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ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2018

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C.Z. and J.Z.

v.

B.G.

Appeal from Elmore Probate Court
(A2017-40)

MOORE, Judge.

C.Z. and J.Z., the prospective adoptive parents of A.L.G. ("the child"), appeal from a judgment entered by the Elmore Probate Court ("the probate court") that, among other things, dismissed their petition for adoption. We affirm the judgment.

Procedural History

On October 16, 2017, the prospective adoptive parents filed in the probate court a petition to adopt the unborn child of J.W. ("the mother"), an unmarried woman. In support of that petition, the prospective adoptive parents filed affidavits of the mother and T.B., who asserted he was the biological father of the child, both of whom consented to the adoption of the child. The child was born on October 23, 2017, and was named "K.I.Z." on his birth certificate. The Alabama Department of Human Resources ("DHR") reported to the probate court on December 18, 2017, that no man had registered with the Alabama Putative Father Registry ("the putative-father registry") claiming paternity of the child. The probate court entered a final judgment of adoption on December 19, 2017.

On January 25, 2018, DHR notified the probate court that, in fact, B.G. ("the father") had registered with the putative-father registry in October 2017, claiming paternity of the child, and that DHR had, in its December 2017 report, erroneously failed to notify the probate court of his registration. Based on that disclosure, the probate court

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vacated the final judgment of adoption on its own motion on January 26, 2018. The probate court subsequently ordered genetic testing of the father, T.B., and the child on February 16, 2018, which, after being conducted several months later, revealed a 99.99% probability that B.G. is the father of the child and excluded T.B. as the father of the child. On March 29, 2018, while awaiting the genetic testing, the probate court ordered the prospective adoptive parents to serve the father with notice of their petition for adoption, which they did on May 1, 2018. On May 25, 2018, the father filed with the probate court an objection to the petition for adoption.

On June 28, 2018, the prospective adoptive parents moved the probate court to "dismiss" the father's objection to the petition for adoption because of the alleged failure of the father to properly register with the putative-father registry. On July 2, 2018, the father moved the probate court to dismiss the adoption petition on the ground that he did not consent to the adoption of the child. The prospective adoptive parents filed an affidavit of the mother in support of their opposition to the motion to dismiss filed by the father. The

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probate court held a hearing on the motions on July 9, 2018, at which the father, his mother, T.B., and J.Z. testified.

On July 13, 2018, the probate court entered a judgment dismissing the petition for adoption. In its judgment, the probate court determined that the mother had defrauded the probate court by identifying T.B. as the putative father of the child and concealing her relationship with the father and his paternity of the child; that the father had substantially complied with the registration requirements of the Alabama Putative Father Registry Act ("the APFRA"), § 26-10C-1 and § 26-10C-2, Ala. Code 1975; that DHR had erroneously failed to disclose that the father had registered with the putative-father registry, claiming paternity of the child; that the father had not consented to the adoption; and that the final judgment of adoption had been properly vacated and was not due to be reinstated. The probate court dismissed the adoption petition, ordered that the father be identified as the father of the child on the child's birth certificate, ordered that the name of the child be changed to "A.L.G." on his birth certificate, and ordered the prospective adoptive parents to turn over the child to the father within 10 days. The probate

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court subsequently purported to transfer the case to the Elmore Juvenile Court for further paternity and custody proceedings, but the Elmore Juvenile Court declined the transfer.

The prospective adoptive parents filed a notice of appeal on July 27, 2018. On August 3, 2018, this court granted a motion to stay that part of the final judgment requiring the transfer of the custody of the child to the father.

Facts

In its final judgment, the probate court set forth extensive findings of fact. The record indicates that the probate court conducted several hearings in this case, during which it received oral testimony, but none of the hearings were recorded or transcribed. The parties to this appeal elected not to submit a statement of the evidence pursuant to Rule 10, Ala. R. App. P. Accordingly, this court conclusively presumes that the probate court's findings of fact, which are substantially set forth below, are supported by sufficient evidence. See Ex parte Lucas, 165 So. 3d 618, 621 (Ala. Civ. App. 2014).

