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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2018-2019

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Ex parte Daniel F. Aldridge

PETITION FOR WRIT OF MANDAMUS

(In re: In the Matter of M.G., minor child)

(Madison Juvenile Court,
JU-18-406.01)

PER CURIAM.

Daniel F. Aldridge petitions this court for the writ of mandamus directing the Madison Juvenile Court ("the juvenile court") to, among other things, vacate an order requiring him

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to appear at a hearing to show cause why he should not be held in contempt. We grant the petition and issue the writ.

Background

This petition arises from an action that was initiated in the juvenile court involving a grandmother's petition seeking custody of a child. Aldridge's law partner, Jimmy Sandlin, represented the child's mother. A hearing was scheduled to occur on September 10, 2018. According to Aldridge's petition, he learned on the morning of the hearing that his law partner was ill and had been hospitalized. Aldridge asked the juvenile-court judge, Judge Linda Coats, for a continuance. Judge Coats continued the hearing to September 12, 2018.

On September 11, 2018, according to Aldridge, he presented Judge Coats and opposing counsel with proof of Sandlin's illness and hospitalization and requested a second continuance. Aldridge asserts that Judge Coats indicated that the motion would be considered the following day at the hearing and that, on the day of the hearing, she ignored the motion and commenced the proceedings. According to the answer that Judge Coats has filed in response to Aldridge's mandamus

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petition, Aldridge appeared at the hearing and requested a general continuance, which she denied.

What happened next is also described differently by Aldridge and Judge Coats. According to Aldridge, he informed Judge Coats "that he had never handled a juvenile case," that he had met Sandlin's client only two days before at the previous hearing setting, and that he was not qualified or prepared to represent Sandlin's client during the hearing. He says that Judge Coats "ignored" him. Aldridge asserts that he chose to remain in the courtroom with the mother but informed the court that he was not representing her.

Notwithstanding that declaration, it appears, Aldridge participated in the hearing. He says that he was "very intimidated" by Judge Coats's "demeanor." He contends that Judge Coats frequently interrupted or discontinued his examination of witnesses and that she erroneously sustained opposing counsel's evidentiary objections that, he says, were "blatantly wrong." He asserts that Judge Coats permitted a particular witness to testify as an expert of behalf of the adverse party but not as an expert on behalf of the mother. Judge Coats also reportedly raised her voice, was

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condescending, and acted "belligerent[ly]." Aldridge says he felt "disrespected."

Judge Coats, on the other hand, says that Aldridge "was obviously angered by the denial of his request for a general continuance." She contends that Aldridge disrupted and frustrated the hearing "with the intimidating volume of his voice, combative demeanor[,] and rude gestures to [Judge Coats] and other individuals in the courtroom." After an adverse evidentiary ruling, Judge Coats asserts, Aldridge held up his hand and rubbed the tip of his thumb against the tips of his index and middle fingers to imply, she says, that she had been bribed by the adverse party. Judge Coats says that, at one point and without direction, her bailiff left the courtroom and obtained a pair of handcuffs in anticipation of restraining Aldridge.

The September 12, 2018, proceedings concluded, and the parties appeared on September 17, 2018, to complete the hearing. The events of that day are also described differently by Aldridge and Judge Coats. According to Aldridge, Judge Coats informed him at the beginning of the proceedings that, if he chose to remain in the courtroom, "he

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would be doing so as counsel of record for the ... mother." Aldridge says that he left because he did not feel qualified to represent the mother.

Judge Coats says that Aldridge arrived on September 17, 2018, accompanied by another attorney. She asserts that, "[e]arly in the proceedings," Aldridge, the mother, and the other attorney requested a recess "to consult in the hallway outside the courtroom." She says that Aldridge never returned to participate in the hearing and that he left the other attorney to represent the mother alone. She states: "Aldridge did, however, briefly enter the doorway to the courtroom and state in a threatening and aggressive manner that he was leaving the trial to file a petition for a writ of mandamus seeking an order that the trial be continued, or words to that effect."

