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ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2011

2100273

G.M. and P.M.

v.

T.W. and D.W.

Appeal from Jefferson Juvenile Court, Bessemer Division (JU-09-700184.01)

PER CURIAM.

In March 2009, T.W. and her husband, D.W. (referred to collectively as "the maternal aunt and uncle"), filed a dependency petition in the Jefferson Juvenile Court, Bessemer Division, in which they sought custody of Z.M.S. ("the child")

on the ground that the child's parents were deceased. The juvenile court, acting through a referee, awarded the maternal aunt and uncle emergency temporary custody of the child; the referee's order was confirmed by the juvenile court. In April 2009, the maternal great-grandparents of the child, G.M. and P.M., moved to intervene in the dependency proceeding. The maternal great-grandparents were allowed to intervene and petitioned for custody of the child. The juvenile court declared the child to be dependent and, on September 4, 2009, awarded custody of the child to the maternal aunt and uncle and awarded the maternal great-grandparents visitation based on an agreement of the parties. An amended judgment regarding agreed-upon holiday visitation was entered on November 19, 2009.

Subsequently, the maternal aunt and uncle adopted the child; the adoption judgment was entered on July 14, 2010. In November 2010, the maternal great-grandparents filed a complaint in the juvenile court seeking to have the maternal aunt and uncle held in contempt for failing to permit the maternal great-grandparents to exercise the visitation provided for in the September 4, 2009, judgment and seeking

the imposition of telephone and summer visitation. The maternal aunt and uncle moved to dismiss the maternal great-grandparents' contempt/modification complaint, arguing in that motion that the maternal great-grandparents had not been entitled to the visitation they were awarded in the juvenile court's judgment because the maternal great-grandparents lacked standing to seek grandparent-visitation rights under Ala. Code 1975, § 30-3-4.1, which this court had held did not authorize visitation awards to great-grandparents.[1] See L.R.M. v. D.M., 962 So. 2d 864, 875 (Ala. Civ. App. 2007) (recognizing that great-grandparents were not authorized to seek visitation rights under § 30-3-4.1).

The maternal aunt and uncle also filed what they entitled a "Motion to Alter or Amend" the September 4, 2009, judgment,

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[1]Section 30-3-4.1 has since been held unconstitutional by our supreme court in Ex parte E.R.G., [Ms. 1090883, June 10, 2011] ___ So. 3d ___ (Ala. 2011). We note that, as mentioned, the maternal great-grandparents were awarded visitation pursuant to agreements regarding regular visitation and holiday visitation reached by the parties; those agreements were then incorporated into the juvenile court's judgments on September 4, 2009, and November 19, 2009. The juvenile court was exercising dependency jurisdiction, and it is apparent from the record that the juvenile court did not award the maternal great-grandparents visitation pursuant to § 30-3-4.1.

seeking to have the juvenile court set aside the September 4, 2009, judgment, insofar as it awarded visitation to the maternal great-grandparents, on the same legal ground asserted in the motion to dismiss; although labeled as a motion made pursuant to Rule 59, Ala. R. Civ. P., the motion specifically relied on Rule 60(b), Ala. R. Civ. P. Because the nomenclature of a motion is not controlling, see Ex parte Hartford Ins. Co., 394 So. 2d 933, 935 (Ala. 1981) (construing a motion labeled as a "Motion to Reinstate" to be a Rule 60(b) motion because it stated grounds under Rule 60(b) as a basis for setting aside the dismissal of the complaint), the maternal aunt and uncle's motion was a Rule 60(b) motion seeking relief from the September 4, 2009, judgment. The maternal great-grandparents responded to the maternal aunt and uncle's motions by arguing first that the juvenile court had had the authority to award them visitation under its dependency jurisdiction, Ala. Code 1975, § 12-15-314(a)(4) (permitting a juvenile court making a disposition in a dependency case to "[m]ake any other order as the juvenile court in its discretion shall deem to be for the welfare and best interest of the child"), and that the parties had agreed

on visitation, which agreement, argued the maternal great-grandparents, should be enforced.

On December 6, 2010, the juvenile court entered two judgments dismissing both the maternal great-grandparents' contempt/modification complaint and the maternal aunt and uncle's motion seeking relief from the September 4, 2009, judgment. As the basis for the dismissals, the juvenile court stated that it no longer had jurisdiction to consider a postjudgment motion directed toward the September 4, 2009, judgment because the period for filing such a motion had expired[2] and that it no longer had jurisdiction over the contempt/modification complaint because of this court's opinion in Ex parte T.C., [Ms. 2090433, June 18, 2010] ___ So.