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The mother and the father were involved in an intimate dating relationship for approximately one year, during which the mother became pregnant with the child. On March 19, 2017, the mother posted on her Facebook social-media page that "We found out on March 9th that we are expecting a baby!" On April 3, 2017, the father transported the mother to an appointment for an ultrasound test. The mother and the father obtained paper copies of the test results, and, on April 4, 2017, the mother posted on her Facebook page that "we saw baby [G.] yesterday for the first time," referring to her unborn child with the surname of the father. Thereafter, the father transported the mother to two other prenatal doctor appointments, and he purchased clothes, bottles, and other supplies for his forthcoming child. The mother resided in the home of the father from March 2017 through July 2017, during which time the father provided her both financial and emotional support. On July 25, 2017, the mother and the father held a gender-reveal party at their home, holding themselves out as the prospective parents of the child and displaying the initials "A.L.G." on the clothes purchased for the child. At that party, the mother impliedly and expressly

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acknowledged that the father was the biological father of the child.

Four days after the gender-reveal party, the mother privately met with J.Z. to discuss the possibility of J.Z. and C.Z. adopting the child. The mother did not inform the prospective adoptive parents of the father's possible or probable paternity of the child. The mother and the father ended their relationship approximately one month later. The mother informed the father that he could be involved in the life of the child, but, contrary to her representation, the mother avoided all contact and communication with the father despite his attempts to contact her.

On September 14, 2017, the mother appeared before the probate court for the purpose of executing a prebirth consent to the adoption of the child. At that hearing, the mother, who was under oath, swore that T.B. was the biological father of the child. The mother did not reveal to the probate court any information regarding her relationship with the father, with whom she had been cohabiting at the time of the conception of the child and during a large part of her pregnancy, or any information regarding the father's paternity

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of the child. On the same date as the hearing, the prospective adoptive parents filed an affidavit from T.B. in which he asserted his paternity of the child and consented to the adoption of the child. On October 16, 2017, when the prospective adoptive parents filed their prebirth petition to adopt the child, they alleged that T.B. was the biological father of the child and submitted affidavits from the mother and T.B. stating that they had received nothing of value to obtain their consent to the adoption. The prospective adoptive parents also filed a notice indicating that the mother had consented to the removal of the child from the hospital by the prospective adoptive parents.

The child was born on October 23, 2017, and was given the name K.I.Z. The name of the father was left blank on the birth certificate for the child. The father learned of the birth of the child indirectly. The father and his mother traveled to the hospital, but, at the request of the mother, they were both removed by security guards, and, thus, the father was not allowed to see the child.

While at the hospital, the father saw the prospective adoptive parents, which alerted him to the possibility that

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the child had been placed for adoption. The father attempted to register with the putative-father registry at the hospital, but hospital staff directed him to contact DHR directly. The next day, the father took a substantially completed "Alabama Department of Human Resources Putative Father Intent To Claim Paternity Registration" form ("the APFRA form") to DHR, leaving blank his and the mother's Social Security numbers and leaving blank a line requesting the possible dates of sexual intercourse between the two. The APFRA form, which was filled out in more than one person's handwriting, described the child as "unborn," and the notary acknowledgment was dated October 21, 2017. Inconsistently, the APFRA form listed the date of the birth of the child, "October 23, 2017, per call," and identified the child both as "Baby Boy [W.]" and as "A.L.G." The probate court found that different persons had completed different parts of the APFRA form at different times. A Rule 32, Ala. R. Jud. Admin., child-support-obligation income statement/affidavit was also attached by the father to the APFRA form. By a letter dated October 27, 2017, DHR confirmed to the father that he had been officially registered on the putative-father registry as of October 21, 2017. The notice

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informed the father that, in the event DHR received notice of an adoption proceeding regarding the child, DHR would notify the father.

On October 27, 2017, the father commenced a paternity action in the Elmore Juvenile Court. In his petition, the father explained that it would be in the best interests of the child for him to obtain custody of the child because, he alleged, the mother "is giving the child up for adoption against my will." On March 9, 2018, the paternity action was dismissed for failure to state a cause of action. The probate court later determined that the dismissal by the juvenile court had not been a ruling on the merits and denied a motion by the prospective adoptive parents to give the dismissal order res judicata effect in the adoption proceedings. When the prospective adoptive parents amended their adoption petition on November 14, 2017, they did not refer to the father or the pending paternity action of which they were unaware.

On December 14, 2017, DHR issued the acknowledgment letter indicating that no man had filed a notice of intent to claim paternity of the child on the putative-father registry,

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which the probate court duly noted and filed in its records on December 18, 2017. The next day, the probate court entered the final judgment of adoption. The father learned of the probate court's error and contacted DHR in an effort to rectify the situation. In response, DHR issued the January 25, 2018, amended acknowledgment letter identifying the father as the putative father of the child and informed the probate court that the father had been officially registered on the putative-father registry as of October 21, 2017.