Judge Coats goes on to state:

"At the end of the proceedings on September 17[, 2018], I stated that it was my intent to address Aldridge's contempt on Friday, September 21, 2018, at 1:30 p.m. The proceedings were then adjourned. On September 18, 2018, a written order, consistent with Ala. R. Civ. P., Rule 70A(b), was issued scheduling a hearing for September 21, 2018, a date within seven days of the completion the proceeding out of which the contempt arose. The purpose of the hearing was to allow Aldridge to present evidence or

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argument regarding excusing or mitigating circumstances and to pronounce sentence in open court, in the presence of Aldridge, the contemnor. Because Aldridge left the proceedings and did not return, immediate punishment was not possible. However, prompt punishment was imperative."

Aldridge states: "Late in the afternoon of Tuesday, September 18, 2018, six days following [my] alleged contemptuous behavior, [I] was served an Order to Show Cause as to why [I] should not be held in Contempt of Court and to appear for a hearing on September 21, 2018." Aldridge has appended to his petition a copy of the juvenile court's September 18, 2018, order, which provides, in relevant part:

"This matter is set for hearing on Friday, September 21, 2018[,] ... for ... Aldridge to show cause as to why he should not be held in contempt of court for his conduct in the courtroom on September 12, 2018[,] to wit: repeatedly pointing his finger at the court, repeatedly screaming in the courtroom, mocking the court under his breath for adverse rulings, repeatedly rolling his eyes at the court for adverse rulings, threatening opposing counsel that he would see him outside court, refusing to sit down when asked, and making gestures with his hands that this court was paid off in response to adverse rulings.

"Failure of ... Aldridge to appear in court on said date will result in a bench warrant being issued."

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Aldridge filed his petition for the writ of mandamus in this court on September 20, 2018, asking for the following relief:

"1. An order disqualifying [Judge Coats] from presiding over the contempt proceedings pending against petitioner. Rule 70A(f)[,] A[1a]. R. C[iv]. P.

"2. An order requiring the presiding Judge of Madison County Circuit Court to appoint another judge to preside over the pending contempt proceedings against Petitioner and instructing said Judge to hold a hearing to determine whether the Petitioner committed the contempt charged, and, if so, to impose punishment. Rule 70A(f).

"3. An order dismissing the proceedings and requesting that a Petition for constructive contempt be filed according to Rule 70A(c)[,] A[1a]. R. C[iv]. P."

In so doing, Aldridge asserts that Judge Coats is disqualified by Rule 70A(f), Ala. R. Civ. P.; that he has been "denied due process required for charges of constructive contempt" under Rule 70A(c), Ala. R. Civ. P.; and that irreparable harm will occur if he is not granted immediate relief. Along with his petition, Aldridge filed a motion in this court requesting a stay, indicating, among other things, that he had requested a stay in the juvenile court and that the juvenile court had indicated that it would not rule on his request before the

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scheduled hearing. We granted the stay motion and called for an answer.

Judge Coats answered Aldridge's petition, asserting that this court lacks jurisdiction over his petition, that Aldridge has no clear legal right to the relief requested in his petition, that she had not ruled on a motion filed by Aldridge seeking her recusal from the contempt proceedings, that Aldridge had an adequate remedy by way of appeal, and that Aldridge had failed to properly support his petition. Judge Coats supported her answer with an affidavit. Aldridge filed a motion asking for permission to reply to Judge Coats's answer, asserting, among other things, that her answer included several inaccuracies. He asked for an opportunity to provide a transcript of the relevant proceedings to support his petition. We granted the motion.

On October 15, 2018, we received a "reply brief" from Aldridge that included, among other things, responsive arguments and supporting affidavits. The next day, Judge Coats filed a motion to strike Aldridge's reply, arguing that we should not consider the affidavits attached thereto. For reasons explained below, our decision in this case does not

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depend on a resolution of the parties' disputed averments regarding what transpired in the underlying proceedings. We therefore deny Judge Coats's motion to strike as moot.