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[2]We cannot agree that the juvenile court was without jurisdiction to entertain the Rule 60(b) motion filed by the maternal aunt and uncle because the time for filing a Rule 59 motion had expired. Unlike a postjudgment motion made pursuant to Rule 59, which must be filed within 14 days of the entry of the juvenile court's judgment, see Rule 1(B), Ala. R. Juv. P., a Rule 60(b) motion, by its very nature, is designed to be filed after the judgment has become final, i.e., after the expiration of the period for filing postjudgment motions or after any such motions are denied. See Ex parte Lang, 500 So. 2d 3, 4 (Ala. 1986); Dubose v. Dubose, 964 So. 2d 42, 45 (Ala. Civ. App. 2007). However, the maternal aunt and uncle did not appeal from the dismissal of their Rule 60 (b) motion, and we need not address this issue further.

3d ___, ___ (Ala. Civ. App. 2010), which the juvenile court read as requiring that "all petitions to modify involving visitations, custody, or contempt must be filed with [the] domestic-relations court." The maternal great-grandparents seek review of the judgment dismissing their complaint.[3]

This court's decision in Ex parte T.C., however, was not quite so broad. In our opinion, this court considered and compared the language of Ala. Code 1975, § 12-15-117(a), which restricts a juvenile court's continuing jurisdiction over a child to cases in which a child has been declared dependent, delinquent, or in need of supervision, with the language of former Ala. Code 1975, § 12-12-32, which did not so restrict the continuing jurisdiction of the juvenile court a child who had been before it. Based on the clear restriction placed on the juvenile court's continuing jurisdiction by § 12-15-

[3]The maternal great-grandparents originally sought mandamus review; however, because the dismissal of their complaint was a final judgment capable of supporting an appeal, we have exercised our discretion to treat their petition for the writ of mandamus as an appeal. Weaver v. Weaver, 4 So. 3d 1171, 1173 (Ala. Civ. App. 2008) (exercising this court's discretion to treat a petition for the writ of mandamus as an appeal when the judgment from which the petition sought relief was a final judgment capable of supporting an appeal).

117(a), this court concluded in Ex parte T.C. that, under the current Alabama Juvenile Justice Act, Ala Code 1975, § 12-15-101 et seq., modification actions relating to a custody award of the juvenile court that had not been premised on a finding that a child is dependent, delinquent, or in need of supervision should be instituted in the circuit court.

We have since clarified our holding in Ex parte T.C. in J.W. v. C.B., [Ms. 2100108, February 25, 2011] ___ So. 3d ___, ___ (Ala. Civ. App. 2011):

> "Pursuant to the AJJA [the Alabama Juvenile Justice Act], if a juvenile court has previously adjudicated a child to be dependent, delinquent, or in need of supervision, the juvenile court has continuing jurisdiction over that child until the child attains the age of 21 or until the juvenile court terminates its jurisdiction over the child. See § 12-15-117(a); and Ex parte L.N.K., [Ms. 2090965, December 3, 2010] ___ So. 3d ___, ___ (Ala. Civ. App. 2010) ('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."'). Nothing in the AJJA limits a juvenile court's continuing jurisdiction pursuant to § 12-15-117(a) to proceedings in which the child is again alleged to be dependent, and nothing in Ex parte T.C. should be construed as limiting a juvenile court's continuing jurisdiction in that manner."

Accordingly, we cannot agree that the juvenile court lacked jurisdiction over the maternal great-grandparents' complaint

because it was required to be maintained in the circuit court under Ex parte T.C.

However, we conclude that the juvenile court was without jurisdiction to enforce or modify the September 4, 2009, judgment for another reason. The judgment at issue arose from a settlement agreement reached between the maternal great-grandparents and the maternal aunt and uncle in a dependency proceeding in which the child was declared dependent, the custody of the child was awarded to the maternal aunt and uncle, and certain visitation rights were awarded to the maternal great-grandparents. Notably, that judgment also relieved the Jefferson County Department of Human Resources of any further duty to supervise the child. Following the entry of that judgment, the juvenile court conducted a compliance hearing and entered a November 13, 2009, judgment in which it indicated "File closed."

