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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2013-2014

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A.H.

v.

B.C.

**Appeal from Limestone Juvenile Court
(JU-13-25.01)**

MOORE, Judge.

A.H. ("the father") appeals from a judgment entered by the Limestone Juvenile Court ("the juvenile court") terminating his parental rights to K.O.C. ("the child"). We dismiss the appeal with instructions.

Background

B.C. ("the mother") gave birth to the child on December 22, 2008. The mother and the father have never married, but the father's paternity was adjudicated by the Limestone District Court on October 25, 2010.

On February 13, 2013, the mother filed a petition seeking to terminate the father's parental rights to the child. In that petition, the mother alleged that the father had abandoned the child and that he had failed to maintain contact with the child, had failed to adjust his circumstances to fit the needs of the child, and had failed to provide financial support for the child. The mother did not specifically allege that child was dependent, delinquent, or in need of supervision.

On June 25, 2013, the juvenile court conducted an ore tenus hearing on the mother's petition. The father did not attend the hearing, but he was represented by legal counsel and his attorney was present at that hearing. Although the father's attorney moved to dismiss the proceeding for lack of subject-matter jurisdiction, the juvenile court denied that motion. On June 27, 2013, the juvenile court entered a

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judgment terminating the father's parental rights. In that judgment, the juvenile court did not make a finding that the child is dependent, delinquent, or in need of supervision. The father timely filed his notice of appeal.

Discussion

The father contends that, under § 12-15-114, Ala. Code 1975, a juvenile court may not exercise jurisdiction over a termination-of-parental-rights case except insofar as that action arises out of a proceeding involving an allegation that a child is dependent, delinquent, or in need of supervision and that, as a result, the juvenile court in this case lacked subject-matter jurisdiction to hear the mother's petition to terminate his parental rights. For the same reasons stated in our opinions in W.B.B. v. H.M.S., [Ms. 2120501, Sept. 6, 2013] ___ So. 3d ___ (Ala. Civ. App. 2013); and C.C. v. L.J., [Ms. 2120534, Sept. 6, 2013] ___ So. 3d ___ (Ala. Civ. App. 2013), we agree. Because the instant termination-of-parental-rights proceeding did not arise out of a dependency, delinquency, or child-in-need-of-supervision proceeding, the juvenile court did not have subject-matter jurisdiction to enter its

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judgment, and its judgment purporting to terminate the parental rights of the father is therefore void.¹

A void judgment will not support an appeal. See generally A.C. v. In re E.C.N., 89 So. 3d 777 (Ala. Civ. App. 2012). Therefore, the appeal is dismissed, albeit with instructions for the juvenile court to vacate its judgment terminating the parental rights of the father.

APPEAL DISMISSED WITH INSTRUCTIONS.

Donaldson, J., concurs.

Thomas, J., concurs specially.

Pittman, J., dissents, with writing, which Thompson, P.J., joins.

¹Because of our resolution of the father's first issue, we need not address his second issue.

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THOMAS, Judge, concurring specially.

I agree with the majority of this court regarding the issue of the jurisdiction of juvenile courts over termination-of-parental-rights actions pursuant to § 12-15-114, Ala. Code 1975. I write to express that I have been, and I remain, nearly persuaded by the sound logic of Judge Pittman's dissents in W.B.B. v. H.M.S., [Ms. 2120501, Sept. 6, 2013] ___ So. 3d ___ (Ala. Civ. App. 2013), and C.C. v. L.J., [Ms. 2120534, Sept. 6, 2013] ___ So. 3d ___ (Ala. Civ. App. 2013), in which Presiding Judge Thompson concurred. Like my colleagues, I doubt that the legislature intended to deprive the juvenile courts of jurisdiction to adjudicate a certain category of termination-of-parental-rights cases.

However, I tenuously hold to my views on the jurisdiction of juvenile courts over termination-of-parental-rights actions, pursuant to § 12-15-114, as alluded to in the main opinion in S.N.W. v. M.D.F.H., [Ms. 2120120, May 17, 2013] ___ So. 3d ___ (Ala. Civ. App. 2013), and as expressed in the main opinions in W.B.B., ___ So. 3d at ___, and C.C., ___ So. 3d at ___. Therefore, I agree with the majority of this court that, in this case, the juvenile court lacked jurisdiction over the

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action because it was a termination-of-parental-rights action that did not arise out of a dependency, delinquency, or child-in-need-of-supervision proceeding. I write to clearly express why I agree with the majority of this court on this issue.