Analysis

We must first address Judge Coats's argument that this court lacks subject-matter jurisdiction over Aldridge's petition because, "[w]ithout jurisdiction, this court cannot take any judicial action other than dismissing the petition." Ex parte Door Components, LLC, 171 So. 3d 18, 22 (Ala. Civ. App. 2014). Judge Coats argues that, by statute, only the Madison Circuit Court can exercise jurisdiction over Aldridge's petition. She begins her statutory argument by citing § 12-11-30(3), Ala. Code 1975, which provides:

"(3) Appellate. The circuit court shall have appellate jurisdiction of civil, criminal, and juvenile cases in district court and prosecutions for ordinance violations in municipal courts, except in cases in which direct appeal to the Courts of Civil or Criminal Appeals is provided by law or rule. Appeals to the circuit court shall be tried de novo, with or without a jury, as provided by law."

Judge Coats also cites § 12-15-120(a), Ala. Code 1975, and attempts to paraphrase the requirements of that statute, but her summary does not match the language of the statute.

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As the title to § 12-15-120 indicates, that Code section deals with "[c]ases initiated by filing of petitions by juvenile court intake officers" and does not have any obvious application to the circumstances presented here. It appears that Judge Coats is perhaps relying on the language of the version of § 12-15-120 that existed before the legislature's enactment of Act No. 2008-77, Ala. Acts 2008, which, among other things, amended the language of the then existing version § 12-15-120 and renumbered that Code section as § 12-15-601, Ala. Code 1975. Section 12-15-601 provides:

"A party, including the state or any subdivision of the state, has the right to appeal a judgment or order from any juvenile court proceeding pursuant to this chapter [i.e., the Alabama Juvenile Justice Act, § 12-15-101 et seq., Ala. Code 1975]. The procedure for appealing these cases shall be pursuant to rules of procedure adopted by the Supreme Court of Alabama. All appeals from juvenile court proceedings pursuant to this chapter shall take precedence over all other business of the court to which the appeal is taken."

Judge Coats also cites § 12-12-72, Ala. Code 1975, which provides the following regarding district courts:

"Appeals shall be directly to the appropriate appellate court if:

"(1) An adequate record or stipulation of facts is available and the right to a

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jury trial is waived by all parties entitled thereto; or

"(2) The parties stipulate that only questions of law are involved and the district court certifies the questions."

She also points to Rule 28(A), Ala. R. Juv. P., which provides more detail regarding the circumstances under which "final orders or judgments" of juvenile courts may be directly appealed to this court or to the Court of Criminal Appeals.

Thus, the question presented here is whether the language of § 12-11-30(3); § 12-12-72; § 12-15-601; and, by reference, procedural rules, specifically Rule 28(A), Ala. R. Juv. P., deprive this court of subject-matter jurisdiction over petitions for the writ of mandamus seeking review of interlocutory orders of juvenile courts.

Our supreme court has explained:

"'[When a court] is called upon to construe a statute, the fundamental rule is that the court has a duty to ascertain and effectuate legislative intent expressed in the statute, which may be gleaned from the language used, the reason and necessity for the act, and the purpose sought to be obtained.'

"Ex parte Holladay, 466 So. 2d 956, 960 (Ala. 1985). In IMED Corp. v. Systems Engineering Assocs. Corp., 602 So. 2d 344, 346 (Ala. 1992), this Court further stated with regard to statutory construction:

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"Words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used a court is bound to interpret that language to mean exactly what it says. If the language of the statute is unambiguous, then there is no room for judicial construction and the clearly expressed intent of the legislature must be given effect.'

". . . .

"It is a familiar principle of statutory interpretation that the Legislature, in enacting new legislation, is presumed to know the existing law. See Ex parte Louisville & N.R.R., 398 So. 2d 291, 296 (Ala. 1981)."