Ordinarily, a juvenile court retains continuing jurisdiction over a child who has been adjudicated dependent until the child reaches age 21; however, as an exception to that rule, a juvenile court may terminate its own jurisdiction over a child who has been adjudicated dependent. See § 12-15-

117(a). The juvenile court closed its file with no further compliance or other hearings contemplated, thus terminating its continuing jurisdiction under § 12-15-117(a). When the parties sought to invoke the jurisdiction of the juvenile court a year later, the juvenile court concluded that "the time allowed to alter/amend order on [the] closed case is expired," and it directed the parties to file any action regarding their visitation dispute with the appropriate domestic-relations court. Although the juvenile court may have been wrong as to the proper legal basis for declining jurisdiction, it remains clear that all of its actions from November 13, 2009, forward signal its unmistakable intent to no longer adjudicate any disputes regarding the custody of the child, including the visitation controversy at issue. Thus, we conclude that the juvenile court properly dismissed the action filed by the maternal great-grandparents for lack of subject-matter jurisdiction.

Both parties' requests for the award of an attorney fee on appeal are denied.

AFFIRMED.

Thompson, P.J., and Pittman and Moore, JJ., concur.

Thomas, J., concurs specially, which Bryan, J., joins.

THOMAS, Judge, concurring specially.

I agree with the main opinion that the juvenile court lacked jurisdiction to enforce or modify the September 4, 2009, judgment. However, I reach that conclusion for a different reason than the one expressed in the main opinion. I cannot agree that the use of the term "file closed," or other similar terms, should be construed to terminate the continuing jurisdiction of a juvenile court under Ala. Code 1975, § 12-15-117(a). The indication by a juvenile court that it does not anticipate further review at its instance does not necessarily foreclose resumption of jurisdiction at the instance of a party to the proceedings. Reasons for continuing jurisdiction would vary, depending on the case, and could include enforcement or modification actions, when those actions may be properly instituted in the juvenile court. Instead, I conclude that the effect of the adoption judgment on the dependency judgment was to terminate the jurisdiction of the juvenile court to enforce or modify the September 4, 2009, judgment.

> "'The right of adoption ... is purely statutory, and was never recognized by the rules of common law.' Hanks v. Hanks, 281 Ala. 92, 99, 199 So. 2d 169, 176 (1967). 'Adoption ... is a status created

> by the state acting as parens patriae, the sovereign parent.' Ex parte Bronstein, 434 So. 2d [780,] 781 [(Ala. 1983)]."

Ex parte D.W., 835 So. 2d 186, 190 (Ala. 2002). Pursuant to Ala. Code 1975, § 26-10A-29(a), "[a]fter adoption, the adoptee shall be treated as the natural child of the adopting parent or parents." After the judgment of adoption, the maternal aunt and uncle no longer had custody by virtue of the September 4, 2009, judgment; they became the natural parents of the child by virtue of the adoption judgment. With that status comes the superior right to custody of the child. Steed v. Steed, 877 So. 2d 602, 605 (Ala. Civ. App. 2003); Douglas v. Harrelson, 454 So. 2d 984, 986 (Ala. Civ. App. 1984).

The changed statuses of the child and of the maternal aunt and uncle are pivotal. As our supreme court explained in Ex parte Bronstein, 434 So. 2d 780, 781-82 (Ala. 1983), "[a]doption is not merely an arrangement between the natural and adoptive parents, but it is a status created by the state acting as parens patriae, the sovereign parent ...." The adoption judgment, in creating the new legal statuses of the child and the maternal aunt and uncle, extinguished the

visitation rights of the maternal great-grandparents provided in the September 4, 2009, judgment. See People ex rel. Levine v. Rado, 54 Misc. 2d 843, 845, 283 N.Y.S.2d 483, 485 (N.Y. Sup. Ct. 1967) (holding in a case remarkably similar to this one that a previous court order awarding a paternal aunt custody and a maternal grandmother visitation rights was extinguished by the adoption of the child by the paternal aunt and her husband based on the permanent change in status wrought by the adoption). This result obtains because the custody and visitation judgment was not a permanent change of status but was instead a temporary determination of the custodial situation serving the best interest of the child at the time and under the circumstances then existing, which is always subject to modification. As our supreme court has explained:

> "[B]y its very nature, custody is always temporary and never permanent. Although the temporary custody of a child may have been placed with someone, the court always retains jurisdiction to modify custody under the appropriate circumstances. This is to say that temporary custody is actually permanent custody subject to change."