Section 12-15-114(a) provides that a juvenile court properly exercises exclusive original jurisdiction over an action if a child that is the subject of the action is alleged (1) to have committed a delinquent act, (2) to be dependent, or (3) to be in need of supervision and that such an action may not include a custody dispute between the child's parents. Section 12-15-114(b) imposes age limitations for individuals who have committed delinquent acts.

More difficult is the interpretation of § 12-15-114(c)(2), which provides that a juvenile court also properly exercises exclusive original jurisdiction over proceedings for the termination of parental rights, but only if the proceeding arose due to an allegation that the child (1) committed a delinquent act, (2) is dependent, or (3) is in need of supervision. § 12-15-114(c)(2).

Thus, notwithstanding the logic of Judge Pittman's writings, I remain slightly more persuaded that the plain

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language of § 12-15-114 prohibits B.C. ("the mother") from bringing a termination-of-parental-rights action against A.H. ("the father") in the juvenile court. Clearly, the mother's petition did not raise an allegation that K.O.C. ("the child") had committed a delinquent act or was in need of supervision. Not as clear to me, however, is whether, as the father asserts, the mother made "no allegation that the child be found dependent and does not request that the child be found dependent." Although the mother titled her petition as a petition to terminate parental rights, it is "'[t]he substance of a motion and not its style determines what kind of motion it is.'" Cornelius v. Browning, 85 So. 3d 954, 958 n. 2 (Ala. 2011) (quoting Evans v. Waddell, 689 So. 2d 23, 26 (Ala. 1997)). The mother alleged in her petition, among other things, that the father had abandoned the child and was unwilling to discharge his responsibilities to the child. If proved, those allegations could support an adjudication of dependency. § 12-15-102(8)a.5. and 6. Thus, I considered whether the substance of the mother's petition could be construed as including a claim that the child is dependent and could have therefore properly invoked the exclusive original

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jurisdiction of the juvenile court pursuant to § 12-15-114(c)(2). I reluctantly agree with the father. The allegations of the mother's petition, if proved, more convincingly assert proper statutory grounds for the termination of the father's parental rights, § 12-15-319(a)(1) through (12), Ala. Code 1975, and do not assert a claim that the child is dependent.² Therefore, I agree that the mother's appeal must be dismissed.

²Furthermore, the mother is willing to provide for the child; thus, the child could not meet the definition of a "dependent child," because the child is not "without a parent ... willing and able to provide for the care, support, or education of the child." § 12-15-102(8)(a)(2). Moreover, the mother, who is seeking the termination of the father's parental rights, was not required to allege or prove the dependency of the child. As our supreme court explained in Ex parte Beasley, 564 So. 2d 950, 954 (Ala. 1990):

"[W]hen one parent seeks to terminate the other parent's parental rights, a 'finding of dependency' is not required. As stated above, if a 'finding of dependency' were a requisite element of proof, the following illogical result could arise: The petitioning parent, who is adequately caring for the child, would have to prove that he or she is not providing adequate care for the child and, therefore, could then be estopped from bringing such an action. We hold, therefore, that, when one parent seeks to terminate the other parent's parental rights, a 'finding of dependency' is not required, and the trial court should determine whether the petitioner has met the statutory burden of proof and whether that termination is in the child's best interest, in light of the surrounding circumstances."

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PITTMAN, Judge, dissenting.

Consistent with the views I have expressed in my dissents in C.C. v. L.J., [Ms. 2120534, Sept. 6, 2013] ___ So. 3d ___, ___ (Ala. Civ. App. 2013) (Pittman, J., dissenting), and W.B.B. v. H.M.S., [Ms. 2120501, Sept. 6, 2013] ___ So. 3d ___, ___ (Ala. Civ. App. 2013) (Pittman, J., dissenting), I respectfully dissent.

Thompson, P.J., concurs.