Blue Cross & Blue Shield of Alabama, Inc. v. Nielsen, 714 So. 2d 293, 296-97 (Ala. 1998). Moreover, "[s]tatutes should be construed together so as to harmonize the provisions as far as practical.' Ex parte Jones Mfg. Co., 589 So. 2d 208, 211 (Ala. 1991)." Alabama Dep't of Revenue v. National Peanut Festival Ass'n, Inc., 11 So. 3d 821, 829-30 (Ala. Civ. App. 2008). Additionally, "[a]ll words of a statute are to be given effect, where possible." Alabama Bd. of Pardons & Paroles v. Brooks, 802 So. 2d 242, 247 (Ala. Civ. App. 2001) (citing Ex parte Darnell, 262 Ala. 71, 76 So. 2d 770 (1954)).

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The legislature established this court's jurisdiction over petitions for the writ of mandamus in § 12-3-11, Ala. Code 1975, which provides, in relevant part: "Each of the courts of appeals shall have and exercise original jurisdiction in the issuance and determination of writs of quo warranto and mandamus in relation to matters in which said court has appellate jurisdiction." The legislature established this court's appellate jurisdiction in § 12-3-10, Ala. Code 1975, which provides, in relevant part: "The Court of Civil Appeals shall have exclusive appellate jurisdiction of ... all appeals in domestic relations cases, including annulment, divorce, adoption, and child custody cases and all extraordinary writs arising from appeals in said cases."

We begin by noting that a difference exists between the nature of the legislative directive set out in § 12-3-10 and the legislative directive set out in § 12-3-11. Whereas § 12-3-10 provides that this court "shall have exclusive appellate jurisdiction" (emphasis added), § 12-3-11 provides that this court "shall have and exercise original jurisdiction" (Emphasis added.) "The distinction between jurisdiction of the subject-matter, and the exercise of the

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jurisdiction, must be observed." Dunbar v. Frazer, 78 Ala. 529, 530 (1885) see also Baldwin Mut. Ins. Co. v. McCain, [Ms. 1160093, March 23, 2018] ____ So. 3d ____, ____ (Ala. 2018) ("McCain's argument ... confuses the proper exercise of subject-matter jurisdiction with the existence of subject-matter jurisdiction. The former is an issue of limits on the exercise of power by a court that actually has power over a certain type of case; the latter is an issue of whether the court actually has any power over the type of case at issue, i.e., subject-matter jurisdiction."). In other words, the language of § 12-3-10 reflects the legislature's acknowledgment that circumstances exist in which, although this court may have jurisdiction over an appeal in a particular type of case, it may nevertheless be unable to exercise that jurisdiction.

Through § 12-11-30(3); § 12-12-72; § 12-15-601; and Rule 28(A), Ala. R. Juv. P., the legislature and our supreme court have expressly defined some of the circumstances in which this court cannot immediately exercise jurisdiction over an appeal taken from a judgment entered in a juvenile case. Generally "[t]he direct appeal to the appropriate court ... should be

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viewed as the preferred route of all juvenile court appeals." Rule 28, Comment to Amendment Effective November 15, 1985. But Rule 28(A) specifically provides, in relevant part, that parties may directly appeal to this court only when particular conditions are met, the purpose of which are to ensure that an adequate record exists such that meaningful appellate review can be obtained in this court.

However, neither the language of Rule 28 nor the language of § 12-11-30(3), § 12-12-72, or § 12-15-601 reflect an intent to diminish the scope of this court's appellate jurisdiction under § 12-3-10. In other words, the fact that, under certain circumstances, a juvenile court's judgment must first be intermediately appealed to the relevant circuit court for the development of an adequate record via a trial de novo, see Rule 28(B), does not mean that an appeal from the circuit court's judgment cannot then be had in this court. The legislature has not carved out a portion of this court's appellate jurisdiction and given it to circuit courts; it has merely provided the proper procedure for invoking this court's appellate jurisdiction.