Ex parte J.P., 641 So. 2d 276, 278 (Ala. 1994).

The status that an adoption judgment conveys, however, is not subject to modification upon a showing of changed circumstances. Although an action to determine custody incident to a divorce or to prove dependency of a child under new circumstances could affect that status, the action would be a new action. A previous custody or dependency order relating to a child based on his or her former status could not survive the change in status wrought by the adoption judgment or else it would undermine the permanency of the adoption judgment and the status it conveys.

Although earlier cases, like Evans v. Rosser, 280 Ala. 163, 166, 190 So. 2d 716, 718-19 (1966), and the case on which it relies, might, at first glance, indicate that the adoption judgment did not oust the juvenile court of jurisdiction to enforce its 2009 judgments, I do not believe that those cases prevent the conclusion I reach. Evans does state that "[a]doption proceedings cannot defeat [the power of the equity court to withdraw custody from a natural or adoptive parent], and do not judicially determine the right of custody as against a natural parent," 280 Ala. at 166, 190 So. 2d at 719; however, that particular statement of law appears to be dicta,

because it was not required to support the court's holding that the adoption decree under review was properly entered without the consent of the father, who had "'lost guardianship of the child through divorce proceedings.'" 280 Ala. at 165, 190 So. 2d at 718. In addition, the case upon which Evans relies, Praytor v. Cole, 247 Ala. 259, 260, 23 So. 2d 713, 713 (1945), indicates that the key word in that particular quotation is the word "proceedings."

In Praytor, our supreme court considered whether an adoption proceeding, begun by maternal grandparents before the father sought custody of the child in circuit court, would prevent the circuit court from exercising its equity jurisdiction over the custody of the child. Praytor, 247 Ala. at 259, 23 So. 2d at 713. The Praytor court decided that the pending adoption proceeding did not prevent the circuit court from exercising its equity jurisdiction over the custody of the child. 247 Ala. at 259-60, 23 So. 2d at 713. Of importance to the holding in Praytor was the fact that the adoption proceeding had not concluded. 247 Ala. at 260, 23 So. 2d at 713. Under the 1940 version of the adoption code, if an adoption petitioner proved to the satisfaction of the

probate court that an adoption would be in the best interest of the child, the probate court could enter an interlocutory order regarding the adoption; a final adoption decree could not be entered until the child had resided with the petitioner for at least one year and had been visited on a quarterly basis by an official from the Department of Public Welfare, the precursor to what is now the Department of Human Resources. Ala. Code 1940, Tit. 27, § 4. Because the adoption had not been concluded in Praytor, the court properly determined that the custody of the child could still be determined by the circuit court exercising its inherent equity power over the custody of the child. 247 Ala. at 260, 23 So. 2d at 713.

The situation in the present case is different than the situations presented in either Evans or Praytor. The adoption in this case has been concluded. Although the Evans court appeared to determine, in dicta, that even a final adoption decree did not "judicially determine the right of custody as against a natural parent," 280 Ala. at 166, 190 So. 2d at 719, that holding was questionable then and is clearly incorrect under the present adoption code. Although a pending adoption

proceeding does not determine the custody rights of competing parties, a completed adoption reduced to a final judgment does necessarily determine the custody rights of a natural parent. Section 26-10A-29 clearly states that the rights and responsibilities of the natural parents, except in the case of a spouse of an adopting stepparent, are terminated. Collateral attacks against an adoption are limited to a period of one year, except in cases where the adoptee has been kidnapped or in cases of fraud. Ala. Code 1975, § 26-10A-25. The finality of an adoption judgment under the present adoption code is in stark contrast to earlier adoption codes, which permitted either the child or the adopting parent or parents to petition to have the adoption annulled. See Ala. Code 1907, § 5202; Ala. Code 1923, § 9308. Even in the 1940 Alabama Code, the adoption could be set aside if the adopting parents failed to perform their duties to the child "faithfully" or, in situations where the adopting parent or parents were unaware of the possibility, where the child developed certain conditions. Ala. Code 1940, Tit. 27, § 4.