The probate court vacated its final judgment of adoption and ordered genetic testing. The probate court explained that it had ordered the genetic testing solely to judicially determine whether T.B. was the biological father of the child as had been repeatedly asserted and whether T.B. had validly consented to the adoption of the child. The probate court stayed the order for genetic testing until after the father had been properly served with notice of the adoption proceedings. On May 4, 2018, the father filed a letter with the probate court, urging the probate court to proceed with the testing and advising the probate court that he was "prepared to be a full time Dad." The father attached

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photographs of himself as a baby and of the child at approximately the same age, which the probate court observed were "remarkably similar." On June 11, 2018, the laboratory issued the results of its genetic testing; those results were provided to the probate court and all of the parties, none of whom disputed the results.

Discussion

I. The Jurisdiction of the Probate Court to Vacate an Adoption Judgment Procured by Fraud Upon the Court

The probate court vacated the final judgment of adoption on January 26, 2018. The probate court indicated in its order that it was acting within 30 days of the entry of the final judgment of adoption, but its order actually was entered 38 days after entry of the final judgment of adoption. The prospective adoptive parents argue that the probate court lacked jurisdiction to vacate the final judgment of adoption on its own motion after the expiration of 30 days. Cf. R.W.S. v. C.B.D., 244 So. 3d 987, 990 (Ala. Civ. App. 2017) (holding that a postjudgment motion must be filed within 14 days of a final adoption judgment and may remain pending for only 14 days before being denied by operation of law).

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In its judgment dismissing the adoption petition, the probate court indicated that it had vacated the final judgment of adoption primarily due to fraud upon the court committed by the mother. Formerly, a probate court, as a court of law with no equity jurisdiction, lacked the authority to vacate its judgments due to fraud upon the court because that remedy classically was considered equitable in nature. See Ex Parte O.S., 205 So. 3d 1233, 1243 (Ala. 2014) (Murdock, J., dissenting). Under Rule 60(b), Ala. R. Civ. P., probate courts now have the same authority as do other Alabama courts to vacate their own judgments for fraud upon the court. Id. Additionally, the legislature has expressly recognized the jurisdiction of probate courts to vacate a judgment procured by fraud upon the court. Section 26-10A-25(d), Ala. Code 1975, a part of the Alabama Adoption Code ("the adoption code"), § 26-10A-1 et seq., Ala. Code 1975, provides:

"A final decree of adoption may not be collaterally attacked, except in cases of fraud or where the adoptee has been kidnapped, after the expiration of one year from the entry of the final decree and after all appeals, if any."

As construed by our supreme court, that statute definitively vests probate courts with the exclusive jurisdiction to vacate

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an adoption judgment procured by fraud upon the court. See Ex parte O.S., supra.

"[A] judgment procured by fraud on the court itself may be set aside by any court, trial or appellate, on its own motion" Ex parte Waldrop, 395 So. 2d 62, 62 (Ala. 1981) (emphasis added). The power of a court to redress a fraud upon the court on its own initiative devolves upon the court because the fraud upon the court not only injures the parties to the action before the court but also affects the integrity of the court system itself.

"But where the jurisdiction of the court of law is acquired by the fraudulent concoction of a simulated cause of action, the fraud itself to be consummated through the instrumentality of a court of justice, the protection of the court demands that there should be a remedy. We can conceive of no worse reflection upon a judicial system, no lowering of its dignity and of the respect due to its findings more regrettable than that the tribunal of justice may become an impotent agency of fraud against those who look to it for protection and who are free from fault or neglect in the premises. . . ."

Bolden v. Sloss-Sheffield Steel & Iron Co., 215 Ala. 334, 335, 110 So. 574, 575 (1925). In granting a probate court jurisdiction to vacate a judgment procured by fraud upon the court, the legislature intended for the probate court to have the same power as other courts of this state to act to

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preserve its own integrity and to prevent injustice. Thus, we hold that a probate court has the authority to act sua sponte to vacate a judgment of adoption on the basis that fraud has been committed upon the court and that it need not await a motion by a party in order to exercise that jurisdiction.