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Most importantly to this case, however, neither the language of Rule 28 nor the language of § 12-11-30(3), § 12-12-72, or § 12-15-601 reflect an intent to diminish the scope of this court's jurisdiction over petitions for the writ of mandamus under § 12-3-11. Sections 12-11-30(3), 12-12-72, and 12-15-601 refer only to appeals, and Rule 28, which provides specific procedural requirements, refers only to "[a]ppeals from final orders or judgments of the juvenile court" Rule 28(A)(1) (emphasis added). Thus, the legislature has not imposed upon parties to an action initiated in juvenile court an obligation to seek intermediate mandamus review of the juvenile court's interlocutory orders in a circuit court before doing so in this court.

Section 12-3-11 expressly directs this court to "exercise original jurisdiction in the issuance and determination of writs of . . . mandamus in relation to matters in which said court has appellate jurisdiction." (Emphasis added.) Section 12-3-10 confers upon this court "exclusive appellate jurisdiction of . . . all appeals in domestic relations cases, including . . . child custody cases and all extraordinary writs arising from appeals in said cases." (Emphasis added.)

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Aldridge's petition for the writ of mandamus relates to events occurring in an action that was initiated in the juvenile court to determine a child's custody. This court therefore has jurisdiction over Aldridge's petition.

We next consider the substantive relief requested by Aldridge in his petition, the primary aspect of which, he clarifies in his reply brief, is an order "dismiss[ing] the current contempt proceedings against him." In other words, Aldridge seeks a writ of mandamus directing the juvenile court to vacate its September 18, 2018, order requiring him to appear at a show-cause hearing.

"A writ of mandamus is an extraordinary remedy, and it will be "issued only when there is: 1) a clear legal right in the petitioner to the order sought; 2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; 3) the lack of another adequate remedy; and 4) properly invoked jurisdiction of the court." Ex parte United Serv. Stations, Inc., 628 So. 2d 501, 503 (Ala. 1993). A writ of mandamus will issue only to compel the exercise of a trial court's discretion; it will not issue to control or to review a court's exercise of its discretion unless an abuse of discretion is shown. Ex parte Auto-Owners Ins. Co., 548 So. 2d 1029 (Ala. 1989).'

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"Ex parte Breman Lake View Resort, L.P., 729 So. 2d 849, 851 (Ala. 1999)."

Ex parte Dozier, 170 So. 3d 673, 675 (Ala. Civ. App. 2014).

In his reply brief, Aldridge argues that the juvenile court's September 18, 2018, order is "deficient on its face." His argument is predicated on the language of Rule 70A, Ala. R. Civ. P., the provisions of which, he notes, are made applicable to district courts by Rule 70A(dc). In evaluating which provisions of that rule apply here, Aldridge notes that, in her answer, Judge Coats clearly considers his alleged conduct to be direct contempt, as opposed to constructive contempt, because she asserts, among other things: "The facts before this Court establish that Aldridge's behavior justifies a finding of direct contempt." In her answer, Judge Coats also argues: "The fact that [she] did not initially hold Aldridge in contempt, and then could not hold Aldridge in contempt without scheduling a separate hearing due to his departure from the courtroom after his behavior, does not change the behavior from 'direct contempt' to 'constructive contempt'" We express no opinion regarding whether Aldridge's conduct constituted direct contempt or constructive contempt. Because Judge Coats insists that her September 18,

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2018, order referenced Aldridge's direct contempt, we will confine our discussion to whether, under these circumstances, Judge Coats could properly exercise her power to hold Aldridge in direct contempt using the procedure she employed.

"Direct contempt" is defined as follows by Rule 70A(a) (2) (A) :

"(A) Direct contempt' means disorderly or insolent behavior or other misconduct committed in open court, in the presence of the judge, that disturbs the court's business, where all of the essential elements of the misconduct occur in the presence of the court and are actually observed by the court, and where immediate action is essential to prevent diminution of the court's dignity and authority before the public."

Rule 70A(b) provides the following regarding "summary disposition of direct contempt proceedings":

"(1) Finding. The court may summarily find in contempt any person who commits a direct contempt, immediately notifying the person of its finding. The judge shall cause to be prepared a written order reciting the grounds for the finding, including a statement that the judge observed the conduct constituting the contempt. The order shall be signed by the judge and entered of record.