Reliance on Evans and older cases is problematic, partly because of the changes in our adoption code over the years and

partly because those cases also rely in large part on the equity powers of the circuit court, which give that court inherent power to determine the custody of children. See, e.g., Wright v. Price, 226 Ala. 468, 147 So. 675 (1933). The juvenile court, unlike the circuit court, is a court of limited jurisdiction that derives its jurisdiction over the custody of children from statute, which means that its jurisdiction is not inherent and arises only in those situations outlined in the statute creating the juvenile courts. T.B. v. T.H., 30 So. 3d 429, 431 (Ala. Civ. App. 2009) ("Juvenile courts are purely creatures of statute and have extremely limited jurisdiction."); see also Ex parte K.L.P., 868 So. 2d 454, 456 (Ala. Civ. App. 2003). Therefore, Evans does not preclude my conclusion that the juvenile court's 2009 judgments were extinguished by the entry of the adoption judgment, which created in the maternal aunt and uncle and the child the new statuses of parents and child.

Allowing the juvenile court to entertain the maternal great-grandparents' contempt claim and to potentially enforce the visitation rights awarded in the September 4, 2009, judgment would undermine the status of the maternal aunt and

uncle as adoptive parents, who have, by statute, the rights of natural parents. Those rights include, in most circumstances, the right to refuse visitation with the child's grandparents or other third parties. In an adoption by anyone other than a stepparent, the natural parents lose all parental rights to the adoptee. § 26-10A-29(b). Thus, all others who may claim a relationship or a right to the child by virtue of the natural parents' relationship to the child also lose their relationships and rights to the child. Ex parte Bronstein, 434 So. 2d at 782. As explained by the Bronstein court, "adoption, like birth creates legal relationships under which the adoptive parents gain certain rights which pre-empt any visitation rights by natural parents or grandparents." Id. at 783.

I note that the maternal great-grandparents' complaint, insofar as it sought additional visitation rights, could not be maintained in the juvenile court because the maternal great-grandparents lacked standing to institute an action seeking those rights. Although natural grandparents may be awarded postadoption visitation in certain relative adoptions, see Ala. Code 1975, § 26-10A-30, the maternal great-

grandparents do not fall within the term "natural grandparents" contained in that statute; in addition, the juvenile court would have lacked jurisdiction to modify the adoption judgment to permit visitation under § 26-10A-30, because the probate court, which has exclusive jurisdiction over adoption proceedings, is the proper forum for such an action. Palmer v. Bolton, 574 So. 2d 42 (Ala. Civ. App. 1990), rev'd on other grounds, 574 So. 2d 44 (Ala. 1990). Thus, the maternal great-grandparents, in my opinion, lack standing to seek an award of grandparent visitation under the adoption code.[4]

Although the juvenile court may have had continuing jurisdiction over the September 4, 2009, judgment until the entry of the adoption judgment, I conclude that the juvenile court lacked jurisdiction to enforce or modify the visitation provisions of that judgment after the entry of the adoption judgment because of the maternal aunt and uncle's changed

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[4]As noted in the main opinion, in Ex parte E.R.G., [Ms. 1090883, June 10, 2011] ___ So. 3d ___ (Ala. 2011), our supreme court held Ala. Code 1975, § 30-3-4.1, the grandparent-visitation statute, unconstitutional. Therefore, I decline to address the maternal aunt and uncle's argument that the maternal great-grandparents also lacked standing to pursue visitation under that statute.

status as adoptive parents, providing them a superior right to custody of the child, and because the maternal great-grandparents no longer have any basis upon which to predicate a right to seek visitation with the child in the juvenile court. To allow the juvenile court to retain jurisdiction to enforce or modify the provisions of the September 4, 2009, judgment would do violence to the spirit and letter of the adoption code and would infringe on the probate court's exclusive jurisdiction to award grandparent visitation in the limited circumstances provided for in § 26-10A-30. Therefore, because this court may affirm the judgment of the juvenile court on any valid legal ground, I would affirm the judgment of the juvenile court dismissing the great-grandparents' complaint for the foregoing reasons. See Byrom v. Byrom, 47 So. 3d 783, 790 (Ala. Civ. App. 2007) ("[A]n appellate court 'may affirm a trial court's judgment on "any valid legal ground presented by the record, regardless of whether that ground was considered, or even if it was rejected, by the trial court."'"); see also Ferguson v. Baptist Health Sys., Inc., 910 So. 2d 85, 96 (Ala. 2005) ("While we affirm [the trial court's] ruling on a ground different from the ground

cited by the trial court, this Court, subject only to exceptions not applicable in this case, can affirm the judgment of the trial court if that judgment is supported by any valid legal ground.").

Bryan, J., concurs.