In this case, the prospective adoptive parents do not contest the probate court's determination that the mother committed fraud upon the court. A fraud upon a probate court is committed when a litigant misrepresents and conceals facts essential to the jurisdiction of the probate court. See Keenum v. Dodson, 212 Ala. 146, 148, 102 So. 230, 232 (1924). In order to obtain jurisdiction to enter a final judgment of adoption, a probate court must obtain all necessary consents, including the consent of the putative father when required. See Ex parte W.L.K., 175 So. 3d 652 (Ala. Civ. App. 2015). In this case, the probate court essentially determined that the mother had misrepresented that T.B. was the biological father of the child and had intentionally concealed from the probate court the identity of the father and his paternity of the child in order to induce the probate court to exercise improperly its jurisdiction to finalize the adoption of the

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child without the necessary consent of the father. Given those circumstances, the probate court had the power to act, on its own motion, to vacate the final adoption judgment to assure that the court was not being used as an instrument of fraud by the mother to circumvent the rights of the father. We hold that the probate court acted within its jurisdiction when it vacated the final judgment of adoption on its own motion for fraud upon the court, and we pretermit discussion of any other valid legal ground that the probate court might also have had to vacate the judgment sua sponte.

II. The Father's Compliance With the APFRA

Section 26-10A-7(a)(5), Ala. Code 1975, a part of the adoption code, provides:

"Consent to the petitioner's adoption or relinquishment for adoption to the Department of Human Resources or a licensed child placing agency shall be required of the following:

". . . .

"(5) The putative father if made known by the mother or is otherwise made known to the court provided he complies with Section 26-10C-1 [, Ala. Code 1975,] and he responds within 30 days to the notice he receives under Section 26-10A-17(a)(10) [, Ala. Code 1975]."

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(Emphasis added.) The prospective adoptive parents assert that the consent of the father to the adoption of the child was not required because the father did not strictly comply with the APFRA.

The APFRA, among other things, requires DHR to maintain a registry listing those persons who have filed with DHR, before or after the birth of a child of unmarried parents, a notice of intent to claim paternity of the child. § 26-10C-1(a)(2), Ala. Code 1975.

"A person filing a notice of intent to claim paternity of a child or an acknowledgment of paternity shall include all of the following:

"(1) The father's name, Social Security number, date of birth, and current address.

"(2) The mother's name, including all other names known to the putative father that have been used by the mother, Social Security number, date of birth, and address, if known.

"(3) The father's current income and financial information by attaching a child support obligation income statement/affidavit form to be prescribed by regulations of the department.

"(4) The child's name and place of birth, if known.

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"(5) The possible date or dates of sexual intercourse."

§ 26-10C-1(c). DHR has adopted regulations for administering the APFRA, which provide that a notice of intent to claim paternity "must" or "shall" contain the information set forth in § 26-10C-1(c). Ala. Admin. Code (Dep't of Human Resources), Rule 660-5-21-.02(1) and (2). When incomplete information is received, "the registrant will be notified in writing" by DHR to supplement the form to include the complete information and, "[s]hould this not be received, the name will not be entered into the Registry." Rule 660-5-21-.02(3).

When he filed the APFRA form with DHR, the father omitted his Social Security number, the mother's Social Security number, and the possible dates of intercourse between the father and the mother. The APFRA form in the record identifies the child as both "unborn" and with his date of birth "per call" and as "Baby Boy [W.] and "A.L.G." DHR issued a letter to the father on October 27, 2017, providing, in pertinent part:

"This is to confirm your registration has been entered into the [putative-father r]egistry for the [mother] and [the child]. The registration date is October 21, 2017."

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In the letter, DHR did not inform the father that it needed any further information in order to secure his registration.

The prospective adoptive parents argued to the probate court that it did not need the consent of the father to the adoption because of the failure of the father to strictly comply with the APFRA. The probate court rejected that argument. The probate court determined that, despite the omissions in the APFRA form, the father had substantially complied with the APFRA.

"'Substantial compliance' with a statute means actual compliance in respect to the substance essential to every reasonable objective of the statute. Coe v. Davidson, 43 Cal. App. 3d 170, 117 Cal. Rptr. 630, 633 (1974). It means that a court should determine whether the statute has been followed sufficiently so as to carry out the intent for which it was adopted. In re Rudd's Estate, 140 Mont. 170, 369 P.2d 526, 530 (1962)."

Smith v. State, 364 So. 2d 1, 9 (Ala. Crim. App. 1978). The probate court concluded that the incomplete information provided by the father on the APFRA form was sufficient to inform DHR of his intent to claim paternity of the child and to meet the purposes underlying the APFRA. See Ex parte S.C.W., 826 So. 2d 844, 851 (Ala. 2001) ("'The Putative Father Registry Act has two purposes: "protecting the rights of

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responsible fathers and facilitating speedy adoptions of children whose fathers do not wish to assume parental responsibility.'" (quoting S.C.W. v. C.B., 826 So. 2d 825, 843 (Ala. Civ. App. 2001) (Crawley, J., concurring in part and dissenting in part))). The probate court further determined that the father had "had no part in the error committed by DHR," that the father had preserved his right to contest the adoption, and that the father had not consented to the adoption.

On appeal, the prospective adoptive parents argue, without citation to any authority, that "there is no provision in the law for substantial compliance with the [APFRA]." The prospective adoptive parents point only to some authority for the general rules that adoption statutes require strict construction and rigid adherence to their requirements. See Evans v. Rosser, 280 Ala. 163, 164-65, 190 So. 2d 716, 717 (1966), and McCoy v. McCoy, 549 So. 2d 53 (Ala. 1989). However, the APFRA is not an adoption statute. As explained by our supreme court, the APFRA is "'outside the Alabama Adoption Code.'" Ex parte S.C.W., 826 So. 2d at 848 (quoting

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S.C.W. v. C.B., 826 So. 2d at 841 (Crawley, J., concurring in part and dissenting in part)).

Moreover, citations to general authority do not meet the requirements of Rule 28, Ala. R. App. P. Stockton v. CKPD Dev. Co., LLC, 936 So. 2d 1065, 1078-79 (Ala. Civ. App. 2005). In T.C.M. v. W.L.K., 248 So. 3d 1 (Ala. Civ. App. 2017), this court stated:

"The prospective adoptive parents first argue that the father's failure to timely register with the Alabama Putative Father Registry resulted in his irrevocable implied consent to the adoption under [Ala. Code 1975,] § 26-10A-9(a)(5)[,] and Ala. Code 1975, § 26-10C-1(i), and, thus, that his consent to the adoption was not required under Ala. Code 1975, § 26-10A-7(a)(5). The prospective adoptive parents rely on the general rule that adoption statutes require strict adherence to their requirements. See Anderson v. Hetherinton, 560 So. 2d 1078, 1079-80 (Ala. Civ. App. 1990). They further contend, without citation to authority, that 'there is no provision ... for substantial compliance' with the Alabama Putative Father Registry.

"The probate court did not expressly decide any issue related to the application of § 26-10A-7(a)(5), § 26-10A-9(a)(5), or § 26-10C-1 in its judgment. Instead, it appears that the probate court either determined that the father's registration with the Florida Putative Father Registry was substantial compliance with the requirement that the father register with the Alabama Putative Father Registry or that Florida law should control the determination of whether the father's consent was required, both of which potential legal bases were argued to the probate

court. The prospective adoptive parents do not provide this court with caselaw or other legal authority regarding either of those potential bases for the probate court's judgment, and we are not required to do their research on those issues. See Legal Sys., Inc. v. Hoover, 619 So. 2d 930, 932 (Ala. Civ. App. 1993) ('It is not the duty nor function of an appellate court to perform a party's legal research.'). Accordingly, we will not further consider the issue whether the father's failure to timely register with the Alabama Putative Father Registry should be fatal to his contest of the adoption."

248 So. 3d at 5. In line with T.C.M., we decline to consider further the arguments of the prospective adoptive parents that the failure of the father to provide all the information required by the APFRA should negate his right to contest the adoption of the child.

III. Jurisdiction of the Probate Court
to Order Genetic Testing, to Adjudicate Paternity of the
Child, to Change the Name of the Child, and
to Order the Issuance of a New Birth Certificate

On February 16, 2018, the probate court ordered the father, the child, and T.B. to submit to genetic testing. The prospective adoptive parents contest the validity of the order on the sole ground that the father had not yet been served with notice of the adoption proceedings and summons and, thus, the probate court had not acquired personal jurisdiction over the father to compel him to submit to genetic testing. The

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prospective adoptive parents do not have standing to assert an argument based on the alleged violations of the due-process or other rights of the father, see generally B.H. v. Marion Cty. Dep't of Human Res., 998 So. 2d 475, 477 (Ala. Civ. App. 2008) (holding that party to a judgment has no standing to appeal based on alleged harm caused by judgment solely to another party), who, we note, not only did not object to the order, but actually moved the probate court to enforce the order for genetic testing as expeditiously as possible.

The prospective adoptive parents also complain that the probate court accepted the results of the genetic testing into evidence and relied on those results in its final judgment. Rule 28(a)(5), Ala. R. App. P., requires a party complaining of an adverse ruling to refer this court to the page of the record in which that adverse ruling appears. In this case, the prospective adoptive parents have not directed the court to any part of the record indicating that they even raised an objection to the admission of the genetic-testing results or to the consideration of those results by the probate court in making any of its determinations, much less received an adverse ruling on those points. Although "[t]his court has no

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duty to search the record to determine if an error has been properly preserved and whether a judgment should be reversed," Cowperthwait v. Cowperthwait, 231 So. 3d 1101, 1107 (Ala. Civ. App. 2017), we have nevertheless reviewed the record ourselves and find no reference to an objection by the prospective adoptive parents to the probate court's receiving the genetic-testing results. Accordingly, we conclude that the prospective adoptive parents did not preserve this argument, which we do not consider to be jurisdictional in nature, for appellate review. See Robbins v. Payne, 84 So. 3d 136, 139 (Ala. Civ. App. 2011).

Based in part on the genetic-testing results, the probate court determined that the father was, in fact, the biological father of the child. The prospective adoptive parents contend that the probate court lacked jurisdiction to make that determination. The prospective adoptive parents heavily rely on Ex parte Martin, 565 So. 2d 1 (Ala. 1989), a case in which our supreme court held that a probate court did not have jurisdiction to determine the parentage of a child for the purposes of considering whether the child would receive any exemptions from the estate of her alleged father and whether

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the child would receive the benefits of any wrongful-death action. The supreme court concluded that the case clearly fell within the purview of the former Alabama Uniform Parentage Act ("the former AUPA"), former § 26-17-1 et seq., Ala. Code 1975, which provided that

"[t]he causes of action provided by [the former AUPA] shall be brought in the juvenile or family court division of the district or circuit court and wherever used in this chapter the word 'court' shall mean the juvenile or family court division of the district or circuit court"

Ala. Code 1975, former § 27-17-10(a). Ex parte Martin recognized that a probate court could determine parentage when empowered by another statute other than the former AUPA, see Valley Forge Ins. Co. v. Alexander, 640 So. 2d 925, 930 (Ala. 1994), but found that no other statute applied in the factual context before the court and, thus, concluded that the probate court had lacked jurisdiction to determine the parentage of the child at issue in that case. The court said:

"[W]e are of the opinion that any finding contrary to the presumed paternity should be made by the court most adept at making that determination. The rebuttal of the presumption of paternity is a serious matter for all those who are involved and, for that reason, the juvenile division or family division of the district or circuit court should be the forum in which such an issue is resolved."

565 So. 2d at 4.

In 1989, when the opinion in Ex parte Martin was issued, former § 26-17-10 empowered only juvenile courts or family-court divisions of the circuit or district courts to decide paternity actions. Section 26-17-104, Ala. Code 1975, a part of the current Alabama Uniform Parentage Act ("the current AUPA"), § 26-17-101 et seq., Ala. Code 1975, now provides that, pursuant to the current AUPA, any court of this state may make a paternity determination as authorized by law. As exceptions to that general rule, the legislature has declared that the current AUPA does not apply to "matters relating to legitimation and adoption," § 26-17-103(a), Ala. Code 1975, which, we recognize, are committed to the original jurisdiction of the probate courts. See Ala. Code 1975, §§ 26-10A-3 and 26-11-2. By carving out those exceptions, the legislature did not intend to deprive probate courts of the power to determine the paternity of a child in legitimation and adoption proceedings but, rather, intended only that the substantive and procedural laws in the current AUPA would not apply to paternity determinations made by probate courts in those types of cases.

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Section 26-11-2 sets forth the procedure by which "the father of a [child born out of wedlock]" may legitimate his child through a written declaration. § 26-11-2(a). That statute grants the mother an opportunity to object to the attempted legitimation and requires the probate court to conduct a hearing to receive evidence for determining whether the legitimation serves the child's best interests. See Ala. Code 1975, § 26-11-2(b). If the probate court determines that the legitimation is in the best interests of the child, the probate court can enter an order legitimating the child by declaring the petitioner to be the legal father of the child. Id. Upon legitimation, the probate judge shall send "a certified copy of the minutes of the court" to "the Office of Vital Statistics, State Board of Health, and to the Registrar of Vital Statistics of the county where the petition was filed within 30 days after the minutes are recorded." § 26-11-2(c). That procedure very clearly authorizes a probate court to determine the paternity of a child during the legitimation process.

The adoption code, which was amended after the supreme court's decision in Ex parte Martin, explicitly establishes

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the power of a probate court to determine the paternity of a child in at least one situation. See Ala. Code 1975, § 26-10A-5(a)(3), as amended by Ala. Acts 1990, Act No. 90-554 (authorizing the adoption of a child, born during previous marriage of mother, by biological father who subsequently married mother, without the consent of mother's previous husband, who would be the presumed father of child). The adoption code also provides that a probate court shall have "original jurisdiction over proceedings brought under" the adoption code. § 26-10A-3. Section 26-10A-24(a)(3), Ala. Code 1975, specifically bestows on a probate court jurisdiction to hold proceedings, known as contested hearings, to resolve any disputes as to the validity of a required consent. When the validity of the consent depends on whether the person consenting is a "putative father," defined in the adoption code to mean the alleged or reputed biological father of the minor adoptee, see §§ 26-10A-2(5) and (12), Ala. Code 1975, by necessary implication a probate court must have jurisdiction to determine the paternity of the child. As the following discussion illustrates, the legislature intended that the probate court would have jurisdiction to decide a

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paternity dispute essential to the resolution of an adoption proceeding without having to suspend those proceedings for resolution of that dispute by another court of competent jurisdiction.

At the time Ex parte Martin was decided, former § 12-15-30(b)(5), provided that juvenile courts also exercised exclusive original jurisdiction over "[p]roceedings for the adoption of a child when such proceedings have been removed from probate court on motion of any party to the proceedings." See M.A.N. v. J.A.N., 611 So. 2d 1090, 1091-92 (Ala. Civ. App. 1992). Former § 12-15-30(b)(5) has since been repealed and replaced by Ala. Code 1975, § 12-15-115(a)(4), which gives juvenile courts original jurisdiction over "[p]roceedings for the adoption of a child when these proceedings have been transferred from probate court as provided by law." Section 26-10A-3, Ala. Code 1975, which was enacted in 1990, see Ala. Acts 1990, Act No. 90-554, authorizes a probate court to transfer an adoption case to a juvenile court, but only for the limited purpose of terminating the parental rights of a nonconsenting parent. See Ex parte C.L.C., 897 So. 2d 234, 237 (Ala. 2004) (holding that, under the transfer mechanism of

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§ 26-10A-3, a juvenile court has subject-matter jurisdiction only to terminate parental rights, but no jurisdiction to enter any other order affecting the adoption of the child, which jurisdiction has been vested in a probate court). Section 26-10A-24(e), Ala. Code 1975, provides that, "[o]n motion of either party or of the court, a contested adoption hearing may be transferred to the court having jurisdiction over juvenile matters." That statute likewise vests discretion in a probate court to transfer an adoption contest to a juvenile court, but it does not mandate that a probate court transfer an adoption contest in any circumstances. See D.B. v. J.E.H., 984 So. 2d 459 (Ala. Civ. App. 2007). As currently drafted, the adoption code does not require a probate court to transfer a paternity dispute to a juvenile court. See Alabama Dep't of Human Res. v. B.V., 59 So. 3d 700, 707 (Ala. Civ. App. 2010) ("[S]imply because a probate court 'may' transfer a case to a juvenile court does not mean that it 'must' do so.").

Under § 12-12-35(a), Ala. Code 1975, "[a]doption proceedings, primarily cognizable before the probate court, may be transferred to the district court on motion of a party

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to the proceeding in probate court." At the time Ex parte Martin was decided, district courts did not have jurisdiction over AUPA actions, but district courts now have such jurisdiction pursuant to Ala. Code 1975, § 26-17-103(a). However, nothing in the adoption code or § 12-12-35 implies that a probate court must transfer a paternity dispute to a district court because of the district court's jurisdiction over the matter. To the contrary, this court has held that it is not mandatory that an adoption proceeding be transferred to the district court upon motion of a party to the proceeding in the probate court and that the probate court has discretion to deny a motion to transfer made under § 12-12-35. See Ex parte Hicks, 451 So. 2d 324 (Ala. Civ. App. 1984).