"(2) Mitigation. The court shall apprise the person of the specific conduct on which the finding is based and give that person a reasonable opportunity to present evidence or argument regarding excusing or mitigating circumstances. No decision concerning the punishment to be imposed shall be made during the course of the proceeding

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out of which the contempt arises, unless prompt punishment is imperative to achieve immediate vindication of the court's dignity and authority.

"(3) Sentence. Unless it is pronounced immediately under subsections (1) and (2) above, sentence shall be pronounced in open court, in the presence of the contemnor, within seven (7) days after the completion of the proceeding out of which the contempt arose."

We agree with Aldridge that he was not immediately notified of a contempt finding against him, as is required by Rule 70A(b)(1). Indeed, the materials before this court indicate that no contempt finding has been entered against Aldridge at all, which distinguishes the facts of this case from the facts of a case that Judge Coats cites in support of her position, see Ex parte Landry, 117 So. 3d 714, 719 (Ala. Civ. App. 2013), and Rule 70A(g), which allows for appellate review of such adjudications. The juvenile court's September 18, 2018, order only requires Aldridge to attend a "hearing on ... September 21, 2018[,] ... to show cause as to why he should not be held in contempt of court for his conduct in the courtroom on September 12, 2018." Thus, insofar as Aldridge's actions at the September 12, 2018, hearing resembled the behavior described in Rule 70A(a)(2)(A), the juvenile court's failure to take "immediate action ... to prevent diminution of

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the court's dignity and authority before the public" indicates that the requirements for establishing a finding of direct contempt have not been met in this case. See Ex parte Garmon, 637 So. 2d 883, 885 (Ala. 1991) ("This Court has stated, 'Summary procedures, designed to punish direct contempts, are utilized to fill the need for immediate penal vindication of the dignity of the court.' In re Tarpley, 293 Ala. 137, 142, 300 So. 2d 409 (1974).") (emphasis added).

The procedure set out in Rule 70A(b) does not contemplate completion of a show-cause hearing to determine whether an alleged contemnor has committed direct contempt. Thus, Aldridge has demonstrated that the juvenile court has not complied with the procedural requirements for entering a finding of direct contempt that are set out in Rule 70A(b), and we grant his petition insofar as it requests an order directing the juvenile court to vacate its September 18, 2018, order requiring him to attend a show-cause hearing regarding his alleged direct contempt. For that reason, we do not consider the other relief requested in his petition regarding whether Judge Coats should be permitted to preside over the show-cause hearing. Likewise, because there is no indication

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that Judge Coats has attempted to obtain a finding of constructive contempt against Aldridge, we expressly do not consider whether the procedural requirements of Rule 70A(c) have been met in this case.

PETITION GRANTED; WRIT ISSUED.

Thompson, P.J., and Pittman, Thomas, and Donaldson, JJ.,
concur.

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

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MOORE, Judge, concurring in the result.

Daniel F. Aldridge petitions this court for the writ of mandamus directing the Madison Juvenile Court ("the juvenile court") to vacate an order requiring him to appear at a hearing to show cause why he should not be held in contempt.

I agree with the main opinion that this court has jurisdiction over Aldridge's petition. This court derives its subject-matter jurisdiction from the Alabama Constitution of 1901 and the Alabama Code of 1975. See, e.g., Baldwin Mut. Ins. Co. v. McCain, [Ms. 1160093, March 23, 2018] ___ So. 3d ___ (Ala. 2018). Article V, § 141(b), Ala. Const. of 1901 (Off. Recomp.), provides, in pertinent part, that this court "shall exercise appellate jurisdiction under such terms and conditions as shall be provided by law and by rules of the supreme court." Section 141(c) provides, in pertinent part, that this court "shall have no original jurisdiction except the power to issue all writs necessary or appropriate in aid of appellate jurisdiction" of the court. According to § 12-15-601, Ala. Code 1975, appeals from a juvenile-court proceeding "shall be pursuant to rules of procedure adopted by the Supreme Court of Alabama." In Rule 28(A), Ala. R. Juv.

