims asserted by the father and the mother seek to enforce the juvenile court's original judgment pertaining to child support. As I have already

⁵Section 12-15-117 provides, in pertinent part:

"(c) In any case over which the juvenile court has jurisdiction, the juvenile court shall retain jurisdiction over an individual of any age for the enforcement of any prior orders of the juvenile court requiring the payment of fines, court costs, restitution, or other money ordered by the juvenile court until paid in full.

"(d) For purposes of enforcing any order of the juvenile court requiring the payment of fines, court costs, restitution, or other money ordered by the juvenile court, the remedies with regard to punishment for contempt, including incarceration in jail of individuals 18 years of age or older, shall be available to the juvenile court."

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explained, I agree that, under the current AJJA, the juvenile court did not maintain jurisdiction over the child, i.e., that the juvenile court lacked continuing jurisdiction to modify child support or child custody. See § 12-15-117(a), Ala. Code 1975; Ex parte L.N.K., [Ms. 2090965, Dec. 3, 2010] ___ So. 3d ___, ___ (Ala. Civ. App. 2010); and Ex parte T.C., supra. However, I cannot agree with the main opinion that an absence of jurisdiction over the child also deprives the juvenile court of jurisdiction to enforce its own judgment, particularly in light of the language of § 12-15-117(c) and § 12-15-110. Accordingly, I conclude that the contempt claims asserted by the father and the mother remain within the jurisdiction of the juvenile court and must be resolved in the juvenile court.

Although the main opinion bolsters its holding by citing concerns over the alleged potential for inconsistent judgments, I do not believe such concerns may operate to govern jurisdictional issues. Further, I do not share the concerns of some members of this court that the jurisdictional specifications set forth by our legislature in the new AJJA will result in inconsistent judgments. The enforcement claims

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asserted by the father and the mother require the juvenile court to determine whether the parties are in contempt for their past actions in allegedly failing to comply with the provisions of the juvenile court's judgment. The modification claim, which is to be resolved in the circuit court, concerns whether a judgment should be modified from the time of the filing of the petition forward. See Rule 32(A)(3)(a), Ala. R. Jud. Admin. ("The provisions of any judgment respecting child support shall be modified only as to installments accruing after the filing of the petition for modification."). Moreover, if the main opinion is to consider the effects of a purported potential for inconsistent judgments in order to confer jurisdiction upon the circuit court to enforce the judgment of the juvenile court, it should also consider the potential for forum shopping by a defendant to an enforcement or contempt claim asserted in the juvenile court. For example, a defendant to such a claim asserted in the juvenile court could respond by filing a claim for a modification, whether he or she believes that claim has merit, so that (under the holding of the main opinion) the matter will be transferred to the circuit court and allow the defendant to

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begin anew with a trier of fact who would not be familiar with the parties or their past actions. The transfer to the circuit court allowed under the main opinion could operate to place an additional burden on the party seeking to enforce the juvenile court's judgment.

I agree that litigating all the parties' claims in one court is both expedient and the best use of the resources of the parties and the judiciary. However, matters of expediency and convenience are relevant to the issue of venue, rather than to jurisdiction. Ex parte Bad Toys Holdings, Inc., 958 So. 2d 852, 856, n.3 (Ala. 2006) (discussing the difference between venue and jurisdiction); Ex parte City of Haleyville, 827 So. 2d 778, 781-82 (Ala. 2002) (same). This court may not confer jurisdiction upon a circuit court to hear enforcement claims pertaining to a juvenile-court judgment, particularly when the legislature, through its recent enactment of the new AJJA, has clearly specified that jurisdiction to consider such claims is retained by the juvenile court. As I stated in my special writing in Ex parte T.C., supra, "[i]t is the duty of the legislature to enact the laws and the duty of the courts to apply those laws as written." ____ So. 3d at _____. The

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resolution of the difficulties arising out of the provisions in the new AJJA concerning the juvenile court's retention of jurisdiction is a matter to be addressed by the legislature, and I encourage the legislature to consider the issue.

Pittman, J., concurs.