Section 26-10A-2 provides a mechanism by which a party may move for the stay of an adoption proceeding, when there is a custody action concerning the adoptee pending in another court, pending a resolution of which court has jurisdiction. Pursuant to § 26-10A-2, a probate court may transfer an adoption case so that it may be consolidated with a pending custody proceeding. However, a pending custody action does not bar a probate court from proceeding with an adoption due

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to the probate court's lack of jurisdiction. See B.C. v. Cullman Cty. Dep't of Human Res., 169 So. 3d 169 (Ala. Civ. App. 2015). The transfer and consolidation provisions of § 26-10A-2 are completely discretionary. Ex parte A.M.P., 997 So. 2d 1008 (Ala. 2008). Section 26-10A-2 does not provide that a probate court may not exercise jurisdiction over a paternity dispute and that it must transfer that dispute to another court or await paternity proceedings to be instituted in another court.

In this case, T.B. asserted his status as the putative father of the child and purported to consent to the adoption of the child. The probate court later learned that the father claimed that he was the putative father of the child and that he did not consent to the adoption of the child. Because the valid consent of "the putative father" was required in order for the probate court to obtain jurisdiction to effectuate the adoption of the child under § 26-10A-7(a)(5), Ala. Code 1975, the probate court had to determine which of the two men was actually the putative father of the child capable of giving that consent. Thus, the probate court had to determine in a contested hearing whether the father or T.B. was the

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biological father of the child as part of the adoption proceedings over which it unquestionably had original jurisdiction.

"A probate court's jurisdiction is limited to that provided by statute." Kish Land Co., LLC v. Thomas, 42 So. 3d 1235, 1237 (Ala. Civ. App. 2010). Because the current AUPA and the adoption code contemplate that a probate court can make parentage determinations in the context of adoption proceedings like the one the probate court oversaw in this case, Ex parte Martin does not support the position of the prospective adoptive parents that the probate court exceeded its jurisdiction in adjudicating the paternity of the child.

Finally, we reject the arguments of the prospective adoptive parents that the probate court did not have jurisdiction to change the name of the child and to order the issuance of a new birth certificate for the child reflecting his paternity and his new name. The legislature has specifically authorized a probate court to make such orders. See Ala. Code 1975, §§ 26-11-2, 26-11-3, and 22-9A-12. Although the probate court may not have followed the correct procedure in ordering the name change and in ordering the issuance of a new birth certificate for the child, mere errors

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in the application of the law by a lower court do not render a judgment void for lack of subject-matter jurisdiction. Bowen v. Bowen, 28 So. 3d 9, 15 (Ala. Civ. App. 2009) (citing Halstead v. Halstead, 53 Ala. App. 255, 256, 299 So. 2d 300, 301 (Civ. App. 1974)).

Conclusion

We hold that the probate court properly acted within its jurisdiction in all respects in this case. The probate court had the authority to vacate the final judgment of adoption on its own motion, to order genetic testing, to adjudicate the paternity of the child, to change the name of the child, and to order the issuance of a new birth certificate for the child. The prospective adoptive parents have not sufficiently argued that the probate court erred in finding that the consent of the father to the adoption was required. Upon its determination that the father did not consent to the adoption, the probate court properly dismissed the adoption petition. We therefore dissolve the stay of the probate court's judgment dismissing the adoption petition and affirm that judgment.

AFFIRMED.

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

Donaldson, J., concurs specially.

Thomas, J., recuses herself.

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DONALDSON, Judge, concurring specially.

I concur with the main opinion. I note that C.Z. and J.Z., the prospective adoptive parents of A.L.G., challenge the jurisdiction of the Elmore Probate Court to set aside the adoption judgment more than 14 days after it was entered, and not the procedure used by the court. As a result, we are not presented with the issue whether parties are entitled to advance notice and opportunity to be heard whenever a trial court, "on its own motion," contemplates setting aside a judgment on the basis that the jurisdiction to enter the judgment was purportedly procured by fraud upon the court. See Ex parte Waldrop, 395 So. 2d 62, 62 (Ala. 1981) (holding that a trial court may set aside a judgment "on its own motion" for fraud upon the court); see also M.M. v. K.J.Z., [Ms. 2160520, Sept. 29, 2017] ___ So. 3d ___, ___ (Ala. Civ. App. 2017) ("Although a court is not required to hold a hearing on a Rule 60(b) [, Ala. R. Civ. P.,] motion before ruling on that motion, ... the failure to hold a hearing may be an abuse of discretion under certain circumstances.").