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P., our supreme court directed that appeals from final orders or judgments of the juvenile court shall be to the appropriate appellate court if certain conditions have been met, including the existence of an adequate record and a stipulation that only questions of law are involved. There is no indication in the present case that those conditions have not been met. Accordingly, pursuant to Rule 28(A), § 12-15-601, and the Alabama Constitution, this court may properly exercise jurisdiction over Aldridge's petition.

The main opinion concludes that the juvenile court's September 18, 2018, order references direct contempt, see Rule 70A(a)(2)(A), Ala. R. Civ. P. (defining "direct contempt"), rather than constructive contempt. See Rule 70A(a)(2)(B), Ala. R. Civ. P. (defining "constructive contempt"). According to Rule 70A(a)(2)(A):

"'Direct contempt' means disorderly or insolent behavior or other misconduct committed in open court, in the presence of the judge, that disturbs the court's business, where all of the essential elements of the misconduct occur in the presence of the court and are actually observed by the court, and where immediate action is essential to prevent diminution of the court's dignity and authority before the public."

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In the present case, Judge Linda Coats declined to address Aldridge's actions at the time of the September 12, 2018, hearing. Instead, Judge Coats entered an order on September 18, 2018, setting a hearing to determine whether Aldridge should be held in contempt. It is clear, therefore, that Judge Coats had determined that, at the time of Aldridge's purportedly contemptuous conduct, immediate action was not essential to prevent diminution of the court's dignity and authority before the public. Accordingly, Aldridge's conduct did not meet the definition of "direct contempt," as defined by Rule 70A(a)(2)(A), and, as a result, necessarily amounted to "constructive contempt," which is defined as "any criminal or civil contempt other than a direct contempt." Rule 70A(a)(2)(B).

With regard to constructive-contempt proceedings, Rule 70A(c), Ala. R. Civ. P., provides, in pertinent part:

"(1) Initiation of Action. A proceeding based on constructive contempt, whether criminal or civil, shall be subject to the rules of civil procedure. The proceeding shall be initiated by the filing of a petition seeking a finding of contempt (the petition may be in the form of a counterclaim or cross-claim authorized under Rule 13[, Ala. R. Civ. P.]). The petition shall provide the alleged contemnor with notice of the essential facts constituting the alleged contemptuous conduct.

"(2) Issuance of Process and Notice. Upon the filing of a contempt petition, the clerk shall issue process in accordance with these rules, unless the petition is initiated by a counterclaim or cross-claim authorized under Rule 13. In any case, the person against whom the petition is directed shall be notified (1) of the time and place for the hearing on the petition and (2) that failure to appear at the hearing may result in the issuance of a writ of arrest pursuant to Rule 70A(d), to compel the presence of the alleged contemnor.

"(3) Right to Counsel. In actions involving criminal contempt, upon the request of the alleged contemnor and proof of indigence, counsel shall be appointed to represent the alleged contemnor. This right to appointed counsel, once asserted, may be subsequently waived by the alleged contemnor in writing or on the record, after the court has ascertained that the alleged contemnor knowingly, intelligently, and voluntarily desires to forgo the right to counsel. The court may, in its discretion, appoint advisory counsel to advise the alleged contemnor."

Despite the edicts of Rule 70A(c) for the initiation of constructive-contempt proceedings, Judge Coats failed to file a petition seeking a finding of contempt as outlined in Rule 70A(c) (1). Because the procedures afforded under Rule 70A(c) were not followed, Aldridge's petition for the writ of mandamus is due to be granted. See S.T.W. v. T.N., 141 So. 3d 1083, 1088-89 (Ala. 2013) (concluding that the juvenile court's failure to follow the procedures set forth under Rule 70A, Ala. R. Civ. P., for finding a party in constructive

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contempt mandated reversal of that court's order finding a party in contempt).

Because I would grant Aldridge's petition for the writ of mandamus based on grounds different than those outlined in the main opinion, I concur